

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 34-99331/ January 11, 2024

In the Matter of the Application of the
Financial Industry Regulatory Authority, Inc.
("FINRA")

For an Order Regarding FINRA's Approval of
the Proposed Association of William John
Tobias as a Non-Registered Individual With
Hold Brothers Capital LLC

Securities Exchange Act of 1934
Sections 15(b), 15A(g)(2) and 19(h)

ORDER GRANTING FINRA'S
APPLICATION FOR RELIEF
FROM CERTAIN STATUTORY
DISQUALIFICATION

FINRA has filed an application ("Application") with the Securities and Exchange Commission ("Commission") seeking an order, pursuant to Rule 19h-1(d) of the Securities Exchange Act of 1934 (the "Exchange Act"). The Application concerns FINRA's approval of the proposed association of William John Tobias, a person subject to a statutory disqualification, as a non-registered individual performing part-time accounting work for Hold Brothers Capital LLC ("HBC" or "Firm"), subject to heightened supervisory procedures.¹ More specifically, FINRA's Application seeks an order declaring that, notwithstanding Mr. Tobias's statutory disqualification, the Commission will not (1) institute proceedings pursuant to Sections 15(b) and 19(h) of the Exchange Act on the basis of Mr. Tobias's proposed association with the Firm and (2) otherwise direct FINRA to bar Mr. Tobias's proposed association with the Firm pursuant to Section 15A(g)(2) of the Exchange Act. This order grants FINRA's Application.

I. Background

A. Statutory Disqualification

As set forth in the Application, Mr. Tobias is subject to a statutory disqualification as a result of the Commission's September 25, 2012, administrative order ("2012 Commission Order"), which found that Mr. Tobias and other respondents willfully aided and abetted and

¹ FINRA filed the Application seeking relief via a notice, pursuant to Rule 19h-1 of the Exchange Act. *See* Application at 9. All representations, terms, and conditions of employment contained in FINRA's Rule 19h-1 notice filing (which includes HBC's MC-400 Application to FINRA), including anything that is not specifically discussed in this order, are incorporated herein by reference.

caused respondents Demostrate, LLC (“Demostrate”), Trade Alpha Corporation, Ltd (“Trade Alpha”), and Hold Brothers On-Line Investment Services, LLC (“Hold Brothers On-Line”)² to violate Section 9(a)(2) of the Exchange Act.³

Specifically, as FINRA summarizes, from January 2009 through September 2010, Mr. Tobias and other respondents became aware of red flags that overseas traders, who traded through accounts held at Hold Brothers On-Line by Demostrate and Trade Alpha, were engaging in a manipulative trading strategy known as “layering” or “spoofing.”⁴ FINRA notes that despite the red flags, which included concerns from exchanges and FINRA regarding manipulative trading occurring at Hold Brothers On-Line, Mr. Tobias and other respondents continued to provide the overseas traders with trading capital, access to trading platforms, and the ability to access U.S. markets, and failed to conduct adequate follow-up despite the red flags.⁵ In the application submitted to FINRA, Mr. Tobias states that he has “learned the lessons of these events and truly regret any historic failures on my part.”⁶

² See Application at 1-2. According to FINRA, Trade Alpha is an affiliate under common control with the Firm. The Firm has no active relationship with Trade Alpha and the Firm represents that Mr. Tobias will have no responsibilities at the Firm relating to Trade Alpha. See Application at n.1. At the time of the misconduct underlying the 2012 Commission Order, Mr. Tobias served as the managing member of Demostrate. The Firm represents that it has no active relationship with Demostrate and that Mr. Tobias will have no involvement with or responsibility for Demostrate. See *id.*

Further, pursuant to the 2012 Commission Order, the Commission imposed upon Hold Brothers On-Line a civil penalty, plus interest, totaling \$1,896,785 and ordered that it disgorge \$638,452. FINRA’s Central Registration Depository (“CRD”) shows that Hold Brothers On-Line also agreed to pay fines to various self-regulatory organizations (“SRO”), including FINRA, in connection with the misconduct underlying the 2012 Commission Order. See *id.* However, Hold Brothers On-Line failed to pay FINRA and as a result, FINRA expelled it in late 2012. See *id.*

³ See *In the Matter of Hold Brothers On-Line Investment Services, LLC, Demostrate, LLC, Trade Alpha Corporate, Ltd, Steven Hold, Robert Vallone, and William Tobias*, Admin. Proc. File No. 3-15046, Exchange Act Release No. 67924, Investment Company Act Release No. 30213 (September 25, 2012).

