

UNITED STATES OF AMERICA
Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Admin. Proc. File No. 3-17254

In the Matter of the Application of :
BRUCE MEYERS AND :
MEYERS ASSOCIATES, L.P. :
For Review of Action Taken by :
FINRA :

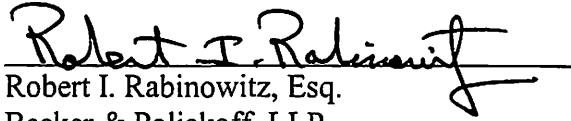
APPLICANTS' MOTION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE

Pursuant to Rule 452 of the Commission's Rules of Practice, Applicants Meyers Associates, L.P. (the "Firm") and Bruce Meyers ("Meyers") hereby move the Securities and Exchange Commission (the "Commission") for an Order permitting the introduction of additional evidence to support their Application to the Commission to review and reverse the decision by the Financial Industry Regulatory Authority's ("FINRA") National Adjudicatory Council dated May 9, 2016 which determined that: 1) Meyers, an associated person of a FINRA-member firm, is statutorily disqualified pursuant to Exchange Act Section 15(b)(4)(H)(i), and 2) denying the Firm's MC-400 Membership Application to permit Meyers to continue to associate with the Firm in any capacity.

Applicants will rely on the Brief in Support of Applicants' Motion for Leave to Adduce Additional Evidence, as well as the Certification of Robert I. Rabinowitz, Esq. and Exhibits in Support of Applicants' Motion for Leave to Adduce Additional Evidence, enclosed herewith.

Dated: December 2, 2016

Meyers Associations, L.P. and Bruce Meyers

A handwritten signature in black ink that reads "Robert I. Rabinowitz". The signature is written in a cursive style and is positioned above a horizontal line.

Robert I. Rabinowitz, Esq.

Becker & Poliakoff, LLP

45 Broadway, 8th Floor

New York, NY 10006

(212) 599-3322-Telephone

rrabinowitz@bplegal.com

Attorneys for Applicants

1986. At one point in my career, I assumed the role of chief compliance officer of a registered broker/dealer, and have previously qualified for the Series 7, Series 24, Series 65, and Series 63 securities and investment advisory registrations. Since February 2009, I have been a partner at the law firm of Becker & Poliakoff, LLP representing broker/dealers and their associated persons in various regulatory and administrative proceedings.

3. In 2015 I represented Meyers Associates, L.P. (“the Firm”) and one of its former registered representatives, William David Nelson (“Nelson”), with respect to a Consent Agreement and Final Order entered into on December 31, 2015 before the Office of the Montana State Auditor, Commissioner of Securities and Insurance (the “Montana Consent Agreement”).¹ An earlier draft version of the Montana Consent Agreement contained the following provision:

- E. Within ten business days of the effective date of this Agreement, Respondent Nelson shall withdraw his registration as a securities salesperson in Montana. Respondent Nelson shall not reapply for a license in Montana for a period of two years.

4. During negotiations regarding the language of the Montana Consent Agreement, I advised the Office of the Montana State Auditor, Commissioner of Securities and Insurance (the “Montana CSI”) that Mr. Nelson would be unable to enter into an agreement containing this language because it would render him statutorily disqualified

¹ A true and accurate copy of the Consent Agreement and Final Order Case No. SEC-2015-143, December 31, 2015, is attached hereto as **Exhibit A**.

under FINRA's interpretation of Exchange Act Section 15(b)(4)(H)(i) and would effectively end his career in the securities industry.²

5. The attorney representing the Montana CSI told me that he was unaware of the wider consequences of the inclusion of this language within the Montana Consent Agreement, and after speaking with his superiors, agreed to the removal of this language since the Montana CSI, Meyers, and Mr. Nelson were all interested in resolving this matter through the issuance of a Consent Agreement and Final Order to avoid a formal administrative proceeding, which would not have occurred if that language remained in the final Consent Agreement.
6. In late 2015 to early 2016 I represented a registered broker/dealer³ before the State of Alaska, Department of Commerce, Community and Economic Development Division of Banking and Securities (the "Alaska Division"), with respect to a Cease and Desist Assessing A Civil Penalty and Consent to Order (the "Alaska Consent") in order to voluntarily resolve an administrative proceeding.⁴
7. An earlier version of the Alaska Consent contained the following provision which required the Broker/Dealer to: "3. "Never re-apply to become registered as a broker-dealer in the State of Alaska."⁵

² A true and accurate copy of the unexecuted, draft Montana CSI Consent Agreement and Final Order is attached hereto as **Exhibit B**.

³ References to the name of the affected broker/dealer are omitted and redacted from the attached exhibits to protect the anonymity of the firm which is unrelated to the Applicants herein.

⁴ A true and accurate copy of the redacted final version of Alaska Division of Banking and Securities Order to Cease and Desist Assessing A Civil Penalty and Consent to Order, dated January 22, 2016 is attached hereto as **Exhibit C**.

⁵ A true and accurate copy of the redacted initial draft version of Alaska Division of Banking and Securities Order to Cease and Desist Assessing A Civil Penalty and Consent to Order is attached hereto as **Exhibit D**.

8. As a result of my experience with Meyers and the Connecticut Department's Consent Order, I was aware that the inclusion of this language could have potential Statutory Disqualification ("SD") consequences for my client. As a result, I sent a redacted copy of the draft Alaska Consent to Lorraine Lee-Stepney, Statutory Disqualification Administrator in FINRA's Department of Member Regulation which oversees FINRA's SD enforcement program, and requested that they review the proposed Alaska Consent to determine if the inclusion of the language that the firm would never re-apply to become registered as a broker/dealer in Alaska would subject the firm to becoming statutorily disqualified.⁶
9. In response to my request, on December 7, 2015, Ms. Lee-Stepney responded by saying: "I've forwarded the Order into the staff in Registration and Disclosure. After reviewing the Order, I believe there are SD implications for the member due to its agreement to withdraw its registration from the State of Alaska and further, its agreement not to reapply in that state."⁷
10. Armed with this information, I went back to the Alaska Division and explained that the broker/dealer would be unable to enter into the Alaska Order if it contained this language because it would render the broker/dealer statutorily disqualified under FINRA's interpretation of Exchange Act Section 15(b)(4)(H)(i), and would effectively force the broker/dealer to shut down and withdraw its registration as a broker/dealer with the Commission, FINRA, and every other state.

⁶ See Exhibit D. A true and accurate copy of the e-mail exchange between Lorraine Lee-Stepney and Robert Rabinowitz, dated December 7, 2015, is attached hereto as Exhibit E.

⁷ Exhibit E at 1-2.

11. The attorney representing the Alaska Division brought this matter to the Chief of Enforcement and the Division Director who agreed to remove the “never re-apply” language from the proposed Alaska Consent since the Alaska Division and the broker/dealer were interested in resolving this matter through the issuance of a Consent to Order without the need for a formal hearing, which would not have occurred if that language remained in the draft Alaska Order.⁸
12. Separately, in follow-up to the finalization of the Montana Consent Agreement described above, on June 27, 2016 I received an e-mail from Michael A. Kakuk, Esq. of the Montana CSI, who was the attorney with whom I negotiated the terms of the Montana Consent Agreement.⁹ In his e-mail, Mr. Kakuk told me, in part:

Hello again. I hope you were able to figure out the FINRA issue. If it helps, we had the same problem come up with another consent agreement just after we finalized the one in this matter. **In that other case, the experienced industry attorneys were surprised (understatement) that FINRA took the position it did on the statutory disbarment.**¹⁰

13. These two experiences with different state securities agencies that were unaware of FINRA’s position with respect to the concept of “functional equivalent” of a bar, as well as the unsolicited statement by Mr. Kakuk of the Montana CSI, have informed my position that there is a lack of guidance and uniform understanding and application of the “functional equivalent” approach taken by FINRA with respect to the issue of statutory disqualification.

⁸ A true and accurate copy of an e-mail from David Newman, Esq. Alaska Division of Banking and Securities to Robert Rabinowitz, Esq. dated December 29, 2015, is attached hereto as **Exhibit F**. See also, Exhibit C.

⁹ A true and accurate copy of the e-mail dated June 27, 2016 from Michael A. Kakuk, Esq. attorney for the Montana CSI, to Robert I. Rabinowitz, is attached hereto as **Exhibit G**.

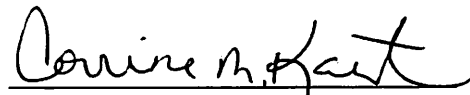
¹⁰ Exhibit G (emphasis added).

