

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the
Continued Membership
of
McDonald Partners LLC
(CRD No. 135414)

Notice Pursuant to
Rule 19h-1
Securities Exchange Act
of 1934

SD-2313

September 29, 2022

I. Introduction

On November 12, 2021, McDonald Partners LLC (“McDonald” or the “Firm”) submitted a Membership Continuance Application (“MC-400A Application” or “Application”) to FINRA’s Credentialing Registration, Education, and Disclosure Department (“CRED”).¹ The Application seeks to permit the Firm, to continue its membership with FINRA, notwithstanding its statutory disqualification. A hearing was not held in this matter. Rather, pursuant to FINRA Rule 9523(b), FINRA’s Department of Member Supervision (“FINRA” or “Member Supervision”) approves the Application and is filing this Notice pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 (“Exchange Act” or “SEA”).

II. Statutorily Disqualifying Event

The Firm is subject to statutory disqualification, as that term is defined in Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(D), as a result of an August 31, 2021 Order (“SEC Order”) issued by the Securities and Exchange Commission (“SEC” or “Commission”) finding that the Firm willfully violated Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 (“Securities Act”) and willfully violated Sections 206(2) and 206(4) of the Investment Advisers Act of 1940 (“Advisers Act”) and Rules 206(4)-8 and 206(4)-2 thereunder for failing to disclose to investors the misappropriation of funds that were invested in private securities offerings and for failing to obtain annual audits of the financial statements or obtain a surprise annual examination of the assets for those private securities offerings.²

¹ See MC-400A Application and related attachments compiled by CRED, with a cover memorandum dated November 18, 2021, attached as Exhibit 1.

² See SEC Order, *In re McDonald Partners, LLC*, Admin. Proc. No. 3-20508 (August 31, 2021), attached as Exhibit 2.

According to the SEC Order, the Firm served as placement agent for private securities offerings conducted by two pooled investment vehicles (“PIVs”) that the Firm advised, which offered and sold securities to raise bridge funding for the construction of a resort in Montenegro.³ Between 2013 and continuing through January 2017, the Firm offered and sold more than 14 million in securities issued by the PIVs.⁴ In October 2016, McDonald became aware that the Executive Director and 50% shareholder of the Montenegrin entity had misappropriated \$488,331 of investor funds.⁵ Despite having knowledge of the misappropriation, the Firm failed to disclose the misappropriation to existing security holders and new investors who subsequently invested \$1.5 million in the offerings.⁶ Additionally, from December 31, 2014 through December 31, 2018, the Firm failed to provide investors with audited financial statements or retain an independent public accountant to conduct surprise examinations of the books of those entities, despite its custody of investor funds or securities.⁷

As a result of the violative conduct, the Firm was ordered to cease and desist from violating Sections 17(a)(2) and 17(a)(3) of the Securities Act, Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-8 and 206(4)-2 promulgated thereunder.⁸ The Firm was also ordered to pay disgorgement of \$37,031.25, prejudgment interest of \$7,651.86, and a civil penalty of \$150,000, and ordered to comply with certain undertakings, which included, among other things, retaining a Compliance Consultant, for an engagement of not less than two (2) years and requiring the Compliance Consultant to provide quarterly reports on its efforts to the Commission.⁹

III. Firm Background

McDonald has been a FINRA member since December 2005. The Firm is headquartered in Cleveland, Ohio, with six (6) branch offices, of which one is an Office of Supervisory Jurisdiction. The Firm has 35 registered representatives, seven (7) registered principals, and five (5) non-registered fingerprint employees.¹⁰

³ *Id.* at pp. 2-4.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* According to the Order, the Firm did not advise investors about the misappropriation of funds until after SEC staff initiated an investigation.

⁷ *Id.* at pp. 2, 4-5.

⁸ *Id.* at p. 7.

⁹ *Id.* at pp. 5-7. On October 22, 2021, the Firm certified to the SEC that it has complied with, and will continue to comply with, all the undertakings set forth in SEC Order. The Firm also represented it had paid the ordered fine in full on September 2, 2021. *See* Certification of Compliance dated October 22, 2021 and confirmation of receipt of payment by Commission staff, attached collectively as Exhibit 3. Staff also notes that in determining to accept the Offer, the Commission considered remedial acts promptly undertaken by McDonald and cooperation afforded the Commission staff. *See* Exhibit 2 at p. 5.

¹⁰ FINRA confirmed this through analysis of the Firm’s information contained in the Central Registration Depository (“CRD”), last performed on September 29, 2022.

