

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

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| In the Matter of the Association of Patrick Dukette as a Non-Registered Employee with World Capital Brokerage, Inc. | <u>Notice Pursuant to Rule 19h-1 Securities Exchange Act of 1934</u> SD-1975 March 27, 2014 |
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I. Introduction

On December 24, 2012, World Capital Brokerage, Inc. (“WCB” or the “Firm”) filed a Membership Continuance Application (“MC-400” or “Application”) with FINRA’s Department of Registration and Disclosure (“RAD”), seeking to permit the association of Patrick Dukette (“Dukette”), a person subject to a statutory disqualification, as a non-registered employee. A hearing was not held in this matter. Rather, pursuant to FINRA Rule 9523(a), Member Regulation recommended that the Chair of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council, approve Dukette’s proposed association with the Firm pursuant to the terms and conditions set forth below.

For the reasons explained below, we approve the Application to permit Dukette to associate with the Firm as a non-registered employee.

II. Dukette’s Statutorily Disqualifying Event

Dukette is statutorily disqualified because on July 10, 2007, he pleaded guilty in Colorado to one count of felony trespassing.¹ In connection with this conviction, the

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 Section 3(a)(39) of the Securities Exchange Act of 1934 (“Exchange Act”). See FINRA By-Laws, Article III. Exchange Act Section 3(a)(39)(F) provides that a person is subject to a statutory disqualification if he has been convicted of any felony within 10 years of the date of the filing of an application to associate with a member firm.

court ordered Dukette to pay \$1,785.50 in charges and fees and sentenced him to 43 days in jail, for which he was given credit for time served. The court also sentenced Dukette to two years of probation. Dukette successfully completed his probation in July 2009.²

Dukette characterized the events leading to his disqualifying conviction as a domestic dispute. Dukette represented that the incident took place at the apartment where he lived, although he was not named in the lease, and that he walked in and “found [his] partner involved in activities that upset [him] greatly.” Dukette further represented that he reacted by throwing various household objects. Dukette also represented that he took the plea agreement against the advice of the public defender, in order to “get [his] life back.”

III. Dukette’s Background and Employment History

Dukette has never maintained a securities industry registration, and he has never worked for a broker-dealer. Dukette’s work experience prior to 2011 consists of a variety of non-securities or financial industry-related jobs. In February 2011, Dukette was hired as a receptionist by Investment Research Corp. (“IRC”), a registered investment adviser and affiliate of WCB.

On February 9, 2012, WCB filed a Uniform Application for Securities Industry Registration or Transfer (“Form U4”) to associate Dukette and to open a window for him to take the investment company products/variable contracts limited representative examination (Series 6). Dukette disclosed his felony conviction on this Form U4 filing, and Dukette’s exam window closed before he attempted the exam. On February 10, 2012, FINRA issued to WCB a Disclosure Letter requesting it to provide information regarding Dukette’s criminal disclosure. The Firm fulfilled this request on December 3, 2012, which enabled FINRA to determine that Dukette was statutorily disqualified. FINRA issued its notice of disqualification to the Firm on December 3, 2012.

On January 3, 2013, WCB filed for Dukette a Uniform Termination Notice for Securities Industry Registration (“Form U5”), fully terminating his association with the Firm, citing compliance with FINRA rules and the pending MC-400 review as the reason for his termination.³

Member Regulation represents that, during the period from February 2011 through December 2012, Dukette was an employee of IRC, was compensated solely by

² Dukette has not completely paid the fine and charges associated with his felony conviction. He had agreed to a payment plan, but he suspended payments under that plan while he has been unemployed. The record shows that Dukette currently owes approximately \$1,475 (which includes the balance of unpaid charges and fees, plus interest). Applicants have represented that payments will resume upon approval of the Application.

³ The Form U5 identified December 24, 2012, as the effective date of Dukette’s termination.

IRC, and received no compensation from WCB. WCB attributed the delay in its identification of Dukette as a statutorily disqualified person to its now admittedly erroneous belief that FINRA's rules governing eligibility proceedings applied only to registered staff and verbal advice it received from legal counsel consistent with this belief. When WCB disassociated with Dukette on December 24, 2012, IRC also severed its ties with Dukette, pending the outcome of the MC-400. The facts and circumstances surrounding WCB's failure to immediately identify Dukette's disqualification, and its delay in responding to FINRA's request for information about Dukette's conviction, was the subject of a FINRA cause examination. *See infra* Part IV.B.1.

