

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Membership
of

RBC Capital Markets, LLC

with

FINRA

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

SD-1794

January 31, 2014

I. Introduction

On August 5, 2009, RBC Capital Markets, LLC (“the Firm”) filed a Membership Continuance Application (“MC-400A” or “the Application”) with FINRA’s Department of Registration and Disclosure.¹ The Application seeks to permit the Firm, a FINRA member firm subject to a statutory disqualification, to continue its membership with FINRA. A hearing was not held in this matter. Rather, pursuant to FINRA Rule 9523, FINRA’s Department of Member Regulation (“Member Regulation”) recommended that the Chair of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council, approve the Firm’s continued membership with FINRA pursuant to the terms and conditions set forth below.

For the reasons explained below, we approve the Firm’s Application.

II. The Statutorily Disqualifying Event Underlying the Application

The Firm filed the Application in connection with a statutorily disqualifying judgment entered by the United States District Court for the Southern District of New York on June 4, 2009 (the “Judgment”). The Judgment, among other things, permanently enjoined the Firm from violating Section 15(c) of the Securities Exchange Act of 1934 (“Exchange Act”) and was based on a complaint issued by the Commission alleging that the Firm, in 2007 and 2008, misled customers regarding the nature and risks of auction rate securities (“ARS”) that the Firm underwrote, marketed, and sold.² The complaint further alleged that the Firm misrepresented to

¹ RBC Capital Markets Corporation terminated its FINRA membership and merged into RBC Capital Markets, LLC, on March 14, 2008.

² Exchange Act Sections 3(a)(39) and 15(b)(4)(C) provide that a member firm is subject to statutory disqualification if it is enjoined by order, judgment, or decision of any court of competent jurisdiction from, among other things, engaging in any conduct or practice in

[Footnote continued on next page]

its customers that ARS were safe, highly liquid investments and comparable to money market funds. The complaint also alleged that, after the ARS market began to deteriorate, the Firm increased its support of ARS by committing its own capital to help prevent those auctions from failing and, although the Firm knew that the risk of failed auctions had materially increased, it did not timely and accurately disclose this information to its customers. The complaint alleged that, when the Firm stopped supporting ARS auctions and the markets subsequently failed, many customers were left with illiquid, long-term maturity ARS.

The Judgment, which the Firm consented to, required the Firm to comply with certain undertakings, including making offers to repurchase at par certain ARS from customers and paying customers who sold their ARS below par the difference between par and the sale price of the ARS. In connection with the Judgment, the Firm repurchased at par \$759 million of ARS from customers, and it was required to use “best efforts” to provide liquidity opportunities to its institutional customers. In June 2010, the Commission determined that the Firm had complied with the terms of the Judgment and that the Commission would not seek additional penalties against the Firm.³

III. Background Information

The Firm has been a FINRA member since 1993. The Firm has approximately 284 branch offices, 233 of which are offices of supervisory jurisdiction (“OSJs”). The Firm employs approximately 5,332 registered individuals and approximately 3,068 non-registered individuals.

The Firm has several past disciplinary infractions. Member Regulation has represented that, notwithstanding the Firm’s disciplinary and regulatory history, it satisfies the standard for continued membership in FINRA. As discussed below, we agree.

A. Recent Routine Examinations

The 2013 FINRA cycle examination of the Firm is in progress.

On June 6, 2013, as a result of the Firm’s 2012 cycle examination, FINRA issued the Firm a Cautionary Action. FINRA cited the Firm for the following violations: (1) failing to accurately and timely report municipal securities transactions; (2) inaccurately filing customer complaints; (3) failing to accurately calculate net capital; (4) failing to maintain adequate written procedures to comply with the fail to deliver closeout process; and (5) failing to maintain an

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connection with any activity as a broker or dealer, or in connection with the purchase or sale of any security.

³ Member Regulation also represents that the Firm executed settlement agreements with 46 state regulatory authorities in connection with the Firm’s misconduct related to ARS.

adequate process to govern shelf-registered and other control and restricted securities. The Firm stated that it had corrected or was in the process of addressing the deficiencies in the Cautionary Action.

On May 8, 2012, as a result of the Firm's 2011 cycle examination, FINRA issued the Firm a Cautionary Action. FINRA cited the Firm for the following violations: (1) failing to maintain complete and accurate books and records; (2) failing to accurately compute customer reserves; and (3) failing to timely file and acknowledge customer complaints. The Firm stated that it had corrected or was in the process of addressing the deficiencies in the Cautionary Action.

B. Recent Regulatory Actions

The following summarizes notable regulatory actions against the Firm during the past two years.⁴

In September 2013, the Firm entered into settlements with the Texas State Securities Board and the State of Illinois Securities Department as part of a larger multi-state settlement. These settlements resulted from allegations that certain of the Firm's associates were not appropriately licensed, in accordance with applicable state laws, and for the Firm's failure to establish and enforce an adequate system to monitor the licensing status of its employees.⁵ As a result, the Firm was fined \$236,035 by the Texas State Securities Board and \$137,970 by the Illinois Securities Department, and it undertook to establish policies, procedures and systems to reasonably supervise the trade process so that the Firm accepts only client orders that originate from jurisdictions where the employee who accepts the order is appropriately licensed.

