

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the
Continued Membership
of

TIAA-CREF Individual & Institutional
Services, LLC (CRD No. 20472)

Notice Pursuant to
Rule 19h-1 of the
Securities Exchange Act
of 1934

SD-2300

August 26, 2022

I. Introduction

On August 16, 2021, TIAA-CREF Individual & Institutional Services, LLC (“TC Services” or the “Firm”) submitted a Membership Continuance Application (“MC-400A Application” or “Application”) to FINRA’s Credentialing Registration, Education, and Disclosure Department (“CRED”).¹ The Application seeks to permit the Firm, a FINRA member subject to statutory disqualification, to continue its membership with FINRA notwithstanding its disqualification. A hearing was not held in connection with this matter. Rather, pursuant to FINRA Rule 9523(b), FINRA’s Department of Member Supervision (“FINRA,” “Member Supervision,” or “Department”) approves the Application and is filing this Notice pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 (“Exchange Act” or “SEA”).

II. The Statutorily Disqualifying Event

TC Services is subject to statutory disqualification, under Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(H)(ii), due to a July 13, 2021 Assurance of Discontinuance (“AOD”) filed by the New York Attorney General (“NYAG”) in which TC Services was found to have violated the Martin Act (N.Y. General Business Law § 352 *et seq.*) New York Executive Law § 63 (12), and the common law of the State of New York.² According

¹ See MC-400A Application and related attachments compiled by FINRA’s CRED, with a cover memorandum dated August 26, 2021, attached as Exhibit 1.

² See NYAG AOD, *In re TIAA-CREF Individual & Institutional Services LLC*, Assurance No. 21-035 (July 13, 2021), attached as Exhibit 2. The agreement resolved parallel investigations between the NYAG and the Securities and Exchange Commission (“SEC”). See also <https://ag.ny.gov/press-release/2021/attorney-general-james-announces-97-million-restitution-tiaa-customers-misled>. FINRA staff considers the July 13, 2021, NYAG AOD a final order based on violations of law or regulations prohibiting fraudulent, manipulative, or deceptive conduct, as described in the Exchange Act Section 15(b)(4)(H)(ii). See also [FINRA Regulatory Notice 09-19](#).

The Firm is also subject to disqualification, as that term is defined in Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(D), and also submitted its application, for the parallel July 13, 2021 SEC Order, in which the Commission found that the Firm willfully violated Sections 17(a)(2) and 17(a)(3) of the Securities

to the AOD, beginning in 2012 through 2018, TC Services used “a false and misleading marketing pitch to convince investors to roll over assets from low-fee employer-sponsored retirement plans to individual managed accounts in [the Firm’s] Portfolio Advisor program, on which [it] charged lucrative management fees.”³ In order to accomplish this, the NYAG found that TC Services salespeople misrepresented themselves to investors and failed to disclose that they were being incentivized through financial compensation and disciplinary measures to make recommendations in connection with their retirement assets; the salespeople steered the investors into managed accounts, “while downplaying or omitting advantages of employer-sponsored plans.”⁴

For these violations, the Firm agreed to (i) pay restitution to investors in the amount of \$97 million, payment of which would be deemed satisfied with the Firm’s payment of this amount in accordance with the SEC Order; (ii) not engage or attempt to engage in conduct in violation of any applicable laws, including but not limited to the Martin Act and Executive Law § 63(12); and (iii) to comply with certain undertakings.⁵ With respect to the undertakings, the Firm agreed to institute specific internal programmatic changes, including adding a fiduciary standard to all rollover recommendations, changing the compensation structure for the sale of managed accounts, instituting full disclosure of advisor conflicts when recommending managed accounts, using plain-language in disclosures when advisors are not acting as fiduciaries and training advisors to offer fair comparisons between managed accounts and employer-sponsored plans.⁶

III. Firm Background

TC Services⁷ is a dually registered brokerage and investment advisory firm with its main offices in New York, New York, and has been a member of FINRA since 1998.⁸ According to the Central Registration Depository (“CRD”) record, the Firm has 140 branch offices, 27 of which are Offices