Other than Dukette's disqualifying felony conviction, in January 2007, he pled guilty to a misdemeanor count of driving under the influence of alcohol. The record shows no other criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against Dukette.

IV. The Firm

A. Background

WCB is based in Denver, Colorado and has been a FINRA member since 1958. The Firm represents that it has 29 branch offices, including five Offices of Supervisory Jurisdiction ("OSJ") and its main office, which is an OSJ. The Firm employs 19 registered principals, 66 registered representatives, and three other employees. The Firm does not employ any other statutorily disqualified individuals.

WCB's Uniform Application for Broker-Dealer Registration ("Form BD") indicates that it is engaged in the following lines of business: broker or dealer selling corporate debt securities; broker or dealer retailing corporate equity securities over-the-counter; mutual fund retailer; mutual fund underwriter or sponsor; municipal securities broker; put and call broker or dealer or option writer; private placements of securities; underwriter or selling group participant (corporate securities other than mutual funds); broker or dealer selling variable life insurance or annuities; other non-securities business, including property management; and other business, including an agreement to sell banking products.

B. The Firm's Regulatory History

1. Recent Routine Examinations

In October 2012, in connection with FINRA's 2012 cycle examination of the Firm, FINRA issued the Firm a Cautionary Action. FINRA cited the Firm for: failing to amend a Form U4 to reflect a customer complaint; failing to document a customer's investment experience and time horizon when recommending a variable annuity; failing to develop and document training policies or programs reasonably designed to ensure that associated persons who effect, and registered principals who review, transactions in deferred variable annuities comply with FINRA rules; failing to ensure that a registered representative disclosed his outside brokerage accounts and arranged for duplicate copies

to be sent to the Firm; and failing to accurately calculate net capital. Member Regulation represents that the Firm addressed the deficiencies noted.

In May 2011, in connection with FINRA's 2010 cycle examination of the Firm, FINRA issued the Firm a Cautionary Action.⁴ FINRA cited the Firm for: failing to notify FINRA that it utilized electronic storage media; failing to create and maintain its Firm Element Continuing Education documents; failing to capture and archive two registered representatives' emails; failing to report a customer complaint and inaccurately reporting customer complaints; failing to comply with FINRA reporting requirements; failing to properly document the review of advertisements; failing to provide confirmation that the Firm's privacy policy was being delivered to customers at account opening; failing to obtain best execution for customers in connection with three municipal securities transactions; failing to accurately calculate net capital; failing to properly allocate in its expense sharing agreement expenses between the Firm and its affiliates; and failing to properly maintain the Firm's checks received and forwarded blotter. Member Regulation represents that the Firm addressed the deficiencies noted.

In March 2009, in connection with FINRA's 2009 alternative municipal examination, FINRA cited the Firm for failing to properly update its Form G-40 filing. Member Regulation represents that the Firm addressed the deficiencies noted.

Finally, as stated above, the Firm was the subject of a cause examination dealing specifically with the delay in its identification of Dukette's disqualification. FINRA recently closed, and took no further action with respect to, this exam.

2. *Formal Disciplinary Actions*

In March 1997, the Firm entered into a Letter of Acceptance, Waiver, and Consent ("AWC") with FINRA for violations of Exchange Act Rule 15c3-1 and NASD Rule 2110. Without admitting or denying FINRA's allegations, the Firm consented to findings that it conducted a securities business while failing to maintain its minimum net capital requirement. FINRA censured the Firm and fined it \$2,500.⁵

⁴ The Firm's 2010 examination also resulted in a Compliance Conference in connection with the Firm's Anti-Money Laundering Compliance Program, and the Firm received Cautionary Actions in connection with two FINRA "termination for cause" examinations. These Cautionary Actions (issued in April 2009 and March 2011) addressed exceptions related to inadequate written supervisory procedures and the Firm's failure to enforce supervisory procedures related to the disclosure of outside business activities. Member Regulation represents that the Firm addressed the deficiencies noted.

⁵ FINRA's Central Registration Depository ("CRD"®) also indicates that the Firm was subject to two other formal actions, in 1970 and 1975, involving the Firm's failure to notify a state regulator that two salesmen had been terminated and advertising, books and records, Regulation T, and supervisory violations.