McDonald is approved to engage in the following lines of business:¹¹ Broker or dealer retailing corporate equity securities over-the-counter; broker or dealer selling corporate debt securities; mutual fund retailer; municipal securities broker; broker or dealer selling variable life insurance or annuities; put and call broker or dealer or option writer; investment advisory services; non-exchange member arranging for transactions in listed securities by exchange member; and private placements of securities.

The Firm is a member of the Municipal Securities Rulemaking Board (“MSRB”).¹²

FINRA Examinations

During the past two years, FINRA completed one routine examination of the Firm which resulted in a Cautionary Action Letter (“CAL”). There were no findings as a result of the non-routine examinations completed in the past two years.

The Firm received a Cautionary Action for one of the four (4) exceptions noted in the routine examination completed in July 2020.¹³ The exception related to the Firm’s failure to list the PMP disclosure information on two (2) of 51 customer confirmations.¹⁴ The other three (3) exceptions related to the Firm’s transmission of funds out of issuer’s accounts while short of the funds represented in connection with the offering memorandum, the Firm not establishing an escrow account for an offering as required in the private placement memorandum, with funds instead transmitted directly to the issuer, and the Firm not maintaining an accurate account of its net capital.¹⁵ The three (3) exceptions related to certain offerings and the Firm’s net capital were referred to FINRA’s Enforcement Department.¹⁶ In response to exception number 1, the Firm updated its written policies and procedures.¹⁷ The Firm also undertook additional remedial measures in response to exception 2 and 3 which included disseminating the applicable FINRA Regulatory Notice to private placement personnel, amending the applicable questionnaire to address noted deficiencies, conducting additional follow-up the Issuer, as well as engaging with

¹¹ See CRD Excerpt: Types of Business, attached as Exhibit 4.

¹² Membership in this organization was verified by FINRA staff through a search of public MSRB, NSCC, and DTCC member directories, last performed September 6, 2022.

¹³ See Examination Disposition Letter dated July 16, 2020 for Examination No. 20190606924, Amended Examination Report dated July 16, 2020, and Firm Response dated January 8, 2020, collectively attached as Exhibit 5, at pp. 1 and 3.

¹⁴ See Exam Disposition Letter at Exhibit 5, p. 1.

¹⁵ *Id.* at p. 8.

¹⁶ *Id.* at p. 1. The referral to Enforcement resulted in the issuance of an AWC on June 22, 2022. See FINRA AWC No. 2019060692401, executed by the Firm May 26, 2022 and accepted by FINRA June 22, 2022, attached as Exhibit 6.

¹⁷ See Exhibit 5, p. 7, at Firm Response.

the Firm's FINOP and FINRA representatives to ensure that net capital deficiencies do not reoccur.¹⁸

Regulatory Actions

McDonald has been the subject of four (4) regulatory matters resulting in three (3) Letters of Acceptance, Waiver and Consent ("AWC") accepted by FINRA and one (1) state action.

A. FINRA Actions

On June 22, 2022, the Firm entered into an AWC with FINRA regarding the Firm's approval of a private placement offering to its customers prior to conducting reasonable due diligence of the offering, its terms, and the potential risks it presented to investors and failed to reasonably consider certain aspects of the offering, including the issuer's initial financing arrangement and the terms of the offering's contingency provision.¹⁹ According to the AWC, the offering was contingent on a \$5 million minimum raise prior to the release of investor funds, but the Firm failed to specify a date by which the contingency in the offering had to be met and allowed the issuer to use non-bona-fide sales to meet the offering contingency.²⁰ The FINRA AWC also addressed the Firm incorrectly counting a non-allowable \$225,000 receivable toward its net-capital requirement that resulted in inaccurate reporting to FINRA.²¹ For its misconduct, the Firm was found to have willfully violated Section 10b-9 of the Securities Act²² and FINRA Rules 3110, Section 15(c) of the Exchange Act, Exchange Act Rule 15c3-1, and FINRA Rules 4110(b)(1) and 2010.²³

The Firm was censured, fined \$100,000 and agreed to pay partial restitution in selling commissions to affected customers in the amount of \$170,000 plus interest, and submit a certification stating that McDonald Partners will not resume sales of private placement offerings until it has implemented a supervisory system and written supervisory procedures reasonably designed to comply with the Exchange Act and FINRA Rules.²⁴

¹⁸ *Id.* at p. 4.

¹⁹ *See* Exhibit 6 at pp. 2-4.

²⁰ *Id.* at pp. 4-6.

