

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In The Matter of

The Continued Association of

Bruce Zipper

as a

General Securities Representative

with

Dakota Securities International, Inc.

Notice Pursuant to

Section 19(d)

Securities Exchange Act

of 1934

SD-2129

October 2, 2017

I. Introduction

On July 29, 2016, Dakota Securities International, Inc. (the “Firm”), submitted a Membership Continuance Application (“MC-400” or “the Application”) to FINRA’s Department of Registration and Disclosure. The Application seeks to permit Bruce Zipper, a person subject to a statutory disqualification, to continue to associate with the Firm as a general securities representative. On July 12, 2017, a subcommittee (“Hearing Panel”) of FINRA’s Statutory Disqualification Committee held a hearing on the matter. Zipper appeared at the hearing, accompanied by the Firm’s acting chief executive officer at the time, Robert Lefkowitz (“Lefkowitz”).<sup>1</sup> Ann-Marie Mason, Esq., Katayna Moore, Esq., and Sora Lee, Esq. appeared on behalf of FINRA’s Department of Member Regulation (“Member Regulation”).

For the reasons explained below, we deny the Application. Zipper engaged in serious misconduct since his disqualifying event by associating with the Firm while suspended, and Lefkowitz—Zipper’s supervisor and the Firm’s chief compliance officer at the time—permitted Zipper to do so. Moreover, the Firm has not demonstrated that Zipper’s current proposed supervisors have the necessary supervisory experience and independence to supervise Zipper, the Firm’s owner. Finally, the Firm’s proposed heightened supervisory plan, which the Firm revised

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<sup>1</sup> As described below, the Firm originally proposed that Lefkowitz would serve as Zipper’s primary supervisor. Effective as of July 17, 2017, however, Lefkowitz began serving a five-month suspension in all principal capacities. *See infra* Part V.A.1. At and subsequent to the hearing, the Firm named Elizabeth Diane Alexander as Zipper’s primary supervisor. Ms. Alexander did not attend the hearing.

both at and after the hearing, lacks sufficient detail and the necessary stringency required of a heightened supervisory plan for a statutorily disqualified individual. We therefore conclude that the Firm has not demonstrated that it is in the public interest for Zipper to continue to associate with the Firm, and deny the Application.<sup>2</sup>

## II. The Statutorily Disqualifying Event

Zipper is statutorily disqualified due to FINRA's acceptance, on April 22, 2016, of a Letter of Acceptance, Waiver and Consent (the "Disqualifying AWC"). The Disqualifying AWC found that Zipper willfully failed to disclose material information on his Uniform Application for Securities Industry Registration or Transfer ("Form U4").<sup>3</sup> Specifically, the Disqualifying AWC found that Zipper willfully failed to disclose on his Form U4 three judgments totaling approximately \$22,000.<sup>4</sup> Zipper disclosed these matters between one and four years late. The Disqualifying AWC imposed "[a] three-month suspension from association with any FINRA member in all capacities" and stated that Zipper "may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rule 8310 and 8311)." The Disqualifying AWC also imposed upon Zipper a \$5,000 fine.<sup>5</sup>

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<sup>2</sup> Pursuant to FINRA Rule 9524(a)(10), the Hearing Panel submitted its written recommendation to the Statutory Disqualification Committee. In turn, the Statutory Disqualification Committee considered the Hearing Panel's recommendation and presented a written recommendation to the National Adjudicatory Council ("NAC").

<sup>3</sup> FINRA's By-Laws provide that a person is subject to "disqualification," and thus must seek and obtain FINRA's approval prior to associating with a member firm, if he is disqualified under Section 3(a)(39) of the Securities Exchange Act of 1934 ("Exchange Act"). *See* FINRA By-Laws, Art. III. Exchange Act Section 3(a)(39)(F) provides that a person is subject to statutory disqualification if he has willfully made a false or misleading statement of material fact, or has omitted to state a material fact required to be disclosed, in any application or report filed with a self-regulatory organization.

<sup>4</sup> Question 14.M of Form U4 asks, "Do you have any unsatisfied judgments or liens against you?" Article V, Section 2(c) of FINRA's By-Laws requires that an associated person keep his Form U4 current at all times and to update information on the Form U4 within 30 days. Further, FINRA Rule 1122 states that, "[n]o member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof."

<sup>5</sup> Zipper did not pay the fine; Member Regulation asserts that it was discharged by his June 2016 bankruptcy filing. *See infra* Part III.B.3. Similarly, it asserts that the judgments underlying the Disqualifying AWC were discharged by Zipper's bankruptcy. Further, Zipper did not honor

In the Application, Zipper stated that he did not update his Form U4 to reflect the judgments because he did not believe that they were valid. Zipper further stated that, “I have now learned that I was wrong and am wiser for it.” At the hearing, however, Zipper testified that it was “outrageous” that he had to undergo an eligibility proceeding for misconduct that he characterized as inconsequential and without customer harm and that he was “hoodwinked” into signing the Disqualifying AWC. Zipper further asserted that at the time he agreed to the Disqualifying AWC, FINRA staff did not adequately explain to him the ramifications of a statutory disqualification.<sup>6</sup> Zipper explained that after signing the Disqualifying AWC, he researched FINRA’s eligibility proceeding process and immediately requested that the Disqualifying AWC be set aside because he realized that it was possible he “could be thrown out of the industry.” FINRA staff refused Zipper’s request. Zipper also testified that later in 2016, he discussed with FINRA staff his argument that FINRA was precluded from entering into the Disqualifying AWC based upon an August 2015 Cautionary Action issued to the Firm for its supervisory failures related to Zipper’s Form U4 deficiencies and those of another registered representative. FINRA staff again refused to vacate the Disqualifying AWC.<sup>7</sup>

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the terms of his three-month suspension and improperly associated with the Firm during the terms of his suspension under the Disqualifying AWC. *See infra* Part VII.B.1.

<sup>6</sup> The Firm’s written supervisory procedures (“WSPs”), however, generally describe the process to obtain FINRA’s approval for a statutorily disqualified individual to remain employed with the Firm. They provide that compliance was responsible for preparing all necessary forms and applications in connection with a statutorily disqualified individual’s employment, that “[a] hearing may be required prior to approval of the individual’s association with Dakota,” and that compliance will establish required supervisory procedures for the disqualified individual. With respect to this section of the WSPs, Zipper (the Firm’s chief compliance officer who created and was responsible for the WSPs) testified that they were 400 or 500 pages long and that he was not “totally up to speed” on each section of the WSPs.

