

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Association of

David L. Ciano

as a

General Securities Representative

with

American Portfolios Financial Services, Inc.

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

SD-1991

Date: December 31, 2014

I. Introduction

On May 2, 2013, American Portfolios Financial Services, Inc. ("American Portfolios," "the Firm," or "the Applicant") submitted a Membership Continuance Application ("MC-400" or "the Application") with the Department of Registration and Disclosure at the Financial Industry Regulatory Authority ("FINRA"), seeking to permit David L. Ciano ("Ciano"), a person subject to a statutory disqualification, to associate with the Firm as a General Securities Representative. A hearing was not held in this matter; rather, pursuant to FINRA Rule 9523(b), FINRA's Department of Member Regulation ("Member Regulation") is filing this Notice pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 ("the Exchange Act").

II. The Statutorily Disqualifying Event

Ciano is subject to a statutory disqualification, as that term is defined in Section 3(a)(39)(F) of the Exchange Act, as the result of a May 17, 2011 Administrative Consent Order ("Consent Order") issued by the New Jersey Bureau of Securities ("the Bureau").¹ The Consent Order included conclusions of law that Ciano: (1) failed to reasonably supervise his branch agents; (2) engaged in dishonest or unethical practices in the securities business; and (3) caused false records of his firm to be created and submitted.²

Ciano and one of the registered representatives he supervised engaged in a series of actions that caused almost \$1.5 million of a customer's funds to be used to purchase securities without the

¹ The Consent Order falls under Section 3(a)(39)(F) of the Exchange Act, which incorporates by reference Section 15(b)(4)(H)(i) and (ii) of the Exchange Act. The Consent Order is a final order of a state securities commission that bars Ciano from associating in any supervisory capacity with a broker dealer, and is based on violations of laws or regulations that prohibit fraudulent, manipulative or deceptive conduct. *See* Administrative Consent Order, *In the Matter of David L. Ciano*, dated May 17, 2011 (attached as Exhibit 1); the Uniform Disciplinary Action Reporting Form ("Form U6") filed by the Bureau on June 2, 2011 (attached as Exhibit 2).

² Exhibit 1, at pp. 8-10. Ciano was registered at Royal Alliance, Inc. at the time of the disqualifying event.

customer's consent. Ciano effectuated this investment on behalf of the registered representative he supervised by using a photocopy of the customer's signature and receiving authority via a medallion signature guarantee to make the transfer from a General Securities Principal ("GSP"). The GSP was not present in the office the day the authority was given.³

The Consent Order prohibited Ciano from "acting in any supervisory capacity for any broker-dealer or investment adviser ... while located in New Jersey or from supervising a person registered with the Bureau."⁴ The Consent Order also directed Ciano to cease and desist from any further violations, and to pay a \$7,500 fine.⁵ Although not explicitly stated, the Consent Order implies that Ciano was required to reapply for agent registration with the Bureau.⁶

Of note, less than six weeks following the Consent Order, on June 29, 2011, the Bureau approved Ciano's state securities registration subject to a heightened supervision agreement.⁷ On January 18, 2013, the Bureau granted a request to lift Ciano's heightened supervision requirement six months ahead of schedule.⁸ The Consent Order continues to prohibit Ciano from acting in a supervisory capacity.

III. Background Information

A. Ciano

Ciano's Proposed Business Activities

American Portfolios proposes to employ Ciano as a General Securities Representative at an Office of Supervisory Jurisdiction ("OSJ") office located at 50 Tice Boulevard in Woodcliff Lake, NJ. Ciano's responsibilities with the Firm will be primarily operational, but will include:

³ *Id.* at pp. 5-7.

⁴ *Id.* at p. 10.

⁵ *Id.* at pp. 10-12. Ciano paid the fine in installments. *Id.* at p. 12.

⁶ The Consent Order sets forth that Ciano's misconduct was grounds to deny, suspend or revoke his agent and investment adviser representative registration. *See* Exhibit 1 at pp. 8-10, paras. 17, 20 and 24. It also states that if Ciano applied for, and the Bureau approved, his agent registration, it would be restricted with a heightened supervision agreement. *See id.*, at p.11, para. 3.

⁷ *See* CRD records for Ciano (attached as Exhibit 3) at p. 4; the Application (attached as Exhibit 4), in Ciano's written statements in attachments #2 and #3, stating that the Bureau approved his state securities agent registration on June 29, 2011. *See also* the heightened supervision agreement between Ciano, Allied Beacon Partners, Inc. ("Allied Beacon") and the Bureau dated June 16, 2011 (attached as Exhibit 5). Prior to registering with American Portfolios, Ciano was registered with Allied Beacon from February 24, 2011 to April 8, 2013. Allied Beacon submitted an MC-400 Application for the continued association of Ciano, which it subsequently withdrew in April 2013 when Ciano terminated his registration there.