Act and Section 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”) and willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 for conduct related to those set forth in the July 13, 2021 AOD. *See* SEC Order, *In re TIAA-CREF Individual & Institutional Services, LLC*, Exchange Act Release No. 92376, (July 13, 2021), attached as Exhibit 3. The Firm was ordered to cease and desist from future violations, to pay a civil monetary penalty totaling \$97 million, and to comply with certain undertakings. The Firm paid the \$97 million fine into an escrow account on June 21, 2021. On December 10, 2021, the Firm also provided to FINRA staff its certification of compliance submitted to the SEC certifying its compliance with Order’s prescribed undertakings. *See* SEC Fine Payment and TC Services’ Certification of Compliance to the SEC, dated December 10, 2021, collectively attached as Exhibit 4. Since there are no sanctions in effect for statutory disqualification purposes for this event, an application is no longer required under FINRA rules. *See also* [FINRA Regulatory Notice 09-19](#).

³ *See* Exhibit 2 at pp. 1-2 ¶1.

⁴ *Id.*

⁵ *Id.* at pp. 15 – 18.

⁶ *Id.* at pp. 15 – 17.

⁷ TC Services is a wholly owned subsidiary of Teachers Insurance and Annuity Association of America (“TIAA”), an insurance company, and is engaged in administering retirement accounts, catering principally to non-profit institutions in the academic, research, medical, educational, cultural, and governmental fields. *See* Exhibit 3 at p. 4.

⁸ FINRA staff confirmed this through a review of the Firm’s CRD record last performed on July 21, 2022. *See also* Firm CRD Snapshot, attached at Exhibit 5.

of Supervisory Jurisdiction (“OSJs”).⁹ The Firm employs approximately 3,240 registered representatives, 737 of which are registered principals, and 768 non-registered individuals.¹⁰ The Firm represented, and FINRA confirmed, that the Firm employs one statutorily disqualified individual, Slava S. Davidoff.¹¹

TC Services is approved to engage in the following lines of business:¹² broker or dealer retailing corporate equity securities over-the-counter; broker or dealer selling corporate debt securities; mutual fund underwriter or sponsor, mutual fund retailer; U.S. government securities broker; municipal securities broker; broker or dealer selling variable life insurance or annuities; put and call broker or dealer or option writer; investment advisory services; non-exchange member arranging for transactions in listed securities by exchange member and other non-securities business, specifically investment adviser.

TC Services is a registered member of the Municipal Securities Rulemaking Board (“MSRB”), a self-regulatory organization.¹³

Recent Examinations

FINRA completed a routine examination of TC Services on March 19, 2019 that resulted in no findings.¹⁴ The Firm has not had a non-routine examination in the past five (5) years.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Slava S. Davidoff (CRD No. 5721673) is subject to statutory disqualification under Section 3(a)(39)(F) of the Exchange Act, incorporating by reference SEA 15(b)(4)(H)(ii), as a result of a December 21, 2016 Order for Monetary Penalty filed by the State of California Department of Insurance, File No. PLBS 10652A, in which Davidoff was ordered to pay a penalty in the amount of \$500 and an examination fee in the amount of \$340 based on a Special Notice of Defense, which incorporated a Statement of Issues, where Davidoff admitted grounds existed for the denial of his pending application to act as an accident and health agent and a life-only agent with variable contract authority. *See Order for Monetary Penalty, In re: Slava Davidoff*, File No. PLBS 10652-A (AR) (December 21, 2016), attached as Exhibit 6. FINRA staff determined that this Order, which references the Special Notice of Defense and Statement of Issues, constitutes an order that prohibits fraudulent, manipulative, or deceptive conduct as defined by SEA 15(b)(4)(H)(ii). According to CRD, the Firm submitted affirmation that Davidoff complied with the underlying sanctions and represented that Davidoff received his California insurance license without any restrictions. Since there are no sanctions in effect for statutory disqualification purposes for Davidoff, an application is no longer required under FINRA rules. Davidoff is currently classified as a Tier 3 statutorily disqualified individual, permitted to associate without any special supervision.

¹² *See* CRD Excerpt: Types of Business and Other Business Descriptions, attached as Exhibit 7.

¹³ MSRB membership was verified by FINRA staff through a search of the public member directory, last performed on July 21, 2022.

