

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In The Matter of
The Association of
Marc N. Jaffe
as a
General Securities Representative
with
Integrity Brokerage Services, Inc.

Notice Pursuant to
Section 19(d)
Securities Exchange Act
of 1934

SD-2103

May 16, 2017

I. Introduction

On March 23, 2016, Integrity Brokerage Services, Inc. (the “Firm”), submitted a Membership Continuance Application (“MC-400” or “the Application”) to FINRA’s Department of Registration and Disclosure. The Application seeks to permit Marc N. Jaffe (“Jaffe”), a person subject to a statutory disqualification, to associate with the Firm as a general securities representative in its Indianapolis, Indiana branch office. On December 7, 2016, a subcommittee (“Hearing Panel”) of FINRA’s Statutory Disqualification Committee held a hearing on the matter. Jaffe appeared at the hearing, accompanied by counsel, Mark E. Maddox, Esq., and Jaffe’s proposed primary supervisor, John Compton (“Compton”). The Firm’s chief executive officer, Joshua Helmle (“Helmle”), testified by telephone. Lorraine Lee-Stepney, Ann-Marie Mason, Esq., Deon McNeil-Lambkin, Esq., and Sora Lee, Esq., appeared on behalf of FINRA’s Department of Member Regulation (“Member Regulation”).

For the reasons explained below, we deny the Firm’s Application.¹ We find that Jaffe has engaged in serious misconduct since his disqualifying event, which by itself warrants denial of the Application. We further find that our concerns regarding Jaffe’s proposed supervision also supports denial.

¹ Pursuant to FINRA Rule 9524(a)(10), the Hearing Panel submitted its written recommendation to the Statutory Disqualification Committee. In turn, the Statutory Disqualification Committee considered the Hearing Panel’s recommendation and presented a written recommendation to the National Adjudicatory Council (“NAC”).

II. The Statutorily Disqualifying Event

Jaffe is statutorily disqualified due to FINRA's acceptance, on August 26, 2015, of a Letter of Acceptance, Waiver and Consent (the "2015 AWC"). The 2015 AWC found that Jaffe willfully failed to disclose material information on his Uniform Application for Securities Industry Registration or Transfer ("Form U4").² Specifically, the 2015 AWC found that Jaffe willfully failed to disclose on his Form U4 11 state and federal tax liens totaling approximately \$923,000 (collectively, the "2015 AWC Liens").³ The 2015 AWC Liens were filed against Jaffe between October 2008 and November 2011 while he was associated with two different member firms. FINRA suspended Jaffe for 60 business days and fined him \$15,000.⁴ Jaffe paid the fine and served his suspension from September 21, 2015 through December 14, 2015.⁵ Jaffe's employing firm at the time he entered into the 2015 AWC terminated him just prior to the beginning of his suspension.

Jaffe states that the 2015 AWC Liens arose because of "income imputed" to him in connection with a forgivable loan that he received from a prior firm. He further states that "because [I] did not anticipate receiving a Form 1099 reflecting additional income in excess of \$1 million in 2006, [I] did not have the funds set aside to pay the taxes that the IRS and [the]

² FINRA's By-Laws provide that a person is subject to "disqualification," and thus must seek and obtain FINRA's approval prior to associating with a member firm, if he is disqualified under Section 3(a)(39) of the Securities Exchange Act of 1934 ("Exchange Act"). *See* FINRA By-Laws, Art. III. Exchange Act Section 3(a)(39)(F) provides that a person is subject to statutory disqualification if he has willfully made a false or misleading statement of material fact, or has omitted to state a material fact required to be disclosed, in any application or report filed with a self-regulatory organization.

³ Question 14.M of Form U4 asks, "Do you have any unsatisfied judgments or liens against you?" Article V, Section 2(c) of FINRA's By-Laws requires that an associated person keep his Form U4 current at all times and that he update information on the Form U4 within 30 days. Further, FINRA Rule 1122 states that, "[n]o member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof." Jaffe disclosed the 2015 AWC Liens in October 2014, and the Firm represented that the 2015 AWC Liens have been satisfied.

⁴ As a result of the 60-day suspension imposed by the 2015 AWC, Jaffe was also statutorily disqualified for the duration of his suspension. *See* Exchange Act Section 3(a)(39)(A) (providing that a person is subject to statutory disqualification if he "[h]as been and is . . . suspended from being associated with a member of, any self-regulatory organization").

⁵ As described below, Member Regulation asserts that Jaffe improperly associated with the Firm as a statutorily disqualified individual, and that Jaffe's association began before he had finished serving his suspension under the 2015 AWC. *See infra* Part IV.C.2.

Indiana Department of Revenue (“IDR”) claimed [I] owed.” Jaffe also states that he informed his compliance department of the 2015 AWC Liens filed by the IRS and IDR between October 2008 and February 2010, and that they “assured him that they would take care of any requirements to disclose the liens to FINRA.” With respect to the remaining 2015 AWC Liens filed by the IRS and IDR between August 2010 and November 2011, Jaffe admittedly failed to disclose them but claims that he was “under an enormous amount of stress” due to personal and family health issues and reestablishing his practice at a new firm “after a tumultuous transition.” Jaffe claims that he openly discussed the existence of the tax liens with FINRA staff during a branch office audit in 2014 and “made no effort to hide the liens from FINRA or otherwise avoid the issue of the liens.” At the hearing, Jaffe testified that for almost a decade he had been “in a case with the IRS” and that in 2016 he was finally able to demonstrate to the IRS that he never owed the taxes underlying the 2015 AWC Liens.

III. Post-Hearing Challenges to the 2015 AWC and this Proceeding

More than two months after the hearing on the Application, the Firm and Jaffe submitted a “supplemental brief,” which for the first time argued that: (1) the language in the 2015 AWC was misleading or ambiguous with respect to the preclusive effect on Jaffe’s ability to associate with a member firm after he served his 60-day suspension, such that FINRA cannot require Jaffe to go through an eligibility proceeding;⁶ (2) FINRA is in breach of the 2015 AWC by requiring that Jaffe submit to this eligibility proceeding because it agreed that it would not bring any further actions against Jaffe, and as a result the 2015 AWC is void and unenforceable and there is thus no basis for this proceeding;⁷ and (3) if FINRA denies the Application it will impose the functional equivalent of a lifetime associational bar, which is “grossly unfair” and contrary to FINRA’s Sanction Guidelines. The Firm and Jaffe request that we either order that the 2015 AWC be revised to exclude any finding that Jaffe willfully failed to disclose the 2015 AWC

⁶ The 2015 AWC provided, in relevant part, that:

I understand that if I am . . . suspended from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in [FINRA’s By-Laws and the Exchange Act.] Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311). . . .

I understand that this settlement includes a finding that I willfully omitted to state a material fact on a Form U4, and that under [Exchange Act Section 3(a)(39)(F) and FINRA’s By-Laws], this omission makes me subject to a statutory disqualification with respect to association with a member.

