

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Association
of

Candace J. Lee

as a

General Securities Representative

with

Financial Services International Corp.

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

SD-1962

Dated: April 22, 2015

I. Introduction

On September 12, 2012, Financial Services International Corp. (“the Firm”) filed a Membership Continuance Application (“MC-400” or “the Application”) with FINRA’s Department of Registration and Disclosure (“RAD”). The Firm requests that FINRA permit Candace J. Lee (“Lee”), a person subject to a statutory disqualification, to continue to associate with the Firm as a general securities representative. On February 27, 2014, a subcommittee (“Hearing Panel”) of FINRA’s Statutory Disqualification Committee held a hearing on the matter. Lee appeared at the February 2014 hearing, accompanied by counsel, Alan Wolper, Esq., Lee’s then-proposed supervisor and the Firm’s chief compliance officer, Mark McCloskey (“McCloskey”), the Firm’s co-owner and introducing broker/dealer financial and operations principal (“FINOP”), Brenda Pingree (“Pingree”), and a compliance consultant hired by the Firm Michael Keller (“Keller”). Lorraine Lee-Stepney, Ann-Marie Mason, Esq., and Dean Miller appeared on behalf of FINRA’s Department of Member Regulation (“Member Regulation”).

Subsequent to the February 2014 hearing, but before FINRA issued a final decision on the Application, the Firm notified the Hearing Panel that McCloskey had left the Firm, but that going forward, he would serve as a consultant for the Firm. The Firm further notified the Hearing Panel that James Kim (“Kim”) had replaced McCloskey as Lee’s primary proposed supervisor and as the Firm’s chief compliance officer. Consequently, the Hearing Panel conducted a supplemental hearing on December 4, 2014, to consider testimony and evidence concerning Kim’s qualifications, his experience, and his ability to supervise Lee under the proposed supervisory plan. Lee appeared at the December 2014 hearing, accompanied by counsel, Alan Wolper, Esq., and Kim. Lorraine Lee-Stepney, Ann-Marie Mason, Esq., and Meredith MacVicar, Esq. appeared on behalf of Member Regulation.

For the reasons explained below, we approve the Firm's Application.¹

II. The Statutorily Disqualifying Event

Lee is statutorily disqualified because of a consent order dated August 1, 2012 (the "Washington Order"), entered by the State of Washington's Department of Financial Institutions Securities Division, against Lee, the Firm, and another representative at the Firm.² The Washington Order found that Lee and others at the Firm sold customers Class C mutual fund shares in order to use the annual fees assessed by these funds (and paid to the representative selling such shares) as compensation for investment advisory services to customers who did not meet the minimum asset requirements for the Firm's traditional advisory accounts. As described in more detail below, Lee and others at the Firm employed this strategy as a lower-cost substitute for investment advisory fees charged to clients with larger accounts.

The Washington Order also found that Lee and others failed to adequately inform customers that the Class C mutual fund fees were being utilized in lieu of paying for investment advisory services, and they failed to enter into written investment advisory agreements with these

¹ Pursuant to FINRA Rule 9524(a)(10), the Hearing Panel submitted its written recommendation to the Statutory Disqualification Committee. The Statutory Disqualification Committee considered the Hearing Panel's recommendation and presented a written recommendation to the National Adjudicatory Council.

² Section 604 of the Sarbanes-Oxley Act of 2002 expanded the definition of statutory disqualification in Section 3(a)(39)(F) of the Securities Exchange Act of 1934 ("Exchange Act") by creating and incorporating Exchange Act Section 15(b)(4)(H) so as to include persons that are subject to any final order of a state securities commission or state authority that supervises or examines banks that: (i) "Bars such person from association with an entity regulated by such commission," or (ii) "Constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative or deceptive conduct." *FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 52, at *5-6 (Apr. 2009). The Washington Order constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive ("FMD") conduct. The Uniform Disciplinary Action Reporting Form filed with FINRA's Central Registration Depository ("CRD"®) by the State of Washington on August 15, 2012, indicates that the Washington Order is a final order based on violations of laws or regulations that prohibit FMD conduct under Exchange Act Section 15(b)(4)(H)(ii).

The Washington Order also rendered the Firm statutorily disqualified. The Firm, however, was not required to go through a FINRA eligibility proceeding because the sanctions against it are no longer in effect. *See* SEC No-Action Letter, 2009 SEC No-Act. LEXIS 349, at *9-10 (Mar. 17, 2009) (providing that the SEC will not take action against FINRA if it does not file a notice seeking approval of a statutorily disqualified firm if: (1) the firm is a FINRA member as of March 2009; (2) the firm is disqualified as a result of a final order based upon FMD conduct; and (3) the order did not involve licensing or registration revocation and the sanctions are no longer in effect).

customers (as required by the Firm's policies and procedures). Finally, the Washington Order found that Lee and the Firm failed to reasonably supervise the Firm's salespersons pursuant to the Firm's supervisory procedures, which resulted in customers purchasing Class C mutual fund shares without receiving full disclosures of the characteristics of the shares and unsuitable recommendations to certain clients who purchased C shares despite having long-term investment time horizons.

Pursuant to the Washington Order, the Firm and Lee agreed to cease and desist from violating Washington law. The Department of Financial Institutions fined the Firm \$25,000, ordered that it pay \$15,000 in investigative costs, suspended Lee in all principal or supervisory capacities for 12 months (from August 1, 2012, until July 31, 2013) (the "Suspension Period"), and required that Lee requalify as a general securities principal. The Firm paid the fines and investigative costs.

Before the Hearing Panel, Lee testified that the Washington Order arose from a routine examination conducted by the State of Washington in 2009. Lee stated that she utilized Class C shares as a low-cost alternative to placing customers with smaller accounts into fee-based investment management arrangements. Lee explained that, for customers with less than \$300,000 to invest, a two to three percent fee was standard for advisory accounts (versus one percent, paid in arrears, with the Class C shares that she sold to her customers). Lee treated the customer accounts as advisory accounts and accepted the Class C share fund fees in lieu of an investment management fee that customers with larger accounts would have paid. Lee further testified that she did not think it was fair to charge her smaller customers the higher fees, that counsel advised her that her practice was "okay as long as they were C shares in lieu of the investment management fee," and that counsel further advised her that she did not need to have those customers sign written advisory agreements. Finally, Lee stated in the Application that, at the time of the 2009 Washington state examination, the Firm had recently updated its policies and procedures and neglected to indicate that advisory agreements "were optional on 'C' shares in lieu of fee accounts."³

III. Background Information

A. Lee

Lee qualified as a general securities representative in May 1986, as a municipal securities principal in January 1986 (and again in May 1994), and as a general securities principal in August 1986. Lee requalified as a general securities principal in August 2013. Lee also passed the uniform securities agent state law examination in August 1986 and the investment advisers law examination in December 1992. Prior to founding the Firm in 1995, Lee was associated

³ Lee testified that, as a result of the Washington Order, the Firm now has written advisory agreements with all customers, regardless of the size of their accounts. The Firm also requires brokerage customers who purchase Class C mutual fund shares to sign an acknowledgment that they have received a full description of Class C shares.

with six other firms.⁴ Prior to the Suspension Period, Lee served as the Firm's president, chief executive officer, chief compliance officer, and sales supervisor. The majority of Lee's business at the Firm is on the advisory side, and Lee testified that she has only three brokerage accounts.⁵

Lee personally filed for bankruptcy in December 1996. Other than the Washington Order, Lee's bankruptcy filing, and FINRA's Department of Enforcement filing a complaint against Lee in connection with her compliance with the Washington Order in late March 2015, the record shows no other criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against Lee. *See infra* Part VI.A.

B. The Firm

1. Background

The Firm is based in Seattle, Washington, and it has been a FINRA member since 1995. The Application states that it has one Office of Supervisory Jurisdiction ("OSJ") and 20 branch offices, and that it employs 10 registered principals and 37 registered representatives. The Firm is an introducing broker-dealer, and it is also registered as an investment adviser and an insurance agent.

Lee co-founded and owns 73.17% of the Firm. Pingree, the Firm's co-founder and FINOP, owns 23.11% of the Firm.⁶ The remaining 3.72% of the Firm is owned by an individual who is no longer registered with the Firm, Andrew Schmidt ("Schmidt"). During the Suspension Period and until mid-February 2014, Gregory Griffith ("Griffith") served as the Firm's chief compliance officer. McCloskey replaced Griffith as the Firm's chief compliance officer and Lee's proposed supervisor until September 2014. At that time, Kim replaced McCloskey as the Firm's chief compliance officer and Lee's proposed supervisor.⁷ Gregory Meinhardt ("Meinhardt") has served as the Firm's president since July 2013.

⁴ Lee also owns CJ Lee and Company (d/b/a Candy J. Lee Financial Planning and Money Management). This entity is an unregistered financial services firm established by Lee in 1992.

⁵ The record shows that Lee's brokerage customers consist of three self-directed pension plans. Excluding these pension plans, she did only three trades in brokerage accounts during the first quarter of 2013.

⁶ Pingree registered as a general securities representative in May 1986 and as an introducing broker/dealer FINOP (Series 28) in May 1995. She also passed the uniform securities agent state law examination in June 1986. Pingree has been registered with the Firm since January 1995, and CRD does not show any complaints, disciplinary proceedings, or arbitrations against Pingree.

⁷ At the December 2014 hearing, Kim testified that he believed McCloskey stepped down as the Firm's chief compliance officer because he was the subject of a lawsuit that would put the Firm "under too much undue stress." The record shows that in August 2014, McCloskey entered into a consent order with the State of Washington to settle allegations that he failed to enforce an

2. Compliance Consultant

The Firm hired Keller in March 2010 as a compliance consultant to conduct an independent review of the Firm's Anti-Money Laundering program. In connection with the Washington Order, the Firm expanded Keller's services to include helping the Firm and Lee comply with the Washington Order and serving as a resource for Griffith.⁸ At the February 2014 hearing, Keller testified that he would review emails to and from Lee as part of his duties.

