

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In The Matter of

The Association of

Peter R. Serra

as a

General Securities Representative and an
Investment Banking Representative
with

Joseph Gunnar & Co. LLC

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

SD-2277

December 1, 2021

On August 21, 2020, Joseph Gunnar & Co. LLC (“JGUN” or the “Firm”) filed with FINRA a Membership Continuance Application (“MC-400” or “Application”). The Application seeks to permit Peter R. Serra, a person subject to a statutory disqualification, to associate with the Firm as a general securities representative and an investment banking representative. 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 Serra’s association with the Firm pursuant to the terms and conditions set forth below.

For the reasons explained below, we approve the Firm’s Application.

I. Serra’s Statutorily Disqualifying Event

Serra is subject to statutory disqualification, as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934 (“Exchange Act”), as a result of his January 2016 guilty plea to, and conviction for, Aggravated Vehicular Assault, a felony in violation of New York law.¹ A court sentenced Serra to six months incarceration and

¹ FINRA’s By-Laws provide that a person is subject to “disqualification,” and thus must seek and obtain FINRA’s approval prior to associating with a member firm, if he is disqualified under Exchange Act Section 3(a)(39). *See* FINRA By-Laws, Art. III. Exchange Act Section 3(a)(39)(F) provides that a person is subject to statutory disqualification if he has been convicted of any offense specified in Exchange Act Section 15(b)(4)(B), or any other felony, within the past 10 years. Serra also pleaded guilty to operating a motor vehicle while under the influence of alcohol, a misdemeanor.

three years of probation. The court also revoked Serra's driver's license for six months, ordered that his vehicle be equipped with an ignition interlock device for three years, and imposed fines and costs totaling \$1,070. The record shows that Serra served four of the six months of incarceration after earning good time credit. Serra was also granted early release from probation in December 2016, and he paid the fines and costs imposed upon him by the court.

Serra's disqualifying felony conviction stemmed from a March 2015 accident caused by Serra. Serra drove his vehicle into on-coming traffic and collided with another vehicle, causing injuries to two passengers in that vehicle. At the accident scene, Serra showed signs of intoxication and was arrested. Serra states that he met a friend for dinner and then went to a neighborhood bar, where he drank too much. Serra states that "I demonstrated a severe lack of judgment because I should not have been operating a motor vehicle" and made "a horrible decision that put other people at risk." He further states that

I have great remorse and regret regarding the events of that evening, and I have taken deliberate action to assure [sic] that I never again repeat my transgressions of that evening, including going to counseling to understand the dangers and consequences of abusing alcohol, and taking classes related to safe driving.

II. Serra's Background Information

Serra qualified as a general securities representative in February 2007, as a general securities principal in February 2008, and was granted a waiver to act as an investment banking representative in June 2010. He passed the uniform securities agent state law examination in May 2007. These registrations expired, but Serra was granted waivers as a general securities representative and an investment banking representative in July 2021. He also passed the uniform securities agent state law examination in July 2021. Serra has been associated with the Firm since July 2020, although he is not working at the Firm while this Application has been pending. He was previously associated with five firms.

FINRA's Central Registration Depository ("CRD"®) records show that Serra is involved in the following outside business activities: (1) general capital markets and corporate finance advisory work for Encore Advisory, LLC, an entity owned by Serra, to which he devotes approximately 10-15 hours per week; (2) advisory services for Corprominence, a non-investment related independent contractor that provides business development and advisory support, to which he devotes approximately 100 hours per month; and (3) vice-president of finance for Galimedix Therapeutics, Inc., to which he devotes 20 hours per month. Serra represents that if the Application is approved, these outside business activities will cease.

Other than the convictions related to Serra's statutory disqualification, the record reflects no customer complaints or arbitrations involving Serra, or any other regulatory, disciplinary, or criminal history.

