SECURITIES AND EXCHANGE COMMISSION
Washington D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 62898 / September 13, 2010

Admin. Proc. File No. 3-13701

In the Matter of the Application of

LESLIE A. AROUH

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

A registered securities association denied a member firm's application to retain its membership if it employed an individual who, because of a 2004 bar order, was subject to statutory disqualification. *Held*, the review proceeding is *dismissed*.

APPEARANCES:

James M. Kaplan and *William Zeena, Jr.*, of Kaplan Zeena LLP, for *Leslie A. Arouh*.

Marc Menchel, Alan Lawhead, Andrew Love, and *Michael J. Garawski*, for the Financial Industry Regulatory Authority, Inc.

Appeal filed: November 25, 2009
Last brief received: February 25, 2010

I.

The Financial Industry Regulatory Authority, Inc. ("FINRA") denied an application (the "Application") by Raymond James & Associates, Inc. ("Raymond James" or the "Firm") to remain a FINRA member if it permits Leslie A. Arouh to associate with it as a general securities

representative.[1] Arouh is subject to statutory disqualification based on a Commission order issued December 20, 2004, which barred him from associating with any broker or dealer, subject to a right to reapply after two years (the "Bar Order").[2] FINRA found that Arouh associated with two broker-dealer firms while the Bar Order was in effect and that the Firm's proposed supervisory plan was inadequate. Concluding that Arouh's proposed association with the Firm would create an unreasonable risk of harm to investors and the markets, FINRA denied the Application. We base our findings on an independent review of the record.

II.

A. Background

Arouh entered the securities industry in 1994. In December 1997, he became associated with First Union Capital Markets Corp. ("First Union"), a registered broker-dealer, as a salesperson of investment-grade corporate bonds. In early April 1998, he participated in a prearranged adjusted trading scheme in which First Union first lost money by buying certain bonds at above-market prices and reselling them at below-market prices, then made up for its losses by selling additional bonds at inflated prices that bore no relationship to supply and demand.[3] First Union investigated the transactions almost immediately, suspended Arouh on April 8, and terminated his employment on May 6, 1998.[4]

In June 1998, Arouh became associated with Raymond James, a FINRA member firm, as an institutional fixed income salesperson. While working at Raymond James, Arouh met Alan

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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 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, 517 (SR-NASD-2077-053). Because FINRA's review of the Application occurred after the consolidation, references to FINRA will include references to NASD.

[2] *Leslie A. Arouh*, 57 S.E.C. 1099 (2004). The Commission also ordered Arouh to pay a $110,000 civil money penalty and to cease and desist from committing or causing any future violations of Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q, Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j, and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5. *See also infra* note 31 and accompanying text (identifying statutory and regulatory bases for disqualification).

[3] *Id*. at 1101-09.

[4] *Id*. at 1109.

Weiner and Scott Budner. Together, Weiner and Budner owned one hundred percent of two registered broker-dealer firms, STG Secure Trading Group, Inc. ("STG Inc.") and STG Secure Trading Group LLC ("STG LLC") (together, the "STG entities" or "STG").[5] Weiner and Budner were also officers of the STG entities.

STG, which offered a trading platform for equity day traders, occupied office space across the hall from Arouh's desk at Raymond James. Weiner wanted to take STG public and continue to expand its securities business, and in fall 2004, he proposed that Arouh join STG to help him develop a bond business.

In the meantime, the Commission had instituted proceedings against Arouh based on the 1998 adjusted trading scheme,[6] and in December 2004, the Commission found that Arouh, while working at First Union, "participated, with scienter, in [a] fraudulent adjusted trading scheme in willful violation of Securities Act Section 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b-5."[7] The scheme, the Commission found, involved hundreds of millions of dollars of trades and exposed both First Union and customers of the trading partner to substantial losses.[8] Based on this misconduct, on December 20, 2004, the Commission found it in the public interest to issue the Bar Order.[9] On January 3, 2005, Arouh filed a motion for reconsideration with the Commission, and began considering how he could continue working in the securities industry despite the bar. He asked an attorney for advice about what activities would be permissible if the Commission denied his motion, but the record contains no details about either his request or the oral advice he received in response.

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[5] The Central Registration Depository ("CRD"), available on FINRA's web site, shows that STG Inc. was registered with NASD and STG LLC was a member of the Philadelphia Stock Exchange. Pursuant to Rule 323 of our Rules of Practice, 17 C.F.R. § 201.323, we take official notice of this information. *See Douglas J. Toth*, Exchange Act Rel. No. 58074 (July 1, 2008), 93 SEC Docket 7380, 7381 n.3 (taking official notice of "basic information" found on CRD), *petition denied*, 319 Fed. App'x 184 (3d Cir. 2009) (unpublished).

[6] *Leslie A. Arouh*, Exchange Act Rel. No. 46450 (Sept. 3, 2002).

[7] *Arouh*, 57 S.E.C. at 1118. The Commission explained: "Adjusted trading constitutes a scheme to defraud in violation of Exchange Act Section 10(b) and Rule 10b-5 thereunder. Adjusted trading is a practice in which a person sells a security above the prevailing market price and purchases another security from the buyer of the first security at a corresponding price above the prevailing market price." *Id.* at 1111 (citations omitted).

[8] *Id.* at 1119-20.

[9] *Id.* at 1020-21.

B. Arouh's Relationship with STG and Raymond James's Membership Continuance Application

1. Arouh's Relationship with STG

In January 2005, Arouh founded two companies, New Horizons LLC ("New Horizons") and Sanctuary Management Consultants LLC ("Sanctuary") (together, the "Companies"). On behalf of the Companies, Arouh signed two consulting agreements with STG (the "Consulting Agreements"). The Consulting Agreements stated that Arouh would provide "recruiting, hiring and pre and post-hiring training of sales, marketing and operational personnel to enable [STG] to establish and operate a fixed income trading department," as well as recruitment and training services in other areas on request, "management consulting services," and "investment advisory and asset management advice."

