BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

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| In the Matter of the Association<br>of<br>Heath Butler<br>as a<br>General Securities Representative<br>with<br>Entoro Securities, LLC | Notice Pursuant to<br>Section 19(d)<br>Securities Exchange Act<br>of 1934<br><br>SD-2294<br><br>December 21, 2022 |

I. Introduction

On February 26, 2021, Entoro Securities, LLC (the "Firm" or "Entoro") filed a Membership Continuance Application (the "Application") with FINRA. The Application requests that FINRA permit Heath Butler, a person subject to a statutory disqualification, to associate with the Firm as a general securities representative. On July 12, 2022, a subcommittee ("Hearing Panel") of FINRA's Statutory Disqualification Committee held a hearing on the matter.[1] Butler appeared and testified at the hearing, accompanied by counsel, Sandra D. Grannum, Esq. and Edward J. Scarillo, Esq. Butler's proposed primary supervisor, James C. Row ("Row"), also appeared and testified at the hearing, along with the managing partner of the non-FINRA entity where Butler currently works. Jennifer Crawford, Esq., Loyd Gattis, Esq., Mark Fernandez, Esq., and Michelle Galloway, Esq. appeared on behalf of FINRA's Department of Member Supervision ("Member Supervision").

[1] The Hearing Panel conducted the hearing via video conference. *See Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Temporarily Amend FINRA Rules 1015, 9261, 9524 and 9830 To Permit Hearings Under Those Rules To Be Conducted by Video Conference*, 85 Fed. Reg. 55712 (Sept. 9, 2020) (permitting statutory disqualification hearings to be conducted via video conference because of the COVID-19 pandemic). The effective period of the temporary rule change was extended multiple times, including through and beyond the hearing date. *See Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Expiration Date of the Temporary Amendments Set Forth in SR-FINRA-2020-015 and SR-FINRA-2020-027*, 87 Fed. Reg. 16262 (Mar. 22, 2022) (extending the temporary rules permitting statutory disqualification hearings to be held by video conference through July 31, 2022).

For the reasons explained below, we deny the Application.[2] Butler is disqualified because he agreed to an unqualified bar from the securities industry for serious, securities-related misconduct. Although the disqualifying bar is more than 22 years old and Butler has had a productive career outside of the securities industry since his bar, the Firm has not made an extremely strong showing that extraordinary circumstances exist to permit Butler to associate with the Firm notwithstanding his disqualifying permanent bar. We also find that the Firm has failed in two respects to show that it can stringently supervise Butler as a disqualified individual: the Firm has proposed an inadequate heightened supervisory plan for Butler and has not demonstrated that Butler's proposed primary supervisor has sufficient time to supervise him.

## II. The Statutorily Disqualifying Bar

Butler is statutorily disqualified due to a FINRA Order Accepting Offer of Settlement dated June 29, 2000 (the "Disqualifying Order"). Pursuant to the Disqualifying Order, Butler agreed to an unqualified bar in all capacities.[3] The Disqualifying Order found that Butler: (1) induced the sale of, and effected transactions in, securities by means of manipulative, deceptive, or other fraudulent devices, in violation of NASD Rules 2120 and 2110; (2) engaged in private securities transactions without prior written notice to, and approval from, his member firm, in violation of NASD Rules 3040 and 2110; and (3) made improper use of customer funds, in violation of NASD Rules 2330 and 2110.

Specifically, the Disqualifying Order found that Butler, who was not registered at the time, and a registered representative, while both associated with Block Trading, Inc. ("Block Trading") and operating Block Trading's New Orleans branch office, participated in the sale of investment contracts issued by an entity controlled by Butler, Abstract Consulting, L.L.C. ("Abstract Consulting"). Butler and the registered representative induced four customers to purchase investment contracts totaling $155,000. Under the investment contracts' express terms, the investors' funds would be loaned by Abstract Consulting to certain Block Trading customers, who in turn would use the funds for day-trading. The investment contracts further provided that the day traders who used the investors' funds would be required to put up their own funds for

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[2] Pursuant to FINRA Rule 9524(a)(10), the Hearing Panel submitted its written recommendation to the Statutory Disqualification Committee. In turn, the Statutory Disqualification Committee considered the Hearing Panel's recommendation and presented a written recommendation to the National Adjudicatory Council ("NAC").

[3] Under FINRA's By-Laws, no person shall, without FINRA's approval, become associated with a member if such person is subject to any "statutory disqualification" as such term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934 ("Exchange Act"). *See* FINRA By-Laws, Art. III, §§ 3, 4. Exchange Act Section 3(a)(39) defines "statutory disqualification" to include a bar from associating with a member of any self-regulatory association. *See* 15 U.S.C. § 78c(a)(39)(A). We reject the Firm's arguments, set forth in the Application, that Butler is not statutorily disqualified because the Disqualifying Order did not fine him or order that he pay restitution and because Butler purportedly did not benefit financially from his misconduct. Butler's bar falls squarely within the definition of events that render an individual statutorily disqualified under the Exchange Act and FINRA's By-laws, and even if Butler did not benefit financially from his misconduct (which the record belies) this would have no impact on his status as a disqualified individual.

trading and that controls would be in place to limit losses in the day traders' accounts so that the investors' investments would be "completely non-risk." Investors would receive a return that was the greater of 15% annually or 20% of the profits earned by the day traders.