⁴ See Application at 2.

⁵ See *id.*

⁶ See *id.* According to FINRA, in May 2014, Mr. Tobias resolved a complaint brought by the New Jersey Bureau of Securities for the same misconduct as that underlying the 2012 Commission Order. Mr. Tobias’s registration was suspended for three years concurrent with the 2012 Commission Order’s temporal bar, after which time he could reapply for registration upon demonstrating that he had complied with all provisions of the 2012 Commission Order and would be subject to a heightened supervisory plan. Mr. Tobias was also fined \$12,500, which he paid. See *id.* at n.3.

Additionally, the 2012 Commission Order bars Mr. Tobias from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; prohibits him from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and bars him from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock for a period of three years, with the right to reapply thereafter.⁷

In addition to the bar, the 2012 Commission Order ordered Mr. Tobias to cease and desist from committing or causing any violations and any future violations of Exchange Act Section 9(a)(2) and imposed a \$75,000 civil penalty, which Mr. Tobias paid.⁸

As set forth in the Application, the findings of willful aiding and abetting contained in the 2012 Commission Order subject Mr. Tobias to a statutory disqualification under Section 3(a)(39)(F) of the Exchange Act, which incorporates by reference Section 15(b)(4)(E) of the Exchange Act.⁹ Additionally, the Application explains that the bar subjects Mr. Tobias to a statutory disqualification under Section 3(a)(39)(B) of the Exchange Act.¹⁰

B. Mr. Tobias's Industry Background

According to FINRA, Mr. Tobias first entered the securities industry in June 1995, when he registered as a general securities representative.¹¹ He also registered as an introducing broker-dealer financial and operations principal in May 1999, an equity trader in January 2000, and a financial and operations principal ("FINOP") in November 2003. Mr. Tobias passed the uniform securities agent state law examination in June 1995.¹² Currently, all of Mr. Tobias's broker-dealer registrations have expired.¹³ Previously, Mr. Tobias was associated with multiple FINRA member firms. In particular, he was associated with Hold Brothers On-Line from August 2012 until September 2012, from April 2003 until January 2005, and from May 1995 until April 2001.¹⁴ Mr. Tobias has not been associated with a broker-dealer since September 2012.¹⁵

⁷ See 2012 Commission Order at 12.

⁸ See Application at 2.

⁹ See *id.* at n.2.

¹⁰ See *id.*

¹¹ See *id.* at 3.

¹² See *id.*

¹³ See *id.*

¹⁴ See *id.*; see also December 14, 2022 Correspondence with FINRA Staff.

¹⁵ See Application at 3.

According to the Application, the Firm states that since the 2012 Commission Order, Mr. Tobias initially worked as an accountant for an accounting firm.¹⁶ After he became licensed as a certified public accountant, he has worked in that capacity for, and is a partner in, the accounting firm.¹⁷ FINRA notes that the record shows that Mr. Tobias is otherwise in good standing and has had no enforcement, non-compliance, or disciplinary actions brought against him.¹⁸

FINRA further notes that, other than the 2012 Commission Order and the New Jersey matter described above, the record shows no other disciplinary or regulatory proceedings, complaints, or arbitrations against Mr. Tobias.¹⁹

C. The Firm

According to FINRA, HBC has been a FINRA member since July 2016 and is based in New York City.²⁰ It has one Office of Supervisory Jurisdiction and 60 non-registered office locations.²¹ HBC employs 47 registered representatives, eight registered principals, and six non-registered fingerprinted individuals.²² It does not employ any other statutorily disqualified individuals.²³

FINRA also notes that it completed HBC's most recent examination in 2020. This examination resulted in a March 2020 Cautionary Action for the following exceptions: (1) failing to file and maintain an accurate Form BD because it did not list all entities engaging in a securities business that the Firm controlled or were under common control with the Firm; (2) failing to perform a Business Continuity Plan test on an annual basis and failing to include in its testing all required elements; (3) failing to maintain the Firm's financial and operations records in the format specified by Exchange Act rules; (4) failing to have adequate supervisory controls over its general ledger entries and its wire release process; and (5) failing to maintain adequate controls to ensure that the Firm did not withdraw funds from its customer reserve account to pay operating expenses. The Firm responded in writing to the exceptions noted in the Cautionary Action.²⁴

¹⁶ *See id.*

¹⁷ *See id.*

¹⁸ *See id.*

¹⁹ *See id.* at 3.