⁷ The 2015 AWC provided, in relevant part, that “[t]his AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against [Jaffe] alleging violations based on the same factual findings described herein.”

Liens on his Form U4 and declare that the Application is therefore unnecessary, or we approve the Application.

We deny the Firm's and Jaffe's request and reject their challenges to this proceeding. As an initial matter, we find that their objections concerning the propriety of this proceeding and request for relief are untimely. When the Firm filed the Application in March 2016, it did not contest that the 2015 AWC statutorily disqualified Jaffe or that it was not required to file the Application. Since that time, the Firm and Jaffe have fully participated in this proceeding, including participating in an evidentiary hearing, without ever raising the issues set forth in the supplemental brief. The Firm and Jaffe could have raised these issues when they received notice from FINRA that the 2015 AWC disqualified Jaffe and the Firm was required to file an MC-400. Instead, they waited until more than two months *after* the hearing on the Application to file their supplemental brief. To raise these challenges to the necessity and propriety of this proceeding at this late date after fully participating in an evidentiary hearing is procedurally improper. *Cf. Hardy v. Walsh Manning Secs. LLC*, 2002 U.S. Dist. LEXIS 16589, at *8-9 (S.D.N.Y. Sept. 5, 2002) (holding that respondents, who actively participated in an arbitration proceeding by participating in discovery and a hearing, waived any objection to jurisdiction), *remanded on other grounds*, 2003 U.S. App. LEXIS 16922 (2d Cir. Aug. 19, 2003); *David T. Fleischman*, 43 S.E.C. 518, 522 (1967) ("Public policy considerations favor the expeditious disposition of litigation, and a respondent cannot be permitted to gamble on one course of action and, upon an unfavorable decision, to try another course of action."). Similarly, we reject the Firm's and Jaffe's arguments as an impermissible collateral attack on the 2015 AWC and Jaffe's disqualifying event thereunder. *See Gershon Tannenbaum*, 50 S.E.C. 1138, 1140 (1992) (stating that in a statutory disqualification proceeding "[i]t is always true in a case of this sort that a respondent cannot mount a collateral attack on findings that have previously been made against him"). The Firm and Jaffe go so far as to ask that we revise the 2015 AWC (without providing any authority that would give us the ability to do so) to eliminate the finding that renders Jaffe statutorily disqualified. We decline to do so.

Regardless of the procedural appropriateness of the Firm's and Jaffe's request, we find that their underlying arguments are substantively without merit. For example, they argue that because the 2015 AWC did not explain that Jaffe could not associate with a member firm until FINRA approved him to do so based upon his willful failure to disclose the 2015 AWC Liens (whereas the 2015 AWC did explain that Jaffe could not associate with a member firm during his 60-day suspension), a "key term" of the 2015 AWC is materially misleading or ambiguous and there is no basis for this eligibility proceeding.

We reject this argument, as the Firm and Jaffe essentially seek to render the 2015 AWC and its findings "void and unenforceable" because the 2015 AWC does not describe the collateral consequences of a statutory disqualification and a statutorily disqualified individual's inability to associate with a firm. The failure to describe these collateral consequences, however, does not render the 2015 AWC unenforceable or obviate the need for this proceeding. Jaffe could not associate with a member firm as a statutorily disqualified individual due to his willful failure to disclose material information until FINRA approved him to do so, even after he served his suspension. This is not a "key term" of the 2015 AWC, but arises by operation of FINRA's By-Laws and rules as a result of Jaffe becoming statutorily disqualified. *See* FINRA's By-Laws,

Art. III. Sec. 3 (providing that, “[n]o person shall become associated with a member . . . if such person is or becomes subject to a disqualification”); FINRA Rule 8311 (providing that if a person is subject to a “suspension, revocation, cancellation of registration, bar from association with a member (each a ‘sanction’) or other disqualification, a member shall not allow such person to be associated with it in any capacity that is inconsistent with the sanction imposed or disqualified status, including a clerical or ministerial capacity”); FINRA Rule 9521(a) (stating that the “Rule 9520 Series sets forth procedures for a person to become or remain associated with a member, notwithstanding the existence of a statutory disqualification”).

Further, the record shows that the Firm and Jaffe knew that Jaffe, as a disqualified individual, could not associate with the Firm unless and until FINRA approved him to do so, which belies their argument that the language in the 2015 AWC was misleading or ambiguous. At the hearing on the Application, Jaffe testified that around the time he entered into the 2015 AWC, he understood that after he served his 60-day suspension FINRA would need to approve his association with a member firm as a statutorily disqualified individual (and that had he remained employed at his prior firm and not been terminated, he could have continued to work at the firm after he served his suspension and while that firm’s MC-400 application remained pending). Further, Jaffe and Compton each testified that they sought advice regarding what Jaffe could and could not do as a statutorily disqualified individual so as not to run afoul of the prohibition on Jaffe associating with the Firm during the pendency of his Application. *See infra* Part IV.C.2. Jaffe’s and Compton’s actions demonstrate that they were fully aware of the 2015 AWC’s preclusive effect on Jaffe’s ability to associate with the Firm as a statutorily disqualified individual after Jaffe served his 60-day suspension, even if the 2015 AWC did not contain express language stating as much.

Similarly, Jaffe and the Firm incorrectly state that this eligibility proceeding is an action based upon the same misconduct underlying the 2015 AWC. The 2015 AWC generally precludes FINRA from bringing against Jaffe a disciplinary action under FINRA’s disciplinary rules for his failures to disclose the 2015 AWC Liens. This eligibility proceeding, however, is not a disciplinary action pursuant to which FINRA may seek sanctions. *See Halpert and Co.*, 50 S.E.C. 420, 422 (1990) (holding that denial of an MC-400 application is not a remedial sanction or penalty). Rather, it is a proceeding mandated by the Exchange Act and FINRA’s rules to determine whether Jaffe’s association with the Firm is in the public interest notwithstanding his statutory disqualification. For similar reasons, we reject the Firm’s and Jaffe’s arguments that denying the Application would be the functional equivalent of a lifetime bar and “grossly unfair” under FINRA’s Sanction Guidelines. *See Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *37 (Mar. 15, 2016) (“FINRA does not subject a person to statutory disqualification as a penalty or remedial sanction. Instead, a person is subject to statutory disqualification by operation of [the Exchange Act] Considerations of ‘fairness’ or policy arguments do not bear upon the automatic statutory disqualification imposed upon McCune.”), *aff’d*, 2016 U.S. App. LEXIS 21690 (10th Cir. Dec. 6, 2016); *Anthony Grey*, Exchange Act Release No. 75839, 2015 SEC LEXIS 3630, at *47 (Sept. 3, 2015) (rejecting the argument that findings resulting in a statutory disqualification are effectively a lifetime bar and stating that a “statutory disqualification is not a FINRA-imposed penalty or remedial sanction”).

Having determined that the 2015 AWC serves as a proper basis for this proceeding, we turn to the merits of the Application.