Despite these terms, the corresponding contracts with day traders issued by Abstract Consulting, and signed by Butler and the registered representative, expressly provided that the investors' funds were at risk and that Abstract Consulting would bear any losses exceeding the day traders' contributions. Further, Butler did not implement any controls to restrict losses in the day traders' accounts and Butler used a portion of the investors' funds to pay the branch office's operating expenses and for trading in Butler's accounts. The investors lost all of their funds, although Butler repaid two of the investors a total of $10,000.[4]

Butler testified that, while in college, he read an article about the founders of Block Trading and became interested in its business and opening a day trading firm. Immediately after finishing college, Butler raised capital through family and friends to open Block Trading's New Orleans office. Butler asserts that Block Trading management understood that he did not have managerial experience in the securities industry and that he was relying upon them for guidance to run the office, and that management did not want Butler to take any FINRA examinations but instead wanted him to focus on business generation and the branch office's operations. Butler further asserts that he received from individuals in Block Trading's Scottsdale, Arizona office templates for the investment contracts at issue. Butler states that his youth and "inexperienced [sic] showed and I did not understand that the contract itself was flawed in that it promised a 'guaranteed return,' which did not account for downside risk to investors."[5] Butler claims that the violations underlying the Disqualifying Order "were the result of actions taken by my team and me under the guidance and direction of Block Trading's corporate office" and that he was "misled and I should have had better counsel and better advisors." Butler testified that he and his team "made a lot of mistakes" and his lack of experience caused him "to make an egregious error that negatively impacted several investors." He further testified that he fully cooperated with FINRA's investigation.

Butler further asserts that he did not benefit financially from Block Trading's business or "from the NASD violations committed by Block [Trading,]" and that he could not afford legal representation in connection with FINRA's allegations of misconduct and therefore voluntarily agreed to the bar.[6] Butler claims that because of his inexperience and financial condition, he "was at the mercy of the NASD and naively agreed to the ban." Butler also testified that he did not misuse customer funds because one of the customers whose funds Butler lost was also an investor in the branch office, and Butler claimed to have used funds intended for the office to pay the Firm's operating expenses. He asserted that after the branch office closed he was locked out and could not obtain documents that would support these facts.

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[4] At the hearing, Butler testified that he also paid a customer several thousand dollars in cash.

[5] Butler was in his mid-twenties when he agreed to the bar.

[6] Despite Butler's suggestion that he did not benefit financially from Block Trading's business or from the misconduct at issue, he did benefit financially from his misconduct because he used customer funds to, among other things, cover his office's expenses and trade in his accounts.

## III. Factual Background

### A. Butler

#### 1. Background

Butler first qualified as an investment company and variable contracts products limited representative in September 1994 and as a general securities representative in February 1999 (which he again qualified for in June 2021).[7] He also passed the uniform securities agent state law examination in April 1999 and again in July 2021. Prior to entry of the Disqualifying Order, Butler was associated with four member firms.

#### 2. Butler's Activities Since the Disqualifying Order and Outside Business Activities

Subsequent to the Disqualifying Order, Butler worked for approximately 14 years at Insperity, Inc. in various roles. During this time, Butler also obtained an MBA and invested in several startups, including a consumer-packaged goods company, a construction company, and a transportation company. Further, Butler has mentored younger African-American entrepreneurs and underrepresented entrepreneurs, is an active advisor and speaker in the startup-tech community in Houston, and has been and is involved with numerous non-profit organizations and endeavors.

Since 2019, Butler also has worked approximately 5-10 hours per week at the Firm's parent company, Entoro Capital, LLC (the "Parent"), and he disclosed this activity, among others, as an outside business activity. The Firm represents that the Parent, which is a non-FINRA member, gives advice regarding corporate transactions and conducts other financial activities. Butler works with the Parent as an independent consultant on non-broker-dealer activities, such as issuer review, due diligence, mergers and acquisitions analysis, fund metrics, and other general financial analysis functions.

Since the fall of 2019, Butler also has been employed at the Mercury Fund, which is an early stage venture capital fund and non-FINRA member.[8] At the Mercury Fund, Butler has served as a "Growth Partner and works in business development and advisory services for the firm's portfolio." Butler is currently under "partner supervision" at the Mercury Fund because of the Disqualifying Order. Butler spends approximately 10-20 hours per week working for this entity, although if the Application is approved he will begin to reduce his activities for this

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[7] While he attended college, Butler worked part-time at a firm focusing on life insurance and mutual funds.

[8] Butler testified that he provided consulting services to the Mercury Fund prior to becoming an employee in 2019.

entity.[9] Further, Butler also consults and provides advisory services through Gestalt Growth Advisors, for which he works approximately 10 hours per week.

3. Additional Disciplinary History

In addition to the Disqualifying Order, in September 1999 the Louisiana Commissioner of Securities issued a Cease & Desist Order against Butler. The order stated that Butler, while a registered agent-salesperson of Block Trading, was doing business in Louisiana without providing full disclosure of material information to customers by updating his records with FINRA's Central Registration Depository ("CRD"®) containing "full disclosure of all material information, including activities with certain customers." Butler was ordered to "cease and desist from any activities in violation of the Louisiana Securities Act, including but not limited to, doing business with customers in Louisiana without providing full disclosure." Butler states that the Louisiana Securities Commissioner was investigating whether a loan agreement between Abstract Consulting and a customer was a security and whether Butler violated Louisiana law by not registering the loan.

