

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In The Matter of
The Continued Association of
Joao M. Valente
as a
General Securities Representative
with
Cetera Investment Services LLC

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

SD-2330

December 5, 2023

On August 5, 2022, Cetera Investment Services LLC (“Cetera” or the “Firm”) filed with FINRA a Membership Continuance Application (“MC-400” or “Application”). The Application seeks to permit Joao M. Valente, a person subject to a statutory disqualification, to continue to associate with the Firm as a general securities representative. A hearing was not held in this matter. Rather, pursuant to FINRA Rule 9523(a), FINRA’s Department of Member Supervision (“Member Supervision”) recommends that the Chairperson of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council, approve Valente’s continued association with the Firm pursuant to the terms and conditions set forth below.

For the reasons explained below, we approve the Firm’s Application.

I. Valente’s Statutorily Disqualifying Event

Valente is subject to statutory disqualification, as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934 (“Exchange Act”), as a result of his January 18, 2022 guilty plea to Driving While Intoxicated (“DWI”), a felony in violation of New York law.¹ A court revoked Valente’s driver’s license for one year and

¹ 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 Exchange Act Section 3(a)(39). 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 been convicted of any offense specified in Exchange Act Section 15(b)(4)(B), or any other felony, within the past 10 years. Valente’s offense was

[Footnote Continued On Next Page]

sentenced him to five years of probation, five years of a vehicle ignition interlock device to be installed on his vehicle,² and 100 hours of community service. The court also imposed fines and fees totaling \$1,570, and as a condition of his probation, Valente was ordered to attend therapy and to submit to periodic drug and alcohol testing. The record shows that to date, Valente has complied with all terms of his probation, paid the fines and fees in full, completed his community service, and has attended therapy and completed a DWI course.

Valente states that he takes full responsibility for, and regrets the circumstances leading to, his arrest and felony conviction. Valente also states that he has completed a 15-week alcohol abuse program and continues to attend therapy sessions. Further, Valente states that he no longer consumes alcohol and is subject to random toxicology screenings, which have all been negative for the detection of alcohol and drugs.

II. Valente's Background Information

Valente qualified as a general securities representative in March 1999 and as an equity trader in May 2001 (although that license has expired). He also passed the uniform securities agent state law examination in March 1999 and the uniform investment adviser examination in September 2010. Valente has been associated with the Firm and its investment adviser affiliate since September 2020. He was previously associated with 10 firms.

Other than the statutorily disqualifying event, FINRA's Central Registration Depository ("CRD"®) record shows no disciplinary or regulatory proceedings, complaints, or arbitrations against Valente.³

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a felony because in January 2014, he was convicted of Operating a Motor Vehicle Under the Influence of Drugs or Alcohol, a misdemeanor.

² Valente has not sought to have his driver's license reinstated and therefore has not installed an interlock device on any vehicle.

³ Member Supervision states that Valente was subject to four customer complaints between July 2011 and May 2016. FINRA reviewed the 2016 complaint, which related to an operational problem concerning a failure to execute a trade, and the examination related to that review was closed with no further action. Member Supervision states that the other three complaints, which related to account service issues, account opening and processing, and poor performance of an unspecified product, were submitted by the Firm to FINRA pursuant to FINRA Rule 4530 and were not reviewed in connection with FINRA examinations.

III. Background of the Firm

The Firm is based in St. Cloud, Minnesota and has been a FINRA member since 1984. According to the Firm's CRD record, it employs 2,614 registered representatives, 717 of whom are registered principals, and 1,888 non-registered fingerprinted individuals. The Firm has 1,491 branch offices, 28 of which are Offices of Supervisory Jurisdiction ("OSJs"). The Firm employs one other statutorily disqualified individual.⁴

A. Recent FINRA Examination History

In the past several years, FINRA has conducted three routine examinations of the Firm, which resulted in two Cautionary Actions and a referral to Enforcement. In September 2022, FINRA issued the Firm a Cautionary Action for failing to adequately supervise mutual fund switch activity and failing to detect an inaccurate disclosure of charges listed on an Annuity Transaction Worksheet and Surrender/Exchange Disclosure Form. The Firm responded in writing that it corrected the deficiencies noted. Three exceptions related to the Firm's supervisory systems concerning marking trades as unsolicited and its supervision of two registered representatives' trading activities were referred to Enforcement. This matter is pending.

In October 2019, FINRA completed an examination of the Firm that resulted in no exceptions.

In April 2019, FINRA issued the Firm a Cautionary Action for failing to properly report municipal securities trades, providing inaccurate markup and markdown disclosures, and failing to establish and maintain adequate supervisory procedures concerning disclosure of markups and markdowns, the EMMA hyperlink, and trade execution times. The Firm responded in writing that it corrected the deficiencies noted.