The Consulting Agreements provided for Arouh to receive a total of $75,000 in signing bonuses upon execution, plus total annual base compensation of $600,000. If STG did at least $600,000 of bond business in a year, Arouh would receive a bonus of at least $600,000.[10] Arouh would participate in a performance-based bonus pool, and he would be entitled to acquire a twelve percent ownership interest in the stock of a holding company that was to acquire STG.

On February 25, 2005, the Commission denied Arouh's motion for reconsideration,[11] and the Bar Order became final. Arouh terminated his employment with Raymond James, but he did not move out of the office he had been using.[12] Raymond James relocated several employees who had been in the space around Arouh, and STG, which at that time had a staff of five people,

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[10] Arouh explained that his annual bonus was to be twenty percent of STG's profits, with a guaranteed minimum of $600,000: "[I]f [STG] made five million and [Weiner] owed me a million, the bonus would be a million instead of six hundred thousand."

[11] *Leslie A. Arouh*, Exchange Act Release No. 51254 (Feb. 25, 2005), 84 SEC Docket 3652. Arouh filed an appeal in the United States Court of Appeals for the District of Columbia Circuit, but subsequently abandoned it.

[12] Arouh testified that "we," i.e., STG, bought the office furniture he had been using from Raymond James and subleased the space, with the understanding that STG would deduct the cost of the sublease from his salary. Arouh testified that STG also paid for maintenance of plants in his office, and for Bloomberg terminals for himself and his assistant. Arouh testified that he had to walk into the area that STG subleased from Raymond James, but that his office "was separate, apart, locked and was different [from Raymond James's] office."

moved into the vacated space.[13] Arouh began providing services to STG, and in March 2005, he received the $75,000 signing bonus as provided in the Consulting Agreements.[14]

Once at STG, Arouh began trying to develop STG's bond business. He successfully recruited three bond traders and stayed in close contact with them once they started working at STG. At STG, the traders' desks were so close to Arouh's that he could "yell out" questions to them. Arouh talked with the bond traders "all the time," sometimes asking whether they were making money in the market, or whether they were long or short. Arouh testified, "[The traders'] success would make a difference in the amount of money that I would ultimately make. I was always interested in knowing whether they were making a lot of money or losing a lot of money." He also asked one of the traders to send him messages about what was going on in the market. When a bond trader complained to Arouh that he was not able to trade the positions he had expected, he asked Arouh to intercede with management and request higher position limits. Arouh brought these concerns to Weiner and Budner.[15] The trader, concerned about whether STG would meet payroll, also asked Arouh to make sure he got paid. Arouh talked to Weiner, and the traders were paid.[16]

Arouh did more for STG's bond business than merely recruit and work with traders. He also took the lead in explaining the bond business to third parties. Arouh testified that, in a meeting with a clearing firm, "I basically described the [bond] business because I knew about that more than either [Weiner or Budner] did." He also testified that when Weiner tried to borrow money for STG, "I would often go and explain what the bond business was because Alan didn't know."

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[13] This staff consisted of Weiner, Budner, a compliance officer, an individual who handled back office matters and general administrative duties, and a receptionist.

[14] There is some evidence that Arouh began performing services to STG before the Bar Order became final. Arouh insists, however, that he did not provide services to STG until late February.

The services Arouh provided to STG are relevant only if they show that he associated with STG while the bar was in effect. Keeping in mind Arouh's assertions about the timing of his relationship with STG, we find that Arouh provided most if not all of his services to STG between February 25 and mid-April 2005. Moreover, we find no qualitative difference between services provided before and after February 25.

[15] Although Arouh testified that Weiner was "responsive" to him when he raised these concerns, the record is unclear as to whether the requests for higher position limits were granted.

[16] Arouh testified that the trader who solicited his assistance thought Arouh had influence over Weiner, although Arouh denied having had such influence.

Arouh's role at STG was not limited to the bond area.[17] At Weiner's request, Arouh attended numerous committee meetings, including meetings of STG's management, executive, and sales and business committees, and he participated "on a regular basis" in discussions with STG about "issues that . . . related to managing the company." These discussions dealt with ongoing concerns such as office morale and STG's lack of a professional infrastructure. They also addressed plans for STG's future, such as how to expand STG's business and make it more profitable; whether STG should open more offices in New York, and if so who should be hired to open them; and the implications that acquiring a small brokerage firm would have on STG's fixed income business. Arouh also helped to recruit a branch manager for a newly created position on the equity side of STG's business.

Arouh testified that STG "asked me for input often and I gave it to them." He advised STG management about firm structure and staffing, recommending that STG hire a compliance officer and assign responsibility for STG's fixed income business and equity business. Arouh also reported to STG management on problems STG had with a market maker in New York that he was trying to resolve.

Arouh made several trips on behalf of STG. He traveled to New York with Weiner "a couple of times" to interview salespeople in connection with a possible acquisition by STG, then made recommendations to Weiner and Budner about whether they should proceed. Arouh traveled to Texas so that he could explain to a clearing firm the type of business that STG's bond group would be doing. On this trip, Arouh was introduced to a potential STG customer "[a]s a consultant to STG but more a partner in the business."[18] Additionally, Arouh went with Weiner to New York to try to borrow money for STG from Weiner's friends. Weiner repeatedly asked Arouh to lend him money to improve STG's net capital position.[19] At one point, Arouh gave Weiner $100,000, which was later returned to him after he helped Weiner arrange a $200,000 bank loan.

Arouh was also involved with compliance matters at STG. Arouh attended compliance meetings and was in frequent contact with STG's compliance officer, who kept him informed and

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[17] Arouh testified that "[b]usiness development was the most important function I had . . . from the equity side, from the bond side, [and] from the investment banking side." None of Arouh's business development efforts came to fruition during his involvement with STG.

[18] Arouh testified that, although he was introduced as a partner, "it was very clear to everyone that I wasn't a partner, that I couldn't be a partner" because of the Bar Order. However, Arouh testified that the potential customer "didn't know the difference" between Arouh, Weiner, and Budner with respect to discussing STG business, apparently viewing the three as equally suitable sources of information.

