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BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

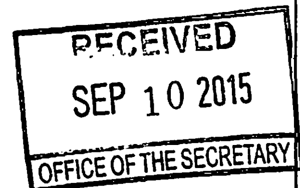
In the Matter of the Application of

Ramcon Financial LLC

For Review of Action Taken By

FINRA

File No. 3-16577



FINRA'S MOTION TO STRIKE AND BRIEF IN OPPOSITION TO APPLICATION FOR REVIEW

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FINRA'S MOTION TO STRIKE AND BRIEF IN OPPOSITION TO APPLICATION FOR REVIEW

I. INTRODUCTION

FINRA correctly determined that Ramcon Financial LLC's ("Ramcon" or "Firm") failed to demonstrate that it satisfied several admission standards as specified by FINRA's rules. Ramcon proposed to be owned and operated solely by someone who has glaring red flags from his recent activities, including being terminated for cause and being the subject of customer complaints and arbitrations. Specifically, FINRA had serious concerns related to Ramcon's proposed chief executive officer ("CEO"), chief compliance officer ("CCO"), anti-money laundering compliance officer ("AMLCO"), sole representative, producing manager, and only supervisor, Richard McCollam's termination for cause by Royal Alliance Associates, Inc. ("Royal Alliance"). Under NASD rules, where a prospective member firm or an associated person is subject to events set forth in the rule, including a termination for cause after an investigation of alleged violation of an industry standard of conduct, a presumption exists that the application should be denied. Ramcon did not rebut this presumption. In addition, FINRA

was appropriately troubled that, during the pendency of Ramcon's membership application, McCollam was the subject of 23 customer complaints, and was the respondent in three pending arbitrations – particularly because Ramcon proposed that McCollam would conduct the same business lines at the Firm without a supervisor. Indeed, Ramcon's written supervisory procedures require registered representatives with McCollam's history of customer complaints and arbitrations to be on heighten supervision. Yet Ramcon insisted that McCollam would not have heightened supervision.

On appeal, Ramcon attempts to challenge the legitimacy of the termination for cause, the customer complaints, and the pending arbitrations by citing to the testimony of an individual with whom McCollam worked *after* he was terminated. Notwithstanding that the testimony proffered in no way excuses McCollam's conduct, undermines the customer complaints or pending arbitrations, or rebuts the presumption of denial established by McCollam's termination for cause, such testimony is not part of the record, is not material, and Ramcon did not properly move to adduce the new testimonial evidence. Ramcon's attempts to circumvent the rules of the Commission should fail.

FINRA appropriately concluded that Ramcon did not overcome the presumption of denial and failed to establish that it has satisfied several standards set forth in FINRA's membership rules. The membership standards are a crucial tool for investor protection and market integrity, and FINRA correctly determined based on the facts presented during the application process that Ramcon failed to show that it meets the minimum requirements for membership. The Commission should affirm the denial of membership.

II. FACTUAL BACKGROUND

A. Ramcon Financial LLC

Ramcon organized as a limited liability company in California on April 30, 2013. RP 413.[1] The Firm is wholly owned by Ramcon Financial Holding Company LLC, a limited liability company in California, which is wholly owned by Richard McCollam. RP 417.

B. McCollam's Termination for Cause

From December 1994 to August 2010, McCollam worked as a general securities representative and principal for Royal Alliance. RP 1405. While at Royal Alliance, McCollam had approximately 500 customer accounts under management. TR at 41.[2] Of those 500 accounts, approximately 90 percent were invested in variable annuities and Real Estate Investment Trusts ("REITs"). TR at 113-114. On May 25, 2010, McCollam's supervisor at Royal Alliance sent a letter of caution to McCollam stating that McCollam had submitted variable annuity paperwork to product sponsor companies prior to receiving pre-approval, as required by the firm's sales practice manual. RP 2805. After receiving the letter of caution, McCollam submitted all of the required variable annuity pre-approval paperwork, but Royal Alliance did not approve any of the sales because it found that they were unsuitable or would over-concentrate customers' investments in variable annuities. TR at 134. McCollam testified that he was aware that Royal Alliance was planning to terminate him for cause prior to his actual termination. TR at 64-65.

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[1] "RP _____" refers to the page numbers in the certified record filed with the Commission.

[2] "TR at ____" refers to the page numbers of the transcript of the hearing before the National Adjudicatory Council ("NAC").

The Central Registration Depository ("CRD"®) reflects that Royal Alliance discharged McCollam on August 26, 2010, for the "failure to follow by firm policy regarding the pre-approval of variable annuities." RP 1413. Subsequent to his employment with Royal Alliance, from August 2010 to March 2012, McCollam was employed by SII Investments. RP 1405.

C. Ramcon's New Member Application

On January 6, 2014, Ramcon filed with FINRA's Department of Member Regulation its form New Member Application ("NMA") and supporting documentation, seeking FINRA approval to register as a broker-dealer. RP 1-41. The application included Ramcon's proposed business plan and written supervisory procedures ("WSPs"). Ramcon stated "it would conduct a general securities business focusing on the sale of variable life insurance policies and the sale of [REITs]." Ramcon represented that it would engage in the following business activities: broker retailing corporate equities securities; broker retailing corporate debt securities; mutual fund retailer; broker selling variable life insurance or annuities, U.S. government securities broker; broker selling tax shelters or limited partnerships in primary distribution or in the secondary market; and the purchase and sale of REITs. RP 4-11. Ramcon said it would solicit retail customers, and it would not handle customer funds. *Id.*

Ramcon represented that McCollam would serve as Ramcon's CEO, CCO, AMLCO, and only representative. RP 446-454; 1383. McCollam sought to register with Ramcon as a general securities principal and investment company products and variable contracts representative, general securities representative, and direct participation program limited representative. TR at 31. Jack Lubitz would serve as Ramcon's financial and operations principal ("FINOP") on a part-time basis at an offsite location. At the time of Member Regulation's decision, Lubitz was serving as FINOP for five other FINRA member firms. RP 1383-1384; 1458-1460.