B. Recent Formal Disciplinary History

In August 2021, the Commission issued an order against the Firm and its affiliates. The order found that the Firm willfully violated Rule 30(a) of Regulation S-P because it failed to adopt written policies and procedures reasonably designed to protect customer records and information. Specifically, the order found that in November and December 2017, unauthorized third parties took over the Firm's email accounts, which exposed customers' personal identifiable information. The Commission censured the Firm, ordered it to cease and desist from committing future violations of Regulation S-P,

⁴ William Stead is subject to statutory disqualification due to a 1992 order issued by the Arizona Corporation Commission, which contained findings that Stead violated a law that prohibited fraudulent, manipulative or deceptive conduct. The Firm, however, was not required to file a membership continuance application for Stead under FINRA's rules as there were no sanctions in effect. *See FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 68, at *11-12 (Apr. 2009).

and ordered it and its affiliates to pay, jointly and severally, a civil monetary penalty of \$300,000.⁵

In June 2021, the Firm entered into a consent order with the Arkansas Securities Commissioner to settle allegations that a designated supervisor of a branch office in Arkansas was not registered in the state. The Firm was fined \$50,000.

The record does not show any additional recent disciplinary or regulatory history against the Firm.

IV. Valente's Proposed Business Activities

The Firm proposes that Valente will continue to work from its Westbury, New York office. The Firm represents that Valente will continue to perform all duties customary of a Series 7, including establishing and maintaining client relationships, recommending products and services, and assisting clients with opening and managing accounts. Valente will be compensated through commissions.⁶

V. Valente's Proposed Supervision

The Firm designated John Golden ("Golden") to serve as Valente's primary supervisor. Golden works from the Firm's Westbury, New York office, where he currently serves as the branch manager. Although he is the branch manager, Golden is only responsible for the direct supervision of Valente, while all other branch personnel are centrally supervised. Golden's compensation consists of a salary, recruiting bonus, and a percentage of gross dealer concessions generated at the branch office (including Valente's business). The Firm represents that the gross dealer concessions attributable to Valente comprise approximately 1.18% of Golden's overall compensation.

⁵ As a result of the Commission's order, the Firm is statutorily disqualified under Exchange Act Sections 3(a)(39)(F) and 15(b)(4)(D). The Firm, however, was not required to file a membership continuance application under FINRA's rules as there were no sanctions in effect once the Firm paid the civil penalty. *See FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 68, at *11-12 (Apr. 2009).

⁶ The Firm represents that the vast majority of Valente's book of business consists of strategy-driven advisory accounts, which are not generally charged commissions. The Firm further represents that Valente is not making the trading decisions in connection with these accounts, as the trading is dictated by strategies determined by third-party managers.

Further, when the Firm hired Valente, he received a loan from the Firm in the amount of \$150,000. Valente is required to make annual payments to the Firm each year through 2025. Valente is current in making his payments to the Firm.

Golden registered as an investment company and variable contracts products representative in April 1982, as an investment company and variable contracts products principal in June 1986, as a general securities representative in February 2001, and as a general securities principal in June 2014. He also passed the uniform securities agent state law examination in October 1996. Golden has worked at the Firm (and its affiliated registered investment adviser) since June 2019. He was previously associated with one other member firm.

The record does not show any regulatory or disciplinary history, criminal history, or any recent customer complaints for Golden.⁷

If Golden is unavailable, the Firm designated Dominick Scarfogliero (“Scarfogliero”) to serve as Valente’s alternate supervisor. Scarfogliero works from the Firm’s Westbury, New York office, where he currently serves as an assistant branch manager. Scarfogliero does not currently supervise any other individuals, and his compensation consists of a salary, commission from the management of his personal client accounts (approximately 200 total), and a percentage of gross dealer concessions generated at the branch office (including Valente’s business). The Firm represents that the gross dealer concessions attributable to Valente comprise approximately .30% of Scarfogliero’s overall compensation.

Scarfogliero registered as an investment company and variable contracts products representative in February 2014, as an investment company and variable contracts products principal in October 2016, as a general securities representative in January 2022, and as a general securities principal in May 2022. He also passed the uniform securities agent state law examination in March 2014. Scarfogliero has worked at the Firm (and its affiliated registered investment adviser) since May 2019. He has previously worked at one other firm.

The record shows no customer complaints, arbitrations, or other regulatory, disciplinary, or criminal history for Scarfogliero.

VI. Discussion

After carefully reviewing the entire record in this matter, we approve the Firm’s Application to continue to employ Valente as a general securities representative, subject to the supervisory terms and conditions set forth below.