3. Regulatory Actions

As described above, the Firm is a party to the Washington Order. Other than the Washington Order, the record shows no other complaints, disciplinary proceedings, or arbitrations against the Firm.

4. Routine Examinations

In March 2014, and in connection with the Firm's 2013 cycle examination, FINRA issued the Firm a Cautionary Action. FINRA cited the Firm for the following deficiencies: permitting Pingree to act in a general principal capacity without being properly registered;⁹ failing to properly calculate its net capital; failing to maintain adequate written supervisory procedures ("WSPs") to address the Firm's processes for documenting the date customer checks are received, identifying branch offices and inspection cycles for all non-OSJ offices, and disclosing all affiliates under common control of Firm owners on the Firm's Uniform Application for Broker-Dealer Registration; and maintaining a link on the website of a branch office to a former insurance representative. Further, Member Regulation asserted that it discovered during this examination that Lee continued to function as a principal and supervisor during the Suspension Period, in violation of the Washington Order. *See infra* Part VI.A. Member Regulation referred this matter to Enforcement, which issued a Wells Letter to Lee in November 2014 and, in late March 2015, filed a complaint against Lee in connection with this activity.

In November 2010, and in connection with the Firm's 2010 cycle examination, FINRA issued the Firm a Cautionary Action. FINRA cited the Firm for the following deficiencies: failing to accurately designate a secondary contact in the Firm's business continuity plan; failing to file the electronic storage media notification; failing to timely file the Firm's Limited Size and

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adequate supervisory system for the sale of tenant-in-common investments. McCloskey agreed to pay \$5,000 in investigative costs to settle this matter.

⁸ At the February 2014 hearing, Keller testified that Griffith "was young" and did not have substantial compliance experience.

⁹ We discuss this matter in more detail in Part VI.B.3.

Resources notification; failing to maintain adequate WSPs to address the Firm's activities related to its dually registered investment adviser representatives, the maintenance of customer complaints, and market timing with respect to variable annuity transactions; and failing to timely amend a Uniform Application for Securities Industry Registration and Transfer ("Form U4") for a registered representative. The Firm responded in writing stating that it had corrected the deficiencies noted.

In January 2009, and in connection with the Firm's 2008 cycle examination, FINRA issued the Firm a Cautionary Action. FINRA cited the Firm for the following deficiencies: failing to maintain an adequate business continuity plan; failing to provide a Business Continuity Plan Disclosure Document to customers when their accounts were opened; failing to maintain evidence of the Firm's annual update, review and approval of its business continuity plan; filing inaccurate Uniform Branch Office Registration Forms; failing to maintain adequate WSPs; failing to implement its WSPs in connection with its review of variable annuity new account forms and permitting Pingree to act outside of her limited principal registration by accepting approximately 100 accounts on behalf of the Firm; failing to monitor subscription-based business for suspicious activity; failing to maintain an adequate Anti-Money Laundering Compliance Program because the Firm did not monitor for new rules proposed under the Patriot Act; failing to timely and accurately report customer complaints; failing to timely file Forms U4 and Uniform Termination Notices for Securities Industry Registration ("Forms U5"); failing to provide initial privacy disclosure notices to customers and maintaining inadequate procedures for safeguarding customer information pursuant to Regulation S-P; approving variable annuity switches with outdated new account forms; failing to maintain Forms U5 for terminated persons; failing to maintain a list of attendees at the Firm's annual compliance meeting; and failing to have adequate procedures for handling third party checks. The Firm responded in writing stating that it had corrected the deficiencies noted.

The 2008 examination also resulted in a compliance conference to address, among others, the following exceptions: failing to timely file the Firm's notice of limited size and resources exception; failing to conduct an adequate annual certification of its policies and procedures and maintaining inadequate supervisory control procedures; failing to maintain adequate WSPs in numerous areas; failing to conduct an inspection of a branch office during 2007; failing to conduct any inspections of its branch offices from March 2004 until September 2008; and failing to timely report customer complaints.

IV. Lee's Proposed Business Activities and Supervision

The Firm proposes to continue to employ Lee as a general securities representative and to provide administrative services.¹⁰ Lee will receive commissions and \$34,000 annually for her

¹⁰ The Application originally requested that Lee be permitted to continue to associate with the Firm as a general securities representative and an investment adviser representative, although it was unclear from the record if the Firm was also seeking for Lee to associate with the Firm in a principal capacity. In its recommendation letter, Member Regulation asserted that the Firm's request for Lee to be employed at the Firm as an investment adviser representative "is beyond

administrative services. Lee, as an owner of the Firm, will also receive a percentage of excess profits paid to shareholders.

The Firm proposes that Lee will be supervised by Kim on-site at the Firm's Seattle, Washington home office. Kim qualified as a general securities representative in February 1999, as a limited representative-equity trader in February 2001, as a general securities principal in December 2004, as a registered options principal in August 2005, and as a municipal securities principal in July 2011. He also passed the uniform securities agent state law exam and the investment advisers law exam in 1999, although his registration as an investment adviser representative has since lapsed. Kim receives a salary from the Firm, and he testified that he currently supervises approximately 32 registered representatives. Prior to his association with the Firm in September 2014, Kim was associated with nine firms.

The record shows no criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against Kim. CRD indicates that Kim was "permitted to resign—no policy violations" from a prior firm. Kim testified that his prior firm's revenues could not support two compliance professionals and the firm laid him off.

The Firm proposes that Meinhardt, the Firm's president, will serve as Lee's on-site supervisor in the event that Kim is out of the office. Meinhardt qualified as a general securities representative in May 1987, as a general securities principal in February 1994, and as a municipal securities principal in August 1994. Meinhardt also passed the uniform combined state law examination in June 1987 and the investment advisers law examination in December 1999. Meinhardt joined the Firm in January 1995, and he has been associated with two other firms.

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the scope of FINRA's jurisdiction. Accordingly, Member Regulation's recommendation does not address this request."

At the February 2014 hearing, the Firm clarified that it was not, at this time, seeking for Lee to associate with the Firm as a general securities principal. Thus, our decision does not address Lee's potential association with the Firm as a general securities principal, and we do not suggest any view as to a particular outcome with respect to any prospective application for Lee to associate with the Firm as a general securities principal. We further note that Member Regulation's assertion regarding FINRA's authority to approve an individual such as Lee seeking to associate as an investment adviser representative with a dually registered broker-dealer and investment adviser is incorrect. *See Ass'n of X*, Redacted Decision No. SD11003, slip op. at 7-8 (NASD NAC 2011), available at <http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p126106.pdf> (denying application of a dually registered broker-dealer and investment adviser for an individual to associate with the firm solely as a registered investment adviser representative). Consequently, and for the reasons set forth herein, we also approve Lee's continued association with the Firm as an investment adviser representative.

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

V. Member Regulation's Recommendation

Member Regulation recommends that the Application be denied because, in its view: (1) Lee violated the terms of the Washington Order by acting in a principal and supervisory capacity during the Suspension Period; (2) the Firm has demonstrated that it is incapable of supervising a statutorily disqualified individual; (3) the Firm failed to propose an adequate supervisory plan for Lee; (4) the Firm failed to propose a suitable supervisor; and (5) the disqualifying event is recent and serious.

VI. 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), available at <http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p036476.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, Article III, Section 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 the regulatory and criminal history, and the potential for future regulatory problems. We also consider whether the sponsoring firm has demonstrated that it understands the need for, and has the capability to provide, adequate supervision over the statutorily disqualified person. The sponsoring firm has the burden of demonstrating that the proposed association is in the public interest despite the disqualification. *See Timothy P. Pedregon, Jr.*, Exchange Act Release No. 61791, 2010 SEC LEXIS 1164, at *16 (Mar. 26, 2010).

After carefully reviewing the entire record in this matter, including Member Regulation's concerns and allegations, the Firm's disciplinary and regulatory history, Lee's disciplinary and regulatory history, and the proposed supervisor and heightened supervisory plan, we find that the Firm has satisfied its burden. We conclude that Lee's continued participation in the securities industry as a general securities representative and investment adviser representative will not present an unreasonable risk of harm to the market or investors. Accordingly, we approve the Application for Lee to continue to be associated with the Firm as a general securities representative and investment adviser representative, subject to the supervisory terms and conditions detailed herein.

A. Lee's Compliance with the Washington Order

Member Regulation asserts that, during the Suspension Period, Lee engaged in numerous activities that required registration as a principal, as well as certain supervisory activities, in violation of the Washington Order. Lee and the Firm dispute Member Regulation's characterization of Lee's activities and argue that she did not act in any principal or supervisory capacity during the Suspension Period. Lee and the Firm further argue that, at various times, they consulted with counsel, as well as their compliance consultant, regarding what Lee could, and could not, do within the confines of the Washington Order. We discuss below the legal standard applicable to our analysis and the evidence concerning Lee's activities.

1. Legal Standard

NASD Rule 1021(b) defines a "principal" as an individual in certain listed categories¹¹ who is "actively engaged in the management of the member's investment banking or securities business, including supervision, solicitation, conduct of business, or the training of [associated] persons."¹² Persons who do not fall into one of the listed categories in NASD Rule 1021 are nonetheless principals "where . . . the requirement of active engagement in the management of the member's investment banking or securities business is satisfied." *Dennis Todd Lloyd Gordon*, Exchange Act Release No. 57655, 2008 SEC LEXIS 819, at *25 n.31 (Apr. 11, 2008); *Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at *28 (Sept. 13, 2010) (holding that individuals who are actively engaged in the management of a firm's investment banking or securities business are principals, regardless of their title).

