

SECURITIES AND EXCHANGE COMMISSION
Washington D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 81778 / September 29, 2017

Admin. Proc. File No. 3-17254

In the Matter of the Application of

MEYERS ASSOCIATES, L.P.,
and
BRUCE MEYERS

For Review of Action Taken by
FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DENIAL OF
MEMBERSHIP CONTINUANCE APPLICATION

Registered securities association denied member firm's application to permit continued association of its chief executive officer who was subject to a statutory disqualification. *Held*, application for review is *dismissed*.

APPEARANCES:

Robert I. Rabinowitz, of Becker & Poliakoff, LLP, for Meyers Associates, L.P. and Bruce Meyers.

Alan Lawhead and *Andrew J. Love* for FINRA.

Appeal filed: June 8, 2016

Last brief received: December 9, 2016

Meyers Associates, L.P., a registered broker-dealer and FINRA member, and Bruce Meyers appeal from a FINRA decision denying the firm's MC-400 Membership Continuance

Application seeking permission for Meyers to continue his association with the firm notwithstanding his “statutory disqualification.”¹ In denying the application, FINRA found that an order entered by Connecticut state authorities subjected Meyers to a “statutory disqualification” pursuant to Sections 3(a)(39)(F) and 15(b)(4)(H)(i) of the Securities Exchange Act of 1934 because it constituted a final order of a state regulator that barred him from engaging in the business of securities in the state. We agree with FINRA’s finding and, based on an independent review of the record, have determined to dismiss applicants’ appeal.

I. Background

A. Meyers became subject to a statutory disqualification.

Meyers Associates, which is based in New York City, conducts a retail securities business and engages in investment banking activities. Meyers founded Meyers Associates, served as its chief executive officer, and indirectly owns 90% of the firm through his 90% ownership of its general partner, Meyers Securities Corporation.

In March 2015, applicants settled charges brought by the Connecticut Department of Banking (“Connecticut”) alleging, among other things, that Meyers failed reasonably to supervise various aspects of Meyers Associates’ operations and materially assisted the firm’s failure timely to provide requested documents.² Without admitting or denying those charges, applicants consented to a final order that required Meyers to withdraw his registration as an agent of the firm and not reapply for registration for three years (the “Connecticut Order”).³

¹ *In the Matter of the Continued Ass’n of Bruce Meyers*, SD-2069, slip op. at 1, 29, & 34 (FINRA NAC May 9, 2016), available at http://www.finra.org/sites/default/files/SD-2069-Meyers_0.pdf. See 15 U.S.C. § 78c(a)(39) (defining the term “statutory disqualification”); see also *infra* Section II.B.1 (discussing Meyers’s statutory disqualification under that provision). Meyers Associates is now known as Windsor Street Capital, LP.

² Meyers Associates was alleged to have engaged in the sale of unregistered securities in Connecticut; committed supervisory failures; failed to provide documents to Connecticut in a timely and complete manner; and failed to maintain and provide accurate books and records.

³ See *In the Matter of Meyers Assocs., L.P. and Bruce Meyers*, Docket No. CFNR-14-8132-S (Conn. Dep’t of Banking), 2015 WL 1431881, at *4 (Mar. 24, 2015). Applicants also “admit[ed that] sufficient evidence exist[ed]” for Connecticut to revoke Meyers’s Connecticut registration. The Connecticut Order required Meyers Associates to ensure that, for the period covered, Meyers refrain from: (A) directly supervising or training firm personnel with respect to securities business transacted in or from Connecticut; and (B) acting as a finder for compensation, receiving or splitting commissions or similar remuneration, including overrides and/or receiving referral fees in conjunction with the offer, sale, or purchase of securities in Connecticut.

In April 2015, FINRA's Department of Registration and Disclosure ("RAD") notified Meyers Associates that the Connecticut Order subjected Meyers to a statutory disqualification. RAD advised the firm of the need to either file an application seeking FINRA's approval for Meyers to continue associating with the Firm through a FINRA eligibility proceeding or immediately terminate the association. After receiving this notice, Meyers and the firm informally contacted Connecticut to request confirmation of their view that the Connecticut Order was not a disqualifying event and seek modification of its registration prohibitions. After Connecticut refused their request, Meyers and the firm filed a petition for reconsideration with Connecticut in which they presented many of the same arguments raised in this proceeding. That petition was denied without explanation. Although Meyers and the firm filed an appeal in Connecticut Superior Court, Connecticut successfully obtained a dismissal.

