

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Association
of
Matthew Iverson

as a

General Securities Representative

with

Alpine Securities Corporation.

Notice Pursuant to
Section 19(d)
Securities Exchange Act
of 1934

SD-2238

October 3, 2022

I. Introduction

On February 15, 2019, Alpine Securities Corporation (the “Firm” or “Alpine”) filed with FINRA a Membership Continuance Application (the “Application”). The Application requests that FINRA permit Matthew Iverson, a person subject to a statutory disqualification, to associate with the Firm as a general securities representative. On February 9, 2022, a subcommittee (“Hearing Panel”) of FINRA’s Statutory Disqualification Committee held a hearing on the matter.¹ Iverson appeared and testified at the hearing, accompanied by counsel, Maranda Fritz, Esq. Iverson’s proposed primary supervisor, Robert Michael Fox (“Fox”), and four other individuals, including the general counsel of Alpine’s parent holding company, Michael Cruz (“Cruz”), also appeared and testified at the hearing. 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 Temporary Amendments Set Forth in SR-FINRA-2020-015 and SR-FINRA-2020-027*, 86 Fed. Reg. 71695 (Dec. 17, 2021) (extending the temporary rules allowing statutory disqualification hearings by video conference through March 31, 2022).

After careful consideration of the entire record in this matter, we deny the Application. First, for the reasons explained below, we reject the Firm's argument that Iverson is not statutorily disqualified. Under SEC guidance and our precedent, Iverson was convicted of lewd and lascivious conduct with a minor, a felony under Florida law, which renders him statutorily disqualified under the Securities Exchange Act of 1934 ("Exchange Act") and FINRA's By-Laws. Second, we find that the Firm has not shown that Iverson's association with it as a statutorily disqualified individual is in the public interest. Iverson's recent disqualifying felony conviction involved serious misconduct against a minor and casts doubt on his character and ability to comply with securities rules and regulations.

Moreover, the Firm has not demonstrated that it can stringently supervise a disqualified individual. The Firm's proposed heightened supervisory plan for Iverson is, at best, rudimentary and missing significant safeguards. Consequently, it does not provide the stringent supervision of Iverson that is required for him to work in the securities industry as a statutorily disqualified individual. The Firm's extensive regulatory and disciplinary history, including numerous supervisory failures and a recent FINRA Hearing Panel decision finding that the Firm engaged in intentional and egregious misconduct that caused extensive customer harm, casts further doubt on the Firm's ability to stringently supervise a disqualified individual such as Iverson. All these factors, whether viewed independently or together, warrant denial of the Application.²

II. Iverson is Statutorily Disqualified

We first address the Firm's argument that Iverson is not statutorily disqualified because he was not convicted of a felony. We find that Iverson was convicted of a felony within the past 10 years, and thus is statutorily disqualified under the Exchange Act and FINRA's By-Laws.

A. Iverson's Criminal Misconduct

1. Iverson Is Arrested and Pleads Guilty to a Felony

In July 2016, when Iverson was 29 years old, he was arrested in Florida for lewd assault of a child under 16 years old. Specifically, the minor—who was sitting in a movie theater with her father—alleged that Iverson sat next to her and, approximately 20 minutes after the movie began, she felt someone touch her. The minor thought nothing of this, but moved over in her seat to sit closer to her father. The minor alleged that Iverson kept adjusting himself in his seat and moving, and then she felt something touching her thigh near her buttocks. The minor looked down and saw Iverson's hand touching her, and she told him to leave her alone. Iverson, however, continued to move closer to the minor while continuing to touch her thigh. The minor then yelled and told Iverson to stop touching her and to go away, which alerted the minor's father. Iverson, however, did not move away. The minor's father grabbed Iverson and escorted him out of the theater and notified security. The police then arrested Iverson.

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").

In connection with this incident, in October 2016, Iverson was charged with lewd and lascivious conduct on a child under 16, a second-degree felony under Florida law.³ To resolve the matter, Iverson entered a plea of guilty to the charge, which was accepted by a Florida state court in November 2017. At that time, the court “adjudge[d] [Iverson] to be guilty of the above offense(s).” Iverson testified that he pled guilty because he “was interested in accepting responsibility, because I was guilty . . . [and] that not accepting responsibility for that action would – would be the wrong thing to do.”

In December 2017, the court entered a Finding of Guilt and Order of Withholding Adjudication/Special Conditions (the “Order”).⁴ The Order provided that Iverson “has been found guilty” of the felony charge pursuant to the court’s entry of his guilty plea. The Order reflected that an adjudication of Iverson’s guilt was stayed and withheld pursuant to Florida law.⁵ In support of the court’s stay of an adjudication of Iverson’s guilt, the Order stated that “the defendant is not likely to engage in a criminal course of conduct and the ends of justice and welfare of society do not require that the defendant shall presently suffer the penalty imposed by law.” *See also* Fla. Stat. § 948.01(2).

The court placed Iverson on probation for six years, through November 2023. Iverson’s probation cannot be terminated early for any reason. Indeed, Iverson’s probation may be terminated only if he has complied fully with his probation agreement and has not violated any of its terms. If Iverson successfully completes probation, the Order and guilty plea will be

³ *See* Fla. Stat. § 800.04(6) (2022) (providing that “[a] person who: 1. Intentionally touches a person under 16 years of age in a lewd or lascivious manner; or 2. Solicits a person under 16 years of age to commit a lewd or lascivious act commits lewd or lascivious conduct”).

⁴ The record shows that in the November 2017 plea entered by the court, the court did not indicate that adjudication was being withheld and, as indicated above, adjudged Iverson to be guilty of the felony at issue. Iverson’s plea agreement, however, provided that he would receive a “withhold of adjudication.” Iverson’s attorney promptly filed a motion to amend the judgment to reflect that adjudication was withheld, and the Order reflected that adjudication was withheld.

⁵ Fla. Stat. § 948.01 (2022) provides that:

(1) Any state court having original jurisdiction of criminal actions may at a time to be determined by the court, with or without an adjudication of the guilt of the defendant, hear and determine the question of the probation of a defendant in a criminal case . . . who has been found guilty by the verdict of a jury, has entered a plea of guilty or a plea of *nolo contendere*, or has been found guilty by the court trying the case without a jury. . . .

(2) If it appears to the court upon a hearing of the matter that the defendant is not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant presently suffer the penalty imposed by law, the court, in its discretion, may either adjudge the defendant to be guilty or stay and withhold the adjudication of guilt. In either case, the court shall stay and withhold the imposition of sentence upon the defendant and shall place a felony defendant upon probation.

vacated. However, as part of his plea agreement, if Iverson successfully completes probation, he will then plead guilty to an amended charge of child abuse without great bodily harm (for which he will also receive a withholding of adjudication). The amended charge is also a felony under Florida law. *See* Fla. Stat. § 827.03(2)(c) (2022) (providing that child abuse without great bodily harm is a third-degree felony).

In addition to a lengthy probationary period, the court ordered Iverson to, among other things, pay \$925 in costs and fines, submit his DNA for analysis, register as a sex offender, and complete a Mentally Disordered Sexual Offender Treatment Program. Iverson is completing his probation in Utah, and therefore must comply with additional conditions imposed by a probation agreement with the Utah Department of Corrections.

2. Iverson's Compliance with the Order

The record shows that Iverson has, to date, complied with the extensive terms and conditions of the Order and his probation, and has engaged in substantial efforts to rehabilitate himself.⁶ Iverson testified that he successfully completed the court-ordered treatment program, which he began before he pled guilty, in August 2019. Iverson explained that the program required meeting weekly with a therapist in a one-on-one session, meeting weekly in a group with a therapist, and completing numerous educational courses and related at-home assignments. Iverson also testified that, pursuant to the terms of his probation, he has registered as a sex offender, reports monthly to his probation officer, is subject to monthly random home visits from his probation officer and random drug testing, and he must request written approval before participating in activities where he may encounter minors (and must be accompanied by a “sight and sound supervisor” for any such activities).

B. The Legal Standard

Under FINRA's By-Laws, no person shall, without FINRA's approval, become associated with a member if they are subject to any “statutory disqualification” as that term is defined in Exchange Act Section 3(a)(39). *See* FINRA By-Laws, Art. III, §§ 3, 4. Exchange Act Section 3(a)(39)(F) provides that a person is subject to statutory disqualification if, among other things, 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. *See* 15 U.S.C. 78c(a)(39)(F).