In determining whether an individual is actively managing a firm's investment banking or securities business, and thus acting in a principal capacity, adjudicators have looked at various factors and to the presence of certain activities, including whether he: (1) had authority over hiring, firing, and recruiting at the firm; (2) negotiated or executed contracts and agreements with third parties on behalf of the firm; (3) directed firm activities and participated in developing or implementing firm policies and procedures; (4) controlled the firm's bank accounts or authorized or directed issuance of checks and disbursements; (5) held himself out to the public as having authority to communicate for, and make commitments on behalf of, the firm; and (6) supervised firm employees, others at the firm followed his orders, or individuals at the firm answered to him. *See, e.g., Arouh*, 2010 SEC LEXIS 2977, at *28-38; *Gordon*, 2008 SEC LEXIS 819, at *25-36; *Hans N. Beerbaum*, Exchange Act Release No. 55731, 2007 SEC LEXIS 971, at *6-13 (May 9, 2007); *L.H. Alton & Co.*, 53 S.E.C. 1118, 1125-27 (1999), *aff'd*, 229 F.3d 1156 (9th

¹¹ The five listed categories in NASD Rule 1021(b) are sole proprietor, officer, partner, branch manager of an OSJ, and director.

¹² "Investment banking or securities business" means "the business, carried on by a broker [or] dealer . . . of underwriting or distributing issues of securities, or of purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others." FINRA By-Laws Art. I(u).

Cir. 2000); *Kirk A. Knapp*, 51 S.E.C. 115, 128-129 (1992); *Dep't of Enforcement v. Gallagher*, Complaint No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *5-11 (FINRA NAC Dec. 12, 2012); *Dep't of Enforcement v. Harvest Capital Inv., LLC*, Complaint No. 2005001305701, 2008 FINRA Discip. LEXIS 45, at *24-33 (FINRA NAC Oct. 6, 2008); *see also Gordon Kerr*, 54 S.E.C. 930, 935 (2000) (holding that when analyzing whether an individual “is a supervisor, we look at the responsibilities assigned to the associated person by the firm and at the activities the individual actually performed”).

In determining whether an individual acted in a principal capacity, “we consider all of the relevant facts and circumstances, including the cumulation of individual acts that might not, on their own, show management.” *Gordon*, 2008 SEC LEXIS 819, at *32. In the cases that we have reviewed where adjudicators have concluded that an individual acted in a principal capacity, the individual in question actively engaged in multiple activities that supported a finding that he was acting as a principal. *See, e.g., Arouh*, 2010 SEC LEXIS 2977 (individual participated in key firm committees, effectively was the head of the firm’s bond group, reviewed firm’s business plan and strategies, helped recruit branch manager and interviewed salespeople and made recommendations regarding their hiring, provided input on compliance-related matters, and was strongly identified with the firm); *Gordon*, 2008 SEC LEXIS 819 (individual gave directions and orders to employees, held himself out as acting on behalf of the firm, negotiated contracts on behalf of the firm, gave extensive instructions regarding the firm’s operations and policies, and exercised authority over firm recruiting, hiring and firing); *Gallagher*, 2012 FINRA Discip. LEXIS 61 (firm’s president and chairman of firm’s board of directors recruited, hired and fired several key employees, supervised personnel, directed regulatory filings, held himself out as a supervising principal, and unilaterally controlled the firm’s finances); *Harvest Capital*, 2008 FINRA Discip. LEXIS 45 (individual actively sought to hire key firm personnel, negotiated agreements with third parties, pursued state certifications where he held himself out as having authority to make decisions, authorized or directed issuance of all checks and disbursements from the firm’s checking account, and all firm principals answered directly to him).

We also observe that, in many of these cases, the individual’s actions appear to have been in flagrant disregard of FINRA’s registration rules or mandated prohibitions from acting as a principal. *See, e.g., Ass’n of X*, Redacted Decision No. SD09007, slip op. at 20 (NASD NAC 2009), available at <http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p122610.pdf> (finding that individual “constructed businesses and contracts that specifically aimed to circumvent the Bar Order, flouting not only its text but also its intent”), *aff’d, Arouh*, 2010 SEC LEXIS 2977; *Gallagher*, 2012 FINRA Discip. LEXIS 61, at *47 (stating that “[t]he brazen, contemptuous, and egregious nature” of Gallagher’s registration violations warranted a bar); *Harvest Capital*, 2008 FINRA Discip. LEXIS 45, at *48-49 (finding that individual’s registration violations were egregious where he knowingly and intentionally engaged in activities as a principal); *Beerbaum*, 2007 SEC LEXIS 971, at *16-19 (finding Beerbaum “deliberately ignored” the requirements of FINRA’s registration rules and had previously violated these rules).

As described in detail below, we find that Lee substantially complied with the Washington Order. We further find that, although Lee on several occasions appears to have overstepped the bounds of the Washington Order by acting in a principal or supervisory capacity,

the record shows that Lee and the Firm attempted in good faith to comply with the Washington Order and in fact substantially complied with the Washington Order. Contrary to Member Regulation's assertions, Lee and the Firm did not intentionally violate or flout the terms of the Washington Order. On the whole, and under the terms of the heightened supervisory plan described herein, we do not believe that Lee's continued employment at the Firm as a general securities representative and investment adviser representative will present an unreasonable risk of harm to the market or investors.

2. Lee's Activities

a. Lee Served on the Firm's Board of Directors

Member Regulation argues that Lee served on the Firm's board of directors during the Suspension Period, which demonstrates that she acted as a principal and violated the Washington Order.

It is undisputed that Lee continued to serve as a member of the Firm's board of directors after August 1, 2012. She resigned from the board on May 6, 2013, after Member Regulation questioned whether she should be serving as a board member in light of her one-year principal suspension. An inside director, such as Lee, who sits on a member firm's board of directors, is presumed to be involved in the firm's day-to-day management and is therefore required to be registered as a principal. *See NASD Notice to Members 99-49*, 1999 NASD LEXIS 24 (June 1999); *see also* NASD Rule 1021(b) (providing that persons who are actively engaged in the management of a firm's investment banking or securities business shall include, among others, directors of corporations).

Although Lee sat on the Firm's board of directors for more than eight months during the Suspension Period, we find that the presumption that Lee was actively involved with the Firm's day-to-day management as a board member has been rebutted. *Cf. Knapp*, 51 S.E.C. at 128-30 (holding that individual violated his principal bar by, among other things, serving on firm's board of directors and continued to be actively involved in the firm's day-to-day management and operations). Pingree, the only board member other than Lee, testified that the board has met only once since August 1, 2012. The record corroborates Pingree's testimony and shows that the Firm's board of directors met on September 4, 2012, to approve actions to comply with the Washington Order and Lee's suspension (including acknowledging Lee's resignation as president, chief executive officer, chief compliance officer, and sales supervisor of the Firm effective as of August 1, 2012, and Pingree's appointment to the position of president and chief executive officer).¹³ The record also shows that Pingree, as the Firm's sole board member, acknowledged Lee's resignation from the board in May 2013. Further, Lee testified that she did not vote on any matters as a board member during her one-year suspension, other than her

¹³ The record also shows that a meeting of the Firm's shareholders (Lee, Pingree, and Schmidt) occurred in October 2012. At that meeting, the shareholders voted to continue Lee and Pingree as the two members of the board.

resignation, and the record shows that other than these matters the Firm's board of directors appears to have been inactive during the Suspension Period while Lee served as a board member.¹⁴ Under these circumstances, we do not find that Lee's participation in a single board meeting to effectuate her resignations of various Firm management positions violated the terms of the Washington Order.

b. Lee Signed Firm Checks and Reviewed Reconciliations

Member Regulation argues that during the Suspension Period, Lee signed off on all checks on behalf of the Firm, reviewed Pingree's preparation of such records, and authorized where the Firm's money went. Member Regulation argues that these activities violated the Washington Order.

It is undisputed that Lee continued to physically sign checks on behalf of the Firm after August 1, 2012. Lee and Pingree testified that the Firm's auditor had suggested previously that Lee sign all Firm checks, and sign off on the account reconciliations prepared by Pingree, as part of "best practices" to prevent Pingree from diverting Firm funds.¹⁵ Lee and Pingree also testified that they were both authorized signatories on the Firm's checking account such that either one of them, acting alone, could sign a check.¹⁶ Lee testified that Pingree prepared all Firm checks (i.e., reviewed the bill to be paid, determined whether the bill should be paid, and affixed the payee and amount to each check) that Pingree presented to Lee for Lee's signature. Pingree prepared the reconciliations, and Lee reviewed and initialed them. Lee further testified that she never directed Pingree to write a check to pay a particular bill or vendor, never declined to sign a check presented to her for signature, never questioned a check presented to her for signature, and never directed that the Firm make any expenditure during the Suspension Period. When McCloskey joined the Firm in February 2014, he directed Lee to stop signing Firm checks.¹⁷

¹⁴ The record includes a transcript of Lee's on-the-record testimony dated December 18, 2013 conducted by Enforcement, which appears to have stemmed from the Firm's 2013 cycle examination. Lee's testimony at this interview was generally consistent with her testimony at the hearing in this proceeding regarding her activities at the Firm and what she believed she could, and could not, do pursuant to the Washington Order. Similarly, Pingree's testimony at the hearing was consistent with Lee's testimony on many of the matters discussed herein. We find that both Lee and Pingree were credible witnesses.

¹⁵ Pingree testified that prior to the auditor's recommendation, Pingree would pay the bills, write the checks, sign the checks, and reconcile the bank statements.

¹⁶ Lee testified that Pingree would sometimes sign checks when Lee was not in the office or if Pingree "deemed that she needed it signed before I was able to see it."

