

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Association of Allan Wolfe as a General Securities Representative with Aaron Capital, Inc.	<u>Notice Pursuant to</u> <u>Rule 19h-1</u> <u>Securities Exchange Act</u> <u>of 1934</u> <u>SD-2157</u> December 20, 2018
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I. Introduction

On April 3, 2017, Aaron Capital, Inc. (the “Firm” or “ACI”) filed a Membership Continuance Application (the “Application”) with FINRA’s Department of Registration and Disclosure (“RAD”). The Application requests that FINRA permit Allan Wolfe (“Wolfe”), a person whom RAD determined is statutorily disqualified, to continue to associate with the Firm as a general securities representative.¹ On August 2, 2018, a subcommittee (“Hearing Panel”) of FINRA’s Statutory Disqualification Committee conducted a hearing. Wolfe appeared at the hearing, accompanied by counsel, Gilbert Boyce, Esq., and Nicole Moriarty, Esq., and his proposed primary supervisor, Robert M. Rodgers (“Rodgers”). David Wolfe—the Firm’s owner, chief executive officer, and Wolfe’s younger brother—appeared on behalf of the Firm. Ann-Marie Mason, Esq., Deon McNeil-Lambkin, Esq., Jasmine Abraham, Esq., and Loraine Lee appeared on behalf of FINRA’s Department of Member Supervision (“Member Supervision”).

We have carefully reviewed this matter, including the parties’ arguments concerning whether Wolfe is statutorily disqualified pursuant to a state insurance commissioner’s order and, if he is disqualified, whether his continued association with the Firm is in the public interest. As described below, we find that Wolfe is statutorily disqualified. We further find that, notwithstanding Wolfe’s statutory disqualification and Member Supervision’s arguments to the

¹ The Firm initially requested that we also permit Wolfe to continue to associate with it as an investment company and variable contracts products limited principal. The Firm later clarified that it sought approval for Wolfe to continue to associate with it solely as a general securities representative.

contrary, his continued association with the Firm does not present an unreasonable risk of harm to the market or investors.

We base this determination upon several factors. First, the facts and circumstances underlying Wolfe's disqualifying event do not support Member Supervision's assertion that it involved serious misconduct by Wolfe and that Wolfe's role in the misconduct was "pivotal." To the contrary, we find that Wolfe's role in the underlying disqualifying event was limited, as reflected in part by the state regulator permitting Wolfe to continue his insurance activities without any restrictions. Second, we find that Wolfe has a relatively clean regulatory history throughout his more than 34 years in the securities industry, which supports approval and, coupled with his limited involvement with the misconduct underlying the disqualifying order, indicates that Wolfe's potential for future regulatory problems appears to be low. Third, Wolfe's proposed securities activities with the Firm are limited, in both volume and scope. Fourth, we believe that the Firm's revised heightened supervisory plan (as amended herein) will adequately ensure that Wolfe's limited securities activities will be stringently supervised by qualified supervisors, and the plan addresses a number of Member Supervision's concerns with Wolfe's continued association with the Firm. Consequently, under the unique facts and circumstances of this case, we approve the Application.²

II. Wolfe Is Statutorily Disqualified

As an initial matter, the Firm and Wolfe argue that Wolfe is not statutorily disqualified because the consent order at issue is not based upon a violation of a law that prohibits fraudulent, manipulative, or deceptive ("FMD") conduct. Member Supervision asserts that Wolfe is statutorily disqualified.³ As set forth below, we find that Wolfe is subject to a final order issued by a state insurance regulator that is based upon violations of laws that prohibit FMD conduct. This renders Wolfe disqualified under the Securities Exchange Act of 1934 ("Exchange Act") and FINRA's By-Laws.

A. Background

Congress enacted the Sarbanes-Oxley Act in July 2002 in an effort to "take a major step toward restoring confidence in corporate America, confidence in our markets, and confidence in our government's ability to protect investors from fraudulent activity." See 148 Cong. Rec. H5462, at *5477 (July 25, 2002). This legislation expanded the definition of "statutory

² 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").

³ Member Supervision bears the burden of demonstrating that Wolfe is statutorily disqualified. See, e.g., *Continued Membership of Firm X*, Redacted Decision No. SD04016, slip op. at 7 (NASD NAC 2004), http://www.finra.org/sites/default/files/NACDecision/p036513_0.pdf.

disqualification” contained in Exchange Act Section 3(a)(39) to include several additional statutorily disqualifying events. *See* Section 604 of the Sarbanes-Oxley Act. Among other things, the Sarbanes-Oxley Act amended the Exchange Act’s existing definition of statutory disqualification to include an individual who is subject to a final order of a state insurance commission that is “based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.”⁴ 15 U.S.C. § 78o(b)(4)(H)(ii).

B. The California Consent Order

The order at issue is an Order Adopting Stipulation dated January 9, 2017, entered by the Insurance Commissioner of the California Department of Insurance against Wolfe and five other parties (the “Order”). Pursuant to the Order, the California Department of Insurance (the “CDI”) revoked Wolfe’s insurance license and issued him a restricted license.⁵ The Order also found Wolfe jointly and severally liable (with two other respondents) for costs totaling \$9,500. Wolfe and the two other respondents paid the costs assessed by the Order.

The Order does not contain any recitation of facts, findings of fact, or legal findings. Instead, the Order references, and is based upon, a First Amended Accusation (the “Complaint”) the CDI filed in October 2016 in connection with Wolfe’s outside business activities at an insurance agency, Equita Financial (“Equita”). The Order contains a provision whereby Wolfe and the other settling respondents:

⁴ Article III, Section 4 of FINRA’s By-Laws incorporates by reference the definition of “statutory disqualification” set forth in Exchange Act Section 3(a)(39). In turn, Exchange Act Section 3(a)(39) incorporates certain provisions of Exchange Act Section 15(b)(4), including the subsection at issue here, Section 15(b)(4)(H)(ii). Congress originally proposed the language contained in Section 15(b)(4)(H)(ii) in the Financial Services Antifraud Network Act of 2001, based upon concerns that individuals who had engaged in misconduct could freely migrate from one financial services industry to another, and “to shore up the antifraud capabilities of our Federal, State, and local authorities.” *See* 147 Cong. Rec. H7732, at *774 (Nov. 6, 2001) (statements of Reps. Bacchus, Rogers, and Oxley).

⁵ Wolfe testified that he is permitted to sell insurance products in California pursuant to his restricted license without any conditions, and he and the Firm state that he will be eligible to petition for restoration of an unrestricted insurance license in February 2019. Indeed, it appears that, other than the CDI’s ability to revoke Wolfe’s restricted license without cause or conducting a hearing, there is no material difference between Wolfe’s restricted license and an unrestricted license. *See, e.g.*, California Insurance Code Section 1742 (providing where a person has been found to have violated California’s insurance laws which would justify the suspension or revocation of his license, the commissioner may after a hearing issue him a restricted license and impose any reasonable conditions in connection therewith). Wolfe also testified that two states (Arizona and Nevada) renewed his insurance licenses subsequent to, and with full knowledge of, the Order. Wolfe testified that neither state imposed any restrictions upon his insurance activities.

[S]pecifically deny and dispute, both generally and specifically, the allegations in the [Complaint]. Nothing in this Stipulation is intended to be an admission of any fault, liability, negligence, or wrongful conduct by any of the Settling Respondents . . . and shall not be or construed to admit any fact or matters set forth in the [Complaint], or any other fault, liability, negligence or wrongful conduct by any of the Settling Respondents. The revocation of any license currently held by Settling Respondents shall not be construed as inconsistent in any manner with the terms of this paragraph.⁶

The CDI filed the Complaint against Wolfe, five other settling respondents, and two additional respondents. The Complaint alleged that Richard Wolfe, Wolfe's older brother and one of the named respondents, controlled Equita. It further alleged that Richard Wolfe and another named respondent, Jay Gordon ("Gordon"), entered into an arrangement related to the sale of life insurance policies.⁷ According to the Complaint, Richard Wolfe would use Equita to find consumers interested in purchasing life insurance through one of its independent agents, John Tod Lloyd ("Lloyd").⁸ Lloyd would meet with prospective customers, have them complete a form with relevant health and financial information, and Equita would then send the information to Gordon. After reviewing the information, Gordon would recommend a particular policy to sell to the customer and the amount of the premium for such policy, and provide that information to Equita (which in turn would send Lloyd the information).