The phrase “convicted” is not defined in the Exchange Act. The SEC, however, has examined other federal securities laws for guidance concerning what constitutes a conviction under Exchange Act Section 3(a)(39). *See* Interpretative letter dated November 9, 2000, from Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, to Peggy Germino, Manager, NYSE (the “Germino Letter”), https://www.finra.org/sites/default/files/NAC_Ddecision/p013420_0.pdf; Interpretative letter dated February 21, 1992, from Joseph M. Furey, Assistant Director, Division of Market Regulation, SEC, to Bruno Lederer, Associate General Counsel, NYSE (the “Lederer Letter”), https://www.finra.org/sites/default/files/NAC_Ddecision/p013420_0.pdf. FINRA has followed the SEC's guidance when determining whether

⁶ Several witnesses testified about Iverson's character and his efforts to rehabilitate himself, including steps he has taken in connection with his church independent of the terms of his probation. We discuss this testimony in Part VI.A.1, *infra*.

an individual is convicted, and thus disqualified, under the Exchange Act and FINRA's By-Laws. *See In the Matter of the Continued Ass'n of X*, Redacted Decision No. SD04017, slip op. at 3 (NASD NAC 2004), https://www.finra.org/sites/default/files/NACDecision/p013420_0.pdf (the "2004 SD Decision").

The Investment Company Act of 1940 and the Investment Advisers Act of 1940 each define "convicted" as follows:

[A] verdict, judgment or plea of guilty, or a finding of guilt on a plea of nolo contendere, if such verdict, judgment, plea or finding has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed.

See 15 U.S.C. § 80a-2(a)(10); 15 U.S.C. § 80b-2(a)(6); *see also* Germino Letter, at 1-2 (looking to the Investment Company Act of 1940 and the Investment Advisers Act of 1940 for guidance on what constitutes a "conviction" under the Exchange Act); Lederer Letter, at 1-2 (same).

C. Iverson Was Convicted of a Felony

Under the facts and circumstances, and following the SEC's guidance and our precedent, we conclude that Iverson was convicted of a felony and is therefore statutorily disqualified.

The record unequivocally shows that Iverson pled guilty to a felony charge. Pursuant to the Order, Iverson was also found guilty of a felony charge. Thus, using the definition of "convicted" set forth in federal securities laws, unless Iverson's guilty plea or the court's finding of guilt have been reversed, set aside, or withdrawn, he is convicted and statutorily disqualified under Exchange Act Section 3(a)(39) and FINRA's By-Laws.

We find that Iverson's guilty plea and finding of guilt have not been reversed, set aside, or withdrawn. This is true notwithstanding that, pursuant to the Order, the court stayed and withheld Iverson's adjudication of guilt and placed him on probation. Indeed, the SEC has stated that when a finding of guilt is held in abeyance pending the successful completion of probation, the individual is disqualified from when the court accepted the guilty plea or finding of guilt until the conviction has been withdrawn upon the successful completion of probation. *See* Lederer Letter, at 3; *see also* 2004 SD Decision, at 3 (citing the Lederer Letter and stating that if a judge defers judgment and puts a defendant on probation after the judge either finds the defendant guilty or accepts a plea of nolo contendere, the person is convicted under the Exchange Act and remains convicted until probation is successfully completed and the charges dismissed). We also have previously rejected arguments that withholding an adjudication of guilt under Florida law precludes a finding that an individual has been convicted under the Exchange Act. *See, e.g., In the Matter of the Ass'n of X*, Redacted Decision No. SD 98001, slip op. at 1-2 (NASD NAC 1998), https://www.finra.org/sites/default/files/NACDecision/p011600_0.pdf (the "1998 SD Decision") (rejecting argument that individual was not disqualified because the court withheld adjudication and placed him on probation and stating that "as with many other states' deferred adjudication statutes, until X successfully completes his probation, he is under constant threat of an adjudication of guilt. When X's probation terminates, his disqualification will be removed"). Here, the court accepted Iverson's guilty plea and made a finding of guilt. Further, Iverson has not yet successfully completed probation. If Iverson violates any of the conditions of his probation, he may be arrested and the court may adjudicate him guilty and impose any sentence

that it could have imposed before placing him on probation. Under SEC guidance and our precedent, the fact that the Order withheld adjudication does not change our determination that Iverson is convicted and statutorily disqualified.

Moreover, although not controlling for purposes of our analysis, the relevant Florida criminal statutes, and caselaw interpreting those statutes, support our finding that Iverson is convicted of a felony despite the court withholding adjudication. *See* Germino Letter, at 2 n.7 (stating that state court decisions are “important” but not dispositive to the SEC’s analysis of whether an individual is convicted under the Exchange Act). Iverson pled guilty to a felony under Florida Statute Section 800.04, which is listed as a sex offense under Florida Statute Section 943.0435 (Sexual offenders required to register with the department; penalty). *See* Fla. Stat. § 943.0435(1)(h)(1)(a)(I) (2022). Section 943.0435 further provides that:

(b) “Convicted” means that there has been a determination of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere, **regardless of whether adjudication is withheld.** (emphasis supplied)

See Fla. Stat. § 943.0435(1)(b); *see also State v. Mason*, 979 So. 2d 301, 303-04 (Fla. Dist. Ct. App. 2008) (finding that a plea of no contest under Section 800.04 where adjudication of guilt is withheld nonetheless constitutes a conviction under Florida law); *Clarke v. United States*, 184 So. 3d 1107, 1113 (Fla. 2016) (noting that some statutes, including Section 943.0435, do not require adjudication to constitute a conviction);⁷ *Price v. State*, 43 So. 3d 854, 857 (Fla. Dist. Ct. App. 2010) (holding that plea of nolo contendere for lewd and lascivious conduct was a conviction despite withholding of adjudication).

Iverson and the Firm argue that the Germino Letter supports their assertion that Iverson was not convicted of a felony because his adjudication was withheld. We disagree. The Germino Letter addressed whether an individual was convicted, and thus statutorily disqualified, under a California statute. *See* Germino Letter, at 1. The California statute at issue provided that if a defendant charged with a first-time drug offense pleads guilty, the court must defer any finding of guilt and entry of judgment while the defendant undergoes treatment. *Id.* at 2. The California statute further provided that if the defendant completes treatment, the court shall dismiss the charges against the defendant. *Id.* Unlike the Florida statute underlying Iverson’s felony, the Germino Letter emphasized that the California statute at issue provided that a plea of guilty “shall not constitute a conviction for any purpose unless a judgment of guilty is entered.” *Id.* at 3. Moreover, the Germino Letter observed that the California court had neither made a finding of guilt nor accepted a guilty plea. In contrast, the Florida court accepted Iverson’s guilty plea and found Iverson guilty of the felony charge. We also note that unlike the circumstances in the Germino Letter, even if Iverson successfully completes probation in

⁷ Iverson and the Firm argue that *Clarke* supports their argument that Iverson was not convicted because the court placed him on probation and withheld adjudication pursuant to Florida law. *Clarke*, however, involved the definition of “conviction” as used in connection with a Florida statute concerning unlawful possession of firearms by a felon. *See* 184 So. 3d at 1108. The court in *Clarke* observed that the term “conviction” as used in Florida law is “chameleon-like,” and stated that the Florida statute related to Iverson’s felony offense—Florida Statute Section 943.0435—is a statute where “conviction” does *not* require adjudication. *Id.* at 1113-14.

November 2023, he will then plead guilty to another, lesser felony. Based upon the different facts and criminal statutory schemes at issue in the Germino Letter and Iverson's criminal case, we find that the Germino Letter fails to support Iverson's claim that he was not convicted of a felony.⁸

Finally, Iverson and the Firm argue that the court "stayed" Iverson's adjudication pursuant to the Order "precisely so that Mr. Iverson would not suffer the consequences of a criminal conviction. That court-ordered stay of the underlying finding operates *to prevent* its use, by [Enforcement] or anyone else, against Mr. Iverson." Iverson and the Firm further assert that any finding that Iverson is convicted and disqualified would violate the Order. Iverson and the Firm misinterpret the reach of the Florida court's stay of Iverson's criminal adjudication, which does not preclude FINRA from determining that he is convicted under the Exchange Act and FINRA's By-Laws and thus statutorily disqualified. *See* Germino Letter, at 1-2; Lederer Letter, at 3; 2004 SD Decision, at 3; 1998 SD Decision, at 1-2. Indeed, the only thing that the Order stayed was an adjudication of guilt; the Order remains in effect and has collateral consequences.

III. Factual Background

We next turn to the factual background underlying the Application.

A. Iverson

Iverson first associated with the Firm in April 2015 as a non-registered, fingerprinted person. At the time, Iverson was enrolled in law school.⁹ For the next several years, Iverson worked as a law clerk at the Firm and reported directly to the Firm's in-house counsel. In this role, Iverson helped develop processes and controls for the Firm, assisted with the Firm's responses to regulators in connection with numerous inquiries, assisted in reviewing over-the-counter ("OTC") securities certificates and performing due diligence in connection with restricted securities, and helped prepare suspicious activity reports ("SARs"). Iverson also assisted with Firm technology.

