

BEFORE THE NATIONAL ADJUDICATORY COUNCIL  
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

The Continued Association of

Zachary S. Brodt

as an

Investment Adviser Representative

with

First Financial Equity Corporation

Notice Pursuant to

Rule 19h-1

Securities Exchange Act  
of 1934

SD-2226

October 28, 2020

## **I. Introduction**

On October 8, 2018, First Financial Equity Corporation (the “Firm” or “FFEC”) filed a Membership Continuance Application (the “Application”). The Application seeks to permit Zachary S. Brodt, a person subject to statutory disqualification, to continue to associate with the Firm as an investment adviser representative. A hearing was not held in this matter; rather, pursuant to FINRA Rule 9523(a), FINRA’s Department of Member Supervision (“Member Supervision”) recommended to the Chairperson of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council, that it approve Brodt’s continued association with the Firm pursuant to the terms and conditions set forth below. For the reasons explained below, we approve the Application to permit Brodt to continue to associate with the Firm as an investment adviser representative, as described herein.

## **II. The Statutorily Disqualifying Event**

Brodt is statutorily disqualified due to FINRA’s acceptance, on May 17, 2018, of a Letter of Acceptance, Waiver and Consent (the “Disqualifying AWC”). The Disqualifying AWC found that Brodt willfully failed to disclose on his Uniform Application for Securities Industry Registration or Transfer (“Form U4”) a misdemeanor charge and guilty plea for shoplifting.<sup>1</sup>

<sup>1</sup> FINRA’s By-Laws provide that a person is subject to “disqualification,” and thus must seek and obtain FINRA’s approval prior to associating with a member firm, if he is disqualified under Section 3(a)(39) of the Securities Exchange Act of 1934 (“Exchange Act”). See FINRA By-Laws, Art. III. Exchange Act Section 3(a)(39)(F) provides that a person is subject to statutory disqualification if he has willfully made a false or misleading statement of material fact, or has omitted to state a material fact required to be disclosed, in any application or report filed with a self-regulatory organization.

Brodt was charged with this misdemeanor in November 2010, and he pled guilty in July 2011. A state court sentenced Brodt to participate in a pre-trial diversion program and ordered him to pay costs of \$110. Brodt successfully completed the diversion program and paid the costs imposed, and the court dismissed the case against Brodt in January 2012.

Brodt, however, did not timely disclose on his Form U4 that he was charged with, and pled guilty to, a misdemeanor involving the wrongful taking of property.<sup>2</sup> In the Application, Brodt states that he mistakenly believed that his completion of a diversion program and dismissal of the case against him eliminated the need to update his Form U4. For these disclosure failures, FINRA suspended Brodt for three months and fined him \$10,000. Brodt served his suspension and paid the fine in full.

### **III. Background Information**

#### **A. Brodt**

Brodt entered the industry in September 2006, when he passed the uniform investment adviser law examination. He registered as a general securities representative in January 2007, although he is no longer registered in this capacity. He also passed the uniform securities agent state law examination in April 2007. Brodt has been associated with four different member firms during his career.<sup>3</sup> Brodt does not currently engage in any outside business activities.<sup>4</sup>

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Question 14.B(1)(a) of Form U4 asks, “Have you ever: been convicted of or pled guilty or nolo contendere (‘no contest’) in a domestic . . . court to a misdemeanor involving . . . wrongful taking of property . . . ?” Question 14.B(1)(b) asks, “Have you ever: been charged with a misdemeanor specified in 14B(1)(a)?” Article V, Section 2(c) of FINRA’s By-Laws requires that an associated person keep his Form U4 current at all times and to update information on Form U4 within 30 days (or, in the case of events involving a statutory disqualification, within 10 days). Further, FINRA Rule 1122 states that, “[n]o member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof.”

<sup>2</sup> Brodt amended his Form U4 in December 2015 to disclose the shoplifting charge and in November 2017 to disclose the guilty plea. The Disqualifying AWC also resolved allegations that Brodt caused his employing firm to violate SEC Regulation S-P by sending nonpublic personal customer information to non-affiliated third parties without the customers’ consent.

<sup>3</sup> In March 2016, Brodt was terminated from a firm for providing inconsistent information with respect to the disclosure in FINRA’s Central Registration Depository (“CRD”®) related to the criminal matter underlying the Disqualifying AWC.