The initial application did not disclose McCollam's termination for cause, any customer complaints against McCollam, or any arbitration that named McCollam as a respondent.[3] In fact, as of January 6, 2014, seven customer complaints had been filed against McCollam alleging improprieties involving the sale of variable annuities and REITs while McCollam was working at Royal Alliance. RP 1384-1385; 3616-82. In addition, McCollam was a named respondent in an arbitration filed on July 30, 2013, claiming that he failed to supervise another broker, who was alleged to have made unsuitable recommendations concerning variable annuities and REITs.[4] RP 3059-3067.

D. Member Regulation's Review of Ramcon's New Member Application

1. Member Regulation's Requests for Additional Information and Ramcon's Responses

In a letter dated February 14, 2014, Member Regulation requested additional supporting information and documentation in connection with the application. RP 2499-2508. Among other things, Member Regulation noted that Royal Alliance terminated McCollam for cause on August 26, 2010, and requested that Ramcon explain how it would overcome the presumption of denial triggered by McCollam's termination for cause, including demonstrating how Ramcon believed it met the standards set forth in NASD Rule 1014. RP 2502-2503. Member Regulation also requested a detailed explanation of the customer complaints against McCollam that alleged

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3 The NMA asks whether the applicant or any of its associated person is the subject of "[a] sales practice event, pending arbitration or pending private civil action" or "[t]ermination for [c]ause or permitted to resign after an investigation after an investigation of an alleged violation of a federal or state securities law, a rule or regulation thereunder, a self-regulatory organization rule, or industry standard of conduct." In each version of the NMA it filed, Ramcon checked "No."

4 By the time Member Regulation issued its decision letter, 23 complaints in total had been filed against McCollam, and he was a respondent in three pending arbitrations. TR at 180; 183.

unsuitable transactions in variable annuities and REITs. RP 2502. Member Regulation also sought clarification whether McCollam would be subject to heightened supervision at the Firm, who would oversee his activities, and whether Ramcon was relying on the limited size and resources exemption pursuant to NASD Rule 3012 in designing its supervision for McCollam. RP 2506-2507.

Ramcon responded in two parts. On April 14, 2014, Ramcon provided detailed information about the seven customer complaints. RP 2509-2532. Then by letter dated May 8, 2014, in response to staff's question concerning McCollam's termination for cause and customer complaints, Ramcon wrote, "[t]he [NASD Rule] 1014 documentation and information concerning Mr. McCollam, the only member with any matters to disclose, has already been provided in separate explanations regarding the customer disputes and the termination." RP 2537. While Ramcon had previously provided detailed information about the seven customer complaints on April 14, 2014, it did not provide any explanation about how it believed it overcame the presumption of denial based on McCollam's termination for cause.[5] Further, despite language in Ramcon's WSPs that would require heightened supervision, Ramcon wrote that McCollam would "not be subject to heightened supervision" because "[Ramcon] only employs Mr. McCollam as the sole representative." RP 2540. Finally, Ramcon stated it would be relying on the limited size and resources exemption pursuant to NASD Rule 3012 for supervision, and it also would be using an outside compliance firm, Luxor Financial Group ("Luxor"), to assist in meeting daily compliance obligations. RP 2552.

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5 Member Regulation staff testified that they never received further documentation or written explanation concerning McCollam's termination for cause or how Ramcon believed it overcame the presumption of denial. TR at 169.

Member Regulation staff sent two additional written requests to Ramcon, to which Ramcon responded in writing. RP 2555-2564. Member Regulation staff and Ramcon also had approximately 10 conversations during the pendency of the application. TR at 202. Ramcon filed 10 versions of the NMA. RP 1-412. In each of the versions, Ramcon failed to disclose McCollam's termination for cause or the initial arbitration filed against McCollam on July 30, 2013.[6]

2. Additional Customer Complaints and Arbitrations

After Ramcon submitted its initial application, 16 more customer complaints were filed against McCollam in addition to the seven existing complaints against McCollam. TR at 180. The additional 16 complaints similarly alleged improprieties involving the sale of variable annuities and REITs. *Id.* Moreover, multiple complaining customers became arbitration claimants against McCollam by joining one of the three multi-party FINRA arbitration proceedings, which claimed breach of fiduciary duty, false representations, and failure to supervise. Specifically, six customers of McCollam joined a multi-party FINRA arbitration proceeding, eight other customers became part of another multi-party FINRA arbitration, and another six customers became part of a multi-party action in Alameda County, California. RP 3003-3030; 3031-3057; TR at 98-99. The statement of claim of each arbitration generally alleged that McCollam and his associate, Kathleen Tarr, whom McCollam supervised, solicited retired AT&T employees or AT&T employees nearing retirement and recommended that they take lump sum distributions from their IRA and 401(k) plans and invest the funds in variable annuities and REITs.

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6 McCollam conceded at the hearing that the application was inaccurate due to a clerical error by staff helping him prepare the documents. TR at 85.

Member Regulation staff already had concerns about the existing customer complaints with respect to its initial review of the application, and the additional complaints and arbitrations only intensified its reservations concerning approval of the application because they considered McCollam's regulatory history to be evolving. TR at 181. Member Regulation staff raised these concerns with Ramcon during multiple telephone conversations and suggested that Ramcon withdraw its application. TR 183-184. Ramcon's consultant from Luxor acknowledged to FINRA the concerns and their negative implications for approval of the Firm's application. *Id.* McCollam also told FINRA he understood the concerns, but he did not want to withdraw the application. TR at 184.