Lloyd would then meet with the customer to complete a policy application, inform the customer that they would not have to pay the first year's premium, and that after the first year they could renew, cancel, or sell the policy. Lloyd would give each customer a \$500 check issued by an entity formed by Gordon, Intrust Insurance Services, LLC ("Intrust"), for the "inconvenience" of having to undergo a physical examination as part of the application process, and he would submit the customer's application to Equita. In turn, Equita would submit the

⁶ The Order contains another provision stating that it:

[D]oes not settle, waive, release, limit, or prohibit administrative, civil, or criminal investigations and actions against or between Settling Respondents involving matters alleged in or arising out of the allegations in the [Complaint] that have been or may be commenced by any entity other than the CDI. . . . Settling Respondents do not agree to waive or limit any defense that might otherwise apply in such investigation or action.

⁷ Wolfe testified that Richard Wolfe is his brother only "in name." He also testified that he never had a business or personal relationship with Gordon.

⁸ As noted in the Complaint, Lloyd and Wolfe have a longstanding business relationship, and both are currently officers at JAJ Financial Resources, LLC, an entity engaged in fixed insurance product sales. *See also infra* Part III.A.2 (discussing Wolfe's outside business activities). Pursuant to the Order, Lloyd and JL & JL Insurance Services, Inc. (an entity that Lloyd owned) each received the same sanction as Wolfe.

applications to the relevant insurance companies for their final approval. Once Equita notified Gordon of the amount of the first year's premium, he would issue a check to the relevant insurance company through Intrust. Gordon sent the premium checks to Equita to send to the insurance companies.

The Complaint stated that, although it is not illegal for an agent to pay the insurance premium on a policy, or to offer customers incentives such as "inconvenience bonuses," "an insurance company's general practice is to terminate any agent who engages in such practices" because customers who do not pay the first year's premium lack the incentive to pay future premiums. This results in the policy's lapse and a financial loss to the insurance company because its commission payment to the agent is usually larger than the first year's premium. The Complaint further alleged that Gordon was likely aware that the arrangement with Equita would fail if the insurance companies knew that the customer was not the source of the first year's premium. It alleged that Intrust issued "forged premium checks" that had the customer's name and address in the upper left-hand corner of the check, but Intrust's account number on the bottom.

Finally, the Complaint alleged that the insurance company would pay commissions on the policy to Equita and Wolfe, who the Complaint described as "an Equita affiliate and participant in the Gordon/Equita arrangement." It further alleged that Equita would send most of the commission back to Gordon.⁹ In total, the Complaint identifies seven insurance policies sold to customers from April to June 2007 where a customer's premium was paid in the foregoing manner. It asserts that the insurance company, OM Financial Life Insurance Company ("Old Mutual"), suffered approximately \$21,600 in losses, while Wolfe and Equita received approximately \$143,000 in commissions.

The Complaint asserted that by virtue of the foregoing allegations, it would be against the public interest to permit the respondents to continue transacting insurance business. The Complaint further asserted that, by virtue of the facts alleged, all of the respondents engaged in a fraudulent practice or act, or conducted their insurance business in a dishonest manner, are incompetent or untrustworthy in the conduct of their insurance business, and lack integrity.¹⁰

⁹ The Complaint details the amount of commissions that the insurance company allegedly paid to Wolfe and Equita in connection with the seven transactions at issue. It also states that Lloyd did not receive any commission from the insurance company on the transactions at issue, "but it is likely he had a separate agreement with [Wolfe] or Equita to receive a portion of the commission." In the Application, Wolfe stated that Equita paid Lloyd.

¹⁰ The Complaint cites to, among other things, California Insurance Code Sections 1668(b), (e), (i), and (j). These provisions provide that the commissioner may deny an application for any license if: granting a license will be against the public interest (subsection (b)); the applicant lacks integrity (subsection (e)); the applicant has previously engaged in a fraudulent practice or act or has conducted any business in a dishonest manner (subsection (i)); or the applicant has shown incompetency or untrustworthiness in the conduct of any business, or has by commission of a wrongful act or practice in the course of any business exposed the public or those dealing with him to the danger of loss (subsection (j)). See Cal Ins. Code § 1668 (Deering 2018).

The Complaint stated that all of these factors constituted grounds for the CDI to suspend or revoke the respondents' insurance licenses.

C. Wolfe's Role in the Underlying Misconduct

Although the Complaint broadly alleges that all named respondents violated numerous California insurance regulations with respect to the arrangement to sell the seven Old Mutual life insurance policies, the Complaint limits Wolfe's role to having received, along with Equita, commissions on the seven policies as "an Equita affiliate and participant in the Gordon/Equita arrangement." Similarly, in the Application, Wolfe states that the Order against him arose because he was "in the commission hierarchy" and, as such, he was included in the Complaint as a necessary party.

At the hearing, Wolfe testified that he was a vice president of sales at Equita.¹¹ Equita compensated Wolfe solely through an annual salary, and Wolfe testified that Old Mutual paid all commissions directly to Equita pursuant to a Commission Payee Designation.¹² As Equita's vice president of sales, Wolfe made presentations to salespeople on various insurance products at different locations. Wolfe testified that, although he generally knew that customers were not paying the first year's life insurance premiums, Gordon, who was an attorney, advised Wolfe that this was permissible in California. Wolfe further testified that he did not know that Gordon was issuing forged checks to pay those premiums, had nothing to do with the checks or the life insurance applications, and he did not handle any funds.

¹¹ As a general matter, the Hearing Panel found Wolfe's testimony concerning his role in the misconduct underlying the Order to be credible. Further, we reject Member Supervision's assertion that Wolfe and the Firm attempted to impermissibly collaterally attack the Order. *See generally Gershon Tannenbaum*, 50 S.E.C. 1138, 1140 (1992) (stating in connection with a statutory disqualification proceeding that "a respondent cannot mount a collateral attack on findings that have previously been made against him"). Neither Wolfe nor the Firm have ever disputed the terms of the Order, but rather they have consistently argued that it is not disqualifying under the Exchange Act and that Wolfe's role in the events underlying the Order were limited. For the most part, Wolfe's testimony did not contradict the Order's terms, but provided details the Order and underlying Complaint did not provide. Moreover, we generally permit disqualified individuals to explain the circumstances surrounding a disqualifying event. This is particularly true where, as here, Member Supervision argues that the misconduct underlying the disqualifying event is serious and serves as a basis for its recommended denial.

¹² Wolfe testified that it was a regular practice with Equita, and in the insurance industry generally, for an insurance agent or manager to be identified as the producer of record with the insurance companies whose products the insurance agency planned to sell, even though sales were made by other agents. He also testified that, with respect to Equita, he was the producer of record for numerous insurance companies (including Old Mutual) and he regularly assigned to Equita commissions earned on the sales.

Wolfe's pre-hearing submission further states that, while he regrets his connection to Gordon and the sale of the life insurance policies, "his limited involvement and awareness of the wrongdoing alleged is reflected" in the Complaint's allegations and sanctions imposed upon him.

D. The Order Is a Final Order Based upon Violations of FMD Conduct

The parties do not dispute that the Order is a "final order."¹³ They also do not dispute that at least some of the California regulations that the respondents allegedly violated involve regulations that prohibit FMD conduct. Instead, they disagree on whether the Order is based upon violations of those laws or regulations. We find that it is.

As an initial matter, "we are guided by the familiar canon of statutory construction that remedial legislation should be construed broadly to effectuate its purposes. The Securities Exchange Act quite clearly falls into the category of remedial legislation." *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967); *see also Herman & MacLean v. Huddleston*, 459 U.S. 375, 387 n.23 (1983) (stating that adjudicators should "construe the details of an act in conformity with its dominating general purpose"). The Exchange Act defines "statutory disqualification" to include a wide array of orders and judgments entered by adjudicators and regulators. "A statutory disqualification constitutes an encumbrance to . . . association with a member of a self-regulatory organization" that prevents a disqualified individual from associating with a member firm until FINRA grants relief from the disqualification and finds that the association "would be consistent with the public interest and the overriding regulatory goal of ensuring the protection of investors." *See Savva*, 2014 SEC LEXIS 2270, at *4-5. FINRA either denies disqualified individuals the ability to associate with a firm, because the firm has not demonstrated that the individual's association is in the public interest, or it permits them to associate with a firm, but only under the scrutiny of heightened supervisory conditions. *See generally* FINRA Rule 9520 Series.

