

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the
Continued Membership
of
PHX Financial, Inc.

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

SD-2071

Date: October 20, 2016

I. Introduction

On June 29, 2015, PHX Financial, Inc. (“PHX,” the “Firm,” or the “Applicant”) submitted a Membership Continuance Application (“MC-400A” or the “Application”) with FINRA’s Department of Registration and Disclosure (“RAD”). The Application seeks to permit the Firm, a FINRA member subject to a statutory disqualification, to continue its membership with FINRA.¹ A hearing was not held in this matter; rather, pursuant to FINRA Rule 9523(b), FINRA’s Department of Member Regulation (“Member Regulation”) approves the Firm’s Application pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 (the “Exchange Act”).

II. The Statutorily Disqualifying Event

The Firm is subject to a statutory disqualification, as that term is defined in Section 3(a)(39)(F) of the Exchange Act, as the result of a Consent Agreement and Final Order dated April 13, 2015 (“Consent Order”) issued by the Office of the Montana State Auditor, Commissioner of Securities and Insurance (“CSI”).²

¹ The Firm’s MC-400A application is attached as Attachment 1. *See also* the Record (“R.”) that was compiled by RAD and provided to the parties and FINRA’s Office of General Counsel pursuant to FINRA Procedural Rule 9524(a)(3).

² Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(H)(i), provides that a member firm is subject to statutory disqualification if it is subject to any final order of a State securities commission that bars it from engaging in the securities business. The Consent Order is a final order of a state securities commission and the prohibition against PHX that it not re-apply for registration with CSI for two years constitutes a bar for purposes of this section of the Exchange Act. *See* Consent Agreement and Final Order dated April 13, 2015 attached as Attachment 2.

The Consent Order arises out of PHX's association with a registered representative of the Firm ("W.H."), who was required by CSI to be placed on heightened supervision. CSI required the Firm to place W.H. on heightened supervision in order for him to qualify as a Montana salesperson.³

The heightened supervision plan submitted by PHX and accepted by CSI also sought to ensure W.H.'s activities complied with PHX policies and Montana law and obligated PHX to notify CSI of any investigations of or actions against W.H.⁴ An investor submitted a complaint to CSI alleging, among other things, that W.H. engaged in excessive trading and failed to act in the investor's best interest.⁵ Additionally, the customer complaint charged PHX with failing to adequately supervise W.H.⁶ CSI expanded its investigation to review W.H.'s other Montana accounts, alleging other conduct that violated the Montana securities laws while he was associated with PHX.⁷

Consequently, on April 13, 2015, the Firm, without admitting or denying any of CSI's allegations, stipulated and agreed to: (i) pay a fine of \$30,000.00 to the State of Montana; (ii) pay restitution in the amount of \$100,117.71 to Montana investor T.K., along with \$12,370.62 in statutory interest; and (iii) pay restitution in the amount of \$17,507.26 to Montana investor "C.P," along with statutory interest of \$2,163.23.⁸ Further, the Firm agreed to withdraw its registration in Montana within ten (10) business days of executing the Consent Order and not reapply for two years.⁹

The Firm withdrew its registration and the two-year window after which it may reapply for registration expires in April 2017.¹⁰

³ See Att. 2 at 1-2; Att. 1, R. at FINRA00019-20.

⁴ CSI filed a Notice of Proposed Agency Action and Opportunity for a Hearing dated October 28, 2014. See Notice of Proposed Agency Action and Opportunity for Hearing, *In the Matter of PHX FINANCIAL, INC., et al.*, Case No. SEC-2014-188 attached as Attachment 3.

⁵ See Att. 3 at 4.

⁶ See *id.*

⁷ See *id.* at 9-12.

⁸ The Firm provided a transmittal letter dated April 10, 2015 and three checks from its lawyer's office to CSI and each of the two customers, evidencing payment of the required fines and restitution.

⁹ See Att. 2 at 3; Att. 1, R. at FINRA00021.

¹⁰ The statutory disqualification will cease to be in effect only if: (1) PHX re-applies after the two-year window expires; and (2) CSI re-admits PHX. See *In the Matter of the Continued Association of Ronald M. Berman*, No. SD-1997 (December 11, 2014), available at http://www.finra.org/sites/default/files/Berman%20SD-1997%20FINAL%2019%28d%29%20DECISION%2012%2011%2014_0_0_0_0_0_0.pdf.

III. Background Information about PHX

A. The Firm

PHX has been a FINRA member since October 2007.¹¹ The Firm is based in New York, New York. According to the Central Registration Depository (“CRD”), the Firm has three branch offices, two of which are Offices of Supervisory Jurisdiction (“OSJ”), and employs approximately 74 registered individuals and 10 non-registered individuals.¹²

PHX is approved to engage in the following lines of businesses: broker or dealer retailing corporate equity securities over the counter; broker or dealer selling corporate debt securities; underwriter or selling group participant in corporate securities other than mutual funds; mutual fund retailer; U.S. government securities broker; municipal securities broker; broker or dealer selling variable life insurance or annuities; put and call broker or dealer or option writer; non-exchange member arranging for transactions in listed securities by exchange member; private placements of securities; and engages in other securities business.¹³ PHX is not a member of any other self-regulatory organizations (“SROs”). The Firm currently employs one statutorily disqualified individual.¹⁴

In seeking to address what it perceived as the cause of the Consent Order, the Firm has added General Securities Principals (Series 24) (“principals”) since the Consent Order was issued.¹⁵

B. Routine Examinations

Over the past two years, PHX has been examined by FINRA each year. None of the recent examination exceptions noted by FINRA during this time period involves findings similar to the misconduct that rendered the Firm statutorily disqualified.