3. Ramcon's Membership Interview

On August 6, 2014, Member Regulation staff, along with the surveillance director, associate director, and regulatory coordinator at the FINRA San Francisco District Office, conducted a membership interview of Ramcon. McCollam and Ramcon's consultant appeared in person, and Lubitz participated telephonically. TR at 176-177; 226.

At the interview, Member Regulation staff again expressed its concerns about McCollam's termination for cause and Ramcon's failure to rebut the presumption that the application should be denied; the numerous customer complaints filed against McCollam, the subject of which were the very same business lines proposed by Ramcon; and the proposed supervisory structure at Ramcon, whereby McCollam would not be subject to heightened supervision and would supervising himself in the very same business lines that had led to 23 customer complaints being filed against him. TR at 227-229; 241. Member Regulation staff later testified about the membership interview that McCollam was unable to articulate basic suitability concepts. TR at 176-178; 237-239.

McCollam argued that his termination was due to a falling out with his manager at Royal Alliance, but he admitted he violated firm policy regarding the pre-approval of variable annuities. TR at 177-178. He asserted he did so because Royal Alliance's review process was taking too long, and, as a general securities principal, he could approve the transactions. *Id.* After the interview, Member Regulation staff and Ramcon's consultant again spoke by telephone, and Member Regulation staff reasserted its belief that Ramcon should withdraw its application.

E. Member Regulation's Denial of Ramcon's New Member Application

After the membership interview, Member Regulation issued its decision denying Ramcon's application on October 3, 2014. RP 1383-1394. Member Regulation based its denial on several factors.

First, Member Regulation found that Ramcon failed to meet the standards in NASD Rule 1014(a)(9) and (10), which require adequate compliance, supervisory, operational, and internal control practices and standards and an adequate supervisory system, including WSPs, internal operating procedures, and compliance procedures designed to prevent and detect violations of federal securities laws, the rules and regulations thereunder, and FINRA rules. RP 1387-1390.

Second, Member Regulation found that Ramcon failed to meet the standard in NASD Rule 1014(a)(3), which requires Ramcon and its associated persons to be capable of complying with federal securities laws, the rules and regulations thereunder, and FINRA rules. RP 1390-1392. Member Regulation based this conclusion on Royal Alliance's termination of McCollam for cause and the fact that, despite inquiry by Member Regulation, Ramcon never specifically addressed the resulting presumption of denial and the fact that McCollam was the subject of a

pending arbitration at the time the application was filed and three multi-party arbitrations filed during the pendency of the application. *Id.*

Third, Member Regulation found that Ramcon failed to meet the standard in NASD Rule 1014(a)(13) because Member Regulation possessed additional information that Ramcon may circumvent, evade, or otherwise avoid compliance with the federal securities laws, rules and regulations, and FINRA rules, in light of McCollam's termination for cause, the customer complaints filed against McCollam, the arbitrations naming McCollam as a respondent, Ramcon's failure to disclose the termination for cause and the initial arbitration in his application, and McCollam being the subject of a FINRA cause examination. RP 1392.

Finally, Member Regulation found that Ramcon failed to meet the standard in Rule 1014(a)(1), which requires the membership application and all supporting documents to be complete and accurate. RP 1392-1393. Among other things, Member Regulation noted that Ramcon failed to disclose on the Form NMA McCollam's August 2010 termination for cause, customer complaints, and the arbitration pending at the time. *Id.*

F. Ramcon Requests a Review of Member Regulation's Decision

On October 27, 2014, Ramcon filed a written request that the National Adjudicatory Council ("NAC") review Member Regulation's denial of its membership application pursuant to NASD Rule 1015(a). RP 1759-1769. On January 12-13, 2015, a subcommittee ("Subcommittee") of the NAC empaneled to hear this matter presided over an evidentiary hearing. On May 4, 2015, the NAC issued its decision, affirming Member Regulation's denial of Ramcon's NMA.[7] RP 3691- 3718. This appeal followed.

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[7] The NAC concluded that in light of its findings that Ramcon failed to satisfy NASD Rule 1014(a)(3), (9), and (10), it was unnecessary to discuss further whether the Firm's application

(Footnote continued on next page)

III. FINRA'S MOTION TO STRIKE

In its opening brief Ramcon appends the transcript of the testimony of Timothy Charles Sullivan ("Sullivan Testimony"), taken during the FINRA arbitration in the matter of *Henry Mora, Lionel Gonzalez, and Michele Lewis v. Royal Alliance, et al* to support Ramcon's argument that McCollam's termination and the customer complaints were fabricated and false. FINRA moves to strike the testimony as it is not part of the record, is not material, and Ramcon did not properly move to adduce the new testimonial evidence. FINRA also moves that all arguments in Ramcon's opening brief that reference or relate to the Sullivan Testimony be similarly stricken.

A. Ramcon Did Not Seek Leave to Adduce Additional Evidence

The Sullivan Testimony is not in the record, and Ramcon did not file a motion with the Commission for leave to adduce that testimony as additional evidence, as required by Rule of Practice 452. Instead, it merely attached the transcript to its opening brief. The Commission has routinely declined to admit new evidence where the applicants did not file a motion under Rule of Practice 452. *See, e.g., CMG Institutional Trading*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, *18 n. 20 (Jan. 30, 2009) (declining to admit documents where no motion was made); *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, *58 (Nov. 9, 2012) (same). It should do so here as well.

(cont'd)

was "complete and accurate," as required by Rule 1014(a)(1), and whether there is information indicating Ramcon may circumvent, evade or otherwise avoid compliance with applicable securities laws, rules, and regulations and FINRA rules, as required by NASD Rule 1014(a)(13).