The record does not show any additional final disciplinary or regulatory proceedings, complaints, or arbitrations against Butler.

B. The Firm

1. Background

The Firm is based in Houston, Texas, and has been a FINRA member since March 1994. The Parent owns 100% of the Firm. Row, through his ownership interest in the Parent, is the Firm's majority owner.

CRD shows that the Firm has two branch offices, both of which are offices of supervisory jurisdiction. The Firm currently employs 53 registered individuals, including 14 general securities principals, and one non-registered fingerprinted person. The Firm does not employ any other statutorily disqualified individuals. The Firm is a broker-dealer selling gas and oil interests and private placements, and engages in investment banking and mergers and acquisitions advisory services. Row testified that the majority of the Firm's customers are family offices, high net worth and accredited individuals, and institutional investors.

2. Regulatory History

In October 2012, FINRA accepted a Letter of Acceptance, Waiver and Consent ("AWC") from the Firm for violations of Exchange Act Rule 17a-3, FINRA Rule 2010, NASD Rules 2110

[9] Despite Butler's employment at the Mercury Fund since 2019, the Firm did not disclose this employment in the Application and Butler did not disclose this activity in writing to the Firm or on his Uniform Application for Securities Industry Registration or Transfer ("Form U4"). Indeed, Butler and the Firm only updated Butler's Form U4 to include this outside business activity after FINRA discovered it in late 2021. Further, even after Butler disclosed in writing this activity to the Firm and on his Form U4, he incorrectly listed his start date and certain activities he engages in on behalf of the Mercury Fund. Butler described these errors as "oversights."

and 3110, and Schedule A, Section 1 of the NASD and FINRA By-Laws. Without admitting or denying the allegations, the Firm consented to findings that during a five-year period, a non-FINRA member entity paid the Firm a monthly retainer fee to exclusively retain it as a broker-dealer for oil and gas auctions and other activities. The Firm's financial statements reflected the retainer fee as its only revenue, and the Firm did not list any revenues related to its oil and gas auction business. This resulted in an understatement of the Firm's revenue and caused the Firm to underpay its Gross Income Assessment. FINRA censured the Firm and fined it $50,000. The Firm also paid $73,295 to FINRA to rectify its Gross Income Assessment underpayment.

3. Recent Examination History

In February 2022, FINRA issued the Firm a Cautionary Action in connection with a non-routine examination. FINRA cited the Firm for failing to: (1) have written supervisory procedures ("WSPs") reasonably designed to verify the accuracy and completeness of information on Forms U4; (2) perform public record searches for 44 applicants for registration during a three-year period; and (3) contact the previous three years of employers and maintain documentation of those contacts for a total of 122 applicants for registration during a multi-year period. The Firm took corrective action by updating its WSPs concerning its hiring practices.

In May 2020, FINRA issued the Firm a Cautionary Action in connection with a non-routine examination. FINRA cited the Firm for failing to: (1) adequately implement its Customer Identification Program and related suspicious activity monitoring processes for investors who purchased digital assets; (2) enforce its WSPs requiring it to document its due diligence investigation of a crypto company; and (3) timely file a copy of a private placement memorandum, term sheet, and other offering documents.

In December 2019, FINRA issued the Firm an exception letter in connection with FINRA's 2019 routine examination, in which FINRA identified three exceptions concerning the following deficiencies: (1) the Firm's failure to ensure that customer funds were properly transmitted to an escrow agent and failure to provide evidence that the escrow agent received customer funds in connection with underwritings; (2) the Firm's failure to follow its WSPs to make required filings for four offerings and follow its procedures to obtain Reg D filings for issuers; and (3) the Firm's failure to implement an adequate supervisory system to monitor and properly disclose the outside business activities of a registered representative. The Firm responded in writing to the exception letter and stated that it had corrected the deficiencies noted.

In December 2018, FINRA issued the Firm an exception letter in connection with a non-routine examination, in which FINRA identified as an exception the Firm's failure to maintain accurate financial books and records by erroneously recording a deposit as a capital contribution, which caused the Firm to overstate its net capital and understate its liabilities on a FOCUS filing.

IV. Butler's Proposed Activities and the Firm's Proposal for his Heightened Supervision

A. Butler's Proposed Association with the Firm

The Firm proposes that Butler will associate with it as a general securities representative selling private placements, conducting due diligence, raising capital, and engaging in investment banking and merger and acquisition activities. The Firm states that Butler will work for the Firm 10-20 hours per week, remotely from his home and from the Firm's main office in Houston.

Butler also testified that if the Application is approved, he will reduce his activities with the Mercury Fund and "ramp up" his activities with the Firm. The Firm proposes to compensate Butler "based on the capital raised according to his independent contractor agreement."

B. Butler's Proposed Primary Supervisor

The Firm proposes that Butler will be supervised remotely and at the Firm's home office by Row. Row is the Firm's owner and serves as its chief executive officer and chief compliance officer. Row testifed that he currently directly supervises eight registered indivdiuals, although in the Application the Firm represents that Row has a "hands-on and direct supervisory role with all representatives" at the Firm (which, as stated above, total more than 50). In addition to Row's duties at the Firm, he serves as the managing partner of the Parent (as well as its holding company, Entoro, LLC) and the managing partner and chief executive officer of Entoro Investments, LLC (a registered investment adviser affilated with the Firm). Further, CRD shows that Row is involved in 13 other outside business activities. Member Supervision asserts that Row spends approximately 20 hours per week total on all of these outside business activities. Row tesitfied generally that he works approximately 80 hours per week in connection with his responsibilities at the Firm and his outside business activities.