14. If Montana and Alaska, as well as apparently the Connecticut Department of Banking in its issuance of the Consent Order at the core of this application for review, were unaware of FINRA's position, it is likely that other state securities administrators and experienced securities attorneys may be similarly uninformed of this dire collateral consequence of entering into a consent agreement or similar voluntary settlement which would contain similar limiting language. Additionally, as Mr. Kakuk's statement indicates, other "experienced industry attorneys were surprised (understatement) that FINRA took the position it did on the statutory disbarment" provides additional insight into the potential scope of this problem.

15. It is therefore my request that the Commission agree to receive and review this additional evidence in its determination with respect to Meyers Associates' and Bruce Meyers' application for review.


ROBERT I. RABINOWITZ

Subscribed and sworn to before me on this
30th day of November, 2016.

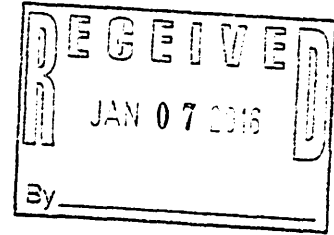

Notary Public

Corrine M Kanterman
Notary Public
New Jersey
My Commission Expires 2-4-20

Exhibit A

MICHAEL A. KAKUK
Office of the Montana State Auditor,
Commissioner of Securities and Insurance (CSI)
840 Helena Avenue
Helena, MT 59601
406-444-2040
mkakuk@mt.gov

Attorney for the CSI



**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR**

IN THE MATTER OF:)	
)	
)	CASE NO. SEC-2015-143
MEYERS ASSOCIATES, L.P., a Montana licensed)	
broker-dealer; and WILLIAM DAVID NELSON,)	CONSENT AGREEMENT AND
individually and in his capacity as a salesperson for)	FINAL ORDER
Meyers Associates, L.P.,)	
)	
Respondents.)	

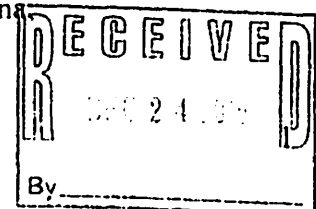
This Consent Agreement and Final Order (Agreement) is entered into by the Office of the Montana State Auditor, Commissioner of Securities and Insurance (CSI), acting pursuant to the authority of the Securities Act of Montana, Mont. Code Ann. § 30-10-101 et seq. (Act), and Meyers Associates, L.P. (Meyers) and William David Nelson (Nelson) (collectively Respondents).

RECITALS

WHEREAS, Nelson is a securities salesperson (CRD # 2734324) for Meyers (CRD# 34171), and both Nelson and Meyers are registered in Montana;

WHEREAS, the CSI alleges that Nelson violated § 30-10-301(1)(c) by conducting excessive trading in three accounts for the individuals residing in Montana;

In re: Meyers Associates, L.P., et. al.
CONSENT AGREEMENT AND FINAL ORDER



WHEREAS, the CSI alleges that Meyers failed to reasonably supervise Nelson, as required by § 30-10-201(13)(k); and

WHEREAS, the CSI and Respondents agree that the best interests of the public would be best served by entering into this Agreement.

NOW, THEREFORE, in consideration of the following mutual undertakings, the CSI and Respondents enter into the following:

STIPULATIONS AND CONSENTS

I. Respondents stipulate and agree to the following provisions.

A. Respondents admit that the Recitals, above, are true and correct.

B. Respondents shall be jointly and severally liable for restitution to the following three Montana investors: B.B. in the amount of \$15,482.16; L.B. & K.B. in the amount of \$4,246.32; and D.V. in the amount of \$8,803.20. Restitution may be paid in installments, in minimum amounts as shown on the spreadsheet, attached as Exhibit A. The first payments are due on or before the 10th day of the month following the effective date of this Agreement, and subsequent payments are due on or before the 10th day of each following month. Payments shall be made in the form of three separate checks, each check made out and sent to the individual account holders, in the minimum amounts shown on Ex. A. Scanned copies of each check shall be emailed on or before the 10th day of each month to:

Lisa Monroe
lmonroe@mt.gov

C. Respondent Nelson shall pay a fine in the amount of \$5,000.00. This fine shall be paid on or before 30 days after the final restitution payment as detailed in paragraph B, above.

This fine shall be paid in the form of a check made payable to the Montana State Auditor's Office, and mailed to:

In re: Meyers Associates, L.P., et. al.

CONSENT AGREEMENT AND FINAL ORDER

Darla Sautter
State Auditor's Office
840 Helena Ave.
Helena, MT 59601

D. Respondent Meyers shall pay a fine in the amount of \$5,000.00. This fine shall be paid on or before 30 days after the effective date of this Agreement. This fine shall be paid in the form of a check made payable to the Montana State Auditor's Office, and mailed to:

Darla Sautter
State Auditor's Office
840 Helena Ave.
Helena, MT 59601

E. Respondents fully and forever release and discharge the Commissioner of Securities and Insurance, Montana State Auditor (Commissioner), the CSI, and all of the CSI's employees and agents from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of this Agreement.

F. Respondents specifically and affirmatively waive their right to a contested case hearing and all rights to appeal under the Montana Administrative Procedure Act, Mont. Code Ann. § 2-4-101 et seq., and elect to resolve this matter with this Agreement.

G. Respondents acknowledge that they were advised of the right to be represented by legal counsel and if represented by legal counsel, that such legal representation was satisfactory.

H. Respondents acknowledge that they enter into this Agreement voluntarily and without reservation.

II. All parties to this Agreement stipulate and consent to the following provisions.

A. The Commissioner and the CSI have jurisdiction over the subject matter of this case and this Agreement.

In re: Meyers Associates, L.P., et. al.
CONSENT AGREEMENT AND FINAL ORDER

B. This Agreement is entered without adjudication of any issue, law, or fact. This Agreement covers the factual allegations addressed above. It is entered into solely for the purpose of resolving the CSI's allegations and is not intended to be used for any other purpose. For any person or entity not a party to this Agreement, this Agreement does not limit or create any private rights or remedies against Respondents, limit or create liability of Respondents, or limit or create defenses of Respondents to any claims.

C. The applicable statute of limitations is tolled for two years from the date of execution of this Agreement with regard to the allegations in the Recitals. In the event either Respondent violates the terms of this Agreement at any time before the applicable statute of limitations has run, the CSI reserves the right to seek any additional administrative penalties or further regulatory action, as the law allows.

D. This Agreement constitutes the entire agreement between the parties and no other promises or agreements, either express or implied, have been made by the CSI or by any member, officer, agent, or representative of the CSI to induce Respondents to enter into this Agreement.

E. This Agreement may not be modified orally, and any subsequent modifications to this Agreement must be mutually agreed upon in writing, with the same formality as this Agreement, to be effective.

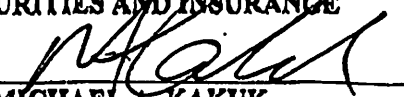
F. This Agreement shall be incorporated into and made a part of the attached Final Order issued by the Commissioner.

G. This Agreement shall be effective upon signing of the Final Order.

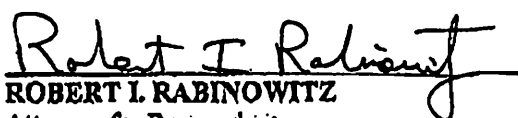
H. The Agreement is a public record under Montana law and, as such, may not be sealed or otherwise withheld from the public.

DATED this 31st day of December, 2015

OFFICE OF THE MONTANA STATE
AUDITOR, COMMISSIONER OF
SECURITIES AND INSURANCE

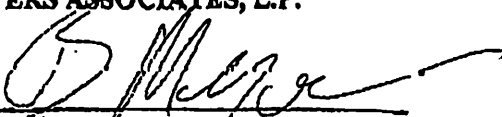
By: 
MICHAEL A. KAKUK
Attorney for the CSI

APPROVED AS TO FORM on this 31st day of December, 2015.


ROBERT L. RABINOWITZ
Attorney for Respondents

DATED this 31st day of December, 2015

MEYERS ASSOCIATES, L.P.

By: 
Signature
B Meyers
Printed Name
CEO
Title

DATED this _____ day of December, 2015

WILLIAM DAVID NELSON

DATED this _____ day of December, 2015

OFFICE OF THE MONTANA STATE
AUDITOR, COMMISSIONER OF
SECURITIES AND INSURANCE

By: _____
MICHAEL A. KAKUK
Attorney for the CSI

APPROVED AS TO FORM on this 31ST day of December, 2015.


ROBERT I. RABINOWITZ
Attorney for Respondents

DATED this _____ day of December, 2015

MEYERS ASSOCIATES, L.P.

By: _____
Signature

Printed Name

Title

DATED this 31 day of December, 2015


WILLIAM DAVID NELSON

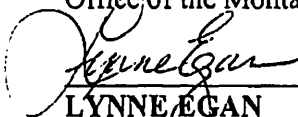
FINAL ORDER

Pursuant to the authority vested by Mont. Code Ann. § 2-4-603 and §§ 30-10-101 et seq., and upon review of the foregoing Consent Agreement and good cause appearing,

IT IS HEREBY ORDERED that the foregoing Consent Agreement between the CSI and Respondents Meyers Associates, L.P., and William David Nelson is adopted as if set forth fully herein.

