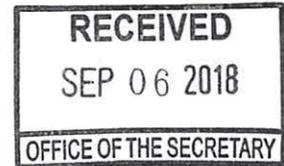




Financial Industry Regulatory Authority

Michael Garawski
Associate General Counsel

Direct: (202) 728-8835
Fax: (202) 728-8264



September 5, 2018

BY MESSENGER

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Room 10915
Washington, DC 20549-1090

RE: In the Matter of FINRA for an Order Granting the Approval of
Proposed Rule Change to Adopt FINRA Rule 1113 and to Amend the
FINRA Rule 9520 Series (File No. SR-FINRA-2010-056)

Dear Mr. Fields:

Enclosed please find the original and three copies of FINRA's Statement in Support of
Proposed Rule Change to Adopt FINRA Rule 1113 and to Amend the FINRA Rule
9520 Series.

Very truly yours,

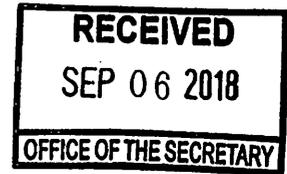
A handwritten signature in blue ink, appearing to read "Michael Garawski". The signature is fluid and cursive.

Michael Garawski

Enclosures

cc: Manuel P. Asensio

**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC**



In the Matter of

**Financial Industry Regulatory Authority,
Inc.**

For an Order Granting the Approval of

Proposed Rule Change to Adopt FINRA Rule
1113 (Restriction Pertaining to New Member
Applications) and to Amend the FINRA Rule
9520 Series (Eligibility Proceedings) (File No.
SR-FINRA-2010-056)

**FINRA'S STATEMENT IN SUPPORT OF PROPOSED RULE CHANGE TO ADOPT
FINRA RULE 1113 AND TO AMEND THE FINRA RULE 9520 SERIES**

Alan Lawhead
Vice President and Director-Appellate Group

Michael Garawski
Associate General Counsel

Andrew Love
Associate General Counsel

FINRA
1735 K Street, N.W.
Washington, DC 20006
(202) 728-8835

Dated: September 5, 2018

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**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC**

In the Matter of

**Financial Industry Regulatory Authority,
Inc.**

For an Order Granting the Approval of

Proposed Rule Change to Adopt FINRA Rule 1113 (Restriction Pertaining to New Member Applications) and to Amend the FINRA Rule 9520 Series (Eligibility Proceedings) (File No. SR-FINRA-2010-056)

**FINRA'S STATEMENT IN SUPPORT OF PROPOSED RULE CHANGE TO ADOPT
FINRA RULE 1113 AND TO AMEND THE FINRA RULE 9520 SERIES**

I. SUMMARY

The federal securities laws define as “statutory disqualifications” specific actions taken against an individual or a firm by a court or regulator based on serious misconduct. A statutorily disqualified person is prohibited from associating with a FINRA member, unless FINRA grants special permission for the statutorily disqualified person to associate or continue to associate with the member. A statutorily disqualified firm must also apply to FINRA to become or remain a FINRA member, in spite of the statutory disqualification. These statutory disqualification restrictions are crucial to protecting investors who entrust broker-dealers to act in their best interests.

The presumption that a statutorily disqualified person or firm will be excluded from associating with a FINRA member or from FINRA membership is effectuated by the requirement that members that sponsor a disqualified person show that, despite the

disqualification, approval by FINRA of the association is consistent with protecting investors and in the public interest. Similarly, firms subject to a disqualification must convincingly show that their being a member of FINRA is consistent with the protection of investors and the public interest. The burdens that a statutorily disqualified person, applicant, or firm face in overcoming the disqualification are an appropriate safeguard given the nature of statutory disqualifying events. For example, three such events are: (1) criminal felony and certain financially-related misdemeanor convictions within the last ten years; (2) expulsions, bars, and current suspensions ordered by the Securities and Exchange Commission (“SEC”), the Commodity Futures Trading Commission (“CFTC”), or self-regulatory organizations (“SROs”); and (3) final orders of a state securities commission (or similar agency) barring an individual or that are based on violations of laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.¹

To protect investors, FINRA—through the challenged rule proposal—seeks to restrict further the opportunities for statutorily disqualified persons to participate in the securities industry. Currently, FINRA’s rules allow a new member applicant that is statutorily disqualified or that proposes to associate with a statutorily disqualified person to apply for FINRA membership. There are no gateway restrictions in FINRA’s membership process that are based on statutory disqualifications. FINRA’s current rules also place no limits on a member’s ability to file a statutory disqualification application for an owner who is statutorily disqualified. FINRA’s proposed amendments to its rules (the “Proposed Rule”) would remedy this

¹ A more detailed description of statutorily disqualifying events is discussed *infra* at Part III. Further, although the proposed rule governs statutorily disqualified persons, new member applicants, and members, this statement focuses on statutorily disqualified persons and the risks they pose to the investing public, rather than new member applicants or disqualified members.

shortcoming. The Proposed Rule is a key part of FINRA’s strenuous efforts to prevent fraud and abuse of retail investors.²

The Proposed Rule would adopt new FINRA Rule 1113 (Restriction Pertaining to New Member Applications) and amend the FINRA Rule 9520 Series (“Eligibility Proceedings”) to restrict certain FINRA members and new member applicants from being able to associate with statutorily disqualified persons. The Proposed Rule would adopt new FINRA Rule 1113 to provide that FINRA shall reject an application for membership (“New Member Application”) in which either the applicant or an associated person of the applicant is statutorily disqualified. Additionally, the Proposed Rule would amend the FINRA Rule 9520 Series to, among other things,³ establish that a member cannot sponsor a statutory disqualification application of a disqualified person who is directly or indirectly a beneficial owner of more than five percent of the member.

By amending its rules, FINRA seeks to preclude highly risky situations that pose an unreasonable risk of harm to the investing public. FINRA Rule 1113 therefore prohibits applicants for FINRA membership from associating with a statutorily disqualified person and, except in limited circumstances, becoming FINRA members if they themselves are statutorily disqualified. New member applicants are ill-equipped for the heavy responsibility of supervising a statutorily disqualified person or ensuring that they follow a stringent heightened supervisory plan, which are critical to investor protection.

² See, e.g., *FINRA Regulatory Notice 18-15 (Heightened Supervision)*, 2018 FINRA LEXIS 14 (Apr. 30, 2018); *FINRA Regulatory Notice 18-16 (High-Risk Brokers)*, 2018 FINRA LEXIS 15 (Apr. 30, 2018).

³ Additional aspects of the FINRA Rule 9520 Series amendments are discussed in Part II.