¹⁴ *See* FINRA Examination Disposition Letter, Examination No. 20190606683, dated March 19, 2019, and undated Examination Report, attached collectively as Exhibit 8. The Firm was not required to provide a response.

Regulatory Actions

A. SEC Action and Additional Statutorily Disqualifying Event

On March 11, 2019, the SEC issued an Order finding that TC Services willfully violated Sections 206(2) and 207 of the Advisers Act through breaches of fiduciary duty and inadequate disclosures by its registered investment adviser in connection with mutual fund share class selection practices and the fees it received.¹⁵ The Firm was censured, ordered to pay disgorgement of \$2,102,380.21 and prejudgment interest of \$293,342.08, and to comply with certain undertakings.¹⁶

B. Other Regulatory Actions

Other than the events described above, TC Services has not been the subject of any recent regulatory actions.

IV. Prior SEA Rule 19h-1 Notice

The Firm has not been subject to prior SEA Rule 19h-1 notices.

V. The Firm's Proposed Continued Membership with FINRA and Proposed Supervisory Plan

The Firm seeks to continue its membership with FINRA notwithstanding its status as a disqualified member. The Firm has agreed to the following Plan of Heightened Supervision as a condition of its continued membership with FINRA:¹⁷

1. The Firm must comply with the undertakings specified in the NYAG AOD, dated July 13, 2021.
2. The Firm will provide FINRA with copies of correspondence between the Firm NYAG staff regarding requests to extend the procedural dates relating to the undertakings.
3. The Firm will provide FINRA with a copy of all certifications and supporting documentation provided to the NYAG upon completion of the undertakings as specified in the NYAG AOD, or other documentation that the undertakings have been either modified or stricken by agreement with the NYAG.
4. All requested documents and certifications under this Plan of Supervision shall be sent

¹⁵ See SEC Order, *In re: TIAA-CREF Individual & Institutional Services, LLC*, Advisers Act Release No. 5129 (March 11, 2019), attached as Exhibit 9. The Firm's settlement was part of the Commission's Share Class Selection Disclosure Initiative concerning similar conduct by investment advisers across the industry.

¹⁶ *Id.* at pp. 4-5, 9. The Firm certified its compliance with the undertakings by letter to the Commission dated February 8, 2019. See TC Services' Certification of Compliance to the SEC and email to FINRA staff, dated April 26, 2019, attached as Exhibit 10. Since there were no sanctions in effect for statutory disqualification purposes for this event, an application was not required under FINRA rules.

¹⁷ See Plan of Heightened Supervision executed by TC Services on August 5, 2022, attached as Exhibit 11.

directly to FINRA’s Statutory Disqualification Group at SDMailbox@FINRA.org.

5. For the duration of the Firm’s statutory disqualification the Firm must obtain written approval from Member Supervision prior to changing any provision of the Plan.
6. The Firm will submit any proposed changes or other requested information under this Plan to FINRA’s Statutory Disqualification Group at SDMailbox@FINRA.org.

III. Discussion

After carefully reviewing the record in this matter, FINRA approves TC Services’ request to continue its membership with FINRA, subject to the terms and conditions set forth herein. In evaluating the Application, Member Supervision assessed whether the Firm has demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm to investors or the markets. *See* FINRA By-Laws, Art. III, Sec. 3(d); *cf. Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (holding that FINRA “may deny an application by a firm for association with a statutorily-disqualified individual if it determines that employment under the proposed plan would not be consistent with the public interest and the protection of investors”). Typically, factors that bear on Member Supervision’s assessment include, among other things, the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, the Firm’s regulatory history, and whether there has been any intervening misconduct.

As of the date of this Notice, FINRA has determined that TC Services’ continued membership is consistent with the public interest and does not create an unreasonable risk of harm. While the NYAG AOD, in parallel with the SEC order, identified serious violations of securities laws, neither the NYAG nor the SEC sought to suspend, revoke, or place limitations on the Firm’s securities activities. Furthermore, the orders expressly required the Firm to take steps to make the affected customers whole and deter future misconduct.