In order to effectuate the broad remedial purposes of the Exchange Act's statutory disqualification provisions and to reduce the risks of harm to the investing public, we review the orders that may subject an individual to statutory disqualification broadly. *Cf. Savva*, 2014 SEC LEXIS 2270, at *31 (refusing to exclude settlement agreements and consent orders from the definition of "final order" and stating that doing so "could expose the public to a risk of harm from persons who would have been subject to disqualification had they not chosen to settle"); *Disqualification of Felons and Other Bad Actors from Rule 506 Offerings*, Securities Act Release No. 9414, 2013 SEC LEXIS 2000, at *89-90 (July 10, 2013) (finding it inappropriate to limit a provision in the Dodd-Frank Wall Street Reform and Consumer Protection Act concerning disqualifications arising from final orders of state regulators based upon violations of

¹³ A "final order" is "a written directive or declaratory statement issued by a state agency under statutory authority that provides for notice and opportunity for a hearing and constitutes a final disposition or action by the state agency." *See Nicholas S. Savva and Hunter Scott Financial, LLC*, Exchange Act Release No. 72485, 2014 SEC LEXIS 2270, at *25 (June 26, 2014). A consent order may constitute a "final order" under Exchange Act Section 15(b)(4)(H)(ii). *See id.* at *30.

laws or regulations that prohibit FMD conduct to scienter-based violations “when imposing such a limitation may result in excluding regulatory orders that are explicitly mandated to be covered by the new rules”); *Timothy P. Pedregon, Jr.*, Exchange Act Release No. 61791, 2010 SEC LEXIS 1164, at *24 n.28 (Mar. 26, 2010) (discussing disqualifications resulting from any felonies within the past 10 years and noting the “additional safeguard” provided by the statutory disqualification process).

Within this framework, we determine that the Order is a final order based upon violations of laws or regulations prohibiting FMD conduct.¹⁴ We base this conclusion upon the allegations against Wolfe described in the Complaint and the terms of the Order resolving the Complaint, which imposed sanctions upon Wolfe without excluding FMD regulations as the basis for entry of the Order.

First, although the Complaint did not make broad factual allegations against Wolfe in connection with his role in the sale of life insurance policies at Equita, it did make broad *legal* allegations of wrongdoing against Wolfe and the other respondents. Indeed, the Complaint alleged that each respondent—including Wolfe—violated several distinct provisions of the California Insurance Code, including Section 1668(i). The parties do not dispute that Section 1668(i), which permits the CDI to deny an insurance license if an individual has previously engaged in a fraudulent practice or act or conducted any business in a dishonest manner, is a regulation prohibiting FMD conduct. *See Savva*, 2014 SEC LEXIS 2270, at *36 (finding that consent order was disqualifying under Exchange Act Section 15(b)(4)(H)(ii) because individual was found to have violated state regulations, “prohibiting, at a minimum, deceptive practices”).

Second, the Order resolved the Complaint’s broad legal allegations against Wolfe and the other settling respondents, including those allegations alleging that Wolfe violated statutes or regulations that prohibit FMD conduct. The Order did not differentiate among the various provisions of California law alleged to have been violated in the Complaint, and it did not exclude any of the California laws that the CDI alleged Wolfe violated, including those prohibiting FMD conduct such as Section 1668(i), as the bases for its entry. Moreover, the Order sanctioned Wolfe in connection with the CDI’s final resolution of the Complaint. Based upon these facts, we find that the Order is based upon violations of all the laws and regulations set forth in the Complaint, including California regulations that prohibit FMD conduct. *Cf. The Continued Association of Gabriel Block with First Standard Financial Company, LLC*, SD-2137,

¹⁴ “Generally, FINRA weighs a state’s determination, as indicated on the state’s [Uniform Disciplinary Action Reporting Form (“Form U6”)], in considering whether an individual violated a law prohibiting fraudulent, manipulative, or deceptive conduct.” *See Continued Ass’n of X*, Redacted Decision No. SD12008, slip op. at 5 (FINRA NAC 2012), http://www.finra.org/sites/default/files/NACDecision/p284393_0.pdf, *aff’d*, 2014 SEC LEXIS 2270. Here, the CDI did not file a Form U6. Wolfe and the Firm assert that this supports their argument that the Order is not based upon violations of laws that prohibit FMD conduct. We disagree, and find that the absence of a Form U6 filing by the state regulator that entered the order in question has no bearing on our analysis of whether the order is disqualifying under the Exchange Act.

2018 FINRA Discip. LEXIS 8 (FINRA NAC Mar. 13, 2018) (rejecting “narrow view” that we should not give allegations in the complaint giving rise to the disqualifying consent order any weight because the order did not contain any factual or legal findings of wrongdoing by Block).

Wolfe and the Firm request that we read the factual allegations of the Complaint narrowly to limit the Complaint’s broad legal allegations against him and exclude any violations of FMD laws. We decline to do so, particularly where the Order is silent on the issue and given the broad purpose of the Exchange Act’s statutory disqualification provisions and their role in protecting investors.¹⁵

Further, we reject Wolfe and Firm’s argument that the Order is not disqualifying because it contains a provision where Wolfe expressly denied all of the Complaint’s allegations and that he engaged in any wrongdoing. This provision is not inconsistent with our conclusion that the Order is based upon violations of laws prohibiting FMD conduct. Exchange Act Section 15(b)(4)(H)(ii) does not require that a party to a final order entered by a state securities regulator agree (or at least not contest) that he violated FMD laws.¹⁶ *See Savva*, 2014 SEC LEXIS 2270, at *32 (finding that FINRA properly found a consent order entered into with a state securities regulator that contained “neither admit nor deny” language was disqualifying); *Kaye, Real & Co., Inc.*, 36 S.E.C. 373, 375 (1955) (finding a consensual state court decree that enjoined the parties from engaging in securities business, and which contained express language that the

¹⁵ However, as set forth below, we have considered the factual allegations of the Complaint and the sanctions imposed upon Wolfe in assessing the seriousness of the misconduct underlying the Order as it relates to Wolfe.

¹⁶ Wolfe and the Firm also argue that a prior NAC decision involving our interpretation of another Exchange Act provision, which renders individuals convicted of a felony within the past 10 years statutorily disqualified, supports their view that the Order is not disqualifying. *See Continued Ass’n of X*, Redacted Decision No. SD4017 (NASD NAC 2004), http://www.finra.org/sites/default/files/NACDecision/p013420_0.pdf (“2004 NAC Decision”). In the 2004 NAC Decision, an individual argued that he was not convicted of a felony, and thus was not disqualified, where pursuant to state law he offered a guilty plea with a request that a guilty finding not be entered and that the case be continued on specific terms or probation. In the 2004 NAC decision, the court placed the individual on supervised release for three years, imposed other terms and conditions, and continued the criminal matter without a finding. Under state law, if the individual completed the period of supervised release without incident, the felony charges would be dismissed. We found that under those circumstances, the individual was not disqualified because he had not been convicted of a felony. Here, however, Wolfe is statutorily disqualified under a different provision of the Exchange Act, and we find that our prior interpretation of the phrase “convicted” has no bearing on whether the Order involves violations of FMD laws or regulations. Moreover, unlike the 2004 NAC Decision, the Order finally resolved the Complaint against Wolfe, imposed sanctions in connection with the resolution of the Complaint, and did not exclude any of the California regulations that the CDI alleged respondents violated (including FMD regulations).

parties were not admitting the allegations in the complaint, provided a statutory basis for revocation of their registrations).

We believe our approach, where we examine the laws that a state regulator alleges an individual has violated and what, if anything, the final order resolving those allegations and imposing a sanction has to say about the allegations, best captures the remedial purposes of the Exchange Act's statutory disqualification provisions and provides a straight-forward framework for analyzing FMD orders. *See Disqualification of Felons and Other Bad Actors from Rule 506 Offerings*, 2013 SEC LEXIS 2000, at *83-84 (focusing on the nature of the relevant legal authority for an order instead of the particular facts and circumstances surrounding an order in determining what constitutes a "final order" under disqualification provisions of another statute, and noting that "[t]his approach is consistent with [a] comment we received stressing the importance of making the disqualification provisions clear and simple to administer").¹⁷

* * *

In sum, we find that Wolfe is statutorily disqualified because he is subject to a final order of a state regulator that is based on violations of laws or regulations that prohibit FMD conduct.

III. Factual Background

We next turn to the merits of the Application.

A. Wolfe

1. Registration History

Wolfe qualified as a general securities representative in September 1984. He also qualified as an investment company and variable contracts products limited principal in July 1996, and he passed the uniform securities agent state law exam in August 1992. Wolfe has been associated with the Firm since January 2014. He was previously associated with six firms.

