

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Association of Gabriel Block as a General Securities Representative with First Standard Financial Company, LLC	<u>Notice Pursuant to</u> <u>Section 19(d)</u> <u>Securities Exchange Act</u> <u>of 1934</u> <u>SD-2137</u> March 13, 2018
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I. Introduction

On November 15, 2016, First Standard Financial Company, LLC (the “Firm” or “FSFC”) filed a Membership Continuance Application (the “Application”) with FINRA’s Department of Registration and Disclosure. The Application requests that FINRA permit Gabriel Block (“Block”), a person subject to a statutory disqualification, to continue to associate with the Firm as a general securities representative. On June 28, 2017, and August 16, 2017, a subcommittee (“Hearing Panel”) of FINRA’s Statutory Disqualification Committee held a hearing on the matter. Block appeared at the hearing, accompanied by counsel, Paul A. Lieberman, Esq., Block’s proposed primary supervisor at the time of the hearing (Philip A. Noto (“Noto”)), Block’s proposed alternate supervisor and the Firm’s chief compliance officer (Scott R. Martinson (“Martinson”)), and Jonathan McCormack (“McCormack”), the Firm’s chief operating officer and chief financial officer.¹ Ann-Marie Mason, Esq., Dana Pisanelli, Esq., Meredith MacVicar, Esq., William Otto, Esq., and Loraine Lee appeared on behalf of FINRA’s Department of Member Regulation (“Member Regulation”).

As described below, we find that the seriousness of the allegations underlying Block’s disqualifying event, the recency of that event, and Block’s additional regulatory history warrant

¹ In mid-November 2017, the Firm informed the Hearing Panel that it had replaced Noto as Block’s primary supervisor with John Marinaccio (“Marinaccio”). On February 9, 2018, the Firm informed the Hearing Panel that it had replaced Marinaccio as Block’s primary supervisor with Jeffrey Baber (“Baber”). *See infra* Part V.A.1. Further, at the hearing, the Hearing Panel held that McCormack’s testimony concerning “the Firm’s capability to supervise, not only Mr. Block, but other individuals,” was unnecessary given the testimony of Noto and Martinson.

denial of the Application. We also find that the Firm has proposed an inadequate heightened supervisory plan and find problematic Martinson's proposed supervision of Block from a remote location. We therefore deny the Application.²

II. The Statutorily Disqualifying Event

Block is statutorily disqualified because of a Consent Order dated October 14, 2016 entered by the State of Delaware Investor Protection Unit (the "Delaware Order"). Pursuant to the Delaware Order, Block agreed to cease and desist from committing any violations of the Delaware Securities Act and agreed to not apply for future registration as a broker-dealer agent or investment adviser representative.³ The Delaware Order also suspended Block's broker-dealer agent and investment adviser representative registration for three years (retroactive to March 2014). The basis for the Delaware Order was a complaint filed by the Delaware Investor Protection Unit alleging that Block engaged in: (1) securities fraud—churning; (2) dishonest or unethical practices—excessive trading; (3) securities fraud—unsuitable recommendations; (4) dishonest or unethical practices—unsuitable recommendations; (5) dishonest or unethical practice—narcotics use; and (6) dishonest or unethical practice—failure to address mental instability notification.

Specifically, the complaint alleged that customer JH was a 27-year-old high school graduate with no investment experience. JH was a construction worker and suffered a workplace injury that left him a quadriplegic. JH received an \$11 million settlement in 2003, and he was introduced to Block in 2005. The complaint alleged that Block encouraged JH to break the structured settlement in which the funds had been invested and transfer them to Block's firm to allow Block to manage them.⁴ The complaint further alleged that JH invested approximately \$3

² 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").

³ See Sections 3(a)(39) and 15(b)(4)(H)(i) of the Securities Exchange Act of 1934 ("Exchange Act") (defining disqualified to include persons that are subject to any final order of a state securities commission or state authority that supervises or examines banks that "bars such person from association with an entity regulated by such commission"); *FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 52, at *5-6 (Apr. 2009). Block and the Firm concede that the Delaware Order is an order barring Block, which renders him statutorily disqualified.

⁴ Block's alleged misconduct occurred while he was employed at Janney Montgomery Scott, LLC ("Janney") and Oppenheimer & Co. ("Oppenheimer"). Janney and Oppenheimer entered into consent orders with Delaware to settle allegations related to Block's misconduct with regard to JH's accounts. Delaware ordered that the firms pay fines totaling \$790,000 and required that Oppenheimer revise its written supervisory procedures ("WSPs"). Further, as described below, Janney and Oppenheimer settled a complaint filed by JH that alleged his account was not handled in his best interests. See *infra* Part III.A.2.

million in several accounts with Block and Block began to exploit JH's lack of sophistication and vulnerability through a pattern of excessive trading and unsuitable recommendations. The complaint alleged that Block generated \$867,900 in commissions from December 2008 until January 2011, while JH's accounts suffered a loss of \$133,861. Further, the complaint alleged that the aggregate cost-to-equity ratio in JH's accounts was 21.44%, with an annualized turnover rate of 5.83, and that Block engaged in "flip trading" nearly every month. Moreover, the complaint alleged that Block's investment objective for JH ("Capital Appreciation (Aggressive)") (the second most aggressive trading profile at the firm) was too aggressive. It further alleged that Block traded "aggressively [and] speculatively," engaged in improper short term trading, and traded heavily in initial public offerings and new issuances. Finally, the complaint alleged that Block violated Delaware law by failing to address a notice from JH's personal assistant that he was mentally unstable and had "issues with narcotics/withdrawal" and that Block engaged in unethical practices by providing narcotics to JH on multiple occasions and using narcotics with JH prior to or after discussing his accounts.