¹⁷ McCloskey testified that his directive regarding Lee's check signing "was sort of an immediate knee-jerk reaction. I mean, I didn't like the fact, given the current circumstances and Ms. Lee's SD—I just simply didn't think she should be signing checks."

Signing checks typically indicates an individual's control of, and authority over, a firm's finances, and it is one factor that adjudicators have looked to in determining that an individual is acting in a principal capacity. *See Harvest Capital*, 2008 FINRA Discip. LEXIS 45, at *16, *27 (finding that individual acted as a principal where, among other things, he was the sole authorized signatory on the firm's checking account and he authorized or directed issuance of all firm checks and disbursements); *Dist. Bus. Conduct Comm. v. Pecaro*, Complaint No. C8A960029, 1998 NASD Discip. LEXIS 13, at *12, *17 (NASD NBCC Jan. 7, 1998) (holding that firm's sole owner acted as a principal where, among other things, he signed checks and reviewed corresponding bills); *see also Vladislav Steven Zubkis*, 53 S.E.C. 794, 799-800 (1998) (finding that individual controlled a firm and thus was an associated person based on, among other things, his payment of firm expenses); *American W. Sec., Inc.*, Admin. Proc. File No. 3-6193, 1984 SEC LEXIS 2609, at *55 (July 17, 1984) (finding that individual violated suspension as a principal by, among other things, signing firm checks and by executing authority to maintain bank accounts on behalf of the firm).

The record shows that Lee did not exercise actual authority over the Firm's checking account. It was Pingree, not Lee, who determined what bills were paid and when they were paid. Lee and Pingree testified that Lee never refused to sign a check presented to her by Pingree, never questioned a check or payment, and that Pingree had the authority to sign a check on the Firm's behalf even if Lee refused to do so. The record also shows, however, that Lee had the ability to exercise authority over the Firm's checking account, and performed monthly reconciliations of the Firm's bank accounts. While we credit Lee's testimony that she did not exercise actual authority over the Firm's checking account, credit her explanations as to why she and Pingree divided duties with respect to the Firm's checking accounts, and credit that Lee believed that she was not acting in a principal capacity by signing Firm checks, we find that Lee's ability to exercise control over the Firm's checking account, coupled with her check signing and monthly account reconciliations, demonstrate that Lee had control over the Firm's checking account.¹⁸

c. Contract Negotiations with Vendors on Behalf of the Firm

Member Regulation asserts that, during the Suspension Period, "Lee's leadership in the negotiation and formation of contracts between [the Firm] and third parties is evidence of principal activity."

¹⁸ We note, however, that Lee's conduct with respect to the Firm's checking accounts is distinguishable from many of the cases in which adjudicators have found that an individual exercised actual authority over a firm's finances and thus acted in a principal capacity. *See, e.g., Gallagher*, 2012 FINRA Discip. LEXIS 61, at *8 (individual "unilaterally controlled the firm's finances, including commission payments to registered representatives and service payments to vendors"); *Pecaro*, 1998 NASD Discip. LEXIS 13, at *12, *17 (finding that individual acted as a principal by both signing checks and reviewing corresponding bills). Further, McCloskey put a stop to these practices shortly after he joined the Firm.

Lee and the Firm disagree with Member Regulation's characterization of her activities with respect to third party vendors. Lee testified that, during the Suspension Period, Griffith and Pingree directed her to research and gather information concerning vendors and to bring that information to them for review. Lee further testified that she would try to get the best contractual terms possible and would provide Griffith and Pingree with "historical reference of what the firm might have done in the past" with respect to a particular vendor. Lee described her role as more of an administrative assistant acting at the behest of Griffith and Pingree, and testified that she did not sign any contracts during the Suspension Period. Similarly, Pingree testified that Lee did not sign any contracts during the Suspension Period, and that she "would ask [Lee] to unburden me from some of the workload, go out there and gather as much information as you can about these upcoming [contract] renewals."¹⁹ Pingree further testified that she and Griffith would tell Lee what terms they were looking for with respect to a particular vendor and would direct Lee to try to obtain those terms. Pingree did not view Lee's activities as negotiating contracts on behalf of the Firm.

The record contains emails between Lee and several third parties during the Suspension Period. One group of emails concerned the Firm's contract with Quest CE ("Quest"), a company providing compliance training and continuing education services to the Firm. In one email, Lee writes to a Quest representative and states that it appears that the draft contract is for three years, "but we do not want a three year contract. We would want a one year with and [sic] auto renew." In another email, Lee asks whether certain learning modules could be swapped. Quest sent the draft contract to Lee for her signature. Lee forwarded the final version of the contract to Pingree to review and sign, and also told Pingree that "we will have to send two different emails" to the Firm's representatives concerning charges for continuing education.²⁰

Another group of emails concerned the Firm's contract and potential contract with internet and telephone service providers (WCI and TW Telecom). During the Suspension Period, Lee wrote to a WCI representative and stated that, among other things, WCI is more expensive than the Firm's existing provider and that "I don't know if the value we place on you is enough to override the concerns and expense we would have with WCI." In another, Lee states, "We would like a two year contract." In another email, Lee asks a TW Telecom representative to send a two-year contract proposal and states that Pingree is the authorized signer for the firm and will review the proposal.

¹⁹ The record contains a number of contracts between the Firm and third parties that were executed during the Suspension Period. Pingree signed all of these contracts.

²⁰ Lee testified that she acted at Griffith's and Pingree's direction in connection with the Quest contract, and that they wanted the term of the contract to be less than three years. Lee further explained that in her email to Pingree, she was reminding Pingree that half of the Firm's representatives were being billed for continuing education, but the others were not, and that Lee was "giving that reference to [Pingree] so that she wouldn't get bombarded with irritated reps."

We have previously found that negotiating contracts may demonstrate that an individual is acting in a principal capacity. See *Harvest Capital*, 2008 FINRA Discip. LEXIS 45, at *28. In *Harvest Capital*, the firm's owner executed several commission sharing agreements on behalf of the firm as its chairperson. *Id.* at *12-13. He also contacted third parties concerning potential contracts with the firm, representing that he was the firm's chairperson and had authority to discuss such matters on the firm's behalf. *Id.* His efforts ultimately resulted in agreements with the parties, and he then directed the firm's chief compliance officer (whom the owner had hired) to sign and return the agreements even though the chief compliance officer had no prior knowledge of, or involvement with, the owner's prior discussions with these third parties. *Id.* There, we held that negotiating contracts, along with the owner's hiring and firing of firm employees, the owner's control of the firm's checking account, evidence that each principal at the firm answered to the owner and only acted at his direction, and the owner's holding himself out to the public as the firm's owner and chief executive officer, all demonstrated that he acted as a principal. See *id.* at *26-30. See also *Dep't of Enforcement v. Lee*, Complaint No. C06040027, 2007 NASD Discip. LEXIS 7, at *23, *28 (NASD NAC Feb. 12, 2007), *aff'd*, 2008 SEC LEXIS 819; *Knapp*, 51 S.E.C. at 129 (holding that individual acted in a principal capacity when he, among other things, negotiated an employment contract without anyone's knowledge, consent, or input).

Based upon the record before us, we find these cases to be distinguishable and that Lee did not actively negotiate contracts on behalf of the Firm during the Suspension Period. Lee talked to third parties at the direction of Pingree and Griffith, and she sought to obtain contract terms within the parameters set by Pingree and Griffith. The record shows that Pingree and Griffith were fully involved with, and aware of, Lee's discussions with third party vendors. Further, Lee never executed a contract on behalf of the Firm during the Suspension Period. Under these circumstances, we cannot find that Lee acted as a principal with respect to her communications, at the direction and under the supervision of Pingree and Griffith, with third party vendors.

d. Recruiting Activities and Hiring and Firing Firm Employees

Member Regulation asserts that Lee continued to participate in recruiting and hiring Firm personnel during the Suspension Period, which further evidences that Lee acted as a principal. Member Regulation points to several emails from Lee to third parties during the Suspension Period as evidence of Lee's violative conduct. In one instance, Lee exchanged several emails with one of the Firm's clearing firms concerning "a local prospective producer team with four billion in assets under management that is considering joining our firm." Lee asks the clearing firm representative for someone to assist her with the prospect, provided him with additional specifics concerning the prospective team's business, and offered several suggestions that she would make to the prospects (including retaining several specific business consultants and the Firm's regulatory attorney).²¹

²¹ The record also contains an email from Lee to one of the suggested business consultants in which Lee informs the business consultant that if she was interested in talking to the prospective team, she should send Lee more information about herself so Lee could pass it along.

In another series of emails, Lee answers questions posed by a prospective representative. Lee wrote to the prospect and stated that, "I talked to [Pingree] about some of the issues you indicated you were interested in. . . . We tried once before to take on an institutional rep and we had very limited access to the type of products and it really didn't fit our firms [sic] style of business. It would not be a good fit for you or us." In another email, Lee responds to what appears to be an unsolicited email from a recruiter that helps advisers buy or sell practices. Lee states that the Firm is interested in purchasing a small broker-dealer and asks if the recruiter works in this area or knows someone who does.

Lee testified that she did not hire or fire any employees during the Suspension Period. She further testified that her role with regard to recruiting was limited to providing information about the Firm and the Firm's parameters for hiring to prospective representatives. Lee stated that she would update Pingree and Griffith concerning her contacts with prospective representatives, and if a prospective representative expressed interest in the Firm, Lee would hand the matter off to Pingree and Griffith. Lee testified that when determining what she could or could not do with respect to recruiting, she would consider what an unregistered recruiter could do before handing off a prospect to the broker-dealer. Lee further testified that she would not make a recommendation to Pingree or Griffith concerning a particular prospect, although she admitted that, "usually if they fit our criteria . . . it's pretty obvious." Pingree testified that she was aware of Lee's recruiting activities and authorized and directed Lee to engage in those activities.