¹⁷ Wolfe and the Firm argue that the Order "is based upon something other than a violation of a law prohibiting FMD conduct," without asserting an alternate basis for the Order's entry. We reject this argument. When the complaint underlying a state regulator's final order alleges violations of laws that prohibit FMD conduct, the broad purpose of the Exchange Act and the interests of investor protection require that we find that the order resolving the complaint is a disqualifying FMD order absent clear language in the order that it is not based upon FMD violations. We also reject Wolfe's and the Firm's suggestion that Member Supervision must prove that Wolfe committed violations under the state statutes in question. Wolfe elected to settle the Complaint by agreeing to the Order, which resolved the Complaint's allegations and imposed a final sanction upon him. Under such circumstances, we must examine the charging document, the regulations that the state regulator alleges were violated, and the final order that resolved the allegations, to determine whether an individual is statutorily disqualified.

2. Wolfe's Insurance and Securities Businesses

The “vast majority” of Wolfe’s professional activities (90-95%) involve the sale of fixed life insurance products to an established customer base, and Wolfe testified that almost all of his income (95% or more) “is derived from overrides from [insurance] agents.” Wolfe characterized himself as “semi-retired.” He testified that his workday is generally limited to several hours each morning talking to his insurance agents and servicing his existing customers, most of whom are retired or nearing retirement. Wolfe further testified that he does not market himself or his insurance or securities businesses.

Wolfe’s securities business consists exclusively of mutual fund and variable annuity sales. Wolfe states that, “where his existing [insurance] clients have an interest in and are suited to mutual fund or variable annuity investments, [he] advises and assists his clients with making those investments. It is to complete these limited registered activities that [he] desires to continue his association with” the Firm. Rodgers testified that on average, Wolfe’s customers engage in one or two securities transactions per month (with an average transaction amount of \$8,000 to \$10,000). Rodgers characterized Wolfe’s securities transactions as “incidental” to his insurance business, and testified that Wolfe has approximately 20 to 30 securities customer accounts (which generate annual gross revenue of less than \$20,000). Wolfe testified that he earned approximately \$4,800 from securities transactions in 2017. He expects that he will earn a few thousand dollars more than that in 2018. At the hearing, David Wolfe stated that Wolfe is the Firm’s “lowest producer and [is] not critical to [the Firm’s] success.”

Wolfe has several outside business activities.¹⁸ He has been the owner of JSW Financial, an investment-related insurance company engaged in sales and marketing of equity indexed and fixed annuities, as well as life and health insurance, since May 2009. Wolfe testified that JSW Financial is the entity through which he conducts his business. FINRA’s Central Registration Depository (“CRD”®) states that Wolfe spends 100 hours per month on this venture, although at the hearing he testified that these activities currently occupy approximately 50 hours of his time per month. Wolfe also has been an officer of JAJ Financial Resources, LLC, a non-investment related entity engaged in fixed insurance product sales. CRD states that he spends two hours per month on this venture.

3. Customer Complaints and FINRA Cautionary Actions

During Wolfe’s 34-year career in the securities industry, he has had one reportable customer complaint.¹⁹ In January 2013, a customer filed with FINRA an arbitration claim

¹⁸ Member Supervision asserts that Wolfe failed to timely disclose to FINRA these outside business activities, as well as his affiliation with Equita, and these lapses support its recommended denial of the Application. We address this argument in Part VII.A, *infra*.

¹⁹ CRD lists two other customer complaints filed against Wolfe. Wolfe’s firm denied one of the complaints, and CRD indicates that no further action was taken in connection with this complaint (which arose from Wolfe’s sale of a limited partnership interest in 2006). In February 2010, however, FINRA issued Wolfe a Cautionary Action in connection with the matter that

against Wolfe that alleged that he made an unsuitable recommendation in connection with a real estate limited partnership. Wolfe's firm estimated that the customer's alleged damages were at least \$120,000. The claim was settled for \$45,000, and Wolfe contributed \$22,500 to this amount. Wolfe testified that, although he believed that "everything I did was right" in connection with this customer transaction, he settled the matter based upon the recommendation of his firm's chief compliance officer.

Further, in June 2017 FINRA issued Wolfe a Cautionary Action for failing to timely disclose on his Uniform Application for Securities Industry Registration or Transfer ("Form U4") the Complaint and the Order.

B. The Firm

1. Background

The Firm has been a FINRA member since September 1991, and it is based in Memphis, Tennessee. The Application states that it has three branch offices and it employs 14 registered representatives, four of whom are registered principals. The Firm does not employ any other statutorily disqualified individuals. The Firm represents that it primarily engages in mergers and acquisitions advisory work, private placements, and mutual fund and variable annuity sales. As set forth above, David Wolfe is the Firm's chairperson and chief executive officer. He also owns 90% or more of the Firm.²⁰

2. Disciplinary History

In September 2017, FINRA accepted a Letter of Acceptance, Waiver and Consent ("AWC") from the Firm. The AWC found that the Firm failed to maintain required net capital

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cited him for making misrepresentations to a customer concerning the length of time that payments would be made to investors and failing to discuss fees and expenses. The second complaint, filed in June 2010, alleged that Wolfe made an unsuitable recommendation and failed to disclose information such as surrender charges in connection with the sale of a fixed annuity. The customer sought \$6,000 in damages. Wolfe's firm settled this matter for \$6,253, and Wolfe did not contribute any funds to this settlement.

Further, Wolfe testified that he has had one complaint by an insurance customer in the past 10 years. He testified that the customer "wasn't crazy about [the product], and I made sure the insurance company took the policy as non-taken and returned their money."

²⁰ The Firm's Uniform Application for Broker-Dealer Registration also lists David Wolfe as the Firm's chief compliance officer. David Wolfe testified, however, that Robert Smith (Wolfe's proposed alternate supervisor) currently serves in this capacity and has done so for at least the past year.

and inaccurately calculated its net capital, in violation of Exchange Act Sections 15(c) and 17(a), Exchange Act Rules 15c3-1 and 17a-3, and FINRA Rules 4511 and 2010. It further found that the Firm failed to review emails because it did not properly communicate email review responsibilities to all of its principals, in violation of NASD Rule 3010(d)(2) and FINRA Rule 2010. FINRA censured the Firm and fined it \$5,000. The AWC states that FINRA imposed a lower fine on the Firm after considering its revenues and financial resources. *See FINRA Sanction Guidelines* at 2 (2018) (General Principles Applicable to All Sanction Determinations, No. 1), http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf (providing that adjudicators should consider a firm's financial resources in ensuring sanctions are appropriately remedial).

3. Examination Results

In January 2018, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2017 examination. FINRA cited the Firm for failing to: obtain and update customer account information; timely notify FINRA that the Firm replaced its auditor; accurately calculate its net capital; and timely update its Uniform Branch Office Registration Form to accurately reflect its branch network structure.

In February 2016, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2015 examination. FINRA cited the Firm for: failing to timely file a private placement memorandum, term sheet, or other offering document and failing to have adequate supervisory procedures related to private placements; failing to establish and implement adequate written supervisory procedures ("WSPs") concerning the independent verification of financial disclosures and timely reporting such events; failing to establish and implement adequate WSPs concerning the review of reported outside business activities and the independent verification that such activities are reported on Forms U4;²¹ failing to establish and implement adequate WSPs to ensure review of employee investment accounts; failing to conduct an adequate branch office inspection; and improperly compensating a registered representative through an unregistered entity.

In May 2014, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2013 examination. FINRA cited the Firm for: failing to establish and implement adequate WSPs addressing due diligence activities and preparation and maintenance of records to ensure compliance with regulations concerning general solicitation of unregistered offerings; failing to file offering documents for three non-public offerings; failing to enforce its WSPs regarding social networking sites, maintaining inadequate WSPs concerning the review of outside business activities, and failing to evidence principal review of such activities; maintaining an inadequate supervisory system to ensure attendance at annual compliance meetings; failing to enforce its WSPs related to the accuracy of CRD registration information; failing to timely notify FINRA of the change in status of branch offices; failing to keep Forms U4 and Uniform Termination

²¹ Wolfe is included in the list of 10 registered representatives for which the Firm failed to keep Forms U4 current for outside business activities.