The proposed amendments to the Eligibility Proceedings rules to prohibit statutory disqualification applications when the statutorily disqualified person is an owner of five percent or more of the member is also a vital investor protection measure. Statutorily disqualified persons must be stringently supervised pursuant to a heightened supervisory plan that is free from conflicts of interests between the disqualified person and his or her supervisor. A member's ability to stringently supervise a statutory disqualified person is inherently impaired when it is an owner who must be supervised. Accordingly, these statutory disqualification applications should not be allowed.

The Proposed Rule was approved, pursuant to delegated authority, by the Division of Trading and Markets ("Division"), in 2011. For the reasons explained below, the Commission should affirm the Division's order and approve FINRA's Proposed Rule.

II. BACKGROUND OF PROPOSED RULE AND THE COMMISSION'S REVIEW

A. FINRA's Proposal to Eliminate High-Risk Applications Involving Statutorily Disqualified Persons and Firms

The Proposed Rule imposes restrictions in FINRA's rules governing New Member Applications and Eligibility Proceedings that target statutorily disqualified persons, applicants for FINRA membership, and statutorily disqualified members.⁴

Proposed FINRA Rule 1113 requires that FINRA reject an application for a new firm to become a member where either the new firm applying, or any proposed associated person of the

⁴ The Proposed Rule will bolster and reinforce FINRA's recent initiatives to address associated persons with a history of misconduct that pose a risk to investors, and emphasize the importance of strengthened oversight of such individuals. *See FINRA Regulatory Notice 18-15 (Heightened Supervision); FINRA Regulatory Notice 18-16 (High-Risk Brokers).*

new firm, is statutorily disqualified.⁵ FINRA Rule 1113 states: “The Department of Member Regulation shall reject an application for membership with FINRA pursuant to NASD Rule 1013 in which either the applicant or an associated person, . . . is subject to a statutory disqualification”⁶

The Proposed Rule amends the rules for Eligibility Proceedings, the FINRA Rule 9520 Series, in several ways. The Proposed Rule amends the definition of “disqualified member” in FINRA Rule 9521 to clarify that a new member applicant may not submit a statutory disqualification application in an Eligibility Proceeding. The Proposed Rule also precludes an existing member from sponsoring the association or continued association of a statutorily disqualified person who is directly or indirectly the beneficial owner of more than five percent of the member. Specifically, FINRA Rule 9521(b)(4) would restrict the definition of a “sponsoring member” for Eligibility Proceedings by stating that a sponsoring member may not sponsor the association or continued association of a disqualified person who is “directly or indirectly the beneficial owner of more than five percent of the sponsoring member.”⁷ Finally, the Proposed Rule would eliminate from the definition of “sponsoring member” the reference to new member applicants. This change conforms the definition of “sponsoring member” to the new restriction in FINRA Rule 1113.

⁵ The Proposed Rule, however, would not apply to a new member applicant that is statutorily disqualified pursuant to Section 3(a)(39)(E) of the Securities Exchange Act of 1934 (“Exchange Act”) solely due to its association with a non-natural person that is itself subject to a statutory disqualification. *See Notice of Filing of Proposed Rule Change*, Exchange Act Release No. 63316, 2010 SEC LEXIS 3845 (Nov. 15, 2010), 75 Fed. Reg. 71166 (Nov. 22, 2010).

⁶ The text of the Proposed Rule is attached as Appendix A. Proposed FINRA Rule 1113 also allows FINRA to cancel a New Member Application that is approved in error.

⁷ Appendix A, p. 28.

B. Procedural History of the Proposed Rule

On November 1, 2010, FINRA filed the Proposed Rule with the Commission pursuant to Exchange Act Section 19(b)(1).⁸ Two parties, including Manuel P. Asensio (“Petitioner”), filed comments to the proposed rule change. After the public comment period, the Division—pursuant to delegated authority—approved the Proposed Rule on February 18, 2011.⁹ The Approval Order stated that “[t]he Commission . . . finds that the proposed rule change is consistent with the requirements of the [Exchange] Act and the rules and regulations thereunder applicable to a national securities association.” The Approval Order further affirmed that “the Commission agrees that a new member applicant should enter FINRA membership free of the supervisory and operating concerns raised by association with a statutorily disqualified person or being itself subject to a statutory disqualification.”¹⁰

On March 4, 2011, Petitioner filed a petition for review of the Division’s action in approving the Proposed Rule (the “Petition”).¹¹ On August 15, 2018, the Commission granted

⁸ See Exchange Act Release No. 63316, 75 Fed. Reg. 71166.

⁹ See *Order Approving a Proposed Rule Change to Adopt FINRA Rule 1113 (Restriction Pertaining to New Member Application) and to Amend the FINRA Rule 9520 Series (Eligibility Proceedings)* [hereinafter the “Approval Order”], Exchange Act Release No. 63933, 2011 SEC LEXIS 664 (Feb. 18, 2011), 76 Fed. Reg. 10629 (Feb. 25, 2011).

¹⁰ Approval Order, 76 Fed. Reg. at 10631. The Division issued the Approval Order, on behalf of the Commission, pursuant to delegated authority.

¹¹ The Petitioner raises arguments in his Petition that are similar to the comments he initially filed to the Proposed Rule. See Approval Order, 76 Fed. Reg. 10629, 10630-31. As set forth below, his arguments against the Proposed Rule are without merit. See *supra* Part IV. The only other commenter to the Proposed Rule did not oppose it, but rather requested amendments that were outside the scope of the Proposed Rule. See Approval Order, 76 Fed. Reg. 10629, 10631.

the Petition, and established that any party to the action or other person may file a written statement regarding the Approval Order.

C. Applicable Legal Standards

In deciding a petition for review that challenges the Division's approval of an SRO's rule pursuant to delegated authority, the Commission "may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part," the approval order.¹² The Commission conducts a de novo review of the Division's approval.¹³ When the Commission considers a FINRA proposed rule change, it shall approve the rule when it is "consistent with the requirements" of the Exchange Act and the rules and regulations issued thereunder that apply to a registered securities association.¹⁴

For a registered securities association such as FINRA, the central requirements for its rules are that they: (1) be designed to prevent fraudulent and manipulative acts and practices; (2) promote just and equitable principles of trade; and (3) protect investors and the public interest.¹⁵ As described below, FINRA's Proposed Rule is fully consistent with the Exchange Act.

¹² SEC Rule of Practice 431(a).

¹³ See *NASDAQ OMX BX, Inc.*, Exchange Act Release No. 65592, 2011 SEC LEXIS 3717, at *12 (Oct. 19, 2011) (explaining that the Commission determines whether "to grant de novo review of the Division's exercise of delegated authority").

¹⁴ See Exchange Act Section 19(b)(2)(C).

¹⁵ See Exchange Act Section 15A(b)(6).