B. The Sullivan Testimony Is Not Material

Even if Ramcon had filed a motion to admit the Sullivan Testimony, it has not met the relevant admission standards. The Commission's Rule of Practice 452 permits new evidence to be adduced before the Commission only if the moving party shows "with particularity that such additional evidence is material." 17 C.F.R § 201.452; *see also CMG Institutional Trading*, 2009 SEC LEXIS 215, at *18. As the Commission has emphasized, Rule of Practice 452 requires a demonstration that the additional evidence is material, rather than cumulative, and that it will "materially modify" the evidence previously adduced. *Richard A. Holman*, 40 S.E.C. 870, 874 (1961).

Here, the Sullivan Testimony falls short of meeting the materiality requirement, and it should be stricken from the record. Ramcon argues that the Sullivan Testimony corroborates McCollam's argument that he was not actually terminated for cause by Royal Alliance. Ramcon Br. 7. The Sullivan Testimony does no such thing. Sullivan was McCollam's supervisor at SII Investments, the firm at which McCollam worked after he was terminated by Royal Alliance for cause. Contrary to Ramcon's characterizations in its brief, Sullivan did not testify that Royal Alliance in any way amended McCollam's Uniform Termination Notice for Securities Industry Registration ("Form U5"). Instead, Sullivan simply testified that he somehow knew that Royal Alliance updated the Form U5 of McCollam's colleague Kathleen Tarr after her departure from Royal Alliance. Thus, the testimony related to any Form U5 filing is not only immaterial, it is also wholly irrelevant to McCollam's termination for cause, the event that triggered the presumption of denial under NASD Rule 1014(a)(3).

Ramcon also argues that Sullivan's testimony establishes that he prodded McCollam's customers to file their complaints and "provides clear and unimpeachable evidence that Mr.

Sullivan fabricated all the charges against Mr. McCollam." This interpretation of the testimony, however, is tortured and defies logic. Reading the Sullivan Testimony in a light most favorable to Ramcon, the only conclusion that can be drawn is that Sullivan assisted McCollam's disgruntled former customers in drafting complaint letters to Royal Alliance – nothing more. There is no testimony from which one could infer that Sullivan "fabricated" the customer complaints against McCollam or that McCollam's customers did not have genuine complaints.

C. The Sullivan Testimony Is Not Newly Discovered Evidence

The Commission's Rule of Practice 452 also requires that a motion to adduce additional evidence shall show "that there were reasonable grounds for failure to adduce such evidence previously." 17 C.F.R § 201.452. Ramcon maintains that Sullivan's testimony is "newly discovered evidence," because the arbitration hearing at which the testimony was elicited occurred while Ramcon's appeal to the NAC was pending. However, the Sullivan Testimony is not newly discovered evidence and should be disregarded.

Ramcon is simply attempting to advance its well-worn arguments based on testimony that it could have taken previously but chose not to. Ramcon was at all times aware of Sullivan and his relationship with McCollam. In fact, in its brief Ramcon makes clear that it has consistently claimed throughout the membership application process that it was Sullivan who drummed up baseless customer complaints against McCollam. Ramcon Br. at 4. Therefore, Ramcon should have called Sullivan to testify during the hearing before the NAC in its attempt to rebut FINRA's presumption of denial. *See, e.g., Caisse Nationale de Credit Agricole v. CBI Indus., Inc.*, 90 F.3d 1264, 1269 (7th Cir. 1996) (moving party must establish that evidence was not only newly discovered or unknown to it, but also that it could not have been reasonably discovered and produced during pendency of matter). It is too late to attempt to do so now.

Ramcon has not properly moved to admit the Sullivan Testimony, and has made no attempt to meet the standards of Rule of Practice 452. Moreover, the testimony is not material to the membership application at issue. Accordingly, the Sullivan Testimony, and all arguments in Ramcon's opening brief that rely on it, should be stricken.

IV. ARGUMENT

The Commission's review of the NAC's decision is governed by Section 19(f) of the Exchange Act, which applies to proceedings to review "the denial of membership . . . in a self-regulatory organization." 15 U.S.C. § 78s(f). In accordance with that section, the Commission must dismiss Ramcon's appeal because: (1) the specific grounds upon which FINRA based its denial "exist in fact"; (2) the action is in accordance with FINRA rules; and (3) FINRA applied its rules in a manner consistent with the purposes of the Exchange Act.[8] *Id.*; *accord Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at *25 (Sept. 13, 2010) (stating standard of review under Exchange Act § 19(f)); *Wm. J. Haberman*, 53 S.E.C. 1024, 1027 (1998) (same), *aff'd per curiam*, 205 F.3d 1345 (8th Cir. 2000) (table).

FINRA's denial of Ramcon's membership application meets these criteria, and the Firm's appeal should be dismissed. Ramcon has failed to demonstrate that it satisfied all admission standards under NASD 1014(a). Denying Ramcon's application—where there exists the

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[8] Exchange Act § 19(f) also requires the Commission to set aside FINRA's action if it finds that the action imposed an undue burden on competition. 15 U.S.C. § 78s(f). Ramcon does not claim that FINRA's actions imposed such a burden. In any event, "[w]hile a restriction may in theory impose a burden on competition because it limits a competitor's access to the marketplace, the issue is whether this burden is unnecessary or inappropriate, given the regulatory purpose to be served." *Sierra Nevada Sec., Inc.*, 54 S.E.C. 112, 123 (1999). Here, the regulatory purpose served by denying the Ramcon's application is the protection of the public interest and investors. *Id.* at 124 (denial of firm's request to modify restrictive agreement created no undue burden on competition where firm's supervisory system was inadequate and "put the public, other broker-dealers, and the market itself at risk").

presumption of denial as required by FINRA's membership standards and where the proposed Firm would be owned and operated solely by someone who was terminated for cause and is the subject of complaints and arbitrations arising out of the same line of business in which he intends to engage at the Firm—is consistent with the public interest and the protection of investors. In addition, FINRA's membership proceeding was in accordance with its rules, and FINRA applied its rules in a manner that is consistent with the purposes of the Exchange Act.