FINRA’s 2015 Cycle Examination resulted in Cautionary Action. The Firm was cited for five exceptions. The most notable exceptions were that the Firm: failed to timely report customer complaints; failed to timely update the Uniform Application for Securities Industry Regulation or Transfer (“Form U4”) for two registered representatives; failed to establish an adequate system

¹¹ See Att. 1 at 2, R. at FINRA00029.

¹² See CRD; this information is current as of October 20, 2016.

¹³ See Att. 1 at 2, R. at FINRA00029; CRD.

¹⁴ PHX currently employs Anthony P. Valois, a statutorily disqualified individual. Valois is disqualified due to a Letter of Acceptance, Waiver and Consent (“AWC”) with the National Association of Securities Dealers dated January 13, 2006, in which he was barred permanently in a supervisory capacity for failure to supervise and 30 days in all capacities. No MC-400 application was required because Valois’s period of suspension elapsed.

¹⁵ See Att. 1 at 6-7, R. at FINRA00033-34; CRD. The Firm represented that additional principals would enable it to better assist in the supervision of individuals subject to heightened supervision plans. See also n.21.

for reviewing securities transactions; and failed to establish and implement adequate procedures to prevent its participation in unregistered distributions of securities.¹⁶

FINRA's 2014 Cycle Examination resulted in a referral to FINRA's Department of Enforcement ("Enforcement") for exceptions related to PHX's private placement business, including disclosures in private placement memoranda, and related supervisory issues, supervision of escrow account activity, failure to establish and implement written supervisory procedures ("WSPs") and training for the marketing and sale of real estate investment trust ("REIT") products. This referral is still pending with Enforcement. The Firm was also issued a Cautionary Action for 13 exceptions, including improper fees and charges, failure to obtain relevant account and suitability information, failure to report customer complaints to FINRA, public disclosure and communications rules, books and records rule violations, and other supervisory rule violations.¹⁷

C. Regulatory Actions

Aside from its disqualifying event, PHX has had one other regulatory action brought against it by FINRA in the past two years.

The regulatory action was brought by FINRA against PHX corporate predecessor Blackwall Capital Markets, Inc. The action was resolved through an AWC dated February 25, 2015. The AWC found that the Firm failed to retain certain Firm-related e-mails and text messages and failed to establish adequate WSPs governing the retention of electronic communications. In addition, the Firm failed to abide by certain implementation requirements and provide timely responses to search requests under the Bank Secrecy Act (BSA). The Firm was censured and fined \$40,000.¹⁸

IV. The Firm's Proposed Continued Membership with FINRA and Proposed Supervisory Plan

PHX seeks to continue its membership with FINRA notwithstanding the Consent Order that triggered its statutory disqualification. As noted above, the Consent Order did not require the Firm to comply with any undertakings and the prohibitions/restrictions against its license allow it to re-apply for registration in Montana as early as April 2017. PHX has committed to taking a number of steps as outlined below to prevent the type of misconduct addressed by the Consent Order.

¹⁶ See 2015 Cycle Examination documents: Examination Disposition Letter dated May 5, 2016, FINRA Report on the Examination of PHX dated March 30, 2016, and the Firm's responses dated April 19, 2016 and May 1, 2016, attached collectively as Attachment 4.

¹⁷ See 2014 Cycle Examination documents: Examination Disposition Letter dated December 2, 2015, FINRA Report on the Examination of PHX dated September 2, 2015, and the Firm's response dated September 30, 2015, attached collectively as Attachment 5.

¹⁸ See AWC No. 2012030486001 dated February 25, 2015, attached as Attachment 6.

Pursuant to FINRA Rule 9523(a), PHX submitted to the following plan of supervision (the “Supervisory Plan” or the “Plan”). The Firm has agreed to the following:¹⁹