Notices for Securities Industry Registration current (including Wolfe's Form U4 with respect to his outside business activities); and failing to timely and accurately report a written customer complaint.²²

IV. Wolfe's Proposed Business Activities

The Firm proposes that it will continue to employ Wolfe as a general securities representative from Wolfe's residence in Sun City, Arizona.²³ The Firm will continue to compensate Wolfe by commissions.

V. Wolfe's Proposed Supervision

A. Proposed Supervisors

1. Primary Supervisor Rodgers

The Firm proposes that Rodgers will continue to serve as Wolfe's primary supervisor, a role he has served in since late 2017. Rodgers has been with the Firm since September 2015, and he first registered as a general securities representative in March 2007. Rodgers also registered as a general securities principal in September 2007 and as a limited representative—private securities offerings in January 2010. He also passed the uniform securities agent state law exam in March 2007, the introducing broker/dealer financial operational principal examination in May 2008, and the uniform combined state law examination in December 2009. Rodgers is also a certified public accountant, although he testified that he no longer practices. He further testified that he has previously sold insurance. Rodgers has been associated with four other firms.

Rodgers does not currently supervise any other individuals at the Firm. Rodgers's business focuses on investment banking, and he does not have any retail customers. Rodgers works from a non-registered location (his residence) in Phoenix, Arizona (approximately 30 miles away from Wolfe's Arizona residence). Other than a minor criminal charge that occurred

²² In its recommendation letter, Member Supervision stated that this examination report also contained an exception finding that David Wolfe provided backdated documents to FINRA, which was referred to FINRA's Department of Enforcement. This matter was included as part of the September 2017 AWC resolving, among other things, the Firm's failure to accurately calculate its net capital.

²³ At the hearing, Wolfe testified that he spends the majority of his time at his Arizona residence, but that he also spends time, and occasionally conducts his business from, Texas (where he also owns a home). Wolfe stated that he hoped to transition to Arizona full time in the near future, and a declaration from Wolfe submitted after the hearing represents that although he travels on business, he no longer owns or leases residential property in Texas and does not maintain an office in Texas. As set forth below, and contrary to Member Supervision's arguments to the contrary, we do not find that Wolfe's travel will prevent the Firm from stringently supervising him pursuant to the heightened supervisory plan described herein.

53 years ago (which was eventually dismissed), the record shows no disciplinary or regulatory proceedings, complaints, or arbitrations against Rodgers.

Rodgers testified that David Wolfe approached him in late 2017 and asked if he would be willing to supervise Wolfe because David Wolfe indicated that it would be “inappropriate” for him to directly supervise his brother because of conflicts of interest.²⁴ Rodgers agreed, and he testified that because Wolfe’s business is limited, the amount of time he spends supervising Wolfe is minimal.²⁵ He stated that, to date, Wolfe’s supervision has not presented any challenges and he has not received any customer complaints related to Wolfe.

In addition to supervising Wolfe for approximately one year, Rodgers testified that he supervised individuals for approximately four years at a member firm that he founded, although that firm focused on investment banking. Rodgers further testified that when reviewing Wolfe’s securities transactions, he ensures that all paperwork is in order. He later elaborated that he also performs suitability reviews to ensure that each security is appropriate for Wolfe’s small base of securities customers (which Rodgers described as “reasonably sophisticated investors [who] have been investing for some period of time and investing in mutual funds and/or variable annuities”).²⁶ With respect to Wolfe’s outside insurance activities, Rodgers testified that he is “peripherally aware” of them, needs to be aware of the scope of those activities, and that if something in his discussions with Wolfe gives him concern that he would investigate further. Rodgers stated that, to date, he has not seen anything with respect to Wolfe’s outside insurance activities that has raised any concerns. Finally, Rodgers testified that he and David Wolfe would jointly make any decision to terminate Wolfe.

2. Backup Supervisor Robert Smith

The Firm proposes that Robert Smith (“Smith”) will serve as Wolfe’s alternate supervisor. Smith is the Firm’s president and chief compliance officer. He is located in Los Angeles, California.

Smith qualified as a general securities representative in July 2007 and as a general securities principal in August 2015. He also passed the uniform securities agent state law exam in December 2007. He has been associated with the Firm since July 2011. He was previously associated with four firms.²⁷

²⁴ The Firm originally proposed that David Wolfe would be Wolfe’s direct supervisor.

²⁵ In addition to reviewing one or two securities transactions that Wolfe does each month, Rodgers has been reviewing Wolfe’s emails (which he estimated total “a few hundred” each quarter).

²⁶ Rodgers and David Wolfe testified that David Wolfe also signs off on each of Wolfe’s mutual fund transactions because the funds will not accept an application without David Wolfe’s signature.

²⁷ CRD lists two outside business activities for Smith: (1) Diamond Strategic Advisors,

CRD lists a tax lien against Smith totaling \$72,569 filed by the IRS in July 2016. CRD states that Smith learned of the lien in July 2017, and that although he had been speaking with the IRS regarding his outstanding taxes, he was unaware that it had filed a lien until FINRA notified him of the lien. Smith recently satisfied this lien, and the IRS released it. The record shows no disciplinary or regulatory proceedings, complaints, or arbitrations against Smith.

VI. Member Supervision's Recommendation

Member Supervision recommends denying the application because, in its view: (1) the disqualifying event is serious and recent; (2) the fact that Wolfe's brother David Wolfe owns and runs the Firm presents "insurmountable" conflicts of interest that "undermine stringent supervision" necessary for a disqualified individual; (3) remote supervision of Wolfe is inadequate; (4) Wolfe's primary supervisor has limited experience supervising the outside business activities that Wolfe is involved with, and has limited experience with retail customers; (5) the proposed plan is deficient; and (6) Wolfe's failures to timely update his Form U4 and alleged lack of responsibility or remorse for the misconduct underlying the Order support denial.

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/sites/default/files/NACDecision/p036476_0.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, 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 Pedregon*, 2010 SEC LEXIS 1164, at *16 & n.17.

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non-investment related consulting services (to which Smith devotes 20 hours per month); and (2) Smith Capital, which is a personal holding entity through which he makes investment decisions for his family (10 hours per month).

After carefully reviewing the entire record in this matter, we find that under the unique facts and circumstances of this case, the Firm has satisfied its burden. Accordingly, we approve the Application for Wolfe to continue to associate with the Firm as a general securities representative.

A. Wolfe's Limited Role in the Misconduct Underlying the Order and his Regulatory History Support Approval

First, Wolfe's limited role in the events underlying the Order, as reflected by the factual allegations of the Complaint and the sanctions imposed upon him by the CDI, as well as his relatively clean regulatory history during his lengthy career in the securities industry, support approving the Application. We do not agree with Member Supervision's assertion that the seriousness of the misconduct underlying the Order supports denying the Application. Nor do we agree with its characterization of Wolfe's role in the underlying misconduct as "pivotal." Rather, we find that Wolfe's role in the misconduct underlying the Order, as alleged by the Complaint, was limited to his receipt of commissions on the seven insurance policies at issue in 2007 as "an Equita affiliate and participant in the Gordon/Equita arrangement" (the circumstances of which, including Wolfe's assignment of all commissions to Equita, Wolfe credibly explained at the hearing). The Complaint makes detailed factual allegations that respondents other than Wolfe (i.e., Gordon and Richard Wolfe) were the primary actors in connection with the misconduct at issue, but none regarding Wolfe other than the general statements set forth above. *Cf. Block*, 2018 FINRA Discip. LEXIS 8, at *36 (concluding that we may consider the allegations of misconduct specifically and solely alleged against individual that resulted in the disqualifying consent order even where the order contains no specific findings of wrongdoing). Consistent with the Complaint's factual allegations pertaining to Wolfe, Wolfe credibly testified that he had no knowledge that Gordon was issuing forged checks to pay the life insurance premiums, trusted Gordon's legal advice that paying the first year premiums on behalf of customers was an acceptable practice in California, and did not retain any portion of the commissions paid by Old Mutual pursuant to the Commission Payee Designation.

The sanctions imposed upon Wolfe by the Order support our determination that he played a limited role in the underlying misconduct. The CDI issued Wolfe a restricted license and imposed costs upon Wolfe and two other respondents totaling \$9,500. These facts support our view that Wolfe's participation in any misconduct was limited, and undermines Member Supervision's claim that the misconduct at issue supports denying the Application. *Cf. William J. Haberman*, 53 S.E.C. 1024, 1028 (1998) (holding that "the sentence imposed on Haberman, whether intended as punishment or deterrence, may properly indicate the seriousness" of the disqualifying felony conviction); *Block*, 2018 FINRA Discip. LEXIS 8, at *36-38 (considering that state regulator barred individual in weighing seriousness of allegations of the complaint underlying disqualifying consent order).

