

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Membership
of
Wells Fargo Securities, LLC
with
FINRA

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

SD-2243

Date: February 9, 2021

I. Introduction

On April 10, 2019, Wells Fargo Securities, LLC (“WFS” or the “Firm”) submitted to FINRA a Membership Continuance Application (“MC-400A” or “the Application”). The Application seeks to permit the Firm, a FINRA member subject to a statutory disqualification, to continue its membership with FINRA. A hearing was not held in this matter. Rather, pursuant to FINRA Rule 9523(a), FINRA’s Department of Member Supervision (“Member Supervision”) recommends that the Chairperson of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council, approve the Firm’s continued membership with FINRA pursuant to the terms and conditions set forth below.

For the reasons explained below, we approve the Application.

II. The Statutorily Disqualifying Event

The Firm is subject to a statutory disqualification because of a March 20, 2019 final judgment (the “Final Judgment”) entered by the United States District Court for the District of Rhode Island. The Final Judgment permanently enjoined the Firm from violating Section 17(a) of the Securities Act of 1933 (the “Securities Act”), Section 15B(c)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”), and Rule G-17 promulgated by the Municipal Securities Rulemaking Board (“MSRB”).¹ Pursuant to the Final Judgment, the Firm was ordered to pay a \$812,500 civil penalty. The Firm paid the penalty in full.

¹ Exchange Act Section 3(a)(39)(F), which incorporates by reference Exchange Act Section 15(b)(4)(C), provides that a member firm is subject to statutory disqualification if it is enjoined from, among other things, engaging in any conduct or practice as a broker-dealer or investment adviser, or in connection with the purchase or sale of any security.

The Final Judgment is based on an October 2016 amended complaint (“SEC Complaint”) filed by the SEC. The SEC Complaint alleged that the Firm, along with others, made materially misleading statements in connection with a municipal bond offering. Specifically, the SEC alleged that in 2010, the Firm and others sought to fund a loan for a video gaming company to develop an online video game. The loan was to be funded through the sale of municipal bonds, and the disclosures for the bond offering were disseminated to potential investors through a private placement memorandum (“PPM”). According to the SEC Complaint, there was a gap between the funds raised through the bond offering and the amount needed to develop the video game. As the lead placement agent, the Firm knew that the video gaming company would receive less funding than what was needed and failed to disclose this funding gap in the PPM. The SEC Complaint also alleged that the Firm failed to disclose the full amount of its compensation for its role in the bond offering.

III. Background Information

A. The Firm

The Firm is based in Charlotte, North Carolina and has been a FINRA member since May 2003. According to the Firm’s Central Registration Depository (“CRD”®) record, it has 54 branches, 27 of which are Offices of Supervisory Jurisdiction. CRD further shows that the Firm employs approximately 3,804 registered representatives, 796 of which are registered principals. The Firm employs one statutorily disqualified individual.

B. Recent Examinations

In the past two years, FINRA completed four routine examinations and 14 non-routine examinations of the Firm, several of which resulted in Cautionary Actions. The SEC completed two examinations, highlighting deficiencies in the Firm’s policies, procedures, and controls. We discuss these matters below.

1. FINRA Routine Examinations

There were no exceptions found in the most recent Sales Practice/Financial and Operational Examination completed in July 2019 and the Trading and Financial Compliance Examination completed in March 2018.

In December 2018, FINRA issued the Firm a Cautionary Action in connection with the Firm’s 2018 Sales Practice/Financial and Operational Examination. FINRA cited the Firm for exceptions pertaining to its failure to pass along fees it collected on behalf of its parent bank, maintain formal services agreements between itself and the bank concerning administrative and wholesale services, and incorrectly reporting aged stock loan buy-in related breaks in a suspense account range. The Firm responded in writing to the exceptions noted in the Cautionary Action.