A. The Bases for FINRA's Denial—McCollam's Termination for Cause, His Numerous Arbitrations, and Ramcon's Inadequate Supervision—Are Supported by the Facts

FINRA's membership rules, the NASD Rule 1010 Series, provide a means for FINRA, through its Membership Application Program ("MAP"), to assess the proposed business activities of potential and current member firms with the ultimate goal of ensuring that each applicant is capable of conducting its business in compliance with applicable rules and regulations, and that its business practices are consistent with just and equitable principles of trade. *See FINRA Regulatory Notice 13-29*, 2013 FINRA LEXIS 41 at * 3 (Sept. 2013).

NASD Rule 1014(a) delineates the 14 standards that an applicant must meet before FINRA may approve a request for admission to FINRA's membership. The applicant firm carries the burden of demonstrating that it meets each of the admission standards. *New Membership Application of Firm A*, Application No. 20090182345, 2010 FINRA Discip. LEXIS 24, at *22 (FINRA NAC Sept. 28, 2010); *see* NASD Rule 1014(a) and 1014(b). Those standards ensure that members are capable of satisfying all relevant regulatory requirements for the protection of the investing public, the securities markets, the firm, and other member firms. *Membership Continuance Application of Member Firm*, Application No. 20060058633, 2007 FINRA Discip. LEXIS 31, at *44-45 (FINRA NAC July 2007). When assessing whether an applicant firm meets these standards, NASD Rule 1014(a) further requires the consideration of

the public interest and the protection of investors. Failure to meet any one – and only one – of these standards can be the basis for a denial.

Furthermore, under NASD Rule 1014(b), where a prospective member firm or an associated person is subject to specific events, including a termination for cause after an investigation of alleged violation of an industry standard of conduct, "a presumption exists that the application should be denied." The existence of such an event "[raises] a question of capacity to comply with the federal securities laws and the rules of [FINRA]," which results in a rebuttable presumption to deny the application. *See NASD Notice to Members 04-10*, 2004 NASD LEXIS 13, at *9 (Feb. 2004). NASD Rule 1014(b) also provides that an applicant "may overcome the presumption [of denial] by demonstrating that it can meet each of the standards in [NASD Rule 1014(a)], notwithstanding the existence of any of the events" that give rise to the presumption of denial.

1. Ramcon Failed to Demonstrate That It Is Capable of Complying With Securities Laws and Regulations and FINRA Rules

Under NASD Rule 1014(a)(3), Ramcon had the burden of establishing that it and its associated persons are capable of complying with the federal securities laws, the rules and regulations thereunder, and NASD Rules, including observing high standards of commercial honor and just and equitable principles of trade. Ramcon has failed to meet this standard because McCollam's termination for cause and the pending arbitrations reflect an inability to comply with securities laws and FINRA rules, or observe high standards of commercial honor and just and equitable principles of trade.

a. The Facts Establish That McCollam Was Terminated for Cause

NASD Rule 1014(a)(3) instructs FINRA, when determining whether the standard has been met, to consider whether "an [a]ssociated [p]erson was terminated for cause or permitted to resign after an investigation of an alleged violation of a federal or state securities law, a rule or regulation thereunder, a self-regulatory organization rule, or industry standard of conduct." NASD Rule 1014(a)(3)(D). Royal Alliance terminated McCollam for cause on August 26, 2010, as reflected by the Form U5, thereby triggering the rebuttable presumption of denial. The NAC properly concluded that following firm policy is an industry standard, and McCollam's termination for cause for the failure to abide by a firm's materially significant sales practice policy, in this case the policy regarding the pre-approval of variable annuities, triggers the rebuttable presumption pursuant to NASD Rule 1014(b) that the application should be denied.

Ramcon disputes this conclusion. It argues that the Sullivan Testimony corroborates McCollam's claim that Royal Alliance amended or altered McCollam's Form U5 subsequent to McCollam's departure to reflect that he was terminated for failure to get preapproval for the sale of annuities. This argument fails. Notwithstanding that Sullivan *did not actually testify that Royal Alliance made any changes to McCollam's Form U5*, there is no evidence to suggest that Royal Alliance filed an altered or amended Form U5. Other than McCollam's self-serving testimony, Ramcon did not offer any evidence to support its allegation that Royal Alliance's Form U5 was false.

On the contrary, the record fully supports the finding that McCollam was terminated for cause and that it was accurately reflected on the Form U5. On May 25, 2010, McCollam's supervisor at Royal Alliance sent a letter of caution to McCollam stating that McCollam had submitted variable annuity paperwork to product sponsor companies prior to receiving pre-

approval, in violation of the firm's sales practice manual. RP 2805. After receiving the letter of caution, McCollam submitted all of the required variable annuity pre-approval paperwork, but Royal Alliance did not approve any of the sales because of suitability and over-concentration concerns. TR at 134. McCollam also testified that he was aware that Royal Alliance was planning to terminate him for cause prior to his actual termination. TR at 64-65. Moreover, Ramcon never even addresses how it is capable of complying with securities laws and FINRA rules despite McCollam's termination, which is critical to demonstrating that it can meet the standards articulated in 1014(a)(3). *See* NASD Rule 1014(b). The presumption that Ramcon's application should be denied has not been rebutted.

b. The Facts Establish That McCollam Has Three Pending Arbitrations Involving Former Customers

The NAC's findings that Ramcon failed to meet the Rule 1014(a)(3) standard is also supported by the fact that McCollam was subject to pending customer arbitrations that raise troubling allegations of misconduct, allegations that Ramcon essentially ignores. NASD Rule 1014(a)(3) requires that FINRA, when determining whether this standard has been met, consider whether "an [a]pplicant's or [a]ssociated [p]erson's record reflects a sales practice event, a pending arbitration, or a pending private civil action." NASD Rule 1014(a)(3)(B). The NAC properly considered the pending arbitrations, particularly because they raise serious allegations of violations and involved the same business lines that McCollam would handle at Ramcon without a supervisor.

