

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the  
Continued Membership  
of

Herbert J. Sims & Co., Inc.  
(CRD No. 3420)

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

SD-2304

**August 29, 2022**

**I. Introduction**

On September 8, 2021, Herbert J. Sims & Co., Inc. (“HJS” or “Firm”) submitted a Membership Continuance Application (“MC-400A Application” or “Application”) to FINRA’s Credentialing Registration, Education, and Disclosure (“CRED”).<sup>1</sup> The Application seeks to permit the Firm, a FINRA member subject to statutory disqualification, to continue its membership with FINRA notwithstanding its statutory disqualification. A hearing was not held in this matter; rather, pursuant to FINRA Rule 9523(b), FINRA’s Department of Member Supervision (“FINRA,” “Member Supervision,” or “Department”) approves the Application and is filing this Notice pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 (“Exchange Act” or “SEA”).

**II. The Statutorily Disqualifying Event**

The Firm is subject to statutory disqualification, as that term is defined in Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(E), as a result of a July 30, 2021 Order issued by the Securities and Exchange Commission (“SEC” or “Commission”) finding HJS failed reasonably to supervise registered representatives (“RRs”) with a view to preventing and detecting their violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 (“Securities Act”).<sup>2</sup> According to the Order, from January 2015 through April 2018, certain HJS RRs recommended complex and unsuitable investments to forty-five customers, though the RRs knew or should have known that the recommended investments were unsuitable, in violation of Securities Act Sections 17(a)(2) and 17(a)(3).<sup>3</sup> The Firm failed to reasonably implement its customer-specific suitability policies and procedures to determine whether the RRs were making

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<sup>1</sup> See MC-400A Application and related attachments compiled by CRED, with a cover memorandum dated September 29, 2021, attached as Exhibit 1.

<sup>2</sup> See SEC Order, *In re Herbert J. Sims & Co., Inc.*, Admin. Proc. No. 3-20444 (July 30, 2021), attached as Exhibit 2.

<sup>3</sup> *Id.* at p. 2.

suitable recommendations, and that HJS branch managers and other supervisory personnel were appropriately supervising those recommendations.<sup>4</sup>

The Firm was censured, ordered to pay a civil money penalty of \$250,000, and ordered to comply with undertakings.<sup>5</sup>

### **III. Firm Background**

The Firm has been a FINRA member since March 1946. HJS is headquartered in Fairfield, Connecticut, with 13 branches, of which seven are Offices of Supervisory Jurisdiction (“OSJ”). The Firm employs approximately 96 registered representatives, 40 registered principals, and 30 non-registered fingerprint employees.<sup>6</sup> It does not employ any statutorily disqualified individuals.<sup>7</sup>

HJS is approved to engage in the following lines of business:<sup>8</sup> Broker or dealer retailing corporate equity securities over-the-counter; broker or dealer selling corporate debt securities; underwriter or selling group participant (corporate securities other than mutual funds); mutual fund retailer; municipal securities dealer; municipal securities broker; broker or dealer selling variable life insurance or annuities; broker or dealer selling securities of non-profit organizations; broker or dealer selling tax shelters or limited partnerships in primary distributions; broker or dealer selling tax shelters or limited partnerships in the secondary market; trading securities for own account; private placements of securities; effects transactions in commodity futures, commodities, commodity options as broker for others or dealer for own account.

The Firm is a member of the MSRB.<sup>9</sup>

#### FINRA Examinations

During the past two years, FINRA completed two routine examinations and three non-routine examinations of the Firm, all of which resulted in a Cautionary Action Letter (“CAL”).

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<sup>4</sup> See Exhibit 2 at p. 3.

<sup>5</sup> *Id.* at pp. 6-10. HJS provided evidence that it paid the civil penalty in full on August 12, 2021. See Exhibit 1 at pp. FINRA00050 and FINRA00065-FINRA00066.

<sup>6</sup> FINRA confirmed this through analysis of the Firm’s information contained in the Central Registration Depository (“CRD”), last performed on August 25, 2022.

<sup>7</sup> *Id.*

<sup>8</sup> See CRD Excerpt: Types of Business, attached as Exhibit 3.

<sup>9</sup> Membership in these organizations was verified by FINRA staff through a search of public MSRB, NSCC, and DTCC member directories, last performed August 25, 2022.