III. THE PROPOSED RULE IS CONSISTENT WITH THE EXCHANGE ACT AND THE COMMISSION SHOULD APPROVE IT

The Commission should affirm the Division's Approval Order and approve FINRA's Proposed Rule to impose limited, common-sense restrictions upon New Member Applications and members' association with certain statutorily disqualified individuals (who by definition have demonstrated a history of serious misconduct). The Proposed Rule will restrict New Member Applications and statutory disqualification applications in situations where an applicant's ability to provide stringent supervision is deeply in doubt and the risk of harm to the investing public is perilously high. As described below, the Proposed Rule is consistent with, and furthers the purposes of, the Exchange Act because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and to protect investors and the public interest.¹⁶

A person is statutorily disqualified with respect to association with a member if, among other things, he or she is the subject of any of the following events involving serious misconduct: (1) a felony conviction or convictions involving certain financially-related misdemeanors within the last 10 years; (2) a bar or current suspension ordered by the Commission, the CFTC, or an SRO; (3) a final order of a state securities commission (or similar agency) barring an individual or based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct; (4) an order finding that he or she willfully violated federal securities laws, the Commodity Exchange Act, or Municipal Securities Rulemaking Board rules; or (5) a court

¹⁶ See Exchange Act Section 15A(b)(6).

order enjoining an individual from, among other things, engaging in any conduct or practice as a broker-dealer or in connection with the purchase or sale of any security.¹⁷

FINRA's By-Laws and rules generally require a new member applicant or member to obtain FINRA's permission to allow a statutorily disqualified person to associate or continue to associate with it.¹⁸ The new applicant or member sponsoring the disqualified person has the burden of demonstrating that the disqualified person's proposed association is consistent with the public interest despite the disqualification and that the person's association will not present an unreasonable risk of harm to the market or investors.¹⁹ "Congress has granted [FINRA] broad discretion in matters involving the employment of statutorily disqualified individuals."²⁰ Currently, FINRA's rules do not impose any targeted restrictions on the ability of a new member applicant or member to sponsor a statutorily disqualified person.

¹⁷ See Exchange Act Section 3(a)(39); FINRA's By-Laws Art. III, Sec. 4. New member applicants and members are also subject to statutory disqualification pursuant to these provisions, and must also obtain FINRA's permission to become or remain a FINRA member.

¹⁸ See FINRA's By-Laws Art. III, Sec. 3; FINRA Rule 9520 Series (Eligibility Proceedings).

¹⁹ See *Timothy P. Pedregon, Jr.*, Exchange Act Release No. 61791, 2010 SEC LEXIS 1164, at *16 & n.17 (Mar. 26, 2010) (stating that "[t]he burden is on the applicant to show that it is in the public interest to permit the requested employment despite the disqualification"); *In the Matter of the Continued Ass'n of X*, Redacted Decision No. SD12008, slip op. at 17 (FINRA NAC 2012), <http://www.finra.org/sites/default/files/NACDecision/p284393.pdf> (assessing "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"), *aff'd*, Exchange Act Release No. 72485, 2014 SEC LEXIS 2270 (June 26, 2014).

²⁰ *William J. Haberman*, 53 S.E.C. 1024, 1030 n.22 (1998).

The Commission has repeatedly emphasized the importance of “stringent” supervision for statutorily disqualified persons.²¹ In furtherance of this principle, FINRA carefully scrutinizes, among other things, the applicant’s proposed heightened supervision to be afforded the disqualified person when FINRA reviews an application to associate with a disqualified person.²² FINRA carefully examines the proposed heightened supervision of a disqualified person to ensure that his or her association or continued association with a member is in the public interest and does not present an unreasonable risk of harm to the market or investors.²³

The Proposed Rule would further protect investors by restricting—in a targeted way—the situations in which a new member applicant or member can sponsor a statutorily disqualified person because the crucial requirement of stringent supervision simply cannot be satisfied. The Proposed Rule would require FINRA to reject a New Member Application where an associated person of the applicant is statutorily disqualified. The Proposed Rule would also prohibit certain

²¹ See *Morton Kantrowitz*, 55 S.E.C. 98, 102 (2001) (“In determining whether to permit the employment of a statutorily disqualified person, the quality of the supervision to be accorded that person is of the utmost importance. We have made it clear that such persons must be subject to stringent oversight by supervisors who are fully qualified to implement the necessary controls.”); *Pedregon*, 2010 SEC LEXIS 1164, at *27 & n.30 (holding that a statutorily disqualified individual must be subject to stringent supervision); *Haberman*, 53 S.E.C. at 1031-32 (“We require, however, stringent supervision for a person subject to a statutory disqualification. . . . [W]e find that the proposed supervision lacks the intensive scrutiny required for a person subject to a statutory disqualification.”).

²² In addition to the proposed plan of heightened supervision, FINRA also generally examines the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, the totality of regulatory history of the disqualified person and sponsoring member, and the potential for future regulatory problems. See *In the Matter of the Continued Ass’n of Bruce Meyers with Meyers Assocs., L.P.*, SD-2069, slip op. at 28 (FINRA NAC May 6, 2016), https://www.finra.org/sites/default/files/SD-2069-Meyers_0.pdf, *aff’d*, Exchange Act Release No. 81778, 2017 SEC LEXIS 3096, at *29-30 (Sept. 29, 2017).

²³ See *supra* notes 19 and 21.

new member applicants that are themselves statutorily disqualified from applying for FINRA membership. In addition, the Proposed Rule would prohibit a new member applicant (i.e., an entity that has never previously operated as a broker-dealer) from sponsoring, in an Eligibility Proceeding, the association of a statutorily disqualified person.

A new member applicant has no operating history and no history supervising registered personnel (let alone statutorily disqualified persons), and should become a FINRA member free of the heavy burden and operating concerns that accompany being associated with a statutorily disqualified person who has already engaged in serious misconduct. Given the critical importance of the sponsoring member's supervision over the statutorily disqualified person or ensuring that the member itself is following its own heightened plan, eliminating the ability of a brand new member to sponsor a statutorily disqualified person, or for itself to become a FINRA member if it is disqualified, furthers the protection of the investing public and will help prevent misconduct.

The Proposed Rule also makes practical sense: a new member applicant lacks any track record to show that it can provide stringent supervision, especially of a person who has engaged in the serious misconduct that resulted in his or her statutory disqualification. The Proposed Rule will allow new member applicants to focus on their operations and compliance with securities rules and regulations, without also attempting to meet the heavy burden of stringently supervising an inherently risky disqualified person.