IV. Background Information

A. Jaffe

1. Employment History

Jaffe qualified as a general securities representative in December 1991, when he also passed the uniform securities agent state law exam. Jaffe passed the uniform investment adviser law exam in August 1994. A core group of individuals has worked for Jaffe in Indianapolis for a number of years, including his partner Andrea Wood (“Wood”) and several other individuals. The group has affiliated with several different broker-dealers and has generally moved together from firm to firm. Prior to Jaffe’s association with the Firm, he was previously associated with four FINRA member firms, and has also been registered with two investment advisers, including one from January 2016 until February 2016.

2. Jaffe Financial Services, Inc. and Woodgroup, LLC

Jaffe owns approximately 90% of Jaffe Financial Services, Inc. (“JFSI”), a non-broker-dealer entity he formed in 2004 and through which he has conducted his securities business. Wood has owned approximately 10% of JFSI since 2010. Wood also owns Woodgroup, LLC (“Woodgroup”), an entity she formed in December 2015 and through which she conducts her securities business. Woodgroup is not a registered broker-dealer or investment adviser. Both JFSI and Woodgroup conduct their businesses at the Indianapolis branch office.

At the hearing, Compton initially testified that JFSI pays the expenses for the Indianapolis branch office, including his salary, and that he is an employee of JFSI. Compton later clarified that Woodgroup had started paying 90% of his salary beginning in February 2016 pursuant to an Office Sharing Agreement between Woodgroup and JFSI dated February 16, 2016 (the “Office Agreement”). Pursuant to the Office Agreement, all employees of the Indianapolis branch office (except for Jaffe) were deemed employees of Woodgroup, and JFSI was required to contribute or reimburse Woodgroup for 10% of all costs associated with each employee. Woodgroup further agreed to reimburse JFSI 90% of all obligations under JFSI’s office lease. Although the Office Agreement was formally agreed to in February 2016, Jaffe testified that he and Wood “had always been handling it that way” and they had been advised to formalize their arrangement. While the Application has been pending, Wood and others at the Indianapolis office have been servicing Jaffe’s former customers, and the customers’ accounts are held at the Firm.

3. Jaffe and Others Move to the Firm

As described above, in September 2015 Jaffe's firm terminated him. The firm stated that it did so because it learned of a potentially improper commission sharing agreement between Jaffe and Wood. The firm also terminated Wood.⁸ Jaffe agreed to move to the Firm, as did Wood, Compton, and several others. The Firm agreed to initiate an eligibility proceeding on behalf of Jaffe, and it initially filed a Form U4 for Jaffe on December 18, 2015. It subsequently filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") for Jaffe on December 30, 2015, but not before FINRA warned the Firm in writing that "as a disqualified person, Mr. Jaffe must immediately cease all activities related to his association with your firm unless and until approved in an Eligibility Proceeding."⁹

The Firm filed another Form U4 to register Jaffe in March 2016, just prior to submitting the Application.¹⁰ Around that time, FINRA again warned the Firm that Jaffe could not associate with the Firm as a disqualified person unless and until FINRA approved him to do so.

B. Matters Arising Before the 2015 AWC

1. Customer Complaints

Many customers have filed complaints against Jaffe. Member Regulation asserts that he has been named in 36 customer complaints since 2001, and 25 of those complaints settled or resulted in arbitration awards totaling approximately \$4.7 million (of which Jaffe individually contributed approximately \$386,000). Complaining customers have made numerous allegations against Jaffe, including churning and excessive trading, charging excessive commissions, making unsuitable recommendations, and making misrepresentations and omitting material facts. Jaffe settled the most recent of these complaints in April 2013.

⁸ The alleged improper commission sharing agreement that was the cause of Jaffe's and Wood's terminations appears to be the Office Agreement and its prior informal iteration. Member Regulation states that FINRA opened an investigation regarding the alleged commission sharing agreement and that the investigation is on-going. Jaffe testified that he and Wood had this arrangement for 12 years and that they "were told by many, many securities attorneys, securities regulators that that was okay."

⁹ Compton explained that the Firm filed Jaffe's December 18, 2015 Form U4 without consulting Compton or Jaffe, when it filed Forms U4 for Compton, Wood, and several others moving to the Firm. Compton further testified that after he discovered that the Firm had filed Jaffe's Form U4, he requested that the Firm file a Form U5 so he and the Firm could examine how the eligibility proceeding process worked.

¹⁰ Compton and Jaffe testified that the Firm filed Jaffe's March 2016 Form U4 without their knowledge, and that Jaffe did not review the March 2016 Form U4 before it was filed.

2. Jaffe's Terminations from Member Firms, Criminal History, and Investigations

In addition to Jaffe's termination from his firm in September 2015, in August 2004, Jaffe was charged with one count of felony intimidation for leaving threatening and inappropriate voicemails for his co-workers at a member firm. Jaffe was ultimately convicted of a misdemeanor, and his firm terminated him for this conduct. CRD indicates that this misdemeanor stemmed from a personal dispute with Jaffe's former partners due to the breakup of their partnership.

CRD also indicates that at the time Jaffe resigned from his firm in March 2001, he was under internal review for allegations of exercising discretion in customer accounts without written authority.

C. Matters Arising After the 2015 AWC

1. Jaffe's State Regulatory Actions

In March 2016, and based upon the same underlying facts that led to the 2015 AWC, the Indiana Securities Commission entered a final order against Jaffe in connection with his application for registration as an investment adviser representative. Pursuant to this consent order, Jaffe agreed to never file a petition to waive prohibitions as allowed under Indiana law.

2. Jaffe's Additional Undisclosed Lien

The record shows that, in addition to the 2015 AWC Liens, the IRS filed a federal tax lien against Jaffe in the amount of \$67,369.77 in December 2015 (the "Additional Lien").¹¹ Jaffe disclosed the Additional Lien in September 2016, approximately nine months late.

Jaffe concedes that he had notice of the Additional Lien in December 2015, but asserts that he did not disclose it because he did not have the ability to do so because he was not registered with any firm at the time the IRS filed the Additional Lien against him and he thought the lien had been filed in error. Jaffe further concedes that he did not discuss the Additional Lien with the Firm when he became registered with it and could not ever recall discussing the Additional Lien with the Firm. Compton testified that he did not become aware of the Additional Lien until July 2016. Compton explained that upon learning of the Additional Lien, he worked with Jaffe, Jaffe's tax attorney, and the Firm to research the lien to determine how to

¹¹ Member Regulation originally asserted that Jaffe also failed to disclose a tax warrant in the amount of \$13,767 filed against Jaffe by the IDR in April 2016. At the hearing, Member Regulation withdrew this purported failure to disclose as a basis for its recommended denial of the Application.

disclose it (which caused a further two-month delay in disclosing the Additional Lien).¹² The Firm represents that the Additional Lien has been satisfied.