Block filed an answer denying the allegations in the complaint, but he ultimately settled with the Delaware Investor Protection Unit. At the hearing before the Hearing Panel, he asserted that all of the allegations in the complaint were false and that he "was not found guilty of anything."⁵ He testified that JH opened an individual account and a trust account (where JH was the sole beneficiary, grantor, and trustee of the trust) at Janney and Oppenheimer. Block testified that he, along with JH's powers of attorney, developed a plan and budgeted distributions from JH's accounts to cover his care, maintenance, and support whereby JH would receive between \$30,000 and \$35,000 per month.⁶ Block testified, however, that JH—against Block's advice—usually spent approximately \$100,000 per month. Block claims that JH's spending habits required Block to frequently liquidate positions in JH's accounts. Block testified that he and his assistant, Debra Bourne ("Bourne"), were in daily contact with JH and his powers of attorney and that JH, his powers of attorney, and compliance staff and supervisors at Block's firms reviewed all of the transactions in JH's accounts. Block further testified that JH and his

⁵ As a general matter, the Hearing Panel found that Block was not a credible witness. For example, when asked about the complaint's allegation that Block generated \$867,900 in commissions in connection with JH's account, Block testified that was "[a] hundred percent incorrect. . . . It's blasphemous what was reported." However, one of the Firm's own exhibits (a calculation by Oppenheimer of the commissions generated on JH's accounts) shows that from 2009 through 2011, JH's accounts generated \$638,000 in commissions. Block testified that this total included "concessions" paid by banks directly to Block's firms to market their securities. Block further repeatedly testified that he "didn't receive a dime of commissions" in connection with JH's accounts. When pressed to explain this testimony, Block stated that JH was eventually repaid all the commissions earned in connection with his accounts.

⁶ In the Application, Block stated that he recommended a "Buy-Hold strategy, composed of a reasonably diversified equity and fixed income portfolio" designed to provide JH the returns he needed to receive these distributions. Block further stated that JH's excessive spending required Block to "shift[] recommendations to more syndicate and IPO business in order to enhance yield and lower commission costs, since syndicate and IPOs were 'concession' based."

representatives frequently received activity letters for his accounts.⁷ Finally, Block testified that he agreed to settle Delaware's complaint to put the matter behind him because he no longer had Delaware customers and to avoid additional legal expenses.⁸

III. Factual Background

A. Block

1. Registrations and Employment History

Block has been in the securities industry for approximately 27 years. He qualified as a general securities representative in November 1990. He also passed the uniform securities agent state law exam in December 1990 and the uniform investment adviser law examination in April 1994. Block has been associated with the Firm since March 2016. He was previously associated with nine firms.

Block describes his business as "primarily a retail broker for high net worth individuals and small businesses," and the Firm states that 90% of Block's business is fixed income. Block testified that he currently services approximately 20 households who hold approximately 60 accounts.⁹ Block has worked with Bourne for more than 22 years. Block testified that although

⁷ Block testified that JH had four different powers of attorney during the time that he worked with him, who were all family members. When asked whether any of JH's powers of attorney were sophisticated in financial matters, Block testified affirmatively and gave the example of one of JH's powers of attorney who had more than 10 years of investment experience and was a college graduate who owned his own real estate franchise. Block further testified that another power of attorney (BP) (who was the power of attorney most involved in overseeing JH's accounts) also had more than 10 years of investment experience. The complaint, however, contained a statement from BP that she tried to follow JH's account statements "as best as I could. I wasn't an investment adviser, I mean I had no idea what I was looking at. [JH] didn't either."

⁸ Block stated that in hindsight, he should have "consulted management about firing the client when he would no longer follow my advice. On the other hand, I felt that the client had the right to use, or abuse, his own money." At the hearing, he testified that JH is a "serial law suiter" and that JH "sued people professionally. That's what he did." Likewise, the Firm characterized Block as the "scapegoat" for the State of Delaware and stated that Block was "victimized by an unscrupulous individual [JH] who clearly denied and avoided accountability for his actions."

⁹ In the Application, Block stated that he would continue to service his existing customers (approximately 200 households), and would obtain new customers through referrals from existing customers. At the hearing, Block testified that a number of his customers initially indicated that they would move their accounts to the Firm, but never did. As a consequence, he currently has approximately 20 households as customers.

Bourne initially served as his assistant and continues to assist him with his customers, she is “more of a partner now” and has approximately 20 accounts of her own.

2. Customer Complaints

Numerous customers have filed complaints against Block (or against Block’s former firms alleging misconduct by Block).¹⁰ In the Application, Block stated that, given the number and size of the accounts that he manages, “I was fortunate to have had what I consider to be a small number of ‘invalid’ claims which were either denied or closed without action from 1999 until December 2012.” Similarly, at the hearing, Block testified that during his career he has helped service and manage more than 24,000 customer accounts and that the customer complaints “represent a few people that just—I don’t think would have been happy regardless of [the] circumstances or situation.” He also testified that, with respect to these customer complaints, “I was never found to do any wrongdoing.”

In June 2015, a customer (MD) filed with FINRA an arbitration claim against Oppenheimer and another firm that alleged that Block churned MD’s account and that the firms, among other things, negligently supervised Block.¹¹ The customer, then a 37-year-old widow who had received settlement funds as a result of her husband’s death, alleged that Block caused large losses in her accounts, convinced her to change accountants to help conceal Block’s excessive short-term trading and churning in the accounts, and recommended that she purchase an unsuitable whole life policy with premium payments that she could not afford to pay. MD sought damages of \$800,000. CRD shows that Oppenheimer and the other firm settled these claims for \$675,000 and \$35,000, respectively. CRD further shows that Block did not contribute personally to these settlements. Block and the Firm assert that, among other things, this customer complaint was without merit, Block was the registered representative for MD’s husband’s account prior to his death, MD never complained previously, Block never sold her an insurance policy, and that MD filed her complaint after disclosure of the settlement by Janney and Oppenheimer with JH.