⁸ *See* letter from the Bureau to Allied Beacon dated January 18, 2013 (attached as Exhibit 6). (Member Regulation verified with the Bureau that the reference to the heightened supervision agreement of June 22, 2011 is an error. It should state June 16, 2011.) The agreement originally stated that Ciano could request removal of the heightened supervision agreement after June 16, 2013. *See* Exhibit 5, para. 21.

the handling of new account forms, client checks, direct business applications, account transfers, distribution requests and similar administrative matters.⁹ The vast majority of Ciano's duties and compensation will derive from his association with Kolinsky Wealth Management ("KWM"). KWM is an affiliated registered investment adviser of the Firm. He will be a salaried employee of KWM. However, Ciano intends to handle a small number of brokerage accounts for family members and friends.¹⁰ While Ciano will assist broker-dealer customers in the course of his operational activities, he is only permitted to make securities recommendations where he serves as the named registered representative on the customer's account.¹¹ His compensation for this brokerage work will be through commissions on securities sales.¹²

Ciano's Registration History

Ciano qualified as an Investment Company Products/Variable Contracts Representative (Series 6) in January 1992, and passed the Uniform Securities Agent State Law Examination (Series 63) in March 1992. Ciano qualified as a General Securities Representative (Series 7) in March 1993, and passed the NASAA-Uniform Combined State Law Examination (Series 66) in February 2000. Ciano qualified as a General Securities Principal (Series 24) in December 2002 and as a Municipal Securities Principal (Series 53) in March 2010.¹³

Ciano's Employment History

Ciano has been registered with the following broker-dealers during the following periods of time: Allied Beacon (February 2011 – April 2013); Investors Capital Corp (September 2010 – December 2010); Sobel Financial Advisors, LLC (September 2010 – December 2010); Royal Alliance Associates, Inc. (September 2008 – April 2010); NFP Securities, Inc. (February 2001 – September 2008); Nathan & Lewis Securities, Inc. (March 1997 – February 2001); Donaldson, Lufkin & Jenrette Securities Corporation (April 1994 – February 1997); and Citicorp Investment Services (August 1991 – June 1994).¹⁴ Ciano is an investment adviser representative with KWM.¹⁵

⁹ See Member Regulation's request letter dated August 12, 2013 and the Firm's response dated August 20, 2013 (attached as Exhibit 7), at response #3.

¹⁰ See Exhibit 7, response #2. See also American Portfolios' letter to Member Regulation dated November 21, 2013 (attached as Exhibit 8), wherein the Firm notes that Ciano's past compensation from broker-dealers averaged \$1,000 annually.

¹¹ *Id.* at response #4c.

¹² See email from the Firm to Member Regulation dated December 31, 2014 with a copy of the commission schedule that will apply to Ciano (attached as Exhibit 8a).

¹³ See Exhibit 3, at p. 14.

¹⁴ *Id.* at pp. 9-10.

¹⁵ *Id.* at pp. 3 and 9.

Prior SEC Rule 19h-1 Notices

Ciano has no previous approvals or denials pursuant to SEC Rules 19h-1 or 19d-1.

Ciano's Regulatory History

On November 17, 2011, Ciano signed a Letter of Acceptance, Waiver and Consent ("AWC") with FINRA ("the FINRA AWC"). The violative conduct articulated in the FINRA AWC mirrors the underlying event at issue in the Consent Order.¹⁶ The FINRA AWC set forth violations of NASD Rules 2110 and 3010.¹⁷ As a result, Ciano was suspended from associating with any FINRA member in any principal or supervisory capacity for 40 business days and was fined \$5,000.¹⁸ Ciano served his suspension from December 19, 2011 through February 15, 2012 and paid the fine.¹⁹

On September 28, 2012, Ciano entered into a consent order with the New Jersey Department of Banking and Insurance ("DOBI")²⁰ for failing to disclose the Consent Order and the FINRA AWC to DOBI within the required 30 days ("the DOBI consent order").²¹ Ciano was fined \$1,000.²²

Ciano's Customer Complaint

Ciano has one customer complaint from when he was registered with NFP Securities, Inc. In September 2010, a customer alleged misrepresentation regarding the sale of auction rate securities in August 2007 and claimed \$200,000 in damages. The firm denied the complaint. Ciano denied any involvement in the customer's account, asserting that this was a family dispute and he was not the registered representative of record.²³ According to FINRA's records, after the

¹⁶ See FINRA AWC No. 2010022654101 dated November 17, 2011 (attached as Exhibit 9).

¹⁷ *Id.* at p. 2.