Ramcon argues that the customer complaints that led to the arbitrations are without merit, and were solicited against McCollam by Sullivan as a personal attack. Ramcon also argues that the Sullivan Testimony, in which Sullivan admits to assisting McCollam's injured former customers in filing complaints with Royal Alliance, "unmistakably demonstrates the customer

complaints were not initiated by genuinely aggrieved customers but rather by outside influences." Ramcon Br. at 7. Thus, Ramcon argues, the arbitrations lack legitimacy and should not have been the basis for membership denial. Ramcon's conclusions, however, are not supported by the Sullivan Testimony or the record.[9]

Other than McCollam's self-serving conspiratorial testimony or the specious conclusions Ramcon draws from the Sullivan Testimony, Ramcon has failed to offer any evidence that the pending arbitrations should not be considered when evaluating its new membership application. On the contrary, the uncontroverted evidence demonstrates that the arbitrations against McCollam raise troubling investor protection concerns. The arbitrations were brought by numerous customers. They concern retirees, near-retirees, and lump-sum distributions from retirement accounts that were invested in variable annuities and REITs. TR at 113-114; RP 3601-3682. And they involve allegations that include false representations, fraud, negligent representations, failure to supervise, and unsuitable investments and recommendations. Ramcon never addresses the substance of these worrisome allegations in any meaningful way, a lack of response punctuated by McCollam's admission that he made only a cursory review of the underlying complaints. TR at 100. Indeed, as the NAC found, Ramcon did not provide sufficient information to demonstrate that the investments underlying the arbitration complaints were, in fact, suitable. Moreover, the arbitrations involve one of the very same business lines—variable annuities—that lead to McCollam's termination from Royal Alliance, and in which Ramcon now seeks to have McCollam engage unsupervised.

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9 Ramcon's opening brief all but admits that all Sullivan admitted to was providing the customers with the complaint template used to file their grievances with Royal Alliance. Ramcon Br. at 5. That falls far short of the unsupported hyperbole that Sullivan coerced the customers into filing false complaints against McCollam.

In short, Ramcon has not demonstrated how, in light of these disturbing allegations of misconduct, it is capable of complying with securities laws, regulations, and rules, as required by Rule 1014(a)(3). It would be contrary to the protection of the investing public to allow McCollam to operate a firm unsupervised dealing in the very same business lines that lead to his termination from Royal Alliance as well as the pending arbitrations. Considering these circumstances, the NAC properly denied the new membership application on the grounds that Ramcon failed to meet the NASD Rule 1014(a)(3) standard.

2. The Facts Establish That Ramcon's System of Supervision Is Inadequate

NASD Rule 1014(a)(9) requires that "[t]he Applicant has compliance, supervisory, operational and internal control practices and standards that are consistent with practices and standards regularly employed in the investment banking or securities business, taking into account the nature and scope of Applicant's proposed business." NASD Rule 1014(a)(10) in turn requires FINRA to determine whether the "[a]pplicant has a supervisory system, including written supervisory procedures, internal operating procedures (including operational and internal controls), and compliance procedures designed to prevent and detect, to the extent practicable, violations of the federal securities laws, the rules and regulations thereunder, and [FINRA] Rules." The NAC properly found that Ramcon failed to meet the standards based on McCollam's role in Ramcon's supervisory structure and Ramcon's proposed implementation of its WSPs. In its application for review, Ramcon makes no arguments to the contrary. Therefore, the Commission should affirm the NAC's finding.

a. Ramcon's Proposal to Have McCollam Supervise Himself Is Woefully Inadequate

Ramcon's supervisory structure, in which McCollam would supervise himself on the same business lines that resulted in 23 customer complaints being filed against him, is inadequate. Ramcon proposes that McCollam would serve as the Firm's CEO, CCO, AMLCO, sole representative, producing manager, and only supervisor. RP 446-454. Lubitz, who would be acting as an off-site FINOP, would have no supervisory responsibility and has no experience selling variable annuities or REITs. TR at 209-210. The record further reflects Ramcon's intent to employ Luxor, an outside compliance firm, to provide guidance on, among other things, regulatory and compliance issues. RP 458-459; 702. This is insufficient for several reasons. Luxor personnel are not associated persons, are not subject to FINRA rules, generally cannot be held liable for failure to supervise, and thus are an unacceptable substitute for proper supervision by the Firm in this instance. Luxor personnel further cannot provide on location and continuous day-to-day and point-of-sale oversight to associated persons, which at a minimum, is necessary to supervise someone with McCollam's regulatory history.

Ramcon has also failed in numerous ways to demonstrate that its intended supervisory structure satisfies the standards of NASD Rule 1014(a)(9) and (10). First, Ramcon's reliance on the "limited size and resources exception" is misguided. NASD Rule 3012(a)(2)(A)(ii) (the limited size and resource exception) provided: "If a member is so limited in size and resources that there is no qualified person senior to, or otherwise independent of, the producing manager to conduct the reviews pursuant to [general supervisory requirements in NASD Rule 3012(a)(2)(A)(i)] . . . ., the reviews may be conducted by a principal who is sufficiently knowledgeable of the member's supervisory control procedures, provided that the reviews are in

compliance with (i) to the extent practicable." NASD Rule 3012(a)(2)(A)(ii).[10] NASD Rule 3012(a)(2)(A)(i) in turn laid out specific requirements for the written supervisory control procedures. It requires that a producing manager be reviewed and supervised by someone senior to, or "otherwise independent" of, the producing manager, and that the review be alternated with another qualified person every two years. An "otherwise independent" person is defined as someone who does not report either directly or indirectly to the producing manager under review and who is located in a different office than the producing manager. In addition, the "otherwise independent" person must not have supervisory responsibility over the activity being reviewed, including not being directly compensated in whole or in part based on revenues accruing from the reviewed activities.

