

BEFORE THE NATIONAL ADJUDICATORY COUNCIL  
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Association  
of

Guy Wyser-Pratte

as a

General Securities Representative, General  
Securities Principal, and Operations  
Professional

with

Wyser-Pratte & Co., Inc.

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

SD-2148

March 7, 2019

I. Introduction

On February 13, 2017, Wyser-Pratte & Co., Inc. (the “Firm”) filed a Membership Continuance Application (the “Application”) with FINRA’s Department of Registration and Disclosure. The Application requests that FINRA permit Guy Wyser-Pratte (“Wyser-Pratte”), a person subject to statutory disqualification, to continue to associate with the Firm as a general securities representative, general securities principal, operations professional, and as the Firm’s chief executive officer. On September 20, 2018, a subcommittee (“Hearing Panel”) of FINRA’s Statutory Disqualification Committee held a hearing on the matter. Wyser-Pratte appeared and testified at the hearing, accompanied by counsel, Valentino Vasi, Esq. and Faith Colish, Esq. Wyser-Pratte’s proposed primary supervisor, Scott Principi (“Principi”), also appeared and testified at the hearing. Ann-Marie Mason, Esq., Deon McNeil-Lambkin, Esq., Ryan Smith, Esq., and Loraine Lee appeared on behalf of FINRA’s Department of Member Supervision (“Member Supervision”).

For the reasons explained below, we deny the Application.<sup>1</sup>

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<sup>1</sup> 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

Wyser-Pratte is statutorily disqualified because of an order issued by the Autorite des Marches Financiers' Sanctions Committee ("AMF") on July 25, 2013 (the "Disqualifying Order").<sup>2</sup> The Disqualifying Order found that from June 2010 to August 2010, Wyser-Pratte used non-public information to acquire shares in an entity, Electricity and Water of Madagascar ("EEM"), in connection with EEM's early conclusion of an agreement to sell hotels in Vietnam. The Disqualifying Order found that Wyser-Pratte violated French law prohibiting the use of non-public information to buy or sell financial instruments to which the non-public information relates. The AMF rejected Wyser-Pratte's various arguments that he did not violate French law, found that his improper use of non-public information was "particularly serious," and found that he and his companies realized a financial gain of €30,000 as a result of his misconduct. The AMF fined Wyser-Pratte €1.3 million.

Wyser-Pratte appealed the Disqualifying Order to the Appeals Court of Paris, which affirmed the Disqualifying Order in January 2015. Wyser-Pratte then appealed to La Cour de Cassation (which is the court of last resort in France). That body rejected Wyser-Pratte's appeal in a July 2018 decision. Wyser-Pratte has appealed the Disqualifying Order to the European Union Court of Human Rights. On appeal, Wyser-Pratte argues that, among other things, La Cour de Cassation failed to refer a preliminary question to the Court of Justice of the European Union so that it could define non-public information. Wyser-Pratte asserts that this failure deprived him of a fair trial. This appeal is pending.

In the Application and at the hearing, Wyser-Pratte denied any wrongdoing in connection with this matter. The Application states that Wyser-Pratte acquired shares of EEM for his investment adviser clients, and did so based upon widely discussed rumors and publicly available information that EEM was interested in selling its hotels. He further testified that he "attack[s] a lot of companies in France. They don't like what I do."

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<sup>2</sup> Article III, Section 4 of FINRA's By-Laws incorporates by reference the definition of "statutory disqualification" set forth in Section 3(a)(39) of the Securities Exchange Act of 1934 ("Exchange Act"). In turn, Exchange Act Section 3(a)(39) incorporates Exchange Act Section 15(b)(4)(G)(ii), which provides that a person is statutorily disqualified if he:

[H]as been found by a foreign financial regulatory authority to have . . . violated any foreign statute or regulation regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade[.]” 15 U.S.C. § 78o(b)(4)(G)(ii).

The AMF is a foreign financial regulatory authority that regulates participants and products in France's financial markets. Although Wyser-Pratte and the Firm initially disputed that the Disqualifying Order rendered Wyser-Pratte statutorily disqualified, at the hearing they conceded that it did.

### III. Factual Background

#### A. Wyser-Pratte

Wyser-Pratte qualified as a general securities representative in June 1971 and as a general securities principal in February 1973. He also registered as an operations professional in December 2011. He has been associated with the Firm since January 1991, although as described below, he is currently serving a six-month suspension in all capacities for failing to disclose the Disqualifying Order on his Uniform Application for Securities Industry Registration or Transfer (“Form U4”).<sup>3</sup> *See infra* Part III.D.1. Prior to the start of his suspension, Wyser-Pratte continued to be associated with the Firm pending resolution of the Application, although he testified that he was spending all of his time working on investment adviser activities through his registered investment adviser, Wyser-Pratte Management Co., Inc. (“WPM”).<sup>4</sup> *See infra* Part III.C.

