BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Association of Bruce Meyers as a General Securities Representative and General Securities Principal with Meyers Associates, L.P.	Notice Pursuant to Section 19(d) Securities Exchange Act of 1934 SD-2069 May 9, 2016

I. Introduction

On June 4, 2015, Meyers Associates, L.P. (the "Firm") filed a Membership Continuance Application ("MC-400" or "the Application") with FINRA's Department of Registration and Disclosure ("RAD"). The Application requests that FINRA permit Bruce Meyers ("Meyers"), a person whom RAD determined is statutorily disqualified, to continue to associate with the Firm as a general securities representative, general securities principal, and the Firm's chief executive officer. On March 22, 2016, a subcommittee ("Hearing Panel") of FINRA's Statutory Disqualification Committee held a hearing on the matter. Meyers appeared at the hearing, accompanied by counsel (Robert I. Rabinowitz, Esq., Eden L. Rohrer, Esq., and Jeffrey Severson, Esq.), his proposed supervisor (Wayne Spence ("Spence")), and the Firm's outside compliance consultant (Diane K. Golbeck ("Golbeck")). Lorraine Lee-Stepney, Ann-Marie Mason, Esq., Meredith MacVicar, Esq., and Dana Pisanelli, Esq. appeared on behalf of FINRA's Department of Member Regulation ("Member Regulation").

After a careful review of the record, we find that, notwithstanding the arguments of Meyers and the Firm to the contrary, Meyers is subject to statutory disqualification. We further find that the Firm has not met its burden to demonstrate that Meyers's continued association with the Firm is in the public interest, and has not shown that it can stringently supervise a statutorily disqualified individual such as Meyers. The Firm's extensive regulatory and disciplinary history (including numerous and repeated supervisory violations), Meyers's extensive regulatory and disciplinary history, and concerns with Meyers's proposed supervision, all support our determination that Meyers's continued association with the Firm will present an unreasonable risk of harm to the market or investors. We therefore deny the Firm's Application.[1]

[1] Pursuant to FINRA Rule 9524(a)(10), the Hearing Panel submitted its written recommendation to the Statutory Disqualification Committee. The Statutory Disqualification

[Footnote continued on next page]

II. Meyers's Employment History and Ownership of the Firm

Meyers qualified as a general securities representative in May 1982 and as a general securities principal in March 1987 (and again in July 1993). He also became registered through wavier as an investment banking representative and operations professional. *See FINRA Regulatory Notice 09-41*, 2009 FINRA LEXIS 114 (July 2009); *FINRA Regulatory Notice 11-33*, 2011 FINRA LEXIS 59 (July 2011); *FINRA Regulatory Notice 11-42*, 2011 FINRA LEXIS 75 (Sept. 2011). Meyers passed the uniform securities agent state law exam in December 1982.

Meyers has been associated with the Firm (f/k/a Roan-Meyers Associates, LP and Janssen-Meyers Capital Group, Inc.) since April 1993, and he has continued to work at the Firm pending resolution of the Application.[2] He was previously associated with 11 firms. Meyers founded the Firm, serves as its chief executive officer, and indirectly owns 90% of the Firm through his 90% ownership interest in Meyers Securities Corp. (f/k/a Meyers-Jansen Securities Corp.).[3] Meyers serves as the director, president, and chief executive officer of Meyers Securities Corp.

III. Meyers Is Statutorily Disqualified

As an initial matter, Meyers and the Firm contend that Meyers is not statutorily disqualified because the consent order identified by RAD and Member Regulation as disqualifying is not an order barring Meyers from associating with a broker-dealer or engaging in securities business. For the reasons set forth below, we find that Meyers is statutorily disqualified.[4]

[cont'd]

Committee considered the Hearing Panel's recommendation and presented a written recommendation to the National Adjudicatory Council ("NAC").

[2] Meyers's continued association with the Firm is consistent with FINRA's interpretation of Article III, Section 3(c) of FINRA's By-Laws, permitting individuals who become statutorily disqualified while they are employed to continue working pending the outcome of the statutory disqualification process.

[3] Meyers testified that Imtiaz Khan ("Khan") owns less than 10% of the Firm, with several others holding the remaining ownership interests.

[4] In prehearing briefs, Meyers and the Firm argued that, for the reasons described in Part III.B.2 *infra*, Meyers is not subject to statutory disqualification and therefore not required to go through a FINRA eligibility proceeding. Member Regulation filed an opposition brief, and Meyers and the Firm requested that the Hearing Panel decide this potentially dispositive matter prior to conducting a hearing on the substance of the Application. The Hearing Panel postponed the hearing to consider this matter, and found that a hearing on the merits of the Application should go forward because Meyers appeared to be statutorily disqualified. Notwithstanding this ruling, prior to the hearing, applicants stated their intent to present further legal arguments as to why the Hearing Panel's determination that the Connecticut Order is disqualifying was "flawed,"

[Footnote continued on next page]

A. The 2015 Connecticut Order

On March 24, 2015, Connecticut's Department of Banking (the "Department of Banking") entered a Consent Order (the "2015 Connecticut Order") against Meyers and the Firm. The 2015 Connecticut Order, among other things: (1) ordered Meyers to withdraw his registration as a broker-dealer agent of the Firm and not to reapply for reinstatement for three years; (2) ordered that the Firm ensure that, for so long as Meyers remained affiliated with the Firm in an unregistered capacity in Connecticut, Meyers refrain from directly supervising or training any broker-dealer agents with respect to securities business transacted in or from Connecticut and receiving any compensation in connection with the offer, sale, or purchase of securities effected in or from Connecticut; (3) suspended for 60 days the Firm's registration as a broker-dealer in Connecticut; (4) ordered that the Firm retain an outside consultant to conduct an audit of the Firm and file a report with the Department of Banking; (5) fined Meyers and the Firm $50,000 and ordered that the Firm pay the cost of any examinations by the Department of Banking within 18 months of the order's entry; (6) limited for three years the Firm's securities business in Connecticut to the purchase, sale, and redemption of securities that are: (a) issued by investment companies regulated under the Investment Company of 1940; (b) issued or guaranteed by the United States government, any state, political subdivision of a state, or any agency or instrumentality of the foregoing; (c) exchange-listed options; or (d) listed on the New York Stock Exchange and certain other exchanges, and specifically prohibited the Firm from offering or selling securities listed or traded on the OTC Bulletin Board, OTCQB marketplace, or the OTC Pink marketplace; and (7) required that, for a period of three years, the Firm notify the Department of Banking within seven business days of any reportable disciplinary items initiated against the Firm, its officers, directors, control persons, agents, employees, or representatives.

1. Basis for the 2015 Connecticut Order

The basis for the 2015 Connecticut Order was an Amended and Restated Order to Cease and Desist, Notice of Intent to Revoke Registration as a Broker-Dealer, Notice of Intent to Revoke Registration as a Broker-Dealer Agent, Notice of Intent to Fine and Notice of Right to Hearing filed by the Department of Banking against Meyers and the Firm on February 13, 2015 (the "Amended Cease and Desist Order"), which amended and superseded a prior cease and

---

[cont'd]

and stated their intent to present testimony from applicants' counsel in the underlying state regulatory proceedings as to the history of those proceedings and conversations with the state regulator at issue during those proceedings. The Hearing Panel determined that it would not allow legal arguments that had already been made by the parties in their briefs, and after a proffer from counsel regarding what specifically applicants' counsel in the underlying proceeding would testify to, declined to hear testimony from this potential witness. For the reasons set forth herein, we agree with the Hearing Panel's determinations.

desist order filed by the Department of Banking in February 2014.[5] The Amended Cease and Desist Order details numerous violations committed by Meyers and the Firm, and stems from an April 2008 examination of the Firm by the Department of Banking. Based upon its findings from that examination, the Department of Banking issued a cease and desist order against the Firm in November 2010. The Firm ultimately entered into a consent order with the Department of Banking in June 2011 (the "2011 Connecticut Order") to resolve that matter.[6]

In June 2012, and in accordance with the 2011 Connecticut Order, the Department of Banking conducted another examination of the Firm. The Department of Banking uncovered various deficiencies during this examination, and had cause to believe that Meyers and the Firm violated Connecticut law. These findings (and a further investigation and examination of the Firm) ultimately resulted in the Amended Cease and Desist Order, which alleged that the Firm engaged in the sale of unregistered securities, failed to supervise in numerous areas, failed to provide documents to the Department of Banking in a complete and timely manner, and failed to maintain and provide accurate books and records. It further alleged that Meyers oversaw the Firm's compliance department and was responsible for ensuring that the Firm complied with all applicable state and federal securities statutes, and alleged that Meyers failed to reasonably supervise registered representatives at the Firm and materially assisted, and willfully aided and abetted, the Firm's failure to provide documents requested by the Department of Banking in a complete and timely manner.[7] Meyers and the Firm ultimately consented to the 2015 Connecticut Order to resolve this matter.

---

[5] In the 2015 Connecticut Order, Meyers and the Firm acknowledged the allegations set forth in the Amended Cease and Desist Order, and without admitting or denying the allegations, admitted that sufficient evidence existed for the Department of Banking to issue a permanent cease and desist order, orders revoking Meyers's registration as a broker-dealer agent in Connecticut and the Firm's registration as a broker-dealer in Connecticut, and an order imposing fines.

[6] Without admitting or denying the allegations of the Department of Banking, the Firm consented to findings in the 2011 Connecticut Order that it employed at least five unregistered agents, effected sales of unregistered securities, failed to disclose to customers that a "handling fee" it charged them included a profit to the Firm that was not based on the costs of handling the transactions, and failed to enforce its written supervisory procedures ("WSPs"). The Department of Banking fined the Firm $12,500, ordered that it reimburse customers and pay for the cost of future examinations, and required that it retain an independent consultant to review the Firm's operations. The Firm states that it reimbursed customers a total of $10,109 pursuant to the 2011 Connecticut Order.

[7] Specifically, the Amended Cease and Desist Order alleged that Meyers: (1) failed to take any meaningful disciplinary action against a registered representative on heightened supervision who continued to be the subject of numerous customer complaints; (2) failed to notify the Department of Banking of a registered representative's disciplinary action by another state regulator, as previously agreed to; (3) failed to ensure that the Firm's director of operations passed the appropriate licensing examination; (4) failed to reasonably supervise the enforcement of the Firm's WSPs in connection with, among other things, a suspended registered representative's contact with a Connecticut customer; (5) knew or should have known of a

[Footnote continued on next page]

At the hearing, Meyers testified that he disagreed with the allegations in the Amended Cease and Desist Order, which he stated involved his failure to supervise. Meyers testified that he was not the direct supervisor of any Firm representatives or employees involved in the allegations underlying the Amended Cease and Desist Order, and he was named as a respondent because he is the chief executive officer of the Firm. He also testified that he agreed to the 2015 Connecticut Order because he had no Connecticut customers and did no business in Connecticut, his attorney was advised by Department of Banking staff that there would be no consequences to withdrawing his registration in the state, and it seemed "harmless" to settle these matters pursuant to the terms of the 2015 Connecticut Order.

