SECURITIES AND EXCHANGE COMMISSION
Washington D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 61791 / March 26, 2010

Admin. Proc. File No. 3-13610

In the Matter of the Application of

TIMOTHY P. PEDREGON, JR.

For Review of Action Taken by the

Financial Industry Regulatory Authority, Inc.

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION – REVIEW OF DENIAL OF MEMBERSHIP CONTINUANCE APPLICATION

Registered securities association denied member's application to retain membership if it employed individual subject to statutory disqualification because of 2007 felony conviction. *Held*, review proceeding is *dismissed*.

APPEARANCES:

Timothy P. Pedregon, Jr., pro se.

Marc Menchel, Alan Lawhead, Michael J. Garawski, and *Deborah F. McIlroy*, for the Financial Industry Regulatory Authority, Inc.

Appeal filed: September 2, 2009
Last brief received: December 7, 2009

I.

Timothy P. Pedregon, Jr. appeals from the denial by the Financial Industry Regulatory Authority, Inc. ("FINRA") of an application by PlanMember Securities Corporation ("PSEC" or the "Firm") to remain a FINRA member if it employs Pedregon as a general securities

representative acting in the capacity of a compliance officer.[1] Pedregon is subject to statutory disqualification based on his January 31, 2007 conviction on two felony counts of "online solicitation of a minor to meet with the intention of sexual contact." We base our findings on an independent review of the record.

II.

A. Background

For several months in fall 2005, Pedregon conducted online conversations with a fourteen-year-old young woman whom he had not met in person. On November 9, 2005, he went to a hotel where he had arranged to meet the young woman. When he arrived, he was arrested by police officers who had been told about the intended meeting by the young woman's mother. The following day, he was discharged by the FINRA member firm where he had been employed as a compliance officer since November 2004.[2]

Pedregon subsequently pled guilty to two counts of online solicitation of a minor to meet with the intention of sexual contact, a felony in Texas.[3] In January 2007, a Texas court sentenced

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[1] On July 26, 2007, the Commission approved a proposed rule change filed by the National Association of Securities Dealers, Inc. ("NASD") to amend NASD's Restated Certificate of Incorporation to reflect its name change to the Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of NASD and the member regulation, enforcement, and arbitration functions of the New York Stock Exchange. *See* Securities Exchange Act Rel. No. 56146 (July 26, 2007), 91 SEC Docket 517 (SR-NASD-2077-053). Because FINRA's review of PSEC's application occurred after the consolidation, references to FINRA will include references to NASD.

[2] Pedregon's employment as a compliance officer was his first and only association with a FINRA member firm in a registered capacity.

[3] Records obtained from the District Court of Collin County, Texas, indicate that Pedregon was indicted under Section 33.201(c) of the Texas Penal Code, which stated, at the time of the offense:

> A person commits an offense if the person, over the Internet or by electronic mail or a commercial online service, knowingly solicits a minor to meet another person, including the actor, with the intent that the minor will engage in sexual contact, sexual intercourse, or deviate sexual intercourse with the actor or another person.

We take official notice of these records (which are also our source of the fact that the young

(continued...)

him to 180 days in county jail for each count, the sentences to be served consecutively. It also placed him on "community supervision," apparently a type of probation, for ten years. Pedregon was required, among other things, to perform 180 hours of community service at the rate of ten hours per month, report to a supervision officer, and register as a sex offender.[4] Pedregon served the jail sentences and registered as a sex offender. As of January 22, 2009, he had completed two years of community supervision.

Pedregon had not begun counseling by the time of the hearing.[5] As of October 8, 2009, Pedregon had attended four court-mandated counseling sessions in a program that ordinarily

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[3] (...continued)
woman was fourteen years old) pursuant to Rule 323 of our Rules of Practice, 17 C.F.R. § 201.323.

Pedregon testified that his conviction was for two felonies because he was charged with one felony for the county in which the young woman resided, and another for the county in which he was arrested.

[4] Court records show that additional community supervision requirements were added in June, 2008. These include a requirement that

> [a]t the direction of [Pedregon's] supervision officer, [Pedregon] shall not reside at a location with or have access (either directly or indirectly) to a computer with a modem or any other device allowing access to the internet and shall allow inspection of [his] computer files, digital camera, cell phone and removable storage media;

a requirement that Pedregon "submit to internet, e-mail, and other electronic transfer of information monitoring at his/her own expense, as directed by the supervision officer"; a prohibition against accessing "myspace, facebook, craigslist, or any similar personal ad web-page"; and a requirement that Pedregon abide by all monitoring rules and refrain from tampering with or attempting to disable the monitoring system. It is unclear why these requirements were added.