The Proposed Rule would also preclude a member from sponsoring the association or continued association of a statutorily disqualified person who owns five percent or more of the

sponsoring member.²⁴ While the Proposed Rule amends other parts of the Eligibility Proceedings, we believe that a key advantage results from the five-percent restriction. This aspect of the Proposed Rule serves to further investor protection by ensuring that the lynchpin underlying the association of a statutorily disqualified person with a member—stringent supervision—is untainted by undue influence by a disqualified person. A person holding an ownership interest in a member necessarily wields influence over the member’s decision making, including whether to sponsor that person if he or she becomes subject to statutory disqualification. The member’s objectivity in deciding to sponsor a disqualified person who holds an ownership interest is necessarily hindered, and the member may downplay or ignore important considerations when deciding to sponsor the person (such as the nature and gravity of the person’s disqualifying event, the person’s other regulatory and disciplinary history, the person’s experience and activities at the firm, and whether it can adequately supervise its disqualified owner).²⁵ The Proposed Rule eliminates this inherent potential impairment of a member’s judgment and helps to ensure that a member sponsors only those persons who are capable of complying with securities rules and regulations pursuant to heightened supervision.

²⁴ A statutorily disqualified person owning five percent or more of a member could still seek to associate or continue to associate with a member notwithstanding his or her disqualification by either: (1) reducing his or her ownership share in the sponsoring member to a de minimis level where the person is unlikely to wield influence over a member’s decision making (i.e., below five percent); or (2) finding a member in which the person does not hold a five percent or more ownership interest to sponsor him or her through a FINRA Eligibility Proceeding.

²⁵ See, e.g., *Meyers Assocs.*, 2017 SEC LEXIS 3096 (affirming FINRA’s denial of application for owner of firm to continue to associate where he was the subject of a recent and serious disqualification order and had an extensive regulatory and disciplinary history).

Moreover, supervising a person who has an ownership interest in a member presents inherent conflicts of interest.²⁶ FINRA’s supervision rules recognize this fact in the normal course of a member’s supervision of its personnel.²⁷ Investor protection concerns over these conflicts are exacerbated where an owner is a disqualified person who must be subject to stringent supervision and intensive scrutiny under a heightened supervisory plan. Indeed, the Commission has repeatedly emphasized the difficulty of heightened supervision of an owner:

In evaluating the adequacy of a proposed supervisory system for a statutorily disqualified person, we have also found that it is especially difficult for employees to supervise effectively the activities of the owner of a firm. The owner of the firm will almost certainly continue to exercise control over the firm’s operations, including the ability to fire an employee charged with the responsibility to supervise the firm’s owner.²⁸

Along these lines, even a well-designed heightened supervisory plan has limits that are tested when the subject of the supervisory plan holds an ownership interest in the sponsoring

²⁶ The Commission has emphasized that “stringent supervision free of any conflicts of interest between the supervised [disqualified] individual and his supervisor (and, in turn, firm management) is of the utmost importance.” See *Robert J. Escobio*, Exchange Act Release No. 83501, 2018 SEC LEXIS 1512, at *21 (June 22, 2018).

²⁷ See, e.g., FINRA Rule 3110(b)(6)(C) (providing that a member’s supervisory procedures shall include, among other things, provisions prohibiting associated persons who perform supervisory functions from reporting to, or having their compensation or continued employment determined by, a person or persons they are supervising, and that if a member determines that compliance with this provision is not possible because of the member’s size or a supervisory person’s position within the member, the member must document the factors used to reach such determination and how the supervisory arrangement with respect to such supervisory personnel otherwise complies with FINRA Rule 3110(a)).

²⁸ See *Asensio & Co.*, Exchange Act Release No. 68505, 2012 SEC LEXIS 3954, at *28 (Dec. 20, 2012) (internal quotations omitted); see also *Meyers Assocs.*, 2017 SEC LEXIS 3096, at *29-30 (“We agree with FINRA that . . . the inability of the firm’s proposed supervisors to stringently supervise Meyers as a statutorily disqualified individual and owner of the Firm provided a basis for its conclusion that the membership continuance application should be denied”); *Citadel Secs. Corp.*, 57 S.E.C. 502, 510 (2004) (stating that it is “difficult” for employees to effectively supervise the activities of a statutorily disqualified owner of a firm).

member. Such situations pose the risk that the member and individuals ostensibly charged with supervising a statutorily disqualified owner will not vigorously enforce the terms of heightened supervision (and thus place themselves and perhaps the entire firm at risk), to the detriment of the investing public and just and equitable principles of trade. The Proposed Rule eliminates these concerns, strengthens protections for investors, and reduces the risk of harmful conduct.

Finally, the Division also properly considered, in accordance with Exchange Act Section 3(f), the Proposed Rule's impact on efficiency, competition, and capital formation.²⁹

Consideration of these factors further supports affirming the Approval Order and approving the Proposed Rule. The Proposed Rule, which is procedural in nature and targeted towards preventing the filing of New Member Applications and statutory disqualification applications in narrow situations, will not have any direct impact on competition or capital formation.³⁰

Moreover, the Proposed Rule will further efficiency by eliminating limited categories of New Member Applications and statutory disqualification applications and the need to undergo potentially lengthy and costly proceedings in situations where a new member applicant or member cannot establish that approval of such application is consistent with the public interest. In these instances, the Proposed Rule will conserve the resources of new member applicants, members, and FINRA.

²⁹ See Approval Order, 76 Fed. Reg. 10629, 10631 n.22.

³⁰ Further, the Commission has previously stated that it may require stringent supervision of a statutorily disqualified individual regardless of whether such requirement burdens competition. See *Haberman*, 53 S.E.C. at 1032 n.24.

IV. THE PETITIONER'S ARGUMENTS AGAINST APPROVAL ARE MERITLESS

Petitioner requests that the Commission set aside the Approval Order and reject the Proposed Rule.³¹ None of Petitioner's arguments, however, has merit.

A. Petitioner's Complaints About FINRA's Disciplinary Process Are Misplaced

Petitioner premises many of his objections to FINRA's Proposed Rule with attacks on FINRA's disciplinary process. He argues that "the law empowering FINRA to deprive individuals of livelihood and property . . . raises questions of violations of due process of law" and that the Proposed Rule gives FINRA "absolute discretion in restricting review" of FINRA actions that impose sanctions.³² These arguments are inapposite. Nothing in the Proposed Rule changes anything in the rules governing FINRA's disciplinary proceedings. The Proposed Rule affects only the rules governing FINRA's membership proceedings and FINRA's statutory disqualification proceedings, neither of which properly involve a "review" or "redress" of a FINRA-imposed disciplinary sanction. Petitioner's underlying point appears to be that FINRA's statutory disqualification proceedings should be available as an avenue to collaterally attack disciplinary sanctions. The Commission has, however, squarely rejected this proposition.³³

³¹ The Petition will be cited as "Pet. ____".