In December 2018, the Firm filed a Uniform Application for Securities Industry Registration or Transfer ("Form U4") for Iverson to associate with it as a registered

⁸ For similar reasons, the 2004 SD Decision does not support Iverson's and the Firm's claim that Iverson is not convicted under Exchange Act Section 3(a)(39)(F). In that case, the court did not accept the defendant's guilty plea or enter a finding of guilt. *See* 2004 SD Decision, at 3-5. Rather, the court continued defendant's case without a finding of guilt pursuant to a Massachusetts statute that the NAC found was similar to the California statute analyzed in the Germino Letter. *Id.* Applying the SEC's guidance, the NAC concluded that the defendant was not convicted, and thus not disqualified. *Id.*

⁹ Iverson testified that, although he graduated from law school in 2017, he has not taken a state bar examination. Iverson explained that his state of residence, Utah, presumes that individuals who are currently on criminal probation are unfit to practice law, unless the applicant rebuts this presumption.

representative. At this time, Iverson disclosed to FINRA for the first time that he was subject to the Order.¹⁰ In late January 2019, FINRA notified the Firm that, because of the Order, Iverson was subject to statutory disqualification and the Firm must initiate a FINRA eligibility proceeding or terminate its association with him. The Firm filed the Application in February 2019. The same month, Iverson passed the Securities Industry Essentials (“SIE”[®]) Examination and the general securities representative (Series 7) examination. Around this time, the Firm reassigned Iverson to work for its holding company’s general counsel, Cruz. Cruz, who is not currently registered with Alpine or any other FINRA member, testified that Iverson’s duties were limited to legal work under his direction and supervision.

The Firm states that although Member Supervision initially permitted Iverson to associate with the Firm in this capacity while the Application was pending, Member Supervision told the Firm to terminate Iverson’s association in or around July 2021. The Firm did so, and Iverson currently works as a law clerk for Ms. Fritz. Prior to his association with the Firm, Iverson was not associated with any other firms.

Other than the criminal matter that is the subject of the Application, the record does not show any disciplinary or regulatory proceedings, complaints, or arbitrations against Iverson.

B. The Firm

1. Background

The Firm has been a FINRA member since May 1984, and is based in Salt Lake City, Utah. As of September 2021, the Firm had two branch offices, both of which are Offices of Supervisory Jurisdiction (“OSJ”), and employed 12 registered representatives, seven of which were registered principals. The Firm’s business primarily focuses on providing clearing services for microcap securities that trade in the OTC market. The Firm does not employ currently any other individuals subject to statutory disqualification.

¹⁰ Although Iverson was associated with the Firm in November 2017 when he pled guilty to a felony, the Firm did not file the Application until February 2019. *See* FINRA Rule 9522 (providing that a member shall file an MC-400 if it determines that an associated person is statutorily disqualified); General Information on Statutory Disqualification and FINRA’s Eligibility Proceedings, <https://www.finra.org/rules-guidance/guidance/eligibility-requirements> (“Firms are reminded that the Eligibility Proceedings process extends to all associated persons, including those individuals for whom firms would file a Non-Registered Fingerprint (NRF).”). Iverson testified that he disclosed his 2016 arrest to his supervisor at the Firm, who worked at the Firm as an attorney. Iverson further testified that his supervisor told him that the Firm was willing to allow him to continue to work and Iverson understood that there was no need to disclose his felony charge based upon his supervisor’s analysis. Moreover, Iverson testified that he disclosed to his supervisor the November 2017 guilty plea, and that it was Iverson’s understanding that his supervisor would make the determination regarding what if any disclosures or actions needed to be taken in connection with the guilty plea.

In July 2021, the Firm hired a new chief executive officer, Raymond Maratea (“Maratea”), and a new chief compliance officer, Fox.¹¹ Fox testified that FINRA’s approval was necessary before the Firm could employ him and Maratea as officers.

2. Final Disciplinary and Regulatory Matters

The Firm has a lengthy regulatory and disciplinary history. Since its inception in 1984, the Firm has been the subject of more than 40 final regulatory and disciplinary actions. Twelve of these matters have occurred within the past 15 years.¹² In connection with these 12 matters, the Firm has been assessed approximately \$14.54 million in monetary sanctions and has been required to comply with several undertakings. The following is a brief description of these matters:

- In April 2022, a FINRA Hearing Panel suspended the Firm in connection with an expedited proceeding under FINRA Rule 9552. The Hearing Panel found that the Firm failed to file a materially accurate audit report in connection with a \$12 million judgment entered against the Firm in connection with an SEC complaint, described below, in violation of FINRA Rule 4140. The Hearing Panel suspended the Firm until it filed an audit report accurately calculating the firm’s net capital in compliance with Exchange Act Rule 15c3-1. The Firm appealed the Hearing Panel’s decision to the SEC. The Firm subsequently filed a compliant audit report and FINRA terminated the Firm’s suspension.
- In March 2022, a FINRA Hearing Panel found that the Firm: (1) improperly converted and misused customer funds and securities by removing from customer accounts securities it improperly deemed abandoned and worthless and seizing securities to cover debits imposed by the Firm that were excessive and unreasonable; (2) engaged in unauthorized trading by moving customers’ securities from their accounts into the Firm’s proprietary account by selling the customer securities to itself for a penny per position and charged excessive commissions in connection therewith; (3) charged its customers unreasonable monthly account, illiquidity, and other fees, and charged certain fees in a discriminatory manner; and (4) executed one unauthorized capital withdrawal. The Hearing Panel expelled the Firm “[b]ased on [its] finding that all of Alpine Securities’ misconduct . . . was intentional and egregious, and considering the firm’s post-Complaint misconduct . . . recurrence is highly likely if Alpine

¹¹ The record shows that Maratea is the third chief executive officer the Firm has employed since 2018, and Fox is the third chief compliance officer that the Firm has employed since 2019.

¹² See *In the Matter of Meyers Assocs., L.P.*, Exchange Act Release No. 81778, 2017 SEC LEXIS 3096 (Sept. 29, 2017) (affirming denial of membership continuance application based upon, among other things, the firm’s regulatory and disciplinary history during the prior 16 years); cf. *Nicholas S. Savva*, Exchange Act Release No. 72485, 2014 SEC LEXIS 5100, at *35 (June 26, 2014) (rejecting argument that FINRA improperly relied on older customer complaints against a disqualified individual and stating that FINRA “appropriately reviewed and considered Savva’s entire regulatory history” in denying a membership continuance application).

Securities remains a FINRA member firm.” In expelling the Firm, the Hearing Panel found that the Firm’s treatment of its customers was “deplorable and well below the standard that customers of member firms are entitled to expect,” the Firm’s indirect owner seemed to have made many of the decisions underlying the Firm’s misconduct, and that it is “abundantly clear . . . that [the Firm’s owner] believes that Alpine Securities acted properly, and he has demonstrated a willful disinterest in the firm’s regulatory responsibilities.” The Hearing Panel also ordered the Firm to pay \$2,310,234 in restitution to customers (plus interest) and entered a permanent cease and desist order against the Firm. The Firm has appealed the Hearing Panel’s decision, and the appeal is pending.¹³

- In July 2021, FINRA accepted a Letter of Acceptance, Waiver and Consent (“AWC”) from the Firm for violations of FINRA Rules 2010, 6622, and 7450. Without admitting or denying the allegations, the Firm consented to findings that it submitted inaccurate reports to the Order Audit Trail System (“OATS”). FINRA censured the Firm and fined it \$30,000.
- In October 2019, a federal district court entered a judgment against the Firm in connection with a complaint filed by the SEC. The complaint alleged that, from at least May 2011 through December 31, 2015, the Firm routinely failed to identify and report suspicious activity. The complaint further alleged that, in 1,950 instances, the Firm systematically omitted known information “reflecting material red flags of money laundering, securities fraud, or other illicit financial activities relating to its customers and their transactions” from its SARs in a manner that “deprived law enforcement, regulatory, and intelligence consumers, including the Commission, of valuable and timely intelligence and undermined the very purpose for which [Bank Secrecy Act] obligations are imposed on financial institutions.” Further, the complaint alleged that the Firm failed to file required SARs stemming from liquidations of 1,900 security deposits, failed to file more than 250 SARs within the required reporting period, and failed to maintain underlying records in support of more than 1,000 SARs filed.