2. Meyers's and the Firm's Unsuccessful Efforts to Modify the 2015 Connecticut Order

After receiving notice from RAD in April 2015 that Meyers was statutorily disqualified pursuant to the 2015 Connecticut Order, counsel for Meyers contacted the Department of Banking and requested that it confirm Meyers's view that the 2015 Connecticut Order does not bar Meyers and was not intended to serve as a statutorily disqualifying event, and stated Meyers's belief that it was not the Department of Banking's intention to render him statutorily disqualified. The Department of Banking declined Meyers's request, and he subsequently filed with the Department of Banking a Petition for Reconsideration and Modification of the 2015 Connecticut Order (the "Petition for Reconsideration"), arguing that FINRA was misinterpreting the order to conclude that it rendered Meyers statutorily disqualified. The Petition for Reconsideration requested that the Department of Banking strike the language in the 2015 Connecticut Order ordering Meyers not to reapply for registration as a broker-dealer agent for three years (or allow Meyers an opportunity to present further evidence to the Department of Banking to demonstrate that the 2015 Connecticut Order should be modified).

In June 2015, the Department of Banking denied the Petition for Reconsideration. Meyers and the Firm then filed a complaint in Connecticut state court requesting that the court amend the 2015 Connecticut Order to state that it should not be construed as a "statutory bar." Meyers and the Firm argued that the Department of Banking did not intend that the 2015 Connecticut Order serve as a disqualifying order under the Securities Exchange Act of 1934 ("Exchange Act"), as evidenced by, among other things, the fact the Firm could continue to operate pursuant to the 2015 Connecticut Order, Meyers was not required to divest himself of his ownership in the Firm, and Meyers could be registered with the Firm in other states. The Department of Banking filed a motion to dismiss the complaint, and in October 2015, the court dismissed the complaint based upon (among other things) a lack of jurisdiction and the plaintiffs'

[cont'd]

commission sharing agreement between two registered representatives used to circumvent registration requirements (and that cash payments made by these representatives to supervisory personnel were not recorded in the Firm's books and records); (6) failed to reasonably supervise the sales of leveraged exchange traded funds, which resulted in unsuitable recommendations, and failed to reasonably supervise a Firm agent with respect to an unauthorized transaction; and (7) materially assisted, and willfully aided and abetted, the Firm's failure to provide documents requested by the Department of Banking in a complete and timely manner.

lack of standing because the injuries they alleged were "at most, the indirect result of the plaintiffs' agreement to enter into" the 2015 Connecticut Order.[8]

B. The 2015 Connecticut Order Rendered Meyers Statutorily Disqualified

1. Applicable Law

Article III, Section 4 of FINRA's By-Laws incorporates by reference the definition of "statutory disqualification" set forth in Exchange Act Section 3(a)(39). Section 604 of the Sarbanes-Oxley Act of 2002 expanded the definition of statutory disqualification in Exchange Act Section 3(a)(39) by creating and incorporating Exchange Act Section 15(b)(4)(H) so as to include persons that are subject to any final order of a state securities commission or state authority that supervises or examines banks that, among other things, "bars such person from association with an entity regulated by such commission . . . or from engaging in the business of securities." *See* Exchange Act Section 15(b)(4)(H)(i); *FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 52, at *5-6 (April 2009).

In interpreting Exchange Act Section 15(b)(4)(H)(i), the Commission has stated that if a final order of a state securities commission has the effect of barring an individual, then it is disqualifying regardless of the exact language contained in the order, and regardless of whether the order uses the term "bar." *See Disqualification of Felons and Other Bad Actors from Rule 506 Offerings*, Securities Act Release No. 9414, 2013 SEC LEXIS 2000, at *75 (July 10, 2013). Specifically, the Commission has observed that:

> Our requests for comment focused on whether there was a need for the Commission to explicitly state that all orders that have the practical effect of a bar (prohibiting a person from engaging in a particular activity) should be treated as such, even if the relevant order did not call it a 'bar.' . . . We believe the statutory language [of Section 15(b)(4)(H)(i)] is clear: bars are orders issued by one of the specified regulators that have the effect of barring a person from association with certain regulated entities; from engaging in the business of securities, insurance or banking; or from engaging in savings association or credit union activities. Any such order that has one of those effects is a bar, regardless of whether it uses the term 'bar.'

Id.; *see also Crowdfunding*, Release Nos. 33-9470 & 34-70741, 2013 SEC LEXIS 3346, at *512 (Oct. 23, 2013) (stating, in the context of proposed rules governing crowdfunding and funding portals, that "bars are orders issued by one of the specified regulators that have the effect of barring a person from: (1) associating with certain regulated entities; (2) engaging in the business of securities, insurance or banking; or (3) engaging in savings association or credit

---

[8] Meyers's and the Firm's response to the Department of Banking's motion to dismiss stated that the Department of Banking made it clear that it would not modify the Connecticut Order and "wanted to put [Meyers] out of business in Connecticut." Applicants' Petition for Reconsideration, complaint, and opposition to the motion to dismiss made many of the same legal arguments that Meyers and the Firm make to the NAC to allegedly demonstrate that the Connecticut Order is not disqualifying.

union activities. We believe that any such order that has one of those effects would be a bar, regardless of whether it uses the term 'bar.'").

We have previously adopted the Commission's interpretation of Exchange Act Section 15(b)(4)(H)(i) and the functional approach to determining whether a state regulatory order is disqualifying as an order barring an individual, and have held that a consent order with a state regulator ordering a registered representative to withdraw his registration and not reapply for a specified period of time constitutes a disqualifying order barring the individual. *See In the Matter of the Continued Association of Ronald Berman with Axiom Capital Management, Inc.*, SD 1997, slip op. at 1-5 (FINRA NAC Dec. 14, 2014) (rejecting argument that consent order was not disqualifying), *available at* http://www.finra.org/sites/default/files/Berman%20SD-1997%20FINAL%2019%28d%29%20DECISION%2012%2011%2014_0_0_0_0_0_0_0.pdf. We have also previously utilized the functional approach in determining whether orders are disqualifying under other sections of the Exchange Act. *See In the Matter of the Association of X*, Redacted Decision No. SD00003, slip op. (NASD NAC 2000), *available at* http://www.finra.org/sites/default/files/ NACDecision/p011567_0.pdf [hereinafter "NAC 2000 SD Decision"] (applying the functional approach to determine that a consent order between an individual and the CFTC in which the indiviudal agreed that he would not apply for registration in any capacity was disqualifying as an order "denying, suspending, or revoking" such person's registration under the Commodity Exchange Act).

2. <u>The 2015 Connecticut Order Has the Effect of Barring Meyers</u>

Based upon the Commission's guidance and our precedent, we find that the 2015 Connecticut Order constitutes a final order that bars Meyers from engaging in the business of securities in Connecticut because its practical effect is to prohibit him from engaging in a particular activity in the state. Specifically, the 2015 Connecticut Order required Meyers to withdraw his agent registration and not to reapply for reinstatement for three years. Moreover, although the 2015 Connecticut Order permits Meyers to remain affiliated with the Firm in an unregistered capacity (and thus retain his ownership interest in the Firm), it further prohibits him from receiving any financial benefit based upon his ownership interest from any securities business in Connecticut and prohibits him from directly supervising or training any broker-dealer agents with respect to securities business in Connecticut.

Indeed, Meyers concedes that the 2015 Connecticut Order prohibits him from doing any securities business in Connecticut that requires registration, and the 2015 Connecticut Order contains no carve out for Meyers to engage in any securities business or activity in Connecticut, or remain registered in any capacity in the state. *See* Connecticut Department of Banking

Broker-Dealer Instructions, *available at* http://www.ct.gov/dob/cwp/view.asp?a=2251&q=299172&dobN%20AV_GID=166 (providing that "[n]o individual may represent a broker-dealer in effecting securities transactions within or from Connecticut unless that individual is registered as an agent of the broker-dealer whom he or she represents. . . . Individuals who work for a broker-dealer (e.g. 'registered representatives' or 'stockbrokers') are 'agents' of that broker-dealer under the Connecticut Uniform Securities Act. Although they do not register as 'broker-dealers', they would register as agents of their employing firm to transact securities business in the state."). The restrictions on Meyers's activities set forth in the 2015 Connecticut Order have the practical effect of prohibiting him from engaging in any securities business in Connecticut, which squarely meets the definition of disqualification under Exchange Act Section 15(b)(4)(H)(i). This is true notwithstanding that the 2015 Connecticut Order does not use the phrase "bar" to describe the sanctions it imposes upon Meyers. *See Disqualifications in Rule 506 Offerings*, 2013 SEC LEXIS 2000, at *75; *Berman*, slip op. at 3.

3. Meyers's and the Firm's Arguments Are Without Merit

We find unavailing Meyers's and the Firm's numerous arguments in support of their claim that the 2015 Connecticut Order does not render Meyers statutorily disqualified. For example, they argue that the plain language of Exchange Act Section 15(b)(4)(H)(i) requires a bar by a state securities commissioner, and because Meyers "voluntarily withdrew" his registration pursuant to the 2015 Connecticut Order, his securities license was not suspended or revoked. Applicants also argue that the Department of Banking's use of the phrase "bar" in other orders unrelated to this matter demonstrates that the 2015 Connecticut Order (which does not contain the phrase) does not bar Meyers. As described above, we have followed the Commission's functional approach in interpreting whether a state regulator's order bars an individual by looking at the effect of the order in question, regardless of the language used, and find no reason to depart from this approach in the present matter. Further, while Meyers may have consented to the terms of the 2015 Connecticut Order, consent orders may be disqualifying under the Exchange Act where an individual had notice and an opportunity for a hearing on the matter (as Meyers did here), and characterizing Meyers's sanction as a voluntary withdrawal of his registration does not alter the fact that the 2015 Connecticut Order has the effect of prohibiting him from engaging in securities business in Connecticut.[9] *See, e.g.*, *Berman*, slip op.

---

[9] We reject applicants' argument that neither Meyers nor the "entire industry" were on notice that the 2015 Connecticut Order could constitute a disqualifying event, as the Commission's guidance regarding Exchange Act Section 15(b)(4)(H)(i) was available (as was our decision in *Berman*) to Meyers and his counsel well in advance of Meyers's agreement to the terms of the 2015 Connecticut Order. Indeed, the NAC 2000 SD Decision notified parties that FINRA utilizes a functional approach to determine whether an order is disqualifying under the Exchange Act.