Row has been registered with the Firm since June 2015. CRD shows that he registered as a general securities representative in May 1996 (and requalified in July 2005), as a general securities principal in July 2005, and as a financial operations principal in November 2007.[10] He also passed the uniform securities agent state law examination in June 1996 (and again in June 2005) and is approved to work in several other capacities at the Firm. Row has been associated with four other firms.

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

C. The Current Proposed Backup Supervisor

The Firm originally proposed Julia Gibson as Butler's alternate supervisor. After she left the Firm in April 2022, the Firm proposed that Paul Mottola ("Mottola") will serve as Butler's alternate supervisor. Mottola resides in New Jersey and he currently serves on the Firm's management committee. Mottola has been associated with the Firm since February 2021. He first registered as a general securities representative in August 1990, as a general securities principal in June 1998, and as a municipal securities principal in October 2011. He also passed the uniform securities agent state law examination in September 1990, and is approved to work in several other capacities at the Firm. Mottola previously has been associated with five firms.

CRD shows that Mottola is involved with three outside business activities, for which he spends approximately 20-40 hours per month. CRD further shows no disciplinary or regulatory proceedings, complaints, or arbitrations against Mottola.

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[10] Row testified that he first qualified as a general securities representative in 1987.

D. The Firm's Proposed Heightened Supervisory Plan

The Firm submitted a proposed heightened supervisory plan with the Application. It provides:

1. The written supervisory procedures for Entoro will be amended to state that Row is the primary supervisor responsible for Butler;

2. Butler will not maintain discretionary accounts at Entoro;

3. Butler will not act in a supervisory capacity;

4. When Butler is in the office, he will be supervised by Row in Entoro's main branch office located at 333 West Loop North, Suite 333, Houston, Texas 77024;

5. Row will review and pre-approve each client engagement, prior to the commencement of work by Butler. Account paperwork will be documented as approved with a date and signature and maintained at Entoro's home office;

6. Row will review Butler's incoming written correspondence (which would include email communications) upon its arrival and will review outgoing correspondence before they are sent;

7. Entoro is a limited broker-dealer approved for private placement activity, investment banking transactions and merger and acquisitions advisory services. Entoro is not a retail [trading] broker-dealer, but if that were to change in the future, then Row will review and approve Butler's order tickets before they are executed. Row will evidence his review by initialing the order tickets;

8. Butler must disclose to Row on a monthly basis details related to his outside sales activit[ies]. The disclosure must contain Butler's activity log, phone call log, appointment log and a to-do list;

9. If Row is to be on vacation or out of the office for an extended period, Mottola will act as Butler's interim supervisor;[11]

10. All complaints pertaining to Butler, whether verbal or written, will be immediately referred to Row for review, and then to the Compliance Department. Row will prepare a memorandum to the file as to what measures he took to investigate the merits of the complaint (e.g., contact with the customer) and the resolution of the matter. Documents pertaining to these complaints should be kept segregated for ease of review;

11. For the duration of Butler's statutory disqualification, Entoro must obtain prior approval from FINRA Member [Supervision] if they wish to change Butler's responsible supervisor from Row to another person; and

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[11] As stated above, since filing the Application the Firm has changed Butler's alternate supervisor. We have substituted Mottola for the name of Butler's former proposed alternate supervisor.

12. Row must certify quarterly (March 31st, June 30th, September 30th, and December 31st) to the Compliance Department of Entoro that Row and Butler are in compliance with all of the above conditions of heightened supervision to be accorded Butler.

V. Member Supervision's Recommendation

Member Supervision recommends that the Application be denied because, in its view: (1) the Disqualifying Order permanently barred Butler from associating in any capacity with a FINRA firm and involved serious, securities-related misconduct and the Firm has not shown that extraordinary circumstances exist to permit Butler's re-entry into the securities industry; (2) the Firm proposed an inadequate heightened supervisory plan; and (3) the Firm's proposed supervisors are unsuitable, mainly because Butler's primary supervisor Row will not have sufficient time to stringently supervise Butler.

VI. Discussion

A. The Legal Standard

In evaluating the Application, we assess whether the Firm has demonstrated that the proposed association of Butler is in the public interest and does not create an unreasonable risk of harm to the market or investors. *See* FINRA By-Laws, Art. III, § 3(d) (providing that FINRA may approve the association of a statutorily disqualified person if such approval is consistent with the public interest and the protection of investors); *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").