The Firm has the burden of demonstrating that Valente’s continued association with the Firm is in the public interest and does not create an unreasonable risk of harm to

⁷ CRD shows that Golden was one of four defendants in a civil lawsuit filed in 1998 that alleged wrongful transfer of plaintiff’s accounts. The suit sought \$40,000 in damages. The parties settled the matter in November 2000 for \$10,000, with no contribution from Golden.

the market or investors. *See Continued Ass'n of X*, Redacted Decision No. SD06002, slip op. at 5 (NASD NAC 2006), available at <http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p036476.pdf>; *see also 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”); FINRA By-Laws, Article III, Section 3(d) (providing that FINRA may approve association of statutorily disqualified person if such approval is consistent with the public interest and the protection of investors).

In reviewing this type of application, we have considered whether the particular felony at issue, examined in light of the circumstances related to the felony and other relevant facts and circumstances, creates an unreasonable risk of harm to the market or investors. *See Kufrovich*, 55 S.E.C. at 625-26 (upholding FINRA’s denial of a statutory disqualification applicant who had committed non-securities related felonies “based upon the totality of the circumstances” and FINRA’s explanation of the bases for its conclusion that the applicant would present an unreasonable risk of harm to the market or investors). We assess the totality of the circumstances in reaching a judgment about Valente’s future ability to work in the securities industry in a manner that comports with FINRA’s requirements for high standards of commercial honor and just and equitable principles of trade in the conduct of his business.

For the reasons set forth below, we conclude that the Firm has satisfied its burden and Valente’s participation in the securities industry, subject to the supervisory terms and conditions set forth below, will not present an unreasonable risk of harm to the market or investors.

We acknowledge the seriousness of Valente’s recent criminal conviction. We note, however, that his felony conviction did not involve securities or fraudulent misconduct. We are not aware of any intervening misconduct by Valente, and he has been registered in the securities industry for more than 24 years without any evidence of regulatory wrongdoing or disciplinary history. Further, Valente has stated his remorse for the events underlying his statutorily disqualifying felony and has accepted responsibility for his behavior. Indeed, he has taken steps to rectify and prevent its reoccurrence, including attending and completing a treatment program. Valente has complied with all applicable terms of his probation, including completing 100 hours of community service, and continues to participate in therapy sessions.

We also find that Golden and Scarfogliero are well-qualified to supervise Valente. Golden has been in the securities industry for more than 40 years and has extensive supervisory experience. Further, Golden has had only one customer complaint filed against him (25 years ago) that was resolved without any financial contribution from him. Likewise, Scarfogliero has been registered as a principal for more than six years and has a clean regulatory history, and he and Golden have supervised Valente under an interim heightened supervisory plan since August 2022 without incident. Although we note that both Golden and Scarfogliero’s compensation is partially dependent on Valente’s business activities, which presents the potential for conflicts, we agree with Member

Supervision that the percentage of each supervisor's compensation that is at issue (1.18% of Golden's total compensation and .30% of Scarfogliero's total compensation) is relatively small and presents little risk that Valente's supervision will be compromised. Moreover, the Firm's written supervisory procedures contain processes and controls to mitigate any conflicts posed by this compensation arrangement, and Member Supervision has represented that it is comfortable with the Firm's existing controls and procedures to address a future scenario where income attributable to Valente increases.

Further, we find that the Firm has proposed a stringent and comprehensive plan of supervision that is tailored to Valente and his disqualifying event. Valente is required to be in the office with Golden or Scarfogliero twice per month on a scheduled basis, and Golden must randomly meet with Valente two additional times per month either in-person or via video conference. Moreover, Valente and Golden will meet three times each month via video conference during the weeks that they are not both in the office.⁸ Valente's supervisors must alert the Firm's compliance and legal departments if there is any indication that Valente is under the influence of alcohol or drugs, or if Valente has unexplained absences, is late, or is otherwise behaving erratically. Finally, Valente will be subject to random drug and alcohol testing.

Finally, we find that the Firm has a relatively clean regulatory history and has corrected deficiencies. On balance, the Firm's history does not warrant a denial of Valente's continued association with the Firm considering his misconduct and the specific supervisory structure in place for him.

We find that the following heightened supervisory procedures, if they are diligently followed, will enable the Firm to reasonably monitor Valente's activities on a regular basis:

⁸ We find that under the circumstances, the fact that Valente will be supervised remotely for the majority of the time does not serve as a basis to deny the Application. See *The Cont'd Ass'n of Allan Wolfe*, SD-2157, slip op. at 21 (FINRA NAC Dec. 20, 2018) (stating that although in-person supervision is preferred, it is not always required and approving application where disqualified individual engaged in limited business and had a lengthy career that was mostly without incident); *The Ass'n of X*, SD10003, slip op. at 8 (FINRA NAC 2010), http://www.finra.org/sites/default/files/NACDecision/p125898_0_0.pdf (redacted decision) ("While we agree that on-site supervision is the ideal standard for most statutorily disqualified individuals, we do not find that it is always necessary."). As stated herein, the heightened supervisory plan contains procedures to ensure that Valente is stringently supervised. We conclude that this fact, along with Valente's lack of regulatory and disciplinary history during his lengthy career in the securities industry and his supervisors' backgrounds, support offsite supervision of Valente.