FINRA’s Central Registration Depository (“CRD”®) lists the following outside business activities for Wyser-Pratte: (1) Kuka U.S. Holding Company LLC, a non-investment related entity dealing in robotics development and manufacturing. Wyser-Pratte serves as an advisory manager, and devotes approximately one hour per month to this activity; (2) Viktoria Invest, SA (the successor in interest to EEM), an investment related holding company in Paris that invests in casinos, hotels, real estate, and paper. Wyser-Pratte serves as president of the board of this entity and devotes approximately 12 hours per month to this activity; (3) Crowfields LLC, an entity located in Bedford, New York that serves as the lessee to a restaurant. Wyser-Pratte is a member of this entity and devotes approximately 30 hours per month to this activity; and (4) Marine Corps University Foundation, Inc. Wyser-Pratte serves as the chairperson of the finance committee and devotes approximately four hours per month to this activity.

#### B. The Firm

Wyser-Pratte founded the Firm in 1991. Wyser-Pratte is the Firm’s sole owner, and he served as the Firm’s chief executive officer until January 2017.<sup>5</sup> The Firm is based in Bedford, New York, and it has one office of supervisory jurisdiction. The Firm employs three registered principals, one registered representative, and five employees. It does not employ any other statutorily disqualified individuals.

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<sup>3</sup> Prior to associating with the Firm, Wyser-Pratte was associated with four firms.

<sup>4</sup> Wyser-Pratte’s continued association with the Firm prior to the start of his suspension is consistent with FINRA’s interpretation of Article III, Section 3(c) of FINRA’s By-Laws, permitting individuals who become statutorily disqualified while they are employed to continue working pending the outcome of the statutory disqualification process.

<sup>5</sup> If the Application is approved, Wyser-Pratte will resume his position as the Firm’s chief executive officer. *See infra* Part IV.

The Application describes the Firm's business as "effecting orders for customers in securities traded in secondary markets [and] private placements of interests in hedge funds managed by WPM." At the hearing, Wyser-Pratte testified that although the Firm currently mostly executes orders emanating from WPM, if the Application is approved, he and the Firm might solicit broker-dealer clients. The Firm does not have retail customers.

C. WPM

Wyser-Pratte founded WPM in 1992. He owns WPM and serves as its chief executive officer. All of the Firm's employees also work for WPM. Wyser-Pratte testified that his investment adviser business generally involves two activities: merger arbitrage and corporate activism. Wyser-Pratte stated that his arbitrage business involves "taking positions in announced transactions and assessing the risk of completion of a transaction vis-à-vis the possibilities of failure." He invests his own funds, as well as the funds of others for a management fee, in connection with his arbitrage activities. With respect to his activities as a corporate activist, Wyser-Pratte testified that he seeks situations where investors are at a disadvantage and tries to rectify the situation by becoming involved with the company's management to enhance shareholder value.<sup>6</sup>

D. Other Regulatory and Disciplinary Matters against Wyser-Pratte and the Firm

1. Failure to Disclose the Disqualifying Order

On January 30, 2019, FINRA accepted a Letter of Acceptance, Waiver and Consent ("AWC") from Wyser-Pratte for violations of FINRA Rules 1122 and 2010 and Article V, Section 2(c) of FINRA's By-Laws. Without admitting or denying the allegations, Wyser-Pratte consented to findings that he willfully failed to disclose on his Form U4 the Disqualifying Order. Wyser-Pratte did not disclose the Disqualifying Order until mid-November 2016 (more than three years late), because he believed it was not final based upon consultations with a compliance consultant, his attorneys, and the Firm's auditor.

Wyser-Pratte agreed to a suspension in all capacities for six months and a \$9,000 fine. Wyser-Pratte's counsel represents that Wyser-Pratte has paid the fine in full, and Wyser-Pratte's suspension runs from February 19, 2019 until August 18, 2019. The AWC also renders Wyser-Pratte statutorily disqualified.<sup>7</sup>

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<sup>6</sup> Wyser-Pratte's activities with respect to EEM are an example of his corporate activism. In the Application, Wyser-Pratte states that his role as a corporate activist "often results in my becoming a target of recalcitrant company management, and in some countries, regulators who are influenced by or biased in favor of entrenched management."