III. Background of the Firm

The Firm has been a FINRA member since 1990.² The Firm currently employs 48 registered representatives, 14 of whom are registered principals, 15 registered investment adviser representatives, eight of whom are principals, and 12 non-registered fingerprinted individuals. The Firm has three branch offices, all of which are OSJs. The Firm currently does not employ any other individuals who are subject to statutory disqualification.

A. Recent FINRA Examination History

In August 2020, in connection with the Firm's 2019 trading examination, FINRA issued the Firm a Cautionary Action for the following deficiencies: (1) failing to provide documentation to evidence the annual notification sent to customers that hard copies of quarterly order routing reports are available without charge; (2) failing to include accurate information on confirmations associated with customer equity transactions; (3) failing to maintain customer specific financial risk management controls within the FlexTrade OMS; (4) failing to establish, document, and maintain a written description of its risk management controls and supervisory procedures reasonably designed to manage the financial and regulatory risks of its business activities; (5) failing to conduct a review of the Firm's business activity in connection with market access to assure the overall effectiveness of such risk management controls and supervisory procedures; (6) failing to certify that the Firm conducted a review of its business activity in connection with market access to ensure the overall effectiveness of its risk management controls and supervisory procedures and that such controls and procedures comply with the market access rule; and (7) failing to maintain written supervisory procedures ("WSPs") related to the review of systems utilized to obtain, display, and distribute market data to ensure the Firm's compliance with Regulation NMS Rule 603. The Firm responded in writing that it corrected the deficiencies noted.³

In October 2019, in connection with the Firm's 2018 examination, FINRA issued the Firm a Cautionary Action for the following deficiencies: (1) failing to enforce its procedures regarding conducting due diligence on issuers; (2) failing to implement a risk-based system to supervise the activities of each associated person that was reasonably designed to achieve compliance with applicable securities laws and regulations, including

² The Firm will be relocating its headquarters from New York City to Uniondale, New York. It expects this to occur by the end of 2021. At that time, the Firm will close its Long Island, New York Office of Supervisory Jurisdiction ("OSJ").

³ FINRA also completed an examination of the Firm in April 2020, which resulted in a referral to Enforcement for exceptions related to the Firm failing to: (1) maintain an adequate supervisory system concerning telemarketing activities; (2) adequately review customer complaints; and (3) establish and enforce an adequate supervisory system to ensure that charges assessed to customers were fair and reasonable. This referral is pending.

monitoring the quantitative suitability of transactions; (3) failing to identify and report customer complaints; (4) failing to accurately disclose the dollar amount and percentage of the prevailing market price of markups and markdowns on its confirmations to non-institutional customers; (5) with respect to the Firm's Melville, New York, branch office, failing to retain outgoing correspondence, failing to evidence its timely review of outgoing correspondence, and failing to implement an adequate system to review the correspondence sent or received by the branch office supervisor; (6) failing to enforce a reasonable system to supervise cancellations and corrections and failing to conduct heightened scrutiny of transactions in which confirmation and settlement did not occur on a timely basis, or where settlement was outside of normal cycles; (7) failing to prohibit the allocation of "new issues" to accounts in which a beneficial interest was held by an executive officer or director of certain current, former, or prospective investment banking customers of the Firm; and (8) failing to implement a heightened supervision plan for a representative at its New York City office.⁴ The Firm responded in writing that it corrected the deficiencies noted.

B. Recent Formal Disciplinary History

In November 2020, FINRA accepted from the Firm an AWC for violations of FINRA Rules 3310 and 2010. Without admitting or denying the allegations, the Firm consented to findings that it failed to: implement an adequate AML program to reasonably monitor its low-priced securities business or to detect and report suspicious activity; investigate red flags that suggested potentially suspicious activity; and establish a due diligence program reasonably designed to detect and report known or suspected money-laundering activities. FINRA censured the Firm, fined it \$55,000, and required it to revise its supervisory procedures and controls. The Firm certified that it implemented policies and procedures to address the AWC's findings.

