UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-13099

In the Matter of

NEWBRIDGE SECURITIES CORP., GUY S. AMICO, SCOTT H. GOLDSTEIN, ERIC M. VALLEJO, and DANIEL M. KANTROWITZ,

Respondents.

PETITIONERS GUY S. AMICO AND SCOTT H. GOLDSTEIN'S REPLY TO DIVISION OF ENFORCEMENT'S RESPONSE TO MOTION TO VACATE SUPERVISORY BARS

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I. INTRODUCTION

Where, in pages 10-17, the Division's brief ("Div. Opp.") addresses the seven well-known factors in determining whether a motion to vacate a bar should be ordered, the Division actually makes the case for granting Petitioner's Motion to Vacate. The seven factors are:

(1) The nature of the misconduct at issue in the underlying matter;

(2) The time that has passed since issuance of the administrative bar;

(3) The compliance record of, and any regulatory interest in, the petitioner since issuance of the administration bar;

(4) The age and security industry experience of the petitioner, and the extent to which the Commission has granted prior relief from the administrative bar;

(5) Whether the petitioner has identified verifiable, unanticipated consequences of the bar;

(6) The position and persuasiveness of the Division of Enforcement, as expressed in response to the petition for relief; and

(7) Whether there exists any other circumstances that would cause the relief from the administrative bar to be inconsistent with the public interest or the protection of investors.[1]

As discussed below, the Division's brief only solidifies that the public interest and investor protection are served by granting Petitioners' motion to vacate their supervisory bars.

[1] Ciro Cozzolino, Exchange Act Release No. 49001, 57 S.E.C. 175 at 180-181 (Dec. 29, 2003); Robert Hardee Quarles, Exchange Act Release No. 66530, 2012 SEC LEXIS 750 at *7-8 (Mar. 7, 2012); and Michael H. Johnson, Exchange Act Release No. 75894 at 4 (Sept. 10, 2015).

II. ARGUMENT

(1) The Nature of the Misconduct at Issue in the Underlying Matter.

The 2009 Order[2] plainly reflects that neither Petitioner was found to have acted as the former representative's direct supervisor but were instead sanctioned for their failure to develop policies, procedures and systems reasonably designed to prevent and detect the underlying violation, which the Division tacitly concedes have been significantly improved, based upon its purported concern that if this Motion is granted, the Petitioners might, for some unexplained reason, act to gut the augmented supervisory and compliance policies systems and personnel they caused to be put in place at Newbridge Securities Corporation ("NSC"). [Div. Opp. at 12] The Division's brief does not dispute that the ALJ expressly found that, based on all available evidence, the petitioners' failures did **not** warrant a bar with a five year right to reapply as the Division sought, but rather only two years. [Motion to Vacate Supervisory Bars of Guy S. Amico and Scott H. Goldstein ("Vacate Mot."), Ex. A, at 68] The ALJ also found that their failures did not cause any harm to the public and that no restitution, disgorgement or other equitable monetary relief was imposed upon them [Vacate Mot., Ex. A, at 70 – 72], which the Division also does not dispute. Lastly, the Division's brief does not even attempt to dispute that the Petitioner's conduct was less egregious than the conduct of other once-barred persons for whom the Commission has vacated a bar order.[3]

The Division brief's further claim that the Petitioners have not taken responsibility for or recognized their roles in Newbridge's supervisory system failures twenty years ago is manifestly

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[2] In the Matter of Newbridge Securities Corp., Guy S. Amico, Scott H. Goldstein, Eric M. Vallejo and Daniel M. Kantrowitz (Jun. 9, 2009).

[3] See, e.g., Cozzolino, who was found to have willfully violated the antifraud provisions of the federal securities laws by participating in a manipulative scheme, and Quarles, who had engaged in unregistered securities sales which resulted in customer losses of nearly a half million dollars.

false. [Div. Opp. at 12] Not only did the Petitioners withdraw their appeal in 2010, fully comply with all of the sanctions imposed and act in fully-compliant non-supervisory capacities in the securities industry for over the past decade, they have taken action in 2014 to cause NSC to exit the very line of business at issue and have overseen NSC's substantial overhaul of its supervisory system to augment its supervisory procedures and to install an experienced, capable and compliant management team to run NSC. In this way, the Petitioners have not just "talked the talk," but have "walked the walk."