[19] Arouh testified that Weiner asked him for such a loan at least twenty times between February 2005 and April 2005.

sought his input.[20] The compliance officer involved Arouh in efforts to retain a consultant to prepare a compliance manual, and asked Arouh to keep him informed "of all relevant issues and particularly those related to compliance."

In late February, STG's compliance officer expressed concern to Weiner and Arouh about whether about Arouh's relationship with STG complied with the Bar Order. Weiner and Arouh responded that they had a legal opinion that the relationship was compliant, and that they would provide him with a copy.[21] As of March 18, however, the compliance officer was still concerned about the relationship, and he again asked Arouh to show him a legal opinion.

Arouh obtained two letters from counsel, dated March 28, 2005 and April 4, 2005, that discussed the permissible scope of his involvement with STG in light of the Bar Order. Each letter discussed the possibility that Arouh could avoid the "association" contemplated in Exchange Act Section 3(a)(18)[22] by acting as an independent contractor. The March 28 letter stated that Arouh might be able to "interact[] with STG" without associating by using "a separate entity providing recruitment and/or training services for broker/dealer salespersons." By maintaining a separate entity, the letter suggested, Arouh might "superficially avoid" many of the problems that otherwise might arise. The letter further stated that Arouh might be able "to receive compensation from the broker/dealers or through contracts with parties you recruit and/or train whereby the recruits remit a percentage of their commissions," an arrangement the letter said was often used by staffing agencies, and one that "involves no direct contact between you and the broker/dealers, let alone control by either party," and therefore would apparently not involve association between Arouh and broker/dealers.

The April 4 letter expanded the description of services that Arouh could provide as an independent contractor, but omitted the language stating that Arouh might be able to receive compensation based on the commissions of persons he recruited. That letter stated that Arouh

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[20] For example, the compliance officer updated Arouh about the development of a new compliance manual, sent him a series of memoranda about compliance "reorganization" efforts, discussed with Arouh and Weiner STG's closing of a "joint back office," copied Arouh on an e-mail informing Weiner that Weiner needed to qualify as a general securities principal, and asked Arouh to attend a meeting to discuss STG's response to an NASD request for information and another meeting to create a business plan and a corporate organizational chart.

[21] Weiner told the compliance officer that he had obtained three opinions.

[22] 15 U.S.C. § 78c(a)(18). Under Section 3(a)(18), a "person associated with a broker or dealer" is defined as "any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer." *Id.* There is a limited exception, not relevant here, for persons whose functions are "solely clerical or ministerial." *Id.*

could perhaps provide "consulting services – for example, with regard to mergers and acquisitions, strategic alliances and growth planning" in addition to "the recruitment and/or training of salespersons" without becoming associated with STG. The letter reiterated that maintaining a separate entity might help Arouh avoid violating the Bar Order. The letter reached the same conclusion as the March 28 letter: due to the lack of direct contact and control, the arrangement "does not appear to involve association, by you with a broker/dealer."

Each letter concluded with a cautionary statement that counsel could not provide Arouh "with definite advice on most points" and advised him, "[I]t is very important that you consult with us prior to engaging in any activity that might be construed as involving association with a broker/dealer."

On April 5, 2005, staff of FINRA's predecessor, NASD, interviewed Arouh in connection with an investigation into STG.[23] Shortly thereafter, on April 11, 2005, a law firm representing Sanctuary sent a letter to NASD's Florida District Office, setting forth the firm's conclusion that Arouh had complied with the Bar Order at all material times, and that Arouh had avoided "association" with STG. The letter stated that Arouh's services were limited to "providing consulting services with regard to mergers and acquisitions, strategic alliances, growth planning and recruitment/training of salespersons," and concluded that, "[a]s none of these activities constitute an 'association' with a broker/dealer pursuant to [Exchange Act Section 3(a)(18)], Arouh's activities with and for STG do not violate the terms of the Bar Order."

By late March or early April, Arouh concluded that STG lacked the capital resources to develop the bond trading business it had envisioned. Moreover, STG had not been paying him as specified in the Consulting Agreements.[24] In April 2005, Arouh ended the relationship with STG.[25] Since then, he has been involved in the real estate industry.

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[23] The record does not reveal what prompted the investigation.

[24] STG's ledger shows that Arouh and the Companies were paid $3,453.10 in February 2005; $80,000 in March 2005; and $4,511.69 in April 2005. The first payment was made on February 3, and the last on April 18. In a declaration submitted after the hearing, Arouh stated that the February payments "were not compensation for services rendered but instead [were] more likely payments for items [he] furnished to STG, such as tickets for basketball games and other events." He further represented that, aside from the $75,000 signing bonus, the other payments in March and April were either expense reimbursements or advances against expenses.

[25] A letter from STG to NASD staff, dated May 12, 2005, states that the relationship between STG and Arouh "ha[d] been set aside until all regulatory matters have been handled."

2. The Membership Continuation Application

In March 2008, Raymond James applied to FINRA for consent to continue as a FINRA member if Arouh became an associated person.[26] Raymond James has been a member of FINRA and its predecessor, NASD, since 1964. At the time of its application, Raymond James had 186 offices of supervisory jurisdiction and sixty-five branch offices, with 947 principals and more than 2,600 registered representatives.

The Application provided that Arouh would be employed as a Senior Vice President, Taxable Fixed Income Sales, in the Firm's home office, but would spend twenty percent of his time traveling. Arouh would handle accounts for institutional clients and would not trade for proprietary accounts or retail accounts other than personal and/or family accounts.

The Firm proposed that Arouh would be supervised by William Specht, Senior Vice President and National Sales Manager, who supervised both the Taxable Fixed Income Institutional Sales Department in the Firm's home office and the Firm's off-site Institutional Fixed Income offices. Specht and Arouh would both work in the Firm's home office, with Arouh sitting next to Specht at the institutional desk, except when either was traveling on business.