<sup>7</sup> See 15 U.S.C. § 78c(a)(39)(F) (providing 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). The Firm requested that we consider Wyser-Pratte's

## 2. SEC Order

In May 2001, the SEC entered an order against Wyser-Pratte, the Firm, and WPM (the “SEC Order”). The SEC Order found that Wyser-Pratte willfully aided and abetted, and was a cause of the Firm’s and WPM’s willful violations of, Exchange Act Section 15(f) and Section 204A of the Investment Advisers Act of 1940 (the “Advisers Act”).<sup>8</sup> Specifically, the SEC Order found that respondents engaged in merger arbitrage and in investment initiatives involving companies where Wyser-Pratte and his firms pursued changes in the companies’ governance. These activities often involved contacts between Wyser-Pratte and various market participants and individuals in possession of material nonpublic information. The SEC Order stated, “Wyser-Pratte’s contacts with such market participants, and his control over all trading activities at [the Firm and WPM], coupled with the failure of [the Firm and WPM] to establish adequate policies and procedures relating to material nonpublic information, created an identifiable potential for the misuse of such information.”

The SEC Order found that the supervisory procedures of the Firm and WPM were inadequate given the nature of their businesses, and failed to “take into account the central position of Wyser-Pratte” as owner of the Firm and WPM and as the decision-maker concerning trading at the firms and all investment initiatives. The SEC found:

It was a foreseeable consequence of such participation, in particular the interaction with other market participants, that Wyser-Pratte would be exposed regularly to persons in possession of material nonpublic information concerning issuers targeted for such initiatives. Notwithstanding his dual role, Wyser-Pratte was not subject to any procedures other than the general requirement to self-evaluate information that came to his attention and to refrain from trading that would violate the law.

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disqualification as a result of the AWC as part of this proceeding, and if we permit him to continue to associate with the Firm in connection with the Disqualifying Order, that we also permit him to continue to associate with the Firm notwithstanding his most recent statutory disqualification and upon completion of his six-month suspension. Because we deny the Application concerning the Disqualifying Order, the Firm’s request is moot.

<sup>8</sup> The relevant Exchange Act provision is now Section 15(g), which provides that “[e]very registered broker or dealer shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such broker’s or dealer’s business, to prevent the misuse in violation of this title, or the rules or regulations thereunder, of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer.” See 15 U.S.C. § 78o(g).

The SEC further noted that Wyser-Pratte had directed trading relating to an issuer after being exposed to persons with material non-public information concerning that issuer.

For this misconduct, the SEC ordered that Wyser-Pratte cease and desist any violations and future violations of the applicable statutes, censured him, fined him \$50,000, and ordered that he comply with various undertakings (including hiring an independent consultant to review the Firm's and WPM's policies and practices). The SEC also censured the Firm and WPM and ordered that they each pay a \$200,000 civil penalty.<sup>9</sup>

### 3. Other Actions Against the Firm

In April 2001, FINRA accepted an AWC from the Firm for violations of NASD Rules 2110, 3010, and 4632. The Firm consented to findings that it failed to timely and accurately submit reports of transactions, and that its supervisory procedures and systems did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations. FINRA censured the Firm and fined it \$7,500.

In June 1999, the Commission des Operations de Bourse fined the Firm \$16,000 in connection with allegations that it notified the issuer, but not the public, of a change of intention not to make a tender offer, and failed to file daily reports of transactions under French law.

### 4. FINRA Examination Results

On May 11, 2017, FINRA issued the Firm a Cautionary Action in connection with its 2016 examination. FINRA cited the firm for: failing to timely report to FINRA the Disqualifying Order; failing to maintain a current and complete expense sharing agreement; failing to properly accrue expenses and offsetting liabilities on its general ledger and failing to properly account for liabilities on FOCUS reports; and maintaining inadequate written supervisory procedures ("WSPs") relating to outside business activities. The Firm responded in writing that it corrected the deficiencies noted in the Cautionary Action.

On June 6, 2012, FINRA issued the Firm a Cautionary Action in connection with its 2012 examination. FINRA cited the Firm for: failing to identify in its WSPs that the Firm's compliance consultant is responsible for reviewing the Firm's electronic correspondence and to adequately ensure that correspondence in foreign languages complies with FINRA's rules

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<sup>9</sup> The SEC Order also rendered Wyser-Pratte and the Firm statutorily disqualified under the Exchange Act. *See* Exchange Act Section 3(a)(39)(F), incorporating Exchange Act Sections 15(b)(4)(D) and (E) (providing that an individual or firm is statutorily disqualified if they have willfully violated, among other things, the Exchange Act or the Advisers Act, or have willfully aided, abetted, counseled, commanded, induced, or procured the violation by any person of, among other things, the Exchange Act or the Advisers Act). Wyser-Pratte and the Firm, however, were not required to undergo an eligibility proceeding in connection with the SEC Order because at the time it was entered, FINRA's definition of statutory disqualification did not include violations of Exchange Act Sections 15(b)(4)(D) or (E).

concerning communications with the public; failing to prepare and maintain annual certifications; and failing to timely amend Wyser-Pratte's Form U4 to include an outside business activity. The Firm responded in writing that it corrected the deficiencies noted in the Cautionary Action.