The court found that the Firm violated Exchange Act Section 17(a) and Exchange Act Rule 17a-8 on more than 2,700 occasions by submitting SARs with deficient narratives, failing to submit SARs on deposit-and-sales patterns, and failing to retain supporting documentation for the Firm’s SARs. The court held that the Firm’s violations were “systemic and enduring,” and found that it acted “knowingly and with disregard for its obligations under the law.” Moreover, the court found that the Firm’s “contempt for the SAR reporting regime increased the risk to investors that they would suffer substantial losses,” and noted that the Firm’s “lack of remorse and denial of wrongdoing has persisted” throughout the proceeding. The court also found that the Firm’s misconduct was egregious, on a

¹³ The Firm’s appeal of the Hearing Panel decision stayed the Firm’s expulsion and order that it pay restitution to customers. *See* FINRA Rule 9311(b) (providing that an appeal of a Hearing Panel decision shall operate as a stay of that decision, except the imposition of a permanent cease and desist order).

“massive scale,” and there was a substantial likelihood that the Firm would violate federal securities laws in the future.

To address the Firm’s misconduct, the court enjoined the Firm from further violations of Exchange Act Section 17(a) and Exchange Act Rule 17a-8 and imposed a \$12 million civil penalty.¹⁴

- In August 2019, FINRA suspended the Firm’s membership pursuant to FINRA Rule 9552. A FINRA Hearing Officer found that the Firm violated NASD Rule 1017 by failing to file a continuing membership application based upon a transfer of indirect ownership of the Firm. The Firm appealed the decision to the SEC, which granted a temporary stay of the decision. Shortly thereafter, the Firm unwound the change in ownership and FINRA terminated the Firm’s suspension.
- In September 2014, FINRA accepted an AWC from the Firm for violations of FINRA Rule 2010 and NASD Rule 3010. Without admitting or denying the allegations, the Firm consented to findings that it: erroneously disclosed on customer confirmations that transactions were executed at average prices; transmitted inaccurate and incomplete reports to OATS; failed to maintain adequate written supervisory procedures (“WSPs”) in several areas; and failed to establish and maintain a supervisory system reasonably designed to comply with applicable securities laws. FINRA censured the Firm, fined it \$20,000, and required it to revise its WSPs.
- In November 2011, FINRA accepted an AWC from the Firm for violations of NASD Rules 2110, 2460, 3010, 3110, 3310 and Interpretative Material 3310, and Exchange Act Rules 17a-3 and 17a-4. Without admitting or denying the allegations, the Firm consented to findings that it: entered non-bona fide quotations in a security; published or circulated, or caused to be published or circulated, a transaction report without believing that the transaction was a bona fide purchase or sale, and quoted the bid price and ask price in the security without believing that such quotations represented a bona fide bid for, or offer of, the security; failed to accurately make and keep its ledgers; and failed to reasonably supervise the activities of a trader at the Firm. FINRA censured the Firm, fined it \$82,500, and required that it revise its WSPs.
- In January 2010, FINRA accepted an AWC from the Firm for violations of NASD Rules 2110 and 3010. Without admitting or denying the allegations, the Firm consented to findings that it sold unregistered securities and failed to establish and

¹⁴ A federal circuit court affirmed the judgment in December 2020. *See SEC v. Alpine Secs. Corp.*, 982 F.3d 68 (2d Cir. 2020), *cert. denied*, 142 S. Ct. 461 (Nov. 2021). As a result of the injunction entered against the Firm, it is statutorily disqualified. *See* Exchange Act Section 3(a)(39)(F) (which incorporates Exchange Act Section 15(b)(4)(C), providing that a member firm is subject to statutory disqualification if it is enjoined from, among other things, engaging in any conduct or practice as a broker-dealer or investment adviser, or in connection with the purchase or sale of any security).

maintain a supervisory system reasonably designed to prevent and detect the sales of unregistered securities. FINRA censured the Firm and fined it \$40,000.

- In June 2009, FINRA accepted an AWC from the Firm for violations of NASD Rules 2110 and 3010 and Exchange Act Rule 10b-10. Without admitting or denying the allegations, the Firm consented to findings that it failed to correctly report information on customer trade confirmations and failed to establish and maintain a supervisory system reasonably designed to comply with regulations and rules concerning order handling, best execution, trade reporting, sales transactions, SEC Regulation SHO, and OATS. FINRA censured the Firm, fined it \$18,500, and required it to revise its WSPs.
- In September 2007, FINRA accepted an AWC from the Firm for violations of NASD Rules 2110, 3010, 8211, and 8213. Without admitting or denying the allegations, the Firm consented to findings that it failed to accurately report trades through the submission of electronic blue sheets and failed to establish and maintain a supervisory system reasonably designed to comply with applicable securities laws. FINRA censured the Firm and fined it \$15,000.
- In May 2007, FINRA accepted an AWC from the Firm for violations of NASD Rules 2110, 3010, and 6130 and SEC Rule 203. Without admitting or denying the allegations, the Firm consented to findings that it: failed to deliver positions in threshold securities and failed to close out positions by purchasing like kind securities; failed to accurately report long sales; and failed to establish and maintain a supervisory system reasonably designed to comply with applicable securities laws. FINRA censured the Firm and fined it \$27,500.
- In July 2006, Connecticut denied the Firm's application for registration because the Firm and its principal were the subject of FINRA sanctions within the prior 10 years (including fines imposed in the prior five years for failing to implement effective anti-money laundering ("AML") procedures and failing to exercise supervisory controls).

3. SEC Examination

In June 2020, in connection with the SEC's examination of the Firm, the SEC identified the following deficiencies and weaknesses: (1) the Firm failed to comply with lost security holder search requirements by destroying stock certificates without conducting an adequate review to determine whether the security holders were customers or the value of the securities at issue; and (2) the Firm failed to adopt and implement adequate controls concerning its destruction procedures with respect to stock certificates. The Firm responded in writing that it corrected the deficiencies noted.

4. Routine FINRA Examinations

In the past several years, FINRA has issued the Firm the following Cautionary Actions related to routine examinations:

- In November 2019, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2018 examination (and also referred several matters to Enforcement, which are currently under review). FINRA cited the Firm for: (1) using a senior secured promissory note from its parent as a core component of its funding and liquidity profile that did not preclude a lien from being placed on monies maintained in customer and PAB reserve accounts; (2) failing to identify and distinguish money market accounts in stock records and customer account statements; and (3) failing to document the recovery time for key systems and vendors on its 2018 business continuity plan ("BCP"), failing to include a test of the Firm's backup generator for its home office, and failing to maintain a clearly documented BCP. The Firm responded in writing that it corrected the deficiencies noted.
- In June 2019, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2018 trading examination (and also referred several matters to Enforcement, which resulted in the July 2021 AWC (referenced above) and June 2021 Cautionary Action (referenced below)). FINRA cited the Firm for: (1) failing to accurately report order routing information; (2) failing to accurately report the riskless portion of a riskless principal transaction; and (3) failing to establish adequate supervisory procedures and maintain evidence of supervision concerning OATS reporting and order marking. The Firm responded in writing that it corrected the deficiencies noted.
- In June 2018, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2017 examination. FINRA cited the Firm for: (1) failing to implement an adequate supervisory system to review stock certificate deposits; and (2) failing to establish, maintain, and enforce a supervisory system to reasonably detect and review trading activity between the Firm's customer accounts and customer accounts of correspondent broker-dealers for whom the Firm provides clearing services. The Firm responded in writing that it corrected the deficiencies noted.
- In January 2018, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2017 cycle examination. FINRA cited the Firm for: (1) failing to correctly report balances on FOCUS reports; (2) permitting an individual who was not properly registered to approve customer wire disbursements requests; and (3) failing to accurately reflect customer holdings in money market funds on customer statements. The Firm responded in writing that it corrected the deficiencies noted.
- In August 2017, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2016 financial/operations examination (and also referred two matters to Enforcement, which remain pending). FINRA cited the Firm for the following deficiencies, several of which were repeat exceptions: (1) failing to create and maintain appropriate bank reconciliations, failing to demonstrate consistent

review and supervision of its monthly bank reconciliation process, and failing to establish and maintain a process or WSPs related to favorable and unfavorable bank differences; (2) failing to accurately report net capital; (3) failing to perform a risk assessment of its third party IT service provider and failing to maintain adequate WSPs related to daily monitoring and resolution of CNS and Obligation Warehouse trade comparisons and procedures to prevent unauthorized transfers of customer securities into the Firm's worthless account; (4) failing to comply with its BCP and failing to test its BCP; (5) failing to properly maintain its electronic records and failing to follow its WSPs to properly maintain such records; (6) failing to follow notifications to customers concerning a bank sweep program, failing to record money market sweeps, and failing to accurately report money market sweeps on customer statements; (7) failing to establish and maintain WSPs to adequately assess its risk and exposure in ex-clearing counterparty transactions and failing to monitor ex-clearing counterparty credit risk exposure; (8) failing to accurately report information on FOCUS reports; (9) failing to establish a process to supervise the transfer of securities from customer accounts to the Firm's worthless account, failing to establish a process to supervise incoming customer account transfers, and failing to maintain and preserve adequate records to support transfers; (10) failing to adequately supervise activities identified on bunching reports; (11) failing to establish and maintain procedures concerning heightened supervision that adequately address the risks associated with the Firm's business; (12) permitting its chief compliance officer to conduct a significant portion of his duties from a non-OSJ location; (13) failing to collect from correspondent firms all required due diligence; (14) failing to conduct a timely review of electronic mail; and (15) failing to implement processes and WSPs to reasonably verify that gifts received did not exceed \$100. The Cautionary Action noted that a review of the Firm's books and records "disclosed an overall lack of supervision and knowledge on the part of" the Firm's former chief financial officer. The Firm responded in writing that it corrected the deficiencies noted.

