

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of
the Continued Association of
Ronald B. Smith
as a
General Securities Representative
with
Professional Trading Services Brokerage,
LLC (d/b/a PTS Brokerage, LLC)

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

SD-2095

November 29, 2018

I. Introduction

On January 26, 2016, Professional Trading Services Brokerage, LLC (d/b/a/ PTS Brokerage, LLC) (the “Firm” or “PTS”) filed a Membership Continuance Application (“MC-400” or the “Application”) with FINRA’s Department of Registration and Disclosure (“RAD”). The Application seeks to permit Ronald B. Smith, a person subject to statutory disqualification, to continue to associate with the Firm as a general securities representative. A hearing was not held in this matter; rather, pursuant to FINRA Rule 9523(a), FINRA’s Department of Member Supervision (“Member Supervision”) recommended to the Chairperson of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council (“NAC”), that it approve Smith’s continued association with the Firm pursuant to the terms and conditions set forth below.¹

For the reasons explained below, we approve the Application to permit Smith to continue to associate with the Firm as a general securities representative.

¹ Member Supervision first recommended approving the Application in June 2017. It subsequently withdrew its recommendation so that it could investigate whether Smith engaged in an undisclosed outside business activity. Member Supervision concluded its investigation and found no evidence of misconduct. It again recommended that the NAC approve the Application pursuant to FINRA Rule 9523 in October 2018.

II. The Statutorily Disqualifying Event

Smith is statutorily disqualified due to FINRA's acceptance, on September 17, 2015, of a Letter of Acceptance, Waiver and Consent ("AWC"). The AWC found that Smith willfully failed to disclose on his Uniform Application for Securities Industry Registration or Transfer ("Form U4") three unsatisfied tax liens filed against him totaling approximately \$386,000.² The IRS and the Commonwealth of Pennsylvania each filed a lien in 2008, and the IRS filed another lien in 2012. FINRA suspended Smith for three months and fined him \$5,000. Smith has served his suspension and paid the fine in full.

In the Application, Smith states that he had been in discussions with the IRS and various tax agencies concerning income taxes that he owed, and he entered into formal repayment plans for the outstanding balances. He further states that he "was informed that it was standard protocol for a lien to be filed on my property until the repayment plan had been completed" and he neglected to inform the Firm of this arrangement and that the liens had been filed. Smith states that he now understands that he should have informed the Firm's compliance department of the liens and that he has learned "that no matter how embarrassing I thought that the situation was that it was a situation that my firm could have helped guided [sic] me through."

III. Background

A. Smith

Smith first registered as an investment company and variable contracts products limited representative in May 1994, and as a general securities representative in March 1999. He also passed the uniform securities agent state law examination in May 1994. Smith has been registered with the Firm since August 2004, and he was previously associated with five other firms.³

Other than the disqualifying AWC, CRD shows that in June 2016, and in connection with Smith's insurance business, an entity filed a civil action in a New Jersey state court against

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 FINRA's Central Registration Depository ("CRD"®) also indicates that Smith is an independent contractor for insurance sales and an insurance broker. He also works as an independent contractor selling employee benefits through another entity and as a mortgage loan originator.

Smith and several other defendants (including his spouse). The complaint alleged, among other things, that services rendered by Smith and a company his spouse owns charged excessive fees, made misrepresentations, engaged in conversion, breached their fiduciary duty and duty of good faith and fair dealing, and breached their contract. The defendants filed counterclaims against the plaintiff. The parties settled this matter in March 2018, and the defendants other than Smith agreed to pay \$50,000 to the plaintiff pursuant to a payment plan. Smith and certain other defendants, however, agreed to personally guarantee payment of the settlement.

The record shows no other disciplinary or regulatory proceedings, complaints, or arbitrations against Smith.⁴

B. The Firm

The Firm has been a FINRA member since August 2002 and is based in Mount Laurel, New Jersey. The Application states that the Firm maintains five branch offices and one Office of Supervisory Jurisdiction (“OSJ”), and employs four registered principals and 21 registered representatives. The Firm represents that it does not employ any other individuals subject to statutory disqualification.

The Firm has no formal disciplinary history.