In cases where FINRA has imposed an unqualified bar, the bar is "intended to prohibit completely a person's ability to engage in any future securities business with any member firm, thus precluding re-entry into the securities industry absent extremely unusual circumstances." *See In the Matter of the Ass'n of Scott Coy with Invicta Cap. LLC*, SD-2195, slip op. at 8 (FINRA NAC Mar. 15, 2019), https://www.finra.org/sites/default/files/2019-05/NAC_SD-2195_Scott-Coy_031519.pdf; *In the Matter of the Continued Ass'n of Kimberly Springsteen Abbott*, SD-2132, slip op. at 9-10 (FINRA NAC May 24, 2018), http://www.finra.org /sites/default/files/NAC_SD-2132_Kimberly-Springsteen-Abbott_052418_0.pdf, *aff'd*, *Commonwealth Cap. Sec. Corp.*, Exchange Act Release No. 89260, 2020 SEC LEXIS 2612 (July 8, 2020); *In the Matter of the Ass'n of X*, Redacted Decision No. SD11003, slip op. at 6 (FINRA NAC 2011), https://www.finra.org/sites/default/files/NACDecision/p126106_0_0.pdf (hereinafter "2011 NAC Decision").

In furtherance of this standard, the Firm must make an extremely strong showing for us to conclude that approving the Application serves the public interest. *See Coy*, SD-2195, slip op. at 8; *Springsteen Abbott*, SD-2132, slip op. at 10; 2011 NAC Decision, at 6; *Asensio & Co., Inc.*, Exchange Act Release No. 68505, 2012 SEC LEXIS 3954, at *11 n.22 (Dec. 20, 2012) ("we agree with FINRA that an individual who is statutorily disqualified as a result of a bar . . . must meet a highly demanding standard before being permitted to reenter the industry. . . . We also agree . . . that a FINRA-barred applicant is required to make an extremely strong showing to justify a finding that approval of an application for re-entry would serve the public interest."); *cf.*

*Daniel Fishberg*, Advisers Act Release No. 5682, 2021 SEC LEXIS 313, at *6 (Feb. 9, 2021) (denying application for individual subject to an unqualified Commission bar to associate with an investment adviser and stating that "the requirement to demonstrate 'extraordinary circumstances' is extremely difficult to meet").

We have carefully considered the entire record in this matter, and we find that the Firm has not made an extremely strong showing to demonstrate that, at this time, extraordinary circumstances exist to permit Butler to associate with the Firm notwithstanding his bar. As explained below, although the Disqualifying Order is more than 22 years old, it unquestionably involved serious, securities-related misconduct that harmed investors and FINRA imposed an unqualified bar upon Butler. Moreover, the Firm has not demonstrated that it is able to stringently supervise Butler as a disqualified individual. Specifically, the Firm's heightened supervisory plan is deficient in numerous areas, and we find that Row does not have sufficient time to stringently supervise Butler. We therefore deny the Application to permit Butler to associate with the Firm.

B. Butler's Misconduct Was Serious and FINRA Barred Him

We find that the seriousness of the misconduct underlying Butler's statutory disqualification, pursuant to which FINRA permanently barred him from the securities industry, supports denying the Application. *See Nicholas S. Savva and Hunter Scott Financial, LLC*, Exchange Act Release No. 72485, 2014 SEC LEXIS 2270, at *34 (June 26, 2014) (holding that FINRA properly considered that the consent order forming the basis of an individual's statutory disqualification stemmed from allegations of serious, securities-related misconduct when it denied application); *Coy*, SD-2195, slip op. at 9 (denying application where disqualified individual was barred for engaging in selling away and finding that seriousness of the misconduct underlying the bar supported denial); *Springsteen-Abbott*, SD-2132, slip op. at 12 (finding that the seriousness of misconduct underlying disqualifying bar order—misusing investment fund monies—supported denial); 2011 NAC Decision, at 6 (denying application based upon seriousness of disqualifying event where individual agreed to a FINRA bar for improperly withholding adviser fees from investment adviser).

The Disqualifying Order, which Butler voluntarily agreed to, found that Butler induced four investors to purchase $155,000 of investment contracts by means of manipulative, deceptive, or other fraudulent devices. The Disqualifying Order also found that Butler improperly used customer funds and engaged in selling away in connection with the investment contracts. The Disqualifying Order found that, despite the terms of the investment contracts, which provided that investor funds would be used for day-trading and that controls would be in place to limit losses so that the investors' investments would be "completely non-risk," Butler used some of the funds to pay Block Trading's expenses and for his own securities trading. Moreover, Butler had no controls in place to limit losses, and the terms of the agreements between Butler's entity (Abstract Consulting) and the day traders expressly provided that the investors' funds were at risk. Customers were harmed by Butler's misconduct, as the four investors at issue lost all of their funds and Butler repaid only a small portion of their funds.

Without a doubt, the Disqualifying Order involved serious, securities-related misconduct that directly harmed investors. *See Dep't of Enf't v. Kaweske*, Complaint No. C07040042, 2007 NASD Discip. LEXIS 5, at *50 (NASD NAC Feb. 12, 2007) (stating that fraudulent misrepresentations are "serious matters that warrant severe sanctions"); *John Edward Mullins*,

Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *47-48 (Feb. 10, 2012) (observing that converting customer funds "is among the most grave violations committed by a registered representative"); *Philippe N. Keyes*, Exchange Act Release No. 54723, 2006 SEC LEXIS 2631, at *14 (Nov. 8, 2006) ("We have held repeatedly that engaging in private securities transactions is a serious violation."). In light of this serious misconduct, Butler voluntarily agreed to an unqualified bar, which reflected the serious nature of his misconduct, to resolve FINRA's investigation into the matter.