With respect to the specific emails with the Firm's clearing firms, Lee testified that a prospective representative had contacted the Firm and asked what the Firm's clearing firms had available to him if he joined, "and I was doing research for him by going to two of our top [clearing firms], Raymond James and Schwab, to see what they could offer this rep." Lee also testified that, with respect to the other prospective registered representative, she was conveying to him the Firm's standard platform of services and that she pulled Pingree in once the prospect expressed interest in joining the Firm. Lee testified that Pingree ultimately rejected the prospect.

An individual who actively engages in hiring and recruiting firm personnel may be acting in a principal capacity. *See, e.g., Gordon*, 2008 SEC LEXIS 819, at *11, *28-29 (holding that individual acted as a principal when he, among other things, exercised authority over the recruiting, hiring and firing of firm personnel); *Richard F. Kresge*, Exchange Act Release No. 55988, 2007 SEC LEXIS 1407, at *49-50 (June 29, 2007) (finding that individual was actively involved in hiring by recommending the firm hire a branch office manager and two registered representatives); *Gallagher*, 2012 FINRA Discip. LEXIS 61, at *8 (holding that individual acted as a principal where he, among other things, recruited, hired and fired key firm employees). Further, in *Arouh*, the Commission upheld findings that Arouh engaged in intervening

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Lee testified that nothing further came of this email and she did not take any information from the consultant to the prospective team.

misconduct by violating the terms of a bar order. *Arouh*, 2010 SEC LEXIS 2977, at *27-38. The NAC found that Arouh acted in a principal capacity by, among other things, successfully recruiting bond traders and collectively interviewing and hiring a branch manager, and the Commission affirmed these findings. *See Ass'n of X*, Redacted Decision No. SD09007, slip op. at 8, 16.

We find that, based upon the record before us, Lee did not actively engage in hiring, firing, or recruiting activities such that she acted in a principal capacity in violation of the Washington Order. First, the record does not show that Lee hired or fired any Firm employees during the Suspension Period. Second, similar to Lee's activities concerning third party vendors, Pingree authorized and directed her to engage in preliminary discussions with potential recruits, and was aware of Lee's activities in this regard. We credit Lee's testimony that she would hand off a potential recruit if he expressed interest in the Firm, and that she did not make any recommendations concerning potential recruits. Lee's activities in this regard simply did not rise to the level of the recruiting, hiring, and firing activities that adjudicators have previously found to be acting as a principal. *See, e.g., Gallagher*, 2012 FINRA Discip. LEXIS 61, at *8 (Gallagher recruited, hired, and fired several key employees); *Harvest Capital*, 2008 FINRA Discip. LEXIS 45, at *26 (individual actively involved in discussions with potential principals and made decision to hire them); *Knapp*, 51 S.E.C. at 129 (individual negotiated employment contract, salary, and benefits with employee without knowledge, consent or input of firm's operations manager).

e. Whether Lee Held Herself Out as Having Authority

Member Regulation asserts that Lee continued to hold herself out as having authority to speak on the Firm's behalf during the Suspension Period. Member Regulation points to emails from Lee and one of the Firm's clearing firms in which Lee appears to be handling a dispute and other matters, and to other emails in which Lee appears to hold herself out as speaking on behalf of the Firm.

We find that, although Lee may have been acting at the directive of Pingree or Griffith, the record in certain instances shows that she did in fact hold herself out as having authority to act on the Firm's behalf. For example, in an email with the Firm's clearing firm, Lee states that "[w]e definitely want to charge the clients and reps for this amount and would not be able to get you the detailed charging information by the 21st. We request the ability to credit the [Firm] accounts for these fees after we have had time to complete the reports[.]" *See, e.g., Gordon*, 2008 SEC LEXIS 819, at *27 (holding that individual represented himself outside of the firm as acting on the firm's behalf); *Arouh*, 2010 SEC LEXIS 2977, at *29-30 (finding that Arouh was effectively the head and public face of the firm's bond group and tried to resolve problems the firm had with a market maker). The record also contains other emails in which Lee repeatedly uses "we" and "us" to reference the Firm. *See Gordon*, 2008 SEC LEXIS 819, at *27 (individual referring to the firm as "my" firm and speaking of the firm's actions "in terms of what 'we' had done or would do").

We note, however, that the record also shows instances where Lee corrected (or attempted to correct) the perception that she had authority to act on behalf of the Firm during the

Suspension Period. For example, in response to a question from a Firm representative, Lee stated that, "I wanted to remind you that I am no longer the Chief Compliance Officer or your Sales Supervisor. Remember that role was moved to Greg Griffith late last year. He is the person that must ultimately decide what the firms [sic] policy will be. My role is to gather and research the information so he has everything he needs to talk to our regulatory consultants." In another instance, Lee responds that "Greg's the guy this year" to a vendor (Quest) asking whether she should send Lee program planning documents for the Firm's 2013 continuing education program. Lee also informed another vendor (TW Telecom) that "Brenda Pingree is the authorized signer for the company and will be in on Monday to review the proposal and if everything is a go she will sign and return the contract at that time."

f. Whether Lee Continued to Manage the Firm and Exercised Supervisory Authority Over Individuals at the Firm

Finally, Member Regulation argues that Lee continued to exert influence over the Firm's day-to-day management, "retained a broad supervisory role" at the Firm, and continued to affect the activities of Griffith and Pingree. In support, Member Regulation asserts that Lee operated as a co-chief compliance officer by reviewing reports, as evidenced by an email to Griffith in which Lee states, "Don't forget to send Michael Keller the reports that you and I reviewed as you complete them." Member Regulation also asserts that Lee continued to deal with compliance inquiries from registered representatives. Member Regulation points to an email with a registered representative in which the representative, at Lee's request, sends Lee compliance documentation and Lee responds that she "will review and get back to you if we need any additional info" and reminds the representative to use FINRA's name on his stationery.

Member Regulation also asserts that on several occasions Lee sent draft emails to Griffith or Pingree and they then sent out the draft emails under their own names.²² Further, Member Regulation cites to a series of emails where Lee allegedly directed Pingree and Griffith how to operate the Firm and Lee double checked Pingree's work.²³ Finally, Member Regulation argues

²² Member Regulation further argues that Lee "composed" the heightened supervisory plan originally submitted by the Firm. During her investigative interview, Lee testified that she "was instructed to write the words on paper" with respect to the plan and that Griffith and Pingree instructed her to write and follow counsel's guidance. Lee further testified that Griffith was involved in all discussions concerning the heightened supervisory plan but she, rather than Griffith, drafted the plan because he "was buried in work because he was taking on a lot of my old work." We find that Lee's administrative activities with respect to the original supervisory plan were consistent with her other activities performed at the direction of Pingree and Griffith. Regardless, the original supervisory plan has been superseded as described in Part VI.D, *infra*.

²³ For example, the record contains emails between Lee and Griffith regarding inactive accounts where Lee asks Griffith to have another individual code certain accounts and "then re-run this report." In another email, Lee states to Griffith, "You need to match the account numbers to the description and upload them to FINRA." Further, responding to an email from Griffith to a registered representative that Lee received because she was copied on the Firm's

that an email in which Griffith expressed concern that he was missing important emails and requested to be added as a recipient to the Firm's general email inbox shows that Lee continued to have authority over him and that Griffith "felt out of the loop."

During her investigative interview, Lee testified generally that she did not conduct any supervisory reviews during the Suspension Period, and assisted Griffith with anything she could that did not "require a decision" to help Griffith manage his increased workload.²⁴ Lee testified that she sometimes acted "as a scribe" and would draft emails for Griffith or Pingree to lighten their workloads. Lee also testified that, with respect to certain of the emails concerning inactive accounts, she was part of a team working on an administrative database management project and that Griffith was the only individual at the Firm who ran the reports requested. Lee stated that "I cannot direct [Griffith,] nor have I directed [him] on what to do. I requested a report to be run just like [administrative assistants at the Firm] could." Finally, Lee testified that she was copied on the Firm's compliance email mailbox to keep up on changes and "spot check" changes to procedures and policies, and that it was the Firm's policy that if she saw any errors or concerns to bring it to management's attention.

Although we credit Lee's testimony that she believed she was purely acting in a clerical capacity when she, for example, drafted emails on behalf of Griffith and Pingree, we find that Griffith and Pingree could at times reasonably believe that Lee, as the majority owner of the Firm and former president and chief executive officer, continued to exercise supervisory authority over their activities during the Suspension Period. For example, the several occasions where Lee appears to have directed Pingree and Griffith to correct items, or reminded them to do certain things, appear to have exceeded the scope of her permissible activities under the Washington Order. *See supra*, note 23; *cf. Beerbaum*, 2007 SEC LEXIS 971, at *6-9 (finding

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general mailbox, Lee tells Griffith that "[t]he disclosures you recommended to Eric doesn't [sic] address the fact that he is stating an opinion on the market. You might want to have him use something like the following that I use on my market letter. . . ."

The record also contains emails between Lee and Pingree. For example, Lee tells Pingree that "[w]e missed one and we need to make a change" to a representative's Form U4. In another, Lee tells Pingree that "I don't see Angela listed as a branch on CRD. We show her as a branch office in our supervision chart so she should show up under CRD as a branch like the others." Finally, Lee tells Pingree that "we missed changing the IARD ADV Part I listing of compliance officer. . . . Please correct and let us know when you're done so we can inform FINRA." Pingree then asks Griffith and Lee to double-check that she correctly made the changes.