DATED this 31st day of December, 2015.

MONICA J. LINDEEN
Commissioner of Securities and Insurance
Office of the Montana State Auditor



LYNNE EGAN
Deputy Securities Commissioner

cc: Michael A. Kakuk
Robert I. Rabinowitz

EXHIBIT A

Payment Date	Brent Badura	Lonnie & Kim Buchholz	David Viers	Fine	Total Monthly Payment
10-Jan-16	\$ 645.09	\$ 176.93	\$ 366.80	-	\$ 1,188.82
10-Feb-16	\$ 645.09	\$ 176.93	\$ 366.80	-	\$ 1,188.82
10-Mar-16	\$ 645.09	\$ 176.93	\$ 366.80	-	\$ 1,188.82
10-Apr-16	\$ 645.09	\$ 176.93	\$ 366.80	-	\$ 1,188.82
10-May-16	\$ 645.09	\$ 176.93	\$ 366.80	-	\$ 1,188.82
10-Jun-16	\$ 645.09	\$ 176.93	\$ 366.80	-	\$ 1,188.82
10-Jul-16	\$ 645.09	\$ 176.93	\$ 366.80	-	\$ 1,188.82
10-Aug-16	\$ 645.09	\$ 176.93	\$ 366.80	-	\$ 1,188.82
10-Sep-16	\$ 645.09	\$ 176.93	\$ 366.80	-	\$ 1,188.82
10-Oct-16	\$ 645.09	\$ 176.93	\$ 366.80	-	\$ 1,188.82
10-Nov-16	\$ 645.09	\$ 176.93	\$ 366.80	-	\$ 1,188.82
10-Dec-16	\$ 645.09	\$ 176.93	\$ 366.80	-	\$ 1,188.82
10-Jan-17	\$ 645.09	\$ 176.93	\$ 366.80	-	\$ 1,188.82
10-Feb-17	\$ 645.09	\$ 176.93	\$ 366.80	-	\$ 1,188.82
10-Mar-17	\$ 645.09	\$ 176.93	\$ 366.80	-	\$ 1,188.82
10-Apr-17	\$ 645.09	\$ 176.93	\$ 366.80	-	\$ 1,188.82
10-May-17	\$ 645.09	\$ 176.93	\$ 366.80	-	\$ 1,188.82
10-Jun-17	\$ 645.09	\$ 176.93	\$ 366.80	-	\$ 1,188.82
10-Jul-17	\$ 645.09	\$ 176.93	\$ 366.80	-	\$ 1,188.82
10-Aug-17	\$ 645.09	\$ 176.93	\$ 366.80	-	\$ 1,188.82
10-Sep-17	\$ 645.09	\$ 176.93	\$ 366.80	-	\$ 1,188.82
10-Oct-17	\$ 645.09	\$ 176.93	\$ 366.80	-	\$ 1,188.82
10-Nov-17	\$ 645.09	\$ 176.93	\$ 366.80	-	\$ 1,188.82
10-Dec-17	\$ 645.09	\$ 176.93	\$ 366.80	-	\$ 1,188.82
10-Jan-18	-	-	-	\$ 5,000.00	\$ 5,000.00
Totals:	\$ 15,482.16	\$ 4,246.92	\$ 8,803.20	\$ 5,000.00	\$ 33,531.68

Exhibit B

MICHAEL A. KAKUK
Office of the Montana State Auditor,
Commissioner of Securities and Insurance (CSI)
840 Helena Avenue
Helena, MT 59601
406-444-2040
mkakuk@mt.gov

Attorney for the CSI

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR**

IN THE MATTER OF:)	
)	
)	CASE NO. SEC-2015-143
MEYER ASSOCIATES, L.P., a Montana licensed)	
broker-dealer; and WILLIAM DAVID NELSON,)	CONSENT AGREEMENT AND
individually and in his capacity as a salesperson for)	FINAL ORDER
Meyer Associates, L.P.,)	
)	
Respondents.)	

This Consent Agreement and Final Order (Agreement) is entered into by the Office of the Montana State Auditor, Commissioner of Securities and Insurance (CSI), acting pursuant to the authority of the Securities Act of Montana, Mont. Code Ann. § 30-10-101 et seq. (Act), and Meyer Associates, L.P. (Meyer) and William David Nelson (Nelson) (collectively Respondents).

RECITALS

WHEREAS, Nelson is a securities salesperson for Meyer, and both Nelson and Meyer are registered in the State of Montana;

WHEREAS, the CSI alleges that Nelson violated § 30-10-301(1)(c) by conducting excessive trading in three accounts for the individuals residing in Montana;

WHEREAS, the CSI alleges that Meyer failed to reasonably supervise Nelson, as required by § 30-10-201(13)(k); and

WHEREAS, the CSI and Respondents agree that the best interests of the public would be best served by entering into this Agreement.

NOW, THEREFORE, in consideration of the following mutual undertakings, the CSI and Respondents enter into the following:

STIPULATIONS AND CONSENTS

I. Respondents stipulate and agree to the following provisions.

A. Respondents admit that the Recitals, above, are true and correct.

B. Respondents shall be jointly and severally liable for restitution to the following three Montana investors: B.B. in the amount of \$14,727.02; L.B. & K.B. in the amount of \$4,055.30; and D.V. in the amount of \$8,469.44. Restitution may be paid in installments, in minimum amounts as shown on the spreadsheet, attached as Exhibit A. The first payments are due to the CSI on or before the 10th day of the month following the effective date of this Agreement, and subsequent payments are due on or before the 10th day of each following month. Payments shall be made in the form of three separate checks, each check made out to the individual account holders and in the minimum amounts shown on Ex. A., and mailed to:

Lisa Monroe
State Auditor's Office
840 Helena Ave.
Helena, MT 59601

C. Respondent Nelson shall pay a fine to the State of Montana in the amount of \$5,000.00. This fine shall be paid on or before 30 days after the final restitution payment detailed in paragraph B, above. This fine shall be paid in the form of a check made payable to the State of Montana, and mailed to:

In re: Meyer Associates, L.P., et. al.

CONSENT AGREEMENT AND FINAL ORDER

Darla Sautter
State Auditor's Office
840 Helena Ave.
Helena, MT 59601

D. Respondent Meyer shall pay a fine to the State of Montana in the amount of \$5,000.00. This fine shall be paid on or before 30 days after the final restitution payment detailed in paragraph B, above. This fine shall be paid in the form of a check made payable to the State of Montana, and mailed to:

Darla Sautter
State Auditor's Office
840 Helena Ave.
Helena, MT 59601

E. Within ten business days of the effective date of this Agreement, Respondent Nelson shall withdraw his registration as a securities salesperson in Montana. Respondent Nelson shall not reapply for a license in Montana for a period of two years.

F. Respondents fully and forever release and discharge the Commissioner of Securities and Insurance, Montana State Auditor (Commissioner), the CSI, and all of the CSI's employees and agents from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of this Agreement.

G. Respondents specifically and affirmatively waive their right to a contested case hearing and all rights to appeal under the Montana Administrative Procedure Act, Mont. Code Ann. § 2-4-101 et seq., and elect to resolve this matter with this Agreement.

H. Respondents acknowledge that they were advised of the right to be represented by legal counsel and if represented by legal counsel, that such legal representation was satisfactory.

I. Respondents acknowledge that they enter into this Agreement voluntarily and without reservation.

II. All parties to this Agreement stipulate and consent to the following provisions.

A. The Commissioner and the CSI have jurisdiction over the subject matter of this case and this Agreement.

B. This Agreement is entered without adjudication of any issue, law, or fact. This Agreement covers the factual allegations addressed above. It is entered into solely for the purpose of resolving the CSI's allegations and is not intended to be used for any other purpose. For any person or entity not a party to this Agreement, this Agreement does not limit or create any private rights or remedies against Respondents, limit or create liability of Respondents, or limit or create defenses of Respondents to any claims.

C. The applicable statute of limitations is tolled for two years from the date of execution of this Agreement with regard to the allegations in the Recitals. In the event either Respondent violates the terms of this Agreement at any time before the applicable statute of limitations has run, the CSI reserves the right to seek any additional administrative penalties or further regulatory action, as the law allows.

D. This Agreement constitutes the entire agreement between the parties and no other promises or agreements, either express or implied, have been made by the CSI or by any member, officer, agent, or representative of the CSI to induce Respondents to enter into this Agreement.

E. This Agreement may not be modified orally, and any subsequent modifications to this Agreement must be mutually agreed upon in writing, with the same formality as this Agreement, to be effective.