The proposed supervisory plan called for Specht, "[c]onsistent with normal firm supervisory procedures," to review and approve Arouh's new account agreements, daily transactions with customers, daily cancels and corrects, and all incoming or outgoing hard copy correspondence. The plan also called for Specht to review emails to and from Arouh "in accordance with firm policy." Because all transactions at the Firm had to be executed by traders, Arouh would not be able to input or record trades without obtaining the approval of the trader executing the trade.

Although much of the Firm's supervision of Arouh would be indistinguishable from that of Firm employees generally, the proposed supervisory plan noted that Arouh's physical proximity to Specht would enable Specht to hear Arouh's conversations. Specht emphasized that he would be personally responsible for reviewing Arouh's trading activity. He further testified that, although the proposed supervisory plan called for only two years of weekly monitoring of Arouh's trades, the Firm would be willing to exercise heightened supervision for the entire time that Arouh was associated with the Firm.

Specht's job required him to travel an average of two to four days each month. Specht reviewed each day's transactions even when he was out of the office. When Specht was away, either James Sickling, manager of the institutional taxable trading desk, or Fred Hoskin, the head of taxable fixed income at the Firm, was generally in the office. Specht testified that Sickling,

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[26] 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).

like Specht, worked on the trading floor and would therefore hear what Arouh was doing, but that Hoskin had a private office and would not be sitting on the floor with Arouh. The proposed supervisory plan did not assign responsibility for monitoring Arouh in Specht's absence to either Sickling or Hoskin, nor did it explain who would supervise Arouh if Specht, Sickling, and Hoskin were all away at the same time. The plan did not say whether additional measures would be implemented if Hoskin were supervising, to compensate for Hoskin's lesser proximity to Arouh.

C. FINRA Denies Application

FINRA denied Raymond James's application. FINRA found that Arouh acted as a principal of STG and was required to be registered as such. Therefore, FINRA found, Arouh was associated with STG in violation of the Bar Order, and this association violated both Article III, Section 3 of the NASD By-Laws and Section 15(b)(6)(B)(i) of the Exchange Act.[27] FINRA concluded that Arouh's association with STG constituted intervening misconduct that occurred after his statutorily disqualifying event.

In evaluating the seriousness of Arouh's misconduct, FINRA found that Arouh's violation of the Bar Order was reckless in that he, knowing that the Commission had imposed the bar to protect investors and the markets, nonetheless "constructed businesses and contracts that specifically aimed to circumvent the Bar Order, flouting not only its text but also its intent." FINRA further found that Arouh's misconduct resulted in at least $75,000 in monetary gain to Arouh, with the potential for much more, that it lasted a significant period of time, and that it ended not because Arouh acknowledged wrongdoing, but because he was not being paid. FINRA rejected Arouh's argument that he relied on legal advice that his involvement with STG was permitted, and concluded that Arouh's intervening misconduct was "a serious, and possibly egregious, violation [that] shows that he remains a serious threat to the public and the markets."

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[27] Article III, Section 3(a), provided, at the relevant time, that "[n]o person shall become associated with a member . . . if such person is or becomes subject to a disqualification." Section 15(b)(6)(B)(i), 15 U.S.C. § 78*o*(b)(6)(B)(i), provides that "[i]t shall be unlawful . . . [f]or any person as to whom [a Commission bar order] is in effect, without the consent of the Commission, willfully to become, or to be, associated with a broker or dealer in contravention of such order."

FINRA also found that Arouh had associated with STG because (1) he was contractually entitled to receive transaction-based compensation in connection with his activities for STG, although he was not registered as a broker-dealer; and (2) his work as an intermediary in support of STG's potential acquisition of another broker-dealer required him to be separately registered as a broker-dealer, but he was not. Because we base our determination that Arouh was associated with STG on our finding that he acted as a principal, we need not (and do not) reach these alternative bases of decision.

FINRA found that Raymond James did not have a disciplinary history that raised concerns. But it found that the Firm's proposed supervisory plan for Arouh was inadequate, in that it lacked sufficient elements and details to ensure that the Firm would prevent and detect possible misconduct by Arouh. FINRA concluded that Arouh's proposed association with the Firm would create an unreasonable risk of harm to investors and the markets. It accordingly denied the Firm's application. This appeal followed.

III.

Exchange Act Section 19(f) governs our review of this appeal.[28] 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 the Firm'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.[29] The burden is on the applicant to show that it is in the public interest to permit the requested employment despite the disqualification.[30]

A. Whether the grounds upon which FINRA based its decision exist in fact

As a result of the Bar Order, Arouh became subject to statutory disqualification under the Securities Exchange Act of 1934 and FINRA's By-Laws.[31] As a statutorily disqualified person, Arouh became ineligible to associate with a FINRA member firm without FINRA's consent.[32] FINRA denied Raymond James's application, finding that Arouh committed intervening misconduct by associating with two broker-dealers while the Bar Order was in effect and that the Firm's proposed supervisory plan was inadequate. We consider each of these findings in turn.

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[28] 15 U.S.C. § 78s(f).

[29] *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. 15 U.S.C. § 78s(f). Arouh does not claim, and the record does not support a finding, that FINRA's actions imposed such a burden.

[30] *E.g.*, *Gershon Tannenbaum*, 50 S.E.C. 1138, 1140 (1992); *M.J. Coen*, 47 S.E.C. 558, 561 (1981).

[31] *See* Exchange Act Section 3(a)(39)(A), 15 U.S.C. § 78c(a)(39)(A); FINRA By-Laws, Art. III, § 4.

[32] FINRA By-Laws, Art. III, § 3(d).

1. Intervening Misconduct

Arouh does not dispute, as FINRA found, (1) that Arouh was subject to a Commission order that barred him from associating with any broker or dealer, subject to a right to reapply after two years; (2) that the Bar Order became final after Arouh's motion to reconsider was denied on February 25, 2005; (3) that Arouh became subject to statutory disqualification as a result of the bar; and (4) that Arouh provided services to STG pursuant to the Consulting Agreements while the Bar Order was in effect. Arouh does, however, dispute FINRA's finding that by providing these services, he became associated with STG within the meaning of Exchange Act Section 3(a)(18) or under the FINRA By-Laws.[33] After reviewing the record in this matter, we find that Arouh was associated with STG because he acted as a principal while subject to the Bar Order.