B. The Firm filed a membership continuance application.

In June 2015, Meyers Associates filed an application with RAD for Meyers's continued employment as a general securities representative, general securities principal, and the firm's CEO. A hearing was scheduled before a subcommittee of FINRA's Statutory Disqualification Committee (the "Hearing Panel"). Prior to the hearing, the firm filed briefs arguing that Meyers was not subject to a statutory disqualification and therefore should not be required to undergo an eligibility proceeding. At the firm's request, the Hearing Panel postponed the hearing to allow for additional briefing, after which it determined that the proceeding should go forward because the Connecticut Order "appear[ed]" to be disqualifying.

Notwithstanding this ruling, Meyers Associates informed the Hearing Panel of its intention to pursue the statutory disqualification issue at the hearing and present testimony from Nathan Pereira, applicants' counsel before Connecticut, concerning the parties' intent in entering into the Connecticut Order. The Hearing Panel informed the parties that it would not permit the applicants to "reargue legal issues already considered by [it] and present potentially irrelevant testimony from Mr. Pereira." Although the Hearing Panel stated that it would "permit Mr. Pereira to testify at the hearing," it nevertheless "reserve[d] its right to exclude any testimony . . . deemed immaterial, irrelevant, or cumulative of other testimony presented at the hearing."

C. FINRA denied the application.

In March 2016, the Hearing Panel held a hearing to consider the application. During the hearing, Meyers testified that he disagreed with Connecticut's allegations against him but agreed to settle them because he had no customers and did no business in the state. He further testified that he was "directly involved" in the parties' settlement negotiations and that Connecticut staff advised that there would be no consequences to withdrawing his registration in the state. However, Meyers acknowledged that the Connecticut Order prohibited him from doing any business in the state that required registration for three years. In addition to Meyers, the Panel heard from Meyers's proposed supervisor and the firm's outside compliance consultant regarding Meyers Associates' proposed supervisory plan for Meyers. After receiving a proffer of Pereira's proposed testimony and considering further argument from the parties concerning its

relevance, the Hearing Panel declined to hear from Pereira.⁴ Following the hearing, the Hearing Panel submitted its recommendation to FINRA’s Statutory Disqualification Committee, which presented its recommendation to FINRA’s National Adjudicatory Council (“NAC”).⁵

In May 2016, the NAC issued a decision denying the application. The NAC determined that Meyers was subject to a statutory disqualification because the Connecticut Order constituted a final order of a state banking authority that barred Meyers from engaging in the securities business in the state of Connecticut. In making this determination, the NAC noted that the Hearing Panel properly excluded Pereira’s testimony. The NAC noted that Meyers himself testified concerning what he believed to be the effects of the Connecticut Order and the parties’ intent in entering into it. The NAC also commented that, under FINRA rules, applicants should have submitted either an affidavit from Pereira or similar evidence at the time the statutory disqualification issue was briefed before the Hearing Panel.

The NAC determined further that allowing Meyers to continue his association with the firm was not in the public interest. First, the NAC discussed Meyers Associates’ “highly troubling” regulatory and disciplinary history.⁶ The NAC found that the firm had been the subject of 17 final regulatory and disciplinary actions since 2000 and paid approximately \$390,000 in sanctions. Of the 17 final actions, eight involved supervisory failures and three involved failures to produce documents to either regulators or claimants in FINRA arbitrations. The NAC also found that the firm had been the subject of seven routine FINRA or Commission examinations that revealed numerous deficiencies, including repeated supervisory deficiencies, between 2011 and 2015. The NAC observed that Meyers Associates’ “litany of violations and the repeated occurrence of numerous violations—particularly supervisory violations—demonstrate[d] that the Firm lack[ed] the ability to provide adequate supervision in the normal course of business, let alone stringently supervise a statutorily disqualified individual such as Meyers.”⁷

Second, the NAC discussed Meyers’s “extensive” and “troubling” disciplinary and regulatory history.⁸ The NAC found that Meyers had been the subject of six final regulatory and disciplinary actions (three of which also named the firm) since 1990, and was recently barred in all principal and supervisory capacities and fined \$75,000 for supervisory failures and violations

⁴ Meyers and the firm proffered that Pereira would testify concerning the background and history of the Connecticut proceeding and the intent and expectations of the parties—specifically, Pereira’s belief that Connecticut did not intend to bar Meyers.

