

BEFORE THE NATIONAL ADJUDICATORY COUNCIL  
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Association  
of

Robert J. Escobio

as a

General Securities Representative, General  
Securities Principal, and Options Principal

with

Southern Trust Securities, Inc.

Notice Pursuant to  
Section 19(d)  
Securities Exchange Act  
of 1934

SD-2130

July 27, 2017

I. Introduction

On September 23, 2016, Southern Trust Securities, Inc. (the “Firm”) filed a Membership Continuance Application (the “Application”) with FINRA’s Department of Registration and Disclosure (“RAD”). The Application requests that FINRA permit Robert J. Escobio (“Escobio”), a person subject to a statutory disqualification, to continue to associate with the Firm as a general securities representative, general securities principal, and options principal. On April 25, 2017, a subcommittee (“Hearing Panel”) of FINRA’s Statutory Disqualification Committee held a hearing on the matter. Escobio appeared at the hearing, accompanied by counsel, Joseph W. Beasley, Esq., and Escobio’s proposed primary supervisor, Susan Escobio (the Firm’s president, chief compliance officer, and Escobio’s spouse). Escobio’s proposed alternate supervisor, Frank Trombatore (“Trombatore”), testified by telephone. Ann-Marie Mason, Esq. and Deon McNeil-Lambkin, Esq. appeared on behalf of FINRA’s Department of Member Regulation (“Member Regulation”).

As described below, we find that the Firm is not capable of supervising a statutorily disqualified individual such as Escobio. The Firm has not demonstrated that Susan Escobio has either the supervisory experience or independence necessary to supervise Escobio. Similarly, Trombatore lacks the supervisory experience to serve as Escobio’s backup supervisor from an offsite location, and the Firm’s proposed heightened supervisory plan is inadequate. We therefore deny the Application. The seriousness and recency of Escobio’s disqualifying event also support our denial.<sup>1</sup>

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<sup>1</sup> Pursuant to FINRA Rule 9524(a)(10), the Hearing Panel submitted its written recommendation to the Statutory Disqualification Committee. In turn, the Statutory Disqualification Committee considered the Hearing Panel’s recommendation and presented a written recommendation to the National Adjudicatory Council (“NAC”).

## II. The Statutorily Disqualifying Event

### A. Escobio is Permanently Enjoined

On August 29, 2016, the United States District Court for the Southern District of Florida entered a Final Judgment (the “Judgment”) against Escobio, Southern Trust Metals, Inc. (“Southern Metals”), and Loreley Overseas Corporation (“Loreley”) based upon a complaint filed by the Commodity Futures Trading Commission (“CFTC”) for violations of the antifraud provisions of the Commodity Exchange Act and for Southern Metals’ failure to register as a futures commission merchant.<sup>2</sup> The Judgment, which was entered after a three-day bench trial, permanently enjoined Escobio from directly or indirectly engaging in a number of activities governed by the Commodity Exchange Act and from applying for registration and engaging in any activity requiring registration under the Commodity Exchange Act. The Judgment ordered that: (1) Escobio, Southern Metals, and Loreley pay, jointly and severally, restitution of \$1.54 million (plus post-judgment interest); (2) Escobio and Southern Metals pay, jointly and severally, additional restitution of \$559,725 (plus post-judgment interest); (3) Escobio, Southern Metals, and Loreley pay, jointly and severally, a penalty of \$254,920 (plus post-judgment interest); and (4) Escobio and Southern Metals pay, jointly and severally, a penalty of \$120,112 (plus post-judgment interest).

As set forth in the Findings of Fact and Conclusions of Law entered by the court in connection with the Judgment, Southern Metals misrepresented to customers that they were purchasing (and owned) physical metals that were held in depositories and that the customers were receiving loans to purchase those metals (for which the customers were charged interest). In reality, there were no physical metals and no customer loans. Instead, and unbeknownst to customers, Southern Metals transferred customer funds through Loreley to margin trading firms based in London (Hantec Global Markets, Ltd. and Berkeley Futures, Ltd.). At those firms, the customer funds were used to purchase derivative contracts designed to hedge Southern Metals’ exposure to its customer positions. Southern Metals retained interest paid by the customers for the fictitious loans (as well as other fees and charges paid by customers). As a result of the defendants’ misconduct, the court found that customers lost more than \$2.1 million.

The court further found that the defendants’ violations of the Commodity Exchange Act were knowing, “egregious, systematic, and calculated.” It found that they defrauded at least 100

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<sup>2</sup> Southern Metals, which became an inactive Florida corporation in 2015, is a wholly-owned subsidiary of Loreley, a British Virgin Islands corporation. In turn, Loreley is a wholly-owned subsidiary of Southern Trust Holding Corp. (“Holding Corp.”). During all times relevant to the complaint underlying the Judgment, Escobio was the largest individual shareholder of Holding Corp. and its chief executive officer and director.