2. Jaffe's Activities While Statutorily Disqualified

Member Regulation asserts that from December 2015 through at least mid-August 2016, Jaffe improperly associated with the Firm as a statutorily disqualified individual. In support, Member Regulation points to an Independent Contractor and Registered Representative Agreement between the Firm and Jaffe dated December 9, 2015. The record also contains numerous emails sent during this time period, many of which were sent to a Firm email address issued to Jaffe in December 2015. These emails are from Jaffe's former customers, Wood, and in one instance an administrative assistant at the Firm, and they generally show that Jaffe (either directly or through Wood) communicated with former customers regarding securities transactions and investment advice, and that Jaffe's former customers sought to set up meetings and telephone calls with Jaffe. They also show that Wood informed customers that Jaffe had changed firms and provided his Firm email address, and Jaffe met with registered representatives in the Indiana branch office to discuss his securities recommendations and opinions. The following are some examples of the emails contained in the record:

- A December 29, 2015 email from Wood to a customer alerting the customer of Wood's and Jaffe's new email addresses at the Firm.
- A January 7, 2016 email from a customer to Wood and Jaffe informing them that he had sent \$50,000 and stating that, "Attached is a summary of these transactions with account balance data from 1/5/16 and ideas for stocks. I will explain Nike when we speak with Marc. All next week is open for a conference call with Marc."
- A January 13, 2016 email from a customer to Wood and Jaffe that states, "Recapping call with Marc. Believe Marc was going to purchase Nike 100 shares Jim's regular account, and for Donna's IRA buy Williams WMB; Kroger 40 shares."
- An April 11, 2016 email from a customer to Wood stating "[w]hen I talked to Marc last week he said that the Hyatt bond in our personal acct was being called. We didn't discuss a replacement but if you could find one to replace it I think I would prefer a bond in that account vs stock."

¹² Compton explained that although they knew that the Additional Lien needed to be disclosed, the Firm was asking Compton and Jaffe to ensure that there were no other undisclosed liens. At the same time, the Firm had also contacted FINRA about itemizing previous tax liens disclosures, and the IRS had determined that the first tax lien against Jaffe had been issued in error (and thus other tax liens against Jaffe were going to be satisfied).

- A May 19, 2016 email from a customer to Wood and Jaffe that states: “Marc, I was sitting at the restaurant talking to you and then the cell signal just died . . . Just following up as we agreed on the phone to the Yahoo buy and getting rid of weight watchers [sic]. I think that was the only move we wanted to do, so let’s get that done.”
- A June 28, 2016 email from a customer to Wood entitled, “Today’s Trades with Marc” and stating that “Please confirm Marc said he would find a way to buy some Valient “VRX” . . .”
- A July 25, 2016 email from an administrative assistant at the Firm stating “Marc wanted me to let everyone know that there is a staff meeting scheduled for 9:00 a.m. on Monday, August 1. Please plan on attending.”
- An August 12, 2016 email from a customer to Jaffe stating, “Hi Marc. I got the text and am glad to hear about the successes. However, I still haven’t seen the overall performance report that we discussed. I have no idea how many [sic] overall position with you (outside of ININ) is growing.”

At the hearing, Compton and Jaffe testified generally that these emails involved Jaffe’s activities as an “analyst” for Woodgroup, and asserted that Jaffe’s activities as an analyst did not constitute improper association with the Firm as a statutorily disqualified individual. The record contains an Independent Contractor Agreement between Woodgroup and Jaffe, dated February 16, 2016 (the “Analyst Agreement”), and Compton testified that Jaffe had been acting in this capacity for several months before the parties formally documented this arrangement. Pursuant to the Analyst Agreement, Woodgroup retained Jaffe “to render financial analysis, investment analysis and research services for Woodgroup.” The Analyst Agreement requires Woodgroup to pay Jaffe \$15,000 per month, although Jaffe testified that he has only been paid twice under the agreement.¹³ The Analyst Agreement further provides that “[a]ny customers seen by Jaffe shall at all times remain solely customers of Woodgroup.”

Compton testified that Jaffe entered into the Analyst Agreement so that he could provide services to Woodgroup pending approval of the Application. Compton stated that Jaffe’s services as an analyst included making stock recommendations to Woodgroup so that it could use Jaffe’s analyses to advise its customers (which included Jaffe’s former customers that were

¹³ Jaffe initially testified that he was paid for these services by Woodgroup (as expressly set forth in the Analyst Agreement), but later stated that the registered investment adviser that Wood was associated with (and Jaffe was briefly associated with) paid him and that “he was never paid a dime” from any interactions with customers. Compton, however, testified that he believed that the commissions and fees Wood earned were paid to her by the Firm and the investment adviser she was registered with, and she would then transfer those funds to Woodgroup to pay office expenses, overhead, and salaries. On this point, and given what is required by the Analyst Agreement, we credit Compton’s testimony.

being serviced by Wood and others).¹⁴ Compton testified that he received advice from a lawyer that Jaffe, while statutorily disqualified, could speak with his former customers about stock recommendations so long as he did not direct them on what they should do in their personal accounts and sent them to another Firm registered representative if the customer wanted to act or had questions.¹⁵

Similarly, Jaffe testified that he talked with lawyers and FINRA staff about what he could do as a statutorily disqualified individual, and they told him that:

I was not permitted to, you know, do my day-to-day business with my clients, I was not allowed to buy and sell securities for them. I was allowed to form an opinion, come up with investment ideas and give them to the people that were working with my former clients . . . And if—if a client, a former client was to come in the office or to get ahold of me somewhere, you know, out for dinner or whatever, I was not allowed to, you know, ask them to buy anything or sell anything; and I was never allowed to be paid for any of it. . . . [S]o they also said they believed that I was allowed, you know, to give investment advice. And if I did happen to, you know, come in contact with a client, be very, very careful, because if you give somebody advice and it turns out wrong, you're shot.

Jaffe further testified that he came into Woodgroup's office daily (the same office shared by JFSI and the Firm as its Indianapolis branch office), and occasionally (i.e., approximately three to four times per week) interacted with his former customers by speaking with them on the telephone. He also would meet in person with them once or twice per month.¹⁶ Jaffe stated that they "would stop in [the office] and bring something, you know, make cookies or bring something in and say hello." Although Jaffe stated that he tried to limit the topics of conversation with his customers to general discussions of the market and stocks, sometimes the

¹⁴ Compton testified that as an analyst, Jaffe would produce lists of recommended securities to everyone in the office, and would sometimes conduct meetings to review those lists and his research. Compton further testified that the July 25, 2016 email from an administrative assistant at the Firm is an example of a meeting where Jaffe shared his research and recommendations with the office. The record shows that, in addition to Jaffe providing his recommendations and research to Woodgroup personnel, he provided his recommendations and advice directly to his former customers.

¹⁵ Although Compton repeated this advice several times during his testimony, he also testified that he had discussions with the Firm regarding what role Jaffe could play and he stated that the Firm told him that Jaffe, "as a non-registered person, [] would not be allowed to meet with his previous clients or advise [them] or registered personnel on stock investments or market direction."