⁵ See FINRA Rule 9524(a)(10).

⁶ In the Matter of the Continued Ass’n of Bruce Meyers, SD-2069, slip op. at 29.

⁷ *Id.* at 29. The NAC noted that applicants were the subject of several pending regulatory and disciplinary actions (including an investigation into whether the firm had violated the Connecticut Order), but did not consider them in denying the application. See *id.* at 12 n.13.

⁸ *Id.* at 31.

of FINRA’s advertising rules.⁹ The NAC found that at least 16 customers had filed complaints against Meyers raising serious allegations of wrongdoing, including fraud, unsuitable recommendations, excessive commissions, failures to supervise, and unauthorized trading. Meyers or the firm paid approximately \$763,000 to settle certain of those complaints, and Meyers’s prior firm paid \$50,000 to settle another complaint. The NAC opined that Meyers’s track record, which “mirror[ed]” the firm’s, “indicate[d] that he, personally and on behalf of the Firm, [was] unwilling or unable to comply with the securities rules and regulations,” that “compliance with securities rules and regulations ha[d] been an afterthought,” and that “any future in the securities industry [would] result in [Meyers’s] further noncompliance.”¹⁰

Third, the NAC considered the “recency and seriousness” of the misconduct underlying the Connecticut Order. In the NAC’s view, the Connecticut Order was “the latest in a long series of violations” that “epitomize[d] Meyers’s admitted lack of attention to complying with securities rules and regulations.”¹¹ Finally, the NAC expressed concerns that Meyers’s proposed supervisors could provide the stringent supervision required for a statutorily disqualified individual. The NAC stated that Meyers’s “extensive history of ignoring regulatory requirements” made it “skeptical” that any supervisor could ensure Meyers’s compliance with the heightened supervisory plan, especially those provisions designed to minimize his ability to exert control over the firm that he founded and owned.¹²

The NAC concluded that Meyers’s continued association with Meyers Associates would present an unreasonable risk of harm to the market or investors that warranted denying the application. Because FINRA’s Board of Governors did not call the decision for review, the NAC’s decision became the final action of FINRA.¹³ This appeal followed.¹⁴

II. Analysis

Section 19(f) of the Exchange Act directs us to dismiss applicants’ appeal if: (i) the specific grounds on which FINRA based its denial exist in fact; (ii) the denial was in accordance

⁹ Pursuant to Rule of Practice 323, 17 C.F.R. § 201.323, we take official notice of Meyers’s Broker Check report, which indicates that on May 23, 2016, this matter was appealed to the NAC. Bruce Meyers (CRD# 1045447) Broker Check Report at 33, *available at* <http://brokercheck.finra.org> (last visited Sept. 12, 2017).

¹⁰ In the Matter of the Continued Ass’n of Bruce Meyers, SD-2069, slip op. at 32.

¹¹ *Id.*

¹² *Id.* at 33.

¹³ FINRA Rule 9524(b)(3).

¹⁴ We denied applicants’ motions for oral argument and a stay of FINRA’s decision. *Meyers Assoc., L.P.*, Exchange Act Release No. 78843, 2016 WL 4772003, at *1 (Sept. 14, 2016); *Meyers Assoc., L.P.*, Exchange Act Release No. 77994, 2016 WL 3124674, at *1, 5 (June 3, 2016).

with FINRA’s rules; and (iii) FINRA’s rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.¹⁵ We find that each of these requirements has been satisfied.

A. The specific grounds for FINRA’s denial exist in fact.

We find that the specific grounds for FINRA’s denial of the membership continuance application exist in fact. FINRA’s By-Laws provide that no person shall continue to be associated with a FINRA member if such person becomes subject to a “disqualification.”¹⁶ FINRA’s By-Laws define a “disqualification” as “any ‘statutory disqualification’ as such term is defined in Section 3(a)(39)” of the Securities Exchange Act of 1934.¹⁷ Section 3(a)(39) provides that a person is subject to a statutory disqualification if, among other things, such person is subject to an order enumerated in Exchange Act Section 15(b)(4)(H), which includes “any final order” of a state banking authority that “bars such person from association with an entity regulated by such commission . . . or from engaging in the business of securities.”¹⁸