In March 2018, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2017 Financial/Operational Examination. FINRA cited the Firm for exceptions relating to its failure to prepare a salability calculation to determine the amount of control securities that were free for sale, to maintain adequate processes for determining the amount of concentrated debit balances to be excluded from the customer reserve formula computation, and establish aggregate capital limits and duplicative order controls and a process for regularly reviewing the effectiveness of its market access controls. The Firm responded in writing to the exceptions noted in the Cautionary Action.

2. Non-Routine Examinations

FINRA also conducted non-routine examinations of the Firm, including on behalf of other self-regulatory organizations. These examinations resulted in Cautionary Actions against the Firm in 2017, 2018, and 2019. The examinations focused on, among other things, the Firm's failure to: take reasonable steps to establish that routed Intermarket Sweep Orders met various rule requirements; maintain continuous two-sided trading interests; use correct SWIFT messages; report transactions to FINRA's Trade Reporting and Compliance Engine ("TRACE"); appropriately calculate net capital and collect the requisite margin with respect to non-TBA ES Trades; report to FINRA accurate short interest data and debt balances in customers' margin accounts; and design appropriate order controls. Where required, the Firm responded in writing to the exceptions noted in the Cautionary Actions.

3. SEC Examinations

In November 2018, and in connection with an SEC examination of the Firm, the SEC identified violations of Exchange Act Section 15(c) and Exchange Act Rules 15c3-3 and 17a-5. Specifically, the SEC found that the Firm understated its reserve requirement and filed an inaccurate financial report in which it incorrectly allocated certain margin collateral positions and failed to include as credits accrued interest on customer credit balances and a bank overdraft. The SEC also identified deficiencies in the Firm's procedures for generating cash projection reports. The Firm responded in writing to the SEC's deficiency letter.

In August 2018, and in connection with an SEC examination of the Firm, the SEC identified deficiencies in connection with FINRA Rule 3110. Specifically, the SEC found that the Firm's compliance policies and procedures did not adequately address the risks associated with money market securities or whether the practice of money market securities mark-ups, based on a percentage of the principal, was reasonable. The SEC also found that the Firm's Written Supervisory Procedures ("WSPs") did not describe the responsibilities and duties of supervisory principals in connection with mark-up alerts or define riskless principal transactions used to analyze mark-ups. The Firm responded in writing to the SEC's deficiency letter.

C. Recent Regulatory Actions

In the past several years, the Firm has been subject to regulatory actions by self-regulatory organizations.²

In June 2018, NYSE issued the Firm a Minor Rule Violation Plan Letter in connection with failures to properly surveil market-on-close and limit-on-close orders.³ NYSE fined the Firm \$2,500.

In May 2018, the Firm entered an Offer of Settlement with the Chicago Board of Trade (“CBOT”). CBOT found that the Firm pre-hedged block trades in certain futures by executing trades on the opposite side of the market in the same products. CBOT also found that the Firm failed to diligently supervise its trader in connection with this misconduct. CBOT ordered the Firm to disgorge \$117,187.50 and pay a \$70,000 fine.

In December 2017, the Firm resolved with several self-regulatory organizations allegations that it inaccurately reported transactions to TRACE and failed to maintain accurate books and records of manual options orders. For its misconduct, the Firm was censured, fined a total of \$54,000, and required to amend its WSPs. Also, in December 2017, FINRA accepted a Letter of Acceptance, Waiver and Consent for inaccurately reporting transactions to TRACE. FINRA censured and fined the Firm \$30,000.

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

The Firm seeks to continue its membership with FINRA notwithstanding the Final Judgment, which renders the Firm statutorily disqualified. In support, the Firm has agreed to the following plan of supervision (“Supervision Plan”) as a condition of its continued membership with FINRA:

1. WFS shall comply with the Final Judgment entered on March 20, 2019, by the U.S. District Court for the District of Rhode Island in connection with Securities and Exchange Commission v. Rhode Island Commerce Corporation, et al., Case No. 1:16-cv-00107;
2. WFS will implement a mandatory annual training for all investment banking and underwriting syndicate personnel within the Municipal

² For the Application, we agree with Member Supervision’s focus on the Firm’s regulatory actions that occurred since December 2017 and discuss these matters herein. Although we limit our discussion to more recent regulatory actions, Member Supervision represents that the Firm has complied with required undertakings in connection with regulatory matters occurring prior to December 2017.