Prior to issuing the Judgment, the court granted the motion for summary judgment filed by the CFTC on certain counts of its complaint and on the issue of control person liability against Escobio. The court found that Escobio had general control over Southern Metals and Loreley, that he acted in bad faith by deliberately failing to act with reasonable diligence or to institute adequate internal controls, and that he knowingly induced Southern Metals’ and Loreley’s violations of the Commodity Exchange Act.

customers during a several-year span. In finding that Escobio's misconduct was egregious, the court pointed to his extensive experience with the Firm ("a registered broker-dealer with the SEC and a member of FINRA [and] the National Futures Association") and found that:

There is a strong likelihood that unless enjoined, Mr. Escobio's occupation will present opportunities for future violations. Mr. Escobio remains an SEC and CFTC registrant. He remains involved in the operations of [the Firm] and in that capacity has clear opportunities to engage in the same type of conduct at issue in this case. Unless enjoined, he is in a position to continue to work as he has in the past in the futures and securities markets, and to handle customer funds.

Escobio, Southern Metals, and Loreley appealed the Judgment, and sought to stay the injunction pending appeal. The court denied defendants' motion to stay. Similarly, in February 2017, a federal appellate court summarily denied defendants' motion to stay the Judgment. The parties have filed briefs with the appellate court and the appeal remains pending.

Escobio testified before the Hearing Panel that he has made two payments of \$500 each in connection with the restitution imposed by the Judgment and has paid none of the penalties. He further testified that he does not currently have the financial resources to pay the amounts due and owing under the Judgment.

B. The Judgment Rendered Escobio Statutorily Disqualified and this Eligibility Proceeding Is Not Premature

Escobio argues that because he has appealed the Judgment and his appeal has not yet been resolved, the Judgment is not "final," he is not statutorily disqualified, and this eligibility proceeding is premature. We disagree.

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) incorporates by reference, among other provisions, Exchange Act Section 15(b)(4)(C). Exchange Act Section 15(b)(4)(C) provides that a person is subject to statutory disqualification if he is temporarily or permanently enjoined by order or judgment of any court of competent jurisdiction from, among other things, acting as a person or entity required to be registered under the Commodity Exchange Act or from engaging in or continuing any conduct or practice in connection with such activity. The Judgment—entered by a federal district court with jurisdiction over the matter—permanently enjoined Escobio from directly or indirectly engaging in a number of activities governed by the Commodity Exchange Act and from applying for registration and engaging in any activity requiring registration under the Commodity Exchange Act. The Judgment therefore renders Escobio statutorily disqualified under the plain language of the Exchange Act, regardless of any subsequent appeal.

Moreover, Escobio's pending appeal of the Judgment does not render this eligibility proceeding premature or alter his current status as a statutorily disqualified individual. See, e.g., *Citadel Sec. Corp.*, 57 S.E.C. 502, 506 (2004) (internal citations omitted) (rejecting applicant's argument that FINRA's denial of a membership continuance application and its finding that individual was statutorily disqualified were premature where individual was the subject of a federal district court injunction that had been appealed; "an injunction is the action of a court of

competent jurisdiction, and the fact that an appeal is taken does not affect the injunction's status as a statutory disqualification"); *Robert J. Sayegh*, 52 S.E.C. 1110, 1112 (1996) (holding that the pendency of an appeal of a permanent injunction "would not alter the factual existence of the injunction and its public interest implications") (internal quotations omitted); *Gershon Tannenbaum*, 50 S.E.C. 1138, 1140 (1992) (rejecting argument that excluding individual from the securities business where he was disqualified as a result of a preliminary injunction that was still awaiting final determination is unfair and stating that, "[j]ust as the court was empowered to act quickly in this case, the Commission and the NASD are also authorized to take prompt action for the protection of public investors prior to a final adjudication on the merits").

Escobio also argues that the Judgment represents "government overreach"; the presiding judge "has been over-turned on many occasions"; "[t]he evidence presented during the case was overwhelmingly in favor of Defendant"; and the judge who entered the Judgment is "very elderly." Throughout this eligibility proceeding, Escobio has also made various claims and arguments contrary to the Judgment and the court's findings in support thereof. We reject Escobio's attempts to collaterally attack the Judgment in this proceeding and find that the federal appellate court is the proper forum for Escobio to consider whether to advance these arguments. *See Citadel Sec.*, 57 S.E.C. at 506 n.11 (holding that challenges to the district court's findings should be made to the court of appeals); *Jan Biesiadecki*, 53 S.E.C. 182, 185 (1997) (holding that FINRA properly limited attempts to attack disqualified individual's convictions and stating that he "had the opportunity, which he exercised, to defend in court the merits of the original criminal actions"); *Tannenbaum*, 50 S.E.C. at 1140 (stating that "[i]t is always true in a case of this sort that a respondent cannot mount a collateral attack on findings that have been previously made against him").

Having found that Escobio is statutorily disqualified by virtue of the Judgment despite Escobio's pending appeal and rejecting applicants' efforts to collaterally attack the Judgment, we turn to the merits of the Application.

### III. Factual Background

#### A. Escobio

##### 1. Registrations and Employment History

Escobio qualified as a general securities representative in January 1980, as a general securities principal in February 1999, as a general securities sales supervisor (Series 9 and 10) in September 1999, as an options principal in April 2002, and as a municipal securities principal in August 2003. He also passed the interest rate options examination in February 1983 and the uniform securities agent state law exam in November 1985. Finally, he is registered as an investment banking representative (effective as of May 2010) and as an operations professional (effective as of December 2011).

Escobio founded the Firm and first registered with the Firm's predecessor in September 1996. He is currently employed at the Firm.<sup>3</sup> Escobio has been associated with ten other firms.