With respect to the recency of Wolfe's disqualifying event, Member Supervision correctly states that the Order is recent based upon its entry in January 2017. *See Robert J. Escobio*, Exchange Act Release No. 83501, 2018 SEC LEXIS 1512, at *17 (June 22, 2018) (holding that FINRA properly determined that the date a court entered a disqualifying injunction finding that an individual engaged in a fraudulent scheme was recent). Typically, we use the

occurrence of a disqualifying event as a starting point to assess whether a disqualified individual has demonstrated that he can comply with securities laws going forward. *Id.* Here, however, this rationale is less of a concern given the limited nature of Wolfe's role in the misconduct underlying the Complaint. Importantly, Wolfe also has a relatively clean regulatory history during a career that has spanned more than 34 years in the securities industry. He has one reportable customer complaint, which involved a product that he is not permitted to sell at the Firm, a Cautionary Action involving a transaction that occurred more than 12 years ago (also concerning a product that he will not be permitted to sell at the Firm), and the 2017 Cautionary Action for failing to timely report the Complaint and Order on his Form U4. Under these circumstances, the fact that the CDI entered the Order less than two years ago, in connection with sales of insurance policies that occurred in 2007, does not demonstrate that Wolfe's continued participation in the securities industry presents a threat to the investing public.²⁸

We also reject Member Supervision's assertion that Wolfe's failure to update his Form U4 with respect to his outside business activities and the Complaint and Order supports denying the Application. We recognize that "[t]he duty to provide accurate information and amend the Form U4 to provide current information assures that regulatory organizations, employers, and members of the public have all material, current information about the securities professional with whom they are dealing." *See Dep't of Enforcement v. McGee*, Complaint No. 2012034389202, 2016 FINRA Discip. LEXIS 33, at *66 (FINRA NAC July 18, 2016), *aff'd*, Exchange Act Release No. 80314, 2017 SEC LEXIS 987 (Mar. 27, 2017), *aff'd*, 733 F. App'x 571 (2d Cir. 2018).

We also acknowledge, as did Wolfe, that he did not comply with his obligation to update timely his Form U4 to reflect his outside business activities and the Complaint and Order. Wolfe, however, credibly testified that he informed at least one of his firms, in writing on annual compliance questionnaires, about his activities with Equita and JSW Financial. Wolfe conceded that he should have checked that the firm updated his Form U4 to reflect these activities, and

²⁸ Member Supervision argues that the Firm and Wolfe "show a profound lack of appreciation for the seriousness of the activities that resulted" in Wolfe's statutory disqualification and that Wolfe seeks to downplay his role in the events that led to the Order. It also points to Wolfe's characterization of the Order on his Form U4 ("Allan Wolfe was receiving a commission on the production in a hierarchy and was an employee of Equita Financial and assigned his commission to the company"), and his failure to indicate that the Order was based upon a violation of laws that prohibit FMD conduct, as evidence that he cannot behave ethically and does not understand "the gravity of what he and the Respondents did." We disagree. Under the circumstances, we find that Wolfe's characterization of his misconduct is more accurate than Member Supervision's, and although we have found that the Order was a disqualifying FMD order, Wolfe had a good faith argument that it was not. Moreover, in this proceeding, Wolfe and the Firm are permitted to argue that, contrary to Member Supervision's assertion, the misconduct underlying the disqualifying Order does not support its conclusion that the Application should be denied. This is especially true where the Complaint underlying the Order does not allege facts sufficient to support Member Supervision's claim that Wolfe engaged in serious misconduct.

testified that he would do so going forward (which is consistent with his duty to ensure that his Form U4 is properly updated). We further observe that FINRA issued the Firm Cautionary Actions that cited it for, among other things, failing to keep Forms U4 current (including ensuring that Forms U4 for registered representatives such as Wolfe were kept current to reflect all outside business activities), but did not issue Wolfe a Cautionary Action in connection with his failures to timely disclose on his Form U4 his outside business activities while at the Firm.

We also note that FINRA reviewed Wolfe's failure to update timely his Form U4 to report the Complaint and Order, and decided to resolve the matter by issuing him a Cautionary Action. While this is significant, it does not change our conclusion that Wolfe's continued association with the Firm will not present an unreasonable risk of harm to the market or investors. *See The Ass'n of X*, Redacted Decision No. SD10003, slip op. at 7 (FINRA NAC 2010) ("2010 NAC Decision"), [http://www.finra.org/sites/default/files/NAC Decision/p125898_0_0.pdf](http://www.finra.org/sites/default/files/NAC%20Decision/p125898_0_0.pdf) (noting disqualified individual's failure to timely amend his Form U4 to reflect disqualifying event but finding that this failure was resolved through a FINRA Cautionary Action in determining that application should be approved). We find that, under the circumstances, these matters do not outweigh our overall finding that Wolfe's potential for future regulatory problems appears to be low.

B. The Firm Has Shown that It Can Stringently Supervise Wolfe

Having determined that the underlying disqualifying event and Wolfe's entire history in the securities history weigh in favor of approving the Application, we turn to the critical question of whether the Firm can stringently supervise Wolfe as a statutorily disqualified individual. The Firm has the burden to demonstrate that it is capable of providing stringent supervision to a statutorily disqualified individual such as Wolfe. *See Timothy H. Emerson, Jr.*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, at *27 (July 17, 2009) (holding that an applicant must establish that it will be able to stringently supervise a statutorily disqualified individual). We find that, under the facts and circumstances of this case, the Firm has satisfied its burden.

As a starting point, we observe that Wolfe's securities business is limited in both quantity of transactions and the scope of permissible transactions (as expressly set forth in the heightened supervisory plan). Indeed, Rodgers testified that Wolfe's monthly securities activities generally consist of one or two mutual fund or variable annuity sales per month. While these facts do not obviate the Firm's need to stringently supervise a statutorily disqualified individual such as Wolfe, in this case they inform our assessment of whether the Firm is capable of providing stringent supervision in connection with Wolfe's limited sales of mutual funds and variable annuities to his customers.²⁹ Moreover, as discussed below, we have considered that the Firm's

²⁹ The fact that a statutorily disqualified individual's business is limited, however, will not always impact our assessment of a firm's supervision. We emphasize that the unusual facts and circumstances of this case, including but not limited to Wolfe's limited securities business, his relatively clean regulatory history over a lengthy career, and the nature of the disqualifying event and Wolfe's limited role in that event, have led us to conclude that Wolfe's continued association

heightened supervisory plan (as amended below) requires semi-annual review of Wolfe's supervision, and the Firm's adherence to the plan, by an independent, third party consultant. It further requires that the independent consultant certify that, among other things, Wolfe's supervisors have complied with the heightened supervisory plan's terms.

Against this backdrop, we find that Rodgers is qualified to supervise Wolfe. *See Morton Kantrowitz*, 55 S.E.C. 98, 102 (2001) ("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"); *cf. In the Matter of the Continued Ass'n of Ronald Berman with Axiom Capital Mgmt., 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"). Rodgers has been registered as a general securities principal for more than 11 years, and testified that he has previously supervised individuals at the firm that he founded. Rodgers's testimony demonstrated that he understands the need to stringently supervise a statutorily disqualified individual, understands the responsibilities that he is undertaking in doing so, and he is capable of adequately supervising Wolfe and his limited securities business under the heightened supervisory plan.³⁰ The Hearing Panel also found credible Rodgers's testimony that he has sufficient time to carry out his obligations under the heightened supervisory plan.

Member Supervision argues that remote supervision is "wholly inadequate" because the Firm's heightened supervisory plan is "essentially the same off-site supervisory structure that allowed for Wolfe's misconduct" underlying the Order, and "nothing in the Application provides any comfort that [the Firm] would be able to detect or prevent future misconduct by Wolfe."³¹

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with the Firm under the terms of the heightened supervisory plan do not present an unreasonable risk of harm to the market or investors.

³⁰ Member Supervision argues that Rodgers lacks experience supervising outside business activities such as Wolfe's insurance business, which demonstrates that he is not qualified to supervise Wolfe. It also argues that the Firm's proposed plan does not provide for supervision of Wolfe's insurance business, which also weighs against approving the Application. The heightened supervisory plan described below, however, contains provisions regarding Wolfe's insurance activities and the Firm's supervision of those activities. Under the circumstances, we find that the heightened supervisory plan adequately addresses Wolfe's outside insurance activities and that Rodgers is capable of supervising those activities.