<sup>4</sup> CRD shows that, in connection with a prior outside business activity, GFA Wealth Design LLC filed a civil action against Brodt for breach of contract and unfair competition in August 2014. It states that this litigation is not customer-related, but rather a dispute related to Brodt’s employment contract. The parties settled this matter in July 2020.

CRD also shows that in September 2019, two customers filed a complaint against Brodt alleging breach of fiduciary duty, failure to conduct due diligence, and fraudulent misrepresentations and omissions. The customers seek \$400,000 in damages. The Firm represents that the customers filed this complaint against Brodt and others, alleging that they made unsuitable recommendations. This matter is pending.

CRD further shows that Brodt compromised debts owed to two creditors in April 2011. Brodt owed the creditors \$288,000, and they accepted \$123,000 in satisfaction of these debts in connection with a short sale.

The record shows no other disciplinary or regulatory proceedings, complaints, or arbitrations against Brodt.

## B. The Firm

The Firm is a dually registered broker-dealer and investment adviser with its home office in Scottsdale, Arizona. It has been a FINRA member since July 1985 and a registered investment adviser since February 2005. The Firm represents that it operates 24 branch offices, of which six are Offices of Supervisory Jurisdiction. The Application states that the Firm employs 158 registered representatives, 19 of whom are also registered principals, and 160 non-registered persons, 39 of whom are independent contractors. The Firm does not currently employ any other statutorily disqualified individuals.

### 1. Recent Examinations

FINRA conducted the Firm's most recent examination in 2019. This examination resulted in a May 2019 Cautionary Action, which cited the Firm for the following exceptions: failing to maintain adequate written supervisory procedures ("WSPs") and implement and enforce its WSPs in several areas, including reviewing electronic correspondence and private securities transactions; failing to maintain an adequate complaint log; failing to maintain accurate books and records in a branch office; and failing to provide accurate markup and markdown information on customer confirmations. The Firm responded in writing to the deficiencies noted and revised its WSPs to address various deficiencies.

In connection with FINRA's 2017 examination of the Firm, FINRA issued a Cautionary Action in April 2018. The Cautionary Action cited the Firm for, among other things: failing to supervise registered representatives' private securities transactions, the dissemination of consolidated reports, and using text messaging; failing to provide documentation for the supervision of private securities transactions; failing to establish and maintain adequate WSPs to supervise private securities transactions; failing to timely amend Forms U4 and failing to adhere to its WSPs regarding updating Forms U4; failing to enforce its WSPs regarding mutual fund switches; failing to maintain controls adequately designed to monitor gifts; failing to comply with a heightened supervisory plan for a registered representative because the Firm failed to obtain quarterly certifications from the representative as required by the plan; failing to maintain adequate anti-money laundering policies and procedures; failing to maintain accurate books and records; failing to maintain a restricted or watch list and maintaining inadequate WSPs related to maintaining such list; and failing to adequately maintain and evidence review of electronic correspondence. The Firm responded in writing to the deficiencies noted.

## 2. Recent Regulatory History

In December 2019, FINRA accepted from the Firm a Letter of Acceptance, Waiver and Consent (“AWC”) for violations of Article V, Section 2 of FINRA’s By-Laws and FINRA Rules 1122, 3110, 3120, 3130, and 2010. Without admitting or denying the allegations, the Firm consented to findings that, between January 2015 and September 2017, the Firm failed to timely amend Forms U4 to reflect 71 outstanding liens, judgments, bankruptcies, and creditor compromises for 20 registered representatives, and failed to establish and maintain supervisory systems reasonably designed to supervise amendments to Forms U4. It also consented to findings that, from 2014 through 2016, it failed to prepare required annual supervisory control reports and annual CEO certifications. FINRA censured the Firm and fined it \$200,000.

In December 2016, FINRA accepted an offer of settlement from the Firm for violations of FINRA Rules 2330, 2360, 3110, 3130, and 2010 and NASD Rules 1022, 3010, and 3012. Without admitting or denying the allegations, the Firm consented to findings that, from January 2010 until June 2013, the Firm, among other things, failed to establish, maintain, and enforce an adequate supervisory system and WSPs concerning fee-based accounts, its options business, discretionary accounts, suitability, leveraged, inverse exchange traded funds, and reviews of churning and excessive commissions. FINRA censured the Firm, fined it \$230,000, and ordered it to comply with certain undertakings.