Butler and the Firm argue that compelling circumstances exist to permit Butler to associate with the Firm notwithstanding his permanent and unqualified bar, and that such circumstances demonstrate that the Firm has shown that approving the Application is in the public interest. Applicants argue that the Disqualifying Order is more than 22 years old and pursuant to Commission precedent, this fact weighs in favor of the Application. Applicants also point to Butler's career outside the securities industry since the Disqualifying Order, his dedication to charitable and other worthy organizations, and several letters in support of the Application attesting to Butler's character and the supportive testimony of Butler's current employer at the Mercury Fund.

We acknowledge that the Disqualifying Order occurred more than 22 years ago. We further acknowledge that since the Disqualifying Order, the record does not show any additional misconduct by Butler and shows that he has engaged in numerous worthy endeavors outside the securities industry. We also acknowledge the support from Butler's current employer and character reference letters submitted by the Firm.[12] Under the circumstances, however, these facts alone do not currently outweigh the serious, securities-related nature of the misconduct underlying the Disqualifying Order and the original intent behind such order; namely, to permanently prohibit Butler from participating in the securities business. *See In the Matter of the Ass'n of X*, Redacted Decision No. SD99023, slip op. at 3-4 (NASD NAC 1999), https://www.finra.org/sites/default/files/NACDecision/p011593_0.pdf (finding that despite the disqualifying bar occurring 16 years prior, the disqualified individual's clean record since the bar, and layers of proposed supervision for the disqualified individual, denial was appropriate and these factors "do not overcome X's unqualified bar from the industry, which we consider to be a serious sanction that necessarily reflects serious misconduct. . . . If we were to permit X to re-enter the industry, absent extraordinary circumstances, we would effectively be overturning the bar and diluting its impact as a substantial sanction imposed for serious violations of the securities laws.").

Moreover, we find that the Commission decisions vacating bar orders cited by Butler and the Firm to support their argument in favor of approving the Application are distinguishable.

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[12] Although we have considered the testimony of Butler's current employer at the Mercury Fund and the attestations concerning Butler's character in the record, this does not outweigh our concerns about the serious, securities-related misconduct underlying the Disqualifying Order and does not show that the Firm has made an extremely strong showing to approve the Application and permit Butler to re-enter the securities industry. *See Kufrovich*, 55 S.E.C. at 628 (finding that the NAC reached a different conclusion concerning the disqualified individual's rehabilitation than the witnesses who testified in support of the disqualified individual and holding that FINRA was "in a better position than Kufrovich's witnesses to understand and evaluate the particular risks presented by securities industry employment").

First, these matters involved whether the Commission should grant a request to vacate a Commission bar and not whether a statutorily disqualified individual such as Butler should be permitted to associate with a firm because the public interest favors such relief. *See Stephen S. Wien*, 57 S.E.C. 162 (2003) (granting motion to vacate Commission order barring individual in supervisory and proprietary capacity with a right to reapply after two years); *Mark E. Ross*, 54 S.E.C. 784 (2000) (granting motion to vacate a Commission administrative bar order entered in 1975 with the consent of the Division of Enforcement where Commission had previously permitted movant to participate in the securities industry in limited capacities). Second, *Wien* did not involve an unqualified bar but rather a limited capacity bar for which Wien could reapply to associate in such capacities after two years, and the bar order entered in 1975 against the movant in *Ross* pre-dated the Commission's 1994 guidance stating that "[h]enceforth, the imposition of an unqualified bar evidences the Commission's conclusion that the public interest is served by permanently excluding the barred person from the securities industry" and requires the establishment of extraordinary circumstances to permit reentry into the securities industry. *See Letter from Brandon Becker, Director of Market Regulation to New York Stock Exchange, Inc.*, Exchange Act Release No. 34-34720, 1994 SEC LEXIS 4250, at *3 (Sept. 26, 1994); *Ross*, 54 S.E.C. 784 (vacating bar order without any determination that movant had demonstrated extraordinary circumstances for doing so). Third, in *Wien* the Commission found that the 21 year-old bar involved "a time frame that is not unduly lengthy and does *not weigh significantly in favor of relief*." *See* 57 S.E.C. at 172 (emphasis added). Similar to *Wien*, the Disqualifying Order here is approximately 22 years old, but this does not by itself weigh significantly in favor of, or against, the Application. *Cf. Mark S. Parnass*, Exchange Act Release No. 50730, 2004 SEC LEXIS 2727, at *6 (Nov. 23, 2004) (denying request to vacate bar in various capacities with a right to reapply and stating "we have made clear that the mere passage of time since the issuance of the bar order -- in this case, twenty-nine years -- does not justify relief").