[5] Pedregon testified that the probation officer in Texas did not want him to begin counseling there if he would soon be moving to California to work for PSEC, because the counseling process was very expensive and California would not recognize the counseling provided to Pedregon in Texas.

Pedregon submitted to the Commission a progress report from a California therapist, which was dated October 8, 2009, regarding his participation in therapy as of that date. Rule of Practice 452, 17 C.F.R. § 201.452, permits the submission of additional evidence on appeal if (1) the evidence is material and (2) there are reasonable grounds for the failure to adduce such evidence previously. We find that the progress report meets these requirements.

requires about eighteen months to complete. His therapist reported that Pedregon had completed two of twenty-five relapse prevention tasks and that many of the identified goals of the program had not yet been addressed, due to the short time that Pedregon had been participating in the program.

Pedregon has no other disciplinary actions, complaints, arbitrations, or criminal actions against him. However, in June 2004, while working as an NASD examiner, Pedregon was placed on probation.[6] The memorandum placing him on probation stated that, during the course of an examination, Pedregon "used an obscene and derogatory term in reference to the firm [under examination] in the presence of firm employees," and that "at times during the course of the examination you conducted yourself in an overly aggressive manner." The memorandum further stated:

> Your overly aggressive approach has been brought to your attention in the past by your supervisor, your mentor, and at least one other co-worker . . . . The impact of your behavior has been considerable. By engaging in inappropriate and unprofessional conduct you have negatively impacted NASD's image as a fair and objective regulator. In addition, your conduct on the examination in question has provided the firm with the opportunity to complain about its treatment by NASD, causing resources to be diverted from investigating the serious apparent violations detected during the examination, to investigating and responding to the firm's allegations.[7]

B. Pedregon's Statutory Disqualification and PSEC's Membership Continuance Application

As a result of his felony conviction, Pedregon is subject to a ten-year statutory disqualification under the Securities Exchange Act of 1934 and FINRA's By-Laws.[8] As a statutorily disqualified person, Pedregon is not eligible to associate with a FINRA member firm without the consent of FINRA.[9]

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[6] Pedregon worked as an NASD examiner from April 2003 until November 2004.

[7] The only specific deficiencies in Pedregon's conduct identified in the memorandum relate to a particular examination in which Pedregon participated. It is unclear whether the statement that Pedregon's "overly aggressive approach" had been brought to his attention "in the past" relates to conduct other than that examination.

[8] *See* Section 3(a)(39)(F) of the Exchange Act, 15 U.S.C. § 78c(a)(39)(F); Art. II, § 4 of the FINRA By-Laws.

[9] FINRA By-Laws, Art. III, § 3(d).

In July 2008, PSEC applied to FINRA for consent to continue as a FINRA member if Pendregon became an associated person.[10] PSEC has been a member of FINRA and its predecessor, NASD, since 1983, and a member of the Municipal Securities Rulemaking Board since 2001. It sells mutual funds, municipal securities, variable annuities, limited real estate investment trusts, and limited partnerships; it also provides investment advisory services. At the time of its application to FINRA, PSEC had three hundred branch offices, with eighty-five principals and almost four hundred registered representatives.

PSEC's membership continuation application provided that Pedregon would work in PSEC's Carpinteria, California office and would be supervised by Daniel Murphy, PSEC's chief compliance officer. Murphy began working in the securities industry in 1993, in sales, then began working in compliance in 1995. He held various compliance positions at another firm for eleven years before becoming chief compliance officer of PSEC in March 2005. At the time of the application, Murphy supervised four individuals at the Firm. He has never supervised a statutorily disqualified individual.

PSEC proposed that Pedregon serve as its compliance officer, with responsibilities for branch office examinations, trade and e-mail surveillance, customer complaint resolution, licensing and registration, and anti-money laundering and advertising review. Murphy testified that Pedregon would be working "literally right at 15 feet outside of my office" and would not be meeting with clients or handling customer funds. Murphy further testified that although Pedregon's position as compliance officer would be "a level above a compliance specialist," Pedregon would not be managing anybody.

PSEC submitted a proposed plan of supervision for Pedregon with its membership continuation application. Although the application instructed PSEC to describe the proposed plan "in specific detail," PSEC's plan had only two elements:

> The supervisor [will meet] with [Pedregon] on a periodic basis to review his performance. This will entail a review of his performance in the areas assigned to him. The firm will keep a log of the findings of these meetings.
>
> All customer, representative or staff complaints pertaining to [Pedregon], whether verbal or written, will be immediately referred to the Director of Compliance. The supervisor will prepare a memorandum to the file as to what measures he took to investigate the merits of the complaint and the resolution of the matter. Documents pertaining to these complaints should be segregated for ease of review.