All persons engaged in the investment banking or securities business of FINRA member firms who are to function as principals are required to register[34] and are considered associated persons.[35] Individuals who "are actively engaged in the management of the member's investment banking or securities business, including supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions," are principals, whatever their title may be.[36]

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[33] Arouh does not dispute that, if he willfully associated with STG, this association violated the Bar Order.

[34] NASD Rule 1021(a).

[35] NASD Notice to Members 05-48 (July 2005) ("[I]n general, parties conducting activities or functions that require registration under NASD rules will be considered associated persons of the member."). Such parties are not considered associated persons if the service provider is separately registered as a broker-dealer and the arrangements in question are contemplated by NASD rules, Municipal Securities Rulemaking Board rules, or applicable federal securities laws or regulations, *id.*, but Arouh does not contend, and the record does not show, that this exception applies to him.

[36] *See, e.g.*, *Dennis Todd Lloyd Gordon*, Exchange Act Rel. No. 37655 (Apr. 11, 2008), 93 SEC Docket 5089, 5100-01 (finding that individual who, "although not holding an official managerial title [at the firm], nonetheless filled a management role" was required to register as a principal); *Richard F. Kresge*, Exchange Act Rel. No. 55988 (June 29, 2007), 90 SEC Docket 3072, 3092-93 (finding that individual who held no official managerial title, but who was "actively engaged in the management" of the firm's securities business, should have been registered as a principal); *Kirk A. Knapp*, 51 S.E.C. 115, 129 (1992) (finding that individual who "exercis[ed] or attempt[ed] to exercise managerial control" over firm's affairs was acting as a principal although he no longer held the title of president or director); *Samuel A. Sardinia*, 46

(continued...)

Hired at a time when STG had only five employees, Arouh took the lead in developing STG's bond business. He was effectively the head of the bond group, as well as its public face. Arouh repeatedly explained the anticipated business of STG's bond group to third parties because he "knew about that more than [Weiner or Budner] did." Arouh successfully recruited three bond traders for STG. Once the traders were on board, Arouh kept in close contact with them, talking to them "all the time" and functioning as an intermediary to bring their concerns to the attention of STG's management. He admitted that the traders' "success" would affect his compensation. Arouh's leadership in this important area of STG's business is persuasive evidence that he was acting as a principal.[37]

Beyond his position at the forefront of STG's bond business, Arouh was extensively involved in STG's management generally. Arouh testified that "[b]usiness development was the most important function I had . . . from the equity side, from the bond side, [and] from the investment banking side." He participated in key committees; reviewed STG's business plan; discussed strategy, office morale, profitability, and business expansion with STG management; and tried to resolve problems STG was having with a market maker. STG sought Arouh's input about the firm's structure and staffing, and Arouh responded by advising STG about positions to fill and the distribution of responsibilities. He helped recruit a branch manager for STG's equity business and interviewed salespeople in connection with a possible acquisition, making recommendations about whether they should be hired. STG's compliance officer asked Arouh to attend meetings and to provide input on compliance-related matters, and he involved Arouh in efforts to retain a consultant to prepare a compliance manual. Arouh's involvement in organizing the firm's affairs, planning for its future, and dealing with personnel matters further manifests the active engagement in firm management that defines a principal.[38]

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[36] (...continued)
S.E.C. 337, 343 (1976) (finding that individual who "actively participated in management decisions" was a principal even after he gave up titles of president and director).

[37] *Cf. Kresge*, 90 SEC Docket at 3091-92 (finding that individual who initiated contact about and negotiated terms of opening a branch office, was often present at the branch office, played a substantial role in the finances of the branch office, was actively involved in hiring personnel for the branch office, participated in meetings at the branch office, and acted as a leader of the personnel who initially opened the branch office, was acting as a principal).

[38] *See, e.g.*, *Gordon*, 93 SEC Docket at 5100-02 (finding that individual who, among other things, "devoted a substantial amount of time and attention" to firm, took responsibility "for a wide range of issues related to the conduct of [the firm's] business and the tenure and conduct of its employees," sought to open branch offices and recruit individual brokers, and interviewed potential candidates was a principal); *Kresge*, 90 SEC Docket at 3092-93 (finding that individual who, among other things, "often was present" in the office, "made himself present" during compliance meetings, and was actively involved in hiring branch manager and registered
(continued...)

Arouh was strongly identified with STG, both in his own mind and in the perceptions of third parties. He traveled on STG's behalf with varied goals: interviewing potential hires, explaining STG's bond business, and assisting Weiner in his efforts to borrow money. A potential customer of STG viewed Weiner, Budner, and Arouh as equally suited to discussing STG's business. Arouh was introduced as "a consultant to STG but more a partner" in the firm, and his use of "we" in referring to STG indicates an alignment of interest with the firm. Arouh worked in what was effectively an STG office suite, so close to STG employees that he could overhear them talking and call out questions to them. STG provided his office space and related amenities.[39] These indicia of identification with STG also support our determination that Arouh acted as a principal.[40]

Arouh argues that he did not act as a principal, rephrasing his contention that he was not actively involved in STG's securities business in several ways. For example, Arouh asserts that he was not involved in the day-to-day conduct of STG's securities business and the implementation of corporate policies that relate to that business. We find, however, as set forth in detail above, that he was quite engaged with the day-to-day management of STG's business. Arouh also argues that his participation in STG meetings and committees does not warrant a finding that he associated with the firm, relying on NASD Notice to Members 99-49, which states that "[a]n outside director's participation in board and committee meetings, during which corporate policies may be developed or adopted, would not by itself rise to the level of being actively engaged in a [firm's] management."[41] But Arouh did far more than just attend meetings, and our determination that he acted as a principal is based on his entire course of conduct. Additionally, Arouh contends

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[38] (...continued)
representatives was a principal); *Sardinia*, 46 S.E.C. at 343 (finding that individual who, among other things, spent a "substantial amount of time in connection with the affairs of the firm" and "actively participated in management decisions to an extent clearly exceeding that of a mere accountant," was a principal); *cf. Juan Carlos Schidlowski*, 48 S.E.C. 507, 510 (1986) (finding that individual who was given "very broad responsibility," including setting up and helping to administer firms' accounting, operations, and bond departments, firm's financial reporting, and firm's liaison with NASD and Commission, was a principal).