¹⁶ Compton stated that every two to three weeks he witnessed Jaffe communicating with a customer.

conversations would get more specific. Jaffe testified that he had “no qualms” about telling a former customer that something was a good buy if asked, and that a number of his former customers are friends. Jaffe explained that “I’m not soliciting people, I’m not entering transactions, and I’m not asking them to buy or sell anything.” Finally, Jaffe testified that he did not use his Firm email account, and believed that someone in the office would check the account. Jaffe could not recall if he ever replied directly to an email sent to his Firm email address, but believed he probably had not.

D. The Firm

The Firm is based in Oceanside, California, and it has been a FINRA member since February 2002. The Firm has two OSJs—its main office and its Indianapolis office, which also serves as the Firm’s only branch office. The Application states that the Firm employs 11 registered representatives and three registered principals. The Firm states that it is a retail broker-dealer and retail municipal securities dealer. The Firm does not employ any other individuals subject to statutory disqualification.

1. Regulatory Actions

In November 2014, FINRA fined the Firm \$2,500 pursuant to a Minor Rule Violation Letter for Order Audit Trail System reporting violations.

2. Routine Examinations

In July 2014, FINRA issued the Firm a Cautionary Action. FINRA cited the Firm for failing to maintain evidence of its review of approved outside business activities. FINRA also cited the Firm for accepting and failing to return customer checks payable to the Firm notwithstanding its status as an introducing broker-dealer, in violation of Exchange Act rules and its written supervisory procedures (“WSPs”). The Firm responded in writing that it corrected the deficiencies noted in the Cautionary Action.

In August 2012, FINRA issued the Firm a Cautionary Action. FINRA cited the Firm for: failing to timely update a registered representative’s Form U4; failing to review FinCEN 314(a) requests; and failing to maintain documentation of the facts and circumstances surrounding errors listed on the Firm’s error account statements. The Firm responded in writing that it corrected the deficiencies noted. The examination underlying the August 2012 Cautionary Action also resulted in a Compliance Conference with regard to the following deficiencies: issues concerning the supervision of Helmle; failure of a qualified options principal to review Helmle’s options activity; and the Firm’s failure to return customer checks that were made payable to the Firm and Helmle’s alteration of two customer checks as an accommodation to the customer.¹⁷

¹⁷ Member Regulation also asserts that since 2011, the Firm has settled several customer complaints.

V. Jaffe's Proposed Business Activities and Supervision

A. Jaffe's Proposed Business Activities

The Firm proposes to employ Jaffe at the Firm's Indianapolis branch office. This is the same location where Jaffe has operated JFSI and conducted business through various broker-dealers since 2006. The Firm represents that Jaffe will work as a general securities representative and will be compensated on a commission basis.

B. Jaffe's Proposed Supervisors

The Firm proposes that Jaffe will be supervised on-site primarily by Compton. He currently supervises two other registered representatives (Wood and Sarah Stewart ("Stewart")), and serves as the branch manager of the Firm's Indianapolis office. As described above, he was until recently an employee of JFSI, and he is currently paid at least a portion of his salary by JFSI. Compton started working with Jaffe in October 2014 at their prior firm, and Jaffe and Wood hired Compton as an employee of JFSI sometime thereafter.

Compton has been with the Firm since December 2015, and was previously associated with nine other firms. He first registered as an investment company and variable products representative in October 1988, as a general securities representative in March 1990, as a general securities sales supervisor (Series 8) in April 1995, as a general securities principal in August 2006, and as a municipal securities principal in April 2010. Compton also passed the uniform securities agent state law exam in September 1988 and the uniform combined state law exam in June 2012. The record shows that Compton has no disciplinary or regulatory history.

In the Application, the Firm further proposes that when Compton is out of the office, Stewart will supervise Jaffe on-site. She currently supervises one other registered representative, and 10% of her salary is paid by JFSI. Stewart serves as JFSI's operations manager. She has been with the Firm since December 2015, and was previously associated with three other firms. She first registered as a general securities representative in January 2001 and a general securities principal in March 2005. She also passed the uniform combined state law exam in April 2001. The record shows that Stewart has no disciplinary or regulatory history.

C. The Firm's Proposed Heightened Supervisory Plan

The Firm submitted the following proposed heightened plan of supervision:

1. The written supervisory procedures for the Firm will be amended to state that Compton is the primary supervisor of Jaffe.
2. Jaffe will not act in a supervisory capacity.
3. When Jaffe is in the office, he will be supervised by Compton in the Firm's branch office located at 500 East 96th Street, Ste. 455, Indianapolis, Indiana 46240.

4. Jaffe will provide a copy of his most recent credit report from one of three major credit reporting agencies (Experian, Equifax or Trans Union) to the Firm's home office every four months. The credit report will be reviewed by the home office compliance staff to ensure that any potentially disclosable events, such as liens or bankruptcies, are properly disclosed in a timely manner by submitting a [Form] U4 amendment to FINRA.
5. The branch office at 500 East 96th Street, Ste. 455, Indianapolis, Indiana 46240 will be subject to two branch office audits by home office compliance staff annually for compliance with [the Firm's] written supervisory procedures.
6. On an annual basis, Jaffe will participate in the Firm's compliance meeting. One of the components of the annual compliance meeting is the importance of prompt disclosure of any liens that need to be reported on a registered representative's [Form] U4.
7. Jaffe's immediate supervisor, Compton[,] will meet with Jaffe on or about the first business day of each month to review the accuracy of the disclosures in Jaffe's Form U4. If any amendments are necessary, Compton will confirm they are made timely.

VI. Member Regulation's Recommendation

Member Regulation recommends that the Application be denied, because in its view: (1) Jaffe engaged in intervening misconduct by failing to disclose the Additional Lien and by associating with the Firm without first being approved to do so by FINRA; (2) the Firm has demonstrated that it cannot supervise Jaffe; and (3) the Firm has failed to propose adequate supervisors and an adequate heightened supervisory plan.

VII. Discussion

We have carefully considered the entire record in this matter. Based on this record, and pursuant to the SEC's controlling decisions in this area, we deny the Firm's Application to employ Jaffe as a general securities representative. We find that Jaffe has engaged in two distinct areas of serious misconduct since the 2015 AWC, which by themselves warrant denial of the Application. Our concerns regarding the independence of Jaffe's proposed supervisors and the Firm's inadequate proposed supervisory plan further support denial of the Application.

A. The Legal Standards

We recognize that, in connection with the 2015 AWC, FINRA's Department of Enforcement ("Enforcement") weighed the gravity of Jaffe's failure to disclose the 2015 AWC Liens. Enforcement concluded that a 60 business-day suspension and \$15,000 fine were appropriate sanctions for Jaffe's misconduct. Jaffe served this suspension and paid the fine in full. In such circumstances, the SEC has instructed FINRA to evaluate a statutory disqualification application pursuant to the standards enunciated in the SEC's decisions in *Paul*

Van Dusen, 47 S.E.C. 668 (1981), and *Arthur H. Ross*, 50 S.E.C. 1082 (1992). See *May Capital Group, LLC* (hereinafter “*Rokeach*”), Exchange Act Release No. 53796, 2006 SEC LEXIS 1068, at *21 (May 12, 2006) (holding that FINRA must apply *Van Dusen* standards to the membership continuance applications of statutorily disqualified individuals whose disqualifications resulted from FINRA enforcement actions).