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[10] FINRA's By-Laws allow a member firm to request relief from ineligibility to associate with a disqualified person on behalf of the prospective associated person. *See* FINRA By-Laws, Art. III, § 3(d).

At the hearing, after Murphy had learned that Member Regulation staff found PSEC's proposed plan inadequate, Murphy orally elaborated on the plan, saying that Pedregon's e-mails would be subject to review, that Pedregon would have quarterly performance reviews, and that Murphy "could have one of my staff look at [Pedregon's] hard drive periodically." However, Murphy was willing to commit only to a general outline of a supervisory plan, stating that he "wasn't going to spend a lot of time on it" and "[didn't] plan on giving the detailed, the granular level" until he was sure that Pedregon would be joining PSEC, because "I'm busy enough as it is."

When asked how the plan he described would differ from the supervision applicable to other PSEC employees who were not subject to statutory disqualification, Murphy said that other employees would not be subjected to hard drive review, and that the review of Pedregon's e-mails would be more comprehensive. Murphy did not explain which of Pedregon's e-mails he would review, or how many he would review, or how he would select the e-mails to review.

PSEC submitted a more detailed supervision plan after the hearing. The revised plan explicitly stated that Pedregon would not maintain discretionary accounts, act in a sales representative capacity, meet with clients, or handle client funds. It named Murphy as Pedregon's primary supervisor and Angel Sugleris, PSEC's Director of Human Resources, as "interim supervisor" if Murphy was to be "on vacation or out of the office for an extended period."[11] The revised plan required Murphy to "periodically review Timothy Pedregon's electronic communications, branch examinations he conducts, his performance as an employee, and his internet activity," and to document and maintain records of those reviews; it also required Murphy to periodically review Pedregon's written correspondence. The revised plan required Pedregon to disclose details related to his probation to Murphy each month, and to notify Murphy immediately if he was in violation of any terms of his probation. The revised plan further specified that all complaints related to Pedregon were to be referred immediately to Murphy for review, and that Murphy was to maintain records as to his investigation and resolution of any such complaints. The revised plan also required Murphy to certify quarterly that Pedregon was in compliance with all the conditions of heightened supervision set forth in that plan.

At the hearing, Pedregon apologized for the conduct that led to his felony convictions and stated that he held himself accountable for it. Pedregon explained that, if he violated probation during his ten-year term, he would be sent to prison for ten years, and would not be given credit for the 360 days already served. Pedregon emphasized that this threat of consequences for a violation of probation made it especially important for him to be scrupulously attentive to maintaining the highest standards of conduct. Pedregon also testified to his dedication to the securities industry, the significance of his prior military service as a Marine, the tenacity he displayed as an NASD examiner, his appreciation of PSEC's willingness to hire him, and his eagerness to devote himself again to protecting investors' interests.

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[11] The revised plan provided that PSEC would notify Member Regulation if it wanted to replace Murphy with a different "responsible supervisor" for Pedregon.

C. FINRA Denies Application

FINRA denied PSEC's application. FINRA found that Pedregon was only recently convicted of a very serious crime, that he would be on probation until 2017, and that he had not shown that he had successfully completed the counseling sessions that are a condition of his probation. FINRA also found that Pedregon's actions, although not securities-related, were "deceptive," and that his misconduct was directed against a minor.

FINRA found that PSEC's proposed supervisory plan was inadequate. FINRA noted three specific areas in which the plan was lacking: (1) the plan did not specify how often Murphy's periodic reviews of Pedregon's electronic communications, branch examinations, internet activity, and written correspondence would take place; (2) the plan did not provide for supervision of Pedregon while Pedregon was conducting branch examinations; and (3) the plan provided for Sugleris to supervise Pedregon in Murphy's absence, although Sugleris was not qualified to supervise Pedregon.[12] FINRA also questioned the likely rigor of Murphy's proposed supervision of Pedregon, finding that Murphy had not prepared adequately for the hearing[13] and expressing concern that Murphy might not devote sufficient time and energy to supervising Pedregon. FINRA also found that the memorandum providing notice of Pedregon's probation at NASD contained "disturbing" comments that did not reflect favorably on Pedregon's character and judgment or his ability to act professionally as PSEC's compliance officer.[14]

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[12] FINRA noted that Sugleris was registered only as an investment company/variable products limited representative and principal and was therefore not qualified to supervise Pedregon, who under the proposal would be registered as a general securities representative acting in the capacity of a compliance officer.