In November 2016, FINRA accepted from the Firm an AWC for violations of FINRA Rules 5310 and 2010 and NASD Rules 3010 and 2320. Without admitting or denying the allegations, the Firm consented to findings that, from April 2012 through September 2013, the Firm failed to exercise diligence to ascertain the best inter-dealer market such that the resultant price to its customer was as favorable as possible under prevailing market conditions, and failed to maintain a supervisory system reasonably designed to achieve compliance with applicable securities laws. FINRA censured the Firm, fined it \$35,000, ordered that it pay restitution to customers totaling \$15,839, and ordered it to comply with undertakings to revise its WSPs.

## **IV. Brodt’s Proposed Business Activities and Supervision**

The Firm proposes that Brodt will continue to work from the Firm’s home office in Scottsdale, Arizona as a registered investment adviser. The Firm represents that Brodt will not conduct a brokerage business. It further represents that Brodt’s duties will consist of providing investment advisory services for his customers, including but not limited to assets under management, financial planning, and the use of third-party money managers. His compensation will be fee-based.

The Firm proposes that Mark Ryan (“Ryan”) will serve as Brodt’s primary onsite supervisor. Ryan does not currently supervise any other individuals, and he also works at the Firm’s home office. He has supervised Brodt since April 2020. The Firm represents that Ryan supervises all aspects of account opening at the Firm and conducts trade suitability reviews for mutual funds, REITs, structured CDs, structured notes, bonds and general securities for investment advisory and brokerage accounts. He also ensures that all Firm disclosure documents are accurately completed.

Ryan first registered as a general securities representative in March 2009 and as a general securities principal in May 2018. He also passed the uniform securities agent state law

examination in August 2009 and the uniform combined state law examination in August 2014. Ryan has been associated with the Firm since May 2019. He was previously associated with six member firms. The record shows no regulatory history, disciplinary history, or customer complaints against Ryan.

If Ryan is unavailable, the Firm designated Renee Rael (“Rael”) to serve as Brodt’s alternate supervisor. Rael currently supervises 52 employees, including 41 registered representatives. She works from the Firm’s Scottsdale, Arizona office. She first registered as a general securities representative in April 1995, as a general securities principal in May 1995, and as a municipal fund securities limited principal in April 2004. Rael also passed the uniform securities agent state law examination in April 1995 and the uniform combined state laws examination in March 2009. The Firm represents that Rael has served in a supervisory capacity for 18 of the 23 years she has been in the securities industry. Rael represents that she will work closely with Ryan to supervise Brodt. Rael has been associated with the Firm since March 2018 and has been previously associated with two member firms. The record shows no disciplinary or regulatory proceedings, complaints, or arbitrations against Rael.

## **V. Member Supervision’s Recommendation**

Member Supervision recommends approving the Firm’s request for Brodt to continue to associate with the Firm as an investment adviser representative, subject to the terms and conditions of heightened supervision described below.

## **VI. Discussion**

We have carefully considered the entire record in this matter. Based on this record, and pursuant to the Commission’s controlling decisions in this area, we approve the Firm’s Application to continue to employ Brodt as an investment adviser representative, subject to the supervisory terms and conditions set forth below.

### **A. The Legal Standards**

We acknowledge that Brodt, as a registered representative at the time of his misconduct, was responsible for knowing the rules of the securities industry and for timely updating his Form U4. *See, e.g., Robert E. Kauffman*, 51 S.E.C. 838, 840 (1993) (“Every person submitting

registration documents [to FINRA] has the obligation to ensure that the information printed therein is true and accurate.”), *aff’d*, 40 F.3d 1240 (3d Cir. 1994) (table). The Commission has emphasized that Form U4 “is critical to the effectiveness of the screening process used to determine who may enter (and remain in) the industry. It ultimately serves as a means of protecting the investing public.” *See Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at \*25-26 (Nov. 9, 2012). Information concerning an associated person’s criminal history is important and may be significant for employers to determine whether to hire an individual and what supervisory procedures are necessary to protect investors. *See Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at \*19 (Dec. 22, 2008).