Thus, pursuant to the limited size and resources exception, small firms could claim an exception to the specific requirements of NASD Rule 3012(a)(2)(A)(i) concerning who conducted the supervisory control reviews of producing managers, not an exception from having requisite written supervisory control procedures, system, and infrastructure designed to ensure compliance with the applicable rules.

Ramcon's intent to have McCollam—who was terminated for cause, is the respondent in three pending arbitrations, and is the subject of 23 customer complaints—function without supervision is dangerously lacking in supervisory structure and poses a risk to investors. Although McCollam has a 30-year career in the industry, his current regulatory issues raise serious questions about whether he is a sufficiently prudent principal who may be relied upon to

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[10] NASD Rule 3012 was superseded by FINRA Rule 3120 on December 1, 2014. *FINRA Regulatory Notice 14-10*, 2014 FINRA LEXIS 17 (Mar. 2014). Ramcon's membership application was filed on January 6, 2014 and was evaluated when NASD Rule 3012 was in effect.

conduct supervision, including his own, and about his commitment to compliance. Although the arbitrations are pending, the allegations contained therein are troubling and concern the same lines of business that McCollam would conduct at Ramcon. Further, McCollam indicated that he would solicit customers similar to the complaining customers—i.e., retirees or those nearing retirement, a group that faces investment decisions with tremendous consequences.[11]

Finally, during the membership interview, McCollam displayed a general lack of understanding and concern for several FINRA rules at issue in the application and was unable to articulate the basic components of a suitability review, how Ramcon would ensure compliance with applicable rules relating to variable annuities and REITs, or how the Firm's controls and processes would support an adequate supervisory system. TR at 237-239. In addition, McCollam's admission that he purposefully violated Royal Alliance's pre-approval policies with respect to variable annuities evidences indifference and blatant disregard for compliance responsibilities. TR at 177-178.

Considering these facts and circumstances, Ramcon falls well short of demonstrating that its proposed supervisory practices, standards, and system, in which McCollam would sell variable annuities and REITs to retirees and near-retirees without supervision, are reasonably designed to prevent and detect violations of the securities laws and rules, as required by NASD

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[11] The customer complaints also raise serious questions about McCollam's ability to effectively supervise. "Customer complaints provide [FINRA] with important information that often times assists with the identification of problem firms, branch offices, and registered representatives." *NASD Notice to Members*, 2000 NASD LEXIS 104, at *57 (Sept. 2000). Indeed, reporting customer complaints "is intended to protect public investors by helping to identify potential sales practice violations in a timely manner." *Richard F. Kresge,* Exchange Act Release No. 55988, 2007 SEC LEXIS 1407, at *44 (June 29, 2007).

Rule 1014(a)(9) and (10). Ramcon's supervisory plan poses a serious risk to investors, and the NAC properly denied Ramcon's membership application on those grounds.

b. Ramcon's Failure to Place McCollum Under Heightened Supervision Is Inadequate Supervision

Ramcon's decision to not place McCollam under heightened supervision is in contravention of Ramcon's WSPs and sufficient reason by itself to deny the application because it evidences a culture of non-compliance at the Firm.

Ramcon's business plan submitted with its application provides: "The Firm will further establish heightened supervisory procedures and special educational programs for any Associated Person whose records reflect: . . . (ii) customer complaints . . . . Further details concerning any heightened supervision requirements are contained in the Firm's [WSPs]." RP 459-460. The first page of the WSPs notes that the procedures cannot address every situation and the appropriate person may exercise discretion when necessary. RP 535. Section 2.1.2 of Ramcon's WSPs provides that if any "associated person has been subject to three or more customer complaints and arbitrations in the previous five years . . . , the Firm will establish, maintain, and enforce heightened written procedures for supervising the activities of the associated persons." RP 553. Section 3.2.10 provides, "Heightened supervision is warranted whether the registered representative has a history of customer complaints, disciplinary actions, or arbitrations . . . ." RP 574-576. In response to FINRA's initial inquiry about how Ramcon intended to comply with its own heightened supervision requirement in light of McCollam's regulatory history, Ramcon stated, "Mr. McCollam will not be subjected to heightened supervision. [Ramcon] employs McCollam as its sole representative." RP 690. At the hearing, McCollam testified that whereas he would place another representative under heightened supervision who had 23 customer complaints, pending arbitrations, and a termination for cause,

Ramcon's WSPs are "situational dependent," and his situation did not warrant heightened supervision because the complaints "were not coming from clients, but . . . individuals that wanted to make money off of my fairly large book of business." TR at 61. Regardless of McCollam's unsubstantiated personal beliefs about the merits of the customer complaints, FINRA consistently has recommended heightened supervisory procedures for registered representatives with a history of *pending* customer complaints, disciplinary actions, or arbitrations. *See, e.g.*, NASD Rule 1014(a)(10)(H) (requiring FINRA to consider whether applicant should be required to place associated persons under heightened supervision); *NASD Notice to Members 97-19*, 1997 NASD LEXIS 23, at *12 (Apr. 1997) ("While final disciplinary actions, complaints, or arbitrations resolved in a manner adverse to the registered representative indicate a disciplinary problem, multiple pending complaints, disciplinary actions, or arbitrations may be indicative of a history that should be carefully reviewed."). Indeed, the Commission has long emphasized the need for heightened supervision when a firm employs associated persons with known regulatory problems or customer complaints. *See Robert J. Prager*, 58 S.E.C. 634, 658-59 (2005). The WSPs, as drafted, also recognize the significance of an associated person being the subject of three or more customer complaints or arbitrations because the procedures require heightened supervision in such instances. The WSPs, as drafted, also do not explicitly provide for a subjective determination concerning heightened supervision by anyone, let alone the person who is the subject of the customer complaints, that the complaints are without merit.