IV. Wyser-Pratte's Proposed Business Activities

Subject to Wyser-Pratte's six-month suspension in all capacities, the Firm proposes that it will continue to employ Wyser-Pratte as a general securities representative, general securities principal, and operations professional at the Firm's Bedford, New York office. If the Application is approved, Wyser-Pratte will also resume his role as the Firm's chief executive officer, and in such capacity, he will "supervise the activities of the Firm's registered representatives, including trade execution, sales, and marketing." Wyser-Pratte will continue to receive a salary and an annual discretionary bonus.

V. Wyser-Pratte's Proposed Supervision

A. Proposed Supervisors

1. Primary Supervisor Scott Principi

The Firm proposes that Scott Principi ("Principi"), the Firm's current chief executive officer and chief compliance officer, will supervise Wyser-Pratte at its home office.<sup>10</sup> Principi has been with the Firm since January 2007, when Wyser-Pratte hired him. Principi first registered as a general securities representative in June 2005, as an equity trader limited representative in April 2007, as an options principal in August 2016, and as a general securities principal in April 2017. Principi also passed the uniform securities agent state law examination in April 2007, and is registered as a securities trader and operations professional. Principi has been associated with two other firms, and he currently is also employed by WPM. Wyser-Pratte supervises Principi's activities at WPM.

Principi currently supervises four other individuals (Wyser-Pratte's alternate supervisor, Wyser-Pratte's son, and two administrative personnel). The record shows no disciplinary or regulatory proceedings, complaints, or arbitrations against Principi.

2. Alternate Supervisor

The Firm proposes that Howard Spindel ("Spindel"), the Firm's financial and operations principal ("FINOP") and chief financial officer, will serve as Wyser-Pratte's alternate supervisor

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<sup>10</sup> Principi testified that an outside compliance consultant helps him with his duties. He stated that she visits the Firm's office several times a month for a few hours at a time.

from remote locations.<sup>11</sup> The Firm further states that Principi will be “supported and assisted” by Spindel and that supervision of Wyser-Pratte will be “collaborative.” Spindel first registered as a FINOP in March 1980, as a general securities representative in May 1980, as a general securities principal in June 1982, as a registered options principal in March 1997, and as a securities trader representative in March 2000. He also passed the uniform securities agent state law examination in March 1990.

Spindel has been associated with the Firm since June 2007, and he is currently associated with 23 other member firms. Spindel serves as an alternate supervisor for a disqualified individual at one of those firms. Member Supervision represents that Spindel has been previously associated with approximately 121 firms. Spindel supervises one other individual at the Firm.

Spindel also engages in the following outside business activities: director at Engex, Inc., a closed-end mutual fund (one hour per month); director at Pharma-bio Services, Inc. (less than five hours per month); and board member of Oak Tree Educational Partners, Inc. (less than five hours per month).

CRD shows that in August 2001, a FINRA Hearing Panel found that Spindel violated NASD Rule 2110 for causing his member firm to conduct a securities business while in net capital deficiency. The Hearing Panel fined Spindel \$2,500.

CRD also shows that in March 2015, Spindel disclosed five tax liens totaling \$87,860, filed by the State of New York and New York City Department of Finance, from April 2006 to April 2012. Spindel learned of the liens and of his obligation to disclose those liens when FINRA brought them to his attention in March 2015.

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

#### B. The Firm’s Proposed Heightened Supervisory Plan

The Firm submitted the following proposed heightened supervisory plan with the Application:

1. Wyser-Pratte will continue to be based at the Firm’s main office (its only office) in Bedford, New York.

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<sup>11</sup> The Firm represents that Spindel resides in Florida and that his company has offices in New York City, New Jersey, and Boca Raton, Florida. He divides his time during the week among these locations, as well as client offices.