³ NYSE also issued the Firm a Cautionary Action for supervisory failures related to these issues.

Products Group (“MPG”) on due diligence considerations related to negotiated municipal securities underwriting transactions (“MPG Training”) for a period of three years from the date of this Notice. Thereafter, the MPG Training will be conducted on a biennial basis;

3. New investment banking and underwriting syndicate personnel within MPG must complete their first MPG Training within 120 days of date of hire;
4. WFS will maintain copies of the presentation deck for each of the MPG Trainings provided and will document completion of such trainings. WFS will segregate such documents for ease of review by FINRA staff during FINRA examinations;
5. A designated municipal principal shall maintain a log containing names and dates of completion for the MPG Training enumerated in items two and three above. A review of this log will be conducted quarterly to ensure timely completion of the MPG Trainings. The designated municipal principal shall attest to the quarterly review of the log. In the event that one or more of the investment banking and underwriting syndicate personnel within MPG do not complete the MPG Training within the time frame prescribed within items two and three above (e.g., employee is on leave), WFS will document the reason for the exception and a remedial plan to ensure completion of the MPG Training as soon as possible. WFS will segregate such logs and documentation for ease of review by FINRA staff during FINRA examinations;
6. WFS will continue to utilize the Wells Fargo Securities – Capital Markets Public Finance – Municipal Negotiated Underwriting Regulatory Diligence & Disclosure Review Form (the “Negotiated Transaction Diligence Form”), which is intended to provide MPG personnel with a clear list of steps to meet MPG’s regulatory obligations as an underwriter and placement agent of municipal securities. The Negotiated Transaction Diligence Form will be completed in connection with each municipal securities offering and in accordance with the timing enumerated on the Negotiated Transaction Diligence Form. The designated municipal principal will (a) on a quarterly basis, review the Negotiated Transaction Diligence Form to ensure the applicable lead investment banker completed and signed the form, and (b) maintain a log of all completed Negotiated Transaction Diligence Forms, containing the dates of review by the designated municipal principal. WFS will segregate such logs for ease of review by FINRA staff during FINRA examinations;

7. At least weekly, the Firm's Regulatory Diligence Group ("RDG") will run a Pipeline Report to determine if the MPG Public Finance Investment Banking Group has completed a Negotiated Transaction Diligence Form for a WFS mandated municipal securities transaction (the "Pipeline Report");
8. RDG will meet quarterly with members of Compliance and Legal to discuss the Negotiated Transaction Diligence Form and make adjustments to the form as needed;
9. At the time of posting of the preliminary offering document, RDG will confirm that the MPG Public Finance Investment Banking Group has completed the Negotiated Transaction Diligence Form for such transaction ("Transaction Review");
10. WFS will document (i) the Transaction Review, and (ii) any changes that are made to the Negotiated Transaction Diligence Form. WFS will make available to FINRA copies of the Negotiated Transaction Diligence Forms, the Pipeline Report, documentation of the Transaction Review and any changes that were made to the Negotiated Transaction Diligence Form, for review by FINRA staff during FINRA examinations;
11. WFS will continue to utilize G-17 Letters to comply with MSRB Rule G-17 and MSRB Notice 2012-25;
12. RDG will ensure compliance by MPG with the G-17 Letter requirement and will work with the MPG Public Finance Investment Banking Group to identify actual and potential material conflicts of interest that may require disclosure in G-17 Letters for each matter that appears on the Pipeline Report;
13. WFS will document reviews and maintain a log of reviews to ensure that the MPG Public Finance Investment Banking Group prepared and completed the G-17 Letters. WFS will make available to FINRA copies of the G-17 Letters and documentation of the review of such letters, for review by FINRA staff during FINRA examinations;
14. WFS must obtain written approval from FINRA's Statutory Disqualification Group ("SD Group") prior to changing any provision of this Plan; and
15. The Firm will submit any proposed changes or other requested information under this Plan to FINRA's SD Group at SDMailbox@FINRA.org.