We also reject Meyers's and the Firm's argument that the Connecticut Order did not prohibit him from engaging in the business of securities because he was required to withdraw his registration, "as if he had never been registered in Connecticut. An individual who has never applied for state registration would not be deemed 'barred.'" Meyers and the Firm ignore the practical effect of the Connecticut Order on Meyers's ability to conduct securities business in Connecticut.

at 3; *Nicholas S. Savva*, Exchange Act Release No. 72485, 2014 SEC LEXIS 2270, at *25-34 (June 26, 2014) (finding that a consent order entered into with a state securities regulator, which contains "neither admit nor deny" language, is a disqualifying order entered by a state securities regulator under Exchange Act Section 15(b)(4)(H)); *Eric J. Weiss*, Exchange Act Release No. 69177, 2013 SEC LEXIS 837 (Mar. 19, 2013) (affirming FINRA's denial of an application for a disqualified individual to continue to associate with a firm where the disqualifying order was a consent order and he neither admitted nor denied any facts).

Meyers and the Firm attempt to distinguish the 2015 Connecticut Order from our decision in *Berman* and the Commission's interpretation of Exchange Act Section 15(b)(4)(H)(i) in the context of Regulation D offerings by arguing that the 2015 Connecticut Order was not based on underlying fraud or other "bad" conduct by Meyers. Meyers and the Firm misconstrue this precedent. It is the effect of the 2015 Connecticut Order that renders Meyers disqualified, not the order's underlying basis (which may be considered in assessing the merits of the Firm's Application). *See also Crowdfunding*, 2013 SEC LEXIS 3346, at *512 (applying the functional approach, in the context of proposed rules governing crowdfunding and funding portals, to determine whether an order bars an individual under Exchange Act Section 15(b)(4)(H)(i)). Moreover, the 2015 Connecticut Order is based upon findings that Meyers engaged in numerous supervisory lapses and violated Connecticut's securities laws by materially assisting and willfully aiding and abetting the Firm's failure to turn over books and records. *See infra* Part VII.C.

Meyers and the Firm also argue that the NAC incorrectly decided *Berman* because it improperly relied upon a prior decision (the NAC 2000 SD Decision) "under an entirely different statutory provision not applicable to the Berman matter or this matter" and the Commission's 2013 interpretation of Exchange Act Section 15(b)(4)(H)(i). Meyers and the Firm misread our holding in *Berman* and its reliance on the NAC 2000 SD Decision. *Berman* appropriately cited the NAC 2000 SD Decision for the proposition that it is appropriate to examine the effect of the order at issue to determine whether it is the "functional equivalent" of a statutorily disqualifying order under the Exchange Act. Similarly, the Commission's interpretation of Exchange Act Section 15(b)(4)(H)(i) referenced by Meyers and the Firm, while in the context of Regulation D and "felons and other bad actors," speaks directly to the issue in both *Berman* and the present matter: whether an order of a state securities regulator that requires an individual to withdraw his registration in the state constitutes an order barring that individual under the Exchange Act. Further, the Commission has applied the same standard in other contexts. *See Crowdfunding*, 2013 SEC LEXIS 3346, at *512.

We also reject Meyers's and the Firm's argument that because the parties to the 2015 Connecticut Order purportedly never intended that it bar Meyers, the 2015 Connecticut Order is not disqualifying.[10] As an initial matter, as set forth above, it is the effect of a state regulator's

---

[10] We further reject Meyers's related argument that the 2015 Connecticut Order cannot render him statutorily disqualified because he did not understand that the 2015 Connecticut Order might have that effect and he specifically rejected lesser proposed sanctions because of their potential for collateral consequences on his ability to conduct a securities business. Meyers's misunderstanding of the collateral effects of the 2015 Connecticut Order is not relevant to our determination. Nor are any other potential variations of the sanctions considered by the parties before agreeing to the 2015 Connecticut Order. This is true even if, as Meyers and the

[Footnote continued on next page]

order that we must consider in determining whether it is disqualifying under Exchange Act Section 15(b)(4)(H)(i). The effect of the 2015 Connecticut Order pursuant to the language contained therein, and agreed to by the parties, is to prohibit Meyers from engaging in any securities business in the state, which renders the order statutorily disqualifying under Exchange Act Section 15(b)(4)(H)(i). Moreover, while we may in certain limited instances weigh a state regulator's clearly expressed intent concerning whether its order is disqualifying under the Exchange Act, here no such clear guidance from the Department of Banking exists. In fact, the record contains the Department of Banking's repeated refusals to modify the terms of the 2015 Connecticut Order based upon many of the same arguments that Meyers and the Firm currently make to us, as well as its opposition to Meyers's and the Firm's subsequent attempts in Connecticut state court to modify the order to potentially avoid the collateral consequences of a statutory disqualification.[11]

[cont'd]

Firm assert, the Department of Banking advised Meyers and his counsel that there would be no collateral consequences as a result of the 2015 Connecticut Order.

[11] At the hearing (and in a post-hearing filing), counsel for the Firm proffered that applicants' counsel to the underlying Connecticut proceedings would testify regarding the background and history of the Connecticut proceedings, the intent of the 2015 Connecticut Order, and the expectations of Meyers and the Firm regarding the order's effects. Counsel for the Firm further proffered that applicants' counsel to the underlying proceedings would not repeat what Department of Banking staff said to him during negotiations, but he would testify regarding the conversations of the parties, his understanding of the 2015 Connecticut Order, the collateral consequences of that order, and his understanding that the Department of Banking never indicated to him its intent to bar Meyers. The Hearing Panel excluded this testimony, and we affirm this determination. As an initial matter, because applicants were seeking an affirmative determination on a potentially dispositive issue when they briefed whether the 2015 Connecticut Order rendered Meyers statutorily disqualified, they should have offered any evidence to support their legal arguments at the time they briefed the issue prior to the hearing. *See, e.g.*, FINRA Rule 9264(d) (providing that a motion for summary disposition shall be accompanied by, among other things, affidavits or declarations setting forth such facts as would be admissible at a hearing). Indeed, in their reply brief filed in this proceeding, applicants referenced their ability to submit an affidavit regarding the negotiations with the Department of Banking and its purported intent in entering into the 2015 Connecticut Order, yet they failed to do so.

Regardless, we find that the Hearing Panel properly determined that this testimony should be excluded, particularly in light of the fact that Meyers, who admitted that he was directly involved in the negotiations with the Department of Banking surrounding the 2015 Connecticut Order, testified regarding his belief of the parties' intent in entering into the order and what he believed the effect of that order would be. *See*, *e.g.*, FINRA Rule 9263(a) (providing that a hearing officer may exclude any testimony or evidence that is irrelevant, immaterial, unduly repetitious, or unduly prejudicial).

Meyers and the Firm further argue that the Department of Banking's intent in entering into the 2015 Connecticut Order was not to cause the "demise" of the Firm by subjecting Meyers to a statutory disqualification proceeding. This argument puts the proverbial cart before the horse. A statutory disqualification is not a sanction imposed by a state regulator; rather, it is a collateral consequence of a regulatory or court proceeding and requires the individual to go through a FINRA eligibility proceeding (the result of which may be to either permit the individual to associate with a broker-dealer or deny the request to associate). *See Savva*, 2014 SEC LEXIS 2270, at *4 ("A statutory disqualification constitutes an encumbrance to membership in, or association with a member of, a self-regulatory organization ('SRO'), but it does not necessarily preclude a person from participating in the securities industry."); *Halpert and Co.*, 50 S.E.C. 420 (1990). Likewise, Meyers and the Firm erroneously characterize any attempt by FINRA to interpret the 2015 Connecticut Order as disqualifying as an overzealous regulator "playing gotcha" and greatly expanding the sanctions imposed by the 2015 Connecticut Order. In the context of this proceeding, we are required to determine whether the 2015 Connecticut Order issued by the Department of Banking constitutes a disqualifying order under the Exchange Act. That we have done so is not an expansion of the sanctions imposed by Connecticut, but rather the collateral effect of the 2015 Connecticut Order.

Finally, Meyers and the Firm argue that Meyers's withdrawal of his registration as an agent "is limited to the sole capacity as a registered agent, and only in one state of the United States" and thus is not a bar. In support of this argument, Meyers and the Firm cite to a prior NAC decision finding that an individual was not disqualified. *See In the Matter of the Association of X*, Redacted Decision No. SD04014, slip op. (NASD NAC 2004), *available at* http://www.finra.org/sites/default/files/NACDecision/p036507_0.pdf [hereinafter "NAC 2004 SD Decision"]. The NAC 2004 SD Decision, however, is distinguishable. In the NAC 2004 SD Decision, the individual entered into a consent order with the CFTC that ordered him to

> withdraw his association as an AP (associated person) and not to apply for registration as an AP except as an AP of an IB (introducing broker), and to not act in any capacity as a principal, AP, or an agent or officer of any person and/or entity registered or required to be registered as an FCM (futures commission merchant).

The NAC determined that the consent order did not constitute an order of the CFTC "denying, suspending, or revoking his registration under the Commodity Exchange Act" and thus was not disqualifying. We held that the CFTC's order "did not revoke X's registration or prohibit him from being registered in any category" pursuant to the Commodity Exchange Act, did not prevent him from being registered in "many other capacities," and that the individual in fact continued to be registered with the CFTC. *See* NAC 2004 SD Decision, at 3-4. Unlike the sanction at issue in the NAC 2004 SD Decision, Meyers's sanction pursuant to the Connecticut Order is not akin to a limited capacity bar, but rather prohibits Meyers from engaging in any securities activity in Connecticut that requires registration.[12]

Having determined that the 2015 Connecticut Order renders Meyers statutorily disqualified, we turn to the merits of the Application.

IV. Additional Background Information

A. Meyers's Regulatory History and History of Customer Complaints

1. Pending Regulatory and Disciplinary Matters[13]

In December 2015, FINRA's Department of Enforcement ("Enforcement") issued a Wells Notice (the "December 2015 Wells Notice") to Meyers and the Firm, which notified them that Enforcement had made a preliminary determination to file disciplinary charges against them for violating: (1) Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010 for willfully failing to disclose on Meyers Uniform Application for Securities Industry Registration or Transfer ("Form U4") a pending customer arbitration filed in July 2014 and the

---

[12] Moreover, orders issued by state regulators always govern only the individual's registrations and licensing in that particular state. Meyers's and the Firm's interpretation of the statute would mean that state regulators' orders barring individuals would never be disqualifying because the individual was not limited from engaging in activities in other states.

We also find that applicants' reliance on *Peterson v. Nat'l Futures Ass'n*, 1992 CFTC LEXIS 416 (Oct. 7, 1992) is misplaced. In that case, Peterson agreed to withdraw from, and never reapply for, membership in the New York Mercantile Exchange ("NYMEX") as a part of his settlement of a NYMEX disciplinary action. The National Futures Association ("NFA") found that this order was disqualifying. On appeal to the CFTC, the NFA conceded that the NYMEX order did not fit squarely under a provision in the Commodity Exchange Act classifying an order denying, suspending, or expelling an individual from exchange membership as disqualifying, but argued that the order was nonetheless disqualifying under a more general provision of the act (providing that the CFTC is authorized to refuse to register an individual for "other good cause"). The CFTC rejected the NFA's finding that Peterson was disqualified and held that to accept the NFA's argument would undermine the notice provided by more specific disqualification provisions set forth in the act. The CFTC held that "a settlement agreement to a withdrawal from exchange membership will not, in and of itself, amount to 'good cause' for statutory disqualification." *Id.* at *10.