³² Pet. 5, 6.

³³ See *Asensio & Co.*, 2012 SEC LEXIS 3954, at *45 (holding that FINRA's eligibility and new membership application processes do not permit collateral attacks on disciplinary sanctions or the facts and legal analysis that led to those sanctions).

Furthermore, the substance of Petitioner’s arguments about FINRA’s disciplinary process is flawed. SROs are not subject to Constitutional procedural due process requirements.³⁴ Rather, the Exchange Act requires SROs to provide a “fair procedure” for its disciplinary proceedings.³⁵ The Commission has approved FINRA’s disciplinary rules and found that they satisfy the fair procedure requirement.³⁶

Contrary to Petitioner’s claims, FINRA does not have “absolute” or “sole” discretion—or anything of the sort—when it imposes or reviews disciplinary sanctions. Instead, FINRA’s disciplinary proceedings have a multi-tier appeal and review process that allows a respondent to obtain review from numerous adjudicatory bodies. These include: (1) FINRA’s National Adjudicatory Council (“NAC”), which performs a de novo review of a sanction imposed by a FINRA Hearing Panel or a FINRA Hearing Officer; (2) FINRA’s Board of Directors, which has discretionary review authority over NAC decisions; (3) the Commission, which performs a de novo review of FINRA’s final disciplinary actions; and (4) federal courts of appeals, which review final Commission orders.³⁷ Indeed, Petitioner—whose opposition to the Proposed Rule

³⁴ See *Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *51 (Jan. 30, 2009) (citing *Desiderio v. NASD*, 191 F.3d 198, 206-07 (2d Cir. 1999), and *Mark H. Love*, 57 S.E.C. 315, 322 n.13 (2004)), *aff’d*, 416 F. App’x 142 (3d Cir. 2010).

³⁵ See *id.*; Exchange Act Sections 15A(b)(8) and 15A(h)(1).

³⁶ See, e.g., *Order Approving Proposed Rule Change*, Exchange Act Release No. 38908, 1997 SEC LEXIS 1617, at *118-19 (Aug. 7, 1997) (finding that FINRA’s disciplinary rules are “consistent with the [Exchange] Act,” “should provide fair and efficient procedures to address disciplinary matters,” and are “consistent with . . . Sections 15A(b)(6) and 15A(b)(8) of the Act”); *Kenny Akindemowo*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769, at *33 (Sept. 30, 2016) (finding that FINRA’s disciplinary proceeding was fair because, among other reasons, the Commission has approved FINRA’s disciplinary proceedings rules).

³⁷ See FINRA Rule 9300 Series (Review of Disciplinary Proceeding by National Adjudicatory Council and FINRA Board; Application for SEC Review); Exchange Act Section

[Footnote continued on next page]

stems from the bar that FINRA imposed on him in a disciplinary proceeding—could have pursued an established avenue to seek review of that sanction.³⁸ The only timely appeal he filed, however, was the appeal he filed with the NAC from the FINRA Hearing Panel decision that initially barred him.³⁹ Petitioner chose not to further appeal to the Commission until years later.

Petitioner also incorrectly suggests that Exchange Act Sections 15A(b)(7) and 15A(g)(2) support his contention that FINRA has “sole discretion” when imposing sanctions.⁴⁰ But Exchange Act Section 15A(b)(7) states that FINRA’s rules provide that its members and persons associated with its members be appropriately disciplined for violations. Nothing in that provision gives FINRA “sole discretion” when imposing sanctions or affects the multi-tier appellate and review process that exists for FINRA disciplinary actions. As for Exchange Act Section 15A(g)(2)—which provides that FINRA may, and shall in cases where the Commission

[cont’d]

19(e) (governing Commission review of final disciplinary sanctions imposed by SROs); SEC Rule of Practice 420 (appeals of determinations by SROs); Exchange Act Section 25(a)(1) (judicial review); *Dep’t of Enforcement v. Ahmed*, Complaint No. 2012034211301, 2015 FINRA Discip. LEXIS 45, at *110 (FINRA NAC Sept. 25, 2015) (demonstrating that the NAC conducts de novo review of disciplinary actions), *aff’d*, Exchange Act Release No. 81759, 2017 SEC LEXIS 3078 (Sept. 28, 2017); *First Colo. Fin. Servs. Co.*, 53 S.E.C. 843, 844 n.2 (1998) (demonstrating that the SEC conducts a de novo review of FINRA disciplinary actions).

³⁸ Pet. 5-6; *see* Exchange Act Section 19(d)(2) (requiring, in pertinent part, that an SRO disciplinary action be subject to review by the SEC “upon application for review by any person aggrieved thereby”).

³⁹ *See Dep’t of Enforcement v. Asensio Brokerage Servs., Inc. and Manuel Peter Asensio*, Complaint No. CAF030067, 2005 NASD Discip. LEXIS 49 (NASD Hearing Panel Jan. 4, 2005), *aff’d in relevant part*, 2006 NASD Discip. LEXIS 20 (NASD NAC July 28, 2006), *dismissed Manuel P. Asensio*, Exchange Act Release No. 62315, 2010 SEC LEXIS 2014 (June 17, 2010) (dismissing petition for review as untimely), *aff’d*, 447 F. App’x 984 (11th Cir. 2011).

⁴⁰ Pet. 3 & n.5.

directs it, deny membership to any registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification—that provision as well does not give FINRA sole discretion over statutory disqualification applications. When FINRA denies an application, the aggrieved party can appeal the decision to the Commission.⁴¹ Neither provision the Petitioner cites supports the claim that FINRA may act based on its sole discretion.

In another line of attack, Petitioner generally impugns the impartiality of FINRA adjudicators, but that baseless claim also fails to show that FINRA’s disciplinary proceedings do not provide a fair procedure.⁴² The general structure of Hearing Panels, NAC Subcommittees, and the NAC are set forth in FINRA rules, which the Commission has already approved as consistent with the Exchange Act.⁴³ Moreover, a respondent in a disciplinary proceeding can raise, and attempt to prove, allegations that specific adjudicators are biased. Giving respondents such an opportunity to be heard is one hallmark of a fair procedure.⁴⁴

⁴¹ See FINRA Rule 9527 (Application to SEC for Review).

⁴² Pet. 4.

⁴³ See FINRA Rules 9231, 9232, 9331; FINRA Regulation By-Laws, Art. V (National Adjudicatory Council) and Art. VI (Selection of Small Firm, Mid-Size Firm and Large Firm Industry Members of the NAC).