²⁴ During Lee's investigative interview, Enforcement staff asked her whether she had concerns that her activities at times "could appear to be you acting as a de facto manager." Lee answered that she did not have concerns because she was acting in a "clerical manner," Keller was reviewing her activities, and "[w]e do not have the luxury of me walking away for a year. I had to do what I could do to help. And clerical is what I was told I could do."

that Beerbaum supervised at least one individual and approved, signed, and filed periodic reports with regulators, required disclosure forms, and required compliance and supervisory procedures on behalf of the firm).

* * *

In sum, and based upon the record before us, we find that Lee and the Firm substantially complied with the terms of the Washington Order.²⁵ We also find that the several instances in which Lee may have exceeded her authority under that order do not, on the whole and considering Lee's and the Firm's attempts to comply with the terms of the Washington Order and the proposed heightened supervisory plan (which we describe below), render Lee's continued employment at the Firm an unreasonable risk to markets or investors.²⁶

²⁵ Prior to the December 2014 hearing, the Hearing Panel repeatedly instructed the parties to limit any further filings or submissions to Kim's qualifications and experience, and not to whether Lee violated the terms of the Washington Order (which had been the primary topic of the day-long hearing in February 2014). Notwithstanding those instructions, in November 2014 Member Regulation submitted a letter to the Hearing Panel that, among other things, sought to introduce additional evidence of "intervening" misconduct by Lee (including a transcript of Griffith's May 2014 testimony before the State of Washington, certain emails drafted by Lee in early 2013, and Enforcement's November 2014 Wells Letter). The Hearing Panel excluded from the record these submissions. Member Regulation subsequently sought to include only the Wells Letter and related Cautionary Action issued by FINRA. Lee and the Firm do not dispute that Lee received the Wells Letter in connection with allegations that she violated the terms of the Washington Order by acting in a principal or supervisory capacity (which is reflected in CRD, along with Enforcement's March 2015 complaint for the same misconduct). Consequently, we admit the Wells Letter and Cautionary Action, and agree with the Hearing Panel's exclusion of all other additional documents.

²⁶ In determining the impact that Lee's intervening misconduct should have on the Application, we have looked to the principles expressed in the FINRA Sanction Guidelines. See *Ass'n of X*, Redacted Decision No. SD09007, slip op. at 20. The Guidelines with respect to registration violations instruct us to consider, among other things, the nature and extent of the unregistered person's responsibilities. See *FINRA Sanction Guidelines*, 45 (2013), available at [http://www.finra.org/Industry/Enforcement/Sanction Guidelines](http://www.finra.org/Industry/Enforcement/Sanction%20Guidelines) [hereinafter *Guidelines*]. As described herein, we find that the nature and extent of Lee's responsibilities in connection with her transgressions were minimal. Under the Principal Considerations in Determining Sanctions applicable to all Guidelines, we also consider that Lee did not intentionally seek to violate or circumvent the Washington Order. *Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 13); cf. *Ass'n of X*, Redacted Decision No. SD09007, slip op. at 20 (holding that individual "constructed businesses and contracts that specifically aimed to circumvent the Bar Order, flouting not only its text but also its intent").

3. Lee's and the Firm's Efforts to Comply with the Washington Order

Member Regulation argues that Lee and the Firm “flouted” the Washington Order and her suspension under that order. Lee and the Firm dispute Member Regulation’s characterization of their efforts to comply with the order. They assert that they attempted to comply with its terms and ask that we consider their efforts in weighing whether the Application should be approved. The evidence shows that although Lee may have exceeded her authority under the Washington Order in several instances, the record also shows that Lee and the Firm made reasonable, good faith efforts to understand the parameters of the Washington Order and to comply with the order.

For example, the record shows that Lee and the Firm consulted initially with counsel regarding the Washington Order and Lee’s permissible activities under the order before the order was entered. Lee testified that this attorney, who negotiated the terms of the Washington Order, advised her that she could remain as the Firm’s president and chief executive officer but to “just stay at the 5,000-foot level.” Shortly after entry of the Washington Order, Lee and the Firm discovered that the Washington Order rendered them statutorily disqualified. The attorney who negotiated the Washington Order referred Lee and the Firm to another attorney with more expertise in securities matters.

Lee and several others at the Firm (including Pingree) subsequently participated in several telephone calls with the Firm’s second attorney to discuss the parameters of Lee’s suspension. The record shows that the second attorney informed them that Lee could not serve as president and chief executive officer during her Suspension Period. Lee testified that counsel further advised them that: (1) Lee could continue to serve on the Firm’s board of directors at a “5,000-foot” level, provided she did not engage in any day-to-day management of the Firm; (2) Lee could perform administrative duties, including drafting documents in an administrative or secretarial role; (3) Lee could engage in recruiting activities provided that she limited her activity to providing potential recruits with information concerning the Firm and performing research on behalf of recruits, and she did not engage in negotiations; (4) Lee could perform research on vendors and potential vendors; and (5) Lee could sign checks.²⁷ Lee further testified that the attorney who provided this advice “was not an attorney who would put things in writing, so there was very little that we could produce from him.” The record contains a letter from another attorney at the same law firm, dated September 5, 2013 (after the Suspension Period), which provides that he reviewed the Firm’s responses to Member Regulation concerning Lee’s activities during the Suspension Period and concluded that none of Lee’s activities “rise to the level of her acting in a ‘principal or supervisory capacity,’ including signing checks on behalf of” the Firm. The author of this letter does not have securities or broker-dealer expertise, and at the

²⁷ The record contains Lee’s notes from these calls, which generally corroborate Lee’s and Pingree’s testimony.

time of this letter the original attorney at the law firm who provided advice to Lee and the Firm had left.²⁸

The Firm also expanded Keller's role after entry of the Washington Order to include helping the Firm and Lee comply with the terms of the Washington Order. Further, at the beginning of the Suspension Period, Lee notified all registered representatives at the Firm that Griffith would be taking on the role of "Rep Supervisor and Chief Compliance Officer" and that "any correspondence approvals or compliance questions should be directed to him from this point forward."²⁹

We find that Lee and the Firm made numerous, good faith attempts to comply with the Washington Order. While these efforts do not exonerate the several instances in which Lee acted in a principal or supervisory capacity, we consider them in determining whether Lee and the Firm intentionally violated the Washington Order and whether Lee presents the potential for future regulatory problems. Further, Lee's and the Firm's efforts to comply with the Washington Order distinguish this case from many of the other cases in which individuals inappropriately, and intentionally, acted as a principal. *See, e.g., Ass'n of X*, Redacted Decision No. SD09007, slip op. at 20; *Gallagher*, 2012 FINRA Discip. LEXIS 61, at *47; *Harvest Capital*, 2008 FINRA Discip. LEXIS 45, at *48-49; *Beerbaum*, 2007 SEC LEXIS 971, at *16-19.

²⁸ Lee and the Firm concede that an argument that they reasonably relied upon counsel's advice as a defense to the alleged misconduct is unavailable under the circumstances. *See John Thomas Gabriel*, 51 S.E.C. 1285, 1292 (1994) (holding that reliance on counsel defense is usually not available when intent is not an element of the violation); *Arouh*, 2010 SEC LEXIS 2977, at *51-52 (rejecting argument that Arouh relied upon the advice of counsel and finding that to successfully raise this defense, an individual must demonstrate that he sought legal advice, made full disclosure to counsel, show that he relied on such advice, and produce actual evidence of the advice). Lee and the Firm, however, argue that Member Regulation's characterization of their intentional disregard for the Washington Order is wrong and that they made efforts to comply with the Washington Order by consulting with several attorneys and Keller regarding the parameters of the order and what Lee could, and could not do, pursuant to that order. Lee and the Firm argue that the NAC should consider these facts in its overall assessment of the Application. Under the particular facts and circumstances of this case, and given Member Regulation's argument that Lee and the Firm intentionally violated the Washington Order, we agree.

²⁹ The email to all of the Firm's registered representatives also stated that Lee "will still be your main contact for help with practice management and marketing strategies." Lee testified that with respect to practice management, she would continue to "help [registered personnel] with the financial planning if they wanted to do – bounce ideas off of business, how they're running their business and things like that," although she also admitted that she was using "verbiage that we picked up from [counsel] on things that we could do" and looking back was not entirely sure what she meant by "practice management."

B. The Firm

Member Regulation makes several arguments to support its assertion that the Firm has not demonstrated that it can supervise Lee as a statutorily disqualified individual. For the reasons set forth below, we reject Member Regulation's arguments and find that, pursuant to the heightened supervisory plan set forth herein and under Kim's supervision, the Firm is capable of properly supervising Lee.

1. Lee's Several Instances of Violating the Washington Order Do Not Demonstrate that the Firm Cannot Properly Supervise Her

Member Regulation argues that Lee's violation of the Washington Order demonstrates that the Firm cannot properly supervise her. As set forth above, however, we find that Lee and the Firm substantially complied with the Washington Order. We do not believe that the several instances where Lee may have acted as a principal warrant denial of the Application or demonstrate that the Firm cannot provide Lee with stringent supervision going forward. This is particularly true considering that Lee will be supervised by Kim pursuant to the heightened supervisory plan, as described below. Further, other than the Washington Order, the Firm has no formal disciplinary or regulatory history in its 20 years of existence.