<sup>7</sup> In April 2017, Zipper filed an appeal with the SEC seeking to invalidate the Disqualifying AWC on this same basis. FINRA filed a motion to dismiss Zipper’s appeal on May 30, 2017, and the SEC dismissed Zipper’s appeal on September 29, 2017. *See Bruce Zipper*, Exchange Act Release No. 81788 (Sept. 29, 2017), <https://www.sec.gov/litigation/opinions/2017/34-81788.pdf>.

Prior to the SEC’s dismissal of Zipper’s appeal, in June 2017 Zipper requested an “indefinite stay” of these proceedings while his SEC appeal remained pending. The Hearing Panel denied Zipper’s request, which we find was appropriate under the circumstances. In other contexts, the SEC has found that a pending appeal of a statutorily disqualifying event does not preclude FINRA from processing an application for a disqualified individual to associate with his or her firm or denying such an application. *See, e.g., Citadel Sec. Corp.*, 57 S.E.C. 502, 506 (2004) (rejecting applicant’s argument that FINRA’s denial of a membership continuance application and its finding that an individual was statutorily disqualified were premature where

### III. Background Information

#### A. Zipper

Zipper has more than 35 years of experience in the securities industry.<sup>8</sup> He has been associated with the Firm, which he founded, since August 2004. Zipper generally served as the Firm's chief executive officer and chief compliance officer from the Firm's inception until the Disqualifying AWC (at which time Lefkowitz assumed those roles), and he currently is again serving as the Firm's chief executive officer and chief compliance officer while Lefkowitz serves his five-month principal suspension. He holds a 70% ownership interest in the Firm. FINRA's Central Registration Depository ("CRD")® indicates that he was previously associated with nine FINRA member firms. The record shows that Zipper has approximately 50 customers. He testified that they are all long-time customers, friends, and family.

#### B. Zipper's Regulatory and Disciplinary History

##### 1. FINRA and State Regulatory Actions

In addition to the Disqualifying AWC, in April 2016 FINRA accepted a Letter of Acceptance, Waiver and Consent ("AWC") from Zipper and the Firm. Without admitting or denying the allegations, the AWC found that Zipper and the Firm failed for a period of more than two years to establish, maintain, and enforce a supervisory system to ensure the preservation of electronic communications. FINRA suspended Zipper in all principal capacities for one month (to be served concurrently to the suspension imposed by the Disqualifying AWC) and fined him \$10,000. FINRA also censured the Firm and fined it \$10,000. The Firm is currently paying the

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the individual was the subject of a federal district court injunction that had been appealed) (internal citations omitted); *Gershon Tannenbaum*, 50 S.E.C. 1138, 1140 (1992) (rejecting argument that excluding an individual from the securities business where he was disqualified as a result of a preliminary injunction that was still awaiting final determination is unfair and stating that, "this Commission and the NASD are also authorized to take prompt action for the protection of public investors prior to a final adjudication on the merits"). We also reject Zipper's arguments regarding the legitimacy of the Disqualifying AWC as an impermissible collateral attack. *See id.* (stating that "[i]t is always true in a case of this sort that a respondent cannot mount a collateral attack on findings that have been previously made against him").

<sup>8</sup> Zipper qualified as a general securities representative in November 1981, as a general securities principal in August 1982, as a financial and operations principal in May 2000, and as a registered options principal in November 2004. He also passed the uniform securities agent state law examination in April 1995.

fine via an installment plan. Member Regulation asserts that Zipper's fine was discharged in his bankruptcy proceeding.

In November 2009, Zipper and the Firm entered into a Stipulation and Consent Agreement with the Florida Office of Financial Regulation. Without admitting or denying the allegations, the Stipulation and Consent Order found that Zipper and the Firm failed to conduct independent testing of the Firm's anti-money laundering ("AML") compliance program and failed to enforce the Firm's WSPs. The Firm and Zipper were fined \$5,000 (jointly and severally) and agreed to amend the Firm's practices and WSPs.

In November 1995, Zipper entered into a Stipulation and Consent Agreement with the Florida Department of Banking and Finance for failing to timely notify the state of an action filed by FINRA. Zipper was fined \$1,000.

In June 1995, the SEC affirmed FINRA's decision to censure Zipper, suspend him for five business days, and fine him \$5,000 for failing to timely pay an arbitration award. Zipper testified that he never served a suspension in connection with this matter.

## 2. Customer Complaint

In September 2014, a customer filed with FINRA an arbitration claim against the Firm, Zipper, and one other individual. The customer's claim related to allegedly unsuitable and unauthorized trades in her account. She sought damages of approximately \$650,000. The claim resulted in a stipulated award in favor of the customer against the respondents; they were jointly and severally liable for paying the customer \$210,460.77, plus interest. CRD indicates that this matter was settled for \$50,000, with Zipper paying the entire amount. At the hearing, Zipper testified that he was not the registered representative of record for this customer's account.

## 3. Bankruptcies

As stated above, Zipper personally filed a bankruptcy petition in June 2016. He received a discharge from his debts in January 2017.<sup>9</sup> Zipper also filed a bankruptcy petition in June 1995. He received a discharge from his debts in July 1996. Finally, Zipper testified during a FINRA on-the-record interview that that he filed another bankruptcy petition in the late eighties.

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<sup>9</sup> In April 2017, and in connection with a request to postpone the hearing in this matter, Zipper stated that his "request for postponement is due to the personal bankruptcy case I have filed and still [sic] undergoing. I am hopeful this bankruptcy filing will be finalized at the end of August 2017." At the hearing, however, Zipper argued that Member Regulation's assertion in its recommendation letter that he sought to continue the hearing based upon his bankruptcy case (for which he received a discharge in January 2017) was "100 percent false. And I have the documentation to show the panel." The documents in the record refute Zipper's claim. At the hearing, Zipper also misrepresented the circumstances and reasoning behind the eventual continuance of the hearing by the Hearing Panel.