In the case before us, we follow the Commission's interpretation of Exchange Act Section 15(b)(4)(H)(i) that an order entered by a state securities regulator may be disqualifying as barring an individual even if it does not use that specific language, which is more relevant contextually and temporally than *Peterson.*

[13] We discuss below pending regulatory matters against Meyers, the Firm, and Meyers's proposed alternate supervisor. While we are troubled by the pending regulatory and disciplinary actions and the serious allegations against these parties, we find it unnecessary to consider them in denying the Application.

resulting settlement (which is described *infra* in Part IV.A.3); (2) NASD Rules 3010 and 3012 and FINRA Rule 2010 for numerous supervisory failures; (3) FINRA Rules 4530 and 2010 for failing to disclose for several years, and failing to timely disclose, written customer complaints; (4) NASD Rule 2440 and FINRA Rule 2010 for charging excessive commissions; and (5) Exchange Act Rule 17a-4 and FINRA Rule 2010 for failing to retain email correspondence.

2. Final Regulatory and Disciplinary Matters

On April 27, 2016, a FINRA Hearing Panel found that: (1) Meyers and the Firm violated FINRA's advertising rules by sending misleading and unbalanced advertising materials regarding SignPath Pharma, Inc. ("SignPath") (which is an investment banking client of the Firm), in violation of FINRA Rule 2010 and NASD Rule 2210; (2) Meyers and the Firm failed to establish, maintain, and enforce WSPs, and the Firm failed to establish and maintain a supervisory system and failed to establish, maintain, and enforce written supervisory control procedures, in violation of NASD Rules 3010, 3012, and 2110 and FINRA Rules 3110 and 2010; (3) the Firm created inaccurate books and records, in violation of Exchange Act Section 17(a)(1), Exchange Act Rules 17a-3, 17a-4, and 17a-5, and FINRA Rules 4511 and 2010; and (4) the Firm failed to report 49 customer complaints from 2007 until 2010, in violation of NASD Rules 3070 and 2110 and FINRA Rule 2010. For these violations, the Hearing Panel barred Meyers in all principal and supervisory capacities and fined him $75,000, and fined the Firm $700,000.[14]

In October 2011, Meyers and the Firm entered into an Offer of Settlement with FINRA to resolve a Hearing Panel decision rendered against them and their appeal of that decision. Without admitting or denying the allegations, Meyers and the Firm agreed to settle allegations that the Firm failed to respond and did not respond timely to requests for information, in violation of FINRA Rules 8210 and 2010, and Meyers failed to supervise Firm personnel to ensure that they completely and timely responded to requests for information, in violation of NASD Rule 3010 and FINRA Rule 2010. FINRA censured Meyers and the Firm, fined them $35,000 (jointly and severally), and suspended Meyers from acting in any principal or supervisory capacity for four months.

In March 2000, FINRA accepted a Letter of Acceptance, Waiver and Consent ("AWC") from Meyers and the Firm for violations of NASD Rule 3010 and FINRA Rule 2010 (the "March 2000 AWC"). Without admitting or denying the allegations, Meyers and the Firm consented to findings that they failed to enforce the Firm's WSPs and traded ahead of customer limit orders. FINRA censured Meyers and the Firm, fined them $10,000 jointly and severally, separately fined the Firm $16,000, and ordered that the Firm pay $5,819 in restitution.

In October 1991, the State of Florida imposed a temporary restriction on Meyers that prohibited him from acting in a principal capacity. This action resulted from the November 1990 AWC, described below.

---

14 As of the date of this decision, Meyers and the Firm have not appealed the Hearing Panel's decision, although their time to do so has not yet expired. *See* FINRA Rule 9311(a).

In November 1990, Meyers entered into an AWC with FINRA for violation of Article III, Section 1 of NASD's Rules of Fair Practice (the predecessor rule to NASD Rule 2110 and FINRA Rule 2010). Without admitting or denying the allegations, Meyers consented to findings that he failed to reasonably supervise a statutorily disqualified individual and submitted an MC-400 that contained false information. FINRA censured Meyers and fined him $2,000.

Finally, in January 1990, the State of Michigan revoked Meyers's license to act as a broker-dealer agent because he failed to pay a renewal fee. Michigan subsequently approved Meyers's registration.

3. Customer Complaints

Meyers has been the subject of at least 16 customer complaints.[15] At the hearing, Meyers explained that four of these complaints (including the two most recent complaints filed in 2015) were filed by his customers, and the remaining complaints were from individuals who were not his customers, and he was named "basically because I'm the CEO with the firm and my name is on the firm. None of them were my customers, nor did I supervise the brokers." Meyers or the Firm have paid approximately $763,000 to settle certain of these matters, and Meyers's prior firm paid an additional $50,000 to settle another complaint. The complaints against Meyers are as follows:

In May 2015, a customer of Meyers alleged that he made unsuitable recommendations and misrepresentations, and sought $125,424 in damages. The record shows that this matter is still pending.

In January 2015, a customer of Meyers alleged that he charged excessive commissions, and sought $5,000 in damages. The Firm denied the complaint, and FINRA's Central Registration Depository ("CRD"®) does not indicate that any additional action was taken on this complaint.

In July 2014, a customer alleged that Meyers, the Firm, and two registered representatives churned his account, made unsuitable recommendations, breached their fiduciary duties, engaged in fraud, and failed to supervise. The customer sought damages of $2.7 million, as well as punitive damages. The record shows that this matter was settled for $315,000. As set forth above, the 2015 Wells Notice asserts that Meyers willfully failed to disclose this matter on his Form U4.

In May 2014, a customer alleged that Meyers made poor recommendations, and sought $225,000 in damages. This matter was settled for $8,500, and Meyers did not personally contribute to this settlement.

[15] At the hearing, applicants introduced an exhibit summarizing customer complaints filed against Meyers. The exhibit listed 16 such complaints, including an arbitration award entered against the Firm in March 2014 but excluding an April 2005 complaint, each of which we discuss below.

In June 2010, a customer alleged breach of contract regarding a settlement of a FINRA arbitration, and sought damages of $25,000. CRD lists this matter as pending, although Meyers states that he was dismissed from this matter.

In July 2009, a customer alleged that he invested in a private placement and was not permitted to sell the securities when they became registered and saleable. The customer sought $100,000 in damages. This matter was dismissed.

In May 2009, a customer alleged that Meyers breached his fiduciary duties, engaged in negligence, made negligent misrepresentations, engaged in common law fraud, and engaged in consumer fraud. He sought $1.8 million in damages. This claim was settled for $30,000, and the customer dismissed his claims against Meyers.

In February 2007, a customer alleged excessive trading in his account, and sought $350,000 in damages. This claim was settled for $150,000, and Meyers did not personally contribute to this settlement. CRD states that Meyers never spoke to the customer, never executed a trade for this account, and was not the supervisor for the broker in question and was only named because his "name appears on the door."

In January 2007, a customer alleged unauthorized trading and failure to follow instructions, and sought $350,000 in damages. This matter was dismissed. CRD states that Meyers was not the broker on the account, never spoke to the customer, and was not the supervisor for the broker in question.

In April 2005, a customer alleged breach of contract, and sought $55,000 in damages. CRD states that this is an arbitration filed by a firm against another firm, and the record contains no additional information regarding this matter.

In December 2003, a customer complained that Meyers failed to sell securities in her account, and sought $25,000 in damages. This matter was dismissed.

In November 2003, a customer of Meyers complained about losses in her account, and sought $65,000 in damages. This claim was settled for $7,500, and Meyers did not contribute personally to this settlement.

In April 2003, a customer alleged churning, unsuitable recommendations, market manipulation, and failure to supervise against Meyers, the Firm, and a registered representative. The customer sought compensatory damages, commissions, punitive damages, interest, attorney's fees, and costs. This matter was settled for $185,000, and Meyers was dismissed from the matter and did not contribute personally to this settlement (although he personally guaranteed the Firm's obligation under the settlement). CRD states that Meyers was named "as a third party respondent despite the fact that he never recommended a transaction, or executed a trade for the customer" and had no supervisory responsibilities over this account.

In January 2002, customers alleged that Meyers and others churned their account, made unsuitable recommendations, and failed to supervise. The customer sought $65,000 in damages. This matter was settled for $65,000, and Meyers did not contribute personally to this settlement. CRD states that Meyers was named as a respondent because he was a control person of the Firm and he had no involvement with the customers and no supervisory responsibilities over the registered representative in question.

In August 1998, a customer alleged that Meyers engaged in unauthorized trading, and sought $22,750. This claim was settled for $2,300.

In 1985, customers of Meyers filed a complaint against Meyers that alleged he made unsuitable recommendations and churned the customers' account. The customers sought $200,000. This claim was settled in 1991 for $50,000. Meyers states that he did not contribute personally to this settlement.

* * *

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

B. <u>The Firm</u>

The Firm has been a FINRA member since June 1994, and is based in New York City. The Firm has eight branch offices and two Offices of Supervisory Jurisdiction ("OSJ"), and the Application states that it employs 20 registered principals and 67 registered representatives. The Firm engages in retail securities brokerage and investment banking activities. Meyers testified that he started the Firm to focus on investment banking and developmental companies primarily in biotech, drug development, and technology. The Firm currently employs two other individuals subject to statutory disqualification, although neither individual was required to go through a FINRA eligibility proceeding.

1. <u>Pending Regulatory and Disciplinary Actions</u>

In addition to the December 2015 Wells Notice, the Firm has two additional pending disciplinary matters.

The record shows that the Department of Banking is investigating whether the Firm violated the 2015 Connecticut Order because it failed to notify the Department of Banking of an SEC cease and desist order entered against a Firm compliance officer within seven business days, as required by the 2015 Connecticut Order. The Firm did not dispute the violation, but explained that this was the first required reporting under the 2015 Connecticut Order, alleged that the notification was only one business day late, and stated that it would, as a "proactive procedure to make sure this type of event does not happen again," hold a weekly meeting to ensure all reportable items are timely disclosed.

In April 2015, Enforcement filed a seven-cause complaint against the Firm, two former registered representatives, and a former supervising principal. The complaint alleges that the individual respondents participated in a market manipulation scheme, disseminated spurious research and sales materials, fraudulently omitted material conflicts of interest, and falsified Firm records. The complaint further alleges that the Firm failed to supervise the individuals responsible for the misconduct and failed to establish and implement reasonable Anti-Money Laundering ("AML") policies and procedures. A FINRA Hearing Panel conducted a two-week hearing on this matter beginning in February 2016, and this matter remains pending.