V. **Dukette's Proposed Business Activities and Supervision**

A. Dukette's Activities and Supervisor

WCB proposes that it will employ Dukette as a non-registered employee in its main office in Denver, Colorado. The Firm proposes that Dukette will be paid a salary and will have primarily administrative responsibilities. More specifically, Dukette will maintain non-client databases (including data entry), and he will be responsible for filing, outbound mailings, state licensing form filings, cold calls to recruit registered representatives and advisers, and backing up the receptionist on an as-needed basis. Dukette will not have access to personal client information and will not interact with clients, other than in instances where he would cover the phones and forward incoming calls. Furthermore, the Firm represented that it has implemented a variety of controls, as discussed below, to preclude Dukette's access to sensitive customer data.

WCB proposes that Dukette will be supervised on-site by Patricia A. Blum ("Blum"). Blum entered the securities industry and joined WCB in July 2002, when she first became registered as an investment company products/variable contracts representative. Blum qualified as an investment company products/variable contracts limited principal in December 2010, and she passed the uniform securities agent state law examination in August 2011.⁶ Blum generally conducts reviews of the Firm's trading activity, but she does not directly supervise any other individuals.

The record shows no criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against Blum.

B. Proposed Plan of Supervision

The Firm proposes the following plan of heightened supervision for Dukette:⁷

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This plan of heightened supervision will remain in effect for the duration of Dukette's statutory disqualification. WCB will amend its Written Supervisory Procedures to identify Dukette as subject to statutory disqualification and to designate Blum (CRD No. 4467584) as the primary supervisor responsible for the supervision of Dukette's activities as described in the Application. In instances when Blum is away from the

⁶ Blum is also a vice president with IRC, and Blum's CRD records list several other affiliated entities under "other businesses."

⁷ This plan includes supervisory steps as well as controls the Firm has implemented to preclude Dukette from gaining access to sensitive customer data. Those items marked with an asterisk represent supervisory steps viewed by WCB as special or unique to its supervision of Dukette.

office or otherwise unavailable, Timothy Taggart (“Taggart”) (CRD No. 1075525) will serve as back-up supervisor for Dukette.⁸

WCB will supervise Dukette as follows:

Duty-Specific Supervisory Steps

- **Database maintenance and data entry**
 - Blum will monitor Dukette’s database maintenance activities by comparing data to the previous month’s data via a printed report. Any changes will be verified against the paperwork in that Representative’s physical file.*
 - To evidence this review, a copy of the printed report will be maintained in a separate file for ease of access during examinations.
 - Additionally, WCB will implement the following controls to restrict Dukette’s access to sensitive client data. First, WCB’s software enables the Firm to restrict user access to particular servers and files stored therein. Dukette will have access only to WCB’s representative/adviser databases and he will not have rights to access any databases or files containing client data. Additionally, Dukette will not have Administrator rights, which further precludes his access to client data.*
 - Blum will re-verify semi-annually that Dukette has server, system, and file access entitlements appropriate for his duties and that comply with this supervisory plan.*

- **Filing**
 - Blum will supervise Dukette’s filing activities by verifying the accuracy of all newly created Registered Representative files (i.e., Form U4/U5, signed contracts, etc.), accuracy of 10% of randomly chosen Registered Representative files and verify additions to corporate records (i.e., minutes to meetings, etc.) on a quarterly basis.*

⁸ Taggart serves as, among other things, the Firm’s president and chief compliance officer, and he has been associated with the Firm since 1983. Taggart registered as a financial and operations principal in July 1985, as a general securities representative in March 1987, as a general securities principal in April 1997, as a registered options principal in November 1998, and as a municipal securities principal in May 2001. Taggart also passed the uniform securities agent state law examination in May 1997. Taggart is affiliated with IRC and several other related entities. The record shows no criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against Taggart.