1. Meyers was subject to a statutory disqualification.

We find, and applicants do not dispute, that the Connecticut Order was a “final order” for the purposes of this proceeding. We have defined a “final order” to include “a written directive or declaratory statement issued by a state agency under statutory authority that provides for notice and opportunity for a hearing and constitutes a final disposition or action by the state agency.”¹⁹ The Connecticut Order was a “final order” under Section 15(b)(4)(H) because it was a written directive issued by the Connecticut Department of Banking, a state banking authority; it was issued under Connecticut laws that provided for notice and opportunity for a hearing;²⁰ and it constituted a final disposition of the allegations against Meyers and the firm.²¹

We also find that the Connecticut Order constituted a “bar.” In 2013, we interpreted language in Section 926(2)(A) of the Dodd-Frank Act that was “essentially identical” to

¹⁵ 15 U.S.C. § 78s(f). Section 19(f) also requires us to set aside FINRA’s action if we find that the action imposes an undue burden on competition. *Id.* Applicants do not claim, nor does the record support a finding, that FINRA’s denial imposes such a burden.

¹⁶ FINRA By-Laws, Art. III, § 3(b).

¹⁷ FINRA By-Laws, Art. III, § 4.

¹⁸ *See* 15 U.S.C. §§ 78c(a)(39)(F), 78o(b)(4)(H)(i).

¹⁹ *Nicholas Savva*, Exchange Act Release No. 72485, 2014 WL 2887272, at *7 (June 26, 2014).

²⁰ *See* Conn. Gen. Stat. §§ 36b-15(f), 36b-27; *see also* Conn. Gen. Stat. § 4-177(a) & (c); Conn. Agencies Regs. § 36a-1-55(a).

²¹ The disposition was final because Meyers and the firm voluntarily waived their right to seek judicial review when they consented to the Connecticut Order.

Exchange Act Section 15(b)(4)(H).²² Section 926(2)(A) disqualifies from participating in offerings under Rule 506 of Regulation D of the Securities Act of 1933 individuals that are subject to a final order of a state banking authority that “bars the person from association with an entity regulated by such commission” or from “engaging in the business of securities.”²³ We concluded that an order should be treated as a “bar” if it had the “practical effect of a bar” by “prohibit[ing] a person from engaging in a particular activity.” Specifically, we stated that

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 [or] from engaging in the business of securities, insurance or banking Any such order that has one of those effects is a bar, regardless of whether it uses the term ‘bar.’²⁴

We reiterated this position when we interpreted the “substantively identical” language of Section 302(d)(2)(B) of the JOBS Act and stated again that “bars are orders . . . that have the effect of barring a person from: (1) associating with certain regulated entities; [or] (2) engaging in the business of securities, insurance or banking” and that “any such order that has one of those effects would be a bar, regardless of whether it uses the term ‘bar.’”²⁵

The Connecticut Order required Meyers to withdraw his broker-dealer agent registration in Connecticut and not reapply for three years. Because Connecticut requires that broker-dealers employ only agents who are registered in the state, and prohibits a person from transacting business as an agent in the state unless the person is so registered, an unregistered agent is prohibited from doing securities business in Connecticut.²⁶ Thus, by requiring that he withdraw his registration the Connecticut Order effectively precluded Meyers from engaging in any activity requiring registration as an agent in the state and therefore constituted a bar from engaging in the business of securities within the meaning of Section 15(b)(4)(H)(i).²⁷

²² See *Disqualification of Felons and Other “Bad Actors” from Rule 506 Offerings*, Securities Act Release No. 9414, 2013 WL 3817311, at *19 (July 10, 2013).

²³ *Id.* at *21.

²⁴ *Id.*

²⁵ *Crowdfunding*, Exchange Act Release No. 70741, 2013 WL 5770346, at *133 (Oct. 23, 2013).

²⁶ See Conn. Gen. Stat. § 36b-6(a) & (b); see also *First Providence Fin. Group, LLC v. Burke*, 31 Conn. L. Rptr. 73, Blue Sky L. Rep. (CCH) ¶ 74243, 2001 WL 1560886, at *4 (Conn. Super. Ct. 2001) (construing Conn. Gen. Stat. § 36b-6(b)).

²⁷ Cf. *Nicholas Rowe*, Exchange Act Release No. 75982, 2015 WL 5608532, at *2 (Sept. 24, 2015) (concluding that an order of a state securities regulator that permanently barred the individual from securities licensure in the state constituted a bar from engaging in the business of securities within the meaning of Advisers Act Section 203(e)(9)(A)).

