

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued  Membership  of  O'Connor & Company Securities, Inc. (CRD No. 146787)  with  FINRA	<u>Notice Pursuant to</u> <u>Rule 19h-1</u> <u>Securities Exchange Act</u> <u>of 1934</u>  SD- 2181  <b>Date: March 1, 2018</b>
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**I. Introduction**

In October 26, 2017, O'Connor & Company Securities, Inc. ("OCSI" or "the Firm") submitted a Membership Continuance Application ("MC-400A" or the "Application") to FINRA's Department of Registration and Disclosure ("RAD"). The Application seeks to permit the Firm to continue in membership with FINRA notwithstanding its statutory disqualification. A hearing was not held in this matter; rather, pursuant to FINRA Rule 9523(b), FINRA's Department of Member Regulation ("Member Regulation" or "the Department") approves the Firm's Application and is filing this Notice pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 ("Exchange Act").

**II. The Statutorily Disqualifying Event Underlying the Application**

The Firm is subject to a statutory disqualification, as that term is defined in Section 15(b)(4)(D), incorporated by reference in Section 3(a)(39)(F) of the Exchange Act, as a result of the U.S. Securities and Exchange Commission's ("SEC" or "Commission") August 23, 2017 Order (the "Order") finding that the Firm and respondent Anthony Michael Wetherbee ("Wetherbee"), willfully violated Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 ("Securities Act"), Section 15B(c)(1) of the Securities Exchange Act of 1934 ("Exchange Act") and MSRB Rules G-17, G-27(a) and G-27(c). The SEC's Enforcement Division uncovered the violations as part of a review of municipal issuers and underwriters that did not voluntarily self-report under the agency's Municipalities Continuing Disclosure Cooperation ("MCDC") Initiative.

The Firm's statutory disqualification resulted from its failure to conduct adequate due diligence in determining whether the issuer of a series of bonds substantially

complied with its continuing disclosure obligations pursuant to Rule 15c2-12 of the Exchange Act while acting as an underwriter for such bonds. According to the Order, the underwriter failed to form a reasonable basis for believing the truthfulness of certain material representations in the issuer's official statements. Without admitting or denying the findings made in the Order, the OCSI and Wetherbee submitted an Offer of Settlement, which the Commission accepted. Accordingly, OCSI consented to the SEC's entry of an Order against it. The SEC's Order found that OCSI acted as the sole underwriter in a number of bond offerings in which the official statements essentially represented that the issuer or obligated person had not otherwise failed to meet its continuing disclosure requirement.

In fact, certain of these official statements were found to be materially false or misleading because the issuer or obligated person had not complied in all material respects with continuing disclosure obligations according to Exchange Act Rule 15c2-12. For its part, OCSI failed to form a reasonable basis through adequate due diligence for believing the truthfulness of the statements made by municipal issuer regarding its compliance with Exchange Act Rule 15c2-12. Based on these failures, the SEC found that the Firm willfully violated the antifraud provisions of the federal securities laws, specifically Sections 17(a)(2) of the Securities Act by offering and selling municipal securities on the basis of materially misleading disclosure documents. Further, OCSI also failed to reasonably supervise its personnel and maintain adequate policies and procedures related to municipal securities underwriting.

Pursuant to the Order, the Firm was censured, fined \$150,000 and required to comply with a set of undertakings.

The Firm was required to file an Application with FINRA because the sanctions from the Order are still in effect. The sanctions will remain in effect until OCSI has made its final payment to the SEC, of \$37,500, payable by August 18, 2018; and fully complied with all of the undertakings, which could extend until November 2018.

### **III. Background Information About the Firm**

#### **A. Location of the Firm & its Business Activities**

OCSI is based in Costa Mesa, California and has been a FINRA member since June 2008. The Firm has two Offices of Supervisory Jurisdiction ("OSJ") and no branch offices. The Firm employs 4 registered principals, 5 registered representatives and 5 non-registered employee. The Firm does not employ any statutorily disqualified persons.

The Firm is engaged in the following lines of business: broker or dealer retailing corporate equity securities over-the-counter (BDR); broker or dealer selling corporate debt securities (BDD); underwriter or selling group participant (corporate securities other

than mutual funds) (USG); mutual fund retailer (MFR); U.S. government securities broker (GSB); municipal securities broker (MSB); trading securities for its own account (TRA); and A); and the Firm engages in collateralized mortgage obligations as another line of business.