[13] At the hearing, Murphy was unable to recall details about a PSEC violation based on the failure to follow Firm procedures for the review of an individual under heightened supervision. The violation occurred while Murphy was PSEC's chief compliance officer, and a 2007 letter of caution from FINRA noting the violation had been attached as an exhibit to a letter from Member Regulation outlining Member Regulation's recommendation on PSEC's application that was sent to Murphy only two weeks before the hearing.

[14] Pedregon did not disclose the fact that he had been jailed on any of the three successive Uniform Applications for Securities Industry Regulation and Transfer ("Forms U-4") that he submitted to PSEC in 2008. FINRA found Pedregon's failure to include information about the jail sentences on his Forms U-4 troubling, although it found that Pedregon "did not mislead the Firm or Member Regulation in this regard as the information about the two jail sentences was apparent from the copies of the two January 31, 2007 sentencing court orders that the Firm enclosed with its MC-400." It appears that FINRA did not weight this factor very heavily since Pedregon provided the information to PSEC and FINRA, albeit not on the Forms U-4. *But see Timothy H. Emerson, Jr.*, Exchange Act Rel. No. 60328 (July 17, 2009), 96 SEC

(continued...)

Based on these findings, FINRA concluded that Pedregon's participation in the securities industry would present an unreasonable risk of harm to investors or the marketplace, and that the public interest would not be served by permitting him to associate with PSEC. It accordingly denied PSEC's application. This appeal followed.

III.

Exchange Act Section 19(f) governs our review of this appeal.[15] In general, Section 19(f) requires us to dismiss such an appeal if we find that (1) the specific grounds on which FINRA based its denial of PSEC's membership continuance application exist in fact, (2) FINRA's action was in accordance with its rules, and (3) FINRA's rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.[16] The burden is on the applicant to show that it is in the public interest to permit the requested employment despite the disqualification.[17]

With respect to the first element under Section 19(f), Pedregon does not dispute, as FINRA found, that (1) Pedregon was convicted on two felony counts in 2007; (2) these felonies were statutorily disqualifying events; (3) Pedregon has not completed either the term of probation or the court-ordered counseling imposed; (4) NASD placed Pendregon on probation, identifying as deficiencies in his conduct the use of an obscene term and an "overly aggressive approach"; (5) Pedregon did not mention his two jail terms on any of three Forms U-4 in the record; and (6) PSEC's revised supervisory plan (a) does not name a supervisor for periods when Pedregon is out of the office, (b) names Sugleris, who is registered only as an investment company/variable products representative, as Pedregon's supervisor in Murphy's absence, and (c) does not indicate with what frequency certain reviews are to occur. We find that all these grounds exist in fact.

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[14] (...continued)
Docket 18882, 18889 (recognizing that "FINRA and other self-regulatory agencies rely on Form U-4 'to monitor and determine the fitness of securities professionals'") (quoting *Thomas R. Alton*, 52 S.E.C. 380, 382 (1995), *aff'd*, 105 F.3d 664 (9th Cir. 1996) (Table)); *Rosario R. Ruggiero*, 52 S.E.C. 725, 728 (1996) (emphasizing that "'[t]he candor and forthrightness of [individuals making these filings] is critical to the effectiveness of this screening process'") (quoting *Alton*, 52 S.E.C. at 382 (alteration in original)).

[15] 15 U.S.C. § 78s(f).

[16] *Id.; see, e.g., Frank Kufrovich*, 55 S.E.C. 616, 623 (2002); *William J. Haberman*, 53 S.E.C. 1024, 1027 (1998), *aff'd*, 205 F.3d 1345 (8th Cir. 2000) (Table). Even if these criteria were satisfied, however, Section 19(f) would require us to sustain the appeal if we found that FINRA's action imposed an undue burden on competition. *Id.*

[17] *Emerson*, 96 SEC Docket at 18890; *Gershon Tannenbaum*, 50 S.E.C. 1138, 1140 (1992).

We also find that FINRA's denial of the application was in accordance with FINRA's rules, which clearly provide for the denial of a firm's application to continue in membership if the firm employs a statutorily disqualified person. As discussed, FINRA conducted an eligibility hearing in accordance with its rules, during which it afforded Pedregon and PSEC an opportunity to be heard.[18]

Pedregon challenges one aspect of the eligibility hearing as inconsistent with FINRA rules. He alleges that FINRA senior management told his former co-workers at NASD (now FINRA) not to comply with his requests for letters of reference. This conduct, Pedregon contends, violated FINRA Rule 9524(a), which permits a statutorily disqualified individual to submit "any relevant evidence" in an eligibility proceeding.