## 2. Outside Business Activities

Escobio lists three potentially pertinent outside business activities on his Uniform Application for Securities Industry Registration or Transfer ("Form U4"). Escobio's Form U4 lists Southern Trust Services Corp. as an outside business activity, which he describes as "Transact Physical Precious Metals." Member Regulation states that, upon consulting with the CFTC, this activity does not appear to violate the Judgment's permanent injunction. Escobio's Form U4 also lists as an outside business activity "AR Growth Finance Corp.—Secretary." Member Regulation states that this entity invests in finance-related companies in Argentina and South America. Finally, Escobio's Form U4 lists "Southern Trust Securities Holding Corp.—Secretary/Director." Escobio testified that this entity is no longer active.<sup>4</sup>

## 3. Regulatory and Disciplinary Matters

In addition to the Judgment, two other regulators have sanctioned Escobio.

In May 2016, the Florida Office of Financial Regulation issued a Notice of Intent to Deny Registration in response to Escobio's application to associate with a registered investment adviser affiliated with the Firm. To resolve the matter, in January 2017 Escobio agreed to the denial of his application for registration and not to reapply for one year.

In April 2014, the National Futures Association ("NFA") issued a decision in connection with its acceptance of an offer of settlement from Escobio and the Firm. The decision was based upon a complaint filed by the NFA against Escobio and the Firm alleging that Escobio failed to observe just and equitable principles of trade by indirectly operating Southern Metals as a futures commission merchant even though it was not registered as such and was not an NFA member. The complaint further alleged that the Firm violated NFA rules by failing to notify the NFA of a customer complaint the Firm received against a conditionally-registered associated person (Trombatore, Escobio's proposed backup supervisor) as required by the order conditionally registering him. Without admitting or denying the allegations, the NFA fined Escobio and the Firm \$50,000, jointly and severally. The Firm also agreed that, among other things, it would not list Escobio as a principal for three years and that the Firm for two years would only operate on a guaranteed basis (meaning it would be guaranteed by a futures commission merchant).<sup>5</sup>

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<sup>3</sup> Escobio has been permitted to work at the Firm pending resolution of the Application, which is consistent with FINRA's interpretation of Article III, Section 3(c) of FINRA's By-Laws permitting individuals who become statutorily disqualified while they are employed to continue working pending the outcome of the statutory disqualification process.

<sup>4</sup> Escobio also testified that the Firm was intended to be a wholly-owned subsidiary of Southern Trust Securities Holding Corp. ("Holding Corp.") but that due to an oversight or technical error, Holding Corp. never formally held an ownership interest in the Firm.

<sup>5</sup> The Firm also represents that the NFA required that Escobio reduce his ownership interest in the Firm to less than 10%.

4. Customer Complaints

Member Regulation asserts that Escobio has been the subject of 20 customer complaints, 16 of which were settled for approximately \$2.36 million (the other four were withdrawn or dismissed). It further asserts that the customers alleged damages of approximately \$2.7 million, Escobio personally contributed approximately \$7,200 to these matters, and that the customers primarily alleged unsuitable recommendations, unauthorized trading, and “operational errors.” FINRA’s Central Registration Depository (“CRD”®) shows that more than 20 customers have filed complaints against Escobio, with the majority of the complaints filed more than 30 years ago. CRD also indicates that the total amount paid to customers to settle these complaints was substantially less than the amount cited by Member Regulation. Escobio testified that the vast majority of these complaints involved trading in customer accounts by a former firm after he left that firm.<sup>6</sup>

5. Civil Judgment

In November 2013, a jury in an action filed in a Florida state court awarded a plaintiff \$19.6 million in damages against Escobio and Holding Corp. This award related to a civil action alleging breach of contract, fraudulent inducement, fraud, negligent misrepresentations, and breach of fiduciary duty filed by a business partner of Escobio who had invested \$6 million in Holding Corp. Escobio and Holding Corp. filed a motion for judgment notwithstanding the verdict, which was denied. The record shows that the court entered a final judgment against Escobio and Holding Corp. in the amount of \$7,369,222 in April 2014, which stemmed from defendants’ liability related to the breach of contract claim. On appeal, a Florida state court affirmed the judgment in May 2016. Escobio testified that he has not paid any amounts due and owing in connection with this judgment because he does not have the funds and because he allegedly cannot pay the award because the plaintiff is subject to a criminal sequestration order by an Italian court.

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

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<sup>6</sup> Escobio argues that these matters are not relevant because they are stale, with most occurring approximately 30 years ago. As a general matter, we may consider customer complaints against a statutorily disqualified individual as part of his regulatory history. *See, e.g., Nicholas S. Savva and Hunter Scott Financial, LLC*, Exchange Act Release No. 72485, 2014 SEC LEXIS 2270, at \*58 (June 26, 2014) (finding that FINRA appropriately considered individual’s entire regulatory history, including customer complaints that were 10 years old). Here however, we need not decide whether Escobio’s older customer complaints are relevant because we do not base our denial on these or any other customer complaints filed against Escobio. Rather, and as stated in more detail herein, we deny the Application because the Firm has proposed inadequate supervisors, an inadequate supervisory plan, and because Escobio’s disqualifying event is serious and recent.