#### 4. Pending Matters

In April 2017, and in connection with Zipper’s alleged violation of the suspension imposed by the Disqualifying AWC, FINRA issued a Wells Notice to Zipper, the Firm, and Lefkowitz. These matters remain pending against Zipper and the Firm; Lefkowitz agreed to an AWC to resolve the matter. *See infra* Part V.A.1.

#### C. The Firm

The Firm is based in Miami, Florida, and has been a FINRA member since 2005. The Application states that the Firm has one Office of Supervisory Jurisdiction (“OSJ”) (currently Zipper’s residence) and no branch offices. Lefkowitz testified that seven individuals (including himself and Zipper) are registered with the Firm. All but Drew Alexander, Zipper’s proposed alternate supervisor, work from their homes in South Florida.<sup>10</sup> The Firm does not employ any other individuals subject to statutory disqualification.

##### 1. Regulatory Actions

In addition to the matters for which the Firm and Zipper were jointly named, in March 2010, the Firm entered into an AWC with FINRA for violations of Exchange Act Section 17, Exchange Act Rule 17a-4, and NASD Rules 3010, 2110, and 2110. Without admitting or denying the allegations, the Firm consented to findings that it failed to retain emails and failed to enforce its supervisory procedures for the retention and review of emails. FINRA censured the Firm and fined it \$5,000.

##### 2. Routine Examinations

In connection with the Firm’s 2015 cycle examination, in August 2015 FINRA issued the Firm a Cautionary Action for failing to implement adequate procedures to ensure that registered representatives’ Forms U4 (including Zipper’s) were current. The Firm was also referred to FINRA’s Department of Enforcement (“Enforcement”) for deficiencies related to the Firm’s failure to identify whether customer orders were solicited or unsolicited, the Firm’s AML compliance program, and supervisory failures in several areas.

#### IV. Zipper’s Proposed Business Activities

The Firm originally proposed to continue to employ Zipper at the Firm’s home office and OSJ (which is currently Zipper’s residence in Miami, Florida). At and subsequent to the hearing, the Firm proposed that if the Application is approved, within 60 days the Firm will move “into a business office located in an office building in South Florida which will become Dakota’s

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<sup>10</sup> Mr. Alexander works from his home in Jacksonville, Florida.

OSJ.”<sup>11</sup> The Firm proposed that Zipper would limit his activities at the Firm to acting as a general securities representative and he would give up his supervisory responsibilities over the Firm.<sup>12</sup> The Firm represents that Zipper will be compensated by commissions.

## V. Zipper’s Proposed Supervision

Several key aspects of Zipper’s proposed supervision were in flux up to, during, and after the hearing, including Zipper’s proposed supervisors and the terms of his heightened supervision. We discuss these matters below.

### A. The Firm’s Chief Executive Officer and Zipper’s Proposed Supervisors

#### 1. Lefkowitz

Lefkowitz has previously served as Zipper’s supervisor, and the Firm originally proposed that he serve as Zipper’s primary supervisor under the plan. Although the Firm no longer proposes that Lefkowitz serve as Zipper’s supervisor, it states that Lefkowitz will serve as the Firm’s chief executive officer if the Application is approved and after he serves his five-month principal suspension. It further states that Lefkowitz will have “total control of the daily operations” of the Firm including supervising all registered representatives and “having the ability to fire anyone” at the Firm, including Zipper.

Lefkowitz met Zipper at a prior firm in 1998, and Zipper hired him at the Firm in December 2011. He first registered as a general securities representative in October 1986 and registered as a general securities principal in May 2016.<sup>13</sup> Lefkowitz also passed the futures managed funds examination in May 1993, the uniform investment adviser law examination in March 1999, and the uniform securities agent state law exam in May 2006. Lefkowitz has been associated with nine other firms. He is paid by commissions.

On June 29, 2017, FINRA accepted a Letter of Acceptance, Waiver and Consent from Lefkowitz (the “Lefkowitz AWC”). Without admitting or denying the allegations, Lefkowitz

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<sup>11</sup> The Firm’s revised heightened supervisory plan, however, does not specifically state whether Zipper will work at, and be supervised from, this new office. *See infra* Part V.B.

<sup>12</sup> Subsequent to the hearing, however, Zipper informed FINRA that he would serve as the Firm’s chief executive officer while Lefkowitz serves his suspension. We find that this statement is in conflict with the Firm’s revised supervisory plan that provides that Zipper will not serve in a supervisory capacity, and underscores that the Firm is incapable of stringently supervising Zipper pursuant to a comprehensive heightened supervisory plan.

<sup>13</sup> Lefkowitz registered as a general securities principal upon Zipper’s request so that Lefkowitz could assume Zipper’s roles at the Firm during Zipper’s three-month suspension under the Disqualifying AWC.

consented to findings that as Zipper's supervisor he permitted Zipper to associate with the Firm during his suspension under the Disqualifying AWC, in violation of NASD Rule 1031, FINRA Rules 8311 and 2010, and Article III, Section 3(b) of FINRA's By-Laws. FINRA suspended Lefkowitz in all principal capacities for five months and fined him \$5,000. Lefkowitz's suspension began on July 17, 2017 and ends on or about December 18, 2017.

In addition to the Lefkowitz AWC, a firm terminated Lefkowitz for cause in 1997. CRD states that the firm had "concerns over the handling of a customer account with issues of unsuitability, excessive trading and using discretion without authorization."

The record shows no other criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against Lefkowitz.

2. Elizabeth Diane Alexander

At the hearing, Lefkowitz proposed that Elizabeth Diane Alexander (who was originally proposed as a potential alternate supervisor) would serve as Zipper's primary supervisor until Lefkowitz could engage in activities as a principal after his five-month suspension. In one of its post-hearing submissions, the Firm proposed that Ms. Alexander would serve as the Firm's chief compliance officer and as Zipper's primary supervisor (presumably even after Lefkowitz serves his suspension).

Ms. Alexander first registered as a general securities representative in August 1997 and as a general securities principal in January 1998. She also passed the uniform securities agent state law examination in October 1998. She has been with the Firm since September 2005 and was previously associated with four other firms.

The record does not reflect that she has any disciplinary or regulatory history.

At the hearing, Lefkowitz and Zipper testified that Ms. Alexander has approximately 20 customers and that their accounts are mostly inactive. Similarly, in one of the Firm's post-hearing submissions, it states that Ms. Alexander has only placed one order in the past six months. She is paid by commissions.<sup>14</sup>

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<sup>14</sup> When asked by the Hearing Panel how Ms. Alexander made a living if her customer accounts are mostly inactive and she is paid on a commission basis, Zipper testified that she has "personal wealth, fortunately, she doesn't need this to survive."