¹⁰ In addition to the complaints described below, FINRA’s Central Registration Depository (“CRD”®) indicates that five other customers filed complaints against Block from August 1998 through March 2011, alleging, among other things, excessive trading, unsuitable recommendations, and unauthorized trades. These complaints were denied by Block’s firms or were withdrawn by the customers.

¹¹ The Firm’s exhibits contained a list prepared by Oppenheimer that shows Block’s customer accounts generating the most commissions for approximately the first two months of 2010. One of MD’s accounts generated the second highest amount of commissions (more than \$36,000), behind only one of JH’s accounts (which generated approximately \$41,500 in commissions; another of JH’s accounts generated an additional \$21,000 in commissions). Further, another one of MD’s accounts (along with an account for one of her children) also appeared on the list (and generated commissions totaling approximately \$7,500).

In June 2015, a customer (LL, who was MD's mother) filed with FINRA an arbitration claim against Block that alleged that he breached his fiduciary duty, made unsuitable recommendations, and was negligent. The customer sought damages of \$100,000. The claim was settled for \$90,000, and Block did not contribute any funds to this settlement. Block and the Firm assert that LL's complaint was without merit, the customer never complained previously, and like MD, the customer filed her complaint after disclosure of the settlement by Janney and Oppenheimer with JH. Block also testified that both MD and LL (and LL's husband) had been his customers for many years.¹²

In October 2013, a customer filed with FINRA an arbitration claim against Block that alleged that he made unsuitable recommendations. The customer sought damages of \$80,000. CRD shows that the claim was settled for \$30,000, and Block did not contribute any funds to this settlement.

In January 2011, the customer whose account was the subject of the misconduct underlying the Delaware Order (JH) alleged against Janney and Oppenheimer that his account was not handled in his best interests. The firms settled this matter for \$750,000 total (with each firm paying \$375,000). Although JH did not file the complaint against Block, Block agreed to contribute \$200,000 to Oppenheimer's settlement with JH.¹³

In April 2009, a customer alleged that he was billed management fees even though Block did not actually manage his account and that staff at Block's firm provided him with inaccurate information. The customer sought \$10,000 in damages. This matter was settled for \$10,000, and Block did not contribute any funds to this settlement. CRD states that the customer clarified that Block was not the subject of his complaint and that the customer's grievance concerned only the firm.

In December 1996, a customer alleged that Block made unsuitable recommendations, and sought damages of \$14,000. The customer's complaint was settled for \$2,000, and Block did not contribute any funds to this settlement.

¹² The Firm and Block also asserted that with respect to MD and LL, "[f]acts had no meaning to these Claimants who withdrew significant amounts from their accounts over many years."

¹³ Oppenheimer asserts, pursuant to a FINRA arbitration claim filed against Block, that Block has paid only \$158,000 of the \$200,000 owed to the firm in connection with this matter and that he failed to make payments to the firm pursuant to promissory notes and a compensation stabilization agreement. Oppenheimer seeks a total of \$451,233 in damages (plus interest and costs). In Block's answer to Oppenheimer's claim, he disputes Oppenheimer's claim that he owes them money and he asserts several affirmative defenses. This matter is currently pending.

Further, in April 2011, Janney obtained a judgment against Block totaling \$578,383. This claim related to unpaid promissory notes. CRD indicates that this judgment was satisfied in May 2011.

In December 1996, a customer filed with NYSE an arbitration claim against Block alleging that he made unsuitable recommendations and mismanaged his account. The customer sought \$100,000 in damages. This matter was settled for \$5,400. CRD does not indicate whether Block contributed to this settlement.

In January 1996, a customer alleged that Block engaged in unauthorized trading. This matter was settled by reversing the trade in question (which was less than \$5,000).

In November 1995, two customers alleged that Block engaged in unauthorized trading and made unsuitable recommendations. The customers' complaint was settled for \$2,000, and Block did not contribute any funds to this settlement.

In March 1995, two customers alleged that Block told them that the principal value of a mutual fund was guaranteed. The customers alleged \$8,000 in damages. This matter was settled for \$3,750, and Block did not contribute any funds to this settlement.

3. Regulatory and Disciplinary Matters

Block has regulatory history in addition to the Delaware Order.

In June 2016, New Jersey required Block and the Firm to agree to heightened supervision as a prerequisite to approving his application for registration (and had taken similar action twice before). The Firm is currently supervising Block pursuant to the New Jersey heightened supervisory plan (in addition to the Firm's heightened supervisory plan that it proposed in connection with the Application). *See infra* Part V.A.1.

In June 2016, Ohio asked Block to withdraw his application for registration after it reviewed Block's disclosure information and informed him that it "was inclined to deny" his application.

In April 2016, Block abandoned his application for registration in Michigan after it requested additional information due to Block's regulatory and complaint history.

In March 1999, Block withdrew his request for registration in Georgia after it attempted to contact Block about his history.

B. The Firm

1. Background

The Firm has been a FINRA member since April 2014, and is based in New York City. The Application states that the Firm has four branch offices, which are each an Office of Supervisory Jurisdiction ("OSJ"). The Firm employs 59 registered representatives, 14 of whom are registered principals.

2. Examination Results

FINRA conducted a cycle examination of the Firm in 2016. In October 2017, FINRA referred several exceptions noted in the examination to FINRA's Department of Enforcement ("Enforcement").¹⁴ Among other things, FINRA referred to Enforcement exceptions related to the Firm's Anti-Money Laundering ("AML") Compliance Program and its supervision of non-traditional exchange-traded-fund and exchange-traded-note activity, penny stock activity, and customer account activity. Specifically, these exceptions included: supervisory failures by Noto (Block's former supervisor) and Martinson (Block's proposed alternate supervisor) for failing, among other things, to review reports and escalate matters that involved potential churning of customer accounts and unreasonable commissions and failing to recognize red flags; the Firm's failure to establish sufficient supervisory procedures and failure to ensure adequate reviews of 41 customer accounts for suitability (where such accounts had annualized cost-to-equity ratios ranging from 8.35% to 354% and annualized turnover rates ranging from 6.98 to 145); and charging excessive commissions and recommending unsuitable securities in a sample of 56 customer accounts.¹⁵