[39] FINRA did not credit Arouh's assertions that he effectively paid rent for his office space because STG's payments on the lease were part of his agreed-upon compensation. No documentary evidence supports Arouh's assertion, which we also reject.

[40] *See Gordon*, 93 SEC Docket at 5101 (finding that (1) speaking of firm's actions in terms of what "we" had done and (2) having third parties view individual as in a position to act for the firm provided additional evidence of principal status); *Sardinia*, 46 S.E.C. at 342 (occupying office in firm's suite and paying no rent because rent was offset against commissions generated by securities activities supported determination that individual was a principal).

[41] NASD Notice to Members 99-49, 1999 NASD LEXIS 24, at *2 (June 1999).

that he "never participated in the activities of STG's trading desk, never placed any trades, recommended trades or solicited trades[,] . . . never reviewed STG's trading records, order tickets, or any other record that reflected STG's trading activity." But individuals who do not perform the trading-related tasks Arouh enumerates may still be required to register as principals.[42] Thus, we find that none of these arguments relieves Arouh of the obligation to register as a principal.

Arouh further argues that he was not a principal because he did not control STG within the meaning of Exchange Act Section 3(a)(18). He argues that he could merely advise and consult on firm business, not direct or cause the direction of STG's management or policies, and that STG management was free to accept or reject his advice. We have held, however, that "the fact that one is consulted about firm affairs may 'illustrate[] . . . influence in the management of the firm whether or not the views articulated prevail.'"[43] With respect to STG's bond business in particular, Weiner and Budner had strong incentives to follow Arouh's guidance, because Arouh, in his own assessment, "knew more about the business than [they] did."

Arouh argues that he was not a principal because he did not fall into one of the five categories enumerated in NASD Rule 1021(b) (sole proprietors, officers, partners, managers of offices of supervisory jurisdiction, and directors of corporations). He argues that he avoided the requirement to register as a principal by styling himself as a consultant or independent contractor. He further argues that, under Florida law, he was not a partner in STG because the record does not show that he agreed to share in STG's losses.

We reject these related arguments. The decisive factor is what Arouh did for STG, i.e., actively engaged in the management of its securities business, not what he was called.[44] FINRA has informed its members that "[a] registration determination does not depend on the individual's title, but rather on the functions that he or she performs."[45] Arouh's acknowledgment that he was "more a partner" than a consultant reflects the closeness of Arouh's affiliation with STG, whether

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[42] *Cf. Gordon*, 93 SEC Docket at 5101 (rejecting argument that "functions not involved in the chain of the securities transaction do not require registration as a principal").

[43] *Gordon*, 93 SEC Docket at 5102 (quoting *Sardinia*, 46 S.E.C. at 343).

[44] *See supra* note 36; *see also, e.g.*, *Books & Records Requirements for Brokers & Dealers Under the Securities Exchange Act of 1934*, Exchange Act Rel. No. 44992 (Nov. 2, 2001), 76 SEC Docket 433, 435 ("The Commission interprets the term associated person to include any independent contractor, consultant, franchisee, or other person providing services to a broker-dealer equivalent to those services provided by the persons specifically referenced in the statute." (footnote omitted)).

[45] NASD Notice to Members 99-49, 1999 NASD LEXIS 24, at *4.

or not he met the legal definition of a partner, and in any event, our determination that Arouh acted as a principal of STG is not based on a finding that he was a partner in STG.

Arouh argues that he maintained a distinction between his office and STG's offices; he occupied Suite 120, but STG occupied Suite 150.[46] But STG bond traders sat so close to Arouh that he could listen to them and exchange comments with them. In any event, the sharing of office space and the subsidy of Arouh's office space and related expenses by STG are only two of many factors that contribute to our determination that Arouh was required to register as a principal.[47]

We find that FINRA correctly concluded that Arouh acted as a principal of STG and therefore was associated with STG within the meaning of Exchange Act Section 3(a)(18) and FINRA By-Laws while the Bar Order was in effect.[48]

2. Supervisory Plan

We now turn our attention to Raymond James's proposed supervisory plan. Much of what the plan required is no different from the supervision the Firm afforded to all employees: review and approval of new account agreements, daily transactions with customers, daily cancels and corrects, incoming or outgoing hard copy correspondence, and emails to and from Arouh. The inclusion of these elements in the plan does not indicate the "stringent supervision" required when a firm employees a statutorily disqualified individual.[49] Additionally, the plan lacks detail: it does not explain how Specht would conduct his reviews, or what records would be kept of them. Nor

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[46] Arouh also asserts that he and STG did not share telephone lines.

[47] *Cf. Gordon*, 93 SEC Docket at 5102 (noting that Commission bases determination that registration as a principal is required on "all of the relevant facts and circumstances," and finding that a combination of functions may require that someone register as a principal, even if none of the functions, viewed in isolation, would have done so). Because our analysis depends on all the facts and circumstances, the absence of various factors found to support a determination that an individual acted as a principal in other cases does not preclude our finding that Arouh acted as a principal with respect to STG.

[48] Because Arouh's status as a principal establishes that he was an associated person, we need not address whether the record additionally shows that Arouh was an associated person either because he expected to receive transaction-based compensation or because he served as an intermediary in STG's potential acquisition of another broker-dealer. *See supra* note 27.

[49] *See, e.g.*, *Haberman*, 53 S.E.C. at 1031 ("We require . . . stringent supervision for a person subject to a statutory disqualification."); *Kufrovich*, 55 S.E.C at 629 (rejecting a proposed supervisory plan as lacking "a key component – stringent supervision").

does it explain how Specht would handle customer complaints, or what he would do if he detected exceptions.