³¹ Member Supervision also argues that Rodgers's personal residence is not registered as a branch office of the Firm, in violation of FINRA Rule 3110(f)(2)(B). It asserts that this "is a compelling factor militating towards denying the Application because it demonstrates the Firm's inability to comply with even the most basic of regulatory requirements." While we agree that Rodgers's residence should be registered as a branch office, and the Firm has represented that it will do so, we do not believe that this oversight presents "compelling" evidence that the Firm will not be able to stringently supervise Wolfe's securities activities.

As a general matter, we typically require that a disqualified individual be subject to in-person supervision. *See generally Emerson*, 2009 SEC LEXIS 2417, at *19 (“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.”). In-person supervision permits a disqualified individual’s supervisor to observe firsthand the disqualified individual’s activities, including but not limited to his interactions with customers and his sales practices.

In-person supervision of a disqualified individual, however, is not always required. *See, e.g.*, 2010 NAC Decision, slip op. at 8 (“While we agree that on-site supervision is the ideal standard for most statutorily disqualified individuals, we do not find that it is always necessary.”). In the 2010 NAC Decision, Member Supervision argued, among other things, that the sponsoring firm could not stringently supervise the disqualified individual because the proposed supervisor would do so remotely and had other responsibilities. We disagreed, and found that the disqualifying event—a felony conviction for driving under the influence—was a disqualifying event for which we had previously permitted off-site supervision. We also found that the disqualified individual had been in the securities industry for more than 20 years without incident, and the individual “otherwise posed no risk to the market or investors.” 2010 NAC Decision, slip op. at 8. These facts, along with the supervisory plan’s requirement of in-person visits, led us to conclude that the Firm was capable of stringently supervising the disqualified individual.

Similar to the 2010 NAC Decision, we find that remote supervision of Wolfe is not inconsistent with a finding that the Firm can stringently supervise him. This is especially true where, as here, Wolfe’s securities activities with the Firm are limited to one or two transactions per month. Moreover, Wolfe’s limited involvement in the misconduct underlying the Order and the CDI’s imposition of no conditions or restrictions on Wolfe’s ability to sell insurance distinguish this case from others where we have required in-person supervision for more serious disqualifying events. These facts, along with Wolfe’s lengthy career in the securities industry that, to date, has been mostly without incident and the provisions of the comprehensive heightened supervisory plan (which, as amended, include at least three in-person visits per quarter and oversight by an independent consultant) all lead us to conclude that remote supervision of Wolfe is acceptable under the circumstances.³²

³² We also find that, under the circumstances, Smith is qualified to supervise Wolfe under the heightened supervisory plan and can do so remotely. Although Smith has been in the securities business for more than 11 years, we acknowledge that he has only been registered as a general securities principal for three years. Our concerns with Smith’s experience as a supervisor are ameliorated by the requirement in the heightened supervisory plan that Rodgers review any supervisory activities of Smith upon Rodgers’s return to the office and the independent consultant’s semi-annual review of both supervisors’ performance under the plan. *Cf. Block*, 2018 FINRA Discip. LEXIS 8, at *43 (finding problematic that alternate supervisor would supervise disqualified individual remotely where the disqualifying order involved serious sales practice violations, disqualified individual had a lengthy history of customer complaints, and supervisory plan did not limit disqualified individual’s securities business).

Member Supervision also argues that David Wolfe's ownership of the Firm presents a supervisory structure "so riddled with conflicts, [it is] irreparable." In support, it argues that David Wolfe sits at the "apex" of the Firm's supervisory structure, ultimately supervises Wolfe's supervisors, and "can likely override any supervisory decision made by them." It points to the Commission's recent decision in *Escobio* to support the proposition that conflicts of interest exist where family members supervise disqualified individuals.

We have stated 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." *Berman*, slip op. at 17. We do not find, however, that David Wolfe's ownership of the Firm presents an irreparable conflict of interest that will prevent or interfere with the stringent supervision of Wolfe.

First, David Wolfe is not Wolfe's direct supervisor. Indeed, he recognized the potential conflicts presented if he directly supervised his statutorily disqualified brother, and requested that Rodgers serve in this role. *Cf. Escobio*, 2018 SEC LEXIS 1512, at *20-21 (finding conflicts of interest where disqualified individual's wife would directly supervise him and observing that the firm changed nothing in its supervision to address admitted conflicts).

Second, David Wolfe credibly testified that he would not let his familial relationship with Wolfe impact the supervision he is accorded. He also testified, and the evidence showed that, Wolfe is not an integral part of the Firm and his association with the Firm will have no bearing on the Firm's success. In fact, Wolfe is the Firm's lowest producer (and his prior firm terminated because the volume of his securities activity was equally as low). *Cf. Berman*, slip op. at 17 (finding that disqualified individual's status as one of the firm's largest producers and

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Further, we reject Member Supervision's assertion that the Firm's failure to provide it with information concerning Smith's supervisory experience "further demonstrates [the Firm's] unwillingness to provide forthright and candid responses to its regulator" and raises troubling concerns "regarding the Firm's culture." The record contains an April 10, 2018 inquiry from Member Supervision asking the Firm to describe "Rodgers's and the proposed alternate supervisor's supervisory experience," and requesting from the Firm additional information (such as "[a] description of any supervisory functions the supervisor is currently responsible for," "[t]he name(s) and CRD number(s) of any individuals that the supervisor is currently supervising," and "[w]hether the supervisor has any experience supervising a disqualified individual." The Firm responded in writing on April 24, 2018, and focused most of its answers on Rodgers (Wolfe's "supervisor"). With respect to Smith, the Firm stated that he "is the President of Aaron Capital and has supervisory responsibilities in that capacity for the last year and a half." Because it was unclear from the initial questions to the Firm whether Member Supervision requested more detailed information for both Rodgers *and* Smith, and the record does not contain any follow up or additional questions on this topic by Member Supervision, we reject its broad characterization of the Firm's response to its inquiry.

importance to the firm's bottom line presents a potential for conflicts); *Escobio*, 2018 SEC LEXIS 1512, at *22 (finding conflict of interest of spouse directly supervising a disqualified individual 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").

Third, the heightened supervisory plan described below provides that an independent consultant will conduct a semi-annual review of the Firm's supervision of Wolfe to ensure that, among other things, Rodgers and Smith have the necessary independence to perform fully their supervisory duties under the plan notwithstanding David Wolfe's ownership of the Firm and familial relationship with Wolfe. The plan thus provides an additional safeguard so that Rodgers and Smith will be able to objectively supervise Wolfe free from any undue influence from David Wolfe. Based upon all of the foregoing, we find that David Wolfe's ownership of the Firm does not demonstrate that the Firm cannot stringently supervise Wolfe as a disqualified individual.³³

C. The Heightened Supervisory Plan

Finally, we find that the provisions of the Firm's revised heightened supervisory plan (as amended below), if they are diligently followed, will enable the Firm to reasonably monitor Wolfe's activities on a regular basis.³⁴

³³ Member Supervision further argues that David Wolfe and Wolfe are partners in a limited partnership that leases property to the U.S. Postal Service and therefore "[i]t is reasonable to infer that the financial health of [the partnership's] partners is germane to the financial health of this venture." This assertion, however, rests on the faulty presumption that Wolfe's "overall financial condition may, in part, be dependent on his continued association" with the Firm. As described above, Wolfe testified that he derives 95% or more of his income from his insurance business. Further, David Wolfe testified that neither his nor Wolfe's financial health is dependent upon the other's professional activities or Wolfe's continued association with the Firm.

³⁴ After the hearing, the Firm submitted an amended plan that addressed certain concerns raised by the Hearing Panel and Member Supervision at the hearing. Member Supervision subsequently raised additional concerns with the Firm's revised plan (to which the Firm filed a detailed response). The supervisory plan described herein (which supersedes all other plans) is based upon the Firm's revised plan and our consideration of some of Member Supervision's additional concerns, and as set forth herein we have made further additions and amendments to the Firm's revised plan. These additions and amendments generally consist of the following changes: clarifying the obligations and duties of the independent consultant; adding provisions regarding documenting compliance with the plan; adding a provision requiring that Wolfe provide advance notice of any travel; clarifying that Rodgers will review any supervisory actions taken by Smith in his absence; and adding provisions concerning Wolfe's obligations to fully and timely disclose matters on his Form U4.

