In the Matter of

FRED F. LIEBAU, JR.

ORDER GRANTING PETITION TO VACATE ADMINISTRATIVE BAR ORDER

On May 21, 1999, the Commission accepted Fred F. Liebau, Jr.’s offer of settlement and entered an order that, among other things, barred him from acting in specified capacities in the securities industry (the “Order”).1 Liebau has petitioned to have the bar vacated, and the Division of Enforcement does not oppose Liebau’s request. For the reasons set forth below, we have determined that relief is appropriate and grant the petition.

I. Background

In the Order, the Commission found that Liebau, while president and chief compliance officer of registered broker-dealer Primeline Securities Corp., failed to adequately supervise registered representative Asif Ameen as he operated a Ponzi scheme.2 The Commission found that Liebau, who was Ameen’s chief supervisor from 1994 through 1997, ignored obvious signs that Ameen was selling securities to non-Primeline customers and stealing funds from Primeline clients and other investors.3 The Commission also found that Liebau failed to adequately investigate complaints and inquiries from Primeline customers that should have alerted him, at least by early 1997, that Ameen was engaged in fraudulent activities.4 The Commission suspended Liebau from association with any broker or dealer for a period of three months; barred him from association in a supervisory or proprietary capacity with any broker or dealer, with a right to reapply after two years; and ordered him to pay a civil money penalty of $10,000.5

2 Id. at *1-2.
3 Id at *1.
4 Id at *2.
5 Id. at *2-3.
II. Analysis

In reviewing requests to lift or modify bar orders, we consider whether, “under all the facts and circumstances presented, it is consistent with the public interest and investor protection to permit the petitioner to function in the industry without the safeguards provided by the bar.”6 The factors that guide our inquiry are:

- the nature of the misconduct at issue in the underlying matter;
- the time that has passed since the bar’s issuance;
- the compliance record of the petitioner since the bar’s issuance;
- the petitioner’s age and securities industry experience, and the extent to which the Commission has granted prior relief from the bar;
- whether the petitioner has identified verifiable, unanticipated consequences of the bar;
- the position and persuasiveness of any response from the Division of Enforcement; and
- whether there exists any other circumstance that would cause the requested relief to be inconsistent with the public interest or the protection of investors.7

Relief is appropriate only in “compelling circumstances,” and in the usual case the bar will remain in place.8 At the same time, we will grant relief where the equitable need, “consistent with the public interest and investor protection, warrants vacating or modifying a Commission bar order.”9 The relevant factors, applied to the facts here, indicate that relief is warranted.

Nature of misconduct. Liebau failed to properly supervise a registered representative who was operating a Ponzi scheme, resulting in significant financial loss for investors.

Time passed. More than 22 years have passed since the Order issued.10

Liebau’s subsequent compliance record. Barred individuals may seek and obtain consent to associate in various capacities in the securities industry notwithstanding their bars.11 Liebau

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8 Cozzolino, 2003 WL 23094746, at *3.
9 Id.
10 Cf. Robert Hardee Quarles, Exchange Act Release No. 66530, 2012 WL 759386, at *3 (Mar. 7, 2012) (stating that “[m]ore than 26 years have passed since the [supervisory] bar was imposed, a time frame that is lengthy and weighs in favor of relief”).
11 In both 2016 and 2019, FINRA considered whether the Order subjected Liebau to a statutory disqualification under Section 3(a)(39) of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(39). The record is somewhat unclear regarding FINRA’s findings and
has not done so with the Commission, but has instead maintained regular employment in the securities industry for over two decades without becoming involved in any supervisory or proprietary capacity that would be prohibited under the Order.\footnote{12}

Liebau does have one regulatory mark against him during the timeframe at issue. In 2001, the Kansas Securities Commissioner alleged that Liebau executed a sale of unregistered and nonexempt securities and either made untrue statements of material fact or caused the omission of material facts related to those securities. Liebau entered into a consent order where he neither confirmed nor denied the allegations but was censured, fined, and had his license retroactively suspended.\footnote{13} Although the Kansas consent order weighs against relief, it is almost as old as the Order itself. As discussed above, Liebau has participated in the securities industry without further incident for 20 years since the Kansas proceeding was brought.

**Petitioner’s age and securities industry experience, and any prior Commission relief.** Liebau is 72 years old and has worked in the securities industry almost continually since 1983. Generally, we first grant consent to associate before granting a petition to vacate.\footnote{14} And we have held the existence of such prior relief weighs in favor of granting relief to a petitioner, and a lack of such incremental relief weighs against granting a petition to vacate.\footnote{15} Because Liebau was not barred in all capacities but only in a supervisory capacity, he has managed to establish a lengthy compliance record through his involvement in the securities industry in the capacities allowed by the Order without the need to seek consent to associate.\footnote{16}

**Unanticipated consequences.** Liebau claims that the bar has posed a substantial hardship on him as it has hindered his full participation in the securities industry. Specifically, Liebau asserts that the bar is preventing him from becoming an approved agent with certain insurance carriers and from providing a number of financial products and services to the clients of his new investment advisor firm. Liebau also notes a desire to remove the blemish on his record and conclusions. What is clear is that Liebau did not disregard any FINRA notices finding that he was subject to a statutory disqualification as a result of the Order, and so we do not consider FINRA’s evaluation of the Order to bear on his compliance record.

\footnote{12}{Cf. Quarles, 2012 WL 759386, at *3 (stating that since the Commission imposed the supervisory bar “Quarles has been almost continuously employed in the securities industry as a general securities representative, including a span of more than 20 years with his current firm”).}

\footnote{13}{Fred F. Liebau, Jr., KSC No. 98-3681, 2003 WL 1916978 (Kan. Sec. Comm’r Jan. 29, 2003).}


\footnote{15}{See Wien, 2003 WL 23094748, at *5 (stating that the fact that petitioner had received consent to associate with several firms weighed in favor of granting relief); Gregory Osborn, Exchange Act Release No. 86001, 2019 WL 2324337, at *3 (May 31, 2019) (denying a petition to vacate, in part, because the petitioner had not previously received a consent to associate).}

\footnote{16}{Cf. Quarles, 2012 WL 759386, at *3 (vacating supervisory bar where petitioner had been “almost continuously employed in the securities profession” since the imposition of the bar).}
restore his professional reputation. These issues are not unanticipated; they arise from the bar itself and are “natural and foreseeable consequences” of the Order.\textsuperscript{17}

\textit{The Division of Enforcement’s position.} The Division does not oppose the relief that Liebau seeks, noting that we have vacated administrative bars in similar circumstances.\textsuperscript{18}

Under all of the circumstances, including the time that has passed since the Order issued, Liebau’s participation in the securities industry without incident since 2001, and the position of the Division of Enforcement, we deem it appropriate to vacate the supervisory bar.

Accordingly, IT IS ORDERED that the petition of Fred F. Liebau, Jr. to vacate the supervisory bar order entered against him on May 21, 1999, be, and it hereby is, GRANTED; and that the supervisory bar order be, and it hereby is, VACATED.

By the Commission.

Vanessa A. Countryman
Secretary


\textsuperscript{18}\textit{See, e.g., Quarles}, 2012 WL 759386, at *3 (vacating supervisory bar where petitioner was 70 years old, 26 years had passed since issuance of the bar, petitioner had no record of further regulatory or compliance problems, petitioner had been employed in the securities industry continuously since the imposition of the bar, and the Division supported relief).