

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of
The Association of
William John Tobias
as a
Non-Registered Individual
with
Hold Brothers Capital LLC

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

SD-2311

October 17, 2022

I. Introduction

On October 11, 2021, Hold Brothers Capital LLC (the “Firm” or “HBC”) filed a Membership Continuance Application (the “Application”) with FINRA. The Application seeks to permit William John Tobias, a person subject to statutory disqualification, to associate with the Firm as a non-registered individual to perform part-time accounting work. A hearing was not held in this matter. Rather, pursuant to FINRA Rule 9523(a), FINRA’s Department of Member Supervision (“Member Supervision”) recommended to the Chairperson of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council, that it approve Tobias’ association with the Firm pursuant to the terms and conditions set forth below.

For the reasons explained below, we approve the Application to permit Tobias to associate with the Firm as a non-registered individual.

II. The Statutorily Disqualifying Event

Tobias is subject to a statutory disqualification because of a September 2012 SEC Order (the “Disqualifying Order”) that barred Tobias, with a right to reapply after three years, from, among other things, association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. The Disqualifying Order found that Tobias and other respondents willfully aided and abetted and caused respondents Demostrate, LLC (“Demostrate”), Trade Alpha Corporation, Ltd (“Trade Alpha”), and Hold Brothers On-

Line Investment Services, LLC (“Hold Brothers On-Line”)¹ to violate Section 9(a)(2) of the Securities Exchange Act of 1934 (“Exchange Act”).² In addition to the bar, the Disqualifying Order ordered Tobias to cease and desist from committing or causing any violations and any future violations of Exchange Act Section 9(a)(2) and imposed a \$75,000 civil penalty, which Tobias paid.

Specifically, the Disqualifying Order found that, from January 2009 through September 2010, Tobias and other respondents became aware of red flags that overseas traders, who traded through accounts held at Hold Brothers On-Line by Demostrate and Trade Alpha, were engaging in a manipulative trading strategy known as “layering” or “spoofing.” Despite the red flags, which included concerns from exchanges and FINRA regarding manipulative trading occurring at Hold Brothers On-Line, Tobias and other respondents continued to provide the overseas traders with trading capital, access to trading platforms, and the ability to access U.S. markets, and failed to conduct adequate follow-up despite the red flags. In the Application, Tobias states that he has “learned the lessons of these events and truly regret any historic failures on my part.”³

¹ Trade Alpha is an affiliate under common control with the Firm. The Firm has no active relationship with Trade Alpha and the Firm represents that Tobias will have no responsibilities at the Firm relating to Trade Alpha. At the time of the misconduct underlying the Disqualifying Order, Tobias served as the managing member of Demostrate. The Firm represents that it has no active relationship with Demostrate and that Tobias will have no involvement with or responsibility for Demostrate.

Further, pursuant to the Disqualifying Order, the SEC imposed upon Hold Brothers On-Line a civil penalty, plus interest, totaling \$1,896,785 and ordered that it disgorge \$638,452. FINRA’s Central Registration Depository (“CRD”[®]) shows that Hold Brothers On-Line also agreed to pay fines to various self-regulatory organizations, including FINRA, in connection with the misconduct underlying the Disqualifying Order. Hold Brothers On-Line has not been a FINRA member since late 2012, when FINRA expelled it for failing to pay this fine.

² FINRA’s By-Laws provide that a person is subject to “disqualification,” and thus must seek and obtain FINRA’s approval prior to associating with a member firm, if he is disqualified under Exchange Act Section 3(a)(39). *See* FINRA By-Laws, Art. III. Exchange Act Section 3(a)(39)(B) provides that a person is disqualified if he is subject to, among other things, an SEC order barring him from associating with a broker-dealer. *See* 15 U.S.C. § 78c(a)(39)(B)(i)(II). Further, Exchange Act Section 3(a)(39)(F) incorporates by reference Exchange Act Section 15(b)(4)(E), which provides that a person is subject to statutory disqualification if he willfully aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of, among other things, the Exchange Act. *See* 15 U.S.C. § 78c(a)(39); 15 U.S.C. § 78o(b)(4)(E).