5. Non-Routine FINRA Examinations

In addition to the Cautionary Actions issued to the Firm in connection with routine examinations, in the past several years FINRA has issued the Firm six Cautionary Actions in connection with the following non-routine examinations:

- In June 2021, FINRA issued the Firm a Cautionary Action in connection with a referral to Enforcement related to the Firm's 2018 trading examination. FINRA cited the Firm for failing to update its WSPs to remove references to its prior order management system.
- In June 2021, FINRA issued the Firm a Cautionary Action in connection with FINRA's review of the Firm's compliance with Reg SHO. FINRA cited the Firm for failing to timely close out a fail-to-deliver position by purchasing or borrowing securities of like kind and quantity and failing to establish and maintain WSPs reasonably designed to comply with Reg SHO. The Firm responded in writing to the deficiencies noted.

- In May 2020, FINRA issued the Firm a Cautionary Action in connection with FINRA's review of the Firm's compliance with FINRA Rules 6460 and 3110. FINRA cited the Firm for failing to immediately display the full price and size of customer limit orders that improved the price and size of the market maker's displayed quotations and failing to establish and maintain a supervisory system reasonably designed to comply with FINRA Rule 6460. The Firm responded in writing to the deficiencies noted.
- In October 2019, FINRA issued the Firm a Cautionary Action in connection with FINRA's review of the Firm's OATS reporting. FINRA cited the Firm for failing to repair rejected Reportable Order Events and failing to enforce its WSPs by conducting a daily review of rejections to ensure that OATS data was properly submitted. The Firm responded in writing to the deficiencies noted.
- In April 2019, FINRA issued the Firm a Cautionary Action in connection with FINRA's review of a customer complaint. FINRA cited the Firm for failing to timely liquidate a customer's shares of money market mutual funds. The Firm responded in writing to the deficiencies noted.
- In July 2018, FINRA issued the Firm a Cautionary Action in connection with FINRA's review of the Firm's compliance with Reg SHO. FINRA cited the Firm for failing to timely close out a fail-to-deliver position by purchasing or borrowing securities of like kind and quantity. The Firm responded in writing to the deficiencies noted.

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

A. Iverson's Proposed Association with the Firm

The Firm proposes that Iverson will work from the Firm's home office in Salt Lake City, Utah. Iverson will perform legal and compliance work, including: receiving and responding to regulatory requests by accessing the Firm's systems, books, and records to conduct reasonable searches for responsive documents; assisting the Firm's chief compliance officer with his review of OTC securities deposits by providing legal analyses and conducting red flag follow-up reviews, as requested; assisting the chief compliance officer with Firm audits and regulatory examinations by providing research, analyses, and drafting policy changes to make improvements and address any noted deficiencies; advising and assisting the Firm's AML officer with the review of suspicious activity referrals to determine whether referred activity should be included in a SAR by conducting red flag investigations at the direction of the Firm's AML officer; and assisting with drafting and filing SARs and maintaining records of AML filings and determinations.¹⁵ Iverson will be compensated by salary.

¹⁵ Although the Application requests that Iverson be permitted to associate with the Firm as a general securities representative, when asked by Member Supervision which of Iverson's proposed duties or responsibilities require being registered in such capacity, the Firm responded that "[n]one of the duties listed [for Iverson] involve the firm's securities business or investment banking. As previously indicated, Mr. Iverson's duties primarily pertain to assisting the AML

B. Iverson's Proposed Primary Supervisor

In the Application, the Firm proposed that Jason Kane would serve as Iverson's primary supervisor. Later in 2019, the Firm proposed Christopher Doubek as Iverson's primary supervisor. In August 2021, after the Firm terminated Doubek, the Firm informed FINRA that Fox would serve in this role.

As stated above, Fox serves as the Firm's chief compliance officer and AML officer. He joined the Firm in July 2021 and currently supervises the Firm's compliance analyst. Fox first registered as a general securities representative in July 2001 and was granted waivers to register as a financial and operations principal and a general securities principal in July and August 2001, respectively. He also registered as a municipal securities principal in September 2001 and passed the uniform securities agent state law examination in July 2001. Prior to associating with the Firm, Fox was associated with five other firms. Fox also testified that he worked at FINRA for a number of years.

FINRA's Central Registration Depository ("CRD"[®]) shows that Fox is engaged in one outside business activity, Mike Fox Consulting, LLC, to which he devotes 30 hours per month. At the hearing, Fox testified that although this outside business does not currently generate any revenue, he devotes approximately 20 to 30 hours per month to this entity.

Prior to the hearing, the Firm represented that Fox, who resides in Delaware, would work from the Firm's Salt Lake City office an average of three days per week. At the hearing, however, Fox testified that he plans to be physically in Salt Lake City on average four days per week for two weeks each month and that "[t]he rest of the time it would be via computer or telephone." Fox further testified that for the weeks he is not physically in the office, Maratea (who is based in Illinois) would be in the Salt Lake City office. Fox testified that there would be some days where neither he nor Maratea are physically in that office supervising Iverson.

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

C. Iverson's Proposed Alternate Supervisor

Similar to Iverson's primary proposed supervisor, the Firm has proposed several different alternate supervisors during this proceeding. First, the Firm proposed that Richard Joseph Johnson would serve as Iverson's alternate supervisor, but changed Iverson's alternate supervisor to David Brant later in 2019. The Firm then named Brian Kane as Iverson's alternate supervisor, but he left the Firm on October 1, 2021. The Firm did not identify an alternate supervisor until the hearing, when Fox stated that Maratea would serve as Iverson's alternate supervisor.

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Officer and reporting to the CEO and CCO to assist with maintaining the firm's books and record keeping systems are [sic] adequately maintained."

As stated above, Maratea has been associated with the Firm since July 2021 and serves as the Firm's chief executive officer. Fox testified that Maratea's home office is in Illinois and that Maratea would be physically in the Firm's Salt Lake City office on the weeks that Fox was working remotely from Delaware. Maratea qualified as a general securities representative in May 1999 and as a general securities principal in April 2009. Maratea also passed the uniform securities state law examination in May 2005. Prior to joining the Firm, Maratea was associated with six firms.

CRD lists the following outside business activities for Maratea: (1) director of TRAC Financial Services, LLC, an entity that provides consulting services to financial services firms, for which CRD shows that Maratea does not devote any time during trading hours; (2) TRAC Asset Management, LLC, an entity owned by Maratea that provides investment advisory services to customers, for which CRD shows that Maratea does not devote any time during trading hours; (3) TRAC Insurance Services, LLC, an entity owned by Maratea that provides insurance agency consulting services, for which CRD shows that Maratea devotes five to seven hours per month outside of trading hours; and (4) director of Electronic Caregivers (ECG) LLC, which is a developer of virtual care and health technologies, for which CRD shows that Maratea devotes eight hours per month outside of business hours.

CRD shows no disciplinary or regulatory proceedings, complaints, or arbitrations against Maratea.

D. The Firm's Proposed Heightened Supervisory Plan

The Firm submitted a proposed heightened supervisory plan for Iverson in May 2020. It provides:

1. Iverson will report directly to Fox,¹⁶ the chief compliance officer of Alpine.
2. In the event Fox is not in the office for any reason, he will be monitored and supervised by Maratea.
3. Iverson's office will be located within close proximity, and visual observance of, Fox. In fact, the office is located upstairs where only Fox, two traders and an administrative/compliance assistant are located.
4. Iverson will be isolated from other employees, which consist of the operations department located downstairs in a sectioned off area.
5. Iverson will have no physical contact with customers.
6. Iverson will not be involved in any of the securities businesses of the Firm, including sales, investment banking, or trading. This limitation does not include conducting deposit due diligence reviews for Fox as requested or

¹⁶ As stated above, since filing the Application, the Firm has changed Iverson's supervisors several times. We have substituted the names of Iverson's former proposed supervisors with his current proposed supervisors (Fox and Maratea).

acting as a backup legal reviewer of such deposits at the request and under the supervision of the holding company general counsel, Cruz.