⁴⁴ See FINRA Rule 9234(b) (providing that a party may move to disqualify a panelist); FINRA Rule 9332(b) (providing that a party may move for the disqualification of a member of the NAC or a NAC Subcommittee); *Ahmed*, 2017 SEC LEXIS 3078, at *69-77 (considering, but rejecting, respondent’s challenge that hearing officer was biased); *Robert Marcus Lane*, Exchange Act Release No. 74269, 2015 SEC LEXIS 558, at *73-74 (Feb. 13, 2015) (same); *Mission Sec. Corp.*, Exchange Act Release No. 63453, 2010 SEC LEXIS 4053, at *42-49 (Dec. 7, 2010) (same).

B. Arguments About FINRA’s Statutory Disqualification Proceedings

Petitioner makes similarly deficient arguments with respect to FINRA’s Eligibility Proceedings. Here again, Petitioner’s arguments are mostly directed against general aspects of FINRA’s Eligibility Proceedings that already exist, have already been approved by the Commission, and are not affected by the Proposed Rule whatsoever. Beyond that, the premises of Petitioner’s arguments are faulty.

For example, again referencing Constitutional “due process” concerns, Petitioner contends that “[a]ny attempt to have . . . a [FINRA] sanction redressed [in an eligibility proceeding] is subject to FINRA’s discretion,” and that the Proposed Rule would “[w]iden[] [FINRA’s] discretion to foreclose relief.”⁴⁵ This objection, however, is largely and broadly directed at statutory disqualification proceedings that are not affected by the Proposed Rule. Petitioner’s fundamental misunderstanding of Eligibility Proceedings as an opportunity to collaterally attack a statutorily disqualifying event provides no reason to disapprove the Proposed Rule. The purpose of a FINRA statutory disqualification proceeding is not to “redress” a FINRA disciplinary sanction. Instead, it is to evaluate whether a sponsoring member has demonstrated that a proposed association with a statutorily disqualified person is consistent with the public interest despite the disqualification, and that the statutorily disqualified person’s association will not present an unreasonable risk of harm to the market or investors. Contrary to Petitioner’s argument, the rules governing FINRA’s Eligibility Proceedings fully satisfy the “fair procedure” requirement in Exchange Act Section 15A(b)(8).⁴⁶

⁴⁵ Pet. 6.

⁴⁶ See Exchange Act Section 15A(b)(8) (requiring FINRA to provide a fair procedure for the denial of membership to any person seeking membership therein and the barring of any

[Footnote continued on next page]

In any event, the Commission has already approved FINRA’s Eligibility Proceedings rules, which meet the Exchange Act’s fair procedure standard.⁴⁷ Petitioner’s primary fairness-related complaint is directed at FINRA’s “discretion” in statutory disqualification proceedings.⁴⁸ But FINRA’s decisions in statutory disqualification proceedings—just like its decisions in disciplinary proceedings—are subject to tiers of appellate and judicial review.⁴⁹ Furthermore, although the Commission’s careful review of FINRA’s statutory disqualification decisions allows FINRA some discretion in determining whether statutorily disqualified persons should be permitted to associate with a member,⁵⁰ that discretion has statutorily prescribed boundaries. The Exchange Act requires the Commission, when reviewing a FINRA denial decision in an Eligibility Proceeding, to assess whether the specific grounds on which FINRA based its action exist in fact, whether the denial was in accordance with FINRA rules, and whether those rules

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person from becoming associated with a FINRA member); Exchange Act Section 15A(h)(2) (setting forth procedural requirements for proceedings to determine whether a person shall be denied membership).

⁴⁷ See *Order Approving Proposed Rule Change*, 1997 SEC LEXIS 1617, at *146-147, 153 (finding that rules governing FINRA statutory disqualification proceedings “should provide a fair and efficient means to address . . . eligibility” and are “consistent with . . . the [Exchange] Act”).

⁴⁸ Pet. 6.

⁴⁹ See FINRA Rule 9525 (Discretionary Review by the FINRA Board); FINRA Rule 9527 (Application to SEC for Review); Exchange Act Sections 19(d), 19(f), and 25(a)(1) (providing for SEC review of SRO actions that deny membership to any applicant or that bar any person from becoming associated with a member firm and for court review of final SEC orders).

⁵⁰ See *Eric J. Weiss*, Exchange Act Release No. 69177, 2013 SEC LEXIS 837, at *23 (Mar. 19, 2013); see also *Halpert & Co.*, 50 S.E.C. 420, 422 (1990) (“Particularly in matters involving a firm’s employment of persons subject to a statutory disqualification, it is appropriate to recognize the NASD’s evaluation of appropriate business standards for its members”).

were applied in a manner consistent with the purposes of the Exchange Act.⁵¹ Moreover, the Commission has prescribed steps that FINRA must take when denying a statutory disqualification application for FINRA's decision to be consistent with the purposes of the Exchange Act.⁵²

Petitioner's fairness-related complaints about FINRA's statutory disqualification proceedings also include that a FINRA-imposed bar "is presumed to be permanent" until FINRA permits the disqualified person to associate with a member.⁵³ The Commission, however, has not held there to be any such presumption of permanence. Rather, the Commission reasonably requires that a FINRA-barred applicant must "'make an extremely strong showing' to justify a finding 'that approval of an application for re-entry would serve the public interest.'"⁵⁴ This policy decision—which reasonably reflects the substantial risks that persons who have been barred by FINRA pose to investors and the public interest—addresses only the sponsoring member's burden when applying to associate with a FINRA-barred, statutorily disqualified person. While it appropriately sets a high burden for those statutorily disqualified persons' eligibility for association, it does not presume that a sponsoring member can never meet that

⁵¹ See Exchange Act Section 19(f); see also *Manuel P. Asensio*, Exchange Act Release No. 62315, 2010 SEC LEXIS 2014, at *28-30 (June 17, 2010) (rejecting argument that the SEC gives too much deference to FINRA in eligibility proceedings).

⁵² See, e.g., *Weiss*, 2013 SEC LEXIS 837, at *23-24 (assessing FINRA's eligibility denial decision for whether FINRA weighed the facts and circumstances regarding the disqualifying event, the disqualified person's regulatory history, and the member's supervisory plan), citing *Frank Kufrovich*, 55 S.E.C. 616 (2002).

⁵³ Pet. 4.

⁵⁴ *Asensio & Co.*, 2012 SEC LEXIS 3954, at *17 n.22 (quoting *Ass'n of X as a Gen. Sec. Rep.*, Redacted Decision No. SD08004, at p. 6 (FINRA NAC 2008)).

burden, preclude a sponsoring member from trying to meet it, provide that FINRA has exclusive discretion to prevent such disqualified persons from re-entering or continuing in the industry, or change the fact that the Commission must make the findings required by Exchange Act Section 19(f) before sustaining FINRA's denial decision.