(2) The Time that Has Passed Since Issuance of the Administrative Bar.

The Division concedes that "thirteen years" since the imposition of the supervisory bar order is a significant length of time [Div. Opp. at 12] and unpersuasively notes only that some, but not all, orders to vacate involve a greater length of time. The Division seeks to deemphasize the importance of this factor, stating, "[E]ven if thirteen years can be considered a sufficient long time, the Commission has made clear that the amount of time, standing alone, does not 'weigh significantly....'" [Div. Opp.at 12]

(3) The Compliance Record of, and Any Regulatory Interest In, the Petitioner Since Issuance of the Administrative Bar.

The Division concedes that "the Division is unaware of any compliance issues or that Petitioners have been the subject of any disciplinary action since the entry of the supervisory bar orders – except for the FINRA disciplinary actions in August 2010 relating to conduct that predated the supervisory bar orders at issue here." [Div. Opp. at 13][4]

[4] Rather than dispute Messrs. Amico and Goldstein's compliance record, the Division tries to undercut the Petitioners' pristine disciplinary records for the past decade by baselessly insinuating that FINRA must have had concerns about the Petitioners' compliance-mindedness. As discussed below, to engage in such groundless speculation, the Division has completely ignored FINRA's Rule 19h-1 Notices to the SEC which contain a lengthy, thorough and detailed review of Petitioners and conclude "it would be inconsistent with the remedial purposes of the

(4) The Age and Security Industry Experience of the Petitioner.

The Petitioners are 60 and 57 years old, respectively, and the Division concedes "that Petitioners have a long history in the securities industry." [Div. Opp. at 14] We strongly encourage the Commission in its consideration of this Motion to carefully review the Division's own Exhibit A, FINRA's Rule 19h-1 Notices to the SEC, which provide, among other things the details of Petitioners' long history in the securities industry. [Div. Opp. Exs. A-10 and A-11]

(5) Whether the Petitioner Has Identified Verifiable, Unanticipated Consequences of the Administrative Bar.

The Division does not contest that the bar order has caused, and continues to cause, unanticipated financial harm with regard to NSC's relationship with clearing and settlement firms and has been an impediment to the sale of the firm. [Div. Opp. at 14] The Motion to Vacate, supported by sworn affidavits, details a series of unanticipated adverse consequences for both the Petitioners and for NSC as a result of the bar orders. [Vacate Mot. and Exs. C, D] The fact that Petitioners are registered representatives serving retail customers means that the continued BrokerCheck disclosure of the bar orders has had a depressive effect upon the Petitioners' abilities to attract new business. NSC, and its officers, employees and clientele, none of whom are subjects of the bar order, are nevertheless also suffering continued harm from the bar orders which has been manifested in, among other ways, disadvantageous relations with the firm's clearing and settlement agent. In several instances, potential purchasers have been dissuaded from closing an agreement to acquire NSC by the very fact of the supervisory bar orders' existence, notwithstanding that neither Petitioner has served as a supervisor since the

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Exchange Act to deny [their] reentry into the securities industry [as General Securities Principals]." [Div. Opp. Exs. A-10 at 16 and A-11 at 17]

2009 Order. [Id.][5] Additionally, in two of the cases cited by the Division, Cozzolino and Stephen S. Wien (Exchange Act Release No. 49000 (Dec. 29, 2003)), the Commission granted the motion to vacate where the only harm the Petitioners stated was the completely anticipated consequence that a bar order would have an adverse impact on their continued employment in the securities industry. In those cases, the Commission determined that, in balancing all of the relevant factors, the motion to vacate should be granted not withstanding that the only identifiable harm was the obviously anticipated impediment to continued employment in the securities industry.[6]

(6) The Position and Persuasiveness of the Division.