FINRA also issued the Firm a Cautionary Action for numerous deficiencies related to the 2016 cycle examination. FINRA cited the Firm for, among other things: failing to properly supervise and report outside business activities of registered representatives (including Noto for failing to notify the Firm of his own outside business activity); failing to place registered

¹⁴ After the hearing, Member Regulation produced to the Hearing Panel an update on the 2016 cycle examination, including the referral to Enforcement of certain exceptions and the Cautionary Action issued for other exceptions discussed herein. The Firm objected to this submission and argued that this was a "stunt," the record was closed, and the Hearing Panel had not ordered the parties to supplement the record. We disagree and may consider updated examination results that arise after a hearing. We further note that the Firm itself submitted additional information to the Hearing Panel (including arguments why the updated examination results were not relevant and two new primary supervisors for Block), which the Hearing Panel did not request from the Firm, but it nonetheless reviewed. *See infra* Part V.A.1.

¹⁵ At the time of the hearing, the Firm was in the process of responding to FINRA's requests for additional information related to the 2016 examination. Martinson testified that the examination focused on the Firm's first 18 months in existence, that the Firm's WSPs had been rewritten twice, and that he was in the process of further updating the WSPs to "tailor[] the WSPs to the type of business that the Firm does at the present time." Martinson also testified that it was his belief that he and McCormack were put in positions at the Firm to rectify areas where the Firm's compliance was lacking and that the Firm had made changes to improve its compliance. Martinson further testified that, with respect to the exceptions that named him personally, he did not "necessarily agree with the findings. Some of the reports that they were looking for were the reports that were halted due to the fact that we changed clearing firms. So . . . there was nothing I could do about it." Further, he stated that the Firm's software (which had not been in place for the Firm's prior examination) needed to be adjusted because it had triggered numerous "false positives," creating alerts for trades that should not have been flagged.

representatives on heightened supervision; failing to establish and enforce a heightened supervisory plan for a registered representative; and failing to enforce provisions of a heightened supervisory plan for another representative.

In April 2015, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2014 examination. FINRA cited the Firm for the following deficiencies: charging excessive commissions; failing to adequately disclose the nature and purpose of fees charged to customers; failing to properly accrue expenses; failing to enforce its WSPs regarding the propriety of its commissions and fees; failing to evidence supervisory review of third-party email and eFaxes for registered representatives; and violating FINRA's telemarketing rules. The Firm responded in writing that it corrected the deficiencies noted in the Cautionary Action.

IV. Block's Proposed Business Activities

The Firm proposes that it will continue to employ Block as a general securities representative in a branch office and OSJ located in Red Bank, New Jersey. The Firm represents that Block will be compensated by commissions.¹⁶

V. Block's Proposed Supervision

A. Proposed Supervisors

1. Primary Supervisor

a. The Firm Changes Block's Primary Supervisor Multiple Times

The Firm originally proposed that Block would be supervised on-site primarily by Noto, who had supervised Block since he joined the Firm in 2016 and served as the branch manager for the Firm's Red Bank, New Jersey office. Noto testified at the hearing on a wide range of topics, including his supervisory experience, an SEC Wells Notice that he had received for failing to reasonably supervise registered representatives at his prior firm, and his views on what level of turnover in a customer account would cause him concern as a supervisor and make him look more closely at trading in an account.

In October 2017, the Firm requested that the State of New Jersey allow it to replace Noto as Block's primary supervisor under the New Jersey heightened supervisory plan with another individual (Jodi Fauci ("Fauci)). The Firm also stated that "it is anticipated that Ms. Fauci will replace Mr. Noto with respect to the supervisory requirements" of the heightened supervisory plan presently under consideration in this proceeding.

New Jersey denied the Firm's request to replace Noto as Block's primary supervisor under New Jersey's heightened supervisory plan because Fauci would not be located in the Red

¹⁶ Further, Block testified that when he joined the Firm, the Firm paid him \$200,000 during the first six months of his employment as part of a forgivable loan agreement.

Bank, New Jersey office (and thus would not be supervising Block on-site). In mid-November 2017, the Firm proposed Marinaccio as Block's primary supervisor under the New Jersey heightened supervisory plan.¹⁷ New Jersey approved the change to Marinaccio on November 22, 2017.

On February 9, 2018, the Firm informed the Hearing Panel that it had replaced Marinaccio as Block's primary supervisor with Baber. Although the Firm did not disclose to the Hearing Panel the reason for the change in proposed supervisors (other than its assertion that the Firm made "up-grades in its supervision" and that Baber has "significantly more extensive supervisory experience than Marinaccio had"), CRD shows that the Firm discharged Marinaccio on or about December 19, 2017. The Uniform Termination Notice for Securities Industry Registration ("Form U5") filed by the Firm explains that a Reg S-P violation served as the reason for Marinaccio's discharge. Specifically, it states that:

[The Firm's] internal review was commenced upon receipt of a letter from [Marinaccio's] former employer alleging misuse of Reg S-P information. . . . Based upon an analysis and advise [sic] from counsel, we determined that the allegations were accurate[.] The Firm terminated [Marinaccio] after the conclusion of its investigation.¹⁸

b. Baber

Baber has been associated with the Firm since January 2018. The Firm states that Baber "has more than 30 years' experience in the securities industry primarily as a compliance and supervisory officer" and that he has previously supervised statutorily disqualified individuals. He currently serves as the branch manager of the Firm's Red Bank, New Jersey office. Baber qualified as a general securities representative in February 1984, as a general securities principal in March 1995, and as a registered options principal in June 1996. He also passed the uniform

¹⁷ In a post-hearing submission, the Firm stated that it "lawfully requested permission of the New Jersey Bureau of Securities to change its supervisor" from Noto to Fauci (and then Marinaccio), and that upon approval by New Jersey, Noto "will no longer be a member of the Firm's Compliance/Supervision Department." The Firm further stated that it would notify FINRA once New Jersey approved Block's new supervisor "so that a conforming change can be noted" for the heightened supervisory plan currently under consideration in this proceeding. The Firm did not explain why it ultimately replaced Noto as Block's primary supervisor, although it stated that "Mr. Marinaccio's hire is a significant upgrade to the Firm's overall organization and compliance structure."