FINRA completed its most recent cycle examination of the Firm in September 2015. The examination report found that the Firm failed to properly supervise the private securities transactions of one of its representatives and failed to properly conduct anti-money laundering testing. Prior to the examination’s conclusion, the Firm took corrective steps to address the exceptions cited in the examination report. Consequently, FINRA opted not to pursue formal action against the Firm.⁵

FINRA’s previous examination of the Firm, a Sales Practice, Financial/Operational, and

⁴ CRD lists approximately 12 liens, in addition to the three liens underlying the AWC, filed against Smith by the IRS, New Jersey, and Pennsylvania. These liens all arose prior to the AWC, and several were duplicative of other liens or were erroneously listed in CRD. CRD states that the remaining liens (as well as the liens underlying the disqualifying AWC) were satisfied. The record also shows that, although Smith did not timely disclose these additional liens, FINRA’s Department of Enforcement (“Enforcement”) was aware of these untimely reported liens at the time it entered into the AWC.

CRD also lists four additional liens filed against Smith by the IRS and the State of New Jersey from September 2017 through July 2018. Smith timely reported on his Form U4 three of these additional liens; Smith reported the fourth lien three days after the required reporting date. A payment plan is in place in connection with these liens.

⁵ This examination also resulted in a referral to Enforcement for Smith’s failure to timely disclose material information on his Form U4, which resulted in the AWC.

Municipal Securities examination, which concluded in July 2011, resulted in FINRA issuing the Firm a Cautionary Action for failing to update a registered representative's Form U4 to reflect a customer complaint and failing to detail every expense being shared by the Firm and its affiliate on the Firm's Expense Sharing Agreement. The Firm responded in writing that it corrected the deficiencies noted.

IV. Smith's Proposed Business Activities and Supervision

The Firm proposes that Smith will continue to work from the Firm's Mount Laurel, New Jersey office. The Firm represents that Smith's securities business

[I]s limited to the sale of annuity products, mutual funds, and certain advisory products where [the Firm] or a third party institution has discretionary authority over the underlying account; Smith himself is prohibited from exercising discretionary authority in any customer account. Smith's PTS business will be effected on an application-way basis, wherein customer checks will be made payable either to the applicable custodian or to the fund or insurance company itself.

Smith will be "paid commissions earned on any new sales written and any existing accounts on record."

The Firm also proposes that Richard Schank ("R. Schank"), the owner, president, and chief financial officer of PTS, will serve as Smith's primary supervisor at the Firm's Mount Laurel, New Jersey office. R. Schank currently supervises 19 individuals in his capacity as the Firm's president.

R. Schank first registered as, among other things, a general securities representative in August 1985 (and requalified in such capacity in October 1999), as a general securities principal in October 1999, as a financial and operations principal in May 2002, and as a municipal securities principal in September 2002. He also passed the state law uniform securities agent examination in October 1985 (and passed the examination again in October 1999). R. Schank has been associated with the Firm since October 2001, and he was previously associated with two firms.

CRD shows that R. Schank is involved in several other non-investment related businesses, including seasonal tax preparation, teaching insurance and securities pre-licensing courses, and sales of employer group benefits. R. Schank represented that he devotes approximately five hours per week during trading hours to these activities.

The record shows no disciplinary or regulatory proceedings, complaints, or arbitrations against R. Schank.

If R. Schank is on vacation or out of the office for an extended period of time, the Firm designated Jeremy Schank ("J. Schank") to serve as Smith's alternate, on-site supervisor. J. Schank is the Firm's co-chief compliance officer. He first registered as a general securities

representative in August 2009, as a general securities principal in March 2010, as a financial and operations principal in July 2010, as an operations professional in October 2011, and as a municipal securities principal in March 2012. He also passed the uniform combined state law examination in October 2009.

J. Shank has been associated with only the Firm, which he joined in August 2009. His CRD record reflects that he is involved in several non-investment related businesses, including seasonal tax preparation.

On June 3, 2010, J. Schank was charged with “felony second-degree eluding an officer.” The charge was subsequently amended to third-degree eluding and, upon successful completion of a municipal pre-trial intervention program, the charge was ultimately dismissed. The record shows no other disciplinary or regulatory proceedings, complaints, or arbitrations against J. Schank.

V. Member Supervision’s Recommendation

Member Supervision recommends approving the Firm’s request for Smith to continue to associate with the Firm as a general securities representative, subject to the terms and conditions of heightened supervision described below.

VI. Discussion

We have carefully considered the entire record in this matter. Based on this record, and pursuant to the Commission’s controlling decisions in this area, we approve the Firm’s Application to continue to employ Smith as a general securities representative, subject to the supervisory terms and conditions set forth below.