As shown above, while the Division nominally opposes the Motion to Vacate, it simultaneously concedes most of the factors in favor of granting the Motion. Further, the Division studiously ignores the analysis and findings in FINRA's lengthy, thorough and detailed Rule 19h-1 Notice to the SEC. [Div. Opp. Exs. A-10 and A-11] In it, FINRA notified the SEC that it "has carefully evaluated and assessed the merits of the [Petitioners'] Application[s], taking into consideration the following factors: a. the nature and gravity of the disqualifying event; the length of time that has elapsed since the disqualifying event; c. whether any intervening misconduct has occurred; d. whether the disqualified person has other regulatory history; e. the precise nature of the securities-related activities proposed in the application; f. the disciplinary history and industry experience of both the member firm and the proposed supervisory of the disqualified person; and g. any other mitigating or aggravating circumstances that may exist."

[5] To expand on the "compelling circumstances" that form the basis of their motions for vacatur, Messrs. Amico and Goldstein submit additional affidavits to provide the Commission with further details as to the unanticipated hardships caused to NSC and to Messrs. Amico and Goldstein as a result of the bar orders. [Petitioners Exs. A and B]

[6] Cozzolino and Stephen S. Wien.

Based on this evaluation and assessment, FINRA found that the Petitioners' respective Applications "present[ed] no new information that would warrant a denial of the Firm's request to allow Goldstein [and Amico] to associate with it as a General Securities Principal . . . . Therefore, it would be inconsistent with the remedial purposes of the Exchange Act to deny Goldstein's [and Amico's] reentry into the securities industry." [Div. Opp. Exs. A-10 at 16 and A-11 at 17] We strongly encourage the Commission to thoroughly review FINRA's assessment of the Petitioners to see precisely what the Division seeks to bury.

(7) Whether There Exists Any Other Circumstance That Would Cause the Requested Relief From the Administrative Bar To Be Inconsistent With The Public Interest or The Protection of Investors.

Because of the lack of a persuasive argument in opposition, the Division's brief invents a new factor – that "Petitioners should fully avail themselves of the reapplication process prior seeking to vacate the supervisory bar orders." [Div. Opp. at 5] The Division dedicates the first 10 of its 17-page brief to this strawman argument and, in so doing, ignores the facts of two of the cases it cites. In Fred F. Liebau, Jr. (Exchange Act Release No. 92353 at 3 (Jul. 8, 2021)) and Quarles (2012 SEC LEXIS 750 at *8), the SEC expressly found that the fact that the movant did not seek or obtain approval to associate as a General Securities Principal through an MC-400 procedure approval did not preclude the SEC from granting their respective Motions to Vacate the supervisory bars imposed upon them.[7]

[7] In Liebau, the petitioner successfully obtained his 2021 SEC order vacating his supervisory bar without making application with FINRA for reassociation. The Commission found that vacatur of Liebau's supervisory bar was justified because he had "managed to establish a lengthy compliance record through his investment in the securities industry in the capacities allowed by the Order without the need to seek consent to associate [as GSP]." [Exchange Act Release No. 92353 at 3] Similarly, in Quarles, the petitioner successfully vacated his supervisory bar without applying for reassociation with FINRA because he had been "almost continuously employed in the securities profession" since the bar was imposed as a general securities representative. [2012 SEC LEXIS 750 at *8] As noted above, Petitioners have spent the past 13+ years since the 2009 bar order working in various non-supervisory capacities at NSC, each of which were specifically approved by FINRA's Statutory Disqualification Department.

There is good reason why seeking and obtaining permission to reassociate as a GSP is not one the factors to be considered in a Motion to Vacate, given that such Motion and an application for registration to engage in certain securities activities despite a bar order are fundamentally different in at least the follow ways:

(1) They are made to separate regulatory bodies with different regulatory objectives.