7. Iverson's activities at Alpine will be limited to responding to regulatory requests and subpoenas; preparing blue sheet responses; preparing and/or analyzing trade, financial and other reports as requested by Fox; coordinating with IT and principals (Fox and Joe Walsh) to ensure books and records are adequately maintained; assisting Fox in carrying [out] compliance calendar activities (CE, CEO Certification, CRD registrations, etc.); and acting as the AML officer.
8. With respect to email communication, Iverson will copy Fox on communications to customers or Alpine's sole correspondent, Scottsdale Capital.
9. Iverson will have no access to the office after hours.
10. Iverson will have limited access to the office network and only pre-approved access to the internet related specifically to office duties.
11. Each week, Iverson will provide Fox with an attestation that he only engaged in the activities enumerated above and that either no customer contact occurred, or if contact did occur, Iverson will describe the nature and purpose of such contact.
12. Fox, or his designee(s) shall conduct at least weekly reviews of Iverson's email correspondence for compliance with these supervisory procedures.

V. Member Supervision's Recommendation

Member Supervision recommends that we deny the Application because, in its view: (1) the Order is recent and involved egregious misconduct; (2) the Firm's proposed heightened supervisory plan is inadequate; (3) the Firm failed to propose suitable supervisors for Iverson; and (4) the Firm's extensive regulatory history demonstrates that it is incapable of supervising a disqualified individual.

VI. Discussion

A. The Legal Standard

In evaluating the Application, we consider 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. We assess the totality of the circumstances in reaching a judgment about Iverson's future ability to act 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. *See Frank Kufrovich*, 55 S.E.C. 616, 625 (2002) (affirming FINRA's denial of a statutory disqualification application for an individual convicted of felonies for enticing and attempting to entice a minor to engage in an unlawful sexual act and traveling interstate with intent to engage in a sexual act with a minor "based upon the totality of the circumstances" and FINRA's explanation of the bases for its

conclusion that the individual would present an unreasonable risk of harm to the market or investors). In so doing, the sponsoring firm has the burden of demonstrating that the proposed association is in the public interest despite the disqualification. *See Timothy P. Pedregon, Jr.*, Exchange Act Release No. 61791, 2010 SEC LEXIS 1164, at *16 & n.17 (Mar. 26, 2010); *In the Matter of the Continued Ass'n of X*, Redacted Decision No. SD06002, slip op. at 5 (NASD NAC 2006), https://www.finra.org/sites/default/files/NACDecision/p036476_0.pdf.

We examine the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, whether the person has engaged in any intervening misconduct, the potential for future regulatory problems, and any other unique circumstances in the application. Importantly, we also consider whether the sponsoring firm has demonstrated that it understands the need for, and has the capability to provide, adequate supervision over the statutorily disqualified person. *See Pedregon*, 2010 SEC LEXIS 1164, at *20 & n.21 (stating that FINRA's "analysis goes beyond the circumstances relating to the felony, and also encompasses circumstances relating to the proposed association"); *Timothy H. Emerson, Jr.*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, at *14 (July 17, 2009) (stating that FINRA "appropriately weigh[ed] all the facts and circumstances surrounding [the applicant's] felony conviction and [the firm's] proposed supervisory plan").

B. The Firm Has Not Met its Burden

After carefully reviewing the entire record in this matter, we find that the Firm has failed to demonstrate that Iverson's association with the Firm is in the public interest and find that Iverson's association with the Firm would present an unreasonable risk of harm to the market or investors. We base our denial upon several factors. First, we conclude that Iverson's recent and highly serious disqualifying event demonstrates that he currently lacks the character and judgment necessary to participate in the securities industry in a compliant manner. Second, we find that the Firm has not demonstrated that it can stringently supervise Iverson. We base this conclusion on the Firm's deficient proposed supervisory plan, as well as its extensive disciplinary and regulatory history (which includes numerous supervisory violations, significant violations related to the Firm's AML compliance, and egregious misconduct that caused extensive customer harm). Consequently, we deny the Application for Iverson to associate with the Firm.

1. Iverson's Recent and Highly Serious Felony Conviction

Iverson's disqualifying felony conviction is, without question, very serious. Iverson inappropriately touched a minor and did not stop doing so despite the child's request that he stop, until her father discovered Iverson's actions and intervened. We are particularly troubled that Iverson's felony involved a minor. Indeed, we have previously denied applications for statutorily disqualified individuals to participate in the securities industry under similar circumstances. For example, in *Pedregon*, the SEC affirmed FINRA's denial of a statutory disqualification application based in part on the seriousness of the disqualifying felony conviction for online solicitation of a minor to engage in sexual contact. *See* 2010 SEC LEXIS 1164, at *21-22 (agreeing "that the seriousness of Pedregon's conviction militates against allowing [the firm's] application"). FINRA found that such misconduct was "deceptive," directed against a minor, and that "Pedregon's activities cast doubt on his character and lead us to question his ability to act in a trustworthy and responsible manner in the securities industry." *Id.* at *22. And, in *In the Matter of the Association of X*, Redacted Decision No. SD10001

(FINRA NAC 2010), https://www.finra.org/sites/default/files/NACDecision/p125896_0_0.pdf (the “2010 SD Decision”), we denied a statutory disqualification application based partly upon our finding that the disqualifying felony, sexual abuse of children (possession of visual or print medium in which children were engaged in sexual conduct), was a “very serious crime” and “cast doubt on [the disqualified individual’s] character and lead us to question his ability to act in a trustworthy and responsible manner in the securities industry.” *Id.* at 6. Further, in *Kufrovich*, the SEC affirmed FINRA’s denial of a statutory disqualification application based partly on our finding that the disqualified individual, who was convicted of enticing and attempting to entice a minor to engage in an unlawful sexual act and traveling interstate with intent to engage in a sexual act with a minor, “knowingly directed [his activities] against a vulnerable child” that calls into question the ability of the statutorily disqualified individual “to act in a trustworthy and responsible manner in interactions with the investing public.” *See* 55 S.E.C. at 626.

Iverson’s misconduct raises these same concerns and casts a long shadow over his ability to act in a trustworthy and responsible manner if we were to approve the Application. *See id.* at 627 (“[a] propensity for dishonest behavior is of particular concern in the securities industry, an industry that presents numerous opportunities for abuses of trust [I]n order to ensure protection of investors, the NASD may demand a high level of integrity from securities professionals.”). We agree with Member Supervision that Iverson’s proposed role as a “gatekeeper,” helping the Firm to comply with securities rules and regulations, requires a high degree of integrity and trust. *See Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Establishing a Registration Category, Qualification Examination and Continuing Education Requirements for Certain Operations Personnel, and Adopt FINRA Rule 1250 (Continuing Education Requirements) in the Consolidated FINRA Rulebook*, 76 Fed. Reg. 36586, 36595 (June 22, 2011) (stating that “back office” functions “are also important to a FINRA member’s ability to comply with its responsibilities under the federal securities laws and regulations, and the rules of FINRA”).

We also find that Iverson’s felony conviction, which occurred less than five years ago, is recent. *See, e.g., William J. Haberman*, 53 S.E.C. 1024, 1030 (1998) (affirming denial of statutory disqualification application where felony conviction occurred “only six years ago”), *aff’d*, No. 99-1014 2000 U.S. App. LEXIS 645 (8th Cir. Jan. 19, 2000); *JJFN Servs., Inc.*, 53 S.E.C. 335, 339 n.6 (1997) (rejecting argument that felony conviction that occurred more than five years prior was “remote in time” and finding that the conviction was “relatively recent”); *Louis A. Frangos*, 49 S.E.C. 865, 867 (1988) (describing a five-year-old felony conviction as “recent”). Under the circumstances, we are concerned that insufficient time has passed for Iverson to show that the changes in his behavior are long-lasting and that he can act in a compliant manner while working in the securities industry.