A. The Legal Standards

We acknowledge that Smith, as a registered representative, 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). 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.

We also recognize, however, that Enforcement weighed the gravity of Smith’s failures to disclose when it executed the AWC in September 2015. After considering Smith’s entire history in the securities industry, Enforcement concluded that a three-month suspension and \$5,000 fine

were appropriate sanctions for his misconduct. Smith served this suspension and paid the fine in full. In such circumstances, the Commission has instructed FINRA to evaluate a statutory disqualification application pursuant to the standards enunciated in the Commission's decisions in *Paul Edward 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 action).

Van Dusen and *Rokeach* thus provide that, in situations where an individual's misconduct has already been addressed by the Commission or FINRA, and certain sanctions have been imposed for such misconduct, FINRA should not consider the individual's underlying misconduct when it evaluates a statutory disqualification application. The Commission stated that 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 when the period of time specified in the sanction has passed. *Van Dusen*, 47 S.E.C. at 671.

The Commission 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 Commission 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 the prospective employer; and (3) the supervision to be accorded the applicant. *Id.*

B. Application of the *Van Dusen* Standards

After applying the *Van Dusen* standards to this matter, we have determined to approve the Firm's Application to continue to employ Smith.

First, the record does not show any customer complaints, regulatory actions, or criminal history since the AWC.⁶ Given the expiration of the suspension imposed upon Smith, and the teachings of *Van Dusen*, he is now permitted to seek re-entry to the securities industry.

⁶ As noted above, most of the liens filed against Smith listed in CRD pre-date the AWC, and the record shows that Enforcement was aware that Smith failed to disclose these liens in a timely fashion when it entered into the AWC. As also noted above, although Smith failed to timely disclose one lien on his Form U4 subsequent to the AWC, such untimely disclosure was only three days late. We agree with Member Supervision that this single event is not sufficiently material to support denying the Application. Further, the 2016 civil complaint filed against Smith was based upon allegations that pre-date the AWC and did not involve his securities business.

Second, the record shows that the Firm does not have any formal disciplinary history. The record further shows that, although FINRA noted several exceptions in connection with the Firm's past two examinations, the Firm corrected the deficiencies noted in those examinations. Moreover, as discussed below, the Firm has proposed that Smith will be subject to a comprehensive supervisory plan. We find nothing in the record to suggest that the Firm will be unable to provide the stringent supervision necessary for a statutorily disqualified individual such as Smith.

Third, based on the record before us, we find that the Firm's proposed plan of supervision is sufficiently stringent, comprehensive, and appropriately tailored to Smith's disqualifying event, and that the supervisors designated to administer the plan are capable of doing so. The primary designated supervisor, R. Schank, is well qualified, has been in the securities industry for more than 30 years, and the record shows that he has no disciplinary or regulatory history. Although R. Schank serves as the Firm's president and chief financial officer, and he engages in several outside business activities, Member Supervision represents that he has sufficient time to supervise Smith. Likewise, J. Schank, who also has a record without disciplinary or regulatory history, is sufficiently qualified and experienced to act as Smith's alternate supervisor.

We are satisfied that the following heightened supervisory procedures will enable the Firm to reasonably monitor Smith's activities on a regular basis:⁷

- *1. The written supervisory procedures for PTS will be amended to state that R. Schank is Smith's primary supervisor;
- *2. Smith will not act in a supervisory capacity;
- *3. Smith will work in, and be supervised from, the Firm's OSJ in Mount Laurel, New Jersey;
- *4. R. Schank will review and pre-approve all of Smith's PTS activity, which will be limited to the sale of annuity products, mutual funds, and certain advisory products where PTS or a third party institution has discretionary authority over the underlying account;
- 5. Smith is prohibited from exercising discretionary authority in any customer account;

⁷ An asterisk within the plan denotes heightened supervisory conditions that are not standard supervisory procedures for representatives of the Firm.