F. This Agreement shall be incorporated into and made a part of the attached Final Order issued by the Commissioner.

G. This Agreement shall be effective upon signing of the Final Order.

H. The Agreement is a public record under Montana law and, as such, may not be sealed or otherwise withheld from the public.

DATED this _____ day of September, 2015

**OFFICE OF THE MONTANA STATE
AUDITOR, COMMISSIONER OF
SECURITIES AND INSURANCE**

By: _____
MICHAEL A. KAKUK
Attorney for the CSI

DATED this _____ day of September, 2015

MEYER ASSOCIATES, L.P.

By: _____
Signature

Printed Name

Title

DATED this _____ day of September, 2015

WILLIAM DAVID NELSON

FINAL ORDER

Pursuant to the authority vested by Mont. Code Ann. § 2-4-603 and §§ 30-10-101 et seq., and upon review of the foregoing Consent Agreement and good cause appearing.

IT IS HEREBY ORDERED that the foregoing Consent Agreement between the CSI and Respondents Meyer Associates, L.P., and William David Nelson is adopted as if set forth fully herein.

DATED this ____ day of September, 2015.

MONICA J. LINDEEN
Commissioner of Securities and Insurance
Montana State Auditor

cc: Michael A. Kakuk
Meyer Associates, L.P.
William D. Nelson

Exhibit C

I the undersigned do hereby certify that the foregoing is a full, true and correct copy of the original document in the above entitled action.

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES
550 WEST SEVENTH AVENUE, SUITE 1850
ANCHORAGE, ALASKA 99501
(907)269-8140

[Signature]
Name
Title
Date
1/27/16

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES

IN THE MATTER OF:

ORDER NO. [REDACTED]

ORDER TO CEASE AND DESIST
ASSESSING A CIVIL PENALTY
AND
CONSENT TO ORDER

Respondent.

The Director of the Department of Commerce, Community, and Economic Development, Division of Banking and Securities ("Administrator"), has conducted an investigation into certain business activities of [REDACTED] ("Respondent") and has determined that Respondent violated certain provisions of the Alaska Securities Act, Alaska Statute ("AS") 45.55.

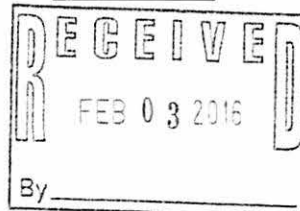
Respondent agrees that the Administrator has jurisdiction over Respondent and these matters pursuant to the Alaska Securities Act.

Respondent wishes to resolve and settle this matter with the Administrator. As evidenced by the authorized signature on this Order, Respondent consents to the entry of this Order assessing a civil penalty based on the Conclusions of Law and Order. Respondent waives its right of appeal under AS 45.55.920(d).

I. FINDINGS OF FACT

1. Respondent (CRD # [REDACTED]) is a broker-dealer firm with an address of [REDACTED]. Respondent has been registered in the State of Alaska as a broker-dealer firm since [REDACTED] 2005. Respondent has not

Order to Cease and Desist



1 previously been the subject of any regulatory proceedings in Alaska. [REDACTED] (" [REDACTED] ")
2 (CRD # [REDACTED]) is the Chief Compliance Officer.

3 2. On July 20, 2015, eighty year old Alaska resident B.B., who was then and
4 continues to be in very poor health, received an unsolicited phone call from [REDACTED]
5 (" [REDACTED] ") (CRD # [REDACTED]), a broker-dealer agent employed at Respondent since December
6 1, 2014, regarding a potential investment. B.B. had never heard of Respondent before and did
7 not know how [REDACTED] obtained his phone number. [REDACTED] was employed at Respondent's
8 branch office located in New York, New York. [REDACTED] (" [REDACTED] ") (CRD # [REDACTED]) was
9 the branch supervisor.

10 3. During the conversation, [REDACTED] attempted to get B.B. to invest with Respondent by
11 offering stock in [REDACTED] (" [REDACTED] ") (symbol: [REDACTED]), a biotechnology
12 company that was trading at \$16.02 a share at that time. [REDACTED] was not registered in Alaska
13 to offer and sell securities to Alaskan residents.

14 4. At the end of the conversation, [REDACTED] generated a new client account form for B.B.
15 that identified B.B.'s risk tolerance as high risk. During the conversation, B.B. never stated to
16 [REDACTED] that he was interested in high risk investments.

17 5. On July 21, 2015, [REDACTED] had the new account form FedExed to B.B. along with a
18 letter requesting a personal check in the amount of \$32,000 to purchase the shares in

19 [REDACTED]

20 6. A few days after speaking with [REDACTED], B.B. received the FedEx package. He did
21 not sign the new account form or send a check to Respondent. B.B. did not have any further
22 contact with [REDACTED] or anyone else at Respondent firm.

23 7. [REDACTED] applied for registration as a broker-dealer agent in Alaska on August 5,
24 2015.

1 8. On October 7, 2015, the Administrator interviewed [REDACTED], Chief Compliance
2 Officer [REDACTED] and another agent at Respondent by telephone. During the interview, [REDACTED]
3 acknowledged that biotechnology companies such as [REDACTED] are "risky" stocks.
4 Moreover, when the Administrator asked [REDACTED] "Would you say that you would normally
5 recommend [REDACTED] to an eighty year old man in poor health?" [REDACTED] responded "Of
6 course not."

7 9. During the interview, Chief Compliance Officer [REDACTED] said that Respondent could
8 not find any record of [REDACTED] ever contacting B.B. [REDACTED] also stated that he had spoken to
9 Branch Supervisor [REDACTED] and [REDACTED] was not familiar with B.B. and had no information
10 regarding [REDACTED] interaction with B.B. [REDACTED] was only able to determine that B.B. was sent a
11 FedEx package by performing a search on fedex.com.

12 10. On October 19, 2015, Branch Supervisor [REDACTED] voluntarily resigned his
13 employment with Respondent.

14 11. On November 2, 2015, Respondent terminated [REDACTED] employment for cause and
15 disclosed his improper actions on a U5 Termination Notice filed with CRD.

16 12. As of the date of this Order, [REDACTED] is trading at \$8.37 a share.

17 13. Respondent has fully cooperated with the Administrator in this matter.

18 II. CONCLUSIONS OF LAW

19 1. The stock that [REDACTED], as an agent for Respondent, offered to B.B. was a
20 "security" as that term is defined in AS 45.55.990(32).

21 2. Respondent violated AS 45.55.060(b)(1) by failing to reasonably supervise [REDACTED].

22 3. Respondent is subject to a civil penalty pursuant to AS 45.55.920 because it
23 violated AS 45.55.060(b)(1).

24 //

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES
550 WEST SEVENTH AVENUE, SUITE 1850
ANCHORAGE, ALASKA 99501
(907)269-8140

1 III. ORDER

2 Pursuant to AS 45.55.920, and on the basis of the Findings of Fact, Conclusions of
3 Law and Respondent's consent to the entry of this Order, Respondent agrees to:

- 4 1. CEASE AND DESIST from further conduct violating the Alaska Securities Act.
5 2. Withdraw its registration as a broker-dealer in the State of Alaska.
6 3. Pay a civil penalty in the amount of twenty-five thousand dollars (\$25,000).

7 IT IS SO ORDERED.

8 CHRIS HLADICK, Commissioner
9 Department of Commerce, Community and
10 Economic Development

11
12 DATED: January 28, 2016

13 Kevin Anselm
14 BY: Kevin Anselm, Director
15 Division of Banking and Securities

16
17 Consent to Entry of Order

18 I, [REDACTED], state that I am the CEO of [REDACTED]
19 [REDACTED] ("Respondent"); that I am authorized to act on its behalf; that I have read the foregoing
20 Order and that I know and fully understand the Order contents; that Respondent has been
21 advised of the right to a hearing and expressly waives any right to a hearing in this matter; that
22 Respondent voluntarily and without any force or duress, consents to the entry of this Order,
23 without admitting or denying the factual allegations stated herein; that Respondent understands
24 that the Administrator reserves the right to take further actions to enforce this Order or to take

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES
550 WEST SEVENTH AVENUE, SUITE 1850
ANCHORAGE, ALASKA 99501
(907) 269-8140

1 appropriate action upon discovery of other violations of the Alaska Securities Act; and that
2 Respondent will fully comply with the terms and conditions stated herein.

3 Respondent understands that this Order is a publicly disclosable document.

4
5 DATED: 1/22/2016

[Redacted]
[Redacted]
Name: [Redacted]
Title: CEO

8
9 SUBSCRIBED AND SWORN TO before me this 22 day of January, 2016 at
Red Bank, NJ.