²¹ *Id.* at p. 6.

²² The Firm is subject to statutory disqualification as result of its willful violation of Section 10b-9 of the Securities Act.

²³ *Id.* at pp. 1-2.

²⁴ *Id.* at 6. McDonald certified to FINRA Enforcement staff that it complied with the undertakings outlined in the AWC, that the \$100,000 fine was paid in full on July 12, 2022 and that the Firm paid restitution to affected clients. *See* July 21, 2022 Certification of Compliance for AWC No. 2019060692401, proof of fine payment, and proof of restitution payment, attached collectively as Exhibit 7. Since there are no sanctions in effect for statutory disqualification purposes for this event, an application is no longer required under FINRA rules. *See* [FINRA Regulatory Notice 09-19](#).

In March 2019, McDonald entered into an AWC with FINRA regarding its failures to report certain municipal securities transactions to the MSRB's Real-Time Transaction Reporting System, conducting a securities business while failing to maintain its required net capital and preparing inaccurate general ledger, trial ledger and net capital computation.²⁵ The Firm was censured and fined \$22,500 (\$12,500 of which pertains to a violation of MSRB Rule G-14).²⁶

In February 2018, McDonald entered into an AWC with FINRA which addressed the Firm's misconduct related to two separate offerings issued by companies affiliated with the Firm.²⁷ According to the AWC, in its role as placement agent, McDonald, in connection with the first offering, released investor's funds from escrow after having used an interim loan to satisfy a portion of the contingency amount.²⁸ In connection with the second offering, the Firm released investor's funds prior to meeting the offering's stated minimum contingency.²⁹ For its misconduct related to both offerings, the Firm willfully violated SEA Rule 10b-9 and FINRA Rule 2010.³⁰ The AWC also addressed the Firm's failures, with regards to the second offering, in allowing funds to be disbursed prior to the contingency occurring, circulating communication to the public that misstated the contingency amount in the offering, and failing to report certain municipal securities transactions to the Municipal Securities Rulemaking Board ("MSRB").³¹ As a result, the Firm was censured and fined in the amount of \$50,000 (\$10,000 of which pertains to the violation of MSRB Rule G-14).³²

B. State Action

In October 2016, McDonald was the subject of a Arkansas Consent Order ("Arkansas Order") naming the Firm, and two others as respondents.³³ According to the Order, the Firm transacted business in the state as a broker-dealer without being registered in the state, employed an

²⁵ See FINRA AWC No. 2017052419301, executed by the Firm February 26, 2019 and accepted by FINRA March 22, 2019, attached as Exhibit 8, at pp. 2-3.

²⁶ *Id.* at p. 3. The Firm paid the fine in full on April 11, 2019. See FINRA Staff Confirmation of Payment, attached as Exhibit 9.

²⁷ See FINRA AWC No. 2015043649601, executed by the Firm February 13, 2018 and accepted by FINRA February 21, 2018, and a March 6, 2018 letter from FINRA confirming fine payment and certification of compliance, collectively attached as Exhibit 10.

²⁸ *Id.* at p. 3.

²⁹ *Id.* at p. 4.

³⁰ *Id.* at p. 5. The Firm is also subject to a statutory disqualification due to the willful violations outlined in the February 2018 AWC.

³¹ *Id.*

³² *Id.* The Firm paid the fine in full on March 6, 2018. *Id.* at pp. 9-10. A Membership Continuance Application was not required under FINRA Rules as there are no sanctions in effect for statutory disqualification purposes. See also *infra* note 24.

³³ See Arkansas Order, *In re McDonald Partners LLC*, Case No. S-16-0046 (2016), attached as Exhibit 11.

unregistered agent who effected transactions in the state, and also conducted business from an unregistered branch office.³⁴ For its misconduct, the Firm was found to have violated Arkansas Code Ann. Section 23-42-301(a), (b)(1) and (e) and ordered to pay a fine in the amount of \$15,000.³⁵

IV. Prior SEA Rule 19h-1 Notices

The Firm has no previous approvals or denials pursuant to SEA Rules 19h-1 or 19d-1.