2. The Firm Did Not Misrepresent Lee's Activities

Member Regulation argues that the Firm "misrepresented the nature of Lee's activities at numerous junctures in the Application process." The record, however, does not support this contention. Lee and the Firm have consistently described Lee's activities throughout this process, and Member Regulation's disagreement with the characterization of those activities does not form a basis for denial of the Application. For example, the Application stated that, among other things, Lee serves as a member of the board of directors and would provide administrative support for the Firm (including compiling documentation, providing historical background information, completing research, working with Keller on current processes and procedures, and performing other duties delegated by Pingree).³⁰

3. Pingree's Service as the Firm's President Does Not Warrant Denial of the Application

Member Regulation also argues that the Firm's alleged failure to supervise Lee is exacerbated because during the Suspension Period, the Firm improperly designated Pingree as its

³⁰ Member Regulation points to the fact that the Application did not disclose that Lee signed Firm checks and was involved with recruiting, hiring, and contract negotiation. Neither Lee nor the Firm, however, believed that such activities violated the Washington Order. Further, as stated above, we find that the majority of these activities did not violate the Washington Order.

president and chief executive officer because Pingree was not registered as a general securities principal and she actively managed and ran the Firm as a FINOP.³¹

Pursuant to FINRA's registration rules, the duties of an introducing broker/dealer FINOP include final approval, responsibility, and preparation of a firm's financial reports, supervision of individuals who assist with such reports and those involved in the actual maintenance of the firm's books and records from which its financial reports are derived, supervision and performance of the firm's responsibilities under financial responsibility rules, overall supervision of and responsibility over individuals involved with the administration and maintenance of the firm's back office operations, and any other matter involving the financial and operational management of the firm. *See* NASD Rule 1022(c)(2). A person registered solely as an introducing broker-dealer FINOP is not qualified to function in a principal capacity with responsibility "over any area of business activity" other than what is described in NASD Rule 1022(c)(2). *See* NASD Rule 1022(c)(4). Any individual actively engaged in the management of a firm's investment banking or securities business must be registered as a general securities principal, "unless such person's activities are so limited as to qualify such person for one or more of the limited categories of principal registration specified hereafter." *See* NASD Rule 1022(a)(1); *see also* NASD Rule 1021(b).

Pingree testified that when Lee resigned as the Firm's president and chief executive officer in August 2012, "I took on as many of the ownership duties as I possibly could. Most of it went to [Griffith's] shoulders. He took on all the supervi[sion] of the reps. Anything compliance related went to him. Anything financial or, you know, ownership related came to me." Pingree further testified that she did not acquire any additional duties as the Firm's president, and that it was simply a title necessary to comply with Washington corporate law. Pingree also testified that she executed contracts on behalf of the Firm (because Lee could not pursuant to the Washington Order) and she reviewed Firm compliance policies and procedures in her role as a Firm owner rather than in a compliance capacity.

While we find that Pingree generally was not involved in day-to-day compliance-related matters on behalf of the Firm, and generally did not exercise the powers that a firm's president is typically authorized to do, we do find that in several matters she appears to have acted beyond the limited scope of her FINOP license. For example, Pingree executed contracts on behalf of the Firm and reviewed Firm compliance policies and procedures. We note, however, that when Member Regulation informed the Firm that Pingree could not, as a FINOP, act as the Firm's president, she resigned from that role. We also note that Pingree and the Firm appeared to follow the advice given to them concerning whether she could act in these roles (although such advice appears to be incomplete).³² Considering these activities in the entirety of the record, and

³¹ In July 2013, Pingree resigned as president and chief executive officer when Member Regulation informed the Firm that it believed that Pingree could not, as a FINOP, hold those positions. Meinhardt took over these positions.

³² The record shows that the Firm sought advice concerning whether Pingree could serve as the Firm's president given that she was not registered as a general securities principal. For

considering that Kim and Meinhardt will be serving as Lee's supervisors under the heightened supervisory plan, we do not believe that this matter (for which FINRA issued the Firm a Cautionary Action) warrants denial of the Application.

4. Alleged Additional Registration Violations

In further support of its recommended denial, Member Regulation points to the 2009 Cautionary Action, issued in connection with the Firm's 2008 examination, which cited the Firm for allowing Pingree to act outside of her limited principal registration by accepting approximately 100 accounts on behalf of the Firm. The Firm responded that it was unaware that a FINOP could not approve new account forms and that going forward only general securities principals would approve such forms. The record does not show that FINRA took any formal action with respect to this matter, and we do not believe that this citation in the 2009 Cautionary Action for conduct that occurred almost six years ago warrants denial of the Application.

Member Regulation also asserts that Griffith improperly supervised Lee's municipal activities for more than one year without being properly registered as a municipal securities principal. Other than Member Regulation's assertion, the record does not contain sufficient evidence for us to determine whether Griffith acted improperly with regard to this matter. Further, the record does not indicate whether the Firm or Griffith were disciplined or cited for this alleged transgression. Thus, based upon the record before us, we cannot determine whether Griffith improperly supervised Lee in this regard. Regardless, Griffith is no longer with the Firm.

5. The Firm's Statutory Disqualification Does Not Show It Cannot Supervise Lee

Finally, Member Regulation argues that the Firm itself is statutorily disqualified and "has not established that it is fully capable of providing Lee with the necessary heightened supervision." In support, Member Regulation cites to a NAC decision approving an application for a statutorily disqualified individual to associate with a firm (which itself was disqualified). *See Cont'd Ass'n of X*, SD12006, slip op. at 9 (FINRA NAC 2012), available at <http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p196933.pdf> (stating that "[w]e are further persuaded that despite the fact that the Sponsoring Firm itself is statutorily disqualified, the Sponsoring Firm is fully capable of providing X with the necessary heightened supervision" in part because the business unit involved with the

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example, in August 2012, in response to the Firm's inquiry, the Firm's securities counsel opined that, "I think it will be ok to have the FinOp as president, although it is a bit unusual, so long as there is a [Series] 24 and the duties of broker supervision are given to the 24." Likewise, Keller opined that Pingree could serve as the Firm's president as long as she did not supervise sales practices.

disqualifying event was no longer operating and the employees involved were no longer employed by firm). Member Regulation argues that because Lee is still with the Firm and is still engaged in the sale of mutual funds, the Firm is incapable of supervising Lee.

For the reasons stated herein, we find that the Firm is capable of supervising Lee pursuant to the heightened supervisory plan. While it is undisputed that the Firm is statutorily disqualified, we reject Member Regulation's proposition that if a disqualified firm has a supervisory plan with provisions different than the firm in the 2012 NAC decision (or different factual circumstances exist), we must deny the firm's application. Moreover, we do not believe that the facts of our 2012 decision, which involved a firm that employs more than 16,000 individuals, are applicable to this matter. Member Regulation's attempt to apply that decision to every sponsoring firm that is statutorily disqualified pursuant to the same order that disqualified the individual at issue would make it virtually impossible for firms, such as the Firm, to successfully sponsor disqualified individuals. While we may view the cessation of the business, and termination of the employees, underlying a firm's statutory disqualification as factors weighing in favor of approving an application under certain circumstances, the absence of such factors does not always preclude our finding that a statutorily disqualified firm is capable of supervising a statutorily disqualified individual.

C. The Washington Order

Member Regulation argues that the recent Washington Order involved serious, securities-related misconduct. We acknowledge that the Washington Order contained findings that Lee failed to disclose adequately to customers the fees charged and services provided in connection with sales of Class C mutual fund shares and failed to reasonably supervise Firm salespersons in connection with such sales. We further acknowledge that it is important for a registered person to fully and adequately disclose the services she will provide and the fees she will charge, and important for a supervisor to properly follow her Firm's policies and procedures. We do not, however, view the misconduct underlying the Washington Order in the same light as Member Regulation. We consider that Lee utilized Class C mutual fund shares as a method to provide her customers with advisory services (at a lower cost than she could have had they been subject to a standard advisory contract). Further, Washington State weighed the severity of Lee's misconduct and disciplined Lee for her disclosure and supervisory oversights, and in doing so it did not suspend Lee in all capacities (or permanently bar her from conducting securities business in the state). Rather, it suspended her in a limited capacity for a set period of time and permitted Lee to continue to engage in securities transactions notwithstanding the findings contained in the Washington Order. We also observe that, although the Washington Order was entered in 2012, the misconduct underlying the Washington Order occurred more than five years ago, and Lee testified that the Firm now has written advisory agreements with all of its customers, regardless of the size of their accounts. Under these facts and circumstances, we do not believe that the misconduct underlying the Washington Order warrants denial of the Application.

D. The Proposed Primary Supervisor and Proposed Plan

Finally, we find that Kim, Lee's proposed supervisor, is qualified to supervise Lee. He has no customer complaints, regulatory, or disciplinary history. While we acknowledge that Kim does not possess as much supervisory experience as McCloskey (who has been in the securities industry for more than 40 years), we find that Kim has adequate supervisory experience to supervise Lee pursuant to the heightened supervisory plan.³³ Kim credibly testified that he has no qualms supervising or directing Lee to comply with the plan and the Firm's policies and procedures, notwithstanding that Lee is the Firm's majority owner.

We acknowledge that Kim, as the Firm's chief compliance officer, is currently ultimately responsible for supervising approximately 32 individuals. We find, however, that under the circumstances Kim will have sufficient time to supervise Lee. We credit Kim's statement that he feels that he has the ability to supervise Lee and handle his responsibilities as the Firm's chief compliance officer, and Kim testified that he has previously supervised as many as 70 registered representatives. Kim will sit several feet from Lee in the same open office, and will generally be in the office whenever Lee is in the office.³⁴ Further, the majority of Lee's business is on the advisory side, Lee's brokerage business is quite limited, Kim testified that Lee generally sends a small number of emails each day, and under the heightened supervisory plan Kim may delegate certain reviews to Meinhardt. Notwithstanding Member Regulation's concerns, we believe that Kim will be capable of supervising a statutorily disqualified individual such as Lee under the proposed heightened supervisory plan described herein.³⁵

We find that the following heightened supervisory procedures, if they are diligently followed, will enable the Firm to reasonably monitor Lee's activities on a regular basis:³⁶

³³ Kim testified that while the Firm entered into a consulting contract with McCloskey upon his departure, he does not utilize McCloskey as a resource but instead frequently consults with Keller concerning compliance issues. Further, although Member Regulation also expressed concern regarding Kim's "spotty" employment record, at the December 2014 hearing Kim adequately explained his employment history and the reasons for his movement among firms (none of which involved Kim's performance as a supervisor or violation of any rules, regulations, or firm policies).