2. Principi will normally be present in the Firm's main office during business hours. Spindel will be in regular telephone, email, and Skype contact with Wyser-Pratte and Principi throughout the day. Spindel will visit the main office when and if necessary.
3. Principi will review each securities account owned or managed by Wyser-Pratte, including accounts of his immediate family, and accounts controlled by any of them. Any new accounts will require the approval of Principi and Spindel. Principi will document his review and action on these accounts by maintaining a record in the Firm's main office that includes their signature, the date(s) of their review, and the action taken, if any. He will email these reviews to Spindel.
4. Principi, with the aid of a compliance consultant, Pam Rockley of Compliance Directives, LLC, will review, at a minimum, 25% of Wyser-Pratte's incoming and outgoing written correspondence (which includes email communications) on a weekly basis. He will document this review through the Firm's retention platform, SilverSky/BAE Systems. SilverSky/BAE Systems automatically documents with a digital fingerprint e-mail and attachments that have been reviewed. Principi and Spindel will each have access to all emails sent and received by Wyser-Pratte.
5. On a monthly basis, Principi will obtain from Wyser-Pratte verification of the circumstances of any of his outside business activities. He will review Wyser-Pratte's appointment log to substantiate this verification. Principi and Spindel will each have access to Wyser-Pratte's appointment log.
6. Both Principi and Spindel will have full access to Wyser-Pratte's calendar and schedule of appointments. Wyser-Pratte will notify Principi and Spindel regarding any shareholder activist initiatives he intends to engage in.
7. Principi and Spindel will consult on a weekly basis to discuss the implementation of this heightened supervisory plan.
8. When Principi is unavailable to carry out the heightened supervisory responsibilities for an extended period, Spindel, the alternate supervisor, with the aid of Ms. Rockley, will perform the heightened review of Wyser-Pratte's activities and will report to the other supervisor by email.
9. Any complaints pertaining to Wyser-Pratte, whether oral or written, will be immediately referred to Principi and Spindel for review, who will prepare a memorandum of the measures taken to investigate the merits of the complaint (e.g., contact with the customer) and the resolution of the matter. Documents pertaining to these complaints will be kept in a separate file for ease of review.
10. For the duration of Wyser-Pratte's statutory disqualification, the Firm will notify FINRA's Member Supervision Department if it changes the primary supervisor responsible for heightened review of his activities or the alternate supervisor.

11. Principi will prepare a certificate on a quarterly basis (March 31, June 30, September 30, and December 31) confirming that he and Wyser-Pratte are in compliance with all of the foregoing conditions of heightened supervision of Wyser-Pratte. This certificate will be maintained in the files of the Firm.

## VI. Member Supervision's Recommendation

Member Supervision recommends that the Application be denied because, among other things: (1) the recent Disqualifying Order involves serious misconduct and Wyser-Pratte engaged in similar misconduct in connection with the SEC Order; (2) the proposed heightened supervisory plan is inadequate; and (3) Wyser-Pratte's proposed supervisors are not suitable or equipped to stringently supervise Wyser-Pratte, the Firm's owner.

## VII. Discussion

In evaluating an application like this, we assess whether the sponsoring firm has demonstrated that the proposed association of the statutorily disqualified individual is in the public interest and does not create an unreasonable risk of harm to the market or investors. *See Continued Ass'n of X*, Redacted Decision No. SD06002, slip op. at 5 (NASD NAC 2006), [http://www.finra.org/sites/default/files/NACDecision/p036476\\_0.pdf](http://www.finra.org/sites/default/files/NACDecision/p036476_0.pdf); *see also Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (holding that FINRA "may deny an application by a firm for association with a statutorily-disqualified individual if it determines that employment under the proposed plan would not be consistent with the public interest and the protection of investors"); FINRA By-Laws, Art. III, Sec. 3(d) (providing that FINRA may approve association of statutorily disqualified person if such approval is consistent with the public interest and the protection of investors).

Factors that bear upon our assessment include the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, the totality of regulatory history, and the potential for future regulatory problems. We also consider whether the sponsoring firm has demonstrated that it understands the need for, and has the capability to provide, adequate supervision over the statutorily disqualified person. The sponsoring firm has the burden of demonstrating that the proposed association is in the public interest despite the disqualification. *See Timothy P. Pedregon, Jr.*, Exchange Act Release No. 61791, 2010 SEC LEXIS 1164, at \*16 & n.17 (Mar. 26, 2010).

After carefully reviewing the record in this matter, we find that the Firm has failed to demonstrate that Wyser-Pratte's proposed continued association with the Firm is in the public interest. The Firm has not demonstrated that it is capable of stringently supervising Wyser-Pratte. Principi lacks sufficient supervisory experience to supervise an industry veteran such as Wyser-Pratte, especially considering that Wyser-Pratte owns the Firm. The Firm's proposed heightened supervisory plan is also deficient in numerous regards. Finally, the seriousness of the misconduct underlying the Disqualifying Order, and the supervisory violations underlying the SEC Order, further support our denial.