²⁰ *See id.*

²¹ *See id.*

²² *See id.*; *see also* December 14, 2022 Correspondence with FINRA Staff.

²³ *See* Application at 3.

²⁴ *See id.* at 3-4.

According to FINRA, the record shows no other recent regulatory or disciplinary actions against HBC.²⁵

II. Proposed Business Activities and Supervision

According to FINRA, HBC proposes to employ Mr. Tobias part-time as a non-registered individual out of its home office in New York City, although he may be permitted to work remotely several days a week.²⁶ HBC proposes Mr. Tobias will assist with accounting work, such as taxes, bookkeeping, billing, and analyses of payouts to traders and vendor payments.²⁷ Mr. Tobias will not have any customers, be assigned to any customer accounts, and will not engage with customers.²⁸

Mr. Tobias will be supervised by Ilan Lessick, HBC's Executive Vice President of Operations and Finance.²⁹ Mr. Lessick oversees HBC's accounting and financial matters. Mr. Lessick has been associated with HBC since April 2021.³⁰ Mr. Lessick first registered as a general securities representative in August 2000, as a general securities principal in May 2002, and as a FINOP in June 2003.³¹ He also passed the uniform securities agent state law examination in December 2000.³² He currently works from HBC's New York City office and supervises three other individuals.³³

²⁵ *See id.* at 4. According to FINRA, CRD shows that from 2012 through 2015, the Firm settled three matters against it brought by other SROs for failing to: (1) retain instant messages in the required format, evidence senior management approval of its Anti-Money Laundering ("AML") Program, and obtain AML attestations from its associated persons; (2) register Firm officers as proprietary trading principals, provide notification of a new FINOP and register its previous FINOP, and establish written supervisory procedures that were relevant to the nature of its business; and (3) establish, document, and maintain a risk management system and supervisory procedures reasonably designed to manage the risks of the Firm's business activities, conduct an annual review and document its annual review, and maintain a chief executive officer certification. The Firm paid a total of \$65,000 in fines and agreed to several undertakings in connection with these matters. *See id.* at n.4.

²⁶ *See id.* at 4.

²⁷ *See id.*

²⁸ *See id.*

²⁹ *See id.*

³⁰ *See id.* at 4-5.

³¹ *See id.* at 4.

³² *See id.*

³³ *See id.*

The Application sets forth that Robert Ricca, HBC's Chief Compliance Officer, will act as Mr. Tobias's alternate supervisor in the event that Mr. Lessick is unavailable.³⁴ Mr. Ricca has been associated with HBC since January 2016.³⁵ Mr. Ricca first registered as a general securities representative in May 2002, as a general securities principal in November 2007, as a municipal securities principal in June 2008, as a registered options principal in May 2010, as a research analyst in December 2010, and as a securities trader representative in March 2016.³⁶ He also passed the uniform securities agent state law examination in October 2002.³⁷ He works from HBC's New York City office and supervises two individuals.³⁸

FINRA additionally notes that Mr. Lessick and Mr. Ricca have no regulatory or disciplinary histories and collectively have more than 47 years of industry experience.³⁹

FINRA further states that based upon the record it found HBC's proposed heightened supervision plan sufficiently stringent.⁴⁰ According to the Application, HBC proposes the following procedures of heightened supervision for Mr. Tobias:

1. The written supervisory procedures for HBC will be amended to incorporate this Supervision Plan for the supervision of Mr. Tobias. Mr. Lessick is the primary supervisor responsible for Mr. Tobias. Mr. Lessick will sign a copy of the Supervision Plan, acknowledging his receipt and acceptance of it.
2. If Mr. Lessick is to be on vacation or out of the office for an extended period, Mr. Ricca will act as Mr. Tobias's interim supervisor.
3. Mr. Tobias will be supervised by Mr. Lessick or Mr. Ricca in the Firm's main office located at One Penn Plaza, New York, New York 10119.⁴¹
4. As defined in FINRA Rules 1220(b)(3)(A)(i) and (ii), Mr. Tobias will not act as a "covered person" nor perform any "covered functions."
5. Mr. Tobias will only engage in the following duties at HBC:

³⁴ See *id.* at 5.

³⁵ See *id.*

³⁶ See *id.*

³⁷ See *id.*

³⁸ See *id.*

³⁹ See *id.* at 6.