1. The Firm's records must be amended to state that Golden must be the primary supervisor responsible for Valente and that Scarfogliero must be the alternate supervisor.
2. Golden and Scarfogliero must supervise Valente, from the Firm's branch office, which is located at 1400 Old Country Rd., Suite 408 Westbury, NY.
3. Valente and Golden must be in the office on the second and fourth Monday of every month from 10:00 a.m. to 4:00 p.m. with a meeting to discuss any developments or issues, if any, for the current time period. Evidence of these meetings must be retained in the ordinary course of business and kept segregated for ease of review for FINRA staff.
4. Valente and Golden must hold three regularly scheduled meetings in the first and in the third week of the month via video conference. Separately, Golden must randomly select to meet with Valente twice per month either in-person or via video conference. Evidence of these meetings must be retained in the ordinary course of business and kept segregated for ease of review for FINRA staff.
5. Golden must conduct the daily review of all of Valente's transactions in accordance with the Firm's written supervisory procedures, must review flagged communications, and must monitor other investment related activities such as complaints, if any. Evidence of such reviews must be retained in the ordinary course of business and kept segregated for ease of review for FINRA staff.
6. Valente must not act in a supervisory capacity.
7. Valente must be prohibited from making any individual transactions in any accounts without seeking prior client approval. Evidence of client approval must be maintained and kept segregated for ease of review for FINRA staff.
8. Golden must review and pre-approve each securities account opened by Valente. Paperwork relating to the opening of the account must be documented as approved with a date and signature. Copies of all documents must be maintained and kept segregated for ease of review for FINRA staff.
9. Valente must maintain an electronic calendar of his meetings, accessible by Golden. Golden must review the electronic calendar on a weekly basis and maintain a record/log of his review. The record/log

must be kept segregated for ease of review during any FINRA examination.

10. Golden must promptly alert the Firm's Compliance Department and Legal Department if there is any indication that Valente is under the influence of alcohol or drugs while at work or if there is any unexplained lateness, absences, or other erratic behavior. Copies of all documentation must be maintained and kept segregated for ease of review for FINRA staff.
11. All of Valente's incoming and outgoing client written correspondence (which includes e-mail communications) must be segregated. Golden must review such incoming and outgoing written client correspondence on a weekly basis. Records of such reviews must be kept segregated for ease of review during any FINRA examination.
12. Valente must report to Golden, in writing, changes or completion of any court mandated obligations. All documentation of Valente's compliance with court mandated obligations and/or court orders must be maintained and kept segregated for ease of review for FINRA staff.
13. Valente must promptly report to Golden, in writing, any change in his sentencing. All documentation must be maintained and kept segregated for ease of review for FINRA staff.
14. Valente must agree, when asked, to submit to random drug and alcohol testing to be conducted by a third-party vendor. The result of any tests conducted must be kept in a segregated file for ease of review during any FINRA examination.
15. Valente must immediately (within the same day received by him) report all complaints, whether written or verbal, to Golden for review, and then to the Compliance Department. Golden must prepare a memorandum to the file that describes the measures taken to investigate the merits of the complaint (e.g., contact with the customer) and the resolution of the matter. All documentation must be maintained and kept segregated for ease of review for FINRA staff.
16. Golden must certify quarterly (March 31st, June 30th, September 30th, and December 31st) in writing to Cetera's Compliance Department that he and Valente are in compliance with all of the above conditions of heightened supervision to be accorded Valente. Additionally, the Quarterly Review Form must require Valente's verification that he is in compliance with the terms and conditions imposed by the Court with respect to his felony conviction. All documents must be maintained and kept segregated for ease of review for FINRA staff.

17. For the duration of Valente's statutory disqualification, the Firm must obtain prior approval from Member Supervision if it wishes to change Valente's primary or alternate supervisors or if the Firm wishes to change any provisions of this plan. The Firm must submit any proposed changes or other requested information under this Plan to FINRA's Statutory Disqualification Program at SDMailbox@finra.org.

FINRA certifies that: (1) Valente meets all applicable requirements for the proposed employment; (2) the Firm is not a member of another self-regulatory organization; and (3) the Firm has represented that Valente, Golden, and Scarfoglio are not related by blood or marriage.

VII. Conclusion

Accordingly, we approve the Firm's Application to continue to employ Valente as a general securities representative, subject to the above-mentioned heightened supervisory procedures. In conformity with the provisions of Exchange Act Rule 19h-1, the association of Valente 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 Mitchell Piorko
Vice President and Deputy Corporate Secretary