In several post-hearing filings, Member Regulation disputes the Firm's characterization of Ms. Alexander's production and argues that the Firm's records show that she was one of the Firm's top producing representatives, earning \$25,048 in commissions from January 2015 through November 2016. Member Regulation asserts that this fact, along with Ms. Alexander's proposed role as the Firm's chief compliance officer, purportedly demonstrates that she has "little time to either administer the Plan or enforce it." Zipper argues that Ms. Alexander does

3. Drew Alexander

The Firm further proposes that Drew Alexander will serve as Zipper's backup supervisor.<sup>15</sup> Mr. Alexander works from his home in Jacksonville, Florida (which is approximately 350 miles from Zipper's location in Miami, Florida).

Mr. Alexander first registered as a general securities representative in February 2007, and as a general securities principal in June 2011. He also passed the uniform securities agent state law examination in February 2007. Mr. Alexander has been with the Firm since May 2016 and was previously associated with three other firms.

CRD indicates that he was discharged from a prior firm for "performance issues." The record shows no disciplinary or regulatory history for Mr. Alexander. Lefkowitz testified that Mr. Alexander has approximately 30 customers and engages in an outside business in which he deals with "some type of artwork."

B. The Firm's Proposed Heightened Supervisory Plan

The Firm initially submitted the following proposed supervisory plan with the Application:

I, Robert Lefkowitz the acting CEO of Dakota Securities will monitor and supervise Bruce Zipper. I have been in the business for more than 20 years and at Dakota for about 8 years. I know the company and know Bruce Zipper well. Dakota is a small company and I believe I will be able to monitor all business at the company including Mr. Zipper's activities. I have a supervisor's license #24 and feel more than capable of making sure Dakota's business is run correctly and with proper supervision. Over time the plan would be to have Mr. Zipper get back to supervising certain activities at the company when that time is right and approved by FINRA.

At the hearing, the Hearing Panel observed that the Firm's plan lacked sufficient detail, and permitted the Firm to propose a plan detailing exactly how Zipper would be supervised.

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have sufficient time to supervise him and that Member Regulation's characterization of Ms. Alexander's production is incorrect. He states that "Ms. Alexander has done about 3 trades in the last 18 months. Has not gotten a check from Dakota in about 12 months and owes the firm about 1800 dollars for her expenses that are accruing until she does some production." As described below, we need not determine whose account of Ms. Alexander's production is accurate because we find that regardless of her production at the Firm and whether she has the time to supervise Zipper, she lacks the necessary experience and independence to do so.

<sup>15</sup> Lefkowitz testified that Drew Alexander is not related to Ms. Alexander.

After a break, the Firm outlined a more detailed supervisory plan, which included provisions that Ms. Alexander would supervise Zipper and that the Firm's main office would be moved out of Zipper's home on August 1, 2017.

After the hearing, Zipper requested that the Firm be permitted to file an amended supervisory plan.<sup>16</sup> The Hearing Panel granted this additional request, and the Firm proposed the following revised heightened supervisory plan:<sup>17</sup>

1. The written supervisory procedures for Dakota Securities International (DSI) will be amended to state that Dianne Alexander (hereafter referred to as Supervisor) is the primary supervisor responsible for heightened supervision of Bruce Zipper;
2. Supervisor will review Public Records for Bruce Zipper on a quarterly basis and confirm U4 is up-to-date;
3. During the period of heightened supervision, Bruce Zipper will not maintain discretionary accounts;
4. Bruce Zipper will not act in a supervisory capacity;
5. Supervisor will review and pre-approve each securities account, prior to the opening of the account by Bruce Zipper. Account paperwork will be documented as approved with a date and signature and maintained at DSI's home office;
6. Supervisor will review Bruce Zipper's incoming correspondence (which will include email communications) and outgoing correspondence;
7. If Supervisor is to be on vacation or out of the office for an extended period, Drew Alexander (no relation) will act as Bruce Zipper's interim supervisor;

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<sup>16</sup> In connection with his request, Zipper stated that he and Lefkowitz "were terribly unprepared to answer the questions relating to Dakota's supervisory plans for Dakota if Zipper is approved to be let back into the industry" and instead were prepared to answer questions "as to why Zipper should be allowed to stay in the industry." Zipper further stated that "[a]s the hearing went on we found out that the biggest issue the panel wanted answered was how will Dakota be run if Zipper is allowed back. If Zipper is not allowed back there is no Dakota Securities so what difference does it make what the supervisory plans are if there is no company." Zipper acknowledged that the Hearing Panel had provided him with an opportunity at the hearing to submit a revised plan, but he requested "the opportunity to put the work in and do this plan with plenty of thought and time devoted to make this proposal right."

<sup>17</sup> In the post-hearing submission that accompanied the revised heightened supervisory plan, the Firm also states that it plans to hire an individual to serve as the Firm's options principal (which role Zipper currently holds), and that another registered representative currently with the Firm would assume Zipper's duties as the Firm's financial and operations principal.

8. For the duration of Bruce Zipper's statutory disqualification, DSI must obtain prior approval from Member Regulation if they wish to change Bruce Zipper's responsible supervisor from Diane Alexander to another person; and
9. Supervisor must certify quarterly (March 31st, June 30th, September 30th, and December 31st) to the Compliance Department of DSI that Supervisor and Bruce Zipper are in compliance with all of the above conditions of heightened supervision to be accorded Bruce Zipper.

VI. Member Regulation's Recommendation

Member Regulation recommends that the Application be denied, because in its view: (1) Zipper engaged in misconduct after the Disqualifying AWC by violating the terms of his suspension; (2) Zipper's proposed supervisors are incapable of stringently supervising a disqualified individual such as Zipper; and (3) the proposed heightened supervisory plan is inadequate.