¹⁸ See CRD occurrence no. 1588665 (attached as Exhibit 10). This action constituted a disqualifying event pursuant to Section 3(a)(39)(A) of the Exchange Act. However, Ciano was not required to undergo FINRA Eligibility Proceedings based on this event. See *FINRA Regulatory Notice 09-19* (2009) at pp. 4-5.

¹⁹ FINRA's Department of Finance confirmed that Ciano paid the \$5,000 fine on November 29, 2011.

²⁰ DOBI regulates the banking, insurance and real estate industries in New Jersey. See <http://www.state.nj.us/dobi/aboutdobi.htm>

²¹ This event does not render Ciano statutorily disqualified because it does not meet the provisions set forth in Section 15(b)(4)(H)(i) or (ii) of the Exchange Act. The DOBI consent order does not bar him from associating with a regulated entity and is not a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative or deceptive conduct.

²² See Consent Order, *In the Matter of: Proceedings by the Commissioner of Banking and Insurance, State of New Jersey, to fine David L. Ciano*, Reference No. 9828437, Order No. E12-112 dated September 28, 2012 (attached as Exhibit 11). DOBI does not utilize CRD for reporting purposes because it is not a securities regulator.

²³ See CRD occurrence no. 1530333 (attached as Exhibit 12).

firm denied the complaint, it does not appear as though the customer pursued the matter any further.

B. The Firm

American Portfolios has been a FINRA member since September 2001. It is also a member of the Municipal Securities Rulemaking Board and the National Futures Association.²⁴ The Firm primarily engages in the sale of corporate equities, debt securities, mutual funds and variable annuities to retail customers. The Firm has approximately 402 branch offices, including 86 OSJ. It employs approximately 745 registered representatives, including 171 principals.²⁵ The Firm currently employs three other statutorily disqualified individuals in addition to Ciano.²⁶

American Portfolios' Relevant Examination and Disciplinary History

Examinations

FINRA's 2013 cycle examination of the Firm resulted in a referral to FINRA's Department of Enforcement ("Enforcement") relating to exceptions found in the Firm's supervision of mutual fund sales and branch office inspection program, which is pending with Enforcement.²⁷ It also resulted in a Cautionary Action for certain exceptions relating to its written supervisory procedures ("WSP") and its supervisory system.²⁸

In response, the Firm amended and updated its procedures to avoid recurrence of the identified deficiencies.²⁹ The Firm also hired a business technology analyst to assist in the development of its electronic systems including additional supervisory alerts and reports.³⁰ American Portfolios added another employee to its compliance and surveillance personnel to oversee supervising

²⁴ See Exhibit 4, at p. 5.

²⁵ *Id.*

²⁶ The Firm employs Charles Rizzo ("Rizzo"), David Mottes ("Mottes"), and Steven Kolinsky ("S. Kolinsky"). The nature of the disqualifying events for all three of these individuals is such that, none of them are subject to heightened supervision. In the Application, the Firm also listed Gina Hornbogen ("Hornbogen") and Victoria Brialmont ("Brialmont"). See Exhibit 4, attachment 7. Hornbogen is no longer registered with the Firm, and Brialmont is no longer statutorily disqualified. Notably, S. Kolinsky is the owner of KWM. He was subject to a Consent Order with the Bureau relating to the same underlying event as Ciano. The Bureau found that S. Kolinsky, among other things, failed to detect or prevent the unauthorized withdrawal from a customer account. S. Kolinsky is prohibited from acting in a supervisory capacity. However, S. Kolinsky terminated his principal registration and continues to act solely as a General Securities Representative.

²⁷ See FINRA Examination Disposition Letter dated December 26, 2013 and FINRA Report of Examination No. 20130353695 dated November 7, 2013 ("the 2013 Examination Report") (attached as Exhibit 13).

²⁸ *Id.*

²⁹ See the Firm's response to the 2013 Examination Report dated December 13, 2013 (attached as Exhibit 14).

³⁰ *Id.*, at attachment 1.

principals as well as mutual fund transaction activity.³¹ Additionally, the Firm assigned a continuing education course about mutual fund switching to all registered personnel.³²

In 2012, FINRA initiated a cause examination of the Firm's supervisory systems and procedures to ensure it timely provided its customers with relevant disclosure documents in purchasing unit investment trusts and exchange traded funds. FINRA found the Firm's supervisory systems and procedures to be deficient, in this regard, and in May 2013, American Portfolios signed an AWC with FINRA for violations of FINRA Rule 2010 and NASD Rules 2110 and 3130, relating to these failures.³³ The Firm was censured and fined \$25,000.