Van Dusen and *Rokeach* provide that in situations where an individual’s misconduct has already been addressed by the SEC or FINRA, and sanctions have been imposed for such misconduct, FINRA should not consider the individual’s underlying misconduct when it evaluates a statutory disqualification application. The SEC stated that when the period of time specified in the sanction has passed, in the absence of “new information reflecting adversely on [the applicant’s] ability to function in his proposed employment in a manner consonant with the public interest,” it is inconsistent with the remedial purposes of the Exchange Act and unfair to deny an application for re-entry. *Van Dusen*, 47 S.E.C. at 671.

The SEC also noted in *Van Dusen*, however, that an applicant’s re-entry is not “to be granted automatically” after the expiration of a given time period. *Id.* Instead, the SEC instructed FINRA to consider other factors, such as: (1) “other misconduct in which the applicant may have engaged;” (2) “the nature and disciplinary history of a prospective employer;” and (3) “the supervision to be accorded the applicant.” *Id.* Further, in *Ross*, the SEC established a narrow exception to the rule that FINRA confine its analysis to “new information.” 50 S.E.C. at 1085. The SEC stated that FINRA could consider the conduct underlying a disqualifying order if an applicant’s later misconduct was so similar that it formed a “significant pattern.” *Id.* at 1085 n.10; see also *Mitchell T. Toland*, Exchange Act Release No. 73664, 2014 SEC LEXIS 4724, at *26 n.38 (Nov. 21, 2014) (holding that, in connection with statutorily disqualified individual’s failure to disclose liens subsequent to executing an AWC with FINRA for a failure to disclose his personal bankruptcy, the NAC would have been justified in relying on his original misconduct as part of a pattern).

B. Application of the *Van Dusen* Standards

After applying the *Van Dusen* standards to this matter, we find that the Firm has failed to show that, “despite the disqualification, it is in the public interest to permit the requested employment.” See *Tannenbaum*, 50 S.E.C. at 1140. Based upon our review of the entire record in this matter, we find that the Application should be denied because Jaffe’s association with the Firm would create an unreasonable risk of harm to the market or investors.

1. Jaffe’s Additional Failure to Disclose the Additional Lien

The parties do not dispute that Jaffe did not timely disclose on his Form U4 the Additional Lien. Jaffe disclosed the Additional Lien, which he learned about in December 2015, approximately nine months later in September 2016.

Jaffe, as a registered representative and principal, was responsible for knowing the rules of the securities industry and for timely updating his Form U4. See, e.g., *Robert E. Kauffman*, 51 S.E.C. 838, 840 (1993) (“Every person submitting registration documents [to FINRA] has the obligation to ensure that the information printed therein is true and accurate.”), *aff’d*, 40 F.3d

1240 (3d Cir. 1994) (table); *see also Toland*, 2014 SEC LEXIS 4724, at *24 (stressing the “critical importance of an associated person’s accurate disclosure on his Form U4, and the material risks that such inaccurate disclosure conceals”). Every associated person must keep his Form U4 current at all times. *See* FINRA By-Laws, Article V, Section 2(c); FINRA Rule 1122. The SEC has emphasized that Form U4 “is critical to the effectiveness of the screening process used to determine who may enter (and remain in) the industry. It ultimately serves as a means of protecting the investing public.” *See Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *25-26 (Nov. 9, 2012). A registered representative’s financial problems “raise concerns about whether [he] could responsibly manage his own financial affairs, and ultimately cast doubt on his ability to provide trustworthy financial advice and services to investors relying on him to act on their behalf as a securities industry professional.” *Id.* at *32.

Notwithstanding Jaffe’s undisputed obligation to keep his Form U4 current, Jaffe failed to disclose the Additional Lien to the Firm and failed to keep his Form U4 current. We reject Jaffe’s claimed defenses for failing to timely update his Form U4 to reflect the Additional Lien. For example, Jaffe claimed that at the time he became aware of the Additional Lien in December 2015, he was not associated with a member firm and he could therefore not update his Form U4. Jaffe, however, did not disclose to the Firm the Additional Lien when the Firm filed the Application and filed a Form U4 for Jaffe in March 2016, at which time his Form U4 could have been updated. Jaffe’s assertion that he did not review his Form U4 at that time, even if true, does not absolve him from liability for this disclosure failure. At a minimum, and given Jaffe’s 25 years in the industry, Jaffe should have inquired about the status of his registration and his Form U4 and should have notified the Firm of the Additional Lien’s existence. Further, Jaffe’s argument that he believed that the IRS filed the Additional Lien in error does not serve to mitigate his disclosure failure. Even if Jaffe believed that he did not owe the IRS any additional money and that it mistakenly filed the Additional Lien against him, it is undisputed that a substantial lien was in fact filed against him and he should have disclosed this matter on his Form U4.

Given that Jaffe’s failure to disclose the 2015 AWC Liens led to a suspension, fine, and ultimately these proceedings, we are troubled that even after entry of the 2015 AWC, Jaffe again omitted important information from his Form U4. This is particularly true given that Jaffe had actual knowledge of the December 2015 IRS lien, and Compton and the Firm knew about the Additional Lien after FINRA notified them of the lien in July 2016. Jaffe’s continuous and ongoing neglect with respect to his disclosure obligations raise serious doubts that he is able, or willing, to comply with securities rules and regulations. Jaffe’s additional disclosure failure completely undercuts statements in the Application that he “has acknowledged and understands the importance of promptly reporting disclosable events to his broker dealer in the future.” Indeed, we find that Jaffe’s disclosure failures demonstrate a troubling pattern. *See Ross*, 50 S.E.C. at 1085; *Toland*, 2014 SEC LEXIS 4724, at *26 n.38; *Timothy H. Emerson Jr.*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, at *16 (July 17, 2009) (holding that an individual’s failure to comply with FINRA’s disclosure rules “raises questions about his ability to maintain his obligations under the securities laws”). The serious nature of Jaffe’s original failures to disclose the 2015 AWC Liens (consisting of 11 liens totaling approximately \$923,000), coupled with his subsequent failure to timely disclose the Additional Lien,

demonstrate a pattern by Jaffe of disregarding his disclosure obligations under FINRA's rules and weigh heavily against approving the Application.