## A. Routine Examinations

The Firm's most recent routine examination was completed in April 2021 and resulted in a CAL for six of eight exceptions noted for violations of MSRB Rules and a FINRA Rule.<sup>10</sup> The exceptions related to: HJS's failure to adequately implement Written Supervisory Procedures ("WSPs") to address amendments to MSRB Rules G-11 and G-32; its failure to establish and maintain WSPs related to close-out obligations; its failure to properly make all form filings; its failure to accurately report municipal transactions; its failure to deliver the annual notice to customers regarding an MSRB investor brochure and how to file a complaint; and its failure to conform to content standards in statements made on its website.<sup>11</sup> In response, the Firm amended its WSPs, made the required form filings and assigned filing responsibilities to the Compliance department, provided training on reporting municipal transactions and reviewed reporting coding, and updated its website language.<sup>12</sup>

The second most recent routine examination concluded in July 2020 and resulted in a CAL for sixteen of seventeen exceptions noted for violations of FINRA Rules, MSRB Rules, and the Exchange Act.<sup>13</sup> The exceptions related to: HJS's failure to adequately implement WSPs related to new hire files; failure to establish an adequate supervisory system to address customer account address and investment objective changes; failure to establish an adequate system to address customer concentration in illiquid investments; failure to implement its WSPs for RRs placed on heightened supervision by failing to document weekly, monthly, and annual plan requirements; allowing an RR to generate unrealized gain/loss account information with inaccurate disclosures directly rather than through a centralized location with supervision; filing two customer complaints late; allowing the electronic communications of two branch managers to be reviewed by persons under their supervision; for allowing non-principal non-registered fingerprinted ("NRF") person to review emails for two branch managers; permitting customers to use security holdings as collateral for personal, non-purpose loans that were incorrectly labeled; failure to establish reasonable procedures or controls for potential conflicts and suitability for the aforementioned customer use of securities for personal loans; failure to establish adequate WSPs to address risks related to transmittal of customer funds or securities; failure to fingerprint or register an employee for two years; failure to establish and implement WSPs relative to timely regulatory filings; failure to mark 261 discretionary orders as solicited as required; failure to update WSPs to align with MSRB Rule G-15; and failure to submit accurate information on 16 negotiated underwritings conducted by the HJS during the review period.<sup>14</sup> The Firm responded to each of the exceptions

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<sup>10</sup> See FINRA Disposition Letter dated April 22, 2021, Amended Examination Report for Examination No. 20200652362, and the Firm's Response dated March 31, 2021 (without attachments), collectively attached as Exhibit 4.

<sup>11</sup> *Id.* at pp. 3-7.

<sup>12</sup> *Id.* at pp. 8-11.

<sup>13</sup> See FINRA Disposition Letter dated July 21, 2020, Examination Report for Examination No. 20190606749 dated January 31, 2020, and the Firm's Response dated February 14, 2020, collectively attached as Exhibit 5.

<sup>14</sup> *Id.* at pp. 5-13.

by acknowledging them, stating they had or will change the noted business practice or review practice, or updated its procedures to correct the violation.<sup>15</sup>

## **B. Non-Routine Examinations**

In April 2020, the Firm was cautioned for three violations of MSRB Rules.<sup>16</sup> The exceptions related to: effecting nine transactions in amounts lower than the minimum denomination of the respective issues; failing to disclose all material facts at or prior to six transactions; and failure to provide supervision reasonably designed to achieve compliance regarding Rule G-15(f), where the WSPs did not state how often a responsible person should take supervisory steps.<sup>17</sup> The Firm updated its procedures and added an automated control to its trading platform to block minimum denomination transactions.<sup>18</sup>

In January 2020, the Firm was cautioned for one exception, for the Firm's failure to maintain written policies and procedures reasonably designed to safeguard customer records and information.<sup>19</sup> The Firm also did not maintain a supervisory system for its email systems designed to comply with Rule 30.<sup>20</sup> In response, HJS stated it intended to hire a third-party provider to develop its formal information security policy and procedures, and that it strengthened its multifactor authentication, monitoring programs, and cybersecurity awareness training.<sup>21</sup>

In November 2019, the Firm was cautioned for violating MSRB Rule G-14 when it failed to report a certain code to the Real-time Transaction Reporting System in 92 transaction reports, each of which was a distinct violation.<sup>22</sup> The Firm changed trading platforms in response.<sup>23</sup>

### SEC Examination

In April 2020, the SEC identified deficiencies in the Firm's compliance with Rule 30(a) of Regulation S-P and Subpart 201 of Regulation S-ID, as the Firm failed to maintain reasonably

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<sup>15</sup> *Id.* at pp. 15-21.