In 2011, FINRA conducted a cycle examination of the Firm that resulted in a Cautionary Action.³⁴ Notable exceptions included: a failure to comply with its WSP, which resulted in one branch office accepting outdated letters of authorization to wire funds to and from customers; a failure to timely report 13 complaints pursuant to NASD Rule 3070; and a failure to maintain a record of analysis conducted of requested outside business activities for 40 registered representatives who became registered with the Firm since the end of 2010.

In response to the 2011 examination, American Portfolios amended its WSP to conform to the Firm's actual processes for wire transfers.³⁵ In its written response, the Firm asserted that it misunderstood NASD Rule 3070 and took corrective action to review all complaints, arbitrations and civil actions from the past three years. The Firm also began conducting monthly reviews of all outstanding actions through a risk committee to ensure timely reporting in the future. In order to address the exception relating to review of outside business activities requests, the Firm revised the form it uses to evidence review of such requests.

FINRA conducted a municipal examination of the Firm in 2009, and identified no exceptions.³⁶

Disciplinary History

In addition to the AWCs mentioned above, in June 2010, American Portfolios signed an AWC with FINRA for trade reporting violations.³⁷ The Firm failed to transmit 17,793 Reportable

³¹ *Id.*, at pp. 1-2.

³² *Id.*, at p. 2.

³³ See FINRA AWC No. 20120333283-01 dated May 28, 2013 (attached as Exhibit 15). FINRA found that American Portfolios failed to detect the failure of its clearing firm, Pershing LLC, to deliver approximately 300 prospectuses to customers purchasing exchange traded funds and unit investment trusts by failing to adequately review exception reports produced by Pershing LLC.

³⁴ See FINRA Examination Report No. 20110258685 dated October 27, 2011 ("2011 Examination Report") and FINRA Examination Disposition Letter to American Portfolios dated December 23, 2011 (attached as Exhibit 16).

³⁵ See the Firm's response to the 2011 Examination Report dated December 8, 2011 (attached as Exhibit 17).

³⁶ See FINRA letter to American Portfolios dated March 19, 2009 regarding Examination No. 20090162877 (attached as Exhibit 18).

³⁷ See FINRA AWC No. 20080157270-01 dated July 27, 2010 (attached as Exhibit 19).

Order Events (“ROEs”) to the Order Audit Trail System (“OATS”) from July 10, 2006 through November 20, 2008. The Firm was censured and fined \$5,000.

In July 2006, American Portfolios signed an AWC with FINRA for failing to timely report its municipal securities transactions to MSRB during the review period.³⁸ The Firm was censured and fined \$7,500. In connection with this AWC, the Firm submitted a statement of corrective action detailing the steps that it took to improve compliance.³⁹

IV. Proposed Supervisors

A. Primary Supervisor

American Portfolios proposes that Ciano will be supervised by Jason Kolinsky (“J. Kolinsky”) at the same office location where Ciano works.⁴⁰ J. Kolinsky qualified as a General Securities Representative (Series 7) in January 2011 and as a General Securities Principal (Series 24) in August 2013. J. Kolinsky also passed the NASAA-Investment Advisors Law Examination (Series 65) in July 2010 and the Uniform Securities Agent State Law Examination (Series 63) in February 2011.⁴¹

J. Kolinsky has been registered with American Portfolios since April of 2013. J. Kolinsky was previously registered with Allied Beacon Partners, Inc. (“Allied Beacon”) from February 2011 to April 2013. He was also registered with American Portfolios from January 2011 to February 2011.⁴² J. Kolinsky is an investment adviser representative with both American Portfolios Advisors, Inc. and with KWM.⁴³

J. Kolinsky has no reported regulatory or disciplinary history.⁴⁴

³⁸ See FINRA AWC No. ELI20050017-01 dated August 22, 2006 (attached as Exhibit 20).

³⁹ *Id.*

⁴⁰ J. Kolinsky is the son of S. Kolinsky. The Firm initially proposed Tom Wirtshafter (“Wirtshafter”) as Ciano’s primary supervisor, but later amended its Application to propose the on-site supervision by J. Kolinsky, with Wirtshafter providing additional oversight and serving as the interim supervisor. See the plan of supervision executed by the Firm on December 18, 2014 (attached as Exhibit 21).

⁴¹ See CRD Records for J. Kolinsky (attached as Exhibit 22) at p. 10.

⁴² See Exhibit 22 at pp. 5-9.

⁴³ *Id.* J. Kolinsky also serves as a marketing independent consultant for an entity named Ambit Energy. He states that he devotes ten hours per month to this activity, two to three of which are during market hours. See Exhibit 22 at pp. 9-10.