In March 2013, without admitting or denying the allegations, the Firm consented to an order by the New Jersey Bureau of Securities for its failure to follow its own procedures with respect to monthly account reviews, failure to reasonably supervise its agents, and failure to maintain copies of monthly account reviews. As a result, the Firm was ordered to disgorge \$300,000 and fined \$150,000 (of which \$100,000 was suspended due to the Firm's extensive cooperation).

In July 2012, the Firm entered into a Letter of Acceptance, Waiver and Consent ("AWC") with FINRA for violations of Exchange Act Rules 15c3-1, 15c3-3, 17a-3, and 17a-5, FINRA

⁴ We agree with Member Regulation's focus on the Firm's regulatory actions that occurred between November 2011 and November 2013 and resulted in fines of \$100,000 or more. We discuss these matters herein.

⁵ FINRA's Central Registration Depository ("CRD"®) indicates that as of mid-November 2013, the Firm entered into settlements with state regulatory authorities totaling approximately \$2.8 million in connection with this misconduct.

Rule 2010, NASD Rules 2110 and 3010, and NYSE Rules 416(a) and 440.20. Without admitting or denying the allegations, the Firm consented to findings that it failed to reconcile its accounts after merging its institutional firm with its affiliated retail firm (which resulted in customer reserve, net capital, recordkeeping and supervisory violations). As a result, FINRA censured the Firm and fined it \$250,000.

In May 2012, the Firm entered into an AWC with FINRA for violations of FINRA Rules 1122 and 2010 and NASD Rules 2110 and 3010. Without admitting or denying the allegations, the Firm consented to findings that it failed to establish and maintain a supervisory system reasonably designed to achieve compliance with applicable rules and regulations concerning short-term transactions in closed-end funds. As a result, FINRA censured the Firm, fined it \$200,000 and ordered it to pay partial restitution to a customer totaling \$70,000.

In November 2011, the Firm entered into an AWC with FINRA for violations of Exchange Act Rule 17a-3, FINRA Rules 2010, 6622(a), 6730, and 7230(d)(4), NASD Rules 2110, 2111(a), 2320, 3110, and 6230, and MSRB Rules G-14 and G-15. Without admitting or denying the allegations, the Firm consented to findings that it failed to timely and accurately report to FINRA's Trade Reporting and Compliance Engine ("TRACE") block transactions in TRACE-eligible securities. The Firm also failed to properly report to the Real Time Transaction Reporting System information regarding purchase and sale transactions effected in municipal securities. Finally, the Firm failed to transmit to the OTC Reporting Facility last sale reports of transactions in OTC Equity Securities. As a result, FINRA censured the Firm, fined it \$125,000, and ordered it to pay \$242, plus interest, in restitution to investors.

IV. The Firm's Proposed Continued Membership with FINRA and Proposed Supervisory Plan

The Firm seeks to continue its membership with FINRA notwithstanding the Judgment. Although the Firm has represented that its ARS business activities decreased to negligible levels after the Commission's action, the Firm included a supervisory plan with the Application to address deficiencies relating to the underlying cause of the statutory disqualification. The plan discusses a number of measures that the Firm represents it has undertaken in connection with the events underlying the statutory disqualification.

The supervisory plan sets forth the following general categories in which the Firm represents it has undertaken significant efforts to enhance its compliance and supervision: (1) global and regional governance; (2) new products and new business processes; (3) surveillance; (4) training; and (5) client-facing disclosures.

Specifically, and with respect to governance, the Firm represents that it created the Capital Markets Operating Committee (which establishes, monitors, and maintains strategy, performance goals, and risk management of the organization on a global level) and the Capital Markets Global Businesses (which are charged with aligning business execution to strategy and operating as the first line of defense in the safety, soundness, and risk management practices of the organization). The Firm also established the Administration and Initiative Review Committee (which is charged

with ensuring alignment, prioritization, and budgeting of business, administrative, infrastructure, and control activities to support Capital Markets' strategic priorities by establishing and maintaining firm-wide standards and policies, common systems and processes, and an effective control environment). The Firm represents that it also created a regional governance model similar to the global model that has been adapted to account for regional differences in the Firm's business or jurisdictional regulatory requirements.

