

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the
Continued Membership
of
NPB Financial Group, LLC
(CRD No. 137743)

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

SD-2283

Date: September 30, 2021

I. Introduction

On September 24, 2020, NPB Financial Group, LLC (“NPB” or “Firm”) submitted a Membership Continuance Application (“MC-400A Application” or “Application”) ¹ to FINRA’s Credentialing Registration, Education, and Disclosure (“CRED”). The Application seeks to permit the Firm, a FINRA member subject to statutory disqualification, to continue its 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 Supervision (“FINRA” or “Member Supervision”) approves the Application and 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

The Firm is subject to statutory disqualification, a term that is defined in Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(D), as a result of an Order issued by the Securities and Exchange Commission (“SEC” or “Commission”) dated August 20, 2020 (“SEC Order”) finding the Firm willfully violated Sections 206(2) and 206(4) of the Investment Advisers Act of 1940 (“Advisers Act”) and Rule 206(4)-7 thereunder.² According to the SEC Order, from January 2014 through March 2019, the Firm breached its fiduciary duty to advisory clients in connection with its mutual share class selection process and the receipt of Rule 12b-1 fees.³ Specifically, the Firm purchased, recommended, or held mutual fund share classes for advisory clients and charged 12b-1 fees when lower-cost share classes of the same funds were

¹ See MC-400A Application and related attachments compiled by CRED, f/k/a Registration and Disclosure, with a cover memorandum dated September 30, 2020, attached as Exhibit 1.

² See SEC Order, *In re NPB Financial Group, LLC*, Admin. Prod. No. 3-19918 (August 20, 2020) at pp. 4-5, attached as Exhibit 2.

³ *Id.* at p. 2.

available.⁴ NPB and its associated persons received 12b-1 fees, but the Firm did not disclose to clients its practice or the conflict of interest in its Forms ADV or otherwise.⁵ Further, as a result of these practices, the Firm breached its duty to seek best execution for certain transactions.⁶ In addition, it failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act in connection with its mutual share class selection practices.⁷ Finally, the Firm did not self-report its violative conduct during the SEC Division of Enforcement’s Share Class Selection Disclosure Initiative.⁸

The Firm was ordered to cease and desist from violating the aforementioned statutes, censured, and ordered to pay disgorgement, prejudgment interest, and a civil penalty totaling \$1,050,188.11.⁹ The Firm was also ordered to comply with undertakings, including the retention of an independent compliance consultant (“ICC”).¹⁰

III. Firm Background

NPB, a dually-registered investment adviser and broker-dealer, is based in Burbank, California and has been a FINRA member since January 2006.¹¹ According to the Firm’s Central Registration Depository (“CRD”) record, NPB has 41 branch offices, 12 of which are Offices of Supervisory Jurisdiction (“OSJ”).¹² The Firm employs about 61 registered representatives/investment advisor representatives, 30 of which are registered principals, and 38 non-registered fingerprinted persons.¹³ The Firm does not employ any statutorily disqualified individuals.¹⁴

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at p. 8. The Firm provided proof it paid the ordered moneys. See Firm Correspondence to FINRA Staff and Supporting Documents, dated April 21, 2021, August 9, 2021, and September 2, 2021, attached collectively as Exhibit 3, at pp. 1-7, 68, and 72-76.

¹⁰ See Exhibit 2 at pp. 5-7, 12. See also Exhibit 3 at pp. 1, 15-55.

¹¹ See Exhibit 1 at p. FINRA00035.

¹² FINRA staff confirmed this through an analysis of the Firm’s information contained in CRD last performed September 29, 2021.

¹³ *Id.*

¹⁴ See Exhibit 1 at p. FINRA00036. FINRA staff also confirmed this through an analysis of the Firm’s information contained in CRD last performed September 29, 2021.

NPB is approved to engage in the following lines of business:¹⁵ broker or dealer retailing corporate equity securities over-the-counter; broker or dealer selling corporate debt securities; mutual fund retailer; U.S. government securities broker; municipal securities broker; broker or dealer selling variable life insurance or annuities; put and call broker or dealer or option writer; investment advisory services; broker or dealer selling tax shelters or limited partnerships in primary distributions; non-exchange member arranging for transactions in listed securities by exchange member; and other non-securities business, specifically traditional term and fixed term insurance.

The Firm is a member of the Municipal Securities Rulemaking Board (“MSRB”).¹⁶

FINRA Examination

During the past two years, FINRA completed one routine examination in October 2020 which resulted in a Cautionary Action Letter (“CAL”) for all three of the exceptions noted.¹⁷ These exceptions pertained to the Firm’s failure to provide the Investor Client Education and Protection disclosure to municipal customers annually and failure to establish procedures regarding this disclosure; failure to designate an appropriately registered individual to supervise municipal securities transactions executed in retail customer 529 Plan accounts; failure to provide all material disclosures to municipal bond customers at or prior to the time of trade and failure to establish an adequate supervisory system and written procedures to ensure material event disclosures occurred.¹⁸ The Firm responded in writing to the deficiencies noted and made procedural updates.¹⁹ The Firm has not been subject to non-routine examinations that resulted in a CAL in recent years.