<sup>16</sup> *See* Cautionary Action Letter dated April 30, 2020, for Cautionary Action No. 2020-116 and FINRA Review No. 20190620468, and the Firm's Response dated May 28, 2020, collectively attached as Exhibit 6.

<sup>17</sup> *Id.* at p. 1.

<sup>18</sup> *Id.* at p. 6.

<sup>19</sup> *See* FINRA Disposition Letter dated January 3, 2020, Examination Report for Examination No. 20180608935 dated November 26, 2019, and the Firm's Response dated December 11, 2019, collectively attached as Exhibit 7.

<sup>20</sup> *Id.* at pp. 5-6.

<sup>21</sup> *Id.* at pp. 7-8.

<sup>22</sup> *See* FINRA Disposition Letter dated November 15, 2019 for FINRA Review No. 20170567728, and the Firm's Response dated November 22, 2019, collectively attached as Exhibit 8.

<sup>23</sup> *Id.* at p. 6.

designed written policies and procedures to safeguard customer records and information from access by suspected fraudulent sources, and it did not establish an identity theft program.<sup>24</sup> In response, the Firm stated it retained a cybersecurity firm in April 2020 to conduct a review of and develop policies, procedures, and controls related to customer records, and establish an identity theft program and enhance red flag detection methods.<sup>25</sup>

### Regulatory Actions

Other than the disqualifying event, the Department is not aware of any recent regulatory actions against the Firm.

### Relevant Arbitrations

In its MC-400A Application and subsequent responses to FINRA, the Firm represented that it settled 11 arbitration matters that involved the RRs responsible for the conduct in the SEC Order.<sup>26</sup> Two arbitration matters involving such RRs are pending. The settlement amounts range from \$15,000 to \$100,000.<sup>27</sup>

## **IV. Prior SEA Rule 19h-1 Notices**

The Firm has no previous approvals or denials pursuant to SEA Rules 19h-1 or 19d-1.

## **V. The Firm's Proposed Continued Membership with FINRA Plan of Heightened Supervision**

The Firm seeks to continue its membership with FINRA notwithstanding its status as a disqualified member. The Firm has agreed to the following Plan of Heightened Supervision as a condition of its continued membership with FINRA:<sup>28</sup>

1. The Firm shall comply with the orders set forth in the SEC Order, *In re Herbert J. Sims & Co., Inc.*, Admin. Proc. No. 3-20444 dated July 30, 2021, including the undertakings set forth therein.

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<sup>24</sup> See SEC Disposition Letter for SEC File No. 008-03315 dated April 28, 2020 and the Firm's Response dated June 29, 2020, collectively attached as Exhibit 9.

<sup>25</sup> *Id.* at p. 8.

<sup>26</sup> See Firm Correspondence to FINRA Staff and Supporting Documents dated December 20, 2021, January 7, 2022, March 31, 2022, and June 24, 2022, attached collectively as Exhibit 10, at pp. 13-19. See also Exhibit 1 at pp. FINRA00067-FINRA00070. Customer information has been removed. Staff also notes that HJS settled or has additional arbitration matters pending in which it appears the conduct and time period described closely correspond to the Firm's SEC Order, but the statements of claim did not involve individuals the Firm identifies as responsible for the conduct in the SEC Order.

<sup>27</sup> See Exhibit 3 at pp. 16-19.

<sup>28</sup> See Executed Consent to Plan of Heightened Supervision dated August 25, 2022, attached as Exhibit 11.