6. Smith's PTS business will be effected on an application-way basis, wherein customer checks will be made payable either to the applicable custodian or to the fund or insurance company itself. For each of these business activities, Smith will submit all completed applications, including any customer checks or other payable instruments, to R. Schank for his review and pre-approval. All account and transaction paperwork, including customer checks and other payable instruments, will be documented with signed and dated evidence of such review and pre-approval, and will be kept segregated for ease of review and maintained at the Firm's OSJ;
- *7. Smith may engage in non-securities related outside business activities including the sale of property/casualty, health, and life insurance products. However, prior to selling any new type of insurance product or engaging in any other outside business activity, Smith will disclose the product or activity to R. Schank for his review and approval, and also to ensure the product or activity does not constitute a "private securities transaction" as defined in FINRA Rule 3280. In either case, Smith must receive written approval from R. Schank prior to engaging in any private securities transaction or outside business activity, regardless of whether Smith has an expectation of receiving compensation. Records relating to such disclosures and reviews shall be kept segregated for ease of review and maintained at the Firm's OSJ;
8. For the purposes of electronic communication, Smith will only be allowed to use an email account that is held at the Firm. If Smith receives a business-related electronic communication in an account other than his Firm email account, he will immediately forward that message to his Firm and R. Schank's email accounts;
- *9. R. Schank will receive copies of all Smith's incoming and outgoing email correspondence. R. Schank will review all of Smith's emails on a daily basis. R. Schank will address any concerns to Smith. R. Schank will maintain a record of any concerns he notes from his review in a segregated file for ease of review at the Firm's OSJ;
- *10. R. Schank will review, prior to distribution, all incoming non-electronic correspondence addressed to or relating to Smith upon its arrival and will review all non-electronic outgoing correspondence from Smith before it is sent. R. Schank will document any concerns noted during the course of his review and segregate them for ease of review at the Firm's OSJ;
- *11. Smith will attend all Firm compliance meetings in person at the Firm's OSJ. Evidence of his in-person attendance will be documented and kept segregated for ease of review and maintained at the Firm's OSJ;
- *12. Smith will complete a Firm Element course each quarter, at least one of which per year must be related to registered representatives' regulatory

disclosure obligations. Smith will provide written evidence that he completed the Firm Element training and certify quarterly to the Firm's compliance department that he completed the required Firm Element training. R. Schank will maintain at the Firm's OSJ and keep segregated for ease of review the evidence of Smith's completion of such courses, as well as the certification of their completion;

- *13. R. Schank and Smith will meet quarterly in person to discuss any events that have occurred that would require disclosure on Smith's Form U4. On an annual basis, Smith will certify to the compliance department of the Firm that any such events have been disclosed;
- *14. R. Schank will conduct quarterly credit checks to monitor Smith's financial status using a third party vendor. All meeting documentation, the quarterly credit checks, and Smith's annual certifications will be kept segregated for ease of review and will be maintained at the Firm's OSJ;
- *15. In the event Smith defaults or otherwise breaches the terms of the Settlement Agreement dated March 23, 2018 in the matter *NWL, Inc. v. Ronald B. Smith, et al.*, R. Schank will immediately provide a detailed update to Lorraine Lee-Stepney, Manager, Statutory Disqualification Program, FINRA, at Lorraine.Lee@Finra.org;
- *16. If R. Schank is on vacation or out of the office for an extended period, J. Schank will act as Smith's interim supervisor;
- *17. All complaints pertaining to Smith, whether verbal or written, will be immediately referred to R. Schank for review, and then to the Firm's compliance department. R. Schank will prepare a memorandum to the file as to what measures were taken to investigate the merits of the complaints (e.g., contact with the customer) and the resolution of the matter. Documents pertaining to these complaints will be kept segregated for ease of review and maintained at the Firm's OSJ;
- *18. For the duration of Smith's statutory disqualification, the Firm must obtain prior approval from Member Supervision if it wishes to change Smith's primary supervisor from R. Schank to another person; and
- *19. R. Schank and Smith must certify quarterly (March 31, June 30, September 30, and December 31) to the Firm's compliance department that R. Schank and Smith are both in compliance with all of the above conditions of heightened supervision.

FINRA certifies that: (1) Smith meets all applicable requirements for the proposed employment; (2) the Firm is a member of the Municipal Securities Rulemaking Board; (3) the

Firm has represented that Smith is not related to R. Schank or J. Schank by blood or marriage; and (4) the Firm does not employ any other statutorily disqualified individuals.

VII. Conclusion

Accordingly, we approve the Firm's Application to continue to employ Smith as a general securities representative, subject to the above-mentioned heightened supervisory procedures. In conformity with the provisions of Exchange Act Rule 19h-1, the association of Smith with 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,

Jennifer Mitchell Piorko
Vice President and Deputy Corporate Secretary