We find that Pedregon failed to introduce facts sufficient to establish that FINRA management deprived him of the right to submit relevant evidence in the form of letters from his former co-workers. Pedregon did not identify anyone who was allegedly involved in this conduct, either FINRA management or former co-workers. He did not provide details as to what such letters might have said or how they would have supported his cause. He did not provide evidence that co-workers would have written such letters if management had not intervened. For these reasons, we find that Pedregon did not establish that FINRA violated Rule 9524(a)(4).[19]

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[18] *See* FINRA By-Laws, Art. 3, § 3(d) (stating that a person may file an application requesting relief from ineligibility from association with a member and that FINRA "may conduct such inquiry or investigation into the relevant facts and circumstances as it, in its discretion, considers necessary to its determination" of whether to approve such an application); *see also* FINRA Code of Procedure, Rules 9520-25 (setting forth parameters of eligibility proceedings).

FINRA is in the process of developing a collection of consolidated rules. The first phase of these consolidated rules became effective on December 15, 2008. *See* FINRA Regulatory Notice 08-57 (Oct. 2008). Because PSEC's application was filed before December 15, 2008, however, the NASD Rule 9520 series was applicable.

[19] Pedregon also contended that, by telling his former co-workers not to submit letters on his behalf, FINRA deprived him of his right to due process. It is well established that the requirements of constitutional due process do not apply to FINRA because FINRA is not a state actor. *See, e.g., D.L. Cromwell Invs., Inc. v. NASD Regulation, Inc.*, 279 F.3d 155, 162 (2d Cir. 2002); *Scott Epstein*, Exchange Act Rel. No. 59328 (Jan. 30, 2009), 95 SEC Docket 13833, 13855, *appeal filed*, No. 09-1550 (3d Cir. Feb. 24, 1009); *Charles C. Fawcett*, Exchange Act Rel. No. 56770 (Nov. 8, 2007), 91 SEC Docket 3147, 3153-55; *Mark H. Love*, 57 S.E.C. 315, 322 n.13 (2004). In any event, as discussed above, we find that Pedregon did not introduce facts sufficient to support his claim that FINRA management effectively prevented his former co-workers from submitting letters on his behalf.

We further find that FINRA applied its rules in a manner consistent with the Exchange Act when it denied PSEC's application. Under the Exchange Act, FINRA may deny a firm's application for continuation in membership if it determines that the association of the statutorily disqualified person would be inconsistent with the public interest and the protection of investors.[20] For FINRA's denial of an application to be consistent with the Exchange Act, FINRA must "independently [evaluate the] application, based upon the totality of the circumstances, and . . . explain the bases for its conclusion."[21] For example, we found in *Kufrovich* that NASD "properly discharged its Exchange Act obligation" where it "appropriately weighed all of the facts developed," including the nature and recency of the felony conviction, the ongoing probationary status, the fact that the misconduct was knowingly directed against a vulnerable child, the risk of harm to third parties, the adequacy of the proposed supervisory plan, and the prior disciplinary history of the statutorily disqualified individual.[22]

FINRA found that Pedregon had been convicted of a very serious crime, one that involved "deceptive" conduct and was directed against a minor.[23] FINRA found that "Pedregon's activities cast doubt on his character and lead us to question his ability to act in a trustworthy and

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[20] Section 15A(g)(2) of the Exchange Act, 15 U.S.C. §78*o*-3(g)(2); *see also* FINRA By-Laws, Art. 3, § 3(d) (providing that FINRA Board may approve continuation in membership or association or continuation in association of any person if Board determines that such approval is consistent with public interest and protection of investors); *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 the protection of investors.").

[21] *Kufrovich*, 55 S.E.C. at 625. Some of our previous cases state that FINRA "'must explain how the particular felony at issue, examined in light of circumstances relating to the felony, creates an unreasonable risk of harm to the market or investors.'" *Emerson*, 96 SEC Docket at 18888 (quoting *Stephen L. Keidash*, 54 S.E.C. 983, 987 (2000)); *see also Kufrovich*, 55 S.E.C. at 625 (quoting *Keidash*). Those cases make clear, however, that the analysis goes beyond the circumstances relating to the felony, and also encompasses circumstances relating to the proposed association. *See, e.g.*, *Emerson*, 96 SEC Docket at 18888 (finding FINRA's denial of application consistent with Exchange Act where it "appropriately weigh[ed] all the facts and circumstances surrounding [the] felony conviction and [the] proposed supervisory plan").