³ In May 2014, Tobias resolved a complaint brought by the New Jersey Bureau of Securities for the same misconduct as that underlying the Disqualifying Order. Tobias’ registration was suspended for three years concurrent with the Disqualifying Order’s

[Footnote continued on next page]

III. Background Information

A. Tobias

Although all of Tobias' broker-dealer registrations have expired, he first entered the securities industry in June 1995, when he registered as a general securities representative. He also registered as an introducing broker-dealer financial and operations principal in May 1999, an equity trader in January 2000, and a financial and operations principal ("FINOP") in November 2003. Tobias also passed the uniform securities agent state law examination in June 1995. Prior to associating with the Firm from August 2012 until September 2012, Tobias was associated with four different member firms (including Hold Brothers On-Line from August 2012 until September 2012, from April 2002 until January 2005, and from May 1995 until April 2001). Tobias has not been associated with a broker-dealer since September 2012.

Since the Disqualifying Order, the Firm states that Tobias initially worked as an accountant for an accounting firm. After he became licensed as a certified public accountant, he has worked in that capacity for, and is a partner in, the accounting firm. The record shows that Tobias is in good standing and has had no enforcement, non-compliance, or disciplinary actions brought against him.

Other than the Disqualifying Order and the New Jersey matter discussed above, the record shows no other disciplinary or regulatory proceedings, complaints, or arbitrations against Tobias.

B. The Firm

The Firm has been a FINRA member since July 2016 and is based in New York City. It has one Office of Supervisory Jurisdiction and 60 non-registered office locations. The Firm employs 60 registered representatives, seven registered principals, and seven non-registered fingerprinted individuals. It does not employ any other statutorily disqualified individuals.

FINRA completed the Firm's most recent examination in 2020. This examination resulted in a March 2020 Cautionary Action for the following exceptions: (1) failing to file and maintain an accurate Form BD because it did not list all entities engaging in a securities business that the Firm controlled or were under common control with the Firm; (2) failing to perform a Business Continuity Plan test on an annual basis and failing to include in its testing all required elements; (3) failing to maintain the Firm's financial and operations records in the format specified by Exchange Act rules; (4) failing to have

temporal bar, after which time he could reapply for registration upon demonstrating that he had complied with all provisions of the Disqualifying Order and would be subject to a heightened supervisory plan. Tobias was also fined \$12,500, which he paid.

adequate supervisory controls over its general ledger entries and its wire release process; and (5) failing to maintain adequate controls to ensure that the Firm did not withdraw funds from its customer reserve account to pay operating expenses. The Firm responded in writing to the exceptions noted in the Cautionary Action.

The record shows no recent regulatory or disciplinary history against the Firm.⁴

IV. Tobias' Proposed Business Activities and Supervision

A. Tobias' Proposed Activities

The Firm proposes to employ Tobias as a non-registered individual out of its home office in New York City, although he will be permitted to work remotely several days a week. Specifically, the Firm proposes that Tobias will assist with accounting work, such as taxes, bookkeeping, billing, and analyses of payouts to traders and vendor payments. Tobias will not have any customers, be assigned to any customer accounts, and will not engage with customers. The Firm represents that Tobias has accounting experience and tax competency that will “materially assist” the Executive Vice President of Finance and Operations, who will serve as Tobias’ primary supervisor as described below, in executing his responsibilities. Tobias will work part-time, 10 to 20 hours per week, and he will be compensated at an hourly rate of \$60 per hour.

B. Tobias' Primary Supervisor

The Firm proposes that Ilan Lessick (“Lessick”) will serve as Tobias’ primary supervisor. Lessick serves as the Firm’s Executive Vice President of Operations and Finance overseeing the Firm’s accounting and financial matters, which include preparing financial books and records, complying with regulatory requirements, and tax planning. Lessick currently supervises three other individuals and works from the Firm’s New York City office. Lessick first registered as a general securities representative in August 2000, as a general securities principal in May 2002, and as a FINOP in June 2003. He also passed the uniform securities agent state law examination in December 2000. Lessick

⁴ CRD shows that from 2012 through 2015, the Firm settled three matters against it brought by other self-regulatory organizations for failing to: (1) retain instant messages in the required format, evidence senior management approval of its Anti-Money Laundering (“AML”) Program, and obtain AML attestations from its associated persons; (2) register Firm officers as proprietary trading principals, provide notification of a new FINOP and register its previous FINOP, and establish written supervisory procedures that were relevant to the nature of its business; and (3) establish, document, and maintain a risk management system and supervisory procedures reasonably designed to manage the risks of the Firm’s business activities, conduct an annual review and document its annual review, and maintain a chief executive officer certification. The Firm paid a total of \$65,000 in fines and agreed to several undertakings in connection with these matters.

has been associated with the Firm since April 2021, and he was previously associated with five other firms.