1. The Firm will amend its WSPs to state that the Firm shall appoint a secondary supervisor, in addition to the primary supervisor, to oversee individuals subject to heightened supervision plans and any attendant responsibilities. The Firm has noted that any broker on heightened supervision will be directly monitored by the most senior compliance officer at the branch office: Daniel Otoya in the New York City office and Sean Case in the Long Island office. Each location has a back-up supervisor assigned to assist with heightened supervision duties: Phillip McKie in the New York City office and Steven Busto in the Long Island office.
2. The Firm will amend its WSPs to provide for a system and schedule that informs at least two supervisors of regulatory requirements involving individuals under heightened supervision. For example, if the Firm is obligated to provide periodic updates to a state regulator and/or maintain correspondence with a registered representative’s clients, two principals will be notified of and responsible for ensuring that such requirements are satisfied and are completely in a timely manner.
3. The Firm will amend its WSPs to provide for two assigned supervisors to review the trading activity of individuals under heightened supervision to look for unusual trading activity or patterns of transactions or other indications of improper trading, including, but not limited to, unusual numbers of cancels and rebills.
4. All principals associated with PHX, shall certify, in writing, that they have reviewed the modified sections of the WSPs referenced above involving supervision of registered representatives under heightened supervision plans.
5. The Firm will notify Member Regulation and provide any related documentation if it reapplies for registration in the State of Montana at any time in the future. These documents, along with updated WSPs in paragraphs 1, 2 and 3 and certifications in paragraph 4, must be sent directly to:

Lorraine Lee-Stepney
Manager, Statutory Disqualification Program
FINRA
1735 K Street NW
Washington, DC 20006
Lorraine.Lee@finra.org.

Following the approval of the Firm’s continued membership in FINRA, FINRA intends to utilize its examination and surveillance processes to monitor the Firm’s continued compliance with the standards prescribed by Rule 19h-1 of the Exchange Act and FINRA Rule 9523.

¹⁹ See executed copy of the Plan of Supervision dated October 18, 2016 attached as Attachment 7.

V. Discussion

After carefully reviewing the record in this matter, FINRA approves PHX's request to continue its membership with FINRA.

In evaluating PHX's Application, Member Regulation assessed whether the Firm has demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors.²⁰ Typically, factors that bear on Member Regulation's assessment include the nature and gravity of the statutorily disqualifying misconduct, time elapsed since its occurrence, restrictions imposed, Firm's regulatory history, and whether there has been any intervening misconduct.

As of the date of this Notice, Member Regulation finds that the Firm has demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm. While the Firm's supervisory failures at the heart of the Consent Order are serious, the Firm has committed to taking steps independently and through the Supervisory Plan to remediate its past failures. Of note are provisions in the WSPs to modify its heightened supervision plans and practices, which will help ensure such a supervisory lapse does not occur again as well as that its supervisory system is better equipped to handle the requirements of heightened supervision plans. Further, the Firm has complied with all of the provisions of the Consent Order, including payment of fines and restitution to customers. It represents that it no longer does a securities business in the State of Montana and does not have a relationship with W.H., the representative who was under heightened supervision. The Firm has indicated that it has no current intention to pursue business in the State of Montana. With respect to the changes to its WSPs, among other things, the Firm has agreed to assign at least two supervisors to the supervision of individuals under heightened supervision and create a system by which at least two supervisors are notified of any responsibilities or duties associated with a particular heightened supervision plan.²¹

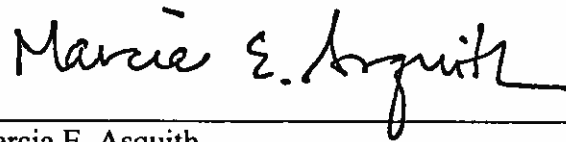
²⁰ See *In the Matter of the Continued Membership of J.P. Morgan Securities, LLC* (citing *Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (FINRA "may deny an application by a firm for association with a statutorily-disqualified individual if it determines that employment under the proposed plan would not be consistent with the public interest and the protection of investors")). See *J.P. Morgan Securities, LLC*, 19h-1 Notice, http://www.finra.org/sites/default/files/NAC%20Statutory%20Disqualification%20Decision%20SD1904_0_0_0_0_0.pdf.

²¹ With respect to additional steps taken by the Firm, the Firm represented that it added additional principals, including Sean Case and Joseph Montana, to assist with compliance duties. It also appears that the Firm has hired other principals in the past year, and a new Chief Compliance Officer, Daniel Otoy. The Firm also acknowledged that it retained the Greico Compliance Group to assist with compliance issues and re-trained its operations personnel regarding customer issues with account statements. See Att. 1 at 6-7, R. at FINRA00033-34; see also Letter from Kevin Chen to Samuel Rivera dated January 7, 2016 and Letter from Kevin Chen to Matthew Baskir dated September 23, 2016, attached as Attachment 8.

In addition, Member Regulation conducted a review of the Firm's regulatory history and recent regulatory actions and finds that none of these matters would prevent the continuance of the Firm as a FINRA member. Thus, Member Regulation is satisfied, based on the foregoing and on the Firm's representations made pursuant to the Supervisory Plan that the Firm's continued membership in FINRA does not create an unreasonable risk of harm to the market or investors.

Accordingly, Member Regulation approves PHX's Application to continue its membership in FINRA. PHX is not a member of any other SRO. In conformity with the provisions of Exchange Act Rule 19h-1, the continued membership of the Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the Commission.

On Behalf of FINRA,

A handwritten signature in black ink that reads "Marcia E. Asquith". The signature is written in a cursive style with a long horizontal stroke at the end.

Marcia E. Asquith
Senior Vice President and Corporate Secretary