[22] *Kufrovich*, 55 S.E.C. at 625-26 & n.13.

[23] Pedregon contends that "inflammatory language" in FINRA's denial of membership continuation shows that FINRA acted with prejudice. We find no prejudice in FINRA's denial, which FINRA explained in terms of the seriousness of the felony, Pedregon's ongoing probation, Pedregon's questionable conduct during an examination and the doubts about his character and judgment to which it gave rise, Pedregon's failure to show that he had completed probation or counseling, and the inadequacy of PSEC's proposed plan of supervision.

responsible manner in the securities industry." We have consistently recognized that, in order to ensure protection of investors, a self-regulatory organization ("SRO") such as FINRA "may demand a high level of integrity from securities professionals."[24] We agree with FINRA that the seriousness of Pedregon's conviction militates against allowing PSEC's application.[25]

Pedregon argues that the conduct that led to his felony convictions did not involve matters related to securities or finance and that "this one legal matter should not reflect upon Pedregon's entire career in the industry."[26] He asserts that FINRA's denial of re-entry into the securities industry to persons convicted of felonies unrelated to the securities laws is "both unfair and unconstitutional." FINRA is not a state actor and is therefore not bound by constitutional limitations applicable to government agencies.[27] Moreover, Congress, not FINRA, determined that felony convictions unrelated to the securities laws could preclude participation in the securities industry for a ten-year period, unless an SRO finds that such participation is in the public interest.[28] FINRA properly acted in furtherance of this Congressional determination.

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[24] *Kufrovich*, 55 S.E.C. at 627.

[25] In *Kufrovich*, we dismissed a review proceeding in which NASD denied a membership continuation application based in part on its finding that misconduct "'knowingly directed against a vulnerable child'" calls into question the ability of the statutorily disqualified individual to act in a trustworthy and responsible manner in interactions with the investing public. 55 S.E.C. at 626 (quoting NASD opinion). *Kufrovich*, like the case before us, involved sexual activity directed at a minor. *Id*. at 617.

[26] In this connection, Pedregon argues that *Kufrovich*, 55 S.E.C. 616, and *Haberman*, 53 S.E.C. 1024, which FINRA cited in support of its decision against Pedregon, do not support the denial of PSEC's application because those cases involved misconduct related to securities or finance. In *Kufrovich*, however, the underlying felonious conduct involved sexual activity directed against a minor, as did Pedregon's; Kufrovich's securities-related misconduct was noted as a relevant factor in that it "reflects poorly on Kufrovich's judgment and trustworthiness," 55 S.E.C. at 628, treatment similar to our recognition of the "troubling" conduct at NASD that caused Pedregon to be put on probation there. In any event, the fact that other cases may involve securities- or finance-related misconduct does not restrict FINRA's power to deny PSEC's application where the statutory standard provides for review by FINRA of applications based on all felonies. *See infra* note 28.

[27] *See, e.g., William J. Gallagher*, 56 S.E.C. 163, 168 n.10 (2003) (citing additional cases); *see also supra* note 19.

[28] In 1990, Congress amended Section 3(a)(39)(F) of the Exchange Act to add "any other felony" to the list of crimes that result in statutory disqualification. Act of November 15, 1990, Pub. L. No. 101-550, Title II, § 203(b)(6), 104 Stat. 2713, 2717-18 (codified at 15 U.S.C.

(continued...)

We also agree with FINRA that the recency of Pedregon's conviction, the pendency of his probation through January 2017, and his failure to complete mandatory counseling militate against allowing Pedregon's re-entry into the securities entry at this time. As we have previously stated, we share FINRA's concern about allowing persons serving probation to be associated with member firms.[29] Moreover, because Pedregon has completed so little of the court-mandated counseling, he has done little to show successful rehabilitation after his conviction. The therapist's progress report submitted by Pedregon rates his progress in therapy on thirteen factors, on a scale of zero (not applicable/unknown) to five (excellent). Pedregon received no rating higher than three, satisfactory, on any factor.