¹⁸ CRD shows that Marinaccio's prior firm had conducted an internal review concerning his potential violations of Regulation S-P "based upon the firm learning [Marinaccio] misappropriated non-public customer information." Marinaccio's prior firm obtained a temporary restraining order against Marinaccio. In a filing with the State of New Jersey, Marinaccio denied the firm's allegations and stated that he settled this matter with the firm.

securities agent state law examination in October 1984 and the uniform investment adviser law examination in December 1996.¹⁹ Baber was previously associated with seven firms.

CRD shows that in April 1993, a customer filed a complaint against Baber alleging “statutory and common law securities violations in connection with unsolicited options trading.” The customer alleged \$100,000 in damages. Baber’s firm settled this matter for \$25,000.

2. Backup Supervisor Martinson

Although the Firm did not initially propose an alternate supervisor for Block, the Firm proposed that Martinson will serve as Block’s alternate supervisor from the Firm’s New York office.²⁰ Martinson also testified that he will ensure that Noto (and now, presumably, Baber) complies with the terms of the heightened supervisory plan.

Martinson currently serves as the Firm’s chief compliance officer (a role that he has held since October or November 2016) and as the Firm’s AML compliance officer. Prior to joining the Firm in November 2015, Martinson had approximately eight years of supervisory experience at several different firms. He qualified as a general securities representative in February 1995 and as a general securities principal in October 1996. He also passed the uniform securities agent state law exam in January 1995. Martinson has been associated with the Firm since November 2015. He was previously associated with 17 different firms.²¹

Several customers have filed complaints against Martinson. In May 2008, two customers alleged that Martinson made unsuitable recommendations and excessively traded their account. The customers sought \$27,558 in damages. This matter was settled for \$17,500, and Martinson contributed \$1,750 to this settlement. Martinson testified that his partner handled the trading in this account.

In January 2006, a customer alleged losses in his account, and sought \$5,000 in damages. This matter was settled for \$4,500, and Martinson contributed \$2,250 to this settlement.

In December 2005, a customer filed with FINRA an arbitration claim alleging that Martinson made unsuitable recommendations, and sought damages of \$150,000. This matter was settled for \$22,000, and Martinson contributed \$5,000 to this settlement. Martinson testified

¹⁹ Baber also passed the Series 8 examination (which was replaced by the general securities sales supervisor examinations (Series 9 and 10)) in October 1990.

²⁰ As of the end of June 2017, Martinson had not yet visited the Red Bank office.

²¹ When asked about the numerous firms that he had been associated with, Martinson testified that since June 2012, he “signed on with approximately four different firms within a number of months, one of which literally was going out of business when I dropped my [Form] U4.” Martinson, however, did not explain why he had been associated with 13 different firms in the years prior to 2012.

that he inherited this account and the activity at issue predated his time as the account representative.

In July 2005, a customer alleged that his account was to be opened as a fee-based account, and he sought the return of commissions earned in connection with the account. This matter was settled for \$9,909, and Martinson contributed \$3,303 to this settlement.

B. The Firm's Proposed Heightened Supervisory Plan

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

1. [The] Heightened Supervisory Plan ("HSP") is a comprehensive supervisory agreement that Block, Supervisor and Firm principal have agreed to comply with.
2. The objective of the HSP is to document the implementation of refinements and enhancements (collectively "Amendments") to the Firm's existing policies, procedures and systems to enable the Supervisor and Block to assure the prevention of any recurrence of the actions that caused Block to become subject to a State investigation.
3. Identification of Supervisor, and Alternate Supervisor.
4. FSFC's written supervisory procedures will be amended to state that Baber is the primary supervisor responsible for Block.²²
5. Block will not:
 - a. maintain discretionary accounts;
 - b. act in a supervisory capacity;
 - c. act as broker to any trust account;
 - d. prospect or accept a referral of a client who resides in Delaware;
 - e. seek to apply or apply for registration in the State of Delaware.
6. Block will:
 - a. be supervised in the Red Bank office by Supervisor Jeffrey Baber, located at 21 E. Front Street, Red Bank, NJ 07710;
 - b. comply with all terms of the HSP;

²² The Firm did not file amended heightened supervisory plans replacing Noto, and then Marinaccio, as Block's primary supervisor. For ease of reference, we refer to Baber throughout the terms of the proposed plan.

- c. disclose to Supervisor the new client paperwork and review such new client's profile details;
 - d. maintain an activity log of client phone calls, appointments and results of meetings;
 - e. provide Supervisor with a copy of all materials to be provided to or reviewed with clients at in-person meetings;
 - f. take, complete, and evidence completion of continuing education courses annually pursuant to a written curriculum established in conjunction with Firm's compliance department ("Continuing Education Plan" or "CEP") that relates to sales practice activity, ethics and new products;
 - g. immediately forward any complaint (verbal or written) pertaining to himself to the Supervisor for review, and cooperate fully in internal review of the complaint, including meeting with Firm Compliance Department personnel as assigned, and legal officer as may be determined by the Firm;
 - h. certify quarterly to Supervisor his compliance with the HSP;
 - i. cooperate in the Supervisor's annual review of compliance with the HSP and certify annual compliance, including the CEP;
 - j. submit for approval by the Supervisor, prior to order entry, all order tickets, requests for commission discounts, IPO concessions or syndicate allocations;
 - k. disclose to Supervisor on a monthly basis the details of his outside sales activity, which will include activity log, phone call log, appointment log, and action list.
7. Supervisor will:
- a. review all incoming/outgoing correspondence of Block, including emails;
 - b. monitor client orders entered for Block's clients, with focus on any Delaware account;
 - c. review and pre-approve prior to account opening all new securities account documentation prepared in accordance with Firm WSPs to assure client is not resident in Delaware, there is no authorization of discretion and suitability requirements are complete;
 - d. account paperwork will be evidenced as having been "approved" by Supervisor with signature and date; a copy will be maintained at FSFC's home office;
 - e. review all state registration and renewals prior to submission by Block to [the] Firm's registration department;