⁴⁴ *Id.*

B. Alternate Supervisor

In the event that J. Kolinsky is out of the office, the Firm proposes that Tom Wirtshafter ("Wirtshafter") will serve as Ciano's interim supervisor.⁴⁵ Wirtshafter is the Senior Vice President of Supervision and Surveillance at the Firm. Wirtshafter works from the Firm's home office in Holbrook, NY.⁴⁶

Wirtshafter qualified as a General Securities Representative (Series 7) in April 1982 and as a General Securities Principal (Series 24) in April 1985. He qualified as a Municipal Securities Principal (Series 53) in November 1986, and passed the Uniform Securities Agent State Law Examination (Series 63) in January 1987.⁴⁷ Wirtshafter went on to qualify as an Options Principal (Series 4) in January 1989, and passed the NASAA-Investment Advisors Law Examination (Series 65) in July 1993. He passed the NASAA-Uniform Combined State Law Examination (Series 66) in June 2009.⁴⁸

Wirtshafter has been registered with American Portfolios since November 2004, and was previously registered with the Firm from September 2001 through February 2003.⁴⁹ Prior to joining American Portfolios, Wirtshafter worked for the following broker-dealers during the following periods of time: AXA Advisors, LLC (March 2003 – June 2004); GRR Financial, Inc. (March 2002 – March 2003); Nathan & Lewis Securities, Inc. (April 1982 – September 2001); Metlife Securities Inc. (October 1998 – March 2001); and ABI Securities, Inc. (September 1991 – July 1992).⁵⁰

Wirtshafter has no reported regulatory or disciplinary history.⁵¹

V. Firm's Proposed Plan of Heightened Supervision

American Portfolios proposes the following plan of heightened supervision:⁵²

⁴⁵ See Exhibit 21.

⁴⁶ See Exhibit 4, at p.4.

⁴⁷ Wirtshafter previously passed the Series 63 examination in February 1986. See CRD Records for Wirtshafter (attached as Exhibit 23), at pp. 15-16.

⁴⁸ See *id.*

⁴⁹ *Id.* at pp. 11-12.

⁵⁰ See Exhibit 23. Wirtshafter lists the following outside business activities: (1) operator of Barrow Street Theater and play producer (50 hours/month, 10-20 during market hours); (2) treasurer and board member of the Town Hall Foundation (25 hours per month); (3) Investor in the Book of Mormon (0 hours); (4) trustee for the Matrix China Fund mutual fund (2 hours per month); (5) treasurer and board member of the Culture Project non-profit theater (10 hours/month, 5 during market hours). *Id.* at p. 15. He serves on the Firm's Risk and Product Review committees and is a member of the board of directors of American Portfolios Holdings, the Firm's parent company. See Exhibit 4, at attachment 4. Wirtshafter is also a member of FINRA's Uniform Practice Code Committee and a past vice chairman of FINRA's District 10 Business Conduct Committee. *Id.*

⁵¹ *Id.*

1. The Firm will amend its WSP to state that the supervisor for Ciano is Jason Kolinsky (“J. Kolinsky”).
2. Ciano will not act in a supervisory capacity.*
3. Ciano will not maintain any discretionary accounts.
4. Ciano will conduct all brokerage activity out of the Firm’s Woodcliff Lake, NJ OSJ.
5. All items handled by Ciano requiring a medallion signature guarantee will only be processed through the home office. The Woodcliff Lake, NJ OSJ will not be issued a signature guarantee stamp.*
6. Tom Wirtshafter (“Wirtshafter”) is the primary supervising principal of J. Kolinsky. Wirtshafter is located at the Firm’s home office in Holbrook, NY.
7. Wirtshafter will be responsible for ensuring that a monthly site visit is conducted of the Woodcliff Lake OSJ. Monthly visits will be conducted by Wirtshafter or a member of the Firm’s Supervision/Compliance Department, including Jeffrey Kahn (CRD No. 2041481), Mauro D’Addato (CRD No. 703847), or Scott Littman (CRD No. 2757603) (collectively, “the Principals”).⁵³ At least two of the visits each year will be on an unannounced basis. The monthly visits will focus on the activities of Ciano, both operational and retail, relating to the broker-dealer. The Principals conducting the monthly visit will review the summary log of Ciano’s activities, and a sample of any related documents, and report the results of such review in the monthly written report. The monthly visit will also include a review of J. Kolinsky’s supervision of Ciano in accordance with this plan of supervision. A summary of what was reviewed, any findings, and any actions taken will be sent in a report to the Supervision/Compliance Department, J. Kolinsky, and Wirtshafter. A copy of all monthly reports will be maintained at the branch by J. Kolinsky for review during any statutory disqualification examination.*
8. Should J. Kolinsky be unavailable for an extended period or for a matter that requires immediate attention, Wirtshafter will act as interim supervisor for Ciano. Wirtshafter and J. Kolinsky will make good faith attempts to coordinate monthly visits during a period of J. Kolinsky’s absence. J. Kolinsky, when possible, will supply Wirtshafter with sufficient advance notice of an absence to allow adjustments to the monthly visit schedule.*
9. The Woodcliff Lake, NJ OSJ will have an independent audit performed on an annual basis. A section will be added to the audit outline to include a review of Ciano’s activities. The auditor will review the monthly site visit reports and any related

⁵² See Exhibit 21. Provisions of the plan of supervision that are heightened and not applicable to other General Securities Representatives at the Firm are denoted with an asterisk.