Against these factors, we have considered and weighed the significant steps that Iverson has taken to rehabilitate himself. We considered the testimony of Cruz, JP (Iverson’s friend and a member of his church), RM (the president of a group of congregations that includes Iverson’s church), and Iverson’s wife. Iverson and these additional witnesses generally testified that Iverson had made substantial progress with his rehabilitation efforts, which included extensive court-ordered therapy, compliance with the numerous terms and conditions of his probation, and undergoing a separate process whereby his church limited his activities for several years and required him to complete a sexual misconduct program. They also testified that Iverson had been readmitted as a full member of his church and was appointed as the church’s finance clerk

and ward clerk (which positions involve helping to keep personal and financial records of the congregation). These witnesses further testified they believed Iverson had made the necessary changes to ensure that the misconduct underlying his disqualification does not reoccur, and that Iverson possessed a high level of integrity.¹⁷

We commend Iverson for his rehabilitation efforts to date and credit Iverson's acceptance of responsibility for his misconduct. We find, however, that on balance, currently these efforts do not outweigh the seriousness and recency of his felony conviction, which support our decision to deny the Application. *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"); 2010 SD Decision, at 7 (denying statutory disqualification application and finding that evidence of disqualified individual's rehabilitation efforts, including the completion of a sex offender treatment program and ongoing participation in a maintenance group, did not establish that his participation in the securities industry would serve the public interest). The fact that Iverson remains on probation and will remain on probation with no possibility of early termination, until November 2023, further supports our findings. *See Kufrovich*, 55 S.E.C. at 628-29 (finding that the NAC "properly considered" that individual was still on probation and holding that "[w]e share the NAC's concerns that Kufrovich remains on probation"); *see also Pedregon*, 2010 SEC LEXIS 1164 at *26 n.29 (sharing the NAC's concern that disqualified individual was still on probation and finding that FINRA properly considered this as one factor in denying a statutory disqualification application); *Funding Cap. Corp.*, 50 S.E.C. 603, 606 (1991) (same).

Iverson and the Firm argue that any finding that Iverson presents an unreasonable risk of harm to the market or investors is contrary to the Florida court's findings in its Order that "the defendant is not likely to engage in a criminal course of conduct" to justify withholding adjudication. They assert that the Florida court was in the best position to assess the risks Iverson presented. These arguments, however, miss the mark. The Florida court was not assessing whether Iverson's association with the Firm and employment in the securities industry was in the public interest.¹⁸ Rather, under the Exchange Act and FINRA rules, we have the

¹⁷ Although the Firm disclosed Iverson's wife as a witness prior to the hearing, it did not disclose that she required an interpreter in connection with her testimony. Nonetheless, the Hearing Panel permitted Iverson's wife's testimony with the assistance of an interpreter, notwithstanding Enforcement's objection. We emphasize the importance of timely disclosing whether a witness will need an interpreter's assistance, and the identity of the interpreter, pursuant to FINRA Rule 9524(a)(3), and note that the Hearing Panel could have declined to hear Iverson's wife's testimony based upon the Firm's failure to disclose her need for, and the identity of, an interpreter. Under the circumstances, however, we find that the Hearing Panel did not err in permitting this witness testimony.

¹⁸ While the Order found that Iverson was unlikely to engage in criminal conduct, the court also ordered that Iverson be placed on probation for six years. The terms of Iverson's probation included numerous conditions and restrictions and cannot be terminated early for any reason. Further, Iverson testified that because of the Order, Utah presumes that he is unfit to practice law while he remains on probation. Similar to Utah's assessment of the risks presented by Iverson's

authority to assess and evaluate any risks to investors and the markets presented by Iverson's employment in the securities industry despite his statutory disqualification. *See* 15 U.S.C. § 78o-3(g)(2) ("A registered securities association may, and in cases in which the Commission, by order, directs as necessary or appropriate in the public interest or for the protection of investors shall, deny membership to any registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification."); FINRA By-Laws, Art. III, Sec. 3(d) (providing that FINRA may, in its discretion, grant relief from a statutory disqualification if it "determines that such approval is consistent with the public interest and the protection of investors"); FINRA Rule 9524(b)(1) (providing that the NAC, after considering "all matters presented in the request for relief [from a statutory disqualification] . . . the public interest, and the protection of investors" may grant or deny the request for relief); *cf. Haberman*, 53 S.E.C. at 1027 n.7 ("NASD may, in its discretion, approve association with a statutorily disqualified person only if the NASD determines that such approval is consistent with the public interest and protection of investors."); *Savva*, 2014 SEC LEXIS 5100, at *4 (June 26, 2014) (stating that the Exchange Act's statutory disqualification provisions "are not self-executing" and must be implemented by a self-regulatory organization). For the reasons stated herein, we find that Iverson's employment with the Firm is not in the public interest and presents an unreasonable risk of harm to the market or investors.

Iverson and the Firm also argue that Member Supervision permitted Iverson to work at the Firm from the time it learned of Iverson's felony conviction in late December 2018 until mid-July 2021, when it required the Firm to terminate Iverson. They assert that this demonstrates that FINRA believed that Iverson was not a danger to the investing public. We disagree. It is our task to assess the Application and to determine whether Iverson's employment with the Firm is in the public interest. *See* FINRA Rule 9524(b)(1). What Member Supervision may have previously permitted Iverson to do has no bearing on our assessment that, based upon a totality of the circumstances, his association with the Firm presents an unreasonable risk of harm to the market and investors. *Cf. Mitchell T. Toland*, Exchange Act Release No. 71875, 2014 SEC LEXIS 4621, at *11 (Apr. 4, 2014) (Order Denying Stay) (rejecting argument that FINRA could not have believed disqualified individual was a risk to the investing public because he worked in the industry during the lengthy period between the filing of the MC-400 and the hearing).

In sum, we find that Iverson's recent and very serious disqualifying event weighs against approving the Application, even after considering Iverson's compliance to date with the terms of his probation and his efforts to rehabilitate himself.

2. The Firm Has Not Demonstrated That It Can Stringently Supervise Iverson

We further find, as a separate and independent reason to deny the Application, that the Firm has not demonstrated that it can stringently supervise a statutorily disqualified individual such as Iverson. *See Emerson*, 2009 SEC LEXIS 2417, at *18 (holding that an applicant must

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admittance to the bar in that state, we have independently concluded, after reviewing all of the evidence presented, that Iverson's employment with the Firm is not in the public interest.

establish that it will be able to stringently supervise a statutorily disqualified individual). We base our conclusion on two factors.

a. The Proposed Heightened Supervisory Plan Is Inadequate

First, we find that the Firm has proposed an inadequate heightened supervisory plan for Iverson. Indeed, the plan lacks detail, omits provisions designed to ensure that the Firm will stringently supervise Iverson, and contains several problematic provisions. *See, e.g., Robert J. Escobio*, Exchange Act Release No. 83501, 2018 SEC LEXIS 1512, at *24 (July 22, 2018) (“We have previously found that supervisory plans that . . . lack[] detail are insufficient.”); *Savva*, 2014 SEC LEXIS 5100, at *38 (affirming denial of statutory disqualification application based, in part, upon FINRA’s findings that the proposed supervisory plan was “skeletal, lack[ed] specificity, and [was] not specifically tailored to Savva and preventing misconduct similar to” the underlying disqualifying order); *Emerson*, 2009 SEC LEXIS 2417, at *18-19 (affirming denial of statutory disqualification application and agreeing with FINRA that the firm’s proposed plan was inadequate).

For instance, although Iverson will be supervised remotely for a portion of each month, the plan contains no provisions describing how remote supervision will be implemented (and, in fact, the plan erroneously suggests that Iverson will be supervised in person at all times). Nor does the plan contain any provisions for meetings between Iverson and his supervisors to discuss compliance with the plan and any issues related to his heightened supervision. The plan further provides that Cruz will generally supervise certain aspects of Iverson’s activities, but Cruz is not registered with FINRA, is not located in Salt Lake City, and the plan does not specify how Cruz will supervise Iverson. Further, the plan does not contain provisions sufficient to detect or prevent misconduct similar to Iverson’s disqualifying felony conviction or to monitor Iverson’s compliance with his continuing probation obligations.¹⁹ Moreover, the plan fails to provide for documentation of the Firm’s compliance with the plan’s provisions. Finally, the plan contains no provisions to address complaints or problems concerning Iverson and how they will be resolved.

Fox testified that he had no role in drafting the plan and, in fact, had only reviewed the plan a week before the hearing. Fox described the supervisory plan as “put forth in generalities” and as “guidelines.” He testified that he plans to implement a more specific and detailed process for supervising Iverson. But the proposed plan currently before us contains no details concerning the additional supervisory provisions that Fox testified he will implement to stringently supervise Iverson and we must “consider the proposed supervisory plan before us, not some hypothetical plan.” *See In the Matter of the Ass’n of Scott Coy with Invicta Cap. LLC*, SD-2195, slip op. at 14 (FINRA NAC Mar. 15, 2019), https://www.finra.org/sites/default/files/2019-05/NAC_SD-2195_Scott-Coy_031519.pdf; *see also Pedregon*, 2010 SEC LEXIS 1164, at *28 (stating that a firm bears the burden of proposing an adequate supervisory plan and that FINRA was fully justified in requiring the firm to provide specifics concerning that plan before approving an application); *Emerson*, 2009 SEC LEXIS 2417, at *20 (rejecting argument that the

¹⁹ And, the one provision of the plan stating that Iverson will not have any physical contact with customers appears to be contradicted by other provisions of the plan that require Iverson to describe any customer contact that occur and to copy Fox on any communications with customers. Fox testified that Iverson would not have any communications with customers.

applicants were willing to accept a supervisory agreement that would satisfy FINRA; “[d]rafting a supervisory plan . . . is neither the Commission’s nor FINRA’s role”).