³⁴ The heightened supervisory plan, described below, permits Lee to perform activities other than "security and advisory activities" from a location other than the Firm's office. Regardless, Kim testified that he does not anticipate that Lee will work from home on a regular basis because he "would rather have her in the office."

³⁵ Although Kim testified that he is still learning about the Firm's processes and procedures, under the circumstances we view Kim's relative newness to the Firm, Lee, and Pingree, to be beneficial.

³⁶ The Firm submitted an amended plan, dated November 5, 2014, and signed by Lee, Kim, and Meinhardt. The Firm's November 2014 supervisory plan addressed certain concerns raised by Member Regulation after the February 2014 hearing. The supervisory plan described herein

Written Supervisory Procedures: The written supervisory procedures for the Firm will be amended to reflect the fact that James Kim, the Firm's chief compliance officer, will be Lee's primary supervisor.

Designated Supervisor in Lee's Absence: If Kim is on vacation or out of the office for an extended period, alternate supervisor Greg Meinhardt will act as Lee's supervisor. During such times, Meinhardt or the designated alternate in Meinhardt's absence (an appropriately qualified principal) will work from Lee's physical location at the Firm in close proximity to her. Only a qualified principal will be designated as Lee's backup supervisor.

Restrictions on Lee's Activities:

- a. Lee shall not act in any supervisory or principal capacity, including in any manner as described herein.
- b. Lee shall not act in any management capacity, including but not limited to negotiating contracts with vendors or employees (or prospective vendors or employees), managing the Firm's day-to-day activities, or acting as a control person of the Firm.
- c. Lee shall not maintain discretionary accounts on behalf of any customers, with the exception of accounts owned by Lee's family members.
- d. Lee will refer all questions, concerns, or Firm-related issues (from employees or third parties) immediately to Kim; he will then determine the appropriate course of action to take.
- e. Due to her prior role at, and long tenure with, the Firm, Lee may serve in a consulting capacity to Firm management and Kim for questions regarding operational issues. While Lee may be solicited by Firm management or Kim for her opinions and recommendations, Lee, Kim, and the Firm expressly understand and acknowledge that Lee has no ability to issue directives, and that her opinions and recommendations should not be offered unless solicited and may be freely disregarded. Kim shall be notified whenever Lee's opinion or recommendation is solicited by Firm management, and Kim shall document each such solicitation of Lee (including his own), Lee's opinion or recommendation, and the action taken. Documents pertaining to these

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is based upon this plan; we have, however, made further clarifications of certain provisions (several of which are expressly described in notes 37 and 38, *infra*). The supervisory plan described herein supersedes all other plans.

matters shall be kept segregated for ease of review during any internal or regulatory examination.³⁷

On-Site Supervision and Office Hours: Lee will conduct all “securities and advisory business” from the Firm’s home office at 701 Fifth Ave., Suite 6870, Seattle, WA 98104, during normal office hours from 7 a.m. to 4 p.m. The phrase, “securities and advisory business” is defined to mean communicating with actual and prospective customers about securities, accounts, trading, and strategies. Expressly excluded from that definition are activities that do not include communicating with actual and prospective customers about such topics. Thus, for example, Lee may conduct analyses of securities and customer accounts from locations other than the Firm’s home office. Kim shall supervise Lee while she is on-site at the home office during the term of her heightened supervision. Kim shall work in close physical proximity to Lee (i.e., within 10 feet) when she is present in the office.

Securities Related Activities: During the term of her heightened supervision, Lee cannot and will not engage in any activity that relates in any way to her principal securities registration (Series 24). However, these procedures shall not impede her ability to act as a general securities representative (Series 7) or as an investment adviser representative (IAR) of the Firm. As noted elsewhere in this plan, all of Lee’s securities and advisory related activities shall be closely supervised and monitored by Kim via increased trade blotter, account opening, account suitability, and email and correspondence reviews, as well as being in close proximity to Lee.

Advisory Related Activities: During the term of heightened supervision, Lee’s advisory related activities will be supervised by Kim, and will be in accordance with NASD Rule 3040 and relevant regulatory guidance. All new advisory accounts will be reviewed and approved by Kim prior to opening, and reviewed for, among other things, proper documentation of the agreements and disclosure requirements for Class C shares.

Quarterly Compliance Certifications: Quarterly, Lee shall sign the Firm’s code of ethics and policies and procedures attestation certifying to Kim and Meinhardt that she has read the Firm’s current Code of Ethics, its Compliance Manual and other applicable Firm policies pertaining to her obligations to clients and the Firm (including but not limited to those related to retail communications, mutual fund share classes, suitability, recommendations to customers, duties and responsibilities of a general securities principal, and duties and responsibilities of a registered representative), and that she fully understands those obligations. Lee shall certify quarterly that Lee is in full compliance with each provision of this heightened supervisory plan. The Firm shall keep copies of these quarterly

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We have clarified this provision to include, among other things, a review by Kim.

certifications segregated for ease of review during any internal or regulatory examination.

Trading Activity Supervision: Kim shall review and approve, prior to execution, all securities transactions effected by Lee on a solicited basis, and shall electronically code them as reviewed by him and the date reviewed and approved. Kim shall review and approve all other securities transactions effected by Lee on a daily, post-execution basis, and electronically code them as reviewed by him and the date reviewed and approved. Lee's brokerage account trade blotters shall be printed quarterly and segregated for ease of review during any examination. Quarterly reviews shall be documented and endorsed by Kim, and the Firm shall keep copies of all quarterly reviews segregated for ease of review during any internal or regulatory examination.

New Account Review and Approval: Prior to the opening of any new customer account by Lee, it shall be reviewed and approved by Kim or Meinhardt as Kim's backup principal designee. Approvals of account paperwork shall be documented by date and endorsed by Kim or Meinhardt as his principal designee. The Firm shall keep copies of Lee's account paperwork segregated for ease of review during any internal or regulatory examination.

Supervision of Communications:

- Retail Communications: All of Lee's outgoing "Correspondence" and "Retail Communications" (as defined in FINRA Rule 2210) to actual and prospective customers (including email, written correspondence, advertising, and sales literature) will be reviewed and approved by Kim or Meinhardt as his principal designee PRIOR to use. If not approved, the Correspondence or Retail Communication will not go out.
- Other Internal and External Communications: Kim will review, on a daily (but not pre-use) basis, all of Lee's incoming and outgoing internal and external written communications (including email).³⁸ Kim shall maintain appropriate records of such reviews in the Firm's compliance reviews and archive them, including any comments and actions taken, in the Firm's email archiving system.
- Emails to Non-Firm Accounts: Lee will forward to her Firm email address any emails she receives through any non-Firm email addresses that relate to her securities or investment banking activities. Lee will not use her personal email address to conduct any Firm business.

Complaints: Lee will immediately (i.e., same day) refer all customer complaints, whether written or verbal, to Kim. Kim will document what measures were taken

³⁸ At the February 2014 hearing, the Firm and Lee indicated that they would be amenable to expanding the scope of the communications covered by the supervisory plan submitted by the Firm. The provisions contained herein have thus been amended.

to investigate any such complaint (e.g., contact with the customer and interview with Lee), the findings, and the resulting resolution. Documents pertaining to any complaint shall be kept segregated for ease of review during any internal or regulatory examination.

Annual Review of Heightened Supervisory Plan: During the course of each annual inspection pursuant to NASD Rules 3012 and 3010(c), Michael Keller, an Independent Compliance Consultant, will review the effectiveness of this heightened supervisory plan by conducting an additional review of the plan's components and compliance with the plan by the Firm and Lee. Kim shall document such annual review as part of the reports issued pursuant to the above referenced rules, and the Firm shall keep copies of all such records segregated for ease of review during any internal or regulatory examination.

Training: On a quarterly basis and as long as this plan is in place, the Firm will provide additional training to Lee regarding the Firm's policies and procedures and prohibited activities. The Firm will also provide training related to FINRA rules, including but not limited to: retail communications, mutual fund share classes, suitability, recommendations to customers, duties and responsibilities of a general securities principal and duties and responsibilities of a registered representative. Particular emphasis and training will be placed on the appropriate use of Class C shares in fee based accounts. On an annual basis, Lee shall also review all changes to the Firm's "Rep Manual" and review all FINRA Regulatory Notices pertaining to the Firm's business. The Firm shall document such training and reviews, and keep such documentation segregated for ease of review during any internal or regulatory examination.

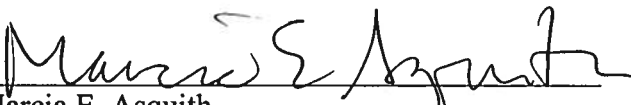
Disciplinary Action for Non-Compliance with the Plan: In the event that Lee fails to comply with any component of the Heightened Supervisory Plan as outlined herein, the Firm (through Kim) will take appropriate disciplinary action against her. Such discipline may include: a monetary fine, restrictions on her activities, suspension, and/or termination.

FINRA Approval of Changes to Plan: The Firm will obtain FINRA's approval prior to any change in the supervisors designated to handle the Plan. The Firm shall not change any provision of this plan without FINRA's prior approval.

VII. Conclusion

For the reasons stated herein, we approve the Firm's Application to continue to employ Lee as a general securities representative and investment adviser representative, subject to the above-mentioned heightened supervisory procedures. In conformity with the provisions of Exchange Act Rule 19h-1, Lee's association with the Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the Commission.

On Behalf of the National Adjudicatory Council,



Marcia E. Asquith
Senior Vice President and Corporate Secretary