FINRA found PSEC's proffered supervisory plan unacceptable, pointing out several specific flaws and omissions. FINRA concluded that under that plan, PSEC and Murphy would be unable to provide the required heightened level of supervision necessary to ensure that they would effectively prevent and detect possible misconduct on the part of Pedregon. We agree with FINRA that PSEC's proposed supervisory plan is inadequate. A supervisory plan for a

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[28] (...continued)
§ 78c(a)(39)(F)). The legislative history indicates that Congress understood that this amendment did not mean that any felony conviction results in automatic exclusion from the securities industry. Instead, the amendment interposed an additional safeguard in the form of special scrutiny by SROs, subject to Commission review, as a condition of re-entry into the industry. *See* H.R. Rep. No. 101-240, at 22 (1989) ("This amendment would not automatically exclude every person convicted of a felony from the securities business. Rather, it would permit SROs, subject to Commission review, to consider the facts and circumstances surrounding a particular felony and to impose appropriate safeguards to protect the markets and investors from unreasonable risks."); S. Rep. No. 101-155, at 40 (1989) ("This amendment does not automatically exclude every person convicted of a felony from the securities business. Rather, it permits SROs, subject to Commission review, to consider the facts and circumstances surrounding a particular felony and to impose necessary safeguards to protect the markets and investors from unreasonable risks.").

[29] *See, e.g.*, *Kufrovich*, 55 S.E.C. at 627-28 (finding that NASD "properly considered" that Kufrovich was still required to serve a probationary sentence that would last eight more months as part of his felony conviction; "We share [NASD's] concern that Kufrovich remains on probation."); *Funding Capital Corp.*, 50 S.E.C. 603, 606 (1991) ("We share the NASD's concern that [the statutorily disqualified individual] remains on probation . . . ."). Pedregon argues that FINRA granted another membership continuation application even though the individual in question was still on probation and that this factor is therefore not applied uniformly. FINRA did not treat Pedregon's probation as an absolute bar to his re-entry; it properly considered it as one factor, along with many others. The case on which Pedregon relies presents a different constellation of factors, so it is not surprising that the two cases resulted in different outcomes.

person subject to statutory disqualification must provide for stringent supervision.[30] For example, we have stated that "a supervisory plan lacks the necessary intensive scrutiny when the supervisor will not be in close, physical proximity to the statutorily disqualified person."[31] Under PSEC's proposed plan, it appears that there would be no supervisor in proximity when Pedregon would be conducting branch office examinations, so Pedregon would not have the intensive scrutiny required because of his statutorily disqualified status. Other shortcomings pointed out by FINRA -- lack of specificity about the frequency of certain reviews and assignment of the unqualified Sugleris as Pedregon's supervisor in Murphy's absence -- are similarly troubling. Although Murphy represented that he would develop a more detailed supervisory plan for Pedregon if Pedregon is permitted to associate with PSEC, the burden of proposing a suitable supervisory plan is on PSEC, and it cannot satisfy this burden by waiting until Pedregon is in the job to work out the details of the plan.[32]

We also share FINRA's concerns about whether Murphy would provide an appropriate level of supervision for Pedregon. Murphy devoted limited attention to structuring a supervisory plan for Pedregon.[33] Although he elaborated on his original plan during and after the hearing, the plan remains vague and flawed. Moreover, Murphy's lack of commitment to thinking through these supervisory issues, as exemplified by his stated refusal to "spend a lot of time" working out the details of a supervision plan because he was "busy enough as it is," suggest that Murphy might not devote sufficient time and attention to supervising Pedregon if we approved PSEC's application.

FINRA found that Pedregon's use of an obscene and derogatory term in reference to a firm under NASD examination in the presence of employees of the firm, and the indications that

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[30] *Emerson*, 96 SEC Docket at 18889; *Haberman*, 53 S.E.C. at 1031.

[31] *Emerson*, 96 SEC Docket at 18890; *see also Kufrovich*, 55 S.E.C. at 629 (finding supervisory plan inadequate where, among other factors, supervisor would not be physically present in close proximity to statutorily disqualified individual during all working days); *Haberman*, 53 S.E.C. at 1031-32 (finding supervisory plan inadequate where, among other factors, supervisor's travel schedule and firm's usual way of conducting business would result in insufficient contact between supervisor and statutorily disqualified individual).

[32] We reject Pedregon's contention that "the denial did not accurately reflect [PSEC's] dedication to ensuring that Pedregon would be adequately supervised." Because the burden of proposing a suitable plan is on PSEC, FINRA was fully justified in requiring PSEC to provide specifics before approving the application, rather than accepting general assurances that PSEC would devise an appropriate plan once Pedregon started working there.