- f. enforce prohibition on Block to establish new accounts for any (i) trust accounts, (ii) discretionary accounts, including individual accounts with POAs, and (iii) Delaware residents;
- g. coordinate with Alternate Supervisor, as required, to assure compliance with HSP including coordination of vacation or absence from office;
- h. issue activity letters to Block's client accounts that have met [the] Firm's parameters for account reviews and activity letters, including review with clients via phone, email or in-person meetings as facts warrant;
- i. review and approve Block's orders prior to entry for execution and evidence review by initialing;
- j. monitor confirmations and monthly statements for disclosure of commissions charged by Block, and monitor [the Firm's] order entry system for commission drop box selections that exceed Firm-approved levels;
- k. assure that any request for commission discounts, IPO concessions or syndicate allowances are discussed with Block in advance of order entry;
- l. in conjunction with CCO and other compliance professionals as may be required, develop and assure compliance by Block with CEP;
- m. assure timely receipt from Block of all complaints from or relating to Block's client accounts, review in accordance with Firm's WSPs, refer a copy to Compliance Department, and prepare such memorandum describing Supervisor's investigation of a complaint, including contact with customer or other Firm members, in order to resolve or close the matter; Supervisor will maintain documents relating to the investigation;
- n. maintain a segregated Block complaint file (verbal or written) pursuant to Firm WSPs and assure compliance with applicable FINRA reporting requirements by Firm through its CCO and/or compliance department;
- o. provide prior written notice to CCO if change of Supervisor is required;
- p. during the duration of the HSP, assure that the Firm obtains prior written notice of Supervisor's request to change Supervisor to another person, and Supervisor agrees not to cease or limit his/her supervisory duties unless and until a replacement Supervisor has been appointed by the Firm;
- q. receive and provide copies to the Firm's CCO of FINRA or State examination reports of Block or Firm's compliance with this HSP so that the Firm can evaluate its compliance with the HSP and whether Amendments or enhancements are necessary as a consequence of changed facts or circumstances concerning Block;

- r. immediately report to the CCO and/or legal officer any instance or evidence of Block's failure to comply with any term or provision of the HSP, and thereafter assure either an Amendment of the HSP or return to compliance by Block, with an explanation of the circumstances that caused or resulted in the departure from the requirements of the HSP;
- s. certify to the Compliance Department on a quarterly basis that he, as the Supervisor and Block have been and currently are in compliance with all of the conditions of the HSP.

VI. Member Regulation's Recommendation

Member Regulation recommends that the application be denied because, in its view: (1) the Delaware Order was recent, serious, and involved churning, excessive trading, and unsuitable recommendations to a vulnerable customer; (2) Block's history of customer arbitrations and complaints show a "troubling pattern of disregard for rules and regulations"; (3) the Firm has "shown a predilection for non-compliance" and has not demonstrated an ability to supervise a disqualified individual; (4) the Firm proposed originally an unsuitable primary supervisor (Noto); and (5) the Firm has not proposed an adequate heightened supervisory plan.

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; *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.²³ The

²³ In its filings and at the hearing, the Firm erroneously suggested that in assessing the Application, we should consider only intervening misconduct and the Firm's proposed supervision of Block in accordance with *Paul Edward Van Dusen*, 47 S.E.C. 668 (1981), and its progeny. The standards set forth in *Van Dusen* do not apply to this matter because Block's disqualifying event, and the sanctions imposed in connection therewith, did not result from a

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 entire record in this matter, we find that the Firm has failed to demonstrate that Block's proposed continued association with the Firm is in the public interest. The seriousness of the allegations underlying the Delaware Order, the recency of that order, and Block's additional regulatory history warrant denial of the Application. Moreover, the Firm has failed to propose an adequate heightened supervisory plan for Block and we have concerns regarding Martinson's proposed remote supervision of Block. Accordingly, we deny the Application for Block to continue to associate with the Firm.²⁴

A. The Recent Delaware Order and Block's Other Regulatory History

We find that the recency and seriousness of the allegations underlying the Delaware Order support 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 consent order forming the basis of individual's statutory disqualification stemmed from allegations of serious, securities-related misconduct); *In the Matter of the Continued Ass'n of Craig Scott Taddonio with Meyers Assocs., LP*, SD 2117, slip op. at 26 (FINRA NAC Mar. 8, 2017), http://www.finra.org/sites/default/files/NAC_SD-2117_Taddonio-Meyers-Associates_030817.pdf (denying membership continuance application based upon, among other things, an 11-month old order involving violations of securities rules and regulations).

As an initial matter, the Firm and Block argue that although the Delaware Order rendered Block statutorily disqualified, we should not give it or the allegations underlying the Delaware Order any weight in assessing the Application because Block agreed to its terms and the order

[cont'd]

Commission or FINRA action. *See id.*; *May Capital Group, LLC*, 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).

²⁴ We do not base our denial on Baber's qualifications or supervisory experience; rather, we deny the Application based upon the seriousness of the allegations underlying the Delaware Order, the recency of that order, Block's additional regulatory history, the Firm's inadequate heightened supervisory plan, and our concerns regarding Martinson's remote supervision of Block. Consequently, additional proceedings to elicit Baber's testimony regarding his supervisory experience and qualifications were unnecessary and would not have altered the outcome. We have concerns, however, that within the past six months the Firm has proposed that four different individuals (Noto, Fauci, Marinaccio, and now Baber) would serve as Block's supervisor. *See infra* note 28.

did not contain any factual or legal findings of wrongdoing by Block. The Firm and Block further argue that the Delaware Order's lack of any factual or legal findings distinguish it from other matters where we have considered the seriousness of the statutorily disqualifying order.