10
11 [Redacted]

12 Notary Public in and for
13 [Redacted]
Notary Public, State of New Jersey
Notary Printed Name My Commission Expires
My commission expires September 02, 2018

14
15 Approved as to form and content:

16
17 Date _____

18 Attorney for [Redacted]

19
20 Contact Person:
21 David Newman
22 Securities Examiner
23 (907) 269-7678
24

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES
650 WEST SEVENTH AVENUE, SUITE 1850
ANCHORAGE, ALASKA 99501
(907) 269-8140

1 appropriate action upon discovery of other violations of the Alaska Securities Act; and that
2 Respondent will fully comply with the terms and conditions stated herein.

3 Respondent understands that this Order is a publicly disclosable document.

4
5 DATED: 1/22/2016 [Redacted]
6 [Redacted]
7 Name: [Redacted]
8 Title: CEO

9 SUBSCRIBED AND SWORN TO before me this 22 day of JANUARY, 2016 at
10 Red Bank, NJ.

11 [Redacted]
12 Notary Public in and for [Redacted]
13 [Redacted]
14 Notary Printed Name My Commission Expires
15 My commission expires September 02, 2018

15 Approved as to form and content:

16
17 1/22/16
18 Date [Redacted]
19 Attorney for [Redacted]

20 Contact Person:
21 David Newman
22 Securities Examiner
23 (907) 269-7678
24

Exhibit D

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES

IN THE MATTER OF:

[REDACTED]

Respondent.

ORDER NO. [REDACTED]
ORDER TO CEASE AND DESIST
ASSESSING A CIVIL PENALTY
AND
CONSENT TO ORDER

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES
550 WEST SEVENTH AVENUE, SUITE 1850
ANCHORAGE, ALASKA 99501
(907)269-8140

The Director of the Department of Commerce, Community, and Economic Development, Division of Banking and Securities ("Administrator"), has conducted an investigation into certain business activities of [REDACTED] ("Respondent") and has determined that Respondent violated certain provisions of the Alaska Securities Act, Alaska Statute ("AS") 45.55.

Respondent agrees that the Administrator has jurisdiction over Respondent and these matters pursuant to the Alaska Securities Act.

Respondent wishes to resolve and settle this matter with the Administrator. As evidenced by the authorized signature on this Order, Respondent consents to the entry of this Order assessing a civil penalty based on the Conclusions of Law and Order. Respondent waives its right of appeal under AS 45.55.920(d).

I. FINDINGS OF FACT

1. Respondent (CRD # [REDACTED]) is a broker-dealer firm with an address of [REDACTED]. Respondent has been registered in the State of Alaska as a broker-dealer firm since [REDACTED] 2005. [REDACTED] (" [REDACTED] ")

1 (CRD # [REDACTED]) is the [REDACTED]

2 2. On July 20, 2015, eighty year old Alaska resident B.B., who was then and
3 continues to be in very poor health, received an unsolicited phone call from [REDACTED]
4 (" [REDACTED] ") (CRD # [REDACTED]), a broker-dealer agent employed at Respondent since December
5 1, 2014, regarding a potential investment. B.B. had never heard of Respondent before and did
6 not know how [REDACTED] obtained his phone number. [REDACTED] was employed at Respondent's
7 branch office located in New York, New York. [REDACTED] (" [REDACTED] ") (CRD # [REDACTED]) was
8 the branch supervisor.

9 3. During the conversation, [REDACTED] attempted to get B.B. to invest with Respondent by
10 offering stock in [REDACTED] (" [REDACTED] ") (symbol: [REDACTED]), a biotechnology
11 company that was trading at \$16.02 a share at that time. [REDACTED] was not registered in Alaska
12 to offer and sell securities to Alaskan residents.

13 4. At the end of the conversation, Respondent generated a new client account form
14 for B.B that identified B.B.'s risk tolerance as high risk. During the conversation, B.B. never
15 stated to [REDACTED] that he was interested in high risk investments.

16 5. On July 21, 2015, Respondent FedExed the new account form to B.B. along with a
17 letter requesting a personal check in the amount of \$82,000 to purchase the shares in
18 [REDACTED].

19 6. In the packet of materials FedExed to B.B., Respondent included some
20 informational brochures from a broker-dealer firm called [REDACTED]
21 (" [REDACTED] ") (CRD # [REDACTED]). Prior to working for Respondent, [REDACTED] was employed as a
22 broker-dealer agent of [REDACTED] from February 14, 2014 to December 1, 2014. [REDACTED] ceased
23 operations and requested termination of its registration with FINRA and all states in which it
24 was registered on June 5, 2015. FINRA ultimately cancelled [REDACTED]'s registration for failure

1 to pay required fees on July 20, 2015. On July 30, 2015, the Administrator issued a Final
2 Cease and Desist against [REDACTED] and several of its principals for directing junior agents to
3 cold call potential clients and make deceptive and misleading representations to those
4 potential clients that certain bonds were a safe investment when in fact they were rated just
5 above default. B.B. was one of the people cold called by [REDACTED], and B.B. invested \$27,000
6 in the bonds through [REDACTED], much of which he lost. The Final Cease and Desist Order
7 included a civil penalty of \$150,000. As of the date of this Order, [REDACTED] is no longer
8 registered as a broker-dealer firm in any jurisdiction.

9 7. It is unknown why Respondent sent promotional materials for [REDACTED] to B.B.
10 Respondent employs or has employed several agents who previously worked at [REDACTED],
11 including eight former agents of [REDACTED] who were hired between November 2014 and
12 January 2015. One of these agents was [REDACTED], who worked as a supervisor at [REDACTED] before
13 his employment as branch supervisor with Respondent, and was the first of the group of eight
14 to be hired by Respondent.

15 8. A few days after speaking with [REDACTED], B.B. received the FedEx package. He did
16 not sign the new account form or send a check to Respondent. B.B. did not have any further
17 contact with Respondent or any of its agents.

18 9. [REDACTED] applied for registration as a broker-dealer agent in Alaska on August 5,
19 2015.

20 10. On October 7, 2015, the Administrator interviewed [REDACTED], [REDACTED]
21 [REDACTED] and another agent at Respondent by telephone. During the interview, [REDACTED]
22 acknowledged that biotechnology companies such as [REDACTED] are "risky" stocks.
23 Moreover, when the Administrator asked [REDACTED] "Would you say that you would normally
24 recommend [REDACTED] to an eighty year old man in poor health?" [REDACTED] responded "Of

1 course not.”

2 11. During the interview, [REDACTED] said that Respondent
3 could not find any record of [REDACTED] ever contacting B.B. [REDACTED] also stated that he had spoken
4 to Branch Supervisor [REDACTED], and [REDACTED] was not familiar with B.B. and had no information
5 regarding [REDACTED]'s interaction with B.B. [REDACTED] was only able to determine that B.B. was sent a
6 FedEx package by performing a search on fedex.com.

7 12. On October 19, 2015, Branch Supervisor [REDACTED] voluntarily resigned his
8 employment with Respondent, two days before he was scheduled to be interviewed by the
9 Administrator.

10 13. On November 2, 2015, Respondent terminated [REDACTED]'s employment.

11 14. As of the date of this Order, [REDACTED] is trading at \$8.89 a share.

12 II. CONCLUSIONS OF LAW

13 1. The stock that Respondent offered to B.B. was a “security” as that term
14 is defined in AS 45.55.990(32).

15 2. Respondent violated AS 45.55.030(a) by [REDACTED] offering stock to B.B. without
16 [REDACTED] being registered as a broker-dealer agent in Alaska.

17 3. Respondent violated AS 45.55.025(3) by offering a stock to B.B. that was not
18 suitable based on the stock's risk and B.B.'s age and poor health.

19 4. Respondent violated AS 45.55.060(b)(1) by

20 A. failing to reasonably supervise [REDACTED] in his interaction with B.B.; and

21 B. failing to review the new account form and offer that was sent to B.B.

22 5. Respondent is subject to a civil penalty pursuant to AS 45.55.920(b) because it
23 knowingly and intentionally violated AS 45.55.030(a), AS 45.55.025(3), and AS
24 45.55.060(b)(1).

1 III. ORDER

2 Pursuant to AS 45.55.920, and on the basis of the Findings of Fact, Conclusions of
3 Law and Respondent's consent to the entry of this Order, Respondent agrees to:

- 4 1. CEASE AND DESIST from further conduct violating the Alaska Securities Act.
5 2. Withdraw its registration as broker-dealer in the State of Alaska.
6 3. Never re-apply to become registered as a broker-dealer in the State of Alaska.
7 4. Pay a civil penalty in the amount of twenty-five thousand dollars (\$25,000).