2. Final Regulatory and Disciplinary Actions

The Firm has been the subject of 16 final regulatory and disciplinary actions since 2000 (including the 2015 Connecticut Order), and to date has paid approximately $390,000 in monetary sanctions to settle certain of these matters.[16]

In December 2015, the Firm agreed to settle allegations made by the State of Montana that the Firm failed to supervise a registered representative in connection with his excessive trading of three customer accounts. The Firm agreed to pay a $5,000 fine and $14,266 in restitution.

In February 2013, FINRA accepted an AWC from the Firm for violations of MSRB Rules G-8 and G-14. Without admitting or denying the allegations, the Firm consented to findings that it failed to report and correctly report municipal securities transactions. FINRA censured the Firm and fined it $6,500.

In December 2011, FINRA accepted an Offer of Settlement from the Firm for violations of NASD Rules 4632, 3010, and 2110. Without admitting or denying the allegations, the Firm consented to findings that it failed to timely and correctly report transactions to the FINRA/NASDAQ Trade Reporting Facility and the Order Audit Trail System ("OATS"), and failed to establish, maintain, and enforce WSPs to ensure compliance with trade reporting rules. FINRA censured the Firm and fined it $25,000.

As described above, in October 2011, FINRA accepted an Offer of Settlement from the Firm and Meyers for violations of FINRA Rules 8210 and 2010 and NASD Rule 3010. *See supra* Part IV.A.2.

As described above, in June 2011, the Firm entered into the 2011 Connecticut Order. *See supra* Part III.A.1.

In April 2011, a FINRA Hearing Panel found that the Firm violated FINRA Rules 8210 and 2010 by failing to respond to two FINRA requests for information and documents related to a customer complaint (which were first addressed to the Firm's chief compliance officer, and then addressed directly to Meyers after the Firm did not respond). The Hearing Panel fined the Firm $50,000 and ordered that it pay hearing costs.

In December 2010, Missouri entered a cease and desist order against the Firm for employing a registered representative for transacting business in Missouri without being registered and making untrue statements or omitting to state material facts in connection with the offer or sale of a security.

In November 2008, FINRA accepted an AWC from the Firm for violations of Exchange Act Section 17, Exchange Act Rule 17a-4, and NASD Rules 3110, 3010, and 2110. Without

---

16 In addition, as described above, on April 27, 2016, a FINRA Hearing Panel fined the Firm $700,000 in connection with, among other things, supervisory violations. *See supra* Part IV.A.2.

admitting or denying the allegations, the Firm consented to findings that it failed to establish and maintain a system to retain emails for more than 30 days and a record of the supervisory review of Firm emails. FINRA censured the Firm and fined it $60,000.

In March 2007, FINRA accepted an AWC from the Firm for violations of MSRB Rules G-2, G-3, and G-27. Without admitting or denying the allegations, the Firm consented to findings that it failed to have a municipal securities principal registered at the Firm at a time when it executed municipal securities transactions. FINRA censured the Firm and fined it $10,000.

In September 2005, FINRA accepted an Offer of Settlement from the Firm for violations of NASD Rule 2110 and IM-10100. Without admitting or denying the allegations, the Firm consented to findings that it failed to comply with its discovery obligations and orders issued by a FINRA arbitration panel by failing to timely produce documents. FINRA censured the Firm and fined it $25,000. FINRA also ordered the Firm to revise its WSPs to require it to notify all counsel representing the Firm in arbitration proceedings of the Firm's policy to comply with arbitration discovery requirements and to comply with all orders of arbitration panels relating to discovery obligations.

In July 2004, FINRA accepted an AWC from the Firm for violations of NASD Rules 3070 and 2110. Without admitting or denying the allegations, the Firm consented to findings that it conducted a securities business while under suspension for failing to pay arbitration fees, failed to report and timely report customer complaints, and failed to timely report two arbitration settlements. FINRA censured the Firm and fined it $12,500.

In May 2004, the Firm entered into a stipulation and consent agreement with the State of Florida to settle allegations that it failed to properly register a branch office. The Firm was fined $15,000.

In May 2003, the State of Iowa fined the Firm $500 for failing to timely file audited financial statements.

In December 2002, FINRA accepted an AWC from the Firm for violations of Exchange Act Rule 15c1-5 and NASD Rules 2240, 3010, and 2110. Without admitting or denying the allegations, the Firm consented to findings that it failed to disclose to customers the existence of a potential control relationship between the Firm and a public company whose securities the customers purchased. The Firm also consented to findings that it did not consistently enforce its WSPs. FINRA censured the Firm and fined it $27,500.

In March 2000, and as described above, FINRA accepted from Meyers and the Firm the March 2000 AWC.[17]

---

[17] Further, in March 2014, a FINRA arbitration panel entered an award against the Firm for compensatory and punitive damages of $322,585, attorney's fees of $104,400, and interest and costs. The claimants asserted common law fraud, negligent misrepresentations, negligent supervision, breach of fiduciary duty, and breach of contract.

3. Routine Examinations

In May 2015, in connection with the Commission's examination of the Firm from October 2014 until March 2015, the Commission identified the following deficiencies and weaknesses: (1) failing to conduct a reasonable review prior to executing large-scale liquidations of microcap securities despite numerous red flags or other suspicious characteristics of the transactions; (2) failing to establish and implement an adequate program sufficient to detect and report suspicious or illegal transactions occurring through the Firm, failing to use any exception reports for AML monitoring purposes, and failing to file Suspicious Activity Reports; (3) aiding and abetting unregistered finders' violations of the Exchange Act; (4) failing to evaluate its registered representatives' proposed activities to determine whether they were properly characterized as outside business activities or outside securities activities; (5) failing to establish adequate procedures for email review and the use of mobile devices, and certain Firm personnel (including John Telfer ("Telfer"), the Firm's chief compliance officer and proposed alternate supervisor) using personal email accounts to transact the Firm's securities business; (6) selling securities to customers who lived in Connecticut even though the representative making the sales was not registered there (and was paid with Meyers's knowledge for the transactions through an off-the-book commission sharing arrangement); (7) failing to provide prompt access to records in response to SEC document requests, which "significantly delayed" completion of the examination, and providing on multiple occasions incorrect or incomplete documentation; (8) failing to comply with Regulation S-P; and (9) failing to maintain adequate supervisory procedures to prevent violations of Section 5 of the Securities Act of 1933, failing to adequately implement or enforce its WSPs regarding AML (such that the Firm "facilitated the suspicious trading activity by its inaction"), and failing to supervise the activities of its registered representatives. The Firm responded in writing (through Telfer) and denied certain of the findings (including several findings based upon the Connecticut Order and that it produced records in an untimely manner). In a letter dated July 13, 2015, the Commission notified the Firm that its response was, in certain respects, without merit and incomplete, and asked the Firm to respond in writing with corrective measures it will implement to avoid future violations.

The Firm's 2015 FINRA examination, which began in July 2015, is currently pending. Member Regulation asserts that each of the Firm's examinations by FINRA since 2010 has resulted in some violations being referred to Enforcement for further action, with 134 exceptions noted as a result of these examinations and 72 of these exceptions (including 12 repeat exceptions) being referred to Enforcement. As described below, the examinations all found multiple supervisory violations and other deficiencies, including a number of repeated deficiencies.

On October 8, 2015, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2014 examination (and also referred a number of matters to Enforcement, which are currently under review). FINRA cited the Firm for the following: (1) charging excessive commissions and excessively trading a customer account through a registered representative of the Firm; (2) failing to adequately supervise a registered representative to ensure that he complied with his firm-imposed suspension; (3) failing to adequately supervise trading activity in a security; (4) failing to maintain accurate financial books and records; (5) failing to establish procedures and implement an adequate supervisory system related to restricted accounts; (6) failing to supervise customer account activity; (7) failing to maintain complete records of municipal securities transactions; (8) failing to establish adequate procedures for its municipal securities business; (9) failing to maintain adequate procedures and parameters for determining appropriate options levels for customers and establishing an adequate supervisory system for supervising options activity at the Firm; (10) executing transactions prior to approval by a principal; (11) failing to obtain all required new account opening information; (12) failing to comply with Regulation S-P; (13) failing to verify that changes in customers' investment objectives were properly documented; (14) failing to ensure that a registered representative obtained prior written approval for an outside business activity; and (15) failing to ensure that registered representatives timely disclosed outstanding judgments and liens. The Firm responded in writing, through Telfer, to the examination report, but FINRA found the response to be inadequate and had to make two follow-up requests to the Firm.

On July 14, 2014, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2013 examination (and also referred to Enforcement exceptions related to the Firm's general supervisory system and books and records failures, some of which ultimately resulted in the December 2015 Wells Notice, and others of which are currently under investigation). FINRA cited the Firm for the following: (1) failing to comply with AML rules because the Firm's independent AML test for 2012 was not comprehensive in addressing the Firm's processes for the Customer Identification Program and suspicious activity reporting; (2) failing to accurately mark order tickets to identify instances where time and price discretion was utilized; (3) failing to comply with its WSPs and regulatory requirements regarding telemarketing; (4) paying earned commissions to registered representatives through unregistered entities; (5) failing to comply with its WSPs regarding email instructions from customers; (6) failing to adhere to guidelines required for restricting accounts; (7) maintaining WSPs that were inadequate to identify instances where registered representatives may open accounts or execute trades in states where they are not registered; (8) failing to establish adequate procedures to comply with FINRA's suitability rules; (9) failing to enforce its WSPs to ensure that faxes are reviewed by the Firm's compliance department before they are sent by registered representatives; (10) filing inaccurate FOCUS reports by failing to substantiate a balance for non-allowable assets; (11) failing to adhere to its WSPs to ensure that the Firm's operations department retained a copy of address change confirmations sent to customers; (12) accepting cashiers' checks from customers even though the Firm's WSPs do not permit this practice; and (13) failing to maintain accurate registration records regarding a registered representative's business address and identifying on customer account statements a non-registered branch location as the branch office of record. The Firm responded in writing, through Telfer, to the examination report.

On October 16, 2013, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2012 examination (and also referred to Enforcement a number of exceptions, some of which, along with the referral from the 2013 examination, ultimately resulted in the December 2015 Wells Notice, and others of which are currently under investigation). FINRA cited the Firm for the following: (1) failing to obtain adequate proof of customer identification for new accounts; (2) failing to properly maintain records of written customer complaints; (3) failing to record on its books and records private securities transactions in which the Firm's registered representatives were approved to engage in and failing to properly supervise such transactions; (4) failing to archive text messaging even though several registered representatives used some form of text messaging related to Firm business; (5) distributing a brochure that contained false, exaggerated, and misleading statements; (6) failing to properly document customer information; (7) failing to establish and implement adequate supervisory procedures for review of correspondence; (8) failing to maintain exception reports, all regulatory reports for three years, and documentation concerning approval of changes to order tickets; (9) failing to provide evidence that issuer information was reviewed prior to recommending purchases in OTC equity securities; (10) failing to provide continuing education for a branch manager; (11) maintaining inadequate WSPs because they did not make provisions for the review of all transactions by a registered principal and maintaining inadequate records regarding such reviews; (12) failing to properly supervise producing managers; (13) failing to implement its WSPs in a branch office; (14) failing to provide documentation of customer confirmation, notification, or follow-up for outgoing wire transmittals; (15) failing to provide documentation regarding a customer's change of address and evidence that changes of customer investment objectives were verified; and (16) failing to supervise the activity of a registered representative in connection with the research he provides to an outside company. The Firm responded in writing, through Meyers, to the examination report.