B. The Firm

1. Background and Ownership

The Firm has been a FINRA member since June 2000. It has one office located in Miami, Florida, which is also its Office of Supervisory Jurisdiction (“OSJ”). The Application states that the Firm has six employees, consisting of two registered principals, three registered representatives and one non-registered individual.<sup>7</sup> The Firm does not currently employ any other statutorily disqualified individuals, and it engages in a general securities business. At the time of the hearing, Escobio testified that Susan Escobio held a direct ownership interest in the Firm of approximately 31-32% and Escobio owned less than 1% of the Firm. The remaining ownership interests in the Firm are held directly by approximately 600 shareholders.<sup>8</sup>

A consultant hired by the Firm informed FINRA that, as of July 2016, 50-60% of the Firm’s revenues were related to Escobio.<sup>9</sup> At the hearing, Escobio testified that he and the other registered representatives at the Firm (including Susan Escobio) had started to work as a team sometime during the past several years and that the consultant’s estimate was “kind of a misstatement.” He further testified that most of the Firm’s approximately 300 customers had been with the Firm for many years and a “good portion” of the Firm’s customers were originally his customers. Susan Escobio testified that the Firm’s efforts to service customers as a team are designed to ensure that the Firm survives if Escobio is terminated.

2. Regulatory and Disciplinary Actions

As described above, in April 2014 the NFA accepted an offer of settlement from Escobio and the Firm.

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<sup>7</sup> As of the date of the hearing, the Firm has three general principals—Escobio, Susan Escobio, and Trombatore.

<sup>8</sup> Escobio testified that at one point, he held an approximately 70% ownership interest in the Firm, which was reduced to approximately 38% in connection with the Firm’s efforts to raise funds, and that he served as the Firm’s president when the Firm was first founded and as its chief executive officer. Escobio initially testified that he supervised the sales activities of all other individuals at the Firm prior to 2013, with the exception of Susan Escobio, but later stated that he supervised everyone at the Firm until 2006 or 2007 when the Firm hired Kevin Fitzgerald (“Fitzgerald”) as its president. Fitzgerald worked at the Firm until 2013 or 2014. Further, Escobio testified that as a result of the April 2014 NFA settlement, he transferred his ownership interest in the Firm to Susan Escobio.

We note that certain aspects of Escobio’s and Susan Escobio’s testimony regarding the Firm’s ownership and the Firm’s exact relationship with Holding Corp. in the years prior to the hearing was confusing and, at times, contradicted by documents in the record.

<sup>9</sup> This information was provided in connection with a continuing membership application that the Firm filed with FINRA pursuant to the NASD Rule 1010 Series.

### 3. Examination Results

In October 2016, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2016 examination. FINRA cited the Firm for failing to: (1) notify FINRA prior to implementing electronic storage media for its Bloomberg correspondence; (2) maintain at least one third party vendor that had access to and the ability to download the electronic correspondence to an acceptable medium; and (3) establish, maintain and enforce an adequate supervisory system and written supervisory procedures ("WSPs") with respect to reviewing electronic correspondence. The Firm responded in writing that it corrected the deficiencies noted in the Cautionary Action. In connection with the Firm's 2016 examination, FINRA also referred to Enforcement for further investigation an exception relating to altering wire instructions by changing the outgoing wire amount on standing letters of authorization. This matter remains pending.

In December 2015, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2015 examination. FINRA cited the Firm for failing to establish and maintain written procedures to memorialize its process for the delivery of Official Statements and continuing disclosures relating to material events at the time of trade. The Firm responded in writing that it corrected the deficiencies noted in the Cautionary Action. FINRA also referred to Enforcement for further investigation a suspicious activity review.

### IV. Escobio's Proposed Business Activities

In the Application, the Firm proposes that Escobio will continue to associate with the Firm as a general securities representative, general securities principal, and an options principal in its Miami office.<sup>10</sup> The Firm represents that he will be responsible for "business development" (developing business through referrals from existing customers and meeting with potential customers). He will also assist the Firm with its long-term customers. The Firm further represents that he is no longer an owner of the Firm (nor is it contemplated that he will become an owner) and he will not have any supervisory or management responsibilities.<sup>11</sup> The Application states that he will receive "50% or less payout of commissions."

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<sup>10</sup> Escobio testified that his options activity is limited to one or two unsolicited transactions every month from a single customer.

<sup>11</sup> Likewise, the Application provides that Escobio is not currently a direct or indirect owner of the Firm and that it is not contemplated that he will become an owner of the Firm. This appears to contradict Escobio's testimony that he currently holds a small ownership interest in the Firm.



V. Escobio's Proposed Supervision

A. Proposed Supervisors

1. Primary Supervisor Susan Escobio

The Firm proposes that Escobio will be supervised primarily by Susan Escobio, his wife since November 1989. Susan Escobio joined the Firm in May 1999, and has served as its chief compliance officer since May 2000 and also as its president for the past several years. She first registered as a general securities representative in August 1982, as a general securities principal in September 2000, and as an introducing broker-dealer financial operations principal in November 2002. She also passed the interest rate options examination in December 1980. She has been associated with five other firms.

CRD shows that in March 2014, a customer alleged that Susan Escobio failed to adhere to her investment objectives and exposed her account to margin interest. The customer sought \$200,000 in damages. CRD states, and Susan Escobio testified, that she had no responsibility for the account and it had been erroneously assigned to her representative number. This matter was settled for \$5,000, and CRD indicates that Susan Escobio did not contribute personally to the settlement.