We also recognize, however, that FINRA weighed the gravity of Brodt’s failures to disclose when it agreed to the Disqualifying AWC in May 2018. After considering Brodt’s entire history in the securities industry, FINRA concluded that a three-month suspension and \$10,000 fine were appropriate sanctions for his misconduct. Brodt served this suspension and paid the fine in full. In such circumstances, the Commission has instructed FINRA to evaluate a statutory disqualification application pursuant to the standards enunciated in the Commission’s decisions in *Paul Edward Van Dusen*, 47 S.E.C. 668 (1981), and *Arthur H. Ross*, 50 S.E.C. 1082 (1992). *See May Capital Group, LLC* (hereinafter “*Rokeach*”), Exchange Act Release No. 53796, 2006 SEC LEXIS 1068, at \*21 (May 12, 2006) (holding that FINRA must apply *Van Dusen* standards to the membership continuance applications of statutorily disqualified individuals whose disqualifications resulted from FINRA enforcement action).

*Van Dusen* and *Rokeach* provide that in situations where an individual’s misconduct has already been addressed by the Commission or FINRA, and sanctions have been imposed for such misconduct, FINRA should not consider the individual’s underlying misconduct when it evaluates a statutory disqualification application. The Commission stated that when the period of time specified in the sanction has passed, in the absence of “new information reflecting adversely on [the applicant’s] ability to function in his proposed employment in a manner consonant with the public interest,” it is inconsistent with the remedial purposes of the Exchange Act and unfair to deny an application for re-entry. *Van Dusen*, 47 S.E.C. at 671.

The Commission also noted in *Van Dusen*, however, that an applicant’s re-entry is not “to be granted automatically” after the expiration of a given time period. *Id.* Instead, the Commission instructed FINRA to consider other factors, such as: (1) other misconduct in which the applicant may have engaged; (2) the nature and disciplinary history of the prospective employer; and (3) the supervision to be accorded the applicant. *Id.*

#### B. Application of the *Van Dusen* Standards

After applying the *Van Dusen* standards to this matter, we have determined to approve the Firm’s Application to continue to employ Brodt. First, the record does not show any regulatory actions, disciplinary matters, criminal history, or final customer complaints against Brodt since the AWC. Given the expiration of time for the suspension imposed upon Brodt, and the teachings of *Van Dusen*, he is now permitted to seek re-entry to the securities industry.

Second, while we acknowledge that the Firm has had several recent regulatory actions filed against it, we agree with Member Supervision’s general assessment that this history does

not warrant denial of the Application.<sup>5</sup> In reaching this conclusion, we have considered that the Firm complied with all required undertakings in connection with these regulatory actions. We have also considered the Firm's representations that, in mid-2017, it changed ownership, hired a new chief compliance officer, and made numerous changes to improve its compliance staffing and systems. The Firm represents that these changes included completely revising and updating its WSPs, investing in new software to assist with compliance in several areas, and retention of an outside consultant to assist and consult with the Firm's compliance department. Further, we have considered the specific supervisory structure in place for Brodt, including qualified supervisors with unblemished histories, and the comprehensive proposed heightened supervisory plan. Both Ryan and Rael will supervise Brodt onsite, Rael has represented that she will work closely with Ryan to ensure that Brodt is stringently supervised under the heightened supervisory plan, and Brodt will not engage in a brokerage business.<sup>6</sup> We find nothing in the record to suggest that the Firm will be unable to provide the stringent supervision necessary for a statutorily disqualified individual such as Brodt.

Third, based on the record before us, we find that the Firm's proposed plan of supervision is sufficiently stringent and comprehensive. We are satisfied that the following heightened supervisory procedures will enable the Firm to reasonably monitor Brodt's activities on a regular basis:<sup>7</sup>

1. The written supervisory procedures for the Firm will be amended to state that Ryan will serve as the primary supervisor for Brodt. If at any time Ryan is not available to perform these functions, Rael, who has been designated as Brodt's alternate supervisor; shall perform his responsibilities;
2. Brodt will not act in a supervisory capacity;
3. Brodt will be supervised, onsite, by Ryan in the home office of FFEC, which is located at 7373 N. Scottsdale Rd., Suite D120, Scottsdale, Arizona 85253;
4. Brodt will not be conducting a brokerage business. His activities will be limited to performing discretionary investment advisory services for his clients, including, but not limited to: assets under management, financial planning, or the use of third-party money managers;\*

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<sup>5</sup> The record further shows that although FINRA noted exceptions in connection with the Firm's past two examinations, the Firm corrected the deficiencies and revised its WSPs to address deficiencies.