2. Applicants' arguments lack merit.

Applicants contend that FINRA “misinterpreted and improperly expand[ed]” “the plain language” of Section 15(b)(4)(H)(i) to find that Meyers was statutorily disqualified. They argue that the Connecticut Order did not come within Section 15(b)(4)(H)(i) because it did not contain the term “bar” and because Meyers’s license was neither suspended nor revoked. Rather, they argue that he merely “agreed to a circumscribed role within the Firm by withdrawing his registration as a broker-dealer agent only in Connecticut.”

Applicants’ position is inconsistent with our prior guidance on this issue. That guidance makes clear that, regardless of whether an order uses the term “bar,” a final regulatory order that prohibits an individual from engaging in the business of securities constitutes a bar within the meaning of Section 15(b)(4)(H)(i). As explained above, the Connecticut Order prohibited Meyers from engaging in the securities business in Connecticut.

Applicants argue further that our prior guidance is inapplicable because it interpreted statutory language that disqualifies “felons and other ‘bad actors’” from participating in certain securities offerings and “Meyers was not found to be (and in fact is not) a felon or ‘bad actor.’” But Applicants do not explain why we should interpret the “essentially identical” language of Exchange Act Section 15(b)(4)(H) differently. Nor do they explain why we should interpret Exchange Act Section 15(b)(4)(H) differently than the “substantively identical” language of Section 302(d)(2)(B) of the JOBS Act. Indeed, we recognized the similarities between the language we interpreted and Exchange Act Section 15(b)(4)(H) in providing our guidance. We find no basis for drawing the distinction Applicants advocate.

No more persuasive is Applicants’ claim that Meyers lacked “sufficient notice . . . of this significant collateral effect” of his settlement—in their words, “that the language of the Exchange Act, which refers to the word ‘bar,’ would include the words ‘voluntarily withdraw his agent registration’” But the requirement in the Connecticut Order that Meyers withdraw his agent registration and not reapply for three years had the effect of barring him from conducting securities business in Connecticut. And our guidance that orders that in effect prohibit a person from participating in an activity constitute bars pre-dated the Connecticut Order. Precedent further undermines Applicants’ claim that they lacked notice of the consequences of their settlement. In 2014, FINRA applied our guidance to hold that a consent order with a state regulator that required a registered representative to withdraw his registration and not reapply for five years was a disqualifying bar under Section 15(b)(4)(H)(i).²⁸

²⁸ See *In the Matter of the Continued Ass’n of Ronald Berman with Axiom Capital Mgmt., Inc.*, SD 1997, slip op. at 1-5 (NAC Dec. 14, 2014), http://www.finra.org/sites/default/files/Berman%20SD-1997%20FINAL%2019%28d%29%20DECISION%2012%2011%2014_0_0_0_0_0_0_0_0_0.pdf. Applicants argue that FINRA incorrectly decided and relied on *Berman* to conclude that the Connecticut Order was a disqualifying bar order. We find no error in FINRA’s reliance on *Berman*.

Even before we issued our guidance, FINRA took a functional approach to evaluating an order's effect for disqualification purposes. In 1999, FINRA staff issued interpretive guidance advising that an undertaking not to apply for registration with the Commodity Futures Trading Commission for three years operated as the functional equivalent of an order suspending or revoking registration under the Commodity Exchange Act and therefore was disqualifying under Section 3(a)(39)(B) of the Exchange Act.²⁹ In 2000, FINRA employed this functional approach in finding that a consent order between an individual and the CFTC in which the individual agreed that he would not apply for registration in any capacity and refrain from engaging in any activity requiring registration for three years was the functional equivalent of an order "denying, suspending, or revoking" registration under the Commodity Exchange Act and therefore was disqualifying pursuant to Section 3(a)(39)(B).³⁰ These authorities, along with our own guidance, belie Applicants' claim that they lacked notice that the prohibition against registering as an agent in the Connecticut Order would constitute a statutory disqualification.³¹

Applicants also contend that, because Connecticut has used the term "bar" in other regulatory orders, its failure to include the term in the Connecticut Order indicates that "barring" Meyers was not its intent. But the record does not support this claim. Applicants repeatedly attempted to have Connecticut endorse their position and modify the registration prohibitions in the Connecticut Order, but those attempts were consistently rebuffed.