⁵³ Member Regulation conducted an investigation into the regulatory history of the listed members of the Firm’s Supervision/Compliance Department and did not find any recent or material disclosures.

documents to ensure that J. Kolinsky and the Firm are properly performing and evidencing the requisite supervisory review of Ciano's activities pursuant to this plan. The auditor will include this review in the written branch report, a copy of which will be separately maintained by J. Kolinsky for review during any statutory disqualification examination.*

10. J. Kolinsky will review all of Ciano's transactional activity within one business day. Any solicitation of securities will require pre-approval by J. Kolinsky. This will be noted by J. Kolinsky in a comment associated with the transaction.* Evidence of J. Kolinsky's review and approval will be kept, maintained and segregated for ease of review during any statutory disqualification examination.
11. J. Kolinsky will review and approve each securities account prior to the opening of the account for which Ciano serves as the registered representative. Evidence of such review will be kept, maintained and segregated for ease of review during any statutory disqualification examination.
12. For the purposes of Ciano's activities with the Firm (both retail and operational), Ciano will only be allowed to use an e-mail account that is held at the Firm. If Ciano receives a business related email message in another e-mail account outside the Firm, he will immediately deliver that message to the Firm's email account. Ciano will inform J. Kolinsky of all outside email accounts. These email messages are to be preserved and kept segregated for ease of review during any statutory disqualification examination.
13. J. Kolinsky will review all of Ciano's incoming and outgoing email on a daily basis. Pre-approval is required for any email sent by Ciano which recommends or solicits the sale of a security. J. Kolinsky's review and approval will be kept, maintained and segregated for ease of review during any statutory disqualification examination.
14. J. Kolinsky will review all of Ciano's outgoing hard copy written correspondence before it is sent, and incoming written correspondence within two business days of receipt.* Evidence of this review will be kept, maintained and segregated for ease of review during any statutory disqualification examination.
15. All complaints, whether verbal or written, will be immediately referred to Wirtshafter and the Supervision/Compliance Department by J. Kolinsky. J. Kolinsky will prepare a memorandum to the file as to what measures were taken to investigate the merits of the complaint (e.g., contact with the customer) and the resolution of the matter. Documents pertaining to these complaints will be kept, maintained and segregated for ease of review during any statutory disqualification examination.

16. Supervision of Ciano's Operational Activities:

- a) The Firm will only process transfer requests (including but not limited to: wires, journals, and check disbursements) handled by Ciano that are made in writing by the customer.
- b) A summary log of all transfer requests handled by Ciano will be maintained by Ciano and J. Kolinsky. The summary log will document all relevant information about the transfer, including but not limited to: the time and date of the request, the nature and details of the request, compliance with any requirement to obtain written confirmation or pre-approval, and J. Kolinsky's review of Ciano's processing of the request. The summary log and any related documentation will be kept, maintained and segregated for review during any statutory disqualification examination.
- c) J. Kolinsky will review the summary log on a weekly basis. Evidence of such review and related documentation (i.e. the customer's written transfer request) will be kept, maintained and segregated for ease of review during any statutory disqualification examination.
- d) Requests for third party transfers (where there is a change of ownership between the accounts from which the customer's money is transferred to the where the customer's money is received) require pre-approval by J. Kolinsky, which will be documented in the summary log.
- e) The Firm's Supervision/Compliance Department will directly confirm any third party transfers handled by Ciano directly with the customer, and will maintain evidence of such confirmation.

17. J. Kolinsky will certify on a quarterly basis to the Supervision/Compliance Department that all conditions of the heightened supervision are being adhered to by both himself and Ciano.*

18. The Firm will obtain approval from Member Regulation prior to any change in the supervisor for Ciano, or in the plan itself.*

VI. Discussion

After carefully reviewing the entire record in this matter, we approve American Portfolio's Application for Ciano to associate with the Firm as a General Securities Representative, subject to the supervisory terms and conditions outlined above. Notably, this approval does not interfere with the sanction imposed on Ciano that bars him from associating in any supervisory capacity with a broker-dealer.