2. Jaffe Improperly Associated with the Firm

We also find that Jaffe engaged in serious misconduct after entry of the 2015 AWC by improperly associating with the Firm while the Application was pending.¹⁸

Jaffe, as a statutorily disqualified individual, was not permitted to associate with the Firm until FINRA approved the Application. *See* FINRA's By-Laws, Art. III. Sec. 3 (providing that, "[n]o person shall become associated with a member . . . if such person is or becomes subject to a disqualification." FINRA has stated that "a person who is subject to disqualification may not associate with a FINRA member in **any capacity** unless and until approved in an Eligibility Proceeding." *See Statutory Disqualification Process, available at* <http://www.finra.org/industry/statutory-disqualification-process>; *see also* FINRA Rule 8311 (providing that "[i]f a person is subject to a suspension, revocation, cancellation of registration, bar from association with a member (each a 'sanction') or other disqualification, a member shall not allow such person to be associated with it in any capacity that is inconsistent with the sanction imposed or disqualified status, including a clerical or ministerial capacity"). Indeed, FINRA notified the Firm—in December 2015 and again in March 2016—that "as a disqualified person, Mr. Jaffe must immediately cease all activities related to his association with your firm unless and until approved in an Eligibility Proceeding."

FINRA's By-Laws define a "person associated with a member" or "associated person of a member" as "a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration" with FINRA. *See* FINRA By-Laws, Article I(rr). FINRA has interpreted the meaning of an associated person broadly. *See Dist. Bus. Conduct Comm. v. Paramount Invs. Int'l, Inc.*, Complaint No. C3A940048, 1995 NASD Discip. LEXIS 248, at *12 (NASD NBCC Oct. 20, 1995). We have previously denied an application for an individual to associate with a member firm notwithstanding his statutory disqualification where the individual improperly associated with the firm prior to FINRA's approval of the firm's MC-400. *See In the Matter of the Association of X as a General Securities Representative*, Redacted Decision No. SD11001 (FINRA NAC 2011), *available at* http://www.finra.org/sites/default/files/NACDecision/p126105_0_0.pdf (the "2011 NAC Decision").

In the 2011 NAC Decision, the NAC found that the disqualified individual improperly associated with his firm prior to approval and denied the firm's application. The NAC found that

¹⁸ Given our findings, we need not also decide whether Jaffe violated the term of his suspension under the 2015 AWC by entering into the Independent Contractor and Registered Representative Agreement with the Firm, as alleged by Member Regulation.

the disqualified individual's former customers were transferred to another representative at the firm, and that, among other things, the disqualified individual regularly communicated with his former customers in an effort to maintain their accounts at his sponsoring firm. The disqualified individual testified that he would not discuss securities trades or concerns regarding a customer's account and that if such issues arose during his conversations he would transfer the call to the other registered representative. The disqualified individual also came to the firm every day during business hours, and received loans from the sponsoring firm. The NAC found that at a minimum, the disqualified individual facilitated activity in customers' accounts, engaged in clerical or ministerial functions in connection with the firm's securities business, and thus improperly associated with the firm. *See* 2011 NAC Decision, at 12-14. The NAC held that this misconduct was a serious violation of FINRA's rules and demonstrated the potential for future regulatory problems. *See* 2011 NAC Decision, at 15-16.

Under the facts and circumstances of this case, we find that for at least nine months Jaffe improperly associated with the Firm as a statutorily disqualified individual and that this misconduct was serious. *See Paramount*, 1995 NASD Discip. LEXIS 248, at *25 (stating that "the association of the statutorily disqualified person with a member firm is one of the most serious regulatory violations"); *see also Leslie Arouh*, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at *59 (Sept. 13, 2010) (affirming denial of firm's MC-400 where a disqualified individual improperly associated with the firm as a principal while subject to a bar order, which constituted "serious intervening misconduct"). Instead of avoiding any association with the Firm, Jaffe constantly communicated with the Firm and his former customers. Jaffe came into the Firm's Indianapolis office (shared by JFSI and Woodgroup) daily, and he regularly met with registered Firm personnel in the office to discuss securities and his recommendations. He also admittedly communicated regularly and met in person with his former customers (many who were Jaffe's long-time customers and all who held their accounts at the Firm). During communications with former customers, he would sometimes discuss securities and share his advice and opinions about securities and the market. The Firm issued Jaffe a Firm email account, and although Jaffe testified that he did not recall personally using the account he believed that others were checking the account (which appeared to lead to customer meetings with Jaffe and subsequent securities transactions). The record also shows that Jaffe was paid, at least in part and while the formal agreement with Woodgroup has been in place, from commissions earned by Wood on securities transactions with Firm customers and paid through Woodgroup (and that Jaffe has been receiving payments indirectly from Woodgroup in the form of its payment of 90% of JFSI's costs and expenses). These factors demonstrate that Jaffe was engaged in the Firm's securities business as an associated person. *See* 2011 NAC Decision.

Moreover, documents in the record show that Jaffe sometimes was much more intimately involved with specific securities transactions in his former customers' accounts. At times, Jaffe discussed specific securities, his outlook on those securities, and he admittedly had "no qualms" about giving specific advice to former customers if they asked him. Jaffe's claims that he was not directly soliciting these customers, not directly entering their orders, and was not giving advice on the specific number of shares a former customer should buy or sell—even if true—do

not alter our conclusion that he improperly associated with the Firm while disqualified.¹⁹ At a minimum, Jaffe facilitated securities activities in his former customers' accounts, and he did so more extensively than the disqualified individual in the 2011 NAC Decision. In sum, the totality of the record shows that Jaffe never fully stopped conducting his securities business while this proceeding has been pending. Under these facts, we find that Jaffe clearly crossed the line and acted as an associated person of the Firm notwithstanding his statutory disqualification.

We are also troubled that the Firm and Compton permitted Jaffe to improperly associate with it while the Application remained pending. FINRA warned the Firm twice that Jaffe, as a disqualified person, could not associate with the Firm. Both Compton and Helmle, however, disavowed any obligation to ensure that Jaffe complied with securities rules and regulations while the Application was pending (other than the obligation to ensure that Jaffe did not engage in any activity that required registration, which as described above they failed to do). Instead, Helmle argued that FINRA was not helpful throughout this proceeding and the Firm had never before been involved in an eligibility proceeding. These facts, even if true, do not abdicate the Firm's responsibilities to comply with securities rules and regulations. *See* 2011 NAC Decision, at 13-14 (rejecting firm's argument that improper association with a disqualified individual was unintentional and resulted from the firm's inexperience with a statutorily disqualified individual, and holding that intent is not necessary to demonstrate that a statutorily disqualified individual improperly associated with a firm); *Paramount*, 1995 NASD Discip. LEXIS 248, at *24 (holding that respondents' failure to ensure that disqualified individual did not associate with the firm in any capacity "represents a breach of an important regulatory requirement, for which a claim of 'mere negligence' is wholly unavailing as a defense").