On April 11, 2012, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2011 examination (and also referred to Enforcement and FINRA's Department of Market Regulation several exceptions, which resulted in the complaint underlying the April 2016 Hearing Panel decision, and engaged in a Compliance Conference with the Firm with respect to several other exceptions). FINRA cited the Firm for the following: (1) failing to record on the Firm's books and records the dates securities were received; (2) failing to obtain investment objectives for customer accounts and failing to verify the account holder's background and financial information; (3) failing to implement its WSPs with respect to approvals prior to trading; (4) failing to have an adequate audit system in place with respect to its electronic records storage; and (5) maintaining inadequate WSPs with respect to email reviews, state registrations of registered representatives, municipal securities trade reporting, procedures for heightened supervision of representatives, branch office reviews, conflicts of interest with affiliated entities, updating Forms U4 on a timely basis, and private placements of the Firm and its affiliates. The Firm responded in writing to the examination report.

On June 27, 2011, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2010 examination (and also referred to Enforcement several exceptions, which resulted in the complaint underlying the April 2016 Hearing Panel decision). FINRA cited the Firm for failing to report a FINRA regulatory action and failing to maintain complete suitability information for its customers. The Firm responded it writing to the examination report.

* * *

The record shows no other complaints, disciplinary proceedings, or arbitrations against the Firm.

V. Meyers's Proposed Business Activities

In the Application, the Firm proposed that Meyers would continue to associate with the Firm as a general securities representative, general securities principal, and the Firm's chief executive officer in its home office in New York City. The Firm represented that Meyers would be compensated by a salary, continue to be eligible to receive commissions on securities transactions he effectuates, and continue to receive a portion of the Firm's investment banking fees. However, in the proposed amended heightened supervisory plan filed in March 2016, the Firm proposed to restrict certain of Meyers's activities.[18] The proposed plan provides that as a registered representative, Meyers will manage his own retail accounts and identify potential investment banking clients. The Firm further proposes that he will also participate in advisory and fund raising efforts. As a registered principal, the Firm proposes that Meyers's role "will be limited to confirming the Firm's net capital compliance . . . recruiting sales persons and introducing them to the Hiring Committee . . . [and] identifying business opportunities for the Firm." The plan provides that Meyers will not supervise or train brokers.

The plan further states that as the Firm's chief executive officer, Meyers will have no authority to hire and fire Firm employees, determine employee compensation, or participate in performance evaluations of employees. The plan further proposes that an Investment Banking Committee (of which Meyers will not be a member) will be formed to review and approve all proposed investment banking deals and advisory relationships.

At the hearing, Meyers testified that he currently does very little retail business and has a few hundred customer accounts that are mostly inactive. Meyers testified that he spends most of his time on SignPath and his other active investment banking client, as well as overseeing the activity of the Firm.[19]

---

[18] The Firm did not propose any heightened supervisory plan when it filed the Application. In January 2016, it first proposed a heightened supervisory plan. The Firm filed a proposed amended heightened supervisory plan several days prior to the March 22, 2016 hearing. Further, we note that Meyers's proposed role at the Firm as described herein, as well as the proposed heightened supervisory plan, do not reflect the recent sanctions imposed pursuant to the April 2016 Hearing Panel decision.

[19] Meyers also lists the following outside business activities on his Form U4: (1) Meyers Associates, Inc. (a non-investment related business to which he devotes five hours per month); (2) SignPath; (3) Timon Social Networking Management, LLC (Meyers is its managing member); and (4) Timon Social Networking Capital, LLC (sole member). Several days prior to the hearing, the Firm proposed that Meyers would cease his outside business activities listed on Meyers's Form U4 once he is under heightened supervision, and he would not engage in any outside business activities for the duration of the plan. This would appear to include SignPath, which currently consumes (along with another investment banking client) most of Meyers's time.

VI. Meyers's Proposed Supervision

A. Primary Supervisor Wayne Spence

In its amended heightened supervisory plan, the Firm proposes that Meyers will be supervised on-site primarily by Spence.[20] Spence first registered as a general securities representaive in November 1998 and as a general securities principal in October 2010. He also passed the uniform securities agent state law exam in November 1998. Spence has been with the Firm since November 2004, and CRD shows that he was previously associated with four other firms. Spence serves a member of the Firm's hiring committee, and testified that he currently supervises approximately 15 registered representatives and 12-13 unregistered individuals. He further testified that if the Application is approved, he understands that he will supervise only five or six registered individuals, including Meyers. Spence testified that he has experience supervising individuals on heightened supervision (and currently supervises three individuals on heightened supervision), but he does not have investment banking experience or experience supervising individuals engaged in investment banking.

CRD includes a November 2004 Form U5 filing from Spence's former firm that states that in the course of his employment Spence "stole certain of the firm's confidential books and records" and "utlized the stolen information to complete account transfer forms and solicit the firm's clients to move their accounts from the firm to his new employer." The firm utlimately concluded that "all parties are in possession of the documents they are entitled to, no violations of firm policies occurred, and all issues between the firm and Spence have been adequately explained or resolved." CRD also lists an open arbitration filed in January 2005, which appears to be related to the above-described issue that has been resolved.

The record shows no other disciplinary or regulatory proceedings, complaints, or arbitrations against Spence.[21]

B. Alternate Supervisor John Telfer

1. Telfer's Background and Current Duties

Telfer will serve as the alternate supervisor in Spence's absence. Telfer currently serves as the Firm's chief compliance officer, chief operating officer, and AML compliance officer. He has been with the Firm since September 2013, and he first registered as a general securities representative in August 1997. He also registered as a general securities principal in September 1997 and as an options principal in December 1998. Telfer passed the uniform securities agent

---

[20] The original heightened supervisory plan proposed Telfer as the primary supervisor and Spence as the alternate. The Firm changed Telfer's and Spence's roles to address concerns raised by Member Regulation. Telfer did not appear or testify at the hearing due to health issues.

[21] FINRA's examination report from the Firm's 2014 examination contained a finding that Spence, Meyers, and Telfer "failed to adequately supervise daily transactions, activities of employees that had been previously suspended by the Firm, and ensure required disclosures of liens and judgments on respective registered representatives Form U4s." The October 2015 Cautionary Action issued to the Firm, however, did not cite this deficiency.

state law exam in January 1999 and became registered as an investment banking representative in September 2013. Telfer has been associated with 12 other firms.

The Application states that Telfer is currently Meyers's supervisor and he supervises eight individuals. It also states that Telfer's duties as chief compliance officer and chief operating officer of the Firm include: "maintaining and enforcing policies and procedures at the [F]irm, responding to customer complaints, customer inquiries, regulatory and state inquiries, acting as the liaison for cycle exams by regulators and states, [and] [d]aily reviews of various department managers' activities and interfacing with the managers of those departments which report to him." The compliance, supervision, operations, and sales and registrations departments all report to him. Telfer is also a member of the Firm's hiring committee, and if the Application is approved, he will be a member of the Investment Banking and Compensation Committees.

2. <u>Telfer's Regulatory History and Customer Complaints</u>

In November 2009, Telfer entered into an AWC with FINRA for violations of FINRA Rule 2110. Without admitting or denying the allegations, Telfer consented to findings that a member firm, acting through Telfer, failed to develop a privacy policy or disseminate to its customers privacy notices as required by Regulation S-P. FINRA censured Telfer and fined him $5,000.

In March 2002, Telfer, as chief compliance officer of a firm, entered into an AWC with FINRA for violations of NASD Rules 3110 and 2110. Without admitting or denying the allegations, Telfer consented to findings that in connection with the purchase of active customer accounts from another member firm, his firm did not have new account forms for the accounts and was missing other essential information. The AWC also contained findings that the firm, acting through Telfer and in connection with penny stock transactions, failed to provide customers on monthly account statements with risk disclosures and required market and price information. FINRA censured Telfer and the firm and fined them $20,000 (jointly and severally).

In addition to certain undisclosed matters described below, Telfer was named in nine other customer complaints. He was dismissed from eight of those nine complaints. With regard to the complaint that was not dismissed, in June 2000, customers filed with FINRA an arbitration claim against Telfer, his firm, and others, which alleged breach of fiduciary duty, unauthorized trading, and common law and statutory fraud. In 2002, a FINRA arbitration panel awarded the customers $55,000 in damages (plus interest, costs, and attorney's fees), to be paid by respondents jointly and severally. Telfer and the firm sought to vacate the award, and the parties eventually settled the matter.

3. 2016 Wells Notice

On March 21, 2016, Enforcement issued a Wells Notice to Telfer, which notified him that Enforcement had made a preliminary determination to file disciplinary charges against him for violating Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010 for failing to disclose on his Form U4 a federal tax lien in the amount of $31,137, his bankruptcy filing, and a pending arbitration.[22]

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

C. The Firm's Proposed Heightened Supervisory Plan

The Firm submitted the following proposed amended heightened supervisory plan several days prior to the hearing in this matter:[23]

1. Meyers will act as a general securities representative (Series 7) and his duties will be to manage his own retail accounts and to identify potential investment banking clients (Series 79). He will also participate in advisory and fund raising efforts, with communications (electronic and hard copy) and investments approved by his supervisor as more fully described below. His role as a general principal (Series 24) will be limited to confirming the Firm's net capital compliance (he will not certify the Firm's financial reports or the FOCUS reports), recruiting sales persons and introducing them to the Hiring Committee (of which he is not a member), identifying business opportunities for the Firm, and he will be further restricted as described herein. Meyers will work out of the Firm's home office, an Office of Supervisory Jurisdiction, located at 45 Broadway, 2nd Floor, New York, New York 10006.

2. Meyers is the Firm's Chief Executive Officer. However, effective immediately, he has no authority to hire and fire, determine salaries or bonuses, or participate in performance evaluations of employees, independent contractors, or third party vendors. This includes, without condition, the individual(s) proposed as responsible for implementing the Plan, as identified in Paragraph 3 below. Such authority now rests with a Compensation Committee comprised of Khan, Joseph Marinelli, CFO and Telfer, COO. Decisions require a majority vote and are memorialized in writing.

---

[22] Enforcement alleges that Telfer willfully failed to disclose his bankruptcy filing and willfully failed to accurately report the filing date of the bankruptcy to create the appearance that his Form U4 amendment was timely. At the hearing, Meyers and the Firm objected to the timing of the Wells Notice, which was issued the day before the hearing in this matter. We note that Member Regulation, in its January 13, 2016 letter, identified Telfer's alleged failures to disclose the matters referenced in the March 21, 2016 Wells Notice.