We evaluated the Application and reached our conclusion based on a review of the following factors:

- a. The nature and gravity of the disqualifying event;
- b. The length of time that has elapsed since the disqualifying event;
- c. Whether any intervening misconduct has occurred;

- d. Whether the disqualified person has other regulatory history;
- e. Any other mitigating or aggravating circumstances that may exist;
- f. The precise nature of the securities-related activities proposed in the application; and
- g. The disciplinary history and industry experience of both the member firm and the proposed supervisor of the disqualified person.

Member Regulation notes the serious nature of Ciano's disqualifying event. However, the Application should be approved based on the following mitigating factors: (1) the Bureau accepted Ciano's application for registration as a registered agent following the Consent Order and released Ciano from its heightened supervision agreement ahead of schedule; (2) Ciano's proposed activities are limited in scope; (3) Ciano's regulatory events predominately relate to the disqualifying event, and he otherwise operated in the securities industry for approximately 19 years without any formal disciplinary history; and (4) the Firm has proposed a plan of supervision and a suitable on-site supervisor.

The Bureau's decision to approve Ciano's application for registration following the disqualifying event weighs in favor of approval of the Application. Member Regulation noted that the Bureau, which brought the case against Ciano that resulted in his disqualification, approved Ciano's application for agent registration less than six weeks following the Consent Order. While the Bureau did so pursuant to a heightened supervision agreement, approximately 18 months later, it then chose to lift the heightened supervision requirement ahead of schedule. Prior to lifting the heightened supervision requirement, the Bureau conducted an investigation of Ciano's compliance with the heightened supervision agreement, and found "no disclosures of concern."⁵⁴ The Bureau found that "documentation and reports indicate appropriate supervision for Mr. Ciano during the restricted period."⁵⁵

The limited nature of Ciano's proposed activities in conjunction with the stringent proposed plan of supervision discussed more fully below led Member Regulation to conclude that the association of Ciano would not result in an undue risk of potential harm to investors. In accordance with the Consent Order and the plan of supervision, Ciano will not have any supervisory authority. His daily duties and responsibilities will be limited primarily to operational activities. While some of his operational activities will involve broker-dealer business, the majority of those activities relate to Ciano's association with KWM, and not the Firm. Ciano further states that he does not personally solicit any business on his behalf,⁵⁶ and that his trading activities will be limited to maintaining a small number of accounts for family members.⁵⁷

Additionally, prior to the disqualifying event, Ciano worked in the industry for over 19 years without incident except for one customer complaint filed in 2010. That complaint failed to materialize into any filed claims. Other than the FINRA AWC and the DOBI consent order,

⁵⁴ Exhibit 6.

⁵⁵ *Id.*

⁵⁶ See Exhibit 4, attachment 5.

⁵⁷ See Exhibits 7 and 8.

Member Regulation found no other evidence of intervening misconduct by Ciano in the three-and-a-half years since his disqualifying event.

The Firm has proposed a plan of supervision adequately tailored to Ciano's proposed activities, and has selected a suitable supervisor who will work in close proximity to Ciano. The plan includes an extra level of review of both Ciano and J. Kolinsky's supervision of Ciano. For instance, it requires regular monthly inspections of Ciano's activities by the Firm's Supervision and Compliance Department. It also requires the home office to confirm all third party transfer requests handled by Ciano directly with the customer. Moreover, Ciano's OSJ has not, and will not, receive a Medallion Signature Guarantee stamp. If properly implemented, this measure will serve to prevent similar misconduct by Ciano in the future by requiring Ciano to obtain such authority from the Firm's home office. If not implemented, the Firm will subject itself to potential disciplinary action.

The plan is also tailored to address specific regulatory concerns with Ciano. Ciano must obtain all transfer requests in writing from the customer. Together with J. Kolinsky's regular monitoring of Ciano's log of activities, Member Regulation found these provisions adequate to prevent and detect any reoccurrence of the misconduct at issue in the disqualifying event.

It was of particular importance to Member Regulation that the Firm proposed a supervisor who will work in at the same office location with Ciano on a daily basis. J. Kolinsky has a clean record in his four years in the securities industry. To further support the effectiveness of J. Kolinsky's on-site supervision of Ciano, the Firm has added additional involvement and oversight by Wirtshafter, who has an unblemished 30-year history in the securities industry and serves as the head of the Firm's Supervision and Compliance Department. Although Member Regulation noted J. Kolinsky's minimal experience as a General Securities Principal, Wirtshafter's involvement via regular monthly inspections along with the limited nature of Ciano's proposed activities served to mollify any concerns in this regard.

The FINRA AWC and DOBI consent order might at first glance appear concerning. However, a closer review of the facts reveals that both of these matters are related to the same underlying event involved in the Consent Order. The FINRA AWC included similar allegations of supervisory failures, and FINRA separately disciplined Ciano for such misconduct by imposing a suspension and a fine.