8 IT IS SO ORDERED.

9
10 CHRIS HLADICK, Commissioner
11 Department of Commerce, Community and
12 Economic Development

13 DATED: _____

14 BY: Kevin Anselm, Director
15 Division of Banking and Securities

16
17
18
19
20 Consent to Entry of Order

21 I, _____, state that I am the _____ of _____
22 Inc. ("Respondent"); that I am authorized to act on its behalf; that I have read the foregoing
23 Order and that I know and fully understand the Order contents; that Respondent acknowledges
24 violation of the Alaska Securities Act; that Respondent has been advised of the right to a

1 hearing; that Respondent voluntarily and without any force or duress, consents to the entry of
2 this Order, expressly waiving any right to a hearing in this matter; that Respondent understands
3 that the Administrator reserves the right to take further actions to enforce this Order or to take
4 appropriate action upon discovery of other violations of the Alaska Securities Act; and that
5 Respondent will fully comply with the terms and conditions stated herein.

6 Respondent understands that this Order is a publicly disclosable document.

7
8 DATED: _____

9
10 Name: _____

Title: _____

11
12 SUBSCRIBED AND SWORN TO before me this ____ day of _____, _____ at

13 _____,

14 _____
15 Notary Public in and for _____

16 _____
17 Notary Printed Name

My commission expires: _____

18 Contact Person:
19 David Newman
20 Securities Examiner
21 (907) 269-7678
22
23
24

Exhibit E

From: Rabinowitz, Robert
Sent: Thursday, December 24, 2015 11:29 AM
To: 'Lee, Lorraine'
Subject: RE: Request for Review of Draft Consent Order

Hi Lorraine: Thanks for the quick response. Attached is the proposed form of the Consent Order. I have taken out the provision that the firm will not re-apply for registration in Alaska in Section III (page 5) of the Order, so this will be the final language.

I understand that I won't hear back until next week and that is fine. I will follow up with you then.

Thanks once again for your assistance and have a Merry Christmas!!

Rob

From: Lee, Lorraine [mailto:Lorraine.Lee@finra.org]
Sent: Thursday, December 24, 2015 7:07 AM
To: Rabinowitz, Robert
Subject: RE: Request for Review of Draft Consent Order

Rob –

I forwarded your email to the staff in Legal and Policy (which will make the final determination on the SD). They've instructed that it would be better to see the actual language, rather than a summary description. Further, given that senior staff will not be returning until next week, the matter is not likely to be reviewed until the first of next week. Please let me know your thoughts.

Best,

Lorraine

From: Rabinowitz, Robert [mailto:RRabinowitz@bplegal.com]
Sent: Wednesday, December 23, 2015 12:08 PM
To: Lee, Lorraine
Subject: RE: Request for Review of Draft Consent Order

Hi Lorraine:

Please assist me with a follow-up questions about the Alaska draft Consent Order that I sent to you and we discussed earlier this month. In light of FINRA's determination that the Consent Order, as currently proposed, would render the subject firm SD, the state seems willing to remove the provision that prohibits the firm from reapplying for registration in Alaska in the future. They will still require the firm's withdrawal now.

The specific question is will the elimination of the provision never to re-apply for registration cure the SD issue, or is the requirement to withdraw now sufficient by itself to trigger an SD? As you can imagine, this is extremely crucial to the firm who needs a definite answer before they will agree to enter into the Consent Order. Alaska is looking to get this wrapped up by year-end so time is of the essence in getting this answer ASAP. I am aware of FINRA's holiday schedule but ask that you do what you can to obtain an answer for me as soon as possible.

I want to thank you for being an invaluable resource for me (and others in my firm, particularly my partner Stanley Goldstein) over the years, and wish you and your family the very best for Christmas and the New Year.

Rob

Robert I. Rabinowitz

Shareholder

Becker & Poliakoff

125 Half Mile Road, Suite 103 | Red Bank, NJ 07701

Tel: 732.842.1662 | Cell: 732.915.0692 | Fax: 732.842.9047

E-Mail | Website[bplegal.com]| Connect on LinkedIn[linkedin.com]

www.bplegal.com

[bplegal.com]

From: Lee, Lorraine [mailto:Lorraine.Lee@finra.org]
Sent: Monday, December 07, 2015 9:58 AM
To: Rabinowitz, Robert
Subject: RE: Request for Review of Draft Consent Order

Robert –

I've forwarded the Order onto the staff in Registration and Disclosure. After reviewing the Order, I believe there are SD implications for the member due to its agreement to withdraw its registration from the State of Alaska and further, its agreement to not reapply in that state. I'll await word from the other department and will circle back after I learn more.

Best,

Lorraine

From: Rabinowitz, Robert [mailto:RRabinowitz@bplegal.com]
Sent: Monday, December 07, 2015 9:37 AM
To: Lee, Lorraine
Subject: Request for Review of Draft Consent Order

Good morning, Lorraine:

As discussed last week, I would appreciate your assistance in helping me determine if my client, which is a member firm, would be subject to SD if they become subject to the attached draft C&D and Consent Order.

I have redacted the firm's name and other identifying information since this is only a draft and the firm has not yet decided whether it will agree to be subject to the proposed sanctions. Their decision will be determined in large measure with FINRA's determination if this would be an SD event or not.

Please send this to the appropriate individuals for review and let me know when they have a response. I greatly appreciate your assistance in this regard.

Robert

Robert I. Rabinowitz

Shareholder

Becker & Poliakoff

125 Half Mile Road, Suite 103 | Red Bank, NJ 07701

Tel: 732.842.1662 | Cell: 732.915.0692 | Fax: 732.842.9047

E-Mail | Website[bplegal.com]| Connect on LinkedIn[linkedin.com]

www.bplegal.com[\[bplegal.com\]](http://bplegal.com)

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Exhibit F

[Compose](#)

Reply

**Newman, David (CED)**

12/29/2015 at 04:20 PM

To: Rabinowitz, Robert (RRabinowitz@bplegal.com) [Details](#) ^**From:** Newman, David (CED) <david.newman@alaska.gov>**Sent:** 12/29/2015 at 04:20 PM**To:** Rabinowitz, Robert (RRabinowitz@bplegal.com) <RRabinowitz@bplegal.com>[Display Images](#) For your security, images are not being displayed. Consider this before displaying them. 1 Attachment(s) Total 43.9 KB [View](#) ^

Rob,

I left you a message early this morning but haven't heard back from you. As I mentioned before, the Division would like this matter resolved by the end of the year. That is this Thursday.

Because there are only two more days to possibly come to an agreement, I've attached the Division's final proposed order. I added the "fully cooperated" and "without admitting or denying" language that we talked about.

I removed the "never re-apply" language, but the "withdraw" language is still in there. After speaking again with the Chief of Enforcement and Division Director, the withdraw language needs to remain in the order.

If this is acceptable to [REDACTED] please have them sign it (and there is signature line for you too as the attorney), and email me a copy of the signed order before Thursday at 12:00 pm Alaska time (4:00 pm your time). After that, please send me the original in the mail with the payment of the \$25,000 civil penalty.

If [REDACTED] chooses not to sign it, or if we don't receive an emailed copy of the signed order by the deadline, the Division will issue a revocation order before the close of business on Thursday.

If you have any questions, please call me.

RE: Request for Review of Draft Consent Order



Lee, Lorraine <Lorraine.Lee@finra.org>

12/29/2015 at 05:15 PM

From: Lee, Lorraine <Lorraine.Lee@finra.org>
Sent: 12/29/2015 at 05:15 PM
To: Rabinowitz, Robert <RRabinowitz@bplegal.com>
Cc:

Heard you got the answer!!! Yea!!!

From: Rabinowitz, Robert
Sent: Tuesday, December 29, 2015 4:25:27 PM
To: Lee, Lorraine
Subject: Request for Review of Draft Consent Order

Hello Loraine:

Do you have any further information regarding the draft Alaska Consent Order that I sent to you last week? Please let me know ASAP since the state has given my client a hard deadline of Thursday at noon or face a revocation proceeding.

Thanks for your help.

Robert

Robert I. Rabinowitz
Shareholder

Becker & Poliakoff
125 Half Mile Road, Suite 103 | Red Bank, NJ 07701
Tel: 732.842.1662 | Cell: [REDACTED] | Fax: 732.842.9047
E-Mail | Website[bplegal.com]| Connect on LinkedIn[linkedin.com]

www.bplegal.com

[bplegal.com]

Exhibit G

Rabinowitz, Robert

From: Kakuk, Michael <MKakuk@mt.gov>
Sent: Monday, June 27, 2016 3:35 PM
To: Rabinowitz, Robert
Subject: Meyer Associates/Nelson - payments

Robert,

Hello, again. I hope you were able to figure out the FINRA issue. If it helps, we had the same problem come up with another consent agreement just after we finalized the one in this matter. In that other case, the experienced industry attorneys were surprised (understatement) that FINRA took the position it did on the statutory disbarment.

I am also contacting you because we have not received proof of restitution payments the past couple of months. I assume your client has continued making the payments, but has missed the extra step of then sending the proof to the CSI. If you could contact your client and double check on this, we would appreciate it. Thanks.

