

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the

Continued Membership

of

Middlebury Securities, LLC

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

SD-2003

Date: December 24, 2015

I. Introduction

On September 19, 2013, Middlebury Securities, LLC (“Middlebury” or “the Firm”) submitted a Membership Continuance Application¹ (“MC-400A” or “Application”) with the Department of Registration and Disclosure at the Financial Industry Regulatory Authority (“FINRA”). The Application seeks to permit the Firm, a FINRA member subject to a statutory disqualification, to continue its membership with FINRA notwithstanding its disqualification. A hearing was not held in this matter; rather, pursuant to FINRA Rule 9523(b), FINRA is filing this Notice pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 (“Exchange Act” or “SEA”).

II. The Statutorily Disqualifying Event

Middlebury is subject to a statutory disqualification, as that term is defined in Section 3(a)(39)(F) of the Exchange Act, as a result of its consent to an August 21, 2013 FINRA Letter of Acceptance, Waiver and Consent (“AWC”) finding that it failed to supervise within the meaning of Exchange Act Section 15(b)(4)(E).²

In the AWC, Middlebury and James Robinson (“Robinson”), the Firm’s majority owner, then President and Chief Compliance Officer (“CCO”), consented to findings that during the period of December 2009 through April 2012 (“the relevant period”), Middlebury, acting through Robinson, failed to supervise a registered representative (“GO”) who violated the federal securities laws as well as FINRA’s rules.³ According to the AWC, GO established two

¹See the MC-400A Application and related attachments submitted by Middlebury, in September 2013 (attached as Exhibit 1).

²See the FINRA Letter of Acceptance, Waiver and Consent, No. 2011025438902, for respondents, Middlebury Securities and James B. Robinson, accepted by FINRA on August 21, 2013 (attached as Exhibit 2).

³Robinson is also subject to a statutory disqualification. The Firm filed an MC-400 Application on behalf of Robinson; however, since the sanctions from Robinson’s disqualifying event are no longer in effect, he is no longer

escrow accounts to hold investor funds from nine private offerings in which Middlebury was the selling broker-dealer (the “Middlebury offerings”). He was then able to convert approximately \$125,000 in customer funds received from the Middlebury offerings for his personal use. He also made fraudulent misrepresentations and omissions of material facts in connection with two of the nine private offerings. In addition, acting through Middlebury, GO misused approximately \$200,000 in escrowed investor funds from two of the offerings to make payments, such as legal fees and commission payments, to or on behalf of, an issuer.

With respect to GO’s misconduct, Middlebury (acting through Robinson) was found to have: 1) failed to reasonably supervise GO; 2) failed to establish and maintain an adequate supervisory system, written supervisory procedures, and written supervisory control procedures relating to the handling and transmittal of customer funds, and the use of escrow accounts in connection with private offering activities; and 3) allowed GO to engage in activity that required principal registration, while he was not so registered. Middlebury was also found to have failed to make and keep current required records, such as monthly bank statements for the escrow accounts that it used to hold customer accounts. As a result of this misconduct, Middlebury was censured and fined \$325,000.⁴ Robinson was suspended from associating, in any and all principal capacities, with any FINRA member for a period of one year; was required to requalify as a General Securities Principal; and was fined \$45,000.⁵

Both FINRA and the SEC⁶ barred GO from the securities industry in April and November 2014, respectively.

III. Background Information

A. The Firm

Background

Middlebury is based in Weybridge, Vermont and has been a FINRA (f/k/a NASD) member since January 2003. The Firm represents that it has three Offices of Supervisory Jurisdiction and one branch office. The Firm employs 17 registered representatives, three registered principals and 18 other employees. The Firm is approved to sell corporate equity securities over-the-counter; corporate debt securities; mutual funds; variable life insurance or annuities; tax shelters or limited partnerships in primary distributions; and private placements.⁷

required to seek permission to associate through a FINRA Eligibility Proceeding. The Firm has since withdrawn the Application.

⁴Per FINRA Finance, the Firm paid \$81,250 as a down payment on September 19, 2013. The balance of \$243,750 is due in monthly installments of \$7,450 on the 19th of each month. Provided that the Firm remains current on its installment plan, the payoff date is expected to be September 19, 2016.

⁵ Robinson’s suspension ended on August 15, 2014 and he paid the fine in full on June 26, 2015. He has not yet requalified as a GP.

⁶The SEC brought action against the Firm for related misconduct which is discussed later in this Notice.

⁷See “Types of Business” and “Other Business” for the Firm, which were extracted from the Firm’s BD filing (attached as Exhibit 3).

Middlebury is not a member of any other self-regulatory organization.