Applicants also suggest that the consequences of the Disqualifying Order should be set aside because when Butler agreed to the bar, he was young, naïve, and could not afford legal representation. The record, however, demonstrates that the Disqualifying Order is valid and enforceable. *Cf. Coy*, SD-2195, slip op. at 9 (rejecting argument that disqualified individual should be permitted to associate with member firm despite agreeing to a bar because Enforcement allegedly took advantage of individual's inability to litigate); *Sargent v. Dep't of Health & Human Servs.*, 229 F.3d 1088, 1091 (Fed. Cir. 2000) ("It is well-established that in order to set aside a settlement, an appellant must show that the agreement is unlawful, was involuntary, or was the result of fraud or mutual mistake."); *Brett Thomas Graham*, Exchange Act Release No. 84106, 2018 SEC LEXIS 2266, at *26 n.34 (Sept. 12, 2018) ("A bare allegation of coercion is not sufficient to set aside the parties' settlement agreement. . . . . Nor would duress be implied if the present settlement had been the result of a hard bargain."). In the Application, Butler states that he voluntarily agreed to the bar, and the record does not show that the Disqualifying Order was procured by fraud or was the result of mutual mistake. Moreover, Butler and the Firm's assertion that Butler fully cooperated with FINRA's investigation into his underlying misconduct and appeared for on-the-record testimony, even if true, does not demonstrate that extraordinary circumstances exist to permit him to associate with the Firm. Butler was required to cooperate with FINRA's investigation and to provide testimony. *See* FINRA Rule 8210(a)(1) (providing that FINRA may require a person subject to its jurisdiction to provide information orally and to testify at a location specified by FINRA); *cf. Keyes*, 2006 SEC LEXIS 2631 at *23 (rejecting applicant's argument that he should have received mitigation credit for cooperating with FINRA's investigation and testifying at an on-the-record interview and holding that compliance with obligations to abide by FINRA's rules is not mitigating).

Butler and the Firm also argue that barring Butler for his misconduct was unnecessarily harsh when compared to other cases and the guidance set forth in FINRA's Sanction Guidelines. They further argue that Butler relied heavily upon Block Trading to comply with FINRA rules and federal securities laws and regulations and that he did not misuse customer funds. Butler, however, waived his right to challenge the findings of the Disqualifying Order and the sanctions it imposed when he voluntarily agreed to its terms and the unqualified bar imposed by such order.[13] *See* FINRA Rule 9270(d) (providing that if a respondent submits an offer of settlement, he waives any right to appeal or otherwise challenge the order approving the settlement); *cf. Coy*, SD-2195, slip op. at 10 (rejecting disqualified individual's argument that a bar agreed to pursuant to an AWC was unnecessarily harsh compared to other similar cases); *Bruce Zipper*, Exchange Act Release No. 81788, 2017 SEC LEXIS 3107, at *8 (Sept. 29, 2017) (finding that an appellate waiver in an otherwise valid FINRA AWC is enforceable). Moreover, Butler's arguments concerning the validity of his agreed-upon bar in this proceeding constitute an impermissible collateral attack upon the Disqualifying Order. *See Robert J. Escobio*, Exchange Act Release No. 83501, 2018 SEC LEXIS 1512, at *30 (June 22, 2018) (finding that "[t]he NAC correctly adhered to [FINRA's] long-standing policy of prohibiting collateral attacks on underlying disqualifying events"). For similar reasons, we reject Butler and the Firm's arguments that Butler received poor guidance from Block Trading and we should consider that he was not fined or required to pay restitution to customers in connection with the Disqualifying Order. Butler waived his right to challenge his agreed-upon sanction of a bar, and, in any event, this is not the appropriate forum to litigate this matter. *See Coy.* SD-2195, slip op. at 10. And, that the Disqualifying Order did not fine or order Butler to pay restitution has no bearing on our assessment that the Firm has not made an extremely strong showing that Butler should be permitted to associate with it notwithstanding the bar.

Finally, Butler and the Firm argue that approving the Application is in the public interest because if we approve the Application, Butler will be able to help underrepresented communities obtain access to capital. While this is a worthy endeavor, Butler and the Firm have not shown that Butler must be associated with a FINRA member firm to assist these communities. Indeed, he has been assisting entrepreneurs for years without being associated with a FINRA member firm. *Cf. also Coy*, SD-2195, slip op. at 11 (stating that "the standard in determining whether to approve the Application is not whether customers may receive ancillary benefits, but whether approval is in the public interest and does not create an unreasonable risk of harm to the market or investors").

In sum, the Firm must meet an extremely high bar to show that extraordinary circumstances exist to permit a disqualified individual such as Butler to associate with it notwithstanding his permanent bar from the securities industry. We find that the Firm has failed to satisfy this burden and did not make an extremely strong showing for us to conclude that at

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[13] In any event, we agree with Member Supervision that the bar imposed upon Butler for using manipulative, deceptive, or other fraudulent devices to induce four customers to purchase investment contracts, misusing customer funds, and selling away was appropriate under the Sanction Guidelines in place when Butler agreed to the Disqualifying Order. We also find that the case cited by Butler to support his claim that barring him for this misconduct was unnecessarily harsh, *ACAP Fin., Inc. v. U.S. S.E.C.,* 783 F.3d 763 (10th Cir. 2015), involved markedly different misconduct than the misconduct that Butler engaged in.

this time, setting aside Butler's unqualified bar and permitting him to associate with the Firm is in the public interest.

C. The Firm Has Not Demonstrated that It Can Stringently Supervise Butler

We also find, as an additional and independent basis to deny the Application, that the Firm has not demonstrated that it can stringently supervise Butler as a statutorily disqualified individual. *See Timothy H. Emerson, Jr.*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, at *17-18 (July 17, 2009) (holding that an applicant must establish that it will be able to stringently supervise a statutorily disqualified individual). We base this conclusion upon two factors.