A. The Firm Has Not Demonstrated that It Can Stringently Supervise Wyser-Pratte

The Firm has the burden to demonstrate that it is capable of providing stringent supervision to a statutorily disqualified individual such as Wyser-Pratte. *See Timothy H. Emerson Jr.*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, at \*18 (July 17, 2009) (holding that an applicant must establish that it will be able to stringently supervise a statutorily disqualified individual). The Commission has held that it is “especially difficult” to supervise a statutorily disqualified owner of a firm. *See, e.g., Bruce Zipper*, Exchange Act Release No. 84334, 2018 SEC LEXIS 2709, at \*21 (Oct. 1, 2018); *Asensio & Co.*, Exchange Act Release No. 68505, 2012 SEC LEXIS 3954, at \*28 (Dec. 12, 2012).

The Firm has failed to show that it can stringently supervise Wyser-Pratte. First, we find that Principi lacks the necessary supervisory experience to supervise Wyser-Pratte. Principi has been a general securities principal since only April 2017, and he testified that he has no prior supervisory experience. *See Robert J. Escobio*, Exchange Act Release No. 83501, 2018 SEC LEXIS 1512, at \*19-20 (June 22, 2018) (affirming NAC’s denial of MC-400 application where proposed supervisor lacked direct supervisory experience); *Morton Kantrowitz*, 55 S.E.C. 98, 102 (2001) (“In determining whether to permit the employment of a statutorily disqualified person, the quality of the supervision to be accorded that person is of the utmost importance. We have made it clear that such persons must be subject to stringent oversight by supervisors who are fully qualified to implement the necessary controls.”); *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), [http://www.finra.org/sites/default/files/Berman%20SD-1997%20FINAL%2019%28d%29%20DECISION%2012%2011%2014\\_0\\_0\\_0\\_0\\_0\\_0\\_0\\_0\\_0.pdf](http://www.finra.org/sites/default/files/Berman%20SD-1997%20FINAL%2019%28d%29%20DECISION%2012%2011%2014_0_0_0_0_0_0_0_0_0.pdf) (finding that proposed supervisor’s lack of experience directly supervising an individual was “problematic in the context of supervising a statutorily disqualified individual”). Principi’s lack of experience is especially concerning when compared to Wyser-Pratte’s 47 years in the industry. *See id.* (finding that proposed supervisor’s lack of experience “is exacerbated by Berman’s many years in the industry and importance to [the firm] as one of its largest producers”).<sup>12</sup>

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<sup>12</sup> The fact that Spindel, who has significant industry experience, is available to assist Principi with his supervisory duties does not assuage our concerns with Principi’s lack of experience. The Firm does not specifically state exactly how Spindel will “support and assist” Principi. Nor does it explain how its outside consultant will aid Spindel. Further, Spindel will be located off-site, and he currently has responsibilities with numerous other firms. *See Escobio*, 2018 SEC LEXIS 1512, at \*23 (affirming denial of MC-400 application based upon, among other things, alternate supervisor’s proposed remote supervision); *The Continued Association of Gabriel Block with First Standard Financial Company, LLC*, SD-2137, 2018 FINRA Discip. LEXIS 8, at \*44 (FINRA NAC Mar. 13, 2018) (denying application based upon, among other things, alternate supervisor’s proposed remote supervision of disqualified individual and firm’s failure to demonstrate that supervisor “currently has the bandwidth to provide stringent supervision as an alternate supervisor and to provide general oversight of [primary supervisor’s] compliance with the heightened supervisory plan”). For similar reasons, Principi’s monthly

Second, the Firm has not demonstrated that, under the circumstances, Principi possesses the independence to effectively supervise Wyser-Pratte. *See Escobio*, 2018 SEC LEXIS 1512, at \*21 (“stringent supervision free of any conflicts of interest between the supervised [disqualified] individual and his supervisor (and, in turn, firm management) is of the utmost importance”). Wyser-Pratte testified that he hired Principi (as an assistant trader and analyst) at a time when Principi was new to the industry. Until recently, Wyser-Pratte supervised Principi’s activities at the Firm (a role he continues at WPM). Indeed, it appears that Wyser-Pratte will resume his role as Principi’s supervisor at the Firm if we approve this Application, and Wyser-Pratte exercises control over the Firm as its sole owner and founder regardless of whether he resumes his supervision of Principi. *See Zipper*, 2018 SEC LEXIS 2709, at \*21 (emphasizing that it is difficult for an employee to supervise the owner of a firm “because owners will almost certainly continue to exercise control over the firm’s operations”); *Asensio*, 2012 SEC LEXIS 3954, at \*28 (“This problem is exacerbated if the owner of the firm continues to serve in executive capacities, such as the firm’s president, that are responsible for the firm’s compliance with regulatory requirements and rules.”).<sup>13</sup>