⁴⁰ See *id.*

⁴¹ According to FINRA, the Firm initially represented that because of COVID-19, Mr. Tobias might work remotely three days a week. The Firm represents that going forward, Mr. Tobias may be permitted to continue to work remotely, in which case Mr. Tobias's supervisors will review his work electronically. See *id.* at n.5.

- a. posting and analyzing the Firm's financial books and records;
 - b. review and preparation of payroll and tax filings;
 - c. preparation of assessment reports (e.g., SIPC); and
 - d. analyzing reports of clearing and routing, revenue, payroll and vendor payments.
6. Mr. Tobias will not act in a supervisory capacity.
 7. Mr. Tobias will not have any customers, be assigned to any customer accounts, nor engage with customers.
 8. All of Mr. Tobias's outgoing emails will be blind copied to Mr. Lessick and reviewed by Mr. Lessick on a bi-weekly (i.e., every two weeks) basis. Mr. Lessick will also review all of Mr. Tobias's incoming emails on a bi-weekly basis. Mr. Lessick will review any other written correspondence directed to, authorized by, or sent by Mr. Tobias on a bi-weekly basis. Records of such reviews will be kept segregated for ease of review during any FINRA examination.
 9. Mr. Tobias will not be permitted to use any email address other than the Firm's email address for business communications. If Mr. Tobias receives a business-related email message in another email account outside the Firm, he will promptly deliver that message to the Firm's email account. In addition, Mr. Tobias will inform the Firm of all outside email accounts which he maintains and will provide the Firm access to those accounts upon request.
 10. All complaints pertaining to Mr. Tobias, whether verbal or written, will be immediately referred to Mr. Lessick for review, and then to the Compliance Department. Mr. Lessick will prepare a memorandum to the file with full details as to the review, investigation and resolution of the matter. Documents pertaining to these complaints will be kept segregated for ease of review during any FINRA examination.
 11. Mr. Lessick must certify quarterly to the Chief Executive Officer for the Firm that Mr. Lessick and Mr. Tobias are in compliance with all of the conditions of the Supervision Plan. These certifications will be kept segregated for ease of review during any FINRA examination.
 12. The Firm must obtain prior approval from FINRA Member Supervision if it wishes to change Mr. Tobias's primary or alternate supervisors or if the Firm wishes to change any provision of this Supervision Plan. The Firm will submit any proposed changes or other requested information under this Supervision Plan to FINRA's SD Group at SDMailbox@FINRA.org.⁴²

⁴² See *id.* at 7-8.

III. Relief Sought

Pursuant to Exchange Act Rule 19h-1(d), the Commission may grant applications related to relief for certain statutory disqualifications. More specifically, pursuant to Rule 19h-1(d), an SRO may include with its 19h-1 notice an application to the Commission seeking an order declaring, as applicable here, that notwithstanding such person's disqualification, the Commission:

1. Will not institute proceedings pursuant to, among other things, Sections 15(b)(6) and 19(h) of the Exchange Act if such person seeks to obtain association with a broker or dealer; and
2. Will not direct the SRO to, among other things, bar the proposed association as provided in Section 15A(g)(2) of the Exchange Act.

In the Application, FINRA seeks such an order from the Commission.

IV. Conclusion

The Commission has reviewed the Application and the record before FINRA in connection with FINRA's approval of Mr. Tobias's proposed association with the Firm as a non-registered individual performing part-time accounting work subject to heightened supervisory procedures. Based on that review of the representations made by FINRA and HBC in the Application and documents referenced or appended thereto,⁴³ the Commission grants FINRA's application, pursuant to Exchange Act Rule 19h-1(d), seeking a declaration from the Commission that it will not: (1) institute proceedings pursuant to Sections 15(b) and 19(h) of the Exchange Act on the basis of Mr. Tobias seeking to obtain association with the Firm and (2) direct FINRA to bar Mr. Tobias's proposed association pursuant to Section 15A(g)(2) of the Exchange Act.

⁴³ See *supra* note 1 (stating that all representations, terms, and conditions of employment contained in FINRA's Rule 19h-1 notice filing (which includes HBC's MC-400 Application to FINRA), including anything that is not specifically listed in this order, are incorporated herein by reference).

Accordingly, IT IS ORDERED that the Application of FINRA on behalf of HBC and Tobias be, and hereby is, granted.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁴

Sherry R. Haywood,

Assistant Secretary.

⁴⁴ 17 CFR 200.30-3(a)(4).