- All documents or materials to be filed by Dukette will be reviewed and signed or initialed by Blum (or Taggart) before they are provided to Dukette for filing. This will ensure that Dukette is not provided with sensitive client data.*
 - Additionally, WCB will implement the following controls to restrict Dukette's access to sensitive client data. WCB's client files are stored in a separate, lockable file room, which also houses the reception desk. Dukette will not have access to the file room and it is locked anytime the receptionist leaves the reception desk.
- **Mailing**
 - Blum will supervise Dukette's involvement in mailings. Blum will pre-approve Dukette's participation by reviewing the nature of all mailings, or the materials to be mailed, to confirm that no sensitive client data is involved. The WCB employee responsible for each mailing (generally, Christopher Herrington) will provide Blum information about the mailing and Dukette's involvement. Evidence of each mailing (i.e., what was mailed) will be initialed by Blum and kept in a separate file.
- **Licensing and Appointments**
 - Blum will supervise Dukette's involvement in licensing and appointments, as described in Dukette's job description, by reviewing and initialing/dating each document prior to them being transmitted (via email, facsimile, etc.). Such reviewed documents are to be copied and kept in a separate file.
- **Registered Representative and Registered Adviser Recruiting**
 - Dukette may only use scripts and/or talking points previously reviewed and approved by Blum.*
 - Dukette must maintain a log of all outbound recruiting calls placed and all inbound calls received. This log must contain the time and date of the call, the number called, who participated in the call with Dukette, and a brief overview of the topics covered. This log is to be submitted to Blum weekly.*
 - Blum will contact 100% of all new Registered Representatives/Advisers who join WCB or IRC to verify the content of the calls.*

- **Telephone**
 - Dukette must log all calls taken where such a log contains the date, return phone number, names of call participants, and a brief description of the topic(s) discussed.*
 - Blum will review this log on a weekly basis and will contact 100% of all new Registered Representatives/Advisers who join WCB or IRC to verify the content of the calls.*
 - Additionally, Blum will follow-up weekly by contacting a sample of 25% of “non-recruitment callers” that had contact with Dukette. In so doing, Blum will verify the information in the log and will initial/date the log entries she contacts as evidence of this review.*
 - As an additional control, at times when Dukette covers the phone, he will do so from his desk and will not have access to the reception area of file room.*

Additional Supervisory Procedures

- **Email**
 - Dukette will be permitted only to use a WCB or IRC-provided email account for business communications.
 - In addition to the keyword and random searches applicable to all of the Firm’s emails, Blum will review all of Dukette’s incoming and outgoing emails weekly.*
 - Blum will use the Global Relay email system to print every incoming and outgoing email.⁹ Upon her review, she will date and initial each email and place in a separate file.
 - Dukette is not permitted to contact clients via email.
- **Other Communications**
 - While Dukette’s duties do not normally involve the issuance of other written communications, should a situation arise where Dukette is called upon to do so, any such communication must be reviewed, initialed, and dated by Blum prior to being sent.*
 - A copy of any such correspondence will be kept by Blum in a separate file for ease of access during examinations.

⁹ Subsequent to filing the Application, the Firm began using Global Relay instead of Smarsh. Functionality and usage, however, remains unchanged. Further, the Firm has represented that Dukette will have both WCB and IRC email addresses and Blum will supervise the communications effectuated with both in accordance with the heightened supervisory plan.

- **Criminal and Credit Checks***
 - Semiannually, for two years, and then annually, thereafter, for the duration of Dukette’s disqualification, Blum will review criminal and credit check reports to monitor for any concerning or reportable activity.
 - Copies of all such reports will be signed and dated by Blum and kept in a separate file for ease of access during examinations.

- **Customer Complaints***
 - All complaints pertaining to Dukette, whether verbal or written, will be immediately forwarded to Blum for review and then to the Compliance Officer. Blum will prepare a memorandum for the file as to what measures were taken to investigate the complaint and the resolution, if any, of the matter.
 - Copies of all such complaints and any follow-up documents will be kept by Blum in a separate file for ease of access during examinations.

- **Certification***
 - Blum will certify quarterly (March 31, June 30, September 30, and December 31) to the Compliance Officer of WCB that Blum and Dukette are in compliance with all of the above conditions of Heightened Supervision to be accorded Dukette.

For the duration of Dukette’s statutory disqualification, WCB will obtain prior approval from Member Regulation if WCB wishes to change Dukette’s responsible supervisor from Blum or Taggart to another person.

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VI. Member Regulation’s Recommendation

Member Regulation recommends that the Application be approved, subject to the specified terms and conditions of heightened supervision over Dukette described above.

VII. Discussion

A. The Legal Standard

In reviewing this type of application, we consider 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. We assess the totality of the circumstances in reaching a judgment about Dukette’s future ability to deal with the public 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. In so doing, we recognize that the sponsoring firm has the burden of demonstrating that the proposed association of the statutorily disqualified individual 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*, SD06003, slip op. at 5 (NASD NAC 2006) (redacted decision), available at <http://www.finra.org/web/groups/industry/@ip/@cnf/@adj/documents/nacdecisions/p036480.pdf>. 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, whether the person has engaged in any intervening misconduct, and the potential for future regulatory problems. We also consider whether the sponsoring firm has demonstrated that it understands the need for, and has the capability to provide, adequate supervision over the statutorily disqualified person.