Third, we find that the proposed heightened supervisory plan is inadequate. *See Zipper*, 2018 SEC LEXIS 2709, at \*37 (stating that an inadequate supervisory plan may serve as a basis to deny an MC-400 application); *Kufrovich*, 55 S.E.C. at 628 (affirming denial of application where FINRA found plan to be inadequate and addressed explicitly the plan’s shortcomings); *William J. Haberman*, 53 S.E.C. 1024, 1031 (1998) (affirming denial of MC-400 application where FINRA found supervisory plan inadequate and stating “[w]e require . . . stringent supervision for a person subject to a statutory disqualification”). The plan does not contain any provisions specifically addressing Wyser-Pratte’s misconduct underlying the Disqualifying Order. *See In the Matter of the Continued Ass’n of Kimberly Springsteen Abbott*, SD-2132, slip op. at 15 (FINRA NAC May 24, 2018), [http://www.finra.org/sites/default/files/NAC\\_SD-](http://www.finra.org/sites/default/files/NAC_SD-)

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meetings with a compliance consultant and access to legal counsel for any compliance or supervisory issues do not outweigh, or make up for, our concerns with Principi’s inexperience.

<sup>13</sup> Illustrating our concerns, the Firm states that Wyser-Pratte is recognized as a leader in the fields of corporate activism and merger arbitrage, and Wyser-Pratte testified that Principi has on his desk a book Wyser-Pratte wrote on merger arbitrage (which Wyser-Pratte characterized as the “bible in the merger arbitrage business”). Although both Wyser-Pratte and Principi testified that Principi will not be a mere “rubber stamp” for Wyser-Pratte’s activities at the Firm, the Firm has not convinced us that under the circumstances and given Principi’s inexperience, Principi will be capable of independently and effectively supervising Wyser-Pratte as the disqualified owner of the Firm and the industry expert who appears to have trained Principi. *See Jeffrey Roy Brooks*, 52 S.E.C. 138, 141-42 (1995) (affirming denial of application based upon proposed supervisor’s lack of experience and independence where disqualified individual previously employed proposed supervisor and hired him as a new college graduate and disqualified individual was a significant source of proposed supervisor’s income).

2132\_Kimberly-Springsteen-Abbott\_052418\_0.pdf (finding proposed plan inadequate where it did not reflect the gravity of misconduct underlying disqualifying event), *appeal docketed*, SEC Admin. Proceeding No. 3-18854 (June 21, 2018).

Moreover, a number of the plan's provisions lack specificity.<sup>14</sup> *See Escobio*, 2018 SEC LEXIS 1512, at \*24 (“We have previously found that supervisory plans that . . . lack[] detail are insufficient.”). For example, the plan provides that Spindel “will be in regular telephone, email, and Skype contact with Wyser-Pratte and Principi during the day” and will visit the office “when and if necessary.” As drafted, these provisions are vague and do not appear to offer any heightened supervision of Wyser-Pratte. The plan also lacks any provisions governing Wyser-Pratte's activities as a general securities principal and as the Firm's proposed chief executive officer. Finally, the plan fails to provide for documentation of the Firm's compliance with all aspects of the plan.

At the hearing, counsel for the Firm described the supervisory plan as “a draft, it's a work in progress,” and stated that the Firm was amenable to adding provisions to the plan at the NAC's request. We consider the proposed supervisory plan before us, not a hypothetical supervisory plan that has not been proposed by the Firm. *See Pedregon*, 2010 SEC LEXIS 1164, at \*28 (stating that a firm bears the burden of proposing an adequate supervisory plan and that FINRA was fully justified in requiring the firm to provide specifics concerning that plan before approving an application); *Emerson*, 2009 SEC LEXIS 2417, at \*27 (rejecting argument that the applicants were willing to accept a supervisory agreement that would satisfy FINRA; “[d]rafting a supervisory plan . . . is neither the Commission's nor FINRA's role”).

Based upon the foregoing, we find that the Firm has failed to show that it can stringently supervise Wyser-Pratte as a disqualified individual.