The record shows no other disciplinary or regulatory proceedings, complaints, or arbitrations against Susan Escobio.

2. Backup Supervisor Trombatore

The Firm proposes that Trombatore will serve as Escobio's alternate supervisor from his home office in New Jersey. Trombatore first registered as an investment company and variable contracts products limited representative in May 1991 (and requalified in such capacity in July 2008), as an investment company and variable contracts products limited principal in April 1995, as a general securities representative in September 2009, and as a general securities principal in February 2012. He also passed the uniform securities agent state law examination in February 1992 (and again in January 2010), the uniform investment adviser law examination in June 1995, and the national commodities futures examination in March 2011. Trombatore has been with the Firm since October 2016, and he also previously worked at the Firm from June 2008 until November 2015. CRD shows that he was previously associated with three other firms.

CRD lists two regulatory disclosures for Trombatore. In February 2003, the State of New Jersey ordered that Trombatore cease and desist from engaging in violations and fined Trombatore and his firm \$1,000 for selling unregistered bonds to New Jersey customers without himself being registered.

In December 2011, the NFA conditioned Trombatore's registration in connection with his willful failure to disclose the 2003 New Jersey matter. The record shows that at the hearing held by an NFA subcommittee in connection with this matter, Trombatore admitted that he failed to disclose this matter in his registration application, but claimed that his failure was not willful. At that hearing, Susan Escobio testified that Trombatore disclosed the New Jersey action to her and that she included this information in Trombatore's Form U4 filed with FINRA. She failed, however, to disclose the matter in Trombatore's NFA application. When Trombatore brought this failure to Susan Escobio's attention, she told him that she did not have time to deal with the

matter and he should file the incomplete NFA application and she would amend it later.<sup>12</sup> The NFA subjected Trombatore's registration with the Firm to a number of conditions for a period of two years.

CRD also lists a number of financial disclosures by Trombatore. In September 2016, Trombatore was named in two foreclosure actions. CRD states that, with respect to one of the foreclosure actions for a residence in New Jersey, he was not a debtor and that Trombatore's wife is the sole borrower under the mortgage loan. CRD states that with respect to the other foreclosure action, the property was an investment property in New York owned by Trombatore and that he was negotiating a deed in lieu of foreclosure.

In March 2016, a noncollectible status letter was issued to Trombatore by the IRS in connection with taxes owed in the amount of \$39,873 (plus interest totaling \$51,151).

In November 2015, Trombatore's student loan was temporarily deferred for hardship by his lender.

In October 2013, Trombatore entered into a stipulation of settlement with a creditor. CRD states that Trombatore paid \$4,897 in connection with \$3,821 originally owed.

In March 2010, Trombatore entered into a compromise with a creditor that agreed to accept \$10,000 in full satisfaction of \$19,000 owed.

In July 2009, a creditor obtained a lien against Trombatore in the amount of \$3,678. CRD states that Trombatore's lawyer did not transmit payment to this creditor as agreed, which resulted in the judgment lien, and that it has been paid in full.

In October 2008, Woodbridge Municipal Sewer filed a lien against Trombatore in the amount of \$566 in connection with property held in his wife's name in New Jersey.

The record shows no other disciplinary or regulatory proceedings, complaints, or arbitrations against Trombatore.

#### B. The Firm's Proposed Heightened Supervisory Plan

The Firm submitted a proposed heightened supervisory plan with the Application (which was filed on September 23, 2016). The exhibits filed by the Firm in April 2017 prior to the hearing contained another heightened supervisory plan, dated October 1, 2016, which appeared to contain some different provisions than the plan submitted with the Application. Prior to the Firm's submission of its hearing exhibits, it had not submitted the October 1, 2016 plan to Member Regulation. At the hearing, Susan Escobio testified that after filing the Application, she revised the original supervisory plan and is currently supervising Escobio pursuant to the October 1, 2016 supervisory plan.

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<sup>12</sup> Likewise, before the Hearing Panel both Susan Escobio and Trombatore testified that Susan Escobio was busy with other things and did not have the time to properly update the NFA application.

The terms of the supervisory plan dated October 1, 2016 are as follows:

1. Regarding Escobio's duties and responsibilities at the Firm:
  - a. Is prohibited from acting in any supervisory role.
  - b. Is prohibited [from] hiring or firing any employees of the Firm.
  - c. Is prohibited from executing any contract or engagement that will bind the Firm in any way.
  - d. Is prohibited from authorizing the withdrawal of any funds on behalf of the Firm.
  
2. Regarding Escobio's limitations as a registered representative of the Firm:
  - a. Is prohibited from having, maintaining, or managing any discretionary accounts of any kind.
  - b. Will have all order tickets approved.
  - c. Will have correspondence on the Firm's letterhead reviewed prior to sending, including incoming and outgoing emails which are maintained on the Firm's server.
  - d. Cannot execute customer instructions to order a payment by check or wire from a customer account or to order the registration and shipment of any securities. This must be completed by the operations staff of the Firm and approved and confirmed by the Principal of the Firm.
  - e. Report all customer complaints immediately to the Principal of the Firm when received. A complaint can either be in written form or verbal.
  - f. Complete the monthly attestation as required by the Firm at the end of each month.