Arbitration

The Firm represents that in the past 5 years it settled one arbitration in the amount of \$57,000.²⁰

Regulatory Action

On November 17, 2017, the Firm entered into a Letter of Acceptance, Waiver and Consent (“AWC”) with FINRA involving violations of NASD Rules 3010(b) and 3010(d)(2) and FINRA

¹⁵ See CRD Excepts: Types of Business and Other Business Descriptions, collectively attached as Exhibit 4.

¹⁶ Membership in these organizations was verified by FINRA staff through a search of public MSRB, DTCC, and NSCC member directories, last performed on September 29, 2021.

¹⁷ See FINRA Disposition Letter dated October 14, 2020, Report of Examination for Examination No. 20200651514 dated September 23, 2020, and the Firm’s Responses dated September 30, 2020 and October 8, 2020 (without attachments), attached as Exhibit 5.

¹⁸ See Examination Report at Exhibit 5.

¹⁹ See Firm Response at Exhibit 5.

²⁰ See Exhibit 1 at p. FINRA00036.

Rule 2010.²¹ Specifically, the Firm failed to establish, maintain, and enforce adequate WSPs for the review of email; failed to conduct email reviews for the Firm’s president, CEO, and CCO; and failed to adequately enforce WSPs related to use of non-firm email addresses.²² The Firm also failed to establish and enforce WSPs related to supervision of producing managers and failed to conduct sufficient testing and verification of the supervisory system.²³ FINRA censured the Firm and imposed a \$35,000 fine.²⁴

FINRA is not aware of any other final regulatory actions involving NPB.

IV. Prior SEA Rule 19h-1 Notices

The Firm has no previous approvals or denials pursuant to SEA Rules 19h-1 or 19d-1.

V. The Firm’s Proposed Continued Membership with FINRA and Proposed Plan of Heightened Supervision

The Firm seeks to continue its membership with FINRA notwithstanding its status as a disqualified member. The Firm has agreed to the following Plan of Heightened Supervision as a condition of its continued membership with FINRA:²⁵

1. The Firm must comply with the undertakings specified in the SEC Order, *In re NPB Financial Group, LLC*, Admin. Prod. No. 3-19918 (August 20, 2020);
2. Employees engaged in the sale of mutual funds will complete an annual training that includes, but is not limited to, rules and regulations for disclosure documents concerning mutual fund share class selection and 12b-1 fees. The Firm will maintain a log evidencing the completion of the annual training;
3. The Firm will provide FINRA’s Department of Risk Monitoring with copies of correspondence between the Firm and SEC staff regarding requests to extend the procedural dates relating to the undertakings;
4. The Firm will retain and provide FINRA’s Statutory Disqualification Group (“SD Group”) with a copy of all certifications, reports and other documentation submitted to the SEC staff in accordance with the Order as well as any other documentation needed to evidence its completion of each of the undertakings outlined in the Order, including, but not limited

²¹ See AWC Matter No. 2014038994601, signed by the Firm October 31, 2017 and accepted by FINRA November 17, 2017, attached as Exhibit 6.

²² *Id.* at p. 2.

²³ *Id.* at pp. 3-4.

²⁴ *Id.* at p. 4. NPB paid the fine in full on December 20, 2017.

²⁵ See Consent to Plan of Heightened Supervision, executed by NPB on August 23, 2021, attached as Exhibit 7.

to, the appropriate documentation to evidence the Firm's distribution of the amounts in the Fair Fund (as that term is defined in Section IV.C.(iii) of the Order);

5. The Firm will segregate all documentation related to the foregoing provisions in a separate file for FINRA's review;
6. All requested documents and certifications under this Plan of Heightened Supervision shall be sent directly to the SD Group at SDMailbox@FINRA.org.
7. The Firm will obtain written approval from the SD Group prior to changing any provision of the Plan; and
8. The Firm will submit any proposed changes or other requested information under this Plan to FINRA's SD Group at SDMailbox@FINRA.org.

VI. Discussion

After carefully reviewing the entire record in this matter, FINRA approves the Firm's request to continue its membership with FINRA, subject to the terms and conditions set forth herein. In evaluating NPB'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 investors or the markets. *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"). Typically, factors that bear on FINRA's assessment include, among other things, the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, the Firm's regulatory history, and whether there has been any intervening misconduct.