First, we find that the Firm's proposed supervisory plan is inadequate. *See Bruce Zipper*, Exchange Act Release No. 84334, 2018 SEC LEXIS 2709, at *37 (Oct. 1, 2018) (stating that an inadequate supervisory plan may serve as a basis to deny an MC-400 application). As a general matter, the plan fails to reflect the gravity of Butler's misconduct (using manipulative, deceptive, or other fraudulent devices to induce four customers to purchase investment contracts, misusing customer funds, and selling away) and the nature of his unqualified bar from the securities industry. *See Springsteen-Abbott*, SD-2132, slip op. at 14. The Firm's proposed supervisory plan consists mainly of generic provisions, most of which are not unique to Butler and appear to be applicable to all the Firm's registered representatives. *See Leslie Arouh*, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at *38 (Sept. 13, 2010) (finding proposed supervisory plan deficient where "[m]uch of what the plan required is no different from the supervision the Firm afforded to all employees"). Indeed, Row testified that the proposed plan simply increases the frequency and intensity of the supervision he currently provides to everyone else at the Firm. *See In the Matter of the Cont'd Ass'n of Gabriel Block with First Standard Fin. Co., LLC*, SD-2137, 2018 FINRA Discip. LEXIS 8, at *46 n.30 (FINRA NAC Mar. 13, 2018) (denying statutory disqualification application and finding that most terms of the proposed heightened plan were not unique to the disqualified individual and observing that his supervisor described supervision of the disqualified individual under the plan as being "a little bit more intense and a little bit more detailed" compared to the supervision of other registered representatives).

The proposed plan also lacks sufficient detail. *See Escobio*, 2018 SEC LEXIS 1512, at *24 ("We have previously found that supervisory plans that . . . lack[] detail are insufficient."). For instance, although the proposed plan provides that Row will pre-approve Butler's client engagements, the proposed plan does not include specific provisions concerning how the Firm will monitor Butler's private placement activities after they are approved, including how customer funds are being used, to help prevent misconduct similar to the Disqualifying Order from reoccurring. *See Savva*, 2014 SEC LEXIS 5100, at *37-38 (affirming denial of statutory disqualification application based, in part, upon FINRA's findings that the proposed supervisory plan was not specifically tailored to preventing misconduct similar to that underlying the disqualifying order); *In re the Continued Ass'n of Guy Wyser-Pratte,* Decision No. SD-2148, slip op. at 12 (FINRA NAC Mar. 7, 2019), https://www.finra.org/sites/default/files/NAC_SD-2148_Wyser-Pratte_030719.pdf (finding plan deficient where it did not contain provisions addressing the misconduct underlying disqualifying event). Other than a general provision providing that Butler will disclose his outside sales activities on a monthly basis, the plan does not contain any provision specifically seeking to prevent misconduct similar to the misconduct underlying his statutory disqualification. Similarly, the plan does not contain any provisions

designed to ensure that Butler complies with FINRA's selling away rule. Moreover, the plan does not address how the Firm will supervise Butler when he is working remotely,[14] and many of the plan's provisions fail to provide for documentation of the Firm's compliance with the plan. Finally, the plan does not contain provisions concerning how the Firm will supervise Butler's numerous outside business activities.[15]

Second, we have concerns that Row lacks the time to stringently supervise a disqualified individual such as Butler.[16] Row currently serves as the Firm's chief compliance officer and chief executive officer, as well as the managing partner of the Parent and its holding company. Further, he is involved in numerous outside business activities. Row also testified that he currently directly supervises eight registered individuals at the Firm and works approximately 80 hours per week. Given these other obligations and Row's current workload, we are not persuaded that he has sufficient time to dedicate to Butler's stringent supervision. *See Mitchell T. Toland*, Exchange Act Release No. 73664, 2014 SEC LEXIS 4724, at *25 (Nov. 21, 2014) (affirming denial of statutory disqualification application based in part upon inadequacy of proposed supervisors where primary supervisor had additional duties as the firm's chief compliance officer and supervised numerous other individuals); *Emerson*, 2009 SEC LEXIS 2417, at *18-19 (affirming denial of statutory disqualification application and finding that FINRA "reasonably questioned" whether the disqualified individual's proposed supervisor had sufficient time to stringently supervise the individual where he supervised nine other individuals); *In the Matter of the Ass'n of X*, Redacted Decision No. SD13002, slip op. at 8-9, www.finra.org/sites/default/files/SD13002_0.pdf (FINRA NAC 2013) (finding that supervisor had insufficient time to supervise disqualified individual where he served as firm's general partner and chief compliance officer, supervised 12 other employees, and was involved with five outside entities).

For all these reasons, we find that the Firm has failed to demonstrate that it can stringently supervise Butler as a statutorily disqualified individual.

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[14] Nor does the plan address how Mottola, who resides in New Jersey, will supervise Butler in Row's absence.

[15] As discussed above, Butler did not initially disclose on his Form U4 his activities with the Mercury Fund and later erroneously described his start date and activities at the Mercy Fund, which highlights the importance of the Firm's supervision of Butler's outside business activities.

[16] This is true despite the Firm's representation that Butler will work for it approximately 10-20 hours per week. Butler testified that if the Application is approved, he will reduce his activities with the Mercury Fund and "ramp up" his activities with the Firm.

VII. Conclusion

Accordingly, we find that at this time, it is not in the public interest, and would create an unreasonable risk of harm to the market or investors, for Butler to associate with the Firm. We therefore deny the Application.

On Behalf of the National Adjudicatory Council,

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Jennifer Piorko Mitchell
Vice President and Deputy Corporate Secretary