1. The written supervisory procedures for ACI have been amended to state that Rodgers is the primary supervisor for Wolfe. Rodgers has been notified that he is responsible for discharging the heightened supervision conditions detailed herein, and that he is subject to appropriate disciplinary action by FINRA if he neglects to do so.
2. Wolfe will not maintain discretionary accounts. Further, Wolfe's registered representative activities will be restricted to selling mutual funds and variable annuities, which is all that is required for Wolfe to service his customer base. Wolfe's outside business activities, addressed below, primarily involve fixed annuities and life insurance sales.
3. Wolfe will not act in a supervisory capacity. Wolfe will not be permitted to recruit other ACI registered representatives to sell mutual funds or variable annuities or to be involved in his outside business activities.
4. Wolfe will work out of his home office located in Sun City, Arizona, and be supervised by Rodgers from his home office located less than 30 miles away in Phoenix, Arizona. Wolfe shall notify Rodgers, in writing, prior to any travel outside of Arizona (and shall indicate whether he expects to conduct any business in connection with such travel). Rodgers will conduct at least three unannounced in-person visits to Wolfe's home office per quarter and prepare memorandum of said visits to ACI's compliance department. The purpose of these visits is to discuss ACI's business, Wolfe's business, and any issues regarding this plan, including but not limited to Wolfe's compliance with the plan's terms. Rodgers shall make a written record of all matters discussed during these visits. Copies of any documents created pursuant to this paragraph shall be maintained and kept segregated for ease of review during any statutory disqualification examination.
5. Rodgers will review and pre-approve each new account, prior to the opening of the account, by Wolfe. He will review the forms for accuracy and completeness, as well as suitability. The documents as approved with dates and signatures will be maintained at Rodgers's home office and kept segregated for ease of review during any statutory disqualification examination, with copies sent to ACI headquarters. Rodgers periodically will send notices to a sample of Wolfe's clients asking them to confirm the information on the new account form, and shall document the results of such inquiries (copies of which shall be kept segregated for ease of review during any statutory disqualification examination).
6. Rodgers will review all of Wolfe's incoming and outgoing written correspondence (to include email communications) on a weekly basis using Global Relay. For purposes of client email communications, Wolfe will only be allowed to use an email account held at ACI, with all emails being filtered through ACI's email system. If Wolfe receives an ACI-related email message in another email account outside ACI, he will immediately forward that

- message to his ACI email account. Wolfe will also inform Rodgers of all outside email accounts that he maintains and will provide access to the accounts upon request.
7. Rodgers will conduct a monthly review of Wolfe's outside business activities, including but not limited to Wolfe's activities with JSW Financial and JAJ Financial Resources, LLC. Rodgers will receive and review all of Wolfe's (or his d/b/a, JSW Financial's) commission logs, and will review all of Wolfe's or JSW Financial's new contracts with insurance carriers. Wolfe will also send Rodgers copies of any checks received by Wolfe or sent on behalf of his clients in connection with his outside business activities. Rodgers will have the authority to request and review any other records or documentation, including copies of email correspondence, at any time, related to Wolfe's outside business activities. Rodgers shall document his monthly review and keep such documents segregated for ease of review during any statutory disqualification examination.
 8. Rodgers will conduct semi-annual reviews of Wolfe's regulatory disclosures to ensure that he has complied with his reporting obligations with respect to, among other things, legal and regulatory matters and outside business activities. Rodgers will document the outcome of each review and he will maintain and keep segregated all documentation related to these reviews for ease of review during any statutory disqualification examination.
 9. Wolfe will certify in writing to Rodgers on a quarterly basis (as of March 31st, June 30th, September 30th, and December 31st) that Wolfe has read the Firm's current code of conduct and other applicable policies pertaining to Wolfe's obligations to disclose outside business activities and legal and regulatory matters to the Firm and that Wolfe fully understands his obligations thereunder. Rodgers will maintain copies of Wolfe's certifications and will keep them segregated for ease of review during any statutory disqualification examination.
 10. In light of David Wolfe's ownership of ACI, and to ensure the independence of Rodgers and Smith and stringent compliance with the terms of this plan, ACI will hire an independent, outside consultant qualified to review the supervision and compliance reports conducted and prepared by Rodgers and Smith related to Wolfe and to monitor ACI's compliance with this plan. The outside consultant will be William Davis (CRD #3188964) ("Davis"). Davis will receive copies of all of Rodgers's and Smith's reports documenting their review of Wolfe's activities and will provide guidance and comment to Rodgers, Smith, and ACI on any improvements to the supervision or reporting activities under this plan. Davis shall certify on a semi-annual basis that Wolfe's activities were monitored appropriately by Rodgers and Smith in accordance with this plan. Copies of these certifications shall be maintained and kept segregated for ease of review during any statutory disqualification examination.

11. Davis shall verify that Rodgers and Smith fully perform their obligations under this plan in an environment free from intimidation, coercion, fear of retribution, or undue influence from David Wolfe. Davis shall certify on a semi-annual basis that he has made such verification, and copies of these certifications shall be maintained and kept segregated for ease of review during any statutory disqualification examination.
12. Rodgers will review and approve Wolfe's mutual fund and variable annuity applications before they are submitted to the fund or insurance company. Rodgers will evidence his review by signing the application. He will review the applications for correctness, suitability, and completeness.
13. Wolfe must disclose to Rodgers monthly details related to his sales activities. The disclosure must contain Wolfe's activity log, phone call log, appointment log, and a to-do list. Rodgers will meet with Wolfe, in person, on a quarterly basis to review his transactions with clients (including a review of the distribution of customer funds). A log will be kept by Rodgers and ACI of these meetings and shall be kept segregated for ease of review during any statutory disqualification examination.
14. Over the last three years, Wolfe has submitted no more than twenty-four (24) applications for registered sales per year. Wolfe is currently ACI's lowest producer. He spends approximately 10-15 hours a week on his outside insurance activities. Wolfe's sales and outside business activity volume will be reviewed annually, and additional supervision measures considered in the event of a material increase in activity.
15. If Rodgers is to be on vacation or out of the office for an extended period, Smith will act as Wolfe's interim supervisor. In the event that Smith performs any duties required under this plan while Rodgers is unavailable, Rodgers will review such actions taken by Smith and certify, within two business days of Rodgers's return to the office, that Smith's actions complied with the plan. Records of the certifications will be kept segregated and maintained for ease of review during any statutory disqualification examination.
16. All complaints pertaining to Wolfe, whether verbal or written, will be immediately referred to Rodgers for review, and then to the ACI compliance department and Davis. Rodgers will prepare a memorandum as to what measures he took to investigate the merits of the complaint (e.g., contact with the customer) and the resolution of the matter. Davis will review and comment on all such reports. In connection with any recommendation from Rodgers concerning Wolfe's termination from the Firm, Davis shall be consulted by Rodgers and David Wolfe to ensure that any decision comports with the terms of this plan, including but not limited to those provisions designed to ensure the independence of Wolfe's supervisors. Documents pertaining to these complaints will be kept segregated for ease of review during any statutory disqualification examination.

17. For the duration of Wolfe's statutory disqualification, ACI will obtain prior approval from Member Regulation if it wishes to change Wolfe's supervisor from Rodgers to another person, change the independent consultant from Davis to another person, or make any changes to this plan.
18. Rodgers must certify quarterly (March 31st, June 30th, September 30th, and December 31st) to ACI's compliance department that Rodgers and Wolfe are in compliance with all of the above conditions of heightened supervision to be accorded Wolfe. Copies of such certifications shall be maintained and kept segregated for ease of review during any statutory disqualification examination.
19. Rodgers will send notices to and/or call all customers who transfer their accounts to another firm to determine why they chose to transfer their accounts. Rodgers shall keep and maintain a written record of notices and calls to customers, including any follow up action, segregated for ease of review during any statutory disqualification examination.

VIII. Conclusion

Accordingly, we approve the Firm's Application to employ Wolfe as a general securities representative, subject to the above-mentioned heightened supervisory procedures. In conformity with the provisions of Exchange Act Rule 19h-1, the continued association of Wolfe with the Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the Commission.³⁵

On Behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell
Vice President and Deputy Corporate Secretary

³⁵ FINRA certifies that: (1) Wolfe meets all applicable requirements for the proposed employment; (2) the Firm is not a member of any other self-regulatory organization; (3) the Firm has represented that Wolfe is not related to Rodgers or Smith by blood or marriage; and (4) the Firm does not employ any other statutorily disqualified individuals.