While Ciano's failure to timely disclose the FINRA AWC and Consent Order to DOBI reflect poorly upon him, DOBI determined to resolve the matter with a \$1,000 fine. Additionally, the Bureau decided to lift Ciano's heightened supervision requirement despite this regulatory action. Member Regulation further noted that Ciano met his obligations pursuant to Article V, Section 2(c) of the FINRA By-Laws by timely disclosing the DOBI consent order to FINRA on his Form U4.

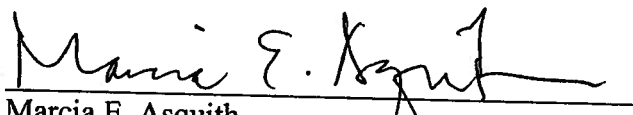
Member Regulation also noted the exceptions FINRA listed in its recent examination reports about the Firm's WSP and supervisory system. Notwithstanding, the Firm responded to the identified exceptions and demonstrated its willingness and ability to make necessary improvements to address the stated deficiencies.

Member Regulation acknowledges the serious nature of Ciano's disqualifying event, which included findings of dishonest and unethical practices and failure to supervise. Also of concern were Ciano's subsequent FINRA AWC and the DOBI consent order. While these actions taken against Ciano by FINRA and DOBI can be classified as intervening misconduct, they stem from the same underlying incident and were each separately resolved. Thus, Ciano has not engaged in any misconduct in over three-and-a-half years since the Consent Order. Further, the Firm has addressed supervisory concerns raised during recent FINRA examinations, and has demonstrated that it is capable of providing Ciano with appropriate supervision. When balancing Ciano's and the Firm's regulatory history against several other factors, including (1) Bureau's decision to approve Ciano's registration as a broker-dealer agent in New Jersey and release him from heightened supervision early; (2) that Ciano's proposed duties at the Firm are limited and primarily operational in nature; (3) that Ciano had previously operated in the securities industry for 19 years without any formal disciplinary action; and (4) that the Firm proposed a relevant plan of supervision and a suitable on-site supervisor, Member Regulation concluded that the association of Ciano subject to the heightened supervision plan outlined above does not create an unreasonable risk of harm to the market or investors.

VI. Conclusion

Accordingly, we approve American Portfolio's Application to employ Ciano as a General Securities Representative, subject to the above-mentioned plan of heightened supervision. In conformity with the provisions of Exchange Act Rule 19h-1, the association of Ciano 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 FINRA,



Marcia E. Asquith
Senior Vice President and Corporate Secretary

Exhibit List

1. Administrative Consent Order, *In the Matter of David L. Ciano*, dated May 17, 2011
2. Uniform Disciplinary Action Reporting Form ("Form U6") filed by the New Jersey Bureau of Securities ("the Bureau") on June 2, 2011
3. Central Registration Depository ("CRD") records for Ciano
4. The Firm's MC-400 Application
5. The heightened supervision agreement between Ciano, Allied Beacon Partners, Inc. ("Allied Beacon") and the Bureau dated June 16, 2011
6. Letter from the Bureau to Allied Beacon dated January 18, 2013 releasing Ciano from the heightened supervision agreement
7. Member Regulation's request letter dated August 12, 2013 and the Firm's response dated August 20, 2013
8. American Portfolios' letter to Member Regulation dated November 21, 2013
- 8a. Email from American Portfolios to Member Regulation dated December 31, 2014, with commission schedule for Ciano
9. FINRA AWC No. 2010022654101 dated November 17, 2011
10. CRD occurrence no. 1588665 for Ciano
11. Consent Order, *In the Matter of: Proceedings by the Commissioner of Banking and Insurance, State of New Jersey, to fine David L. Ciano, Reference No. 9828437, Order No. E12-112* dated September 28, 2012
12. CRD occurrence no. 1530333 for Ciano
13. Examination Disposition Letter dated December 26, 2013 and FINRA Report of Examination No. 20130353695 dated November 7, 2013 ("2013 Examination Report")
14. The Firm's response to the 2013 Examination Report dated December 13, 2013
15. FINRA AWC No. 20120333283-01 dated May 28, 2013
16. FINRA Examination Disposition Letter to American Portfolios dated December 23, 2011 and FINRA Examination Report No. 20110258685 dated October 27, 2011 ("2011 Examination Report")
17. The Firm's response to the 2011 Examination Report dated December 8, 2011

18. FINRA letter to American Portfolios dated March 19, 2009 regarding Examination No. 20090162877
19. FINRA AWC No. 20080157270-01 dated July 27, 2010
20. FINRA AWC No. ELI20050017-01 dated August 22, 2006
21. The plan of supervision executed by the Firm dated December 17, 2014
22. CRD Records for proposed supervisor Jason Kolinsky
23. CRD Records for proposed alternate supervisor Tom Wirtshafter