#### B. The Disqualifying Order and SEC Order

We find that the seriousness of Wyser-Pratte's misconduct underlying the Disqualifying Order further supports denying the Application. *See Nicholas S. Savva and Hunter Scott Financial, LLC*, Exchange Act Release No. 72485, 2014 SEC LEXIS 2270, at \*57 (June 26, 2014) (holding that FINRA properly considered that the order forming the basis of individual's statutory disqualification stemmed from allegations of serious, securities related misconduct). The AMF found that Wyser-Pratte's securities related misconduct was “particularly serious” and that Wyser-Pratte and his companies realized significant financial gains through his use of non-public information, in violation of French law. For this misconduct, the AMF imposed a

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<sup>14</sup> Further, regarding the provision in the plan whereby Principi, with the aid of an outside consultant, will review 25% of Wyser-Pratte's incoming and outgoing correspondence (including email), Principi testified that under this provision he will actually review substantially all of Wyser-Pratte's correspondence because communications such as daily market commentaries will be manually screened out. The plan also provides that Principi and Spindel “will each have access” to all of Wyser-Pratte's email. These provisions as drafted, however, do not require that Principi review all of Wyser-Pratte's correspondence.

substantial fine of €1.3 million upon Wyser-Pratte. *Cf. Haberman*, 53 S.E.C. at 1028 (holding that “the sentence imposed on Haberman, whether intended as punishment or deterrence, may properly indicate the seriousness” of the disqualifying felony conviction); *Block*, 2018 FINRA Discip. LEXIS 8, at \*36-38 (considering that state regulator barred individual in weighing seriousness of allegations of the complaint underlying disqualifying consent order).

Wyser-Pratte and the Firm argue that the AMF erroneously determined that Wyser-Pratte misused non-public information. We reject Wyser-Pratte and the Firm’s attempts to collaterally attack the Disqualifying Order in this proceeding. *See Gershon Tannenbaum*, 50 S.E.C. 1138, 1140 (1992) (stating that “[i]t is always true in a case of this sort that a respondent cannot mount a collateral attack on findings that have been previously made against him”). We also note that French courts have twice affirmed the AMF’s findings that Wyser-Pratte engaged in misconduct and violated French law.<sup>15</sup>

Wyser-Pratte and the Firm further argue that the Disqualifying Order’s findings that Wyser-Pratte improperly used non-public information are at odds with U.S. laws governing insider trading. They posit that Wyser-Pratte’s actions underlying the Disqualifying Order would not have violated the Exchange Act or other U.S. securities laws and regulations. We need not decide whether Wyser-Pratte would have been liable for insider trading under U.S. law to determine that his misuse of non-public information was a “particularly serious” violation of French law, as expressly found by the AMF and as reflected in the large fine imposed by the Disqualifying Order.

Similarly, the SEC Order suggests that the misconduct underlying the Disqualifying Order was not an aberration. *See Savva*, 2014 SEC LEXIS 2270, at \*58 (holding that FINRA appropriately considered disqualified individual’s entire regulatory history in denying application for disqualified individual to continue to associate with his firm); *Emerson*, 2009 SEC LEXIS 2417, at \*17-18 (holding that FINRA reasonably concluded that several customer complaints filed against disqualified individual and settled by his firm, as well as discharges from prior firms, reflected poorly on his judgment and trustworthiness). The SEC Order found that Wyser-Pratte willfully aided and abetted, and was a cause of, the Firm and WPM’s willful violations of the Exchange Act and Advisers Act. The SEC Order further found that the Firm’s and WPM’s supervisory procedures designed to prevent the misuse of material nonpublic information were inadequate and failed to account for Wyser-Pratte’s role with the firms and the nature of his business. For this misconduct, the SEC imposed fines totaling \$450,000, and ordered that Wyser-Pratte and the firms engage in undertakings.

Wyser-Pratte and the Firm argue that the SEC Order did not make any findings that Wyser-Pratte or the Firm engaged in insider trading. While we agree that the SEC Order did not find that Wyser-Pratte or the Firm engaged in insider trading, the findings that the SEC Order did

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<sup>15</sup> Further appeal of the Disqualifying Order to the Court of Human Rights does not alter Wyser-Pratte’s status as a disqualified individual under the Exchange Act. *Cf. Escobio*, 2018 SEC LEXIS 1512, at \*15 (holding that appeal of an injunction “does not affect the injunction’s status as a statutory disqualification”).

make—that Wyser-Pratte and the Firm had inadequate procedures in place to protect against the misuse of material nonpublic information—are sufficiently related to the misconduct underlying the Disqualifying Order to amplify our concerns that Wyser-Pratte and the Firm may not be capable of complying with securities laws and regulations going forward.

VIII. Conclusion

Accordingly, we find that it is not in the public interest, and would create an unreasonable risk of harm to the market or investors, for Wyser-Pratte to continue to associate with the Firm. We therefore deny the Application.

On Behalf of the National Adjudicatory Council,

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Jennifer Piorko Mitchell  
Vice President and Deputy Corporate Secretary