We reject applicants' narrow view of what we can consider when determining whether to approve or deny the Application. We acknowledge that although the Delaware Order contains a reference to the complaint and its six causes of action, it does not contain a recitation of any facts or findings. Notwithstanding this fact, we conclude that we may consider the allegations of misconduct that resulted in the disqualifying Delaware Order and the bar imposed by that order in assessing the Application. Indeed, the Commission has previously concluded that FINRA may consider the allegations underlying a disqualifying order in assessing an application for a statutorily disqualified individual to continue to associate with his or her firm. *See Am. Inv. Servs., Inc.*, 54 S.E.C. 1265, 1271 (2001) (finding that FINRA properly considered "the gravity of the *charges alleged*" in the complaint underlying the disqualifying injunction) (emphasis added); *Savva*, 2014 SEC LEXIS 2270, at *32-33 and 57 ("FINRA properly considered that the Vermont Order *stemmed from allegations* of serious, securities-related misconduct.") (emphasis added).

Further, we have considered the seriousness of misconduct underlying disqualifying consent orders where the orders contained language that the disqualified individual neither admitted nor denied any allegations or findings in the orders. *See, e.g., In the Matter of the Continued Ass'n of Bruce Meyers with Meyers Assocs., LP*, SD 2069, slip op. 32 at (FINRA NAC May 9, 2016), http://www.finra.org/sites/default/files/SD-2069-Meyers_0.pdf (considering the seriousness of a consent order where a disqualified individual acknowledged that the allegations of the complaint were sufficient for the regulator to revoke his license even though he did not admit nor deny the allegations), *aff'd*, Exchange Act Release No. 81778, 2017 SEC LEXIS 3096 (Sept. 29, 2017); *Savva*, 2014 SEC LEXIS 2270, at *57 (finding that FINRA properly considered the seriousness of the misconduct underlying a consent order entered into with a state securities regulator that contained "neither admit nor deny" language and findings of fact and law); *Eric J. Weiss*, Exchange Act Release No. 69177, 2013 SEC LEXIS 837 (Mar. 19, 2013) (affirming FINRA's denial of an application for a disqualified individual to continue to associate with a firm based upon, among other things, the seriousness of the misconduct underlying the disqualifying consent order where he neither admitted nor denied any facts in connection with the order). We find that the current matter is indistinguishable from these prior cases for purposes of assessing the merits of the Application.²⁵

We further find that the securities-related Delaware Order, entered in October 2016, was based upon serious allegations of wrongdoing by Block. Delaware alleged that Block took advantage of a customer by churning and excessively trading his accounts, making unsuitable

²⁵ The Firm and Block's argument, taken to its logical conclusion, would permit us to consider only those state regulatory orders containing findings that the disqualified individual expressly agreed to or findings resulting from an adjudicator's decision after a matter was fully litigated. This is contrary to Commission and NAC precedent.

recommendations, and engaging in other serious misconduct. *See Gerald E. Donnelly*, 52 S.E.C. 600, 605 (1996) (finding that respondent engaged in serious misconduct by excessively trading customer accounts, “placed his own interest above those of his customers” and “breached the trust that had been placed in him as a securities professional”); *Dep’t of Enforcement v. Brookstone Sec., Inc.*, Complaint No. 2007011413501, 2015 FINRA Discip. LEXIS 3, at *128 (FINRA NAC Apr. 16, 2015) (holding that violating FINRA’s suitability rule breaches “an important duty that is fundamental to the relationship between registered representatives and their customers”). To settle these serious allegations of misconduct, Block agreed to the equivalent of a lifetime bar in Delaware, Block’s employing firms paid JH \$750,000 in connection with these allegations, and Block agreed to personally contribute \$200,000 to this amount. Further, Block’s employing firms paid fines to Delaware totaling \$790,000 in connection with this matter.

We also find that far too little time has passed since entry of the Delaware Order for Block and the Firm to demonstrate that Block is currently able to comply with securities laws and regulations and to refrain from engaging in misconduct. *See Taddonio*, SD 2117, slip op. at 26; *see also Ass’n of X*, Redacted Decision No. SD09002, slip op. at 6 (FINRA NAC 2009), http://www.finra.org/sites/default/files/NACDecision/p117874_0_0.pdf (finding that insufficient time had passed since disqualifying event occurring approximately two years prior for disqualified individual to show that he is able to comply with securities rules and regulations).

Moreover, we have also considered that, in addition to JH and the five customers who filed complaints that were denied by Block’s firms or later withdrawn, nine customers have filed complaints alleging misconduct against Block since 1995 and four states have conditioned Block’s registration or asked or caused him to withdraw his registration.²⁶ Excluding payments made to JH, Block’s firms paid approximately \$853,000 to settle the customer complaints. These complaints involved allegations of excessive trading, unsuitable recommendations, and unauthorized trading. We further note that the facts surrounding MD’s complaint and allegations of wrongdoing by Block were similar to the facts alleged by the State of Delaware against Block. This is troubling.