(2) They are independent processes. The purpose of FINRA's MC-400 is to evaluate potential registrations in a specific capacity with a FINRA-member firm, whereas the purpose of a Motion to Vacate before the SEC is to seek removal of an SEC order that no longer serves important public interest and investor protection interests.

(3) They involve separate legal standards. FINRA's MC-400 process evaluates whether to allow a person to enter or remain in the securities industry based upon their application to associate with a particular firm. [See FINRA Rule 9520 Series][8] A motion to vacate a bar order is not made with respect to association with any particular firm and does not implicate an analysis of that firm's capability to properly supervise the applicant. In a motion to vacate, the SEC evaluates whether there remains important public interest and investor protection concerns to warrant the continued imposition of a bar, taking into consideration the adverse consequences to the party subject to the bar order which are not, or no longer, required to achieve the SEC's statutory objective.[9]

(4) They conclude with different legal results. In an MC-400 proceeding, the successful goal is the resumption of engagement in a particular securities activity with a particular member firm. Removal of a bar order does not provide registration for a person to engage in a securities activity at all.

As the Division details in the 10 pages it devotes to this strawman argument, the Petitioners have fully availed themselves of the reapplication process. The Petitioners submitted successful MC-400 applications for General Securities Representatives with FINRA and then later submitted successful applications for Association as Investment Banking Representatives

[8] The FINRA Rule 9520 Series sets forth rules governing eligibility proceedings in which FINRA evaluates whether to allow a member, person associated with a member, potential member or potential associated person subject to a statutory disqualification to enter or remain in the securities industry.

[9] In the Matter of Paul Edward Van Dusen, 47 SEC 668 (1981).

and have operated in such registered capacities for years without any regulatory issues. [Div. Opp. at 6-7] The historical fact is that Petitioners also fully availed themselves of the registration application process to serve as General Securities Principals, as reflected in the Division's own exhibits. [Div. Opp. Exs. A-6, A-7, A-10, and A-11] The SEC was not once, but twice, advised by FINRA of its determination to favor the continued associations of the petitioners as General Securities Principals. In the first instance in September 2014, the SEC advised FINRA to withdraw its notification filing and resubmit as a notice requesting the SEC to issue an appropriate order. FINRA abided by this directive and submitted its Notice pursuant to Rule 19h-1.[10] [See Div. Opp. Exs. B-3, B-4, A-10 and A-11] The Division's exhibits document that Petitioners provided all necessary information to FINRA which, upon its approval of the Petitioners' reassociation as GSPs, submitted the information to the SEC, where it apparently fell into a regulatory black hole and languished. The Division is now using another SEC Division's regulatory failure as a cudgel against Petitioners, essentially contending that the Commission should deny Petitioners' relief because of another SEC Division's unexplained failure to act in a separate and distinct process seeking a wholly different relief.[11]

III. CONCLUSION

Taken together, the seven factors properly considered by the Commission in determining whether to grant a motion to vacate a bar weigh decisively in favor of the Petitioners. Assuming arguendo that Petitioners' reassociation efforts have any bearing on this Motion to Vacate, the

[10] The record reveals that after three years of inaction by the SEC Staff, FINRA withdrew the 2017 notice without explanation. [Div. Opp. Exs. A-10, A-11, A-12, and A-13]

[11] NSC has recently amended its MC-400 applications for Petitioners' GSP association with the firm to update FINRA as to the improvements to its supervisory and compliance system. Predictably, after complaining that Petitioners did not somehow force the SEC to finally act upon FINRA's Rule 19h-1 Notice, the Division now seeks to use NSC's amended filing as a basis to argue Petitioners are improperly pursuing "two tracks." [Div. Opp. at 10]

Division's own exhibits conclusively demonstrate the Petitioners have fully availed themselves of the "incremental grants of relief" roadblock established by the Division 's brief. Certainly, Petitioners should not be further penalized for another SEC Division's inaction and respectfully submit that the Commission should grant their Motion to Vacate.

Respectfully submitted,

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