Finally, Compton and Jaffe testified that they sought the advice of various attorneys and regulators regarding what Jaffe could do as an analyst for Woodgroup. We interpret this testimony as a claim that they relied upon the advice of counsel in determining the parameters surrounding Jaffe's disqualification. We reject this argument. As an initial matter, reliance on counsel's advice does not excuse misconduct in a case such as this where scienter is not an element. *See Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141,

¹⁹ We also reject Jaffe's claim that his activities did not constitute impermissibly associating with the Firm because he did not tell his former customers to buy or sell particular stocks. First, the record shows that Jaffe did, at least indirectly, tell his customers to buy or sell when they asked for Jaffe's advice. For example, with respect to the email in the record dated May 19, 2016, in which a former customer recaps his telephone conversation with Jaffe about purchasing shares in Yahoo and selling his shares in Weight Watchers, Jaffe claimed that the customer asked if Jaffe thought these transactions were "ok." Jaffe testified that he told the customer that these transactions were "a perfectly good thing to do," which he believed was not telling the customer to buy or sell. Jaffe's tacit approval of these securities transactions, even if he did not use the words "buy" or "sell," is readily apparent. Moreover, even assuming that Jaffe's purported reply to this customer and others did not—at least directly—constitute advising his customer what to do in a particular situation, Jaffe's activities up to that point clearly crossed the line and constituted impermissibly associating with the Firm while disqualified.

at *39 (Nov. 14, 2008), *aff'd*, 347 F. App'x 692 (2d Cir. 2009); 2011 NAC Decision, at 13-14. Moreover, neither Compton nor Jaffe, through their general testimony that they reached out to several attorneys and FINRA staff, has shown that they reasonably relied upon counsel's advice in this case. *See Arouh*, 2010 SEC LEXIS 2977, at *52 (providing that to successfully assert such defense, a respondent must show that he made full disclosure to counsel, sought to obtain relevant legal advice, obtained such advice, and then reasonably relied on such advice that respondent must describe with specificity). Further, the record does not show that either Compton or Jaffe disclosed to these advisers the extent to which Jaffe would be involved with his former customers and their ongoing securities transactions.

3. Supervisory Conflicts and Heightened Supervisory Plan

Finally, we have concerns about whether Jaffe's proposed supervisors can provide the stringent supervision required of a statutorily disqualified individual. *See Timothy P. Pedregon*, Exchange Act Release No. 61791, 2010 SEC LEXIS 1164, at *27 (Mar. 26, 2010) (holding that an applicant must establish that it will be able to stringently supervise a statutorily disqualified individual).

We are troubled that Compton and Stewart receive at least a portion of their compensation from Jaffe via JFSI (and, until recently, received 90% of their compensation from JFSI). This arrangement presents, at a minimum, the potential for conflicts.²⁰ "This is particularly true in the context of a statutorily disqualified individual, where stringent supervision free of any conflicts of interest between the supervised individual and his supervisor (and, in turn, firm management) is of the utmost importance." *See In the Matter of the Continued Association of Ronald Berman with Axiom Capital Management, Inc.*, SD 1997, slip op. at 17 (FINRA NAC Dec. 11, 2014), *available at* <http://www.finra.org/industry/decisions>; *see also* FINRA Rule 3110(b)(6)(C) (providing that a firm's supervisory procedures shall include, among other things, provisions prohibiting associated persons who perform supervisory functions from reporting to, or having their compensation or continued employment determined by, a person or persons they are supervising, and that if a firm determines that compliance with this provision is not possible because of the firm's size or a supervisory person's position within the firm, the member must document the factors used to reach such determination and how the supervisory arrangement with respect to such supervisory personnel otherwise complies with FINRA Rule 3110(a)). The Firm has not addressed these potential conflicts, and has not demonstrated that either Compton or Stewart possess the independence necessary to stringently supervise Jaffe as a statutorily disqualified individual. Under the circumstances, we find that this factor weighs against approving the Application.

²⁰ Compton testified that Jaffe hired him and could, in conjunction with Wood, fire him. The Office Agreement provides that Compton is now an employee of Woodgroup and it has ultimately responsibility for all personnel matters (including hiring, firing, and compensation). Wood, however, must consult with Jaffe prior to any such decision.

We further find that the Firm's proposed heightened supervisory plan is woefully short on detail, and lacks certain basic provisions that we expect in a supervisory plan for a statutorily disqualified individual. See *Nicholas S. Savva and Hunter Scott Financial, LLC*, Exchange Act Release No. 72485, 2014 SEC LEXIS 2270, at *63 (June 26, 2014) (affirming FINRA's denial of an application to employ a statutorily disqualified individual where the proposed plan was "skeletal" and finding that "the proposed plan did not contain provisions sufficient to ensure that Hunter Scott properly supervised Savva"). For example, the plan contains no provisions concerning monitoring Jaffe's emails, or provisions concerning customer complaints. The absence of provisions governing these matters is particularly troubling given: (1) Compton's testimony at the hearing that he had not been reviewing emails of representatives in the Indiana branch office, in contravention of the Firm's WSPs and Helmle's testimony that he believed that Compton was reviewing emails of representatives in the Indiana branch office; and (2) Jaffe's lengthy history of customer complaints.²¹ The proposed plan also fails to explicitly designate Stewart as Jaffe's alternate supervisor in the event that Compton is out of the office. We generally agree with Member Regulation that the provisions in the proposed heightened supervisory plan designed to prevent future failures to disclose by Jaffe are lacking and that the Firm has not provided for documentation of its compliance with the plan.²²

²¹ In the supplemental brief, the Firm and Jaffe assert that because the heightened supervisory plan requires Jaffe to meet with Compton monthly to review the accuracy of Jaffe's Form U4, we "should take great comfort in the fact that this heightened supervision procedure will address the only regulatory concern that was the subject of the prior AWC." For the reasons stated herein, we find that even with this provision (which depends solely upon Jaffe, who has proven himself to be unable to timely make required disclosures), the Firm's plan falls short.

²² Were we otherwise inclined to approve this Application, which we are not, we would have given the Firm an opportunity to cure the numerous deficiencies in its proposed heightened supervisory plan. Moreover, while we recognize that the Firm has relatively little formal regulatory history, we find that the other factors discussed herein (i.e., Jaffe's serious intervening misconduct, as well as our concerns regarding Jaffe's proposed supervisors) outweigh the Firm's lack of disciplinary history.

VIII. Conclusion

In sum, we find that Jaffe's pattern of failing to disclose matters on his Form U4, including an additional disclosure failure unrelated to the 2015 AWC, as well as his improper and extensive association with the Firm while statutorily disqualified, demonstrate that he is currently unable to show that he can comply with FINRA's rules and regulations. Moreover, our concerns with Jaffe's proposed supervisors, and questions concerning the Firm's ability to adequately supervise Jaffe pursuant to a stringent plan of supervision, weigh heavily against approving the Application. Accordingly, we find that it is not in the public interest, and would create an unreasonable risk of harm to the market or investors, for Jaffe to associate with the Firm as a general securities representative. We therefore deny the Application.

On Behalf of the National Adjudicatory Council,

Marcia E. Asquith
Senior Vice President and Corporate Secretary