#### **B. Examination History**

The two most recent FINRA examinations of the Firm were completed in 2014 and 2016. The 2014 cycle examination resulted in a Cautionary Action issued to the Firm for the two exceptions noted. The Firm was found to have violated Section 17 of the Exchange Act due to a registered representative's use of a personal email account for business related purposes; and was also in violation of FINRA Rule 3270 for its failure to conduct a review of a registered representative's outside business activities. The 2016 special examination was conducted by the Trade Reporting and Compliance Engine ("TRACE") team of FINRA's Market Regulation Department and centered around the accuracy of times of execution, as reported to TRACE, for customers trades during the period of July 1, 2015 through December 31, 2015.

#### **The Firm's Disciplinary History**

Aside from the SEC's Order, the Firm has not been the subject of any other regulatory action.

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

Pursuant to Exchange Act Rule 19h-1(c)(4) and FINRA Rule 9523(b), the Firm has agreed to the following plan of supervision (the "Supervisory Plan"):

1. Comply with the undertakings specified in the Order;
2. Establish protocols to ensure that the undertakings outlined in the Order are completed in the time period established in the Order or by the time period granted by Commission staff in any extension;
3. Provide FINRA with copies of correspondence between the Firm and Commission staff regarding requests to extend the procedural dates relating to the undertakings;
4. Within a reasonable amount of time, but no later than 4 months after a letter of acknowledgement has been issued by the SEC, all Firm employees involved in municipal underwritings shall review the SEC's Order and the recommendations

contained in the Independent Consultant's Report ("Report"). The Firm shall certify this review to Member Regulation. Records of the review will be maintained in a segregated file for ease of review during a statutory disqualification or other examination; and

5. Provide FINRA with a copy of the certification and all supporting documentation that will be provided to the Commission upon completion of the undertakings as specified in the Order. These documents must be sent directly to:

Lorraine Lee-Stepney  
Manager, Statutory Disqualification Program  
FINRA  
1735 K Street NW  
Washington, DC 20006  
Lorraine.Lee@finra.org

## V. Discussion & Recommendation

After carefully reviewing the records in these matters, FINRA approves OCSI's Application. In evaluating applications like these, FINRA assesses whether the statutorily disqualified firm seeking to continue its membership with FINRA 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* FINRA By-Laws, Art. III, Sec. (3)(d); *cf* *Frank Kufrovich*, 55 SEC. 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"). Typically, factors that bear on our assessment include the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, and whether there has been any intervening misconduct.

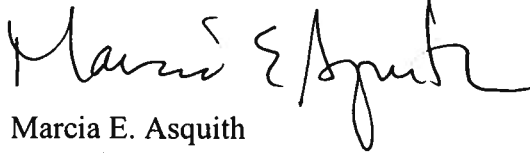
FINRA finds that OCSI has demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm. While FINRA recognizes that the underlying misconduct involved serious violations of the federal securities laws, rules and regulations, as referenced above, FINRA also takes into account that the Commission did not expel, suspend or otherwise limit the Firms' securities activities. Instead, the Commission imposed remedial sanctions consistent with the purpose of disciplinary actions under the Exchange Act. *See* Exchange Act § 15(b) *et seq*; *Paul Edward Van Dusen*, 47 SEC 668, 670-671 (1981), quoting *Commonwealth Securities Corporation*, 44 SEC 100, 101-102 (1969) ("The sanctions ... serve[] to deter both the particular respondents as well as others in the securities industry from committing violations of the securities laws. We have been cognizant of the importance of exercising the discretionary power reposed to us in this area in a manner that will afford investors protection without visiting upon the wrongdoers adverse consequences

not required in achieving the statutory objectives”).

FINRA finds that a review of the Firm’s regulatory history, including recent examinations, should not prevent the Firm from continuing as a FINRA member. In fact, aside from the SEC’s Order, the Firm has no other disciplinary history. In addition, Wetherbee is no longer associated with the Firm, having been terminated on July 7, 2017. FINRA further notes the severity of the SEC’s sanctions. The Firm was ordered to pay civil monetary sanctions for the misconduct and was ordered to hire an independent consultant for an extended period of time. The purpose of the independent consultant will be to address deficiencies in the Firms’ policies and procedures relating to the due diligence process for underwriting municipal securities offerings. OCSI has additionally agreed, pursuant to its Supervisory Plan to, among other things, apprise FINRA of the Firm’s compliance with the undertakings ordered by the Commission. FINRA accepts the Commission ordered undertakings as sufficient to deter similar misconduct by the Firm in the future. Additionally, FINRA may, through its own examination program, assess whether the recommended changes are implemented.

FINRA approves OCSI’s continued membership with FINRA as it does not present an unreasonable risk of harm to the market or investors. The Firm is not a member of any other self-regulatory organizations.

On Behalf of the National Adjudicatory Council,



Marcia E. Asquith  
Executive Vice President and Corporate Secretary