In December 2017, FINRA accepted from the Firm an AWC for violations of NASD Rule 3010 and FINRA Rules 3110 and 2010. Without admitting or denying the allegations, the Firm consented to findings that from January 2010 through January 2015, it failed to establish and maintain a supervisory system, including WSPs, reasonably designed to detect and prevent unsuitable trading by a registered representative.⁵ FINRA censured the Firm, fined it \$60,000, and required it to revise its supervisory procedures and controls. The Firm certified that it implemented policies and procedures to address the AWC's findings.

⁴ Neither of Serra's proposed supervisors were involved with this failure. In addition, an exception related to the Firm's Anti-Money Laundering ("AML") Compliance Program was referred to Enforcement, which resulted in the Letter of Acceptance, Waiver and Consent ("AWC"). See *infra* Part III.B.

⁵ Neither of Serra's proposed supervisors supervised the registered representative at issue.

The record does not show any additional recent disciplinary or regulatory history against the Firm.

IV. Serra's Proposed Business Activities

The Firm proposes that Serra will work from its Uniondale, New York, office. Serra will serve as a managing director and a member of the Firm's investment banking group. His duties will involve promoting and developing the Firm's investment banking business by: (1) originating and facilitating existing and new client engagements; (2) providing financial analyses and structuring, performing due diligence, projecting and providing relationship management expertise for the Firm's M&A debt and equity capital raise activities (both public and private), corporate restructuring and recapitalization, SPAC, and other strategic business initiatives; and (3) placing securities and ensuring compliance with all applicable regulations. Serra will be compensated through origination processing and placement fees and a monthly draw against revenues attributable to him.

V. Serra's Proposed Supervision

The Firm designated Demitry Portnoy ("Portnoy") to serve as Serra's primary supervisor. Portnoy registered as a general securities representative in December 2000 and as a general securities principal in October 2006. He passed the uniform securities agent state law examination in February 2001. Portnoy has worked at the Firm since January 2009 (and previously worked at the Firm from March 2001 until July 2001). He was previously associated with six other firms.

Portnoy will work from the Firm's Uniondale, New York, office. The Firm represents that, in addition to several years of supervisory experience before joining the Firm, Portnoy has overseen and managed the registered personnel at the Firm's Long Island OSJ and co-supervised a number of registered representatives from 2009 until the present. The Firm represents that, if the Application is approved, Serra will be the only person that Portnoy will supervise.

CRD lists the following outside business activities for Portnoy: (1) JGUN Agency, the Firm's insurance company affiliate, to which he devotes less than 20 hours per week; (2) Demitry Portnoy, Inc., an entity owned by Portnoy used to pay bills incurred by Portnoy in connection with Firm business conducted from his residence, to which he devotes five hours per week; (3) Buttonwood Select Opportunities Management Associates LLC and Buttonwood H1 Management Associates LLC, in which Portnoy is involved as a general partner of Buttonwood Funds, to which he devotes no time;⁶ and

⁶ The Buttonwood Funds are venture capital entities that are Firm affiliates by reason of partial commonality of ownership. They sell membership interests from time to time and the Firm has been retained as exclusive placement agent for the offerings. Portnoy is a non-voting passive member in these investment related entities and has the potential of earning compensation on a contingent basis at the discretion of the managing members. He does not devote any time to these entities.

(4) American Pride Wealth Management Group, which is a website developed to manage account business offered through the Firm, and American Pride Management LLC, the entity through which Portnoy pays the bills of the Long Island OSJ, to which he devotes one hour per month serving as managing partner.

The record shows no customer complaints, arbitrations, or other regulatory, disciplinary, or criminal history for Portnoy.

If Portnoy is unavailable, the Firm designated Stephan Stein (“Stein”) to serve as Serra’s alternate supervisor. Stein is the Firm’s president, chief operating officer, and a member of its executive committee. Stein registered as a general securities representative in February 2003 and as a general securities principal in March 2003. He passed the uniform securities agent state law examination in March 2003. Stein has worked at the Firm since 2003 and has not been previously associated with any other firms. Stein will work in the Uniondale, New York, office. He currently supervises 19 other individuals.