In any event, applicants cite no authority that supports their position that the parties' intent is relevant in determining whether a consent order constitutes a statutory disqualification.³² "Extrinsic evidence" of intent may be considered only when the consent order's terms are ambiguous.³³ That is not the case here. As Meyers acknowledged, the Connecticut Order

²⁹ See Interpretive Letter to Gerald L. Fishman, Esq., Wolin & Rosen, dated Sept. 28, 1999, <http://www.finra.org/industry/interpretive-letters>; see also 15 U.S.C. § 78c(a)(39)(B) (including as a statutory disqualification an order of the CFTC "denying, suspending, or revoking [the person's] registration under the Commodity Exchange Act").

³⁰ See *In the Matter of the Ass'n of X*, Redacted Decision No. SD00003 (NASD NAC Jan. 1, 2000), <http://www.finra.org/industry/decisions>.

³¹ See, e.g., *Howmet Corp. v. EPA*, 614 F.3d 544, 554 (D.C. Cir. 2010) (stating that "published agency guidance may provide fair notice of an agency's interpretation of its own regulations").

³² Applicants' reliance on *Continued Ass'n of X*, NAC Decision No. SD4014, 2004 WL 5319879 (N.A.S.D.R. 2004), is misplaced. In that decision, FINRA did not base its conclusions on the parties' intent at the time they entered into the settlement. Rather, FINRA found that a CFTC order was not a statutorily disqualifying event because of the order's express terms (including that "the CFTC expressly permitted X to be registered as an [associated person]") and the parties' subsequent conduct (including that the CFTC never subjected X to disqualification proceedings and allowed X to remain continually registered with the CFTC). See *id.* at *4.

³³ See, e.g., *United States v. Volvo Powertrain Corp.*, 758 F.3d 330, 340 (D.C. Cir. 2014) ("In interpreting a consent decree, . . . 'a court may not look to extrinsic evidence of the parties'

(continued...)

required him to give up his Connecticut registration. We need not look beyond the “four corners” of the Connecticut Order to discern the parties’ intent because that provision of the consent order had the effect of barring him from the securities business in that state.³⁴

B. FINRA’s denial of the application was in accordance with FINRA’s rules.

We find that FINRA’s denial of the application was in accordance with FINRA’s rules. FINRA’s By-Laws provide that FINRA may grant a membership continuance application only if, “in its discretion,” it determines that approval “is consistent with the public interest and the protection of investors.”³⁵ FINRA’s By-Laws also provide that FINRA “may conduct such inquiry or investigation into the relevant facts and circumstances as it, in its discretion, considers necessary to its determination” of whether to approve a member’s application for relief from ineligibility from membership.³⁶ And FINRA Rule 9524(a)(4) provides that “[t]he disqualified member, sponsoring member, and/or disqualified person, as the case may be, and the Department of Member Regulation, shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence.” Here, FINRA made its determination after a properly convened eligibility hearing at which Meyers appeared, was accompanied by counsel, and had an opportunity to present evidence and address the relevant issues.

Applicants do not dispute that Meyers was permitted to participate in the proceedings, but argue that FINRA did not follow its rules because Pereira was not permitted to testify.³⁷ Specifically, they argue that under FINRA Rule 9524(a)(4), which permits a party to an eligibility proceeding to submit relevant evidence at the hearing, the Hearing Panel should have permitted Pereira to testify because his testimony concerning the parties’ intent in entering into

(...continued)

subjective intent unless the document itself is ambiguous.”) (quoting *Segar v. Mukasey*, 508 F.3d 16, 22 (D.C. Cir. 2007)), *cert. denied*, 135 S. Ct. 2833 (2015).

³⁴ See, e.g., *United States v. Armour & Co.*, 402 U.S. 673, 682 (1971) (“[T]he scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it.”).

³⁵ FINRA By-Laws, Art. III, § 3(d); accord *William J. Haberman*, Exchange Act Release No. 40673, 1998 WL 786945, at *2 n.7 (Nov. 12, 1998) (stating that “NASD may, in its discretion, approve association with a statutorily disqualified person only if the NASD determines that such approval is consistent with the public interest and protection of investors”), *aff’d*, 205 F.3d 1345 (8th Cir. 2000).

³⁶ FINRA By-Laws, Art. III, § 3(d); see generally FINRA Rules 9520-27 (rules governing eligibility proceedings).