CRD lists one outside business activity for Lessick. He serves as a consultant for FINOP Solutions Inc., which provides outsourced FINOP functions, for approximately eight hours per month.

The record shows no regulatory history, disciplinary history, or customer complaints against Lessick.

C. Alternate Supervisor

If Lessick is unavailable, Robert Ricca (“Ricca”) will serve as Tobias’ alternate supervisor. Ricca works from the Firm’s New York City office, serves as the Firm’s chief compliance officer, and currently supervises two individuals.

Ricca first registered as a general securities representative in May 2002, as a general securities principal in November 2007, as a municipal securities principal in June 2008, as a registered options principal in May 2010, as a research analyst in December 2010, and as a securities trader representative in March 2016. He also passed the uniform securities agent state law examination in October 2002. Ricca has been with the Firm since January 2016, and he was previously associated with four firms.

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

V. Member Supervision’s Recommendation

Member Supervision recommends approving the Firm’s request for Tobias to associate with it as a non-registered individual, subject to the terms and conditions of heightened supervision described below.

VI. Discussion

We have carefully considered the entire record in this matter. Based on this record, and pursuant to the SEC’s controlling decisions in this area, we approve the Firm’s Application to employ Tobias as a non-registered individual, subject to the supervisory terms and conditions set forth below.

A. The Legal Standards

We acknowledge that the Disqualifying Order involved serious misconduct. We also recognize, however, that the SEC weighed the gravity of Tobias’ misconduct when it permitted him to apply for reentry into the securities industry after three years. More than three years have passed since Tobias has been eligible to reapply, and he paid all amounts required under the Disqualifying Order. In such circumstances, the SEC has

instructed FINRA to evaluate a statutory disqualification application pursuant to the standards enunciated in its decisions in *Paul Edward Van Dusen*, 47 S.E.C. 668 (1981), and *Arthur H. Ross*, 50 S.E.C. 1082 (1992).

Van Dusen and its progeny provide that in situations where an individual's misconduct has already been addressed by the SEC, and sanctions have been imposed for such misconduct, FINRA should not consider the individual's underlying misconduct when it evaluates a statutory disqualification application. The SEC stated that when the period of time specified in the sanction has passed, in the absence of "new information reflecting adversely on [the applicant's] ability to function in his proposed employment in a manner consonant with the public interest," it is inconsistent with the remedial purposes of the Exchange Act and unfair to deny an application for re-entry. *Van Dusen*, 47 S.E.C. at 671.

The SEC also noted in *Van Dusen*, however, that an applicant's re-entry is not "to be granted automatically" after the expiration of a given period. *Id.* Instead, the SEC instructed FINRA to consider other factors, such as: (1) other misconduct in which the applicant may have engaged; (2) the nature and disciplinary history of the prospective employer; and (3) the supervision to be accorded the applicant. *Id.*

B. Application of the *Van Dusen* Standards

After applying the *Van Dusen* standards to this matter, we have determined to approve the Firm's Application to employ Tobias as a non-registered individual.

First, the record does not show any complaints, regulatory actions, or criminal history against Tobias unrelated to the misconduct underlying the Disqualifying Order since it occurred approximately 10 years ago. Nor does the record reflect any complaints, regulatory actions, or criminal history during a lengthy career in the securities industry prior to the Disqualifying Order. Given the expiration of the time-limited bar imposed upon Tobias, and the teachings of *Van Dusen*, he is now permitted to seek re-entry to the securities industry.

Second, the Firm does not have any recent formal disciplinary or regulatory history and it corrected deficiencies noted in FINRA's most recent examination. Moreover, the proposed supervisors are qualified to supervise a statutorily disqualified individual such as Tobias. This is particularly true where, as here, Tobias' activities at the Firm are strictly limited to assisting with the Firm's accounting on a part-time basis, as specified in the heightened supervisory plan. Indeed, Tobias will not have any customers, be assigned to any customer accounts, engage with customers, and will not have any supervisory responsibilities. Lessick and Ricca have no regulatory or disciplinary histories and collectively have more than 47 years of industry experience.