VII. Discussion

We have carefully considered the entire record in this matter. Based on this record, and pursuant to the SEC's controlling decisions in this area, we deny the Firm's Application to employ Zipper as a general securities representative. The Firm has not demonstrated that Zipper's continued association with the Firm is in the public interest. Specifically, we find that Zipper engaged in serious misconduct since the Disqualifying AWC by associating with the Firm during his suspension. We also find that the Firm has not demonstrated that it can stringently supervise Zipper pursuant to a heightened supervisory plan. The Firm has not demonstrated that Zipper's proposed supervisors have the necessary supervisory experience and independence to supervise a statutorily disqualified individual. Finally, we find that the Firm's amended supervisory plan is inadequate.

A. The Legal Standards

We recognize that, in connection with the Disqualifying AWC, Enforcement weighed the gravity of Zipper's failure to disclose his judgments on his Form U4. Enforcement concluded that a three-month suspension in all capacities and \$5,000 fine were appropriate sanctions for Zipper's misconduct. In such circumstances, the SEC has instructed FINRA to evaluate a statutory disqualification application pursuant to the standards enunciated in the SEC's decisions in *Paul Edward Van Dusen*, 47 S.E.C. 668 (1981), and *Arthur H. Ross*, 50 S.E.C. 1082 (1992). See *May Capital Group, LLC* (hereinafter "Rokeach"), Exchange Act Release No. 53796, 2006 SEC LEXIS 1068, at \*21 (May 12, 2006) (holding that FINRA must apply *Van Dusen* standards to the membership continuance applications of statutorily disqualified individuals whose disqualifications resulted from FINRA enforcement action).

*Van Dusen* and *Rokeach* provide that in situations where an individual's misconduct has already been addressed by the SEC or FINRA, and sanctions have been imposed for such misconduct, FINRA should not consider the individual's underlying misconduct when it evaluates a statutory disqualification application. The SEC stated that when the period of time

specified in the sanction has passed, in the absence of “new information reflecting adversely on [the applicant’s] ability to function in his proposed employment in a manner consonant with the public interest,” it is inconsistent with the remedial purposes of the Exchange Act and unfair to deny an application for re-entry. *Van Dusen*, 47 S.E.C. at 671.

The SEC also noted in *Van Dusen*, however, that an applicant’s re-entry is not “to be granted automatically” after the expiration of a given time period. *Id.* Instead, the SEC instructed FINRA to consider other factors, such as: (1) “other misconduct in which the applicant may have engaged;” (2) “the nature and disciplinary history of a prospective employer;” and (3) “the supervision to be accorded the applicant.” *Id.* Further, in *Ross*, the SEC established a narrow exception to the rule that FINRA confine its analysis to “new information.” 50 S.E.C. at 1085. The SEC stated that FINRA could consider the conduct underlying a disqualifying order if an applicant’s later misconduct was so similar that it formed a “significant pattern.” *Id.* at 1085 n.10; *see also Mitchell T. Toland*, Exchange Act Release No. 73664, 2014 SEC LEXIS 4724, at \*24 n.38 (Nov. 21, 2014) (holding that, in connection with statutorily disqualified individual’s failure to disclose liens subsequent to executing an AWC with FINRA for a failure to disclose his personal bankruptcy, the NAC would have been justified in relying on his original misconduct as part of a pattern).

#### B. Application of the *Van Dusen* Standards

After applying the *Van Dusen* standards to this matter, we find that the Firm has failed to show that, “despite the disqualification, it is in the public interest to permit the requested employment.” *See Tannenbaum*, 50 S.E.C. at 1140. Based upon our review of the entire record in this matter, we find that the Application should be denied because Zipper’s continued association with the Firm is not in the public interest and would create an unreasonable risk of harm to the market or investors.

##### 1. Zipper Improperly Associated with the Firm During His Suspension

We find that Zipper engaged in serious misconduct after entry of the Disqualifying AWC by improperly associating with the Firm during his three-month suspension, which supports our decision to deny the Application.

The record includes numerous emails sent by Zipper during his suspension period. Several emails were from Zipper to third parties (such as the Firm’s clearing firm and other vendors) concerning Firm business. Moreover, the record contains a number of emails from Zipper to customers concerning their securities positions or making securities recommendations. For example, on June 1, 2016, Zipper emailed a customer concerning a stock the customer owned and the dividend paid to him, along with Zipper’s brief analysis of the company and his opinion that it would get “uplisted back to a listed exchange.” In another email to different customers dated June 3, 2016, Zipper stated:

A stock I like a lot and has been getting high analyst praise is R.R. Donnelley & Sons. . . . I strongly recommend this stock RRD to both of you. You both have large cash balances and this old time blue chip would look good in each of your portfolios. Let me know if interested.

In two emails to another customer on June 6, 2016, Zipper wrote “[i]n reviewing your portfolio I would like to offer you a suggestion for you to consider” and suggested that the customer sell shares owned by the customer and consider purchasing shares in several other companies. On July 25, 2016, Zipper emailed a customer with a “stock idea” and suggested that the customer purchase additional shares in a company. Zipper also testified that he talked with his customers on the phone during this period.

FINRA Rule 8311 provides that:

If a person is subject to a suspension, revocation, cancellation of registration, bar from association with a member (each a “sanction”) or other disqualification, a member shall not allow such person to be associated with it in any capacity that is inconsistent with the sanction imposed or disqualified status, including a clerical or ministerial capacity.

FINRA’s By-Laws define a “person associated with a member” or “associated person of a member” as “a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration” with FINRA. *See FINRA By-Laws, Article I(rr).* A firm’s “investment banking or securities business means the business, carried on by a broker . . . of purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others.” *See FINRA By-Law, Article I(u).* FINRA has construed the interpretation of an associated person broadly. *See Dist. Bus. Conduct Comm. v. Paramount Invs. Int’l, Inc.,* Complaint No. C3A940048, 1995 NASD Discip. LEXIS 248, at \*12 (NASD NBCC Oct. 20, 1995).

We have previously found that communicating with customers demonstrates that a disqualified individual has improperly associated with his firm. *See In the Matter of the Association of Marc N. Jaffe with Integrity Brokerage Services, Inc.,* SD 2103 (FINRA NAC May 16, 2017), [http://www.finra.org/sites/default/files/NAC\\_SD-2103\\_Mark\\_Jaffe\\_IBS\\_031617.pdf](http://www.finra.org/sites/default/files/NAC_SD-2103_Mark_Jaffe_IBS_031617.pdf) (holding that disqualified individual improperly associated with his firm by regularly communicating with customers and recommending securities to customers); *In the Matter of the Association of X as a General Securities Representative,* Redacted Decision No. SD11001 (FINRA NAC 2011), [http://www.finra.org/sites/default/files/NACDecision/p126105\\_0\\_0.pdf](http://www.finra.org/sites/default/files/NACDecision/p126105_0_0.pdf) (finding that disqualified individual improperly associated with his firm prior to approval by regularly communicating with customers in an effort to maintain their accounts at his sponsoring firm).