Michael A. Kakuk • Attorney • Office of the Montana State Auditor,
Commissioner of Securities and Insurance • 840 Helena Ave. • Helena, MT 59601
Phone: (406) 444-2040 • Fax: (406) 444-3499

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Admin. Proc. File No. 3-17254

In the Matter of the Application of :
 :
BRUCE MEYERS AND :
 :
MEYERS ASSOCIATES, L.P. :
 :
For Review of Action Taken by :
FINRA :

**BRIEF IN SUPPORT OF APPLICANTS' MOTION FOR LEAVE TO ADDUCE
ADDITIONAL EVIDENCE**

ON THE BRIEF

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PRELIMINARY STATEMENT

Applicants Meyers Associates, L.P. (the “Firm”) and Bruce Meyers (“Meyers”) submit this brief in support of their motion before the Securities and Exchange Commission (“SEC” or the “Commission”) for leave to adduce additional evidence pursuant to Rule 452 of the Commission’s Rules of Practice. Applicants move for an Order permitting the introduction of additional evidence to support their Application to the Commission to review and reverse the decision by the Financial Industry Regulatory Authority’s (“FINRA”) National Adjudicatory Council (“NAC”) dated May 9, 2016 (the “NAC Decision”) which determined that: 1) Meyers, an associated person of a FINRA-member firm, is statutorily disqualified pursuant to Exchange Act Section 15(b)(4)(H)(i), and 2) denying the Firm’s MC-400 Membership Application to permit Meyers to continue to associate with the Firm in any capacity.

JURISDICTIONAL AUTHORITY

The NAC Decision is a final disciplinary sanction by a self-regulatory organization as to which a notice is required to be filed with the Commission pursuant to Section 19(d)(1) of the Securities Exchange Act. Such notice was filed with the Commission on May 9, 2016.

Pursuant to Exchange Act Rule 19d-2, the Commission has jurisdiction to stay the effectiveness of the NAC Decision and this motion is made thereunder.

Pursuant to Rule 452 of the Commission’s Rules of Practice, the Commission may allow the submission of additional evidence, provided that such evidence is material and there were reasonable grounds for failure to adduce such evidence previously.

BASIS FOR THE MOTION

The additional evidence sought to be introduced relates only to Applicants' public policy argument that there is insufficient guidance from FINRA or the SEC as it relates to the concept of the "functional equivalent of a bar" upon which FINRA has relied in this and other matters.¹

The additional evidence sought to be adduced is contained in the Certification of Robert I. Rabinowitz Esq.,² counsel to Applicants, and the exhibits which accompany the Certification, which include draft and final Orders of two state securities commissions which were modified to eliminate language which would have been considered as the functional equivalent of a bar, based upon FINRA's interpretation and application. The two state securities commissioners' Orders were modified at the request of respondent's counsel when he alerted each state's representative of the disqualifying effect of the proposed language in the initial drafts of each Order.³ Thereafter, the proposed Orders were changed when the state realized the impediment to the respondents from entering into the proposed Orders as initially drafted, and wished to informally resolve the matters through the issuance of consent orders.⁴

The additional evidence provides recent, "real world" examples of two state securities commissions that would have entered final Orders in settlements with respondents that, under FINRA's interpretation, would have rendered the respondents statutorily disqualified to continue as a member and associated person of a member, by agreeing to settle proposed charges with a state regulator which would have required the respondents to withdraw their registrations and

¹ See, e.g., *In the Matter of the Continued Assoc. of Ronald M. Berman as a Gen. Sec. Representative with Axiom Capital Mgmt., Inc.*, NAC Decision No. SD-1997 (December 11, 2014); see also *Disqualification of Felons & Other Bad Actors from Rule 506 Offerings*, SEC Release No. 33-9414, 2013 SEC LEXIS 2000 (July 10, 2013), 78 F.R. 44730, 44741 (July 24, 2013).

² The Certification of Robert I. Rabinowitz, Esq. in Support of Applicants' Motion for Leave to Adduce Additional Evidence (hereinafter "Rabinowitz Cert.") is attached hereto as **Exhibit 1**.

³ Rabinowitz Cert. at ¶¶ 3-11.

⁴ *Id.*

agree not to re-apply for registration.⁵ The fact that, in both cases, the states were willing to revise the proposed Orders to eliminate the statutory disqualification-triggering language that the respondents not re-apply for registration, clearly demonstrates that (1) at least these two states' commissioners did not intend that their proposed Orders be deemed disqualifying events, and 2) the staffs of those two securities commissions had no understanding that the original language in the draft consent orders would be interpreted by FINRA to be disqualifying under the statute, thereby effectively ending the careers of the respondents in the securities industry.

FINRA's sole basis for this draconian interpretation, as explained in the *Berman* case, is its reading of the SEC Release standing for the proposition that "if a final order has the effect of barring an individual such sanction is a bar, regardless of the language contained in the order."⁶ However, the SEC Release is subtly different, stating that:

We believe the statutory language is clear: bars are orders issued by one of the specified regulators that have the effect of barring a person from association with certain regulated entities; from engaging in the business of securities, insurance or banking; or from engaging in savings association or credit union activities. Any such order that has one of those effects is a bar, regardless of whether it uses the term "bar." Orders that do not have any of those effects are not bars, although they may be disqualifying "final orders," as discussed below.⁷

(A) The SEC Should Provide Clarity as a Matter of Public Policy

In this case and the *Berman* matter cited above, FINRA relies primarily on the SEC Release in interpreting the withdrawal language as the "functional equivalent of a bar."⁸ There is a severe lack of guidance from FINRA or the SEC when it comes to this concept of a "functional

⁵ *Id.*

⁶ *In the Matter of the Continued Assoc. of Ronald M. Berman as a Gen. Sec. Representative with Axiom Capital Mgmt., Inc.*, NAC Decision No. SD-1997 (December 11, 2014) at 3.

⁷ *Disqualification of Felons & Other Bad Actors from Rule 506 Offerings*, SEC Release No. 33-9414, 2013 SEC LEXIS 2000 (July 10, 2013), 78 F.R. 44730, 44741 (July 24, 2013) at **75-76.

⁸ See *In the Matter of the Continued Assoc. of Ronald M. Berman as a Gen. Sec. Representative with Axiom Capital Mgmt., Inc.*, NAC Decision No. SD-1997 (December 11, 2014).

equivalent of a bar.” In the SEC Release, the SEC defined the practical effect of a bar as “prohibiting a person from engaging in a particular activity.”⁹ However, FINRA has interpreted the SEC Release language far too broadly in adopting its newfound “functional equivalent of a bar” standard. Under the same reasoning, many state sanctions would be unintentionally construed as a bar and form the basis for statutory disqualification.

Significantly, the SEC Release is titled “Disqualification of Felons and Other ‘Bad Actors’ from Rule 506 Offerings.”¹⁰ Anyone conducting any research into this issue or seeking guidance regarding statutory disqualification for purposes of FINRA registrations could easily have missed this Commission Release from July 2013 which, by its own title, seems to be limited to the issue of the use (or prohibition of the use) of Rule 506 of Regulation D for private securities transactions by persons subject to statutory disqualification. As it is written, an issuer or person involved in a distribution of securities could not rely on this particular exemption from registration and would have to consider other alternatives, if they were subject to, among other things, a state securities commission order which served as the “functional equivalent” of a bar.¹¹

However, not being able to utilize the exemption from registration in a private securities offering provided by Regulation D is a minor inconvenience; not being able to maintain your securities registration and with it, your livelihood, is much more than that. For FINRA to make such a massive interpretive leap based on the language of the SEC Release without more specific guidance from the Commission is unfair and unwarranted, given that the SEC Release did not address whether a state securities commission sanction could form the basis for statutory disqualification in a FINRA eligibility proceeding. The repercussions for securities industry

⁹ See *Disqualification of Felons & Other Bad Actors from Rule 506 Offerings*, SEC Release No. 33-9414, 2013 SEC LEXIS 2000 (July 10, 2013), 78 F.R. 44730, 44741 (July 24, 2013).

¹⁰ *Id.*

¹¹ *Id.*

professionals of FINRA's broad interpretation and expansion of the SEC Release to determine that an individual would be permanently barred from the securities industry (rather than simply ineligible to take advantage of an exemption from registration in a private securities offering) are so severe that it is imperative that the SEC directly address this issue and issue more explicit guidance regarding same.¹²

The examples provided in the attached Certification are submitted to illuminate a problem that is likely unforeseen by many securities professionals seeking to resolve regulatory matters with state securities administrators, who also appear to be unfamiliar with the "functional equivalent" approach. If those state securities administrators and experienced securities counsel are unaware of FINRA's interpretation of this issue, certainly FINRA member firms and/or associated persons who attempt to resolve potential state charges without legal representation are bound to become ensnared in this serious, potentially career-ending dilemma.