[23] Spence testified that the terms of the plan have not yet been implemented.

3. Spence is the proposed supervisor responsible for Meyers. Spence has 18 years of industry experience and has been a Series 24 general principal since 2010. At the Firm, Spence acts as a Supervisor. In his absence, Telfer will act as Meyers's backup supervisor. Telfer has 33 years of industry experience and also serves as the Firm's Chief Compliance Officer ("CCO") and the Chief Operating Officer ("COO"). The backup supervisor will be responsible for the same duties and undertakings as the proposed supervisor as set forth in this Plan. Both supervisors (collectively known as the "Supervisor") are located, and work full time, at the 45 Broadway offices.

4. All new account paperwork and other paperwork that may be specific to the type of investment contemplated must be signed by the client and Meyers's Supervisor before being submitted to the Firm for processing. No trades will be placed and/or executed before the account is approved in writing by the Supervisor.

5. Meyers's trades will be reviewed and approved (or rejected) by the Supervisor before execution and evidence of approval will be on the hard copy order ticket. Order tickets are maintained at the 45 Broadway office.

6. Order ticket approval will focus on: (a) the size of the trade; (b) whether the trade is suitable for the customer; (c) whether the trade, when reviewed in connection with the history of trading in the account, is appropriate in size and frequency; (d) short sale activity; (e) whether the trade is prohibited under the "penny stock" rules; and (f) whether the trade or series of trades suggests fraudulent or manipulative conduct.

7. Meyers is not allowed to have accounts over which written discretionary authority is vested in him, and he is not allowed to enter trades pursuant to an oral grant of discretion (time and price or otherwise).

8. Meyers has an email account through the Firm, BMeyers@meyersassociateslp.com. This is the only account Meyers is allowed to use for communications with clients, with prospective clients, for investment banking and advisory business, and for internal communications. Any other email accounts are required to be disclosed to the Firm and their use for business purposes is not allowed. Texting for business purposes is also not allowed unless is it captured through the Firm's email system. All emails to or from Meyers, whether internal or external, will be captured in an electronic "folder" and they will not be forwarded to Meyers or sent out from him until after their review by the Supervisor. Such reviews will occur in real-time or as soon as practicable, with 100% of the emails requiring review. If Meyers receives a business-related communication through any means other than the Firm approved email account identified above, Meyers must immediately forward the email message to his Supervisor.

9. All incoming non-electronic communication (including faxes) will be delivered to the Supervisor for opening and review/supervision before being given to Meyers. All outgoing non-electronic communication (including faxes) will be reviewed and supervised by the Supervisor before mailing or transmittal. Copies of all such supervised communications will be maintained by the Supervisor.

10. For the duration of the plan, Meyers may not train or supervise brokers, including those who conduct business in Connecticut. Meyers will not be permitted to receive any compensation (finders' fees, commissions, commission sharing) in connection with the purchase or sale of securities to or from Connecticut customers. In addition, Meyers may not share commissions with any other individual (registered or otherwise), including through joint broker codes, involving any retail or investment banking customers.

11. Any complaint received (written or verbal, U4 reportable or 4530) will be reported immediately to Meyers's Supervisor. The Supervisor will obtain a written statement from Meyers addressing the allegations and a memorandum prepared by the CCO reflecting the findings and a resolution. Any such matters deemed U4 or 4530 reportable will be reported to the appropriate authority in a timely manner by the CCO.

12. With respect to investment banking and advisory business, an Investment Banking Committee (the "Committee") has been formed and it consists of Telfer, CCO, Joseph Marinelli, CFO, Greg Traina, Managing Director Syndicate, and Khan. All proposed investment banking deals and advisory relationships must be approved, in advance, by three members of the Committee and the voting will be memorialized in writing.

13. Meyers has ceased the outside business activities as previously disclosed on his Form U4, and during the Plan's duration, he will not seek to engage in any outside activities.

14. Meyers's Supervisor will meet with Meyers on a bi-monthly basis (2x/month) to review each component of the Plan and any other matters that the Supervisor deems appropriate. A written record will be created by the Supervisor to memorialize the meeting.

15. Meyers's Supervisor will complete an attestation each quarter documenting the implementation or verification of each component of the Plan. Meyers will also attest on this form that he has conducted himself in accordance with the Plan. The quarterly attestation forms will be completed by the 10th business day following the end of the quarter.

16. After the Plan has been effective for six months, Meyers's Supervisor will arrange for an independent testing verifying that the Plan has been implemented appropriately, and will arrange for additional independent testing every six months thereafter for the duration of the Plan. Any identified deficiencies will be rectified immediately but will also prevent the Plan from being modified for the following six-month period, as described below.

17. For the duration of Meyers's statutory disqualification, the Firm must obtain prior approval from FINRA if it wants or needs to change the identification of Meyers's Supervisor or if it wishes to propose any change to Meyers's work responsibilities, work location, or Plan components. If a supervisory change must be made prior to FINRA approval due to extenuating circumstances, a qualified Supervisor will be identified and FINRA notified immediately. If the Firm proposes a modification to the Plan, it will request FINRA approval but only if the following internal conditions are met: (a) 12 months have elapsed from the date of this agreement; (b) a third party confirms that the Plan has been implemented per its requirements by the Supervisor; (c) any FINRA statutory disqualification reviews within the 12 month period confirm compliance with supervisory conditions and the absence of related problems; and (d) the Plan's Supervisor agrees to the Plan's modification.

VI. Member Regulation's Recommendation

Member Regulation recommends that the Application be denied because, in its view: (1) the Firm's extensive regulatory history demonstrates that it is not capable of supervising a statutorily disqualified individual such as Meyers; (2) Spence and Telfer are unsuitable supervisors; (3) the heightened supervisory plan is inadequate; (4) Meyers's disqualifying event is recent and serious; and (5) Meyers's regulatory and disciplinary history and intervening misconduct establish a pattern of non-compliance with federal securities laws and FINRA's rules.

VII. Discussion

In evaluating an application like this, we assess whether the sponsoring firm has demonstrated that the proposed association of the statutorily disqualified individual is in the public interest and does not create an unreasonable risk of harm to the market or investors. *See Continued Ass'n of X*, Redacted Decision No. SD06002, slip op. at 5 (NASD NAC 2006), *available at* http://www.finra.org/sites/default/files/NACDecision/p036476_0.pdf; *see also 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"); FINRA By-Laws, Art. III, Sec. 3(d) (providing that FINRA may approve association of statutorily disqualified person if such approval is consistent with the public interest and the protection of investors). Factors that bear upon our assessment include the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, the totality of regulatory history, and the potential for future regulatory problems. We also consider whether the sponsoring firm has demonstrated that it understands the need for, and has the capability to provide, adequate supervision over the statutorily disqualified person. The sponsoring firm has the burden of demonstrating that the proposed association is in the public interest despite the disqualification. *See Timothy P. Pedregon, Jr.*, Exchange Act Release No. 61791, 2010 SEC LEXIS 1164, at *16 & n.17 (Mar. 26, 2010).

After carefully reviewing the entire record in this matter, we find that the Firm has failed to demonstrate that Meyers's proposed continued association with the Firm is in the public interest. The Firm's lengthy regulatory and disciplinary history, which is littered with numerous supervisory lapses and other repeat violations, causes us to seriously question whether the Firm can stringently supervise a statutorily disqualified individual such as Meyers. Similarly, we are deeply troubled by Meyers's extensive regulatory and disciplinary history, as well as the serious nature of the misconduct underlying the recent 2015 Connecticut Order. These factors, along with our concerns with Meyers's proposed supervisors, lead us to the conclusion that Meyers's proposed continued association with the Firm would create an unreasonable risk of harm to investors and the market. Accordingly, we deny the Application for Meyers to continue to associate with the Firm.

A. <u>The Firm's Troubling Regulatory and Disciplinary History</u>

Under the facts and circumstances of this case, the Firm's regulatory and disciplinary history is highly troubling. The Firm has been the subject of 16 final regulatory actions since 2000 (including the 2015 Connecticut Order), and to date has paid approximately $390,000 in monetary sanctions to settle certain of these matters. In addition, the Firm was the subject of a recent FINRA Hearing Panel decision pursuant to which it was fined $700,000. Eight of the Firm's regulatory actions involved supervisory failures, and three matters involved the Firm's failures to produce documents to regulators or claimants in FINRA arbitrations. Other violations occurred repeatedly during this time frame, such as failing to comply with FINRA's reporting obligations, employing unregistered personnel, and failing to make disclosures to customers.

Further, routine examinations by the Commission and FINRA during the past five years have found myriad deficiencies, including repeated supervisory deficiencies. Indeed, in the Commission's and FINRA's most recent examinations of the Firm, numerous deficiencies were identified, including: failing in various areas to maintain adequate supervisory procedures and failing to adequately implement or enforce its WSPs; failing to adequately supervise its registered representatives; failing to establish adequate procedures for email review and the use of mobile devices; failing to conduct a reasonable review prior to executing large-scale liquidations of microcap securities despite numerous red flags or other suspicious characteristics of the transactions; and failing to establish and implement an adequate AML program. Both the Commission and FINRA further recently noted the Firm's inadequate and incomplete response to document requests and inadequate and incomplete responses to examination findings (which mirror prior issues). The Firm also recently had entered against it a FINRA arbitration award involving serious allegations of fraud, misrepresentations, and supervisory issues. An arbitration panel assessed damages and costs of more than $426,000.

We agree with Member Regulation that the Firm's litany of violations and the repeated occurrence of numerous violations—particularly supervisory violations—demonstrates that the Firm lacks the ability to provide adequate supervision in the normal course of business, let alone stringently supervise a statutorily disqualified individual such as Meyers.[24] *See Timothy H. Emerson Jr.*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, at *18 (July 17, 2009)

[24] Our concerns are reinforced given Meyers's role as the Firm's majority owner and chief executive officer and his lengthy regulatory and disciplinary history, which we discuss below.

(holding that an applicant must establish that it will be able to adequately supervise a statutorily disqualified individual); *In the Matter of the Continued Association of Mitchell T. Toland with Hallmark Investments, Inc.*, SD 1812, slip op. at 14-15 (FINRA NAC Feb. 19, 2014), available at http://www.finra.org/sites/default/files/NACDecision/ p448164_0.pdf (denying application based upon firm's troubling regulatory and disciplinary history and stating that "[t]he totality of the Firm's disciplinary and regulatory history is disconcerting and supports our conclusion that it is not capable of assuming the additional heavy burden of supervising a statutorily disqualified individual"), *aff'd*, Exchange Act Release No. 73664, 2014 SEC LEXIS 4724 (Nov. 21, 2014); *In the Matter of the Continued Association of X,* Redacted Decision No. SD12001, slip op. (FINRA NAC 2012), *available at* http://www.finra.org/sites/default/files/NACDecision/ p284390_0_0.pdf (denying application based upon, among other things, Firm's regulatory history and history of supervisory problems).