2. The Firm will provide FINRA's Department of Risk Monitoring with copies of correspondence between the Firm and SEC staff regarding requests to extend the procedural dates relating to the undertakings.
3. The Firm will provide FINRA's Statutory Disqualification Group ("SD Group") with a copy of the certification and all supporting documentation provided to the SEC upon completion of the undertakings as specified in the Order, or other documentation that the undertakings have been either modified or stricken by order of the SEC Order.
4. The Firm will document its implementation of the recommendations of the Independent Consultant, hired pursuant to the SEC Order, and make available copies of said documentation to FINRA staff during future examinations.
5. The Firm's New Product Committee ("NPC") will review and approve all new variable interest rate structured products ("VRSPs"), structured notes ("SNs"), and structured products ("SPs") which are offered by the Firm's Registered Representatives ("RRs"). Such approvals will be required prior to offering said products to customers. The Firm will make a log of any changes to its procedures, as it relates to the NPC, and document any required approvals for review by FINRA staff during future examinations.
6. The Firm will implement a mandatory annual training for all FINRA registered persons who recommend, solicit, or submit an order for a VRSP, SN, or SP, or who approve or review such recommendations, solicitations, or orders. The annual training will cover securities rules and regulations surrounding complex products, including but not limited to VRSPs, SNs, and SPs. New personnel to be involved in sales of VRSPs, SNs, and SPs must complete this training prior to recommending, soliciting or submitting an order for a VRSP, SN or SP. The Firm will maintain documentation of the completion of such trainings in a segregated file for ease of review by FINRA staff during FINRA examinations.
7. All VRSP, SN, or SP purchases and sales must be pre-approved by a Registered Principal prior to the transaction being executed. Before executing a VRSP, SN, or SP trade, the trader must verify that the trade was pre-approved by a Registered Principal. The Firm will maintain documentation of such approvals in a segregated file for ease of review by FINRA staff during FINRA examinations.
8. The Firm will document any internal corrective action taken by the Firm with respect to its registered representatives as it relates to VRSP, SN, or SP purchases and sales. The Firm

will make available to FINRA copies of such documentation for review by FINRA staff during future examinations.

9. The Firm's Compliance Department will review the Firm's compliance with this plan on a quarterly basis. The Firm will document these reviews and make available to FINRA copies of such documentation for review by FINRA staff during future examinations.
10. The Firm will obtain written approval from FINRA's SD Group prior to changing any provision of this Plan of Heightened Supervision.
11. The Firm will submit any proposed changes or other requested information under this Plan to FINRA's SD Group at SDMailbox@FINRA.org.

## **VI. Discussion**

After carefully reviewing the entire record in this matter, FINRA approves the Firm's request to continue its membership with FINRA, subject to the terms and conditions set forth herein. In evaluating HJS's Application, FINRA assessed whether the Firm has demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm to investors or the markets. *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"). Typically, factors that bear on FINRA's assessment include, among other things, the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, the Firm's regulatory history, and whether there has been any intervening misconduct.

As of the date of this Notice, FINRA has determined that the Firm's continued membership is consistent with the public interest and does not create an unreasonable risk of harm to investors or the markets. While the SEC Order identified serious violations of securities laws, the Firm was not expelled or suspended, nor were any limitations placed on HJS's securities activities.<sup>29</sup> Member Supervision acknowledges that some of the RRs responsible for the misconduct identified in the SEC Order continue to be associated with the Firm.<sup>30</sup> However, the Firm represents that it required that they, along with all the RRs at the Firm, complete mandatory training if the RRs wished to continue selling certain complex investment products.<sup>31</sup> Furthermore, the Firm promptly paid the required fine in full to the SEC.<sup>32</sup>

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<sup>29</sup> *See* Exhibit 2.

<sup>30</sup> *See* Exhibit 10 at pp. 1-2, 13, and 49-50.

<sup>31</sup> *Id.* at pp. 1-2, response 3, and 49-50, response 3.

<sup>32</sup> *See* Exhibit 1 at pp. FINRA00050 and FINRA00065-FINRA00066.

The Department is further reassured by the progress the Firm has made on the undertakings required by the SEC, including hiring an independent consultant, complying with the independent consultant's review, and obtaining an initial report of findings from the independent consultant.<sup>33</sup> Specifically, the Firm retained the Bates Group LLC ("Bates" or "IC") to conduct a comprehensive review of the Firm's policies and procedures designed to prevent and detect unsuitable recommendations of structured products, and HJS's systems to implement these policies and procedures.<sup>34</sup> The IC's initial report of January 22, 2022 made thirteen recommendations.<sup>35</sup> On March 31, the Firm represented that it had addressed or was in the process of addressing the IC's recommendations in the initial report.<sup>36</sup> HJS also confirmed that the WSPs incorporating the IC recommendations and its new procedures on structured notes were updated April 4, 2022 and published July 1, 2022.<sup>37</sup> Bates will produce a second report to assess HJS's implementation of the recommendations and to make further recommendations if necessary in October 2022.<sup>38</sup>