V. The Firm's Proposed Continued Membership with FINRA and Proposed Plan of Heightened Supervision

The Firm seeks to continue its membership with FINRA notwithstanding its status as a disqualified member. The Firm has agreed to the following Plan of Heightened Supervision as a condition of its continued membership with FINRA:³⁶

1. The Firm shall comply with all of the undertakings outlined in the SEC Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933, Section 15(b)(4) of the Securities Exchange Act of 1934 and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, *In the Matter of McDonald Partners, LLC*, Administrative Proceeding No. 3-20508 (August 31, 2021) ("SEC Order"). Copies of all documentation of the Firm's compliance with the above obligations shall be maintained and kept segregated for ease of review for FINRA staff.
2. The Firm shall notify FINRA's Department of Risk Monitoring and FINRA's Statutory Disqualification Group ("SD Group") if and when Commission staff grants any extensions to the deadlines set forth in the SEC Order. Copies of all documentation shall be maintained and kept segregated for ease of review for FINRA staff.
3. The Firm shall retain and submit to FINRA's SD Group all certifications, reports and other documentation submitted to the SEC staff in accordance with the SEC Order, as well as any other documentation needed to evidence the status and completion of each of the undertakings outlined in the SEC Order. Copies of all documentation shall be maintained and kept segregated for ease of review for FINRA staff.

³⁴ *Id.* at p. 2-3.

³⁵ *Id.* at pp. 3-4. According to CRD, the Firm paid the fine in full October 24, 2016. See Firm's CRD Disclosure Occurrence Summary, attached as Exhibit 12.

³⁶ See Executed Consent to Plan of Heightened Supervision September 27, 2022, attached as Exhibit 13.

4. All requested documents and certifications under this Plan of Supervision shall be sent directly to FINRA's Statutory Disqualification Group at SDMailbox@FINRA.org.
5. The Firm shall obtain written approval from FINRA's SD Group prior to changing any provision of the Plan of Heightened Supervision.
6. The Firm shall submit any proposed changes or other requested information under this Plan of Heightened Supervision to FINRA's SD Group at SDMailbox@FINRA.org.

VI. Discussion

After carefully reviewing the entire record in this matter, FINRA approves the Firm's request to continue its membership with FINRA, subject to the terms and conditions set forth herein. In evaluating McDonald's Application, FINRA assessed whether the Firm has demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm to investors or the markets. *See* FINRA By-Laws, Art. III, Sec. 3(d); *cf. Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (holding that FINRA "may deny an application by a firm for association with a statutorily-disqualified individual if it determines that employment under the proposed plan would not be consistent with the public interest and the protection of investors"). Typically, factors that bear on FINRA's assessment include, among other things, the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, the Firm's regulatory history, and whether there has been any intervening misconduct.

As of the date of this Notice, FINRA has determined that the Firm's continued membership is consistent with the public interest and does not create an unreasonable risk of harm to investors or the markets. While the SEC Order identified serious violations of securities laws, the Firm was not expelled or suspended, nor were any limitations placed on McDonald's securities activities. The Firm also promptly paid all ordered moneys in full. Member Supervision also acknowledges that within its Order the SEC considered the Firm's prompt remedial actions and cooperation with the Commission when determining to accept the Offer of Settlement.³⁷ The Firm represented that it self-reported the finding concerning its violation of Rule 206(4)-2 ("Custody Rule") to the Commission³⁸ and suspended its participation in new private offerings.³⁹ Furthermore, the undertakings set forth in the matter require the Firm to continue its remedial measures to monitor and deter future misconduct. The Department recognizes the Firm's representation that it has made steady progress on its required undertakings under the SEC's Order, with the transmission of quarterly reports from the consultant to the Commission its only remaining undertaking.

It is well settled that a firm's regulatory history bears upon the assessment of its ability to comply with securities law and regulations. *See In the Matter of the Continued Association of Craig Scott Taddonio with Meyers Associate, L.P.*, SD-2117, slip op. at 24-25 (FINRA NAC March 8, 2017).

³⁷ *See* Exhibit 2 at p. 5.

³⁸ *See* Exhibit 1 at p. FINRA00060.

³⁹ *Id.*

However, the corrective measures taken by firms to address deficiencies are weighed in determining whether to approve applications. *See In the Matter of the Association of X with the Sponsoring Firm*, SD11007 (FINRA NAC 2011) (where a firm’s corrective actions negated Member Regulation’s assertion that the firm failed to appreciate or respect securities rules and regulations). FINRA has also previously approved applications for continued membership where the firms had extensive regulatory history, including disqualifying events. *See In the Matter of the Continued Membership of Deutsche Bank Securities, Inc.*, SD-2190 (FINRA Jan. 14, 2020) and *In the Matter of the Continued Membership of Citigroup Global Markets, Inc.*, SD-2082 (FINRA May 2, 2017) approving continued membership where the firms had extensive regulatory history, including recent disqualifying events.