Member Supervision acknowledges proactive measures taken by the Firm prior to the commencement of the NYAG’s investigations and the issuance of the final orders. The Firm voluntarily undertook remedial actions, including implementing a fiduciary standard of care for its management account recommendations, revising advisor compensation to eliminate the incentive compensation for placing assets in managed accounts, enhancing training of advisors, revising its disclosure brochures to reflect material changes to the Portfolio Advisor programs, including conflicts of interests, fees, and increased training of advisors.¹⁸

Further, since the issuance of the final orders, TC Services represented that it took the following steps to comply with the parallel actions and to mitigate the risk of recurrence: 1) certified, by letter dated December 21, 2021, that it notified over 20 thousand affected clients about the issuance of the orders and sanctions imposed; 2) reviewed and revised its disclosures related to recommendation of managed account solicitations; and 3) transitioned managed account rollover recommendations from a broker-dealer service to an investment advisory service.¹⁹ Member

¹⁸ *See* Exhibit 2 at pp. 13-14. *See also* Firm’s Discovery Response to FINRA, dated March 7, 2022, attached as Exhibit 12.

¹⁹ *Id.*

Supervision also acknowledges the Firm's compliance with the SEC's parallel action undertakings. Specifically, the Firm produced to FINRA staff evidence of its certification of compliance with the ordered undertakings to the SEC, dated December 10, 2021.²⁰

In evaluating the Firm's application, Member Supervision also conducted a review of the Firm's regulatory history and recent exam history. Despite the NYAG AOD and parallel SEC matter, the Firm has a limited recent regulatory history without any further hinderance to the Firm's ability to continue as a FINRA member. The Department acknowledges the 2019 statutory disqualification matter and notes that the action focused on correcting industry wide mutual fund share class selection practices by investment advisors as well as recognizes the Firm's prompt payment of its fine and compliance with its ordered undertakings. The Department also notes the Firm's most recent 2019 Examination where no formal findings were noted. FINRA is further comforted by the controls set in place by the Firm's Heightened Supervision Plan which is specifically tailored to the misconduct identified in the NYAG AOD. It bolsters the undertakings outlined in the NYAG AOD and will continue to provide oversight of the Firm as it moves towards full compliance with its remaining undertakings.

Thus, FINRA is satisfied, based on the foregoing and the Firm's representations made pursuant to the Plan of Heightened Supervision that the Firm's continued membership in FINRA does not create an unreasonable risk of harm to the market or investors. Further, FINRA intends to utilize its examination and surveillance processes to monitor the Firm's continued compliance with the standards prescribed by Exchange Act Rule 19h-1 and FINRA Rule 9523, following the approval of the Firm's continued membership in FINRA. Accordingly, FINRA approves TC Services' Application to continue its membership with FINRA. FINRA certifies that the Firm meets all qualification requirements.

In conformity with the provisions of Rule 19h-1 of the Exchange Act, the continued membership of the Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the SEC.

On Behalf of FINRA,

Jennifer Piorko Mitchell

Jennifer Piorko Mitchell
Vice President and Deputy Corporate Secretary

²⁰ See Exhibit 4 at pp. 4-11.

Exhibit List

SD-2300

1. MC-400A Application and related attachments compiled by FINRA's CRED, with a cover memorandum dated August 26, 2021.
2. NYAG AOD, *In re TIAA-CREF Individual & Institutional Services LLC*, Assurance No. 21-035 (July 13, 2021).
3. SEC Order, *In re TIAA-CREF Individual & Institutional Services, LLC*, Exchange Act Release No. 92376 (July 13, 2021).
4. SEC Fine Payment and TC Services' Certification of Compliance dated December 10, 2021.
5. Firm CRD Snapshot.
6. Order for Monetary Penalty, *In re Slava Davidoff*, File No. PLBS 10652-A (AR) (December 21, 2016).
7. CRD Excerpt: Types of Business and Other Business Descriptions.
8. FINRA Examination Disposition Letter, Examination No. 20190606683, dated March 19, 2019, and undated Examination Report.
9. SEC Order, *In re TIAA-CREF Individual & Institutional Services, LLC*, Advisers Act Release No. 5129 (March 11, 2019).
10. TC Services' Certification of Compliance to the SEC and email to FINRA staff, dated April 26, 2019.
11. Plan of Heightened Supervision executed by TC Services on August 5, 2022.
12. Firm's Discovery Response to FINRA, dated March 7, 2022.