The Firm puts the following Supervisory Procedures in place to supervise Escobio:

1. Regarding the review of registrations, operations, and Outside Business Activities:
  - a. Each month the Principal of the Firm will review CRD to assure that Escobio is only registered with the Firm. If a registration with any other firm is discovered then Escobio will immediately be terminated.
  - b. Each month of the Principal of the Firm will review the records posted by the Florida Corporate Secretary of Florida to see if any new corporations have been established with Escobio acting in the role of the owner, director, officer, or agent. If any such activity has occurred without the express[] prior [] knowledge and approval of the Firm then Escobio will be immediately terminated.
  - c. Each month the Firm will have Escobio execute a monthly attestation whereby Escobio will affirm that he has not violated any portion of this Heightened Supervisory Procedure[s]. If

Escobio fails to submit the attestation or if any violation comes to light on the attestation then Escobio will immediately be terminated.

- d. Each month the Principal of the Firm will solicit comments from all staff at the Firm to see if Escobio had acted in any way that may have violated any portion of the Heightened Supervisory Procedure[s].
- e. The principal of the Firm will immediately investigate any customer complaint that is brought to the attention of the Firm. Once initially investigated, the Principal will notify FINRA of the complaint, the initial findings, and the anticipated resolution.
- f. The Principal, or appointed registered staff, will process and confirm all withdrawals of funds or securities with any customers where Escobio is the registered representative of record. The Principal and operations staff will not allow Escobio to authorize any withdrawal of any kind from any customer account.
- g. Operations staff of the Firm will review all trade activity and cash movements of Escobio's customer accounts and confirm to the Principal that all activity was executed correctly and with the proper authorization.

#### VI. Member Regulation's Recommendation

Member Regulation recommends that the application be denied because, in its view: (1) Escobio's disqualifying event is recent and egregious; (2) Escobio "has engaged in a pattern of fraudulent practices"; (3) Susan Escobio lacks the requisite experience and objectivity to stringently supervise a statutorily disqualified individual such as Escobio; (4) Trombatore is an inadequate proposed backup supervisor for Escobio; and (5) the Firm has proposed an inadequate heightened supervisory plan.

#### VII. Discussion

In evaluating an application like this, we assess whether the sponsoring firm has demonstrated 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*, Redacted Decision No. SD06002, slip op. at 5 (NASD NAC 2006), <http://www.finra.org/industry/decisions>; *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, Art. III, Sec. 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).

Factors that bear upon our assessment include the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, the totality of regulatory history, 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. The sponsoring firm has the burden of demonstrating that the proposed association is in the public

interest despite the disqualification. *See Timothy P. Pedregon, Jr.*, Exchange Act Release No. 61791, 2010 SEC LEXIS 1164, at \*16 & n.17 (Mar. 26, 2010).

After carefully reviewing the entire record in this matter, we find that the Firm has failed to demonstrate that Escobio's proposed continued association with the Firm is in the public interest. The Firm has failed to demonstrate that it can stringently supervise Escobio as a statutorily disqualified individual. Specifically, we find that the Firm has not demonstrated that: Susan Escobio has the supervisory experience and independence necessary to supervise Escobio; Trombatore possesses the necessary supervisory experience to supervise Escobio and that he could do so remotely; and that the proposed heightened supervisory plan is adequate to ensure that Escobio is stringently supervised. We also find that the seriousness and recency of the Judgment warrant denial of the Application. Accordingly, we deny the Application for Escobio to continue to associate with the Firm.

A. The Firm Has Not Demonstrated that it Can Supervise Escobio

The Firm has the burden to demonstrate that it is capable of providing stringent supervision to a statutorily disqualified individual such as Escobio. *See id.* at \*27 (holding that an applicant must establish that it will be able to stringently supervise a statutorily disqualified individual). It has failed to satisfy this burden in myriad ways.

First, we find that Susan Escobio lacks the supervisory experience necessary to supervise a statutorily disqualified individual such as Escobio. *See Morton Kantrowitz*, 55 S.E.C. 98, 102 (2001) ("In determining whether to permit the employment of a statutorily disqualified person, the quality of the supervision to be accorded that person is of the utmost importance. We have made it clear that such persons must be subject to stringent oversight by supervisors who are fully qualified to implement the necessary controls."); *see also Pedregon*, 2010 SEC LEXIS 1164, at \*27-28 (finding troubling the assignment of an unqualified individual to serve as a supervisor for a statutorily disqualified individual); *In the Matter of the Continued Association of Ronald Berman with Axiom Capital Management, Inc.*, SD 1997, slip op. at 17 (FINRA NAC Dec. 11, 2014), <http://www.finra.org/industry/decisions> (finding that proposed supervisor's lack of experience directly supervising an individual was "problematic in the context of supervising a statutorily disqualified individual").