In its evaluation of the Firm’s application, FINRA acknowledges the Firm’s recent regulatory and disciplinary history, including its additional statutorily disqualifying events. Member Supervision also notes that, as of the date of this Notice, the Firm has paid all fines and, except for its current order, complied with all undertakings ordered by regulators. None of these matters would prevent the continuance of the Firm as a FINRA member. With respect to the Firm’s most recent FINRA AWC, as well as its 2018 disqualifying event, Member Supervision took into consideration that the Firm complied with all its required sanctions, timely certified its compliance, and as a result, no further Eligibility review was required for the Firm. In approving the Firm’s application, Member Supervision also took into consideration that the Firm indefinitely suspended its participation in new private offerings which it cannot resume, in compliance with FINRA’s recent order. Further, Member Supervision also notes the corrective measures taken by the Firm in connection with each of its 2020 examination exceptions as well as the operational nature of the Firm’s violations contained in its 2016 Arkansas Order.

In approving the Firm’s application, FINRA also considered the organizational and operational changes incorporated by the Firm in order to enhance internal controls and strengthen compliance.⁴⁰ Specifically, the Firm’s Chief Executive Officer stepped down, the Firm’s FINOP and Chief Financial Officer moved into the executive role, and the Firm hired two more experienced compliance staff.⁴¹ McDonald notes that the conduct in the 2021 SEC Order took place under its former Chief Compliance Officer (“CCO”), who left the Firm in early 2019, and that the Firm retained an outside compliance firm in January 2019 to act as CCO on the Firm’s investment advisory side to establish and maintain a compliance program, assigning three experienced consultants to support the internal compliance team.⁴² It further engaged a separate accounting firm in 2019 to conduct surprise examinations of assets of private funds McDonald manages.⁴³ Additionally, McDonald engaged an independent compliance consultant to provide monthly advice and direction as to the Custody Rule.⁴⁴

⁴⁰ *Id.* at pp. FINRA00059-FINRA00061.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

FINRA is further reassured by the controls set in place by the Firm's Plan of Heightened Supervision which bolster the undertakings outlined in the SEC Order and will continue to provide oversight of the Firm and compliance with its remaining undertakings. Following the approval of the Firm's continued membership in FINRA, FINRA intends to utilize its examination and surveillance processes to monitor the Firm's continued compliance with the standards prescribed by Exchange Act Rule 19h-1 and FINRA Rule 9523.

Accordingly, FINRA is satisfied, based on the foregoing and on McDonald's representations made pursuant to the Plan of Heightened Supervision, that the Firm's continued membership in FINRA is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors. Accordingly, FINRA approves the Firm's Application to continue its membership with FINRA.

In conformity with the provisions of Exchange Act Rule 19h-1, the continued membership of the Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the SEC.

On Behalf of FINRA,



Marcia E. Asquith
Executive Vice President & Corporate Secretary

Exhibits

SD-2313

1. MC-400A Application and related attachments compiled by CRED, with a cover memorandum dated November 18, 2021.
2. SEC Order, *In re McDonald Partners, LLC*, Admin. Proc. No. 3-20508 (August 31, 2021).
3. Certification of Compliance dated October 22, 2021, and confirmation of receipt of payment by Commission staff.
4. CRD Excerpt: Types of Business.
5. Examination Disposition Letter dated July 16, 2020, for Examination No. 20190606924, Amended Examination Report dated July 16, 2020, and Firm Response dated January 8, 2020.
6. FINRA AWC No. 2019060692401, executed by the Firm May 26, 2022 and accepted by FINRA June 22, 2022.
7. July 21, 2022 Certification of Compliance for AWC No. 2019060692401, proof of fine payment, and proof of restitution payment.
8. FINRA AWC No. 2017052419301, executed by the Firm February 26, 2019, and accepted by FINRA March 22, 2019.
9. FINRA Staff Confirmation of Payment for FINRA AWC No. 2017052419301.
10. FINRA AWC No. 2015043649601, executed by the Firm on February 13, 2018 and accepted by FINRA, and a March 6, 2018 letter from FINRA confirming fine payment and certification of compliance.
11. Arkansas Securities Commissioner Consent Order, *In re McDonald Partners LLC, Cameron Glenn and Katherine Knight*, Case No. S-16-0046, Order No. S-16-0046-16-OR01 (October 24, 2016).
12. CRD Excerpt – Disclosure Summary for Occurrence No. 1908027, filed December 14, 2016.
13. Consent to Plan of Heightened Supervision Executed September 27, 2022.