Notwithstanding the guidance from both the Commission and FINRA, as well as Ramcon's apparent acknowledgement in its own WSPs of the significance of regulatory history, Ramcon argues that McCollam should be excused from heightened supervision because he is the sole representative at the Firm and because McCollam believes the complaints against him are

frivolous and retaliatory. Such a supervisory system poses the potential for abuse and substantial risk to the investing public. Ramcon's failure to appreciate the seriousness of McCollam's regulatory history, even if it is not yet adjudicated, and the potential risk to investors is disconcerting.

In sum, Ramcon does not have the supervisory practices, standards, and system designed to ensure compliance with federal securities laws, the rules and regulations thereunder, and FINRA rules. Ramcon's proposed supervisory system is wholly inadequate based on McCollam's termination for cause, pending arbitrations, and customer complaints. Further, Ramcon's WSPs do not accurately reflect its intended implementation of heightened supervision at the Firm, and Ramcon's intended implementation does not provide for heightened supervision of an associated person with a known history of customer complaints and pending arbitrations. Ramcon has thus failed to demonstrate it can meet the standards in NASD Rule 1014(a)(9) and (10).

B. FINRA's Denial of Ramcon's New Membership Application Was Conducted in Accordance with FINRA's Rules

FINRA's membership process was conducted in accordance with its rules and Ramcon makes no claims otherwise. Once a firm files a substantially complete application with FINRA, Member Regulation conducts a review to determine whether FINRA requires any additional information from the applicant to conduct a meaningful review of the application. After the receipt of any additional requested information or documentation from the applicant, FINRA may make subsequent requests for information. Prior to making a decision on the application, Member Regulation will schedule a membership interview. Member Regulation issues its decision within 180 days from the date the substantially complete application was filed, unless the parties agree to extend this date. *See* NASD Rule 1013(a)(4) & (b). In accordance with

NASD Rule 1014(b) and (c), Member Regulation assessed whether the Firm met each of the standards for admission and issued a written decision that explained in detail the reasons for denial. Ramcon appealed to the NAC. *See* NASD Rule 1015. The NAC Subcommittee held an evidentiary hearing during which the parties presented their arguments to the Subcommittee. In accordance with NASD Rule 1015(j), the NAC issued a decision that provided a rationale that referenced the applicable standards for admission. All NASD and FINRA rules were followed, and Ramcon does not contend otherwise.

C. FINRA Applied Its Rules in a Manner Consistent With the Purposes of the Exchange Act

FINRA's denial of the Ramcon's membership application is fully consistent with several purposes of the Exchange Act. FINRA's denial protects the public interest and protects investors. Section 15A(b)(6) of the Exchange Act requires that FINRA have rules that are "designed to. . . promote just and equitable principles of trade . . . [and] protect investors and the public interest." Section 15A(g)(3)(A) of the Exchange Act provides, in pertinent part, that a registered securities association "may deny membership to . . . a registered broker or dealer if (i) . . . such broker or dealer or any natural person associated with such broker or dealer does not meet such standards of training, experience, and competence as are prescribed by the rules of the association." That section further provides that a securities association "may examine and verify the qualifications of an applicant to become a member and the natural persons associated with such an applicant." 15 U.S.C. § 78o-3.

FINRA acts consistent with such statutory provisions by evaluating membership applications pursuant to the membership procedures in the NASD Rule 1010 Series, including the 14 admission standards contained in NASD Rule 1014. Indeed, the Commission has expressly found that those rules and admission standards are "consistent with the [Exchange]

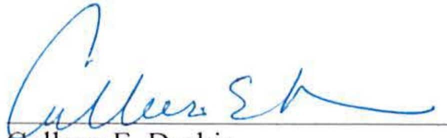
Act." *See Order Approving Proposed Rule Change,* 62 Fed. Reg. 43385, 43398-43400 (Aug. 13, 1997).

Not only are FINRA's rules consistent with the Exchange Act, so was FINRA's application of those rules here. The Firm's proposal was blatantly inconsistent with the public interest and the protection of investors. The intractable problem is that Ramcon proposed to be owned and operated solely by someone who was terminated for cause and is the subject of complaints and arbitrations arising out of the same line of business that Ramcon would conduct and alleging serious allegations of misconduct. The Commission has upheld FINRA's membership denial in similar circumstances. *See, e.g., Sierra Nevada*, 54 S.E.C. at 115-16, 122 (finding that denial of request to modify restrictive agreement was consistent with the Exchange Act where the Firm had an inadequate system of supervision, and also stating that "[t]he Exchange Act recognizes the importance of establishing and enforcing standards of training and experience for broker-dealers and their personnel"); *Monroe Parker Sec.*, 53 S.E.C. 155, 160-61 (1997) (denial of request to increase the number of representatives was consistent with the Exchange Act where there was evidence of a "lack of adequate supervision and . . . deficiencies in [the Firm's] compliance procedures"). Denying Ramcon's new membership application is fully consistent with the Exchange Act.

V. CONCLUSION

For all the reasons stated above, the Commission should sustain FINRA's denial of the Firm's new membership application.

Respectfully submitted,



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