Third, based on the record before us, we find that the Firm's proposed supervisory plan is sufficiently stringent. As described above, the proposed supervisory plan strictly limits Tobias' activities, which should help to ensure that the misconduct underlying the

Disqualifying Order does not reoccur. We are satisfied that the following heightened supervisory procedures, if followed, will enable the Firm to reasonably monitor Tobias' limited activities on a regular basis:

1. The written supervisory procedures for HBC will be amended to incorporate this Supervision Plan for the supervision of Tobias. Lessick is the primary supervisor responsible for Tobias. Lessick will sign a copy of the Supervision Plan, acknowledging his receipt and acceptance of it.
2. If Lessick is to be on vacation or out of the office for an extended period, Ricca will act as Tobias' interim supervisor.
3. Tobias will be supervised by Lessick or Ricca in the Firm's main office located at One Penn Plaza, New York, New York 10119.⁵
4. As defined in FINRA Rules 1220(b)(3)(A)(i) and (ii), Tobias will not act as a "covered person" nor perform any "covered functions."
5. Tobias will only engage in the following duties at HBC:
 - a. posting and analyzing the Firm's financial books and records;
 - b. review and preparation of payroll and tax filings;
 - c. preparation of assessment reports (e.g., SIPC); and
 - d. analyzing reports of clearing and routing, revenue, payroll and vendor payments.
6. Tobias will not act in a supervisory capacity.
7. Tobias will not have any customers, be assigned to any customer accounts, nor engage with customers.
8. All of Tobias' outgoing emails will be blind copied to Lessick and reviewed by Lessick on a bi-weekly (i.e., every two weeks) basis. Lessick will also review all of Tobias' incoming emails on a bi-weekly basis. Lessick will review any other written correspondence directed to, authorized by, or sent by Tobias on a bi-weekly basis. Records of such reviews will be kept segregated for ease of review during any FINRA examination.

⁵ The Firm initially represented that because of COVID-19, Tobias might work remotely three days a week. If the Application is approved, the Firm represents that going forward, Tobias may be permitted to continue to work remotely, in which case Tobias' supervisors will review his work electronically.

9. Tobias will not be permitted to use any email address other than the Firm's email address for business communications. If Tobias receives a business-related email message in another email account outside the Firm, he will promptly deliver that message to the Firm's email account. In addition, Tobias will inform the Firm of all outside email accounts which he maintains and will provide the Firm access to those accounts upon request.
10. All complaints pertaining to Tobias, whether verbal or written, will be immediately referred to Lessick for review, and then to the Compliance Department. Lessick will prepare a memorandum to the file with full details as to the review, investigation and resolution of the matter. Documents pertaining to these complaints will be kept segregated for ease of review during any FINRA examination.
11. Lessick must certify quarterly to the Chief Executive Officer for the Firm that Lessick and Tobias are in compliance with all of the conditions of the Supervision Plan. These certifications will be kept segregated for ease of review during any FINRA examination.
12. The Firm must obtain prior approval from FINRA Member Supervision if it wishes to change Tobias' primary or alternate supervisors or if the Firm wishes to change any provision of this Supervision Plan. The Firm will submit any proposed changes or other requested information under this Supervision Plan to FINRA's SD Group at SDMailbox@FINRA.org.

FINRA certifies that: (1) Tobias meets all applicable requirements for the proposed employment; (2) the Firm is not a member of any other self-regulatory organization; (3) the Firm has represented that Tobias is not related to Lessick or Ricca by blood or marriage; and (4) the Firm does not employ any other statutorily disqualified individuals.

VII. Conclusion

Accordingly, we approve the Firm's Application to employ Tobias as a non-registered individual, subject to the above-mentioned heightened supervisory procedures. The association of Tobias with the Firm will become effective upon the issuance of an order by the SEC that it will not institute proceedings pursuant to Section 15(b) of the Exchange Act and that it will not direct otherwise pursuant to Exchange Act Section 15A(g)(2). FINRA is also seeking relief under Exchange Act Section 19(h). This notice shall serve as an application for such an order.

On Behalf of the National Adjudicatory Council,

Jennifer Mitchell Piorko
Vice President and Deputy Corporate Secretary