The only argument of Petitioner's that appears to challenge directly the actual effect of the Proposed Rule on Eligibility Proceedings is his objection that the Proposed Rule does not address instances where a person is statutorily disqualified "not for investor harm, but for supposed harm to the 'self-regulatory process.'"⁵⁵ No such dividing line exists, however, in the disqualifying events set forth in Exchange Act Section 3(a)(39), and Petitioner cites no cases in statutory disqualification or membership proceedings in which the Commission has given preferential treatment to statutorily disqualified persons whose disqualifying conduct did not directly harm investors. In fact, the Commission has found that persons (like Petitioner) who are statutorily disqualified as a result of bars imposed for violations of FINRA Rule 8210 must meet a "highly demanding standard" before being permitted to reenter the industry.⁵⁶

Moreover, Petitioner's arguments do not acknowledge that this rulemaking proceeding has complied with all procedural requirements applicable to SRO rulemaking, and has allowed all interested persons—including Petitioner—to participate.⁵⁷

⁵⁵ Pet. 4.

⁵⁶ *Asensio & Co.*, 2012 SEC LEXIS 3954, at *17.

⁵⁷ Exchange Act Release No. 63316, 75 Fed. Reg. 71166.

C. First Amendment Arguments

In another baseless Constitutional argument, Petitioner contends that FINRA's Proposed Rule purportedly "impinges upon . . . freedom of speech."⁵⁸ In his view, the Proposed Rule would restrict a statutorily disqualified person's speech in statutory disqualification proceedings, because the sponsoring member would "control[]" the application, and the disqualified person "would not be able to set forth as he sees fit the reasons why his association should be allowed."⁵⁹ FINRA rules, however, already require statutory disqualification applications to be filed by members, and the Proposed Rule alters nothing in that regard.⁶⁰ Moreover, FINRA is not a state actor and is not subject to the requirements under the First Amendment to the U.S. Constitution.⁶¹

D. Costs of Proposed Rule

Petitioner contends that the Proposed Rule will make the process by which a statutorily disqualified person seeks to associate with a member "more prohibitive," because it will require a statutorily disqualified person to find a FINRA member willing to employ him and file an MC-400 application that sponsors the disqualified person's return to the industry.⁶² For the vast majority of statutorily disqualified persons, however, the Proposed Rule will add no burdens.

⁵⁸ Pet. 2-3, 4.

⁵⁹ Pet. 2-3.

⁶⁰ See FINRA Rule 9522.

⁶¹ *Timothy H. Emerson, Jr.*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, at *31 (July 17, 2009); *Martin Lee Eng*, 55 S.E.C. 91, 95 (2001) (holding that the First Amendment is not applicable to NASD), *aff'd*, 49 F. App'x 697 (9th Cir. 2002).

⁶² Pet. 3. Form MC-400 is used by sponsoring members who are applying to FINRA to allow the association, or continued association, of a statutorily disqualified person.

Most statutorily disqualified persons seeking re-entry already need to locate a FINRA member willing to sponsor their readmission.

Thus, Petitioner's complaint is limited to the burden that the Proposed Rule will place on the small category of statutorily disqualified persons like himself who might otherwise seek to re-enter or remain in the industry by forming their own broker-dealers to sponsor their own statutory disqualification applications. Whatever these extra costs, they are far outweighed by the benefits of FINRA's Proposed Rule.

E. Need for the Proposed Rule

In his comment letter, Petitioner opined that the Proposed Rule is "unnecessary" because FINRA's current rules already provide authority to deny a new membership application based on a statutory disqualification and to deny a statutory disqualification application based on the statutorily disqualified person proposing to associate with a new member.⁶³ The standard for whether the Commission shall approve a proposed rule change, however, is not whether it is necessary. Rather, it is whether the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations issued thereunder that are applicable to SROs.⁶⁴ As explained above (*see* Part III, *supra*), FINRA's Proposed Rule is consistent with Exchange Act requirements for what a registered securities association's rules must be designed to achieve.

Moreover, as FINRA previously explained when responding to Petitioner's comment letter, FINRA believes, given the public policy interests underlying the Proposed Rule's

⁶³ *See Comment Letter of Manuel Asensio.*

⁶⁴ *See Exchange Act Section 19(b)(2)(C)(i) and (ii).*

objective to promote initiation of FINRA membership free of statutory disqualification concerns, that it would be pointless and an indefensible use of regulatory resources to consider the new membership applications and statutory disqualification applications that the Proposed Rule would preclude at the outset.

F. Impact on Petitioner's Firm's Eligibility and New Membership Applications

Finally, Petitioner objects that the Approval Order “does not address FINRA’s impropriety in seeking the Proposed Rule in direct response to [a new member application] and MC-400 submitted by a firm formed by Petitioner, while adjudication of such applications by FINRA staff was not yet concluded.”⁶⁵ Those arguments are moot. The membership and statutory disqualification proceedings to which Petitioner refers are specific only to him and the firm he formed, and those two proceedings concluded years ago.⁶⁶ Moreover, Petitioner already made arguments about FINRA’s filing of this Proposed Rule in his firm’s new membership proceeding, and the Commission directly rejected them.⁶⁷

In any event, as FINRA explained when responding to Petitioner’s comment letter,⁶⁸ FINRA’s Proposed Rule is a policy-driven proceeding that has general public policy goals that

⁶⁵ Pet. 6.

⁶⁶ On January 24, 2012, FINRA returned as deficient Asensio & Company’s application to associate with Petitioner, in light of the NAC’s denial of that firm’s new membership application. Later in 2012, the Commission sustained FINRA’s denial of Asensio & Company’s new membership application. *Asensio & Co.*, 2012 SEC LEXIS 3954.

⁶⁷ See *Asensio & Co.*, 2012 SEC LEXIS 3954, at *53 (rejecting the argument that this proposed FINRA rulemaking constituted a source of impermissible bias in FINRA’s evaluation of the firm’s new membership application).

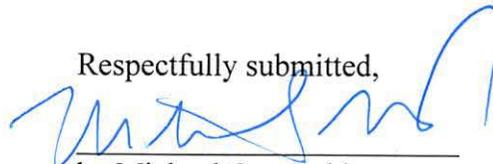
⁶⁸ See *FINRA’s Response to Comments*, File No. SR-FINRA-2010-056 (Feb. 4, 2011), <https://www.sec.gov/comments/sr-finra-2010-056/finra2010056-3.pdf>.

are separate from the specific membership and statutory disqualification applications that Petitioner's firm filed several years ago.