Susan Escobio testified that her supervisory experience prior to joining the Firm consisted of being in charge of hiring and firing at one prior firm and doing a "little supervision" at another firm by overseeing everything that went on in the office. She further testified that at the Firm prior to becoming its president sometime during the past several years, she was "responsible for making sure that certain individuals were no longer in the business for things that they did that were not correct and against the rules." Susan Escobio, however, testified that she performed these duties (as well as other duties) in her role as the Firm's chief compliance officer rather than as the direct supervisor for these individuals' securities sales activities. The record shows that most if not all of her experience directly supervising registered personnel has occurred since February 2014, when the Firm represents that she began to supervise one of the

Firm's registered representative's sales activities.<sup>13</sup> Susan Escobio's general lack of direct supervisory experience is problematic in the context of supervising a statutorily disqualified individual, particularly one such as Escobio who has more than 35 years in the industry and given his prior roles as the Firm's majority owner and president. See *Luther E. Oliver*, 51 S.E.C. 914, 916 (1993) (finding that the firm had failed to demonstrate that its supervisory procedures were adequate where the only principal at the firm other than the disqualified FINOP was the disqualified individual's spouse, who had no financial training); *Berman*, slip op. at 17 (holding that proposed supervisor's lack of supervisory experience "is exacerbated by Berman's many years in the industry and importance to Axiom as one of its largest producers").<sup>14</sup>

Second, the Firm has not demonstrated that Susan Escobio has the necessary independence to supervise Escobio. We have previously held that "stringent supervision free of any conflicts of interest between the supervised [disqualified] individual and his supervisor (and, in turn, firm management) is of the utmost importance." See *Berman*, slip op. at 17-18. Susan Escobio testified that prior to her supervising Escobio, Fitzgerald supervised Escobio "[i]n order to avoid a conflict of interest" because she is Escobio's wife. Susan Escobio, however, could not adequately explain why or how this potential conflict (which she admitted existed when Fitzgerald supervised Escobio) has been mitigated, particularly in light of Escobio's recent statutory disqualification.<sup>15</sup> The fact that Escobio is Susan Escobio's spouse presents, at a minimum, the potential for the importance of the spousal relationship overriding the duty to apply stringent heightened supervision. This potential conflict is exacerbated by the Firm's dependence on Escobio as the source for a large portion of its customers, and in turn Susan Escobio's dependence upon the Firm for her income. The Firm has not demonstrated that it has implemented any processes or procedures to mitigate these potential conflicts, or even

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<sup>13</sup> Subsequently, she began supervising the sales activities of Escobio (as of June 2016) and Trombatore (as of October 2016). She assumed supervisory responsibilities for the entire Firm when she became its president several years ago.

<sup>14</sup> Further, although Escobio testified that his options activity is limited, the Firm has failed to show that Susan Escobio is qualified to supervise that activity without being registered as an options principal. See generally NASD Rule 1022(a)(4) (providing that a person who is registered solely as a general securities principal "shall not be qualified to function as a . . . Limited Principal—Registered Options and Security Futures . . . unless that person is also qualified and registered as such"); NASD Rule 1022(f)(1) (providing that "[e]very person engaged in the supervision of options and security futures sales practices . . . shall be registered as a Registered Options and Security Futures Principal").

<sup>15</sup> At the hearing, applicants argued that there is no rule that prevents an individual from supervising the securities activities of her spouse. Applicants' argument misses the point. The Firm has not demonstrated that Susan Escobio possesses the necessary independence to stringently supervise Escobio as a statutorily disqualified individual, and it has failed to explain what facts and circumstances have changed to mitigate this admitted conflict since Fitzgerald—an unrelated third party—left the Firm and stopped supervising Escobio.

recognizes the potential for conflicts given the marital relationship of the proposed supervisor to the statutorily disqualified individual.<sup>16</sup>

Third, we find that Trombatore lacks the necessary supervisory experience to supervise a statutorily disqualified individual. He testified that during his career, he has never had any supervisory responsibilities other than his approximately 2.5 years as a compliance officer approximately 20 years ago. *See Pedregon*, 2010 SEC LEXIS 1164, at \*29; *In the Matter of the Association of Xavier Capdepon with Dinosaur Securities, LLC*, SD 2044, slip op. at 13 (FINRA NAC July 20, 2016), <http://www.finra.org/industry/decisions> (noting that a proposed backup supervisor with no supervisory experience was inappropriate). Further, while Trombatore testified that he would be willing to travel to Miami, Florida to supervise Escobio in Susan Escobio's absence, the plan does not currently provide for in person supervision by Trombatore.<sup>17</sup> Under the circumstances and given our other serious concerns regarding Escobio's proposed supervision, we find this aspect of Escobio's proposed supervision problematic. *See generally Timothy H. Emerson, Jr.*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, at \*19 (July 17, 2009) ("As we have previously concluded, a supervisory plan lacks the necessary intensive scrutiny when the supervisor will not be in close, physical proximity to the statutorily disqualified person.").

Fourth, we find that the proposed heightened supervisory plan is inadequate. We agree with Member Regulation that the provisions in the proposed heightened supervisory plan designed to prevent future fraudulent activities by Escobio are lacking. For example, Susan Escobio will review only those registrations with other firms that Escobio affirmatively discloses on his Form U4 and corporations formed by Escobio in the State of Florida. Further, many of the provisions of the supervisory plan appear to be general provisions applicable to all of the Firm's registered representatives and not heightened or special supervisory procedures in any way. *See Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at \*38 (Sept. 13, 2010) (finding proposed supervisory plan deficient where "[m]uch of what the plan required is no different from the supervision the Firm afforded to all employees"). The plan also fails to provide for documentation of the Firm's compliance with the plan and to explicitly designate Trombatore as Escobio's alternate supervisor in the event that Susan Escobio is out of the office.