As of the date of this Notice, FINRA has determined that the Firm's continued membership is consistent with the public interest and does not create an unreasonable risk of harm to investors or the markets. While the SEC Order identified serious violations of securities laws, resulting in restitution to customers, a fine imposed by the Commission, and the imposition of undertakings for the Firm, the Firm was not expelled or suspended, nor were any limitations placed on NPB's business activities. Furthermore, the undertakings set forth in this matter require the Firm to take appropriate actions to redress, monitor, and deter future misconduct.²⁶ NPB was ordered to review and correct all disclosure documents concerning mutual fund share class selection and 12b-1 fees, evaluate whether existing clients should be moved to a lower-cost share class and move them as necessary, notify clients of the SEC Order, and retain an ICC to conduct reviews and make recommendations, which NPB must promptly adopt.²⁷ The Firm also represents that it no longer

²⁶ *See* Exhibit 2 at pp. 5-7.

²⁷ *Id.*

allows any new purchase of mutual fund shares that pay 12b-1 fees in investment advisory accounts.²⁸

In connection with the Firm's undertakings, NPB represents that it is in compliance with the SEC Order.²⁹ Specifically, it retained the ICC Bates Group LLC and received the first ICC report dated December 22, 2020.³⁰ The report indicates that the Firm's changes to its policies and procedures were adequate to address the problems noted in the SEC Order, and provided fourteen recommendations "designed to further enhance the processes with the goal to eliminate any gaps between current NPB practices and best practices."³¹ The Firm has certified that it adopted and fully implemented eight recommendations, and is in the process of implementing the remaining six recommendations.³² For advisory clients eligible for compensation under the SEC Order, NPB has informed them of the SEC Order, hired a third party administrator to mail checks to former clients, and represents it has credited the accounts of current clients.³³ The second of the ordered ICC reviews will commence December 2021.³⁴

In its evaluation of NPB's application, FINRA noted the Firm's limited regulatory history, its corrective measures taken in response to its recent exam findings, and the substantial actions taken thus far to implement the recommendations of the ICC in connection with the disqualifying event. NPB has paid all fines and none of the other regulatory matters would prevent the continuance of the Firm as a FINRA member. The Firm's Plan of Heightened Supervision, which is tailored specifically to the misconduct, bolsters the undertakings outlined in the SEC Order and will continue to provide oversight of the Firm and its compliance with remaining undertakings. The Plan of Heightened Supervision also calls for ongoing training in connection with the sale of mutual shares and 12b-1 fees. Further, following the approval of the Firm's continued membership in FINRA, FINRA intends to utilize its examination and surveillance processes to monitor the Firm's continued compliance with the standards prescribed by Exchange Act Rule 19h-1 and FINRA Rule 9523.

Thus, FINRA is satisfied, based on the foregoing and on the Firm's representations made pursuant to the Plan of Heightened Supervision, 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

²⁸ See Exhibit 1 at p. FINRA00053 and Exhibit 3 at pp. 35, 39, and 60. See also the Firm's May 31, 2020 Form ADV Part 2 Brochure at p. 7, attached as Exhibit 8.

²⁹ See Exhibit 1 at p. FINRA00052. See also Exhibit 3 at p. 1 and 4-7. The Firm represents it is in compliance with the installment payment deposits required by the SEC Order. The ICC notes in the report summary that the Firm has made adequate changes to address the deficiencies noted in the SEC Order. *Id.* at p. 28.

³⁰ See Exhibit 3 at pp. 15-55 for the Bates Group LLC engagement agreement and report. The Commission granted an extension of the deadline for the first report. *Id.* at p. 26, n. 1.

³¹ *Id.* at pp. 33, 43-46.

³² *Id.* at pp. 57, 63 and 66.

³³ See Exhibit 3 at pp. 1, 9-13, and 63-65.

³⁴ *Id.* at p. 27.

or investors. Accordingly, FINRA approves the Firm's Application to continue its membership with FINRA.

FINRA certifies that the Firm meets all qualification requirements and represents that the Firm is not a member of any other self-regulatory organizations.

In conformity with the provisions of Rule 19h-1 of the Exchange Act, 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
Executive Vice President & Corporate Secretary

Exhibits

SD-2283

1. MC-400A Application and related attachments with a cover memorandum dated September 30, 2020.
2. SEC Order, *In re NPB Financial Group, LLC*, Admin. Prod. No. 3-19918 (August 20, 2020).
3. Firm Correspondence to FINRA Staff, dated April 21, 2021, August 9, 2021, and September 2, 2021, and Proof of Payment of Fine.
4. CRD Except: Types of Business and CRD Excerpt: Other Business Descriptions.
5. FINRA Disposition Letter dated October 14, 2020, Report of Examination for Examination No. 20200651514 dated September 23, 2020, and the Firm's Responses dated September 30, 2020 and October 8, 2020 (without attachments).
6. AWC Matter No. 2014038994601, signed by the Firm October 31, 2017 and accepted by FINRA November 17, 2017.
7. Consent to Plan of Heightened Supervision, executed by NPB on August 23, 2021.
8. NPB's May 31, 2020 Form ADV Part 2.