HJS also represents that it has implemented changes in its business operations related to structured products to mitigate the risk of misconduct from reoccurring.<sup>39</sup> Specifically, it created a New Product Committee which will review and approve future VRSPs, SNs, and SPs using a checklist similar to that recommended by Bates, requires training for all RRs who recommend any sort of structured product, proposed restrictions on the type of investor who can be offered structured products, requires principal pre-approval of all such purchases, and will have the Compliance Department oversee such business operations.<sup>40</sup>

FINRA is also comforted by the controls set in place by the Firm's Plan of Heightened Supervision which bolster the undertakings outlined in the Order. In addition to mandating annual training for RR's who sell VRSPs, SNs, and SPs, HJS will not be able to disband the New Product Committee without FINRA's approval, will ensure its RRs sell all VRSPs, SNs, and SPs after pre-approval by a Registered Principal, and the Firm's Compliance Department will review Plan compliance on a quarterly basis. The Plan will continue to provide oversight of the Firm and its compliance with its remaining undertakings.

In its evaluation of HJS's Application, Member Supervision also conducted a review of the Firm's regulatory history and recent disciplinary actions, and found that, as of the date of this Notice, the

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<sup>33</sup> See Bates Group, LLC Review by Independent Consultant and Report of Review and Recommendations, dated January 22, 2022 (with exhibits), attached as Exhibit 12.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at pp. 16-19.

<sup>36</sup> See Exhibit 10 at pp. 21-24.

<sup>37</sup> *Id.* at p. 50.

<sup>38</sup> See Exhibit 12 at p. 3.

<sup>39</sup> *Id.* at pp. 12-13, 17, 32-37, and Exhibit 10 at pp. 1, 22-24, and 26-36.

<sup>40</sup> *Id.* See also Exhibit 10 at p. 51 and Exhibit 11.



Firm has a limited regulatory history without any further hinderance to the Firm's ability to continue as a FINRA member. The Department acknowledges the Firm's recent examination history and also notes that the Firm took corrective action in connection with each of its examination exceptions, including in some instances hiring outside consultants.<sup>41</sup>

Following the approval of the Firm's continued membership in FINRA, FINRA intends to utilize its examination and surveillance processes to monitor the Firm's continued compliance with the standards prescribed by Exchange Act Rule 19h-1 and FINRA Rule 9523. Thus, FINRA is satisfied, based on the foregoing and on the Firm's representations made pursuant to the Plan of Heightened Supervision, 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, FINRA approves the HJS's Application to continue its membership with FINRA.

In conformity with the provisions of Rule 19h-1 of the Exchange Act, 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 SEC.

On Behalf of FINRA,



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Marcia E. Asquith  
Executive Vice President & Corporate Secretary

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<sup>41</sup> See Exhibit 9 at p. 8.

Exhibits

SD-2304

1. MC-400A Application and related attachments with a cover memorandum dated September 29, 2021.
2. SEC Order, *In re Herbert J. Sims & Co., Inc.*, Admin. Proc. No. 3-20444 (July 30, 2021).
3. CRD Except: Types of Business.
4. FINRA Disposition Letter dated April 22, 2021, Amended Examination Report for Examination No. 20200652362, and the Firm's Response dated March 31, 2021 (without attachments).
5. FINRA Disposition Letter dated July 21, 2020, Examination Report for Examination No. 20190606749 dated January 31, 2020, and the Firm's Response dated February 14, 2020.
6. Cautionary Action Letter dated April 30, 2020, for Cautionary Action No. 2020-116 and FINRA Review No. 20190620468, and the Firm's Response dated May 28, 2020.
7. FINRA Disposition Letter dated January 3, 2020, Examination Report for Examination No. 20180608935 dated November 26, 2019, and the Firm's Response dated December 11, 2019.
8. FINRA Disposition Letter dated November 15, 2019 for FINRA Review No. 20170567728, and the Firm's Response dated November 22, 2019.
9. SEC Disposition Letter for SEC File No. 008-03315 dated April 28, 2020 and the Firm's Response dated June 29, 2020.
10. Firm Correspondence to FINRA Staff and Supporting Documents, dated December 20, 2021, January 7, 2022, March 31, 2022, and June 24, 2022, attached collectively.
11. Executed Consent to Plan of Heightened Supervision dated August 25, 2022.
12. Bates Group, LLC Review by Independent Consultant and Report of Review and Recommendations, dated January 22, 2022 (with exhibits).