Under the facts and circumstances of this case, we find that Zipper improperly associated with the Firm by communicating with his customers and third parties on behalf of the Firm during the term of his suspension, and that such misconduct was serious. *See Paramount,* 1995 NASD Discip. LEXIS 248, at \*25 (stating that “the association of the statutorily disqualified person with a member firm is one of the most serious regulatory violations”); *see also Leslie Arouh,* Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at \*59 (Sept. 13, 2010) (affirming denial of firm’s MC-400 where disqualified individual improperly associated with the firm as a principal while subject to a bar order, which constituted “serious intervening misconduct”). Zipper does not dispute that he communicated with customers and third party

vendors during this time. Rather, he argues that he believed that such activity was permissible under the terms of the Disqualifying AWC and that during his suspension, he was simply precluded from talking with FINRA or FINRA members and from entering trades.<sup>18</sup>

We reject Zipper's narrow interpretation of the terms of his suspension. A plain reading of the Disqualifying AWC demonstrates that he could not associate with the Firm in *any capacity* (including even in a clerical or ministerial capacity). Further, the Disqualifying AWC explicitly references FINRA Rule 8311, which contains the same prohibition. The Firm's WSPs also undercut Zipper's purported belief that he was permitted to discuss with customers securities transactions and recommend securities during his suspension. Indeed, the Firm's WSPs provide that while under suspension, "employees may not: Have direct or indirect contact with customers" or "Give investment advice or counsel." It is troubling that Zipper, as the Firm's chief compliance officer for most of the Firm's existence and the individual who created the Firm's WSPs, gave investment advice and counsel during his suspension and failed to ensure that Lefkowitz was aware of these prohibitions.<sup>19</sup>

It is further troubling that a broker with Zipper's experience in the industry did not comply with a FINRA suspension that prohibited him from associating with the Firm in all capacities, including talking with his customers about securities transactions and recommending securities—core functions of a registered representative and activities squarely falling under the Firm's securities business.<sup>20</sup> Similarly troubling is that Lefkowitz, Zipper's then-supervisor, the Firm's chief compliance officer at the time, and the Firm's proposed chief executive officer, shared Zipper's view of what was permissible during his suspension despite the clear language of the Disqualifying AWC.<sup>21</sup>

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<sup>18</sup> At his January 2017 on-the-record testimony, Zipper initially testified that he was not permitted to speak with customers to solicit stocks or to email customers with securities recommendations. Zipper later testified during the on-the-record interview that he was permitted to engage in such activities and testified before the Hearing Panel that he had "clarified" his first statements about what he could and could not do under the Disqualifying AWC during the on-the-record interview.

<sup>19</sup> Zipper's testimony at the hearing suggested that he was unfamiliar with this section of the Firm's WSPs, as well as other sections pertinent to his statutory disqualification. *See supra*, note 6.

<sup>20</sup> At the hearing, Zipper implied that it is unreasonable to have expected him to refrain from speaking to his customers because they are his friends and family. Zipper misconstrues the nature of his misconduct; he violated the terms of his suspension by speaking with his customers about securities transactions and recommending securities during that time. These activities clearly constitute associating with his Firm, which he was prohibited from doing during his three-month suspension.

<sup>21</sup> When shown Zipper's email to a customer in which he stated that he "strongly recommended" a stock to two customers, Lefkowitz would not say whether Zipper was

Zipper further argues that he verbally received assurances from the FINRA attorney who negotiated the Disqualifying AWC that FINRA would not strictly enforce the terms of the Disqualifying AWC. Specifically, Zipper asserts that he was told that if that an issue arose during his suspension that Zipper determined only he could handle due to the small size of the Firm, and if his intervention was necessary to prevent harm to the Firm or to a customer, Zipper was permitted to intervene regardless of the suspension. We do not find Zipper's testimony to be credible, and other than his self-serving testimony the record does not contain any evidence of this purported exception to the Disqualifying AWC's broad and straight-forward prohibition on Zipper associating with the Firm in any capacity.<sup>22</sup> Moreover, even assuming the veracity of Zipper's testimony, neither Zipper nor the Firm have adequately explained why another registered representative at the Firm could not service Zipper's customers during his suspension.

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In sum, Zipper regularly communicated with his customers during his suspension and made securities recommendations during that period instead of avoiding associating with the Firm in all capacities as was required by the Disqualifying AWC. Zipper's conduct during this time constituted improperly associating with the Firm, in violation of the Disqualifying AWC.

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recommending a security to a customer and instead characterized Zipper's email as "discussing the stock." Further, in a post-hearing submission Zipper stated that he believed that he was permitted to communicate with customers and he "conveyed those thoughts to Mr. Lefkowitz and he accepted my version of the events as to why I believed them to be the case" and that Lefkowitz "did nothing more than accept [Zipper's] version of what [Zipper] could or couldn't do during [his] suspension." Lefkowitz could not recall if he reviewed the Disqualifying AWC prior to the beginning of Zipper's suspension. Nonetheless, Lefkowitz's own settlement with FINRA regarding his failure to enforce the terms of Zipper's suspension contradicts any testimony regarding his belief as to whether Zipper was associating with the Firm.

<sup>22</sup> During Zipper's January 2017 on-the-record testimony, he claimed that the FINRA attorney at issue gave Zipper "a list of five things [that he could not do during the term of his suspension], I have it written in my file." At the hearing, however, Zipper contradicted his previous statement and testified that he did not have anything in writing to document this. At the hearing, Zipper also suggested that he had taped conversations that supported his assertions concerning the Disqualifying AWC. When pressed by the Hearing Panel, however, he admitted that he did not have any such tapes.