The plan is further flawed because it lacks adequate provisions about supervision while either Arouh or Specht is traveling. It makes no special provisions for Arouh's supervision when he is away from the office and neither Specht, nor Sickling, nor Hoskin is able to hear his conversations or keep an eye on him. Although Specht testified that either Sickling or Hoskin was "generally" in the office when Specht was away, the plan does not say how supervisory responsibilities are to be allocated as between Sickling and Hoskin, nor does it say who is to assume supervisory responsibility if both Sickling and Hoskin are away. Moreover, although Hoskin would not be sitting on the trading floor with Arouh as Specht or Sickling would, the plan does not provide additional measures to compensate for this lack of proximity. The plan thus lacks sufficient elements and detail to demonstrate that the Firm would prevent and detect possible misconduct by Arouh.

Because of the seriousness of Arouh's intervening misconduct and the deficiencies in Raymond James's supervisory plan, we find that the grounds on which FINRA based its decision to deny the membership continuation application exist in fact.

B. Whether FINRA's Denial of the Application Was in Accordance with Its Rules

We also find that FINRA's denial of the application was in accordance with FINRA's rules, which provide for the denial of a firm's application to continue in membership if the firm employs a statutorily disqualified person. FINRA conducted an eligibility hearing in accordance with its rules, during which it afforded Arouh and the Firm an opportunity to be heard.[50]

Arouh argues that Member Regulation raised the argument that his relationship with STG constituted intervening misconduct that would warrant denial of the application for the first time at the hearing, and that Arouh was severely prejudiced because he had no opportunity to prepare a defense. Member Regulation briefly described Arouh's relationship with STG in its recommendation regarding the application, which was sent to Arouh's counsel several weeks before the hearing, although at that time it characterized the relationship as an aggravating

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[50] *See* FINRA By-Laws, Art. 3, § 3(d) (stating 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 a membership continuation 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 Raymond James filed its application before December 15, 2008, however, the NASD Rule 9520 series was applicable.

circumstance rather than intervening misconduct.[51] After the hearing, the panel asked the parties to supplement the record (1) by filing documentary evidence "demonstrating the specific timing" of any payments by STG to the Companies pursuant to the Consulting Agreements, (2) by clarifying, "with declarations, documentary evidence, stipulations, and/or citations to the record," when Arouh began and ceased providing services to STG, and (3) by filing briefs that addressed the question "whether Arouh was an 'associated person' of STG . . . and therefore violated the SEC's December 20, 2004 order," with particular respect to "the conduct of Arouh and the provisions of the Consulting Agreements that governed the compensatory structure of that relationship." In response, Arouh submitted an affidavit and documentary evidence pertaining to the timing of consulting services provided to STG and the receipt of payments from STG. He also submitted a brief arguing that the services he provided pursuant to the Consulting Agreements did not render him an "associated person" of STG. Under the circumstances, we find that the panel gave Arouh the opportunity to prepare a defense to the intervening misconduct allegation and that Arouh was not prejudiced.

Arouh argues that certain documents introduced by Member Regulation as attachments to a post-hearing brief are "nothing more than hearsay and statements of third parties."[52] We have repeatedly held, however, that hearsay is admissible in administrative proceedings, and we evaluate such evidence based on its probative value, its reliability, and the fairness of its use.[53] Although Arouh broadly objects that the documents are hearsay, he makes no specific arguments as to their reliability or probative value. Because Member Regulation submitted the documents after the hearing, the panel gave Arouh an opportunity to submit a declaration addressing issues

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[51] In its recommendation, Member Regulation identified as intervening misconduct only Arouh's failure to comply with the Commission's December 20, 2004 order to pay a $110,000 civil penalty until January 2007, after the Commission had filed a complaint seeking an order requiring Arouh to comply. FINRA did not base its decision as to the Application on this ground.

[52] These include an assortment of STG internal e-mails, the personal compliance log of STG's compliance officer for the period from February 14, 2005 to March 28, 2005, and a memorandum from STG's compliance officer to "All Committee Members."

[53] *E.g., Harry Gliksman*, 54 S.E.C. 471, 480 (1999), *aff'd*, 24 Fed. App'x 702 (9th Cir. 2001) (unpublished).

raised by the documents, and he in fact submitted such a declaration.[54] For these reasons, we reject Arouh's argument that the documents should not be considered.

Arouh also argues that Member Regulation acted unfairly in introducing, as an attachment to its post-hearing brief, a transcript of his off-the-record ("OTR") testimony taken in 2005. FINRA staff took Arouh's testimony in connection with NASD's 2005 investigation of STG, and Arouh had not previously reviewed it. Under NASD rules, witnesses such as Arouh do not routinely receive transcripts of their testimony, although they may do so upon written request of counsel, unless there is good cause to deny the request.[55] Arouh does not argue, and the record does not show, that his counsel submitted a request for the transcript. Moreover, the hearing panel allowed Arouh to address issues raised by the transcript by either seeking to re-open the hearing or (as he chose) by submitting declaration. Under these circumstances, we reject his argument that the use of the transcript is unfair.[56]

C. Whether FINRA's Rules Are, and Were Applied in a Manner Consistent with, the Exchange Act

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.[57] For FINRA's denial of an

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[54] Arouh had objected to Member Regulation's submission of these materials after the hearing, arguing that "[i]ntroducing these Exhibits this late in the proceedings evidences either Member Reg's intent to unfairly surprise Arouh and thereby deprive him of his right to present a defense or indicates Member Reg's failure to conduct a diligent inquiry into the evidence they intended to use." The hearing panel stated that it was "troubled by Member Regulation's post-hearing submission of exhibits," but it denied Arouh's motion to strike the exhibits, stating that "[i]nclusion, rather than exclusion, of all relevant evidence is preferred, and it is clear that the newly proposed evidence may have some relevance to the 'associated person' issue." In order to ensure fairness, however, the hearing panel allowed Arouh to either file a motion for an additional hearing, or serve documentary evidence, including declarations, on Member Regulation and FINRA's Office of General Counsel. Arouh chose to submit the declaration.