We stress the importance of having documented the exact terms and conditions of the Firm’s supervisory plan. *See Coy*, SD-2195, slip op. at 13 (holding that “the language of the proposed heightened supervisory plan is of the utmost importance because it provides the specific framework for and details of Coy’s supervision as a disqualified individual”); *cf. In the Matter of the Continued Membership of Windsor Street Cap., L.P.*, SD-2172, slip op. at 22 (FINRA NAC May 14, 2018), http://www.finra.org/sites/default/files/NAC_SD-2172_Windsor_051418_0_0.pdf (emphasizing, in the context of a firm’s request to continue its FINRA membership notwithstanding its disqualification, that “a written plan serves as a safeguard to help ensure that the disqualified firm does not repeat the misconduct underlying the disqualifying event and generally complies with securities laws and regulations going forward. A written plan also provides FINRA examiners with concrete factors and benchmarks to help measure and assess a firm’s compliance with securities laws and regulations if FINRA permits the firm to continue in membership.”).

In sum, the Firm’s approach to supervising Iverson appears to be ad hoc, which falls far short of the supervision necessary for a disqualified individual. That the Firm has proposed numerous different supervisors for Iverson while the Application has been pending, including naming a new alternate supervisor at the hearing, underscores this point. *See In the Matter of the Continued Ass’n of Gabriel Block with First Standard Fin. Co., LLC*, SD-2137, slip op. at 16 n.24 (FINRA NAC Mar. 13, 2018), https://www.finra.org/sites/default/files/NAC_SD-2137_Block_031318_0.pdf (expressing concerns that the sponsoring firm had switched proposed supervisors numerous times during the proceeding); *cf. Coy*, SD-2915, slip op. at 12 (holding that “uncertainty surrounding most aspects of the Firm’s business and operations, and the impact that uncertainty may have on Coy’s supervision” support finding that the sponsoring firm could not stringently supervise disqualified individual).

b. The Firm’s Troubling Regulatory and Disciplinary History

Second, the Firm’s regulatory and disciplinary history is highly troubling and casts further doubt on the Firm’s ability to provide the stringent supervision that we expect to be provided to a statutorily disqualified individual. Since the Firm’s inception, it has been the subject of more than 40 final regulatory and disciplinary actions—12 of which have occurred within the past 15 years. In connection with these 12 matters, the Firm has been assessed approximately \$14.54 million in monetary sanctions, was required to comply with several undertakings, and was suspended twice by FINRA on an expedited basis for different violations of FINRA’s rules. Moreover, a Hearing Panel has found that the Firm engaged in extremely serious misconduct that caused extensive customer harm (as described above, the Firm has appealed that decision).

Among the more serious of these matters other than the March 2022 Hearing Panel decision that is currently on appeal, a federal court enjoined the Firm, based upon an SEC complaint, from violating the Exchange Act and imposed a \$12 million civil penalty against the Firm for widespread failures to comply with the Bank Secrecy Act. The court held that the Firm’s violations were “systemic and enduring” and it acted “knowingly and with disregard for its obligations under the law.” Moreover, the court found that the Firm’s “contempt for the SAR reporting regime increased the risk to investors that they would suffer substantial losses” and

noted that the Firm's "lack of remorse and denial of wrongdoing persisted" throughout the proceeding. The court also found that the Firm's misconduct was egregious, on a "massive scale," and there was a substantial likelihood that the Firm would violate federal securities laws in the future. Although Iverson testified that he was not involved with the Firm's misconduct underlying this matter, we are nonetheless troubled that the Firm engaged in serious and widespread misconduct related to AML compliance, an area in which it proposes that Iverson will work directly.

We further find that six of the 12 disciplinary and regulatory matters against the Firm involved supervisory failures in various areas, including failing to establish and maintain a supervisory system reasonably designed to prevent and detect the sales of unregistered securities and failing to reasonably supervise Firm personnel. Moreover, examinations by the SEC and FINRA during the past five years have found myriad deficiencies, including repeated supervisory deficiencies. These deficiencies include: failing to adopt and implement adequate controls concerning the destruction of stock certificates; failing in various areas to maintain adequate supervisory procedures and failing to adequately implement or enforce the Firm's WSPs; failing to timely review emails and to properly maintain electronic records; permitting an individual who was not properly registered to approve wire disbursement requests; and failing to establish and maintain procedures concerning heightened supervision that adequately address the risks presented by the Firm's business activities.²⁰

The Firm's compliance record and repeated supervisory failures weigh strongly against approving the Application, and the Firm has not provided any reason for us to approve the Application notwithstanding its regulatory and disciplinary history.²¹ Although the Firm

²⁰ We also note that the Firm did not promptly seek to obtain FINRA's permission for Iverson to associate with it, notwithstanding his statutory disqualification.

²¹ Both before and during the hearing, the Firm focused heavily on demonstrating that Iverson was trustworthy and possessed the character to work in the securities industry in a compliant manner, despite the disqualifying event. Member Supervision, however, argued that the Application should be denied for several reasons other than Iverson's disqualifying misconduct, including that the Firm could not stringently supervise Iverson based upon the inadequacy of the proposed supervisory plan and the Firm's regulatory and disciplinary history. The Firm presented little evidence to rebut these concerns.

A sponsoring firm's ability to stringently supervise a disqualified individual is always crucial to our determination of whether to approve a statutory disqualification application, and is especially important here given the supervisory plan's omissions and lack of details and the Firm's lengthy regulatory and disciplinary history, which includes numerous supervisory lapses. See FINRA By-Laws, Art. III, Sec. 3(d) (providing that in determining whether to approve a statutory disqualification application, FINRA "may conduct such inquiry or investigation into the relevant facts and circumstances as it, in its discretion, considers necessary to its determination, which, in addition to the background and circumstances giving rise to the failure to qualify or disqualification, may include the proposed or present business of a member and the conditions of association of any current or prospective associated person"); *Morton Kantrowitz*, 55 S.E.C. 98, 102 (2001) (holding that "the quality of the supervision to be accorded that person is of the

changed senior management in July 2021, this occurred relatively recently and the Firm has not demonstrated that its compliance with securities laws and regulations will improve. *Cf. Toland*, 2014 SEC LEXIS 4724, at *36 (holding that purported evidence of the firm’s “current compliance with its obligations does not negate the prior disciplinary and regulatory history that the NAC found disconcerting”). We therefore agree with Member Supervision that the Firm lacks the ability to stringently supervise a statutorily disqualified individual such as Iverson. *See Meyers*, 2017 SEC LEXIS 3096, at *29 (affirming FINRA’s denial of statutory disqualification based on, among other things, the sponsoring firm’s troubling regulatory and disciplinary history); *In the Matter of the Continued Ass’n of Mitchell T. Toland with Hallmark Invs., Inc.*, Decision No. SD 1812, slip op. at 14-15 (FINRA NAC Feb. 19, 2014), http://www.finra.org/sites/default/files/NACDecision/p448164_0.pdf (denying application based upon firm’s troubling regulatory and disciplinary history and stating that “[t]he totality of the Firm’s disciplinary and regulatory history is disconcerting and supports our conclusion that it is not capable of assuming the additional heavy burden of supervising a statutorily disqualified individual”), *aff’d*, Exchange Act Release No. 73664, 2014 SEC LEXIS 4724 (Nov. 21, 2014); *In the Matter of the Continued Ass’n of X*, Redacted Decision No. SD12001, slip op. (FINRA NAC 2012), https://www.finra.org/sites/default/files/NACDecision/p284390_0_0.pdf (denying application based upon, among other things, Firm’s regulatory history and history of supervisory problems).

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

[cont’d]

utmost importance”); *Haberman*, 53 S.E.C. at 1031 (“We require, however, stringent supervision for a person subject to a statutory disqualification.”).

At the hearing, the Firm argued that FINRA has had “issues” with Alpine and its business. To the extent that Iverson and the Firm are asserting that FINRA staff was biased against them, we find that the record does not support any such contention. Further, we have considered well-established factors in denying the Application, including the Firm’s regulatory and disciplinary history. The Firm’s cursory effort to brush aside this history is unavailing. In any event, the NAC—not FINRA staff—decides whether to approve the Application, and our review of the Application in connection with this proceeding cures any possible bias of FINRA staff. *Cf. Donner Corp. Int’l*, Exchange Act Release No. 55313, 2007 SEC LEXIS 334, *43 (Feb. 20, 2007).

VII. Conclusion

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

On Behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell
Vice President and Deputy Corporate Secretary