2. Zipper's Proposed Supervisors Lack the Necessary Experience and Independence

As an independent basis for denying the Application, we also find that the Firm has not shown that Ms. Alexander and Mr. Alexander can provide the stringent supervision required of a statutorily disqualified individual.<sup>23</sup> See *Morton Kantrowitz*, 55 S.E.C. 98, 102 (2001) (“In determining whether to permit the employment of a statutorily disqualified person, the quality of the supervision to be accorded that person is of the utmost importance. We have made it clear that such persons must be subject to stringent oversight by supervisors who are fully qualified to implement the necessary controls.”); see also *Timothy P. Pedregon*, Exchange Act Release No. 61791, 2010 SEC LEXIS 1164, at \*27-28 (Mar. 26, 2010) (finding troubling the assignment of an unqualified individual to serve as a supervisor for a statutorily disqualified individual); *In the Matter of the Continued Association of Ronald Berman with Axiom Capital Management, Inc.*, SD 1997, slip op. at 17 (FINRA NAC Dec. 11, 2014), <http://www.finra.org/industry/decisions> (finding that proposed supervisor’s lack of experience directly supervising an individual was “problematic in the context of supervising a statutorily disqualified individual” and was “exacerbated by Berman’s many years in the industry and importance to Axiom as one of its largest producers”).

As an initial matter, we note that only Lefkowitz appeared at the hearing to testify. Lefkowitz, however, entered into the Lefkowitz AWC pursuant to which he agreed to a five-month suspension in all principal capacities. Despite Lefkowitz’s inability to serve as Zipper’s supervisor during his suspension and the Firm’s knowledge of this fact several weeks prior to the hearing, neither Ms. Alexander nor Mr. Alexander appeared at the hearing. It was the Firm’s obligation to marshal its witnesses and evidence to present at the hearing to satisfy its burden that approving the Application is in the public interest (including demonstrating that it could stringently supervise Zipper with qualified and experienced supervisors), yet the Firm failed to do so for these key individuals. Cf. *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at \*54 (Nov. 9, 2012) (“Ultimately, it is the respondent’s obligation . . . to marshal all the evidence in his defense”) (citations omitted).

Regardless, and based upon the record, we find that Zipper’s proposed supervisors lack the necessary supervisory experience to supervise a statutorily disqualified individual such as

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<sup>23</sup> As a general matter, Zipper demonstrated a lack of appreciation for the crucial requirement that statutorily disqualified individuals be subject to stringent supervision by qualified supervisors. During this proceeding, Zipper repeatedly took “tremendous offense” to Member Regulation’s legitimate questions and concerns regarding the experience of Ms. Alexander and Mr. Alexander, and questioned Member Regulation’s ability to make such inquiries and its staff’s qualifications. Statutorily disqualified individuals, however, *must* be supervised by qualified supervisors pursuant to a stringent supervisory plan, and Member Regulation appropriately asked questions regarding Zipper’s supervisors’ experience and backgrounds.

Zipper under heightened supervision.<sup>24</sup> As set forth above, Zipper has more than 35 years of industry experience. In contrast, CRD indicates that although Ms. Alexander has been registered as a general securities principal since 1998, she appears to have minimal (if any) direct supervisory experience during her career. At the hearing, Lefkowitz initially testified that Ms. Alexander “has over 35 years in the brokerage business and compliance experience and we feel this qualifies her to be in a supervisory role.” Lefkowitz elaborated that Ms. Alexander had prior supervisory and compliance experience at two firms prior to joining the Firm. After being confronted with Ms. Alexander’s CRD report stating that she had served as a “senior cashier” at one of the firms, he then testified that he was “not that familiar with her past experience” and thought she served as a supervisor at the other firm (where she was employed for less than two years, only one month of which she was registered as a principal).<sup>25</sup> Similarly, CRD indicates that Mr. Alexander has been registered as a general securities principal for only six years (and only became approved as a principal at the Firm after the hearing in this matter). He appears to have no direct supervisory experience.<sup>26</sup> We further note that Lefkowitz, the Firm’s proposed chief executive officer who will supervise all registered representatives, has only been registered as a general securities principal for approximately one year, and admitted that he has limited supervisory experience. Indeed, during his brief time as a supervisor, he permitted Zipper to violate the terms of his suspension, which resulted in Lefkowitz’s five-month suspension.

We also find that the Firm has not demonstrated that Zipper’s proposed supervisors possess the necessary independence to supervise Zipper. *See Berman*, SD 1997, slip op. at 17 (FINRA NAC Dec. 11, 2014) (holding that “in the context of a statutorily disqualified

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<sup>24</sup> As set forth above, the parties submitted numerous post-hearing filings concerning whether Ms. Alexander has sufficient time to supervise Zipper based upon her alleged production at the Firm and her proposed role as the Firm’s chief compliance officer. Resolving this factual matter is unnecessary because we find that Ms. Alexander lacks the qualifications and independence necessary to supervise Zipper regardless of whether she has the time to do so.

<sup>25</sup> In one of the Firm’s post-hearing submissions, it describes Ms. Alexander’s experience as follows:

Ms. Alexander has 35 years [sic] experience in the industry and has worked in all capacities in the industry including cashiering with Dean Witter, being a compliance officer with Community Bank in Homestead FL, and as a registered rep for Dakota Securities for the last 13 years.

<sup>26</sup> The Firm stressed that both Ms. Alexander and Mr. Alexander have clean regulatory histories. While this may be true, it does not alter our conclusion that neither individual possesses the necessary direct supervisory experience to supervise a disqualified individual. *See Kantrowitz*, 55 S.E.C. at 102 (stating that supervisors of statutorily disqualified individuals must be “fully qualified to implement the necessary controls”); *Pedregon*, 2010 SEC LEXIS 1164, at \*27-28 (finding troubling the assignment of an unqualified individual to serve as a supervisor for a statutorily disqualified individual).

individual, [ ] stringent supervision free of any conflicts of interest between the supervised individual and his supervisor (and, in turn, firm management) is of the utmost importance”); *Jaffe*, SD 2103, slip op. at 20 (denying firm’s application to associate with disqualified individual where, among other things, the firm failed to address potential conflicts of interest between the disqualified individual and his proposed supervisors); *see also* FINRA Rule 3110(b)(6)(C) (providing that a firm’s supervisory procedures shall include, among other things, provisions prohibiting associated persons who perform supervisory functions from reporting to, or having their compensation or continued employment determined by, a person or persons they are supervising, and that if a firm determines that compliance with this provision is not possible because of the firm’s size or a supervisory personnel’s position within the firm, the member must document the factors used to reach such determination and how the supervisory arrangement with respect to such supervisory personnel otherwise complies with FINRA Rule 3110(a)).