FINRA's By-Laws and Membership Rules are in place to protect the investing public and the integrity of the marketplace. However, they do not give Membership Regulation or the NAC the unfettered discretion to rewrite a negotiated agreement with a state regulator or unilaterally expand the definition of statutory disqualification. Here, any reasonable reading of the plain language of the Order, and any fair and equitable interpretation of its intended purpose, should lead to the conclusion that Meyers is not and should not be statutorily disqualified.

Like the individuals in *In the Matter of the Continued Association of X as a General Securities Representative, et al.*, 2004 WL 5319879, NAC Decision No. SD04014 (N.A.S.D.R. 2004) and *Leslie T. Peterson v. Nat'l Futures Ass'n*, 1992 CFTC LEXIS 416 (Oct. 7, 1992),

¹² FINRA has also indicated that the period of statutory disqualification extends through the time that the Department approves Meyers' registration in the State and not merely after the three-year term has expired, citing the SEC Release. It is also imperative that the Commission interpret this language in the context of Section 3(a)(39) and provide clear guidance to FINRA and the industry to ensure that a statutory disqualification does not remain in place for longer than the sanction that created it.

Meyers could not have been on notice that the language of the Exchange Act, which refers to the word “bar,” would include the words “voluntarily withdraw his agent registration in Connecticut and not reapply for registration as an agent of a broker-dealer for three years.” To permit this would be to allow FINRA to unilaterally rewrite the parties’ agreement and expand the definition of Statutory Disqualification under the Exchange Act.

Finally, FINRA acted outside of its authority by adding elements to the definition of statutory disqualification that are not included in nor intended by the statute and are not clarified by any guidance issued by the Commission. This dangerous precedent will send a chilling effect to any member firm or registered individual seeking to resolve charges with a regulatory authority if they are in danger of receiving the regulatory equivalent of the death penalty without sufficient notice of this significant collateral effect. Clearly that was not the intention of the statute and FINRA should not be permitted to unilaterally redefine the statute without further authority from the SEC and Congress.

**(B) The Certification of Robert I. Rabinowitz, Esq. and Accompanying Exhibits
Should Be Accepted by the Commission and Considered in Its Review of this
Matter**

The Certification of Rabinowitz I. Rabinowitz, Esq. contains anecdotal evidence of two recent state administrative proceedings in which the respondents would have unwittingly become subject to statutory disqualification as a result of their desire to resolve administrative actions through consent agreements or consent orders. The Certification provides one experienced securities regulatory attorney’s firsthand experience in avoiding the devastating result of a statutory disqualification. The Certification explains two unrelated encounters with the securities commissions of Alaska and Montana in which he encountered the same lack of understanding by those regulators of what a final consent agreement and/or order which prohibited a respondent

from reapplying for registration, would mean to those respondents in the wider purview of FINRA's interpretation of those voluntarily-executed settlement documents.¹³

In addition to those two unrelated examples, in an e-mail from Michael A. Kakuk, Esq. of the Office of the Montana State Auditor, Commissioner of Securities and Insurance to attorney Rabinowitz, Mr. Kakuk noted that, “[W]e had the same problem come up with another consent agreement just after we finalized the one in this matter, in that other case, the experienced industry attorneys were surprised (understatement) that FINRA took the position it did on the statutory disbarment.”¹⁴

These two examples, along with the Connecticut Department of Banking's lack of clarity on this issue within the language of the Consent Order which is the precursor to the NAC Decision, clearly demonstrate the discord among FINRA and at least three state regulatory authorities as to FINRA's overreaching interpretation of the Commission's unrelated guidance within the context of its Release with respect to prohibitions on the use of the Rule 506 exemption from registration.¹⁵

(C) The Additional Evidence is Material and There are Reasonable Grounds for Failure to Adduce Such Evidence Previously

As presented at length above, the additional evidence is important to demonstrate to the Commission that in the absence of clearly enunciated guidance from the Commission, that many more securities industry firms and individuals can and have been unknowingly caught in the “functional equivalent” trap set by FINRA's unreasonably wide interpretation of the applicable statute.

¹³ Rabinowitz Cert. at ¶¶ 3–11.

¹⁴ Rabinowitz Cert. at ¶ 12.

¹⁵ See *Disqualification of Felons & Other Bad Actors from Rule 506 Offerings*, SEC Release No. 33-9414, 2013 SEC LEXIS 2000 (July 10, 2013), 78 F.R. 44730, 44741 (July 24, 2013).

This evidence was not provided to the Commission at the time of the filing of the request for review as it only became clear to Meyers and its counsel on or about June 27, 2016 upon receipt of an e-mail from Michael A. Kakuk, Esq., an attorney representing the Montana Commission of Insurance and Securities, in which he stated, "...[I]f it helps, we had the same problem come up again with another consent agreement just after we finalized the one in this matter. In that other case, the experienced industry attorneys were surprised (understatement) that FINRA took the position it did on this statutory disbarment."¹⁶

This unsolicited statement from Mr. Kakuk and his reference to other "experienced industry attorneys" that were surprised by FINRA's position on this important issue illuminates the scope of the problem among state securities administrators as well as within the industry in general. This e-mail was received after Meyers' filing of an application with the Commission to review the NAC Decision on May 19, 2016.

For these very important reasons, the Commission should provide its clear and concise interpretation and related guidance to FINRA, the state securities commissioners, and the industry at large to promote a more uniform application of the statutory disqualification issue as it relates to final state securities orders, in connection with securities firms and their associated persons.

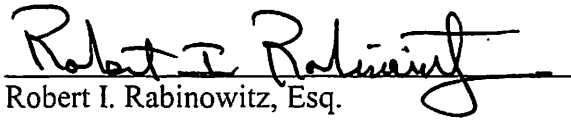
For the foregoing reasons, Meyers Associates, L.P. and Bruce Meyers hereby move the Securities and Exchange Commission for an Order permitting the introduction of the additional evidence provided for herein and in the attached Certification and exhibits which accompany this Motion.

¹⁶ Rabinowitz Cert. at ¶ 12.

Dated: December 2, 2016

Respectfully Submitted,

Meyers Associations, L.P. and Bruce Meyers

A handwritten signature in black ink, reading "Robert I. Rabinowitz", written over a horizontal line.

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Attorneys for Applicants

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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In the Matter of the Application of :
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Bruce Meyers and Meyers Associates, L.P. :
 : File No. 3-17254
For Review of Action Taken by :
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FINRA :
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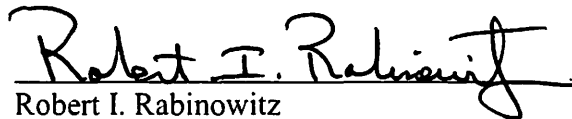
CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2016 I caused a true and correct copy of the foregoing Applicants' Motion for Leave to Adduce Additional Evidence; Certification of Robert I. Rabinowitz with Exhibits and Brief in Support of the Motion was served upon the following by overnight Fed Ex delivery addressed to:

Lynn M. Powalski
Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Andrew J. Love, Esq.
Office of General Counsel
Financial Industry Regulatory Authority
1735 K Street, N.W.
Washington, DC 20006

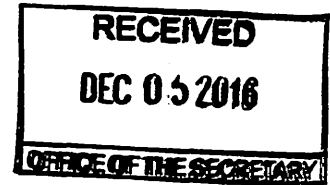
Dated: December 2, 2016



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Reply
To:
Robert I. Rabinowitz
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December 2, 2016



Via FedEx Delivery

Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

**Re: In the Matter of the Application of Bruce Meyers and Meyers Associates, L.P.
For Review of Action Taken By FINRA, File No. 3-17254**

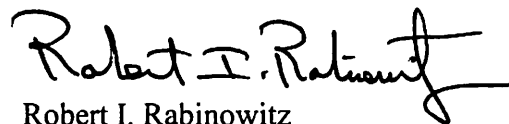
Dear Sir/Madam:

We represent Bruce Meyers and Meyers Associates, L.P. (collectively, "Applicants").
Please find attached for filing Applicants':

1. An original and three (3) copies of Applicants' Motion for Leave to Adduce Additional Evidence;
2. An original and three (3) copies of Certification of Robert I. Rabinowitz with exhibits;
3. An original and three (3) copies of a Brief in Support of the Motion, and
4. Executed Certificate of Service.

Applicants' respectfully request oral argument on this Motion should FINRA file an opposition thereto. Applicants' further respectfully request expedited review of this matter.

Very truly yours,


Robert I. Rabinowitz

RIR:cmk
Enclosures

cc: Andrew J. Love, Esq. FINRA (by Fed Ex delivery)
Mr. Bruce Meyers (by e-mail only)
Meyers Associates L.P. (by e-mail only)
Alan Lawhead, Esq. (by Electronic Mail Delivery Only)

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