V. CONCLUSION

The Proposed Rule will yield benefits for FINRA in the areas of New Member Applications that involve statutorily disqualified persons or members and statutory disqualification applications that sponsor statutorily disqualified owners. In both these situations, the central requirement underlying a statutorily disqualified person's or member's participation or continued participation in the securities industry—stringent supervision—cannot be satisfied. And, without stringent supervision of these statutorily disqualified persons and members, the investing public is at risk. The Proposed Rule is narrowly tailored to reduce the risks of harm to the investing public posed by these situations and others covered by the Proposed Rule, and is entirely consistent with the Exchange Act and the protection of investors. For all of these reasons, the Commission should affirm the Approval Order and approve the Proposed Rule.

Respectfully submitted,



by Michael Garawski

Alan Lawhead
Michael Garawski
Andrew Love
FINRA

Dated: September 5, 2018

APPENDIX A

The text of the Proposed Rule follows. New language added by the Proposed Rule is underlined and deletions are in brackets.

* * * * *

1000. MEMBER APPLICATION AND ASSOCIATED PERSON REGISTRATION

* * * * *

1100. MEMBER APPLICATION

1113. Restriction Pertaining to New Member Applications

The Department of Member Regulation shall reject an application for membership with FINRA pursuant to NASD Rule 1013 in which either the applicant or an associated person, as defined in Article I of the FINRA By-Laws, is subject to a statutory disqualification, as defined in Article III, Section 4 of the FINRA By-Laws. Any such application as described in this Rule that is approved by virtue of Department of Member Regulation error or applicant error (including, but not limited to, an inadvertent or intentional misstatement or omission by the applicant or associated person) shall be subject to cancellation of membership in accordance with Rule 9555.

* * * * *

9000. CODE OF PROCEDURE

* * * * *

9500. OTHER PROCEEDINGS

9520. Eligibility Proceedings

9521. Purpose and Definitions

- (a) No Change.

(b) Definitions

(1) No Change.

(2) The term “disqualified member” means a [broker, dealer, municipal securities broker or dealer, government securities broker or dealer, or] member that is or becomes subject to a disqualification or is otherwise ineligible for membership under Article III, Section 3 of the FINRA By-Laws.

(3) No Change.

(4) The term “sponsoring member” means the member [or applicant for membership pursuant to NASD Rule 1013] that is sponsoring the association or continued association of a disqualified person to be admitted, readmitted, or permitted to continue in association. A sponsoring member, however, may not sponsor the association or continued association of a disqualified person to be admitted, readmitted, or permitted to continue in association if that disqualified person is directly or indirectly the beneficial owner of more than five percent of the sponsoring member.

9522. Initiation of Eligibility Proceeding; Member Regulation Consideration

(a) Initiation by FINRA

(1) Issuance of Notice of Disqualification or Ineligibility

If FINRA staff has reason to believe that a disqualification exists or that a member or person associated with a member otherwise fails to meet the eligibility requirements of FINRA, FINRA staff shall issue a written notice to the member [or applicant for membership under NASD Rule 1013]. The notice shall specify the grounds for such disqualification or ineligibility. FINRA staff shall not issue such

written notice to members [or applicants for membership under NASD Rule 1013] with respect to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, unless the member [or applicant for membership under NASD Rule 1013] is required to file an application pursuant to a Regulatory Notice entitled “Eligibility Proceedings: Amendments to FINRA Rule 9520 Series to Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualifications” (the “SD Regulatory Notice”).

(2) No Change.

(3) Notice Regarding an Associated Person

A notice issued regarding a disqualified person to a member [or applicant for membership under NASD Rule 1013] shall state that such member [or applicant for membership] may file an application on behalf of itself and such person or, in the case of a matter set forth in Rule 9522(e)(1), a written request for relief, within ten business days after service of the notice. If the member fails to file the application or, where appropriate, the written request for relief, within the 10-day period, the registration of the disqualified person shall be revoked, unless the Department of Member Regulation grants an extension for good cause shown.

(4) No Change.

(b) Obligation of Member to Initiate Proceeding

(1) A member shall file an application or, in the case of a matter set forth in Rule 9522(e)(1), a written request for relief, with RAD, if the member determines prior to receiving a notice under paragraph (a) that:

(A) No Change.

(B) a person associated with such member [or whose association is proposed by an applicant for membership under NASD Rule 1013] has become a disqualified person; or

(C) the member [or applicant for membership under NASD Rule 1013] wishes to sponsor the association of a person who is a disqualified person.

(2) No Change.

(c) through (e) No Change.

9523. Acceptance of Member Regulation Recommendations and Supervisory Plans by Consent Pursuant to SEA Rule 19h-1

(a) With respect to all disqualifications, except those arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, after an application is filed, the Department of Member Regulation may recommend the [membership or] continued membership of a disqualified member or sponsoring member or the association or continuing association of a disqualified person pursuant to a supervisory plan where the disqualified member, sponsoring member, and/or disqualified person, as the case may be, consent to the recommendation and the imposition of the supervisory plan. The disqualified member, sponsoring member, and/or disqualified person, as the case may be,

shall execute a letter consenting to the imposition of the supervisory plan.

(1) through (4) No Change.

(b) With respect to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, after an application is filed, in approving an application under Rule 9522(e)(2)(F), the Department of Member Regulation is authorized to accept the [membership or] continued membership of a disqualified member or sponsoring member or the association or continuing association of a disqualified person pursuant to a supervisory plan where the disqualified member, sponsoring member, and/or disqualified persons, as the case may be, consent to the imposition of the supervisory plan. The disqualified member, sponsoring member, and/or disqualified person, as the case may be, shall execute a letter consenting to the imposition of the supervisory plan. The Department of Member Regulation shall prepare a proposed Notice under SEA Rule 19h- 1, where required, and FINRA shall file such Notice.

(1) through (2) No Change.

* * * * *

CERTIFICATE OF SERVICE

I, Michael Garawski, certify that on this 5th day of September 2018, I caused the original and three copies of FINRA's Statement in Support of Proposed Rule Change to Adopt FINRA Rule 1113 and to Amend the FINRA Rule 9520 Series (File No. SR-FINRA-2010-056) to be served by messenger on:

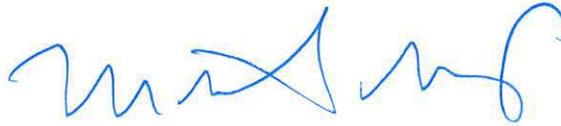
Brent J. Fields, Secretary
Securities and Exchange Commission
100 F St., NE
Room 10915
Washington, DC 20549-1090

and via overnight FedEx on:

Manuel P. Asensio
[Address from SEC Service List – redacted]

Different methods of service were used because courier service could not be provided to Mr. Asensio.

Respectfully submitted,



Michael Garawski
Associate General Counsel
FINRA
1735 K Street, N.W.
Washington, D.C. 20006
(202) 728-8835