Following the approval of the Firm's continued FINRA membership, Member Supervision represents that FINRA intends to utilize its examination and surveillance processes to assess the Firm's continued compliance with the standards prescribed by Exchange Act Rule 19h-1 and FINRA Rule 9523.

V. Discussion

Member Supervision recommends approving the Firm's request to continue its FINRA membership. After carefully reviewing the entire record in this matter, we approve the Application.

In evaluating an application like this, we assess whether the statutorily disqualified firm seeking to continue its membership in 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 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"). 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.

We recognize that the Final Judgment involved serious violations of securities rules and regulations. We note, however, that the violative conduct occurred in 2010, more than 10 years ago.⁴ We further note that the Firm represents that it implemented remedial measures to help ensure that similar misconduct does not recur. For example, the Firm states that in late 2010, it implemented enhancements to the MPG's compliance policies and procedures. The Firm also states that in 2012, it created the RDG to assist the MPG with compliance issues arising from new and negotiated offerings of municipal securities, and that it implemented processes and controls to satisfy disclosure requirements pursuant to MSRB Notice 2012-25. Further, the Firm states that it engaged outside counsel to help develop and update its training concerning transaction due diligence for negotiated municipal securities underwriting transactions.

⁴ We also note that, in connection with the Final Judgment, the SEC found good cause to grant the Firm a waiver from the disqualification provision under Rule 506(d)(2)(ii) of Regulation D under the Securities Act and granted the Firm an exemption from the disqualification provisions set forth in Section 9(a) of the Investment Company Act of 1940. The SEC's Division of Investment Management also issued the Firm a no-action letter in connection with the Final Judgment, in which staff stated that it would not recommend enforcement action under the Investment Advisers Act of 1940 and rules promulgated thereunder.

We further find that although the Firm has recent regulatory history, the record shows that it has taken corrective actions to address the noted deficiencies. We have also considered that Member Supervision states that the Firm has complied with undertakings imposed by regulators. Moreover, the record shows that the Firm has not engaged in similar misconduct since the Final Judgment and has consented to a Supervision Plan that will help to ensure that such misconduct does not recur. We agree with Member Supervision that the Firm's history should not prevent it from continuing as a FINRA member, and conclude that, notwithstanding its regulatory history, the continued membership of the Firm is in the public interest and does not present an unreasonable risk of harm to the market or investors.

At this time, we are satisfied, based in part upon the Firm's representations, Member Supervision's representations concerning, among other things, FINRA's future monitoring of the Firm, and the record currently before us, that the Firm's continued membership in FINRA is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors. Accordingly, we approve the Firm's Application to continue its FINRA membership as set forth herein.⁵ In conformity with the provisions of Exchange Act Rule 19h-1, the continued membership of the Firm will become effective within 30 days of the receipt of this notice by the SEC, unless otherwise notified by the SEC.

On Behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell

Jennifer Mitchell Piorko
Vice President and Deputy Corporate Secretary

⁵ FINRA certifies that the Firm meets all qualification requirements and represents that it is registered with MSRB, BOX Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Miami International Securities Exchange, LLC, and NYSE Arca, Inc., as well as the following self-regulatory organizations and exchanges that concur with the Firm's proposed continued membership: Investors' Exchange LLC; MEMX LLC; Cboe BZX Exchange; Cboe C2 Exchange, Inc.; Cboe BYX Exchange; Cboe EDGA Exchange; Cboe EDGX Exchange; Cboe Exchange, Inc.; Nasdaq BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; Nasdaq PHLX LLC; The Nasdaq Stock Market, LLC; NYSE Chicago, Inc.; NYSE National, Inc.; NYSE American LLC; New York Stock Exchange LLC; and DTCC, NSCC, and FICC.