The record shows two recent pending customer complaints against Stein. In both matters, customers alleged that Stein failed to supervise representatives who sold private placements. Stein disputes that he supervised the representatives at issue or that he served as the broker of record for these transactions.

Further, CRD lists the following outside business activities for Stein: (1) owner of Sas Ventures, LLC, a business development and consulting company that is currently inactive; (2) owner of Buttonwood Group Advisors LLC, an entity established to advise the Buttonwood Funds, to which he devotes 40 hours per month; and (3) owner of Arroga’s Grille House & Sports Bar, a restaurant franchisee, to which he devotes 12 or fewer hours per month.

Other than the two pending customer complaints discussed above, the record shows no customer complaints, arbitrations, or other regulatory, disciplinary, or criminal history for Stein.

VI. Discussion

After carefully reviewing the entire record in this matter, we approve the Firm’s Application to employ Serra as a general securities representative and investment banking representative, subject to the supervisory terms and conditions set forth below.

The Firm has the burden of demonstrating that Serra’s association with the Firm is in the public interest and does not create an unreasonable risk of harm to the market or investors. *See Continued Ass’n of X*, Redacted Decision No. SD06002, slip op. at 5 (NASD NAC 2006), <http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p036476.pdf>; *see also 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”); FINRA By-Laws, Article III, Section 3(d) (providing that FINRA may approve association of statutorily disqualified person if such approval is consistent with the public interest and the protection of investors).

In reviewing this type of application, we have considered whether the particular felony at issue, examined in light of the circumstances related to the felony and other relevant facts and circumstances, creates an unreasonable risk of harm to the market or investors. *See Kufrovich*, 55 S.E.C. at 625-26 (upholding FINRA’s denial of a statutory disqualification applicant who had committed non-securities related felonies “based upon the totality of the circumstances” and FINRA’s explanation of the bases for its conclusion that the applicant would present an unreasonable risk of harm to the market or investors). We assess the totality of the circumstances in reaching a judgment about Serra’s future ability to work in the securities industry in a manner that comports with FINRA’s requirements for high standards of commercial honor and just and equitable principles of trade in the conduct of his business.

For the reasons set forth below, we conclude that the Firm has satisfied its burden and that Serra’s participation in the securities industry, subject to the supervisory terms and conditions set forth below, will not present an unreasonable risk of harm to the market or investors.

We acknowledge the seriousness of Serra’s criminal conviction. We note, however, that his felony conviction did not involve securities or fraudulent misconduct and that it occurred more than five years ago. We further note that Serra served all terms of his sentence and the court released Serra from probation in December 2016, more than two years early. We are not aware of any intervening misconduct by Serra, and the record does not show any regulatory wrongdoing or customer complaints during his career. Further, Serra has accepted responsibility and stated his remorse for the incident underlying his disqualification.

We also find that Portnoy and Stein are well-qualified to supervise Serra. They have been registered in the securities industry for 21 years and 18 years, respectively, and both have substantial supervisory experience. Portnoy has a clean regulatory history and his supervisory duties will be limited to supervising Serra. We agree with Member Supervision that the two recent, pending customer arbitrations filed against Stein should not prevent him from stringently supervising Serra. Moreover, the heightened supervisory plan is comprehensive and tailored to Serra and his disqualifying event. Serra will be supervised onsite, and Portnoy and Stein will be able to monitor Serra for signs of alcohol abuse.

Finally, we find that the Firm has a relatively clean regulatory history and has corrected deficiencies and complied with required undertakings. On balance, the Firm’s history does not warrant a denial of Serra’s association with the Firm considering his misconduct, his proposed business activities at the Firm providing investment banking services, and the specific supervisory structure in place for him.