Recent FINRA Examinations of Middlebury

The Firm's most recent combined Financial/Operational and Sales Practice Examination, was conducted in 2015.⁸ The examination resulted in a Cautionary Action. The Firm was cited for eight exceptions. The most notable exceptions were that the Firm: 1) Middlebury failed to enforce its Written Supervisory Procedures because four of its representatives failed to disclose their Outside Business Activities ("OBAs") on their Form U4's, a violation of FINRA By-Laws, Article V Section 2 (Application for Registration), FINRA Rule 3110 (b) and NASD Rule 3010 (b) (Written Procedures); 2) the Firm failed to file offering materials with FINRA for two of four private placement offerings during the period of June 30, 2013 through July 13, 2015, a violation of FINRA Rule 3110 (b) and NASD Rule 3010 (b) (Written Procedures) and FINRA Rule 5123(a) (Filing Requirements); and 3) Middlebury failed to comply with FINRA Rule 2090 (Know Your Customer), FINRA Rule 2111 (Suitability) and FINRA Rule 3110 (b) (Written Procedures) because it did not maintain a record of a complete investment profile for all of the investors in a private offering.

An earlier 2013 combined Financial/Operational and Sales Practice Examination also resulted in a Cautionary Action.⁹ Middlebury was cited for four exceptions. The most notable exceptions were that the Firm: 1) failed to comply with NASD Rule 3040 (Private Securities Transactions of an Associated Person) and NASD Rule 3010 (Supervision) because the Firm approved an OBA for a registered representative who was raising capital for a privately placed energy fund, but failed to recognize the OBA as a private securities transaction; and 2) was not in compliance with SEC Regulation S-P because it failed to safeguard or otherwise protect customer information or records at its Boca Raton, Florida branch office.

Formal Disciplinary History

SEC Regulatory Action

FINRA is aware of only one other regulatory action involving Middlebury, and it is based on the same misconduct that led to the Firm becoming statutorily disqualified. In October 2014, the SEC instituted proceedings against Middlebury. To resolve the SEC's action, Middlebury submitted an offer of settlement, which was accepted by the Commission. The SEC then issued an Order finding that Middlebury willfully violated Sections 10(b) and 17(a) of the Exchange Act and Rule 10b-5 thereunder.¹⁰ In the Order, the Firm was censured and ordered to cease and

⁸See the Examination Disposition Letter, dated December 7, 2015; Report for Examination Number 20150432833, dated November 3, 2015; and the Firm's response, dated November 20, 2015 (collectively attached as Exhibit 4).

⁹See the Examination Disposition Letter, dated February 12, 2014; Report for Examination Number 20130350374, dated December 27, 2013; and the Firm's response, dated January 27, 2014 (collectively attached as Exhibit 5).

¹⁰See the SEC Administrative Proceeding Order In the Matter of Middlebury Securities, LLC, dated October 31, 2014 (attached as Exhibit 6).

desist from committing or causing any violations or future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.¹¹

IV. The Firm's Proposed Continued Membership with FINRA and the Supervisory Plan

Notwithstanding its disqualification, Middlebury seeks to continue its membership with FINRA. To prevent a reoccurrence of the misconduct found by FINRA and the SEC, Middlebury created a Core Compliance Team ("CCT") in November 2012,¹² and separated the role of compliance and supervision from sales and business growth.¹³ The key members of the CCT, Craig Sherman ("Sherman")¹⁴ and Donna Schulze ("Schulze")¹⁵ do not hold sales roles at Middlebury.¹⁶

V. Discussion

After carefully reviewing the record in this matter, including certain representations by the Firm, we approve Middlebury's request to continue its membership in FINRA, subject to the terms and conditions set forth below.

In evaluating Middlebury's Application, FINRA assessed whether the Firm has demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors. See, *In the Matter of the Continued Membership of J.P. Morgan Securities, LLC*¹⁷, citing *Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (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"). Factors considered in FINRA's assessment included the nature and gravity of the statutorily disqualifying misconduct; the restrictions imposed; the Firm's regulatory history; and whether there was any mitigating or aggravating factors, including intervening misconduct.

The underlying misconduct leading to Middlebury's disqualification status involved serious violations of the federal securities laws, rules and regulations. FINRA considered the

¹¹ The SEC stated in its Order that additional proceedings to determine the amount of civil penalties, prejudgment interest and disgorgement, will be decided at a future date.

¹² See email correspondence from Craig Sherman to Lorraine Lee, dated March 28, 2014 (attached as Exhibit 7).

¹³ See Exhibit 1, Bates p. 46.

¹⁴ Sherman is the Firm's Chief Compliance Officer and the Financial and Operations ("FINOP").

¹⁵ Schulze is the Firm's Chief Executive Officer.

¹⁶ See Exhibit 1, Bates p. 46.

¹⁷ Link to the J.P. Morgan Securities, LLC, 19h-1 Notice, http://www.finra.org/sites/default/files/NAC%20Statutory%20Disqualification%20Decision%20SD1904_0_0_0_0_0.pdf

misconduct, as well as the sanctions imposed on the Firm as a result of the FINRA and SEC disciplinary actions. In particular, we considered that the sanctions did not include an expulsion, suspension or otherwise limit Middlebury's activities.