Susan Escobio testified that the Firm was considering several additions to the proposed existing heightened supervisory plan, including hiring a compliance consultant to ensure that the

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<sup>16</sup> When asked by Member Regulation, Susan Escobio testified that the Firm had implemented procedures reasonably designed to prevent its supervisory system from being compromised by conflicts of interest pursuant to FINRA Rule 3110(b)(6), but could not remember what the procedures were. The Firm's WSPs, which are included in the record, include a paragraph entitled "Conflicts of Interest" that cites to FINRA Rule 3110(b)(6) and generally recites the requirements of that rule but do not otherwise appear to contain any specific provisions addressing the potential conflict presented by Susan Escobio's supervision of Escobio.

<sup>17</sup> In fact, the proposed heightened supervisory plan does not contain any provisions addressing Escobio's supervision in the event that Susan Escobio is not in the office.

plan is followed and hiring a new general securities principal (presumably to serve as Escobio's primary supervisor). The current proposed supervisory plan under consideration, however, does not contain any such provisions. We consider the proposed supervisory plan before us, not a hypothetical supervisory plan that has not been proposed by the Firm. *See Pedregon*, 2010 SEC LEXIS 1164, at \*28 (stating that a firm bears the burden of proposing an adequate supervisory plan and that FINRA was fully justified in requiring the firm to provide specifics concerning that plan before approving an application); *Emerson*, 2009 SEC LEXIS 2417, at \*20 (rejecting argument that the applicants were willing to accept a supervisory agreement that would satisfy FINRA; "[d]rafting a supervisory plan . . . is neither the Commission's nor FINRA's role").

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For all of these reasons, we find that the Firm has failed to demonstrate that it can stringently supervise Escobio as a statutorily disqualified individual.<sup>18</sup>

**B. The Recent Judgment Involved Highly Serious Misconduct**

We further find that the recency and seriousness of the Judgment support denying the Application. *See Savva*, 2014 SEC LEXIS 2270, at \*57 (holding that FINRA properly considered that the consent order forming the basis of individual's statutory disqualification stemmed from allegations of serious, securities-related misconduct); *In the Matter of the Continued Association of Craig Scott Taddonio with Meyers Associates, LP*, SD 2117, slip op. at 26 (FINRA NAC Mar. 8, 2017), <http://www.finra.org/industry/decisions> (denying membership continuance application based upon, among other things, an 11-month old order involving violations of securities rules and regulations).

The Judgment—entered less than a year ago—was based upon findings that Escobio engaged in a fraudulent commodities scheme involving numerous customers and occurring during a several-year period. *See Biesiadecki*, 53 S.E.C. at 185-86 (affirming FINRA's denial of a Membership Continuance Application based upon the seriousness of a disqualifying event involving applicant's participation in a fraudulent scheme to induce investments in commodity futures contracts). The court found that Escobio's misconduct was "egregious, systematic, and calculated" and that Escobio's position with the Firm presented him with opportunities for future violations. Indeed, the Judgment expressly stated that, "[u]nless enjoined, [Escobio] is in a position to continue to work as he has in the past in the futures and securities markets, and to handle customer funds." The Judgment ordered that Escobio and the entities that he controlled pay almost \$2.5 million in restitution and penalties, and permanently enjoined Escobio from directly or indirectly engaging in a number of activities governed by the Commodity Exchange Act and from applying for registration and engaging in any activity requiring registration under the Commodity Exchange Act.

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<sup>18</sup> At the hearing, applicants argued that the lack of regulatory and disciplinary matters against the Firm and Susan Escobio demonstrate that she has been an adequate supervisor and can continue to adequately supervise Escobio. While we acknowledge the Firm's relative lack of formal disciplinary history and Susan Escobio's clean regulatory record, these factors do not outweigh our other substantial concerns with the proposed supervision of Escobio and the recent and highly serious disqualifying event.



In sum, the Judgment involved extremely serious and recent misconduct. We find that far too little time has passed since entry of the Judgment for Escobio and the Firm to demonstrate that he is currently able to comply with securities laws and regulations and to refrain from engaging in fraudulent practices.<sup>19</sup> Escobio's appeal of the Judgment does not alter our conclusion that it involved highly serious misconduct and that the Judgment supports denial of the Application. *See Sayegh*, 52 S.E.C. at 1113 (finding that FINRA properly determined that the seriousness of a permanent injunction supported denial of a continuing membership application despite the disqualified individual's pending appeal of the injunction).

#### VIII. Conclusion

Accordingly, we find that it is not in the public interest, and would create an unreasonable risk of harm to the market or investors, for Escobio to continue to associate with the Firm. We therefore deny the Application.

On Behalf of the National Adjudicatory Council,

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Jennifer Piorko Mitchell  
Vice President and Deputy Corporate Secretary

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<sup>19</sup> We reject applicants' suggestion that because the Judgment involved commodities fraud and did not enjoin Escobio's securities activities, it somehow did not involve highly serious misconduct that is pertinent to the Application and Escobio's ability to comply with securities laws and regulations. Further, we reject as mitigating Escobio's testimony that he has engaged in numerous civic activities over the years. We find this testimony unavailing to lessen the seriousness and recency of the Judgment. These activities fail to demonstrate that Escobio has been rehabilitated since the Judgment such that he is unlikely to engage in such misconduct going forward or that the misconduct underlying the Judgment was aberrant.