With respect to new products and new business processes, the Firm represents that it has made significant changes to its new business and new product approval processes at both the global level and at the Firm level. At the global level, the Firm's parent company adopted the RBC Enterprise Product Risk Review and Approval Policy ("Enterprise Policy"), which outlines the initial and subsequent risk review, approval process, and responsibilities of internal stakeholder groups that manage and support the risk review and approval process. The Firm represents that the Enterprise Policy has been enhanced to manage risk more effectively. The Firm expanded the scope of the product review to perform periodic reviews that track performance and progress of approved products. All products are reviewed within a three-year period after the initial risk review, though high risk products may be reviewed more frequently. At the Firm level, a committee was developed for each of the Wealth Management and Capital Markets Divisions to review all new lines of business or new investment products or services in order to ensure that operational, technology, legal, compliance, regulatory, and other risk issues are identified and addressed consistently. The committee for new products in the Wealth Management Division is charged with reviewing all new investment products, as well as products or services that provide or support financial advice. The committee for new products in the Capital Markets Division is charged with reviewing each newly proposed initiative using certain outlined criteria, including regulatory approvals, licensing issues, surveillance and suitability, among other things. The committee also conducts a post-review process to assess the status of the initiative within six to 12 months after it has been implemented.

With respect to surveillance, the Firm represents that it has implemented the initial phase of a multi-year global surveillance and monitoring project in support of the securities businesses of both the Capital Markets and Wealth Management Divisions. The Firm represents that the updated system provides more effective and consistent surveillance and monitoring across the organization for both fixed income and equities products. The Firm also updated its regional surveillance program procedures through the publication of a new Equity Surveillance Manual that provides step-by-step instructions for analysts who conduct surveillance reviews, allowing for more substantial reviews and findings.

With respect to training and client-facing disclosures, the Firm represents that it implemented training enhancements for all employees and supervisors within both the Wealth Management and Capital Markets Divisions, and that it has enhanced its client-facing disclosures on its public website for products and services. The Firm is now able to direct clients to a centralized resource for disclosures, which ensures that product-specific features, including applicable risks, are available to clients in connection with their investment decisions.

Member Regulation has represented that subsequent to any approval of the Firm's continued membership in FINRA notwithstanding its statutory disqualification, FINRA staff's first examination of the Firm will evaluate whether it has complied with the proposed plan as described herein. After the Firm's initial examination, FINRA will determine whether to subject the plan to further review, considering (among other things) FINRA's overall risk-based assessment of the Firm.

V. Discussion

Member Regulation recommends approval of the Firm's request to continue its membership in FINRA. After carefully reviewing the entire record in this matter, we approve the Firm's Application, subject to the terms and conditions set forth below.

In evaluating an application like this, we assess whether the statutorily disqualified firm seeking to continue its membership in FINRA has demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors. *See* FINRA By-Laws, Art. III, Sec. (3)(d); *cf. Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (holding that FINRA "may deny an application by a firm for association with a statutorily-disqualified individual if it determines that employment under the proposed plan would not be consistent with the public interest and the protection of investors"). Factors that bear on our assessment include the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, and whether there has been any intervening misconduct.

We recognize that the Judgment involved serious violations of securities rules and regulations. The Commission found, however, that the Firm has fully complied with all of the terms of the Judgment, including the various undertakings required of the Firm pursuant to the Judgment.⁶ The Firm also represents that its ARS business activities have decreased to negligible levels. The Firm further represents it has enhanced and updated its policies and procedures for the review, approval, and reappraisal of products (including ARS). The plan sets forth extensive provisions regarding, among other things, future sales of products to retail customers and additional training for Firm personnel concerning complex products. Moreover, the Firm has established organizations and procedures within the Firm to assess and evaluate the appropriateness of investment products and whether certain products may be offered to individual investors.

We further find that although the Firm has disciplinary history, the record shows that it has taken corrective actions to address noted deficiencies. Further, none of the recent regulatory events relate to ARS at the Firm and FINRA's examinations of the Firm since entry of the

⁶ We have also considered that the Commission, in connection with the Judgment, has granted the Firm's request for relief from disqualification from certain exemptions under the Securities Act of 1933 and the rules and regulations promulgated thereunder.

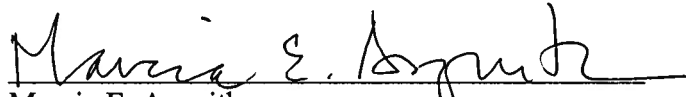
Judgment have not detected repeat violations in this area. We agree with Member Regulation that the Firm's disciplinary history should not prevent it from continuing as a FINRA member.

At this time, we are satisfied, based in part upon the Firm's representations concerning its compliance with the plan, Member Regulation's representations concerning FINRA's future monitoring of the firm, and the record currently before us, that the Firm's continued membership in FINRA is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors. Accordingly, we approve the Firm's Application to continue its membership in FINRA.

FINRA certifies that the Firm meets all qualification requirements and represents that it is registered with several other self-regulatory organizations, including BATS, BX, NYSE AMEX, NYSE, NYSE ARCA, CBOE, CHX, ISE, NSX, NQX, PHLX, DTC, NSCC, and FICC, which concur with the Firm's continued membership as described herein. The Firm also represents that it employs a number of individuals who are subject to a statutory disqualification.

Accordingly, we approve the Firm's Application to continue its membership in FINRA as set forth herein. In conformity with the provisions of SEC Rule 19h-1, the continued membership of the Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the Commission.

On Behalf of the National Adjudicatory Council,



Marcia E. Asquith
Senior Vice President and Corporate Secretary