B. The Firm Has Satisfied its Burden

After carefully reviewing the entire record in this matter, we find that WCB has met its burden, and we conclude that Dukette's employment with the Firm in a non-registered capacity will not present an unreasonable risk of harm to the market or investors. Accordingly, we approve the Application for Dukette to associate with the Firm as a non-registered employee, subject to the supervisory terms and conditions detailed herein.

1. *The disqualifying event*

Dukette's disqualifying event, while serious, appears to be an isolated event that occurred almost seven years ago. Dukette's arrest and conviction stemmed from a domestic dispute, was not related to his professional conduct, and did not involve securities products, the securities industry, or fraud. Dukette successfully completed and was released from his probation in July 2009, and he has not engaged in any intervening misconduct. When combined with the plan of heightened supervision proposed by the Firm, Dukette's proposed supervisors, and Dukette's limited and largely administrative role and responsibilities at the Firm, we conclude that Dukette's proposed association with WCB does not create an unreasonable risk of harm to the investing public.

2. *Dukette's limited role at the Firm*

We have also considered that Dukette will work primarily in an administrative capacity and one where the job functions do not require registration.¹⁰ His duties would involve database maintenance and filing, among other things. He would have no customer contact, save for instances when he would cover the reception line and forward a customer call to the appropriate party. As a salaried employee, with little access to

¹⁰ Member Regulation has represented that the Firm is aware that it would need to seek FINRA approval, through an eligibility proceeding, if it seeks for Dukette to act in a registered capacity.

customers and no access to customer data or direct involvement in the conduct of the Firm's investment banking or securities business, we do not believe that Dukette's association with WCB poses any undue risk of harm to investors or the marketplace.

3. *The disciplinary history and industry experience of the Firm and proposed supervisor*

The Firm has been the subject of three formal FINRA disciplinary actions, two of which occurred almost 40 years ago. The Firm entered into its most recent AWC in 1997, which involved net capital deficiencies. The Firm's most recent FINRA cycle and cause examinations all resulted in informal dispositions, as discussed above. While certain of its cause examination results did include concerns related to the adequacy and implementation of the Firm's written supervisory procedures, these findings do not give rise to specific concerns about the Firm's ability to supervise Dukette's activities. Furthermore, the Firm amended its procedures to cure any deficiencies noted in those examinations.

We also find that Blum and Taggart are qualified to supervise Dukette pursuant to the proposed heightened supervisory plan. Both Blum and Taggart have unblemished records and have extensive industry experience. The Firm has proposed a comprehensive supervisory plan to supervise Dukette's administrative activities at the Firm, and it has implemented a variety of physical and computerized controls, as discussed above, designed to preclude Dukette's access to sensitive customer data.

We acknowledge that WCB delayed identifying Dukette's disqualification. However, FINRA recently closed its examination concerning this matter and elected to take no further action against the Firm. Moreover, with respect to this Application, Dukette was forthright in disclosing his felony to WCB at the time of hire. We further note that WCB terminated Dukette's association (as did IRC) once it realized that it had been mistaken concerning the applicability of FINRA's eligibility rules to individuals such as Dukette. Under the circumstances, denial of the Application is not warranted because of this lapse.

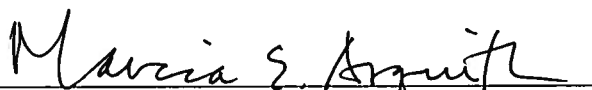
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FINRA certifies that: (1) Dukette meets all applicable requirements for the proposed employment; (2) the Firm represents that is registered with the Municipal Securities Rulemaking Board; (3) the Firm does not employ any other statutorily disqualified individuals; and (4) the Firm represents that Dukette, Blum, and Taggart are not related by blood or marriage.

VIII. Conclusion

Accordingly, we approve WCB's Application to employ Dukette as a non-registered employee, subject to the above-mentioned heightened supervisory procedures. In conformity with the provisions of Exchange Act Rule 19h-1, the association of Dukette as a non-registered employee 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 the National Adjudicatory Council,



Marcia E. Asquith
Senior Vice President and Corporate Secretary