Zipper is the majority owner of the Firm and he hired Lefkowitz, Ms. Alexander, and Mr. Alexander. He also supervised these individuals at the Firm prior to the Disqualifying AWC. In one of its post-hearing submissions, the Firm stated that Lefkowitz will supervise all registered representatives and will have the ability to fire anyone at the Firm, including Zipper. At the hearing, however, Lefkowitz testified that he did not believe that he could prevent Zipper from acting as the owner of the Firm. Zipper also testified that he has the authority to fire Lefkowitz (noting that the Firm has the ability to sever ties with all of its registered representatives upon 30 days’ notice). Moreover, Zipper testified at his on-the-record interview that Lefkowitz was “as close to me as my brother. . . He would do anything for me and me him.” These facts, along with Lefkowitz’s acceptance of Zipper’s explanation of what he could do during his three-month suspension, amplify our concerns that Zipper will exert controlling influence over Lefkowitz and his proposed supervisors.<sup>27</sup> The Firm has not presented any evidence that alleviates our concerns in any of these areas. Under the circumstances, we find that these factors weigh strongly against approving the Application.

### 3. The Plan

Finally, we find that the Firm’s revised heightened supervisory plan remains short on detail and lacks certain basic provisions that we expect to be contained in a supervisory plan for a statutorily disqualified individual. *See Nicholas S. Savva and Hunter Scott Financial, LLC*, Exchange Act Release No. 72485, 2014 SEC LEXIS 2270, at \*63 (June 26, 2014) (affirming FINRA’s denial of an application to employ statutorily disqualified individual where “the proposed plan did not contain provisions sufficient to ensure that Hunter Scott properly supervised Savva”); *Jaffe*, SD 2103, slip op. at 21 (denying application based upon, among other things, inadequate proposed plan of supervision).<sup>28</sup>

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<sup>27</sup> On several occasions during the hearing, Zipper attempted to answer questions on Lefkowitz’s behalf, which highlights our concerns regarding the independence of Lefkowitz and Zipper’s proposed supervisors.

<sup>28</sup> Moreover, even if we were to find that the Firm had crafted a comprehensive heightened supervisory plan that provided for stringent supervision of Zipper (it did not), “[i]t is well

Although the Firm’s most recent proposed heightened supervisory plan filed after the hearing is an improvement upon its original proposed plan (which consisted of a single paragraph that contained no specific provisions explaining how Zipper would be supervised) and the amended plan that the Firm proposed during the hearing, it still falls short of what is required to ensure that a statutorily disqualified individual be subject to stringent supervision. For example, the plan contains no provisions concerning where Zipper will work and whether Ms. Alexander will supervise him on-site.<sup>29</sup> The plan also contains no specific provision concerning whether Mr. Alexander will supervise Zipper on-site or remotely from Jacksonville, Florida. *See generally Timothy H. Emerson, Jr.*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, at \*19 (July 17, 2009) (“As we have previously concluded, a supervisory plan lacks the necessary intensive scrutiny when the supervisor will not be in close, physical proximity to the statutorily disqualified person.”).

Further, certain provisions of the plan lack sufficient detail. For example, although the plan provides that Ms. Alexander will review Zipper’s incoming and outgoing emails, it does not state specifically when that review will occur. This is particularly troubling given that Zipper’s intervening misconduct involved communicating with his customers via email while he was suspended. The plan also fails to require documentation of compliance with the plan. Finally, although the plan provides that Ms. Alexander will perform a quarterly review of public records to ensure that Zipper’s Form U4 is properly updated, this contrasts with statements made by the Firm that she would perform this review monthly, and the plan does not indicate what steps she will take if she finds that Zipper has not updated his Form U4.<sup>30</sup>

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established that the presence of procedures alone is not enough. Without sufficient implementation, guidelines and strictures do not ensure compliance.” *KCD Fin. Inc.*, Exchange Act Release No. 80340, 2017 SEC LEXIS 986, at \*34 (Mar. 29, 2017) (internal quotation marks omitted). As set forth above, the Firm has not demonstrated that Zipper’s proposed supervisors are capable of implementing *any* proposed supervisory plan.

<sup>29</sup> It is also unclear how many hours per week Ms. Alexander will spend supervising Zipper in the Firm’s new office (or elsewhere, as the case may be). Further, the Firm has not indicated that it will compensate Ms. Alexander for supervising Zipper in person, above and beyond the commissions she already earns on customer transactions (which according to the Firm are minimal). These unresolved issues are especially pertinent given that the record does not indicate Ms. Alexander’s willingness to supervise Zipper pursuant to the proposed heightened supervisory plan.

<sup>30</sup> At the hearing and in one of its post-hearing submissions, the Firm stated that it would include in its heightened supervisory plan additional provisions if requested by FINRA. It is the Firm’s burden, however, to propose an adequate heightened supervisory plan. *See Pedregon*, 2010 SEC LEXIS 1164, at \*28 (stating that a firm bears the burden of proposing an adequate supervisory plan and that FINRA was fully justified in requiring the firm to provide specifics

VIII. Conclusion

In sum, we find that Zipper's improper association with the Firm while suspended under the Disqualifying AWC demonstrates that he is currently unable to demonstrate that he can comply with FINRA's rules and regulations. Moreover, our numerous concerns with Zipper's proposed supervisors, and questions concerning the Firm's ability to adequately supervise Zipper pursuant to a stringent plan of supervision, weigh heavily against approving the Application. Accordingly, we find that it is not in the public interest, and would create an unreasonable risk of harm to the market or investors, for Zipper to associate with the Firm as a general securities representative. We therefore deny the Application.

On Behalf of the National Adjudicatory Council,

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Marcia Asquith  
Executive Vice President and Corporate Secretary

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concerning that plan before approving an application); *Emerson*, 2009 SEC LEXIS 2417, at \*20 (rejecting argument that the applicants were willing to accept a supervisory agreement that would satisfy FINRA; “[d]rafting a supervisory plan . . . is neither the Commission’s nor FINRA’s role”). And, despite being permitted several opportunities to present an adequate supervisory plan for Zipper, the Firm failed to do so.