³⁷ Applicants also argue that FINRA, by prohibiting them from presenting Pereira’s testimony, violated “basic principles of due process.” Because FINRA is not a state actor, the requirements of constitutional due process do not apply. See, e.g., *Eric J. Weiss*, Exchange Act Release No. 69177, 2013 WL 1122496, at *6 n.40 (Mar. 19, 2013). Nevertheless, the Exchange Act requires FINRA to provide fair procedures, which it did here. See 15 U.S.C. § 78o-3(b)(8).

the Connecticut Order was relevant in assessing whether Meyers was statutorily disqualified. We agree with the NAC that the Hearing Panel properly exercised its discretion in excluding the testimony as irrelevant. As noted, Meyers himself testified about applicants' negotiations with Connecticut and his understanding of the parties' intent. And further extrinsic evidence of the parties' intent was irrelevant given the clarity of the terms of the Connecticut Order.³⁸

We also reject applicants' argument that FINRA failed to follow its rules when the Hearing Panel, after indicating that it would permit Pereira's testimony, reversed itself and excluded his testimony. The decision to exclude the testimony occurred only after the Hearing Panel reviewed applicants' proffer, which further clarified the nature of the proposed testimony and revealed that it would be irrelevant. Applicants cite no authority for the proposition that FINRA's rules prevented the Hearing Panel from reserving the right to decline to hear from Pereira and then excluding his testimony as irrelevant after reviewing applicants' proffer.

We reject further applicants' argument that FINRA failed to follow its rules because the NAC cited a rule governing disciplinary hearings when it upheld the Hearing Panel's exclusion of Pereira's testimony as irrelevant. An improper citation does not negate the fact that FINRA's By-Laws and rules expressly contemplate the introduction of only relevant evidence in eligibility proceedings.³⁹

C. FINRA's rules are, and were applied in a manner, consistent with the Exchange Act.

We find that FINRA's rules are, and were applied in a manner, consistent with the Exchange Act. Under the Exchange Act, FINRA may deny a firm's application for continued association with a statutorily disqualified person.⁴⁰ As discussed above, FINRA's By-laws provide that FINRA may grant a membership continuance application only if it determines that approval is consistent with the public interest and the protection of investors. And FINRA's rules provide that the statutorily disqualified person shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence. These provisions are consistent with FINRA's authority under the Exchange Act to deny membership continuance applications.

FINRA applied those provisions in a manner consistent with the Exchange Act here. To be consistent with the Exchange Act, "FINRA must 'independently [evaluate the] application, based upon the totality of the circumstances, and . . . explain the bases for its conclusion.'"⁴¹ In a

³⁸ See, e.g., *Volvo Powertrain Corp.*, 758 F.3d at 340 (finding terms of consent decree to be unambiguous and therefore refusing to consider extrinsic evidence of the parties' negotiations or post-decree actions).

³⁹ See FINRA Rule 9524(a)(4).

⁴⁰ See 15 U.S.C. § 78o-3(g)(2).

⁴¹ *Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 WL 3554584, at *12 (Sept. 13, 2010) (quoting *Timothy P. Pedregon*, Exchange Act Release No. 61791, 2010 WL 1143089, at *5 (Mar. 26, 2010)).

proceeding such as this, “the burden rests on the applicant to show that, despite the disqualification, it is in the public interest to permit the requested employment.”⁴² Here, FINRA weighed the facts and circumstances developed at the hearing and cogently explained the basis for its decision that Meyers’s continued association with the Firm was not in the public interest and would present an unreasonable risk of harm to the market or investors. We agree with FINRA that applicants’ regulatory and disciplinary histories, the recency and seriousness of the Connecticut Order, and the inability of the firm’s proposed supervisors to stringently supervise Meyers as a statutorily disqualified individual and owner of the Firm provided a basis for its conclusion that the membership continuance application should be denied.⁴³

Applicants do not dispute FINRA’s findings regarding their significant disciplinary and regulatory histories, nor do they challenge its adverse determination regarding the adequacy of Meyers Associates’ proposed supervisory plan. Rather, they claim that FINRA’s action in construing the Connecticut Order as a statutory disqualification is against “public policy” as “a massive interpretative leap” that will “send a chilling effect to any member firm or registered individual seeking to resolve charges with a regulatory authority” if, as a result, they may become subject to a statutory disqualification.⁴⁴ We find applicants’ argument unpersuasive.⁴⁵

⁴² *Timothy H. Emerson, Jr.*, Exchange Act Section 60328, 2009 WL 2138439, at *4 (Sept. 17, 2009) (quoting *Gershon Tannenbaum*, Exchange Act Release No. 31080, 1992 WL 213844, at *2 (Aug. 24, 1992)).