We find that the following heightened supervisory procedures, if they are diligently followed, will enable the Firm to reasonably monitor Serra's activities on a regular basis:

1. The written supervisory procedures for the Firm will be amended to incorporate this Heightened Supervisory Plan ("Plan") for the supervision of Serra. Portnoy is the primary supervisor responsible for Serra. Serra will sign a copy of the Plan, acknowledging his receipt and acceptance of it.
2. If Portnoy is on vacation or out of the office for an extended period, Stein will act as Serra's interim supervisor.
3. Serra will act solely in an investment banking capacity. He will not maintain any customer accounts and his personal and related accounts (if maintained at the Firm) will be handled by an independent broker at the Firm.
4. Serra will not act in a supervisory capacity and will not have any business line authority over any registered individuals.
5. Serra will not be authorized to commit the Firm to any business obligation without prior approval from Portnoy. Serra will notify Portnoy of Serra's transmission of a proposed engagement letter or agreement to a prospective investment banking client prior to the Firm's execution of the letter or agreement. Such notification may be accomplished by Serra forwarding the email to Portnoy or copying Portnoy on the email. Such notifications will be maintained in a segregated file for ease of review during any FINRA examination.
6. Portnoy will review and approve all proposals and proposed engagement letters or agreements in connection to investment banking services provided by Serra, including without limitation, underwriting, private placement or advisory services to proposed and existing clients of the Firm before they are executed. All engagement letters and agreements must be executed by Serra and Portnoy collectively, or by Portnoy alone. All engagement letters or agreements signed by either Serra or Portnoy will be maintained in a segregated file for ease of review during any FINRA examination.
7. Serra will promptly notify Portnoy by email whenever a proposed engagement letter or agreement is executed by an investment banking client.
8. Serra will be supervised by Portnoy at the Firm's home office located at 625 RXR Plaza, Uniondale, New York, 11553. Serra will sit in close proximity to Portnoy.

9. At the beginning of each week, Serra will advise Portnoy in writing (e.g., via email or shared calendar) of Serra's upcoming planned interactions with clients and prospective clients. Thereafter, during the week, Serra will advise Portnoy by email or shared electronic calendar, in advance or as reasonably practicable, of any later scheduled meetings with clients and prospective clients during the week. The Firm will retain a copy of these written communications in a segregated file for ease of review during any FINRA examination.
10. Serra's incoming mail (not including email) will be reviewed by Portnoy, before being provided to Serra. In addition, Serra's outgoing mail (not including email) will be pre-approved by Portnoy. Such review and preapproval will be documented and maintained in a segregated file for ease of review during any FINRA examination.
11. Serra will not be permitted to use any email address other than the Firm's email address (which is subject to the Firm's surveillance and supervisory review) for business communications. If Serra receives a business-related email message in another email account outside the Firm, he will immediately deliver that message to the Firm's email account. In addition, Serra will inform the Firm of all outside email accounts which he maintains and will provide the Firm access to the accounts upon request. The email messages are to be preserved and maintained in a segregated file for ease of review during any FINRA examination.
12. Once every two weeks, Portnoy will review 100% of Serra's external incoming and outgoing emails. Any potentially problematic emails will be brought to the attention of both Stein and the Firm's Chief Compliance Officer. Records of such reviews and escalations will be kept segregated for ease of review during any FINRA examination.
13. On a quarterly basis, Portnoy will confer with other professionals of his choosing in the investment banking department about Serra's investment banking activities. Portnoy will document the date of each conference and with whom he spoke. Such documentation will be maintained in a segregated file for ease of review during any FINRA examination.⁷
14. On a monthly basis, Serra will provide Portnoy with a written description of his interactions with clients and prospective clients and all client transactions in which Serra was involved. The Firm will retain a copy of

⁷ The Firm has stated that in connection with this plan provision, it anticipates that Portnoy will query Stein about what engagements Serra has been working on, what transactions Serra may have originated and how he did so, what financing transactions Serra may have consummated, what advisory services Serra may have provided, and whatever else is deemed pertinent to the appropriate supervision of Serra.

these descriptions and they will be maintained in a segregated file for ease of review during any FINRA examination.