FINRA also considered Middlebury's examination history and that the Firm is addressing the cited deficiencies, including improving its written supervisory procedures ("WSPs") and implementing the CCT.¹⁸

FINRA also considered the possibility of a reoccurrence of the misconduct and found that a number of factors mitigate a reoccurrence of the violations. First, GO is no longer with the Firm and is no longer employed in the securities industry, as he was barred by FINRA and the SEC. Second, FINRA is not aware of any intervening misconduct by the Firm and the principal responsible for failing to supervise GO is no longer acting in a supervisory capacity at the Firm. Third, the Firm is subject to a stringent plan of heightened supervision, which is outlined immediately below.¹⁹ Included in the plan is a provision that Robinson will not serve as an officer of the Firm or operate in a supervisory capacity, even though FINRA's disciplinary action did not prevent him from serving in such capacity if he were to requalify as a principal. Given these factors, FINRA is satisfied that the likelihood of a reoccurrence of the misconduct is minimized and the Firm's continued membership with FINRA will not create an unreasonable risk of harm to the market or investors.

Accordingly, FINRA approves the Firm's Application to continue its membership subject to the following special procedures:

1. The Firm will not engage with any new clients, open any new retail accounts, or accept any investments into a private placement without the review, approval and pre-authorization of the Firm's Chief Compliance Officer ("CCO") and Chief Executive Officer ("CEO"). The CCO and CEO must approve and initialize paperwork which establishes new clients; new retail accounts or the acceptance of investments into a private placement. All engagements, contracts, releases, or any other forms requiring a signature, must be reviewed and signed by the CCO of the Firm. Documentation evidencing such approvals will be maintained and kept segregated for ease of review during any statutory disqualification or other examination;
2. All escrow accounts will only be maintained by a bank escrow agent. No person associated with the Firm, nor an issuer of securities, will be permitted to act as an escrow agent. In addition, all bank statements and releases will be maintained by the Firm, pursuant to SEC Rule 17a-4 (Records to be preserved by certain exchange members, brokers and dealers). The Firm will be required to maintain monthly bank statements for all escrow accounts that it uses to hold customer accounts. The Firm will keep copies of such documents segregated for ease of review during any statutory disqualification or other examination;

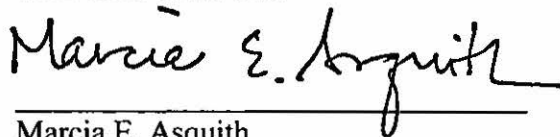
¹⁸See Exhibits 5 and 6.

¹⁹See the Plan of Heightened Supervision of Middlebury Securities, LLC, submitted to FINRA by Craig Sherman, on July 22, 2014 (attached as Exhibit 8).

3. The CCO will certify, in writing, that the Firm has established and implemented a reasonable review of the Firm's electronic mail and the Firm will maintain documentation evidencing such reviews. The documentation will be segregated for ease of review during any statutory disqualification or other examination;
4. To satisfy the fine levied in the FINRA AWC, the Firm must remain current on its FINRA installment plan, which requires a payment of \$7,450 on the 19th of each month;²⁰ and
5. James B. Robinson, the majority owner of Middlebury, will not be permitted to act as an officer, principal or supervisor of the Firm but rather, he will associate with the Firm solely as a General Securities Representative.²¹

FINRA certifies that the Firm meets all qualification requirements. Middlebury is not a member of any other self-regulatory organization. In conformity with the provisions of SEA Rule 19h-1, the continued membership of the Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the SEC.

On Behalf of FINRA



Marcia E. Asquith
Senior Vice President and Corporate Secretary

²⁰ Failure to pay the fine according to the terms of the installment plan will subject the Firm to summary suspension or expulsion from membership under FINRA Rule 8320.

²¹ See the letter from Lorraine Lee-Stepney of FINRA, to Craig Sherman, of Middlebury, wherein the Firm agrees to the plan of heightened supervision, dated December 18, 2015 (attached as Exhibit 9).

List of Exhibits

1. The MC-400A Application and related attachments submitted by Middlebury, submitted in September 2013.
2. FINRA Letter of Acceptance, Waiver and Consent, No. 2011025438902, for respondents, Middlebury Securities and James B. Robinson, accepted by FINRA on August 21, 2013.
3. “Types of Business” and “Other Business” for the Firm.
4. The Examination Disposition Letter, dated December 7, 2015; Report for Examination Number 20150432833, dated November 3, 2015; and the Firm’s response, dated November 20, 2015.
5. The Examination Disposition Letter, dated February 12, 2014; Report for Examination Number 20130350374, dated December 27, 2013; and the Firm’s response, dated January 27, 2014.
6. SEC Administrative Proceeding Order In the Matter of Middlebury Securities, LLC, dated October 31, 2014.
7. Email correspondence from Craig Sherman to Lorraine Lee, dated March 28, 2014.
8. The Plan of Heightened Supervision of Middlebury Securities, LLC, submitted to FINRA, by Craig Sherman, on July 22, 2014.
9. Letter from Lorraine Lee-Stepney of FINRA, to Craig Sherman, of Middlebury, wherein the Firm agrees to the plan of heightened supervision, dated December 18, 2015.