⁴³ *See, e.g., Emerson*, 2009 WL 2138439, at *5 (finding that FINRA applied its rules in a manner consistent with the Exchange Act in denying member’s application to continue its association with an individual notwithstanding his statutory disqualification where the statutorily disqualifying event was recent, the individual had been the subject of several customer complaints, and the proposed supervisory plan lacked stringent supervision); *Frank Kufrovich*, Exchange Act Release No. 45437, 2002 WL 215446, at *5 (Feb. 13, 2002) (same).

⁴⁴ Applicants further ask that we clarify whether Meyers’s statutory disqualification continues after the expiration of the three-year period specified in the Connecticut Order. That question is not relevant to our consideration of their appeal. Our authority under Section 19(d) of the Exchange Act extends only to the review of specified FINRA actions, and applicants’ request does not fall within any of the categories identified in that provision. *See, e.g., Morgan Stanley & Co.*, Exchange Act Release No. 39459, 1997 WL 802072, at *3 (Dec. 17, 1997) (declining, on jurisdictional grounds under Exchange Act Section 19(d), to review NASD decision denying exemption request despite finding that the denial “adversely affected” applicant).

⁴⁵ In support of their claim, Applicants move under Rule of Practice 452 to adduce additional evidence consisting of regulatory orders, draft regulatory orders, and emails concerning unrelated parties in other states, including final orders of two state securities commissions that were modified, at the request of counsel for respondents, to eliminate language that could be construed as the functional equivalent of a bar. Rule 452 allows a party to adduce additional evidence if it can establish with particularity that the additional evidence is “material” and that there were reasonable grounds for failing to adduce the evidence previously. 17 C.F.R. § 201.452. Applicants fail to meet this standard. The proposed evidence is not material because
(continued...)

In our view, FINRA’s application of our guidance furthers important policy objectives by triggering eligibility proceedings whenever an associated person is subject to the functional equivalent of a bar. Indeed, we believe it would be inconsistent with FINRA’s obligations under the Exchange Act to protect investors if it did not require such proceedings under these circumstances merely because the relevant order failed to include a particular term.⁴⁶ While such proceedings frequently have significant adverse consequences for the parties involved, they are necessary to ensure that persons who have in effect been barred from conducting business in securities do not continue to work as a securities professional unless, under all the circumstances, they do not pose a threat to the public interest or the protection of investors.

For the foregoing reasons, we will dismiss this application for review.

An appropriate order will issue.⁴⁷

By the Commission (Chairman CLAYTON and Commissioners STEIN and PIWOWAR).

Brent J. Fields
Secretary

(...continued)

it has nothing to do with FINRA’s denial of the membership continuance application, and applicants have not demonstrated that reasonable grounds exist for their failure to adduce this evidence previously. *See, e.g., Weiss*, 2013 WL 1122496, at *8-9. In any event, we would reach the same conclusion to dismiss even if we were to grant applicants’ motion to adduce because, as discussed, Connecticut was unquestionably aware of the regulatory implications of the Connecticut Order but declined to modify it, despite applicants’ request.

Applicants have also requested oral argument in connection with the motion to adduce. Because they have not demonstrated that our disposition of their motion would be “significantly aided” by oral argument, oral argument is denied. 17 C.F.R. § 201.451(a).

⁴⁶ *See, e.g., Savva*, 2014 WL 2887272, at *2 (stating that eligibility proceedings serve “the overriding regulatory goal of ensuring the protection of investors”).

⁴⁷ We have considered all of the parties’ contentions and rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 81778 / September 29, 2017

Admin. Proc. File No. 3-17254

In the Matter of the Application of

MEYERS ASSOCIATES, L.P.,

and

BRUCE MEYERS

For Review of Action Taken by

FINRA

ORDER DISMISSING REVIEW PROCEEDINGS

On the basis of the Commission's opinion issued this day, it is

ORDERED that the application for review filed by Meyers Associates, L.P., and Bruce Meyers is hereby dismissed.

By the Commission.

Brent J. Fields
Secretary