We find that Block’s dismissal of these matters generally (as involving customers who would not “have been happy regardless” of the circumstances), as well as his explanations concerning certain of the more serious customer complaints, to be wholly inadequate and raise

²⁶ Prior to and at the hearing, Block’s counsel asserted that unlike larger broker-dealers where Block had been previously registered, the Firm did not pay for Block to be registered in all 50 states but instead required that Block personally pay registration fees. Counsel further asserted that because Block had no customers in certain states, the matters involving Block’s registrations in Ohio and Michigan are immaterial. We disagree and consider these matters as part of Block’s entire regulatory history. *See Savva*, 2014 SEC LEXIS 2270, at *58 (holding that FINRA appropriately considered disqualified individual’s entire regulatory history, including two regulatory matters and customer complaints, in denying application for disqualified individual to continue to associate with his firm).

serious concerns regarding his dealings with customers and his ability to comply with securities laws and regulations. *See Savva*, 2014 SEC LEXIS 2270, at *58 (“We also agree with FINRA that Savva’s history of at least ten customer complaints and two regulatory matters raised serious concerns about Savva’s dealings with customers and his ability to comply with securities laws and regulations.”); *Timothy H. Emerson Jr.*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, at *17-18 (July 17, 2009) (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).²⁷ For these reasons, we find that denial of the Application is appropriate.

B. The Firm Has Not Demonstrated that It Can Stringently Supervise Block

The Firm has the burden to demonstrate that it is capable of providing stringent supervision to a statutorily disqualified individual such as Block. *See Emerson*, 2009 SEC LEXIS 2417, at *27 (holding that an applicant must establish that it will be able to stringently supervise a statutorily disqualified individual). The Firm has failed to satisfy this crucial burden, which further supports our denial of the Application.

First, we have concerns that Martinson, Block’s alternate supervisor, will supervise Block remotely. Under the circumstances and given our other serious concerns regarding Block’s proposed association with the Firm, we find this problematic.²⁸ *See generally Emerson*, 2009 SEC LEXIS 2417, at *19 (“As we have previously concluded, a supervisory plan lacks the necessary intensive scrutiny when the supervisor will not be in close, physical proximity to the

²⁷ The Firm characterizes the customer complaints filed against Block prior to the complaint filed by JH in 2011 as “even older” than the complaints filed by MD and LL in 2015. We reject the Firm’s attempt to minimize these complaints as irrelevant. Regardless, we may consider customer complaints against a statutorily disqualified individual as part of his entire regulatory history. *See, e.g., Savva*, 2014 SEC LEXIS 2270, at *58; *see also Weiss*, 2013 SEC LEXIS 837, at *33-34 (holding that FINRA properly considered settled customer complaints in denying an application for a disqualified individual to continue to associate with his firm).

²⁸ We note that the Firm initially sought to replace Noto with Fauci, who would have served as Block’s primary supervisor from a remote location under both the New Jersey supervisory plan and the heightened supervisory plan under consideration in this proceeding. We further note that the Firm then proposed Marinaccio, whom it described as an improvement over Noto, and then Baber as an “an upgrade” over Marinaccio. These facts raise questions about the Firm’s judgment and selection process for Block’s potential supervisors and whether the Firm fully understands the need for, and is committed to, stringent supervision of Block as a statutorily disqualified individual. *See Emerson*, 2009 SEC LEXIS 2417, at *19; *see also Taddonio*, SD 2117, slip op. at 23 (stating that in assessing an application to continue to employ a statutorily disqualified individual, “[w]e 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”).

statutorily disqualified person.”). Further, Martinson’s testimony that he will ensure that Noto (and now, presumably, Baber) complies with the terms of the heightened supervisory plan does not assuage our concerns with the Firm’s supervision of Block. Martinson’s duties at the Firm include serving as the chief compliance officer and AML compliance officer, and Martinson testified that he has been focused on improving the Firm’s admittedly deficient WSPs and compliance generally (including addressing the numerous deficiencies identified by FINRA during FINRA’s 2016 examination of the Firm, some of which have been referred to Enforcement and specifically named Martinson and involved supervisory issues). We conclude that the Firm has not shown that Martinson currently has the bandwidth to provide stringent supervision as an alternate supervisor and to provide general oversight of Baber’s compliance with the heightened supervisory plan.²⁹

Second, we find that the proposed heightened supervisory plan is inadequate. A number of its provisions are not unique to Block, but are applicable to all of the Firm’s registered representatives. *See Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at *38 (Sept. 13, 2010) (finding proposed supervisory plan deficient where “[m]uch of what the plan required is no different from the supervision the Firm afforded to all employees”).³⁰ Moreover, the plan contains no provisions addressing the activities of Bourne, who has served and continues to serve as Block’s assistant and has communicated regularly with his customers. The plan also fails to provide for documentation of the Firm’s compliance with all aspects of the plan and to explicitly name Martinson as Block’s alternate supervisor. The Firm stated that it would add a provision to the heightened supervisory plan that Martinson will serve as Block’s alternate supervisor and that if requested, it was willing to add a provision requiring that an independent compliance consultant review the Firm’s performance under the plan. The current proposed supervisory plan under consideration, however, does not contain any such provisions. We consider the proposed supervisory plan before us, not a hypothetical supervisory plan that

²⁹ Prior to and at the hearing, the Firm submitted evidence of the various technological tools that it uses to supervise its registered representatives and repeatedly argued that these tools should be weighed favorably in assessing the Application. While technology and computer software may help qualified and experienced supervisors fulfill their supervisory obligations, it does not obviate the need for qualified and experienced supervisors in the first place and does not ensure stringent supervision of a statutorily disqualified individual. Under the circumstances, we give minimal weight to the Firm’s use of these tools. We also give minimal weight to the Firm’s assertion that it has supervised Block since 2016 without incident. This is far too little time to demonstrate that the Firm can provide stringent supervision to a statutorily disqualified individual such as Block, especially considering our myriad concerns discussed herein and the fact that Baber has only been supervising Block for several months.

³⁰ Underscoring this point, Noto described Block’s supervision under the heightened supervisory plan as being “a little bit more intense and a little bit more detailed” compared to the supervision of other registered representatives; “you’re going to monitor all the brokers in a very similar way, but in accordance with a heightened [supervisory] plan, you are going to do it in a more frequent way, in a more, maybe, in depth way.”

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 *20 (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”).

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 Block to continue to associate with the Firm. We therefore deny the Application.

On Behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell
Vice President and Deputy Corporate Secretary