[33] As FINRA noted, Murphy's preparation for the hearing was also less than thorough. *See supra* note 13.

several of his colleagues considered his approach "overly aggressive," did not reflect favorably on Pedregon's character or judgment, or his ability to act professionally as PSEC's compliance officer. We agree that these facts are troubling, and that they further weigh against Pedregon's re-entry into the securities industry as a statutorily disqualified person, especially when the proposed heightened supervision is inadequate.[34]

For these reasons, we find that FINRA's basis for denying PSEC's application to continue in membership with Pedregon as its compliance officer exists in fact, and that FINRA acted fairly and in accordance with its rules, which are and were applied in a manner consistent with the purposes of the Exchange Act.[35]

Pedregon incorrectly asserts that the Commission recommended in 2003 that FINRA limit or discontinue the review of membership continuation applications based on offenses unrelated to the securities industry. The recommendation Pedregon cites was made in an audit by the Commission's Office of the Inspector General with respect to reviews by our Division of Market Regulation[36] of SRO approvals of membership continuation applications.[37] The audit noted that Market Regulation staff "generally defer judgment to the SROs for determining, on a case-by-case basis, whether it is in the public interest to permit the proposed or continued association of [statutorily disqualified] persons."[38] Thus, the recommendation was directed

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[34] Pedregon states that his examination of the firm uncovered various violations and irregularities, and that the firm was subsequently closed "because of Pedregon's attention to detail, investigative mentality, assertive approach, and steadfastness." He argues that rather than raising concerns about his conduct, his involvement in the examination should be viewed as demonstrating his commitment to the public interest. We find that FINRA appropriately concluded that Pedregon's behavior during the examination was questionable, even if his goals in conducting the examination were laudable.

[35] We also find that FINRA's action imposed no undue burden on competition. *See supra* note 16 and accompanying text (discussing requirements of Exchange Act Section 19(f), 15 U.S.C. § 78s(f)).

[36] The Division of Market Regulation is now known as the Division of Trading and Markets.

[37] *Statutory Disqualification Process*, Audit No. 363 (May 13, 2003), *available at* http://www/sec/gov/about/oig/audit/363fin.htm.

[38] *Id*. at 3.

solely to Market Regulation staff and did not suggest that SROs such as FINRA limit or discontinue their consideration of such applications.[39]

Pedregon argues that he is devoted to the securities industry and the protection of investor interests,[40] that he should be given a second chance, that his "years of honorable service with distinction in the Marine Corps" show that he has the integrity necessary to work in the securities industry, and that it is in the best interests of all parties to let him re-enter that industry. We disagree. The factors militating against re-entry discussed above outweigh the factors supporting re-entry that Pedregon identifies.[41]

Pedregon's misconduct was serious, his conviction was recent, and he has not completed probation or counseling (and has done little to show successful rehabilitation). Moreover, the conduct that gave rise to his probation at NASD did not reflect favorably on his character or judgment. Additionally, PSEC's proposed supervisory plan does not adequately provide for heightened supervision of Pedregon, and the record suggests that Murphy might not devote sufficient time and energy to supervising Pedregon. For these reasons, we find that Pedregon and

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[39] Moreover, review by an SRO is the only avenue by which FINRA member firms can continue in membership if they associate with statutorily disqualified individuals. If FINRA stopped reviewing applications where the disqualification was based on a non-securities related felony, firms would have no way to employ such persons and still retain their FINRA membership.

[40] Pedregon cites the examination that led to his being put on probation at NASD as evidence of his commitment to the public interest. As discussed, *see supra* note 34, we find that devotion to the public interest does not excuse Pedregon's "overly aggressive" approach and use of obscene language.

[41] In reaching this conclusion, we have also considered the letters of reference Pedregon submitted in support of PSEC's application.

PSEC have not shown that it is in the public interest to allow Pedregon re-entry into the securities industry as PSEC's compliance officer. We therefore dismiss this review proceeding.

An appropriate order will issue.[42]

By the Commission (Commissioners CASEY, WALTER, AGUILAR and PAREDES; Chairman SHAPIRO not participating).

Elizabeth M. Murphy
Secretary

[42] We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 61791 / March 26, 2010

Admin. Proc. File No. 3-13610

In the Matter of the Application of

TIMOTHY P. PEDREGON, JR.

For Review of Action Taken by the

Financial Industry Regulatory Authority, Inc.

ORDER DISMISSING REVIEW PROCEEDING

On the basis of the Commission's opinion issued this day, it is

ORDERED that the application for review filed by Timothy P. Pedregon, Jr. be, and it hereby is, dismissed.

By the Commission.

Elizabeth M. Murphy
Secretary