15. On a monthly basis, Portnoy will review with Serra, through personal meetings and/or telephone conferences, Serra's investment banking activities and interactions with clients. The Firm will keep a log of the dates of each meeting, which will be maintained in a segregated file for ease of review during any FINRA examination.
16. On a quarterly basis, Portnoy will assess Serra's compliance with the Plan and shall report his findings to the Chief Compliance Officer. A description of the assessment and the findings will be maintained in a segregated file for ease of review during any FINRA examination.
17. If any complaint is received pertaining to Serra, whether oral or written, it will be immediately referred to Portnoy for review, and to the Firm's Compliance Department. A memorandum will be prepared regarding the measures the Firm took to address the complaint and any resolution of the matter. The Firm will maintain records pertaining to any complaints in a segregated file for ease of review during any FINRA examination.
18. Serra will agree, when asked, to submit to random drug and alcohol testing to be conducted by a third-party vendor. The result of any tests conducted will be kept in a segregated file for ease of review during any FINRA examination.
19. Portnoy will promptly alert the Firm's Chief Compliance Officer of any indication that Serra is under the influence of alcohol while at work, including but not limited to observances that Serra has red, watery eyes, odor of alcohol on his breath, an unsteady gait, or unexplained lateness or absences, or other erratic behavior.
20. By using a third-party vendor, Portnoy will conduct an annual public records search to ascertain whether Serra has any criminal disclosures and will subsequently review Serra's regulatory disclosures to ensure that he has complied with his regulatory obligations. Portnoy will document the outcome of each public records search and maintain and keep segregated all documents related to the public records search and reviews for ease of review during any FINRA examination.
21. On a semi-annual basis (June 30th and December 31st), Serra will certify that he has read the Firm's Compliance Manual, Written Supervisory Procedures, this Plan, and any other documents containing Firm policies related to his obligations to his clients and the Firm, that he understands those policies, and that he has acted, and is acting, in complete compliance

with the Plan. Such certifications will be kept segregated for ease of review during any FINRA examination.

22. The Firm will contact FINRA's Risk Monitoring and FINRA's Statutory Disqualification Group ("SD Group") if Serra's primary or alternate supervisors' responsibilities at the Firm change in any material respect other than as represented to FINRA to evaluate the Firm's application. Material changes include, but are not limited to, any new or additional supervisory responsibilities.
23. Portnoy will certify quarterly (March 31, June 30, September 30th and December 31st) to the Firm's Chief Compliance Officer that Portnoy and Serra are in compliance with all of the conditions of the Plan. These certifications will be kept segregated for ease of review during any FINRA examination.
24. For the duration of Serra's statutory disqualification, the Firm must obtain prior approval from FINRA Member Supervision if it wishes to change Serra's primary or alternate supervisors or if the Firm wishes to change any provision of this plan. The Firm will submit any proposed changes or other requested information under this Plan to FINRA's SD Group at SDMailbox@FINRA.org.

FINRA certifies that: (1) Serra meets all applicable requirements for the proposed employment; (2) the Firm is a member of the NASDAQ Stock Market, which concurs with the proposed employment as described herein, and the Municipal Securities Rulemaking Board; (3) the Firm represents that Serra, Portnoy, and Stein are not related by blood or marriage; and (4) the Firm does not currently employ any other individuals who are subject to statutory disqualification.

VII. Conclusion

Accordingly, we approve the Firm's Application to employ Serra as a general securities representative and an investment banking representative, subject to the above-mentioned heightened supervisory procedures. In conformity with the provisions of Exchange Act Rule 19h-1, the association of Serra with the Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the Commission. FINRA requests that the Commission not direct FINRA to bar Serra from associating with the Firm pursuant to Exchange Act Section 15A(g)(2).

On Behalf of the National Adjudicatory Council,

Jennifer Mitchell Piorko
Vice President and Deputy Corporate Secretary