<sup>6</sup> The Firm represents that Ryan spends approximately 10 to 15 hours per week conducting reviews of the Firm's accounts as described herein. Under the circumstances, it appears that he will have sufficient time to stringently supervise Brodt in accordance with the heightened supervisory plan.

<sup>7</sup> The provisions denoted with an asterisk (\*) are special for Brodt and are not required of other individuals associated with the Firm. Further, items nos. 6 and 9 have been amended to reflect the Firm's representations after Member Supervision made its recommendation.

5. Ryan will review and pre-approve each customer account, prior to the opening of the account by Brodt. Account paperwork will be documented, as approved, with a date and signature. New account documents will be easily accessible if requested during any statutory disqualification examination;
6. Ryan will review all written, hardcopy incoming correspondence addressed or relating to Brodt upon its arrival, and will review all written, hardcopy outgoing correspondence before it is sent. Ryan will print out, as well as initial, all of Brodt's hardcopy correspondence. Ryan will maintain and keep copies of all initialed hardcopy correspondence segregated for ease of review during any statutory disqualification examination. Ryan will also review all of Brodt's incoming and outgoing email communications on a weekly basis, and will be able to produce a report from SMARSH (FFEC's email vendor) demonstrating review of all incoming and outgoing emails if requested during any statutory disqualification examination. In addition, copies of all reviewed emails will be easily accessible if requested during any statutory disqualification examination;\*
7. For purposes of client communication, Brodt will only be permitted to use an email account that is held at FFEC, with all emails being filtered through FFEC's email system. If Brodt receives a FFEC-related email message in another email account outside of FFEC, he will immediately deliver that message to his FFEC email account. Brodt will also inform Ryan of all outside email accounts that he maintains, and he will provide access to those accounts upon request. Ryan will maintain the emails and keep them segregated for ease of review during any statutory disqualification examination. For purposes of this paragraph, a "client communication" shall be understood to refer to communications with customers or clients of FFEC;\*
8. Using a third-party vendor, Ryan will conduct semi-annual credit checks and will subsequently review Brodt's regulatory disclosures to ensure that he has complied with his regulatory disclosure obligations. Ryan will document the outcome of each credit check and he will maintain and keep segregated all documentation related to the credit checks for ease of review during any statutory disqualification examination;\*
9. Using a third-party vendor, Ryan will conduct quarterly public records searches to monitor Brodt's financial status and any criminal matters to ensure that he has complied with his regulatory disclosure obligations. Ryan will document the outcome of each quarterly public record search and he will maintain and keep segregated all documentation related to the public records searches for ease of review during any statutory disqualification examination;\*



10. All complaints pertaining to Brodt, whether verbal or written, will be immediately referred to Ryan for review. Ryan will prepare a memorandum to the file with full details as to the review, investigation and resolution of the matter. Documents pertaining to these complaints should be kept segregated for ease of review during any statutory disqualification examination;
11. For the duration of Brodt's statutory disqualification, the Firm must obtain prior approval from Member Supervision if it wishes to change Brodt's primary or alternate supervisors or if the Firm wishes to change any provisions of this plan. The Firm will submit any proposed changes or other requested information under this Plan to FINRA's Statutory Disqualification Group at [SDMailbox@FINRA.org](mailto:SDMailbox@FINRA.org);<sup>\*</sup> and
12. Ryan must certify quarterly (March 31st, June 30th, September 30th, and December 31st) that he and Brodt are in compliance with all the above conditions of this heightened supervisory plan.<sup>\*</sup>

FINRA certifies that: (1) Brodt meets all applicable requirements for the proposed employment; (2) the Firm is a member of the Municipal Securities Rulemaking Board; (3) the Firm has represented that Brodt is not related to Ryan or Rael by blood or marriage; and (4) the Firm does not employ any other statutorily disqualified individuals.

## **VII. Conclusion**

Accordingly, we approve the Firm's Application to continue to employ Brodt as an investment adviser representative, subject to the above-mentioned heightened supervisory procedures. In conformity with the provisions of Exchange Act Rule 19h-1, the continued association of Brodt with the Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the Commission.

On Behalf of the National Adjudicatory Council,

*Jennifer Piorko Mitchell*

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Jennifer Mitchell Piorko  
Vice President and Deputy Corporate Secretary