The Firm's recent hiring of Golbeck, and its implementation of some of her recommendations, does not alter our view that the Firm is incapable of supervising Meyers as a statutorily disqualified individual. Golbeck testified that when she first visited the Firm in mid-2015, she concluded that "there was a lot of work to do from all respects" and that there was "a little bit of chaos" going on in terms of personnel changes.[25] Although Golbeck testified that the Firm has since made changes and enhancements to its supervisory and compliance processes and procedures, a number of Golbeck's September 2015 recommendations have not yet been implemented. For example, Golbeck described the Firm's WSPs as not current to reflect rule updates since 2012 and not specifically tailored to the Firm's business. In September 2015, she recommended that the WSPs be updated "as soon as possible," and the Firm stated that this project was a "priority," but the process of updating the Firm's WSPs only began several weeks prior to the hearing (almost six months after Golbeck made her recommendations). Further, although Golbeck recommended in September 2015 that the Firm put the restrictions imposed upon Meyers's by the 2015 Connecticut Order in a plan to be signed by Meyers and Telfer, this has not yet occurred.[26] The Firm has also failed to hire all the additional compliance and supervisory personnel that Golbeck recommended.

Given the state of the Firm when Golbeck began her work in mid-2015, the Firm's repeated inability to comply with securities rules and regulations, and the incomplete implementation of all of the recommendations made by Golbeck to improve the Firm's supervisory and compliance systems and procedures, we are unconvinced that any recent changes made by the Firm will ensure the Firm's future compliance with securities rules and regulations. *See Toland*, 2014 SEC LEXIS 4724, at *36 (holding that purported evidence of the firm's "current compliance with its obligations does not negate the prior disciplinary and

---

[25] The Firm initially retained Golbeck pursuant to the 2015 Connecticut Order, and she issued a report on her findings as required by the order. Golbeck's September 2015 report concluded that, among other things, the Firm "has not kept pace with a quickly changing regulatory environment [and the] departments which should have been monitoring and supervising its sales force did not grow appropriately, in personnel or sophistication, to keep the Firm compliant with industry rules and regulations."

[26] The Firm put these restrictions in writing for the first time in its heightened supervisory plan filed several days before the March 22, 2016 hearing.

regulatory history that the NAC found disconcerting"). The Firm's admitted violation of the 2015 Connecticut Order by failing to comply with the reporting requirements of that order (which occurred after the Firm retained Golbeck) reinforces our skepticism that the Firm has made long-lasting changes that will enable it to stringently supervise Meyers.[27]

Finally, given Meyers's lengthy disciplinary and regulatory history, we find the Firm's failure to put Meyers under any form of heightened supervision since entry of the 2015 Connecticut Order to be indicative of the Firm's shortcomings. *See Weiss*, 2013 SEC LEXIS 837, at *42 (finding that, "[m]ost troubling is the firm's conscious decision not to place Weiss on heightened supervision for approximately two years after learning that Weiss had been statutorily disqualified. Although ACP eventually placed Weiss under supervision, it did so only after FINRA expressed the importance of doing so."). Given all of the foregoing, we find that the Firm cannot provide the stringent supervision required of a statutorily disqualified individual.

B. Meyers's Troubling Regulatory and Disciplinary History

Further supporting our denial of the Application is Meyers's extensive disciplinary and regulatory history. *See Savva*, 2014 SEC LEXIS 2270, at *58 ("We also agree with FINRA that Savva's history of at least ten customer complaints and two regulatory matters raised serious concerns about Savva's dealings with customers and his ability to comply with securities laws and regulations."). Meyers has been the subject of five final regulatory actions (excluding the 2015 Connecticut Order, which we discuss below), and was recently barred in all principal and supervisory capacities and fined $75,000 for supervisory failures and violations of FINRA's advertising rules. Moreover, pursuant to the October 2011 Offer of Settlement, Meyers served a four month suspension in all principal and supervisory capacities for failing to supervise Firm personnel to ensure that they completely and timely responded to requests for information. The other matters involved, among other things, findings that Meyers failed to enforce the Firm's WSPs, failed to reasonably supervise a statutorily disqualified person, and submitted an MC-400 that contained false information.

In addition to these serious regulatory matters, at least 16 customers have filed complaints against Meyers. These complaints made various allegations of wrongdoing, including unsuitable recommendations, excessive commissions, fraud, failures to supervise, and unauthorized trading. Meyers or the Firm have paid approximately $763,000 to settle certain of these matters, and Meyers's prior firm paid an additional $50,000 to settle another complaint. Although Meyers attempted to downplay these complaints at the hearing as mostly resulting from his position as the Firm's chief executive officer and owner, four of the complaints involved direct customers of Meyers (including two filed in 2015). And, regardless of whether Meyers served as the registered representative or direct supervisor of the registered representative at the Firm who serviced the remaining customers, the fact remains that these complaints made serious allegations of wrongdoing, and the Firm paid substantial sums to resolve these matters.

---

[27] The Firm's violation of the 2015 Connecticut Order is also contrary to Meyers's testimony that to the best of his knowledge, the Firm has complied with the terms of the 2015 Connecticut Order.

In sum, Meyers's extensive disciplinary and regulatory history, which mirrors the Firm's extensive disciplinary and regulatory history, indicates that he, personally and on behalf of the Firm, is unwilling or unable to comply with securities rules and regulations and that compliance with securities rules and regulations has been an afterthought. Under the circumstances, such a track record strongly suggests that any future in the securities industry will result in further non-compliance.

C. The 2015 Connecticut Order is Recent and Serious

We also find that the recency and seriousness of the 2015 Connecticut Order supports denial of the Application. *See Savva*, 2014 SEC LEXIS 2270, at *57 (holding that FINRA properly considered that the consent order forming the basis of individual's statutory disqualification stemmed from allegations of serious, securities-related misconduct). The 2015 Connecticut Order involved allegations that Meyers failed to supervise in various ways, knew or should have known of a commission sharing agreement between two registered representatives used to circumvent registration requirements (and that cash payments made by these representatives to supervisory personnel were not recorded in the Firm's books and records), and materially assisted, and willfully aided and abetted, the Firm's failure to provide documents requested by the Department of Banking in a complete and timely manner (which was similar to prior regulatory actions involving Meyers and the Firm). Reflecting the seriousness of the 2015 Connecticut Order, the Department of Banking imposed numerous sanctions upon Meyers and the Firm (including requiring Meyers to withdraw his registration and prohibiting him from reapplying for three years, prohibiting him from engaging in supervisory or training activities and receiving income from business in Connecticut, suspending the Firm's registration in the state for 60 days, limiting the Firm's business in the state for three years, and fining Meyers and the Firm $50,000). *See William J. Haberman*, 53 S. E. C. 1024, 1028 (1998) (finding that the sanction imposed upon a disqualified individual "may properly indicate the seriousness of the offense").

Both prior to and at the hearing, Meyers and the Firm repeatedly downplayed the seriousness of the 2015 Connecticut Order and the proceedings that led to entry of the order. For example, Meyers described the 2011 Connecticut Order as the Department of Banking having "an issue with the postage and handling" fees, and Meyers and the Firm repeatedly stated that the 2015 Connecticut Order did not involve Meyers's personal conduct and he was named in that action because he was the Firm's owner and chief executive officer. *See American Investment Services, Inc.*, 54 S.E.C. 1265, 1273 (2001) (denying firm's application where statutorily disqualified individual demonstrated a "troubling lack of understanding . . . of their own role in the events that were at issue" in the underlying disqualifying event). Notwithstanding Meyers's characterization of the 2015 Connecticut Order, entry of this order is the latest in a long series of violations and epitomizes Meyers's admitted lack of attention to complying with securities rules and regulations.

D. Concerns Regarding Meyers's Supervisors

Finally, we have concerns whether Meyers's proposed supervisors can provide the stringent supervision required of a statutorily disqualified individual. As a general matter, "it is especially difficult for employees to supervise effectively the activities of the owner of a firm." *Asensio & Co.*, Exchange Act Release No. 68505, 2012 SEC LEXIS 3954, at *28 (Dec. 20, 2012) (internal quotations omitted). While the Firm attempted to address this issue in its amended plan by further limiting Meyers's functions as the Firm's chief executive officer and his ability to hire and fire employees and determine employee compensation, Meyers's extensive history of ignoring regulatory requirements makes us skeptical that any supervisor could ensure Meyers's compliance with the heightened supervisory terms, especially provisions designed to minimize his ability to exert control over the Firm that he founded and owns.[28]

Moreover, Spence has only been registered as a general securities principal since 2010. We are not convinced that Spence has the experience to effectively supervise Meyers, the owner of the Firm and individual who hired him.[29] *See Berman*, slip op. at 17 (holding that proposed supervisor's inexperience is exacerbated by disqualified individual's many years in the industry and importance to his firm as one of its largest producers). Spence also testified that he does not have investment banking experience, does not have experience supervising investment banking activity, and is not currently registered as an investment banking representative (Series 79).[30] Most of Meyers's business, however, involves investment banking. The Firm has not demonstrated how Spence can effectively supervise this activity under the circumstances. *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 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).

We also have concerns regarding Telfer's ability to effectively supervise Meyers. Telfer currently serves as the Firm's chief compliance officer, chief operating officer, and AML compliance officer. Telfer currently serves on one Firm committee, and if the Application is approved he will serve on two additional Firm committees. Golbeck observed that Telfer was overextended in a number of areas, and it is unclear the extent to which certain of Telfer's duties have been reassigned since September 2015. We find that the Firm has not demonstrated that

---

[28] Although the plan limits Meyers's activities as chief executive officer, he would remain in that position. At the hearing, however, Spence testified that he believed that Meyers would no longer serve as chief executive officer. This confusion appears to be the result of the Firm's recent revisions to the plan.

[29] At the hearing, Golbeck testified that other than Telfer, Spence has the most experience of the remaining supervisors at the Firm.

[30] Principals who supervise investment banking activities are required to be registered as investment banking representatives. *See FINRA Regulatory Notice 09-41*, 2009 FINRA LEXIS 114, at *1, 6-7.

Telfer has sufficient time to serve as a supervisor in any capacity. We also find troubling Telfer's regulatory and disciplinary history, which includes several settled matters, one settled customer complaint, several pending arbitration matters, and an examination finding that he improperly used his personal email for Firm business.[31]

VIII. Conclusion

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 Meyers to continue to associate with the Firm in any capacity. We therefore deny the Application.

On Behalf of the National Adjudicatory Council,

____

Marcia E. Asquith
Senior Vice President and Corporate Secretary

---

[31] We also find that the proposed heightened supervisory plan is deficient because it does not specifically address how Meyers's investment banking activities will be supervised and monitored. Nor does the plan address how Spence and Telfer will monitor Meyers to ensure that he acts in a limited capacity as chief executive officer, as described in the plan. Were we otherwise inclined to approve this Application, which we are not, we would have given the Firm an opportunity to cure these deficiencies.