[55] NASD Rule 8410(f). Rule 8410, like NASD's Rule 9520 series, became part of the FINRA consolidated rulebook after Raymond James filed its application. *See supra* note 50 (discussing development of consolidated rules).

[56] We also note that Arouh relies on the transcript in his briefs to the Commission.

[57] 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

(continued...)

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.'"[58] In cases like Arouh's, where a statutorily disqualified person has applied for permission to associate after a sanction of specified duration has run its course, we have held that it would be inconsistent with the remedial purposes of the Exchange Act and unfair to deny the application solely on the basis of the misconduct that led to the original sanction.[59] The application may be denied, however, if there is new information "reflecting adversely on [the applicant's] ability to function in his proposed employment in a manner consonant with the public interest."[60]

FINRA based its denial of the application on new information – Arouh's association with STG in violation of the Bar Order. FINRA found that Arouh's association with STG was "a serious, and possibly egregious, violation that shows that he remains a serious threat to the public and the markets, and warrants the denial of [the] application." FINRA based this conclusion on its findings that Arouh acted recklessly by seeking to remain involved in the securities industry while the Bar Order was in effect, that his misconduct continued for approximately two months, and that his association with STG resulted in at least $75,000 in monetary gain, with the potential for more. FINRA also found Raymond James's supervisory plan inadequate because it lacked sufficient detail to ensure that the Firm would prevent and detect possible misconduct by Arouh.

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."[61] We have also afforded FINRA discretion in determining whether persons subject to statutory disqualification should be permitted to associate with a member firm.[62] As we have previously stated, we consider violation of a bar order very serious

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[57] (...continued)
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.").

[58] *Timothy P. Pedregon*, Exchange Act Rel. No. 61791 (Mar. 26, 2010), 98 SEC Docket 26802, 26811 (quoting *Kufrovich*, 55 S.E.C. at 625).

[59] *Paul Edward van Dusen*, 47 S.E.C. 668, 671 (1981).

[60] *Id*.

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

[62] *E.g., Am. Inv. Servs.*, 54 S.E.C. 1265, 1271 & n.16 (2001); *Halpert & Co.*, 50 (continued...)

misconduct.[63] We agree with FINRA that the seriousness of Arouh's misconduct militates against allowing the Application.

We also find that the deficiencies in Raymond James's supervisory plan counsel against allowing the Application. In many respects, the plan simply describes the Firm's normal supervisory procedures. It lacks details as to how even those procedures would be implemented. Moreover, the lack of specific supervisory coverage when Specht or Arouh is out of the office is a serious flaw. As we have previously recognized, "a supervisory plan lacks the necessary intensive scrutiny when the supervisor will not be in close, physical proximity to the statutorily disqualified person."[64] We therefore find that, in denying the Application, FINRA applied its rules in a manner consistent with the Exchange Act.

Arouh argues that even if he was associated with STG, his actions did not violate Section 15(b)(6) of the Exchange Act because his conduct was not willful. It is well established that a person acted "willfully" within the meaning of Section 15(b)(6) if he or she intended to commit the act that constituted the violation, whether or not he or she intended to violate the securities laws.[65] Arouh does not deny that he intended to perform the services for STG described above, and thus we find his conduct to be willful.

Arouh contends that he "conducted a reasonable and diligent investigation into the scope of the Bar Order" and "conducted a reasonable inquiry and relied on the advice of counsel." He argues that this reliance constitutes at least a mitigating, if not an exonerating, factor.

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[62] (...continued)
S.E.C. 420, 422 (1990).

[63] *Kirk A. Knapp*, 50 S.E.C. 858, 864 (1992) (finding that majority owner of an NASD member firm engaged in "very serious misconduct" when he, among other things, "flouted the NASD's bar by exercising a managerial role in the firm"); *cf. David C. Ho*, Exchange Act Rel. No. 54481 (Sept. 22, 2006), 88 SEC Docket 3194, 3203 (affirming sanctions imposed by Chicago Board Options Exchange, Inc. ("CBOE"), in part because of individual's "disregard for CBOE's disciplinary authority in violating his suspension").

[64] *Timothy H. Emerson, Jr.*, Exchange Act Rel. No. 60328 (July 17, 2009), 96 SEC Docket 18882, 18890; *see also Kufrovich*, 55 S.E.C. at 628-29 (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).

[65] *See, e.g., John D. Audifferen*, Exchange Act Rel. No. 58230 (July 25, 2008), 93 SEC Docket 8129, 8138; *Wonsover v. SEC*, 205 F.3d 408, 413 (D.C. Cir. 2000).

In the context of disciplinary proceedings, we have held that to successfully assert reliance on the advice of counsel, a respondent must establish "that the respondent made full disclosure to counsel, appropriately sought to obtain relevant legal advice, obtained it, and then reasonably relied on the advice."[66] The advice must be based on full and complete disclosure,[67] and the respondent asserting reliance must produce "'actual advice from an actual lawyer.'"[68] Applying these standards, we find that Arouh failed to establish reasonable reliance on competent legal advice.

Arouh asked counsel for an opinion about "the scope of his future permissible activities in the event the Commission refused to consider its decision" in or around early January 2005, while he was still associated with Raymond James.[69] The attorney informed Arouh orally about his findings. However, there is not enough evidence about either the disclosure Arouh made, or the oral advice he obtained, to establish that Arouh relied on that advice.

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[66] *Howard Brett Berger*, Exchange Act Rel. No. 58950 (Nov. 14, 2008), 94 SEC Docket 11615, 11630.

[67] *Id.*; *see also Hal S. Herman*, 55 S.E.C. 395, 403 (2001) (finding no reliance on advice of counsel where respondent could not establish that he made full disclosure to counsel); *accord Dolphin & Bradbury, Inc. v. SEC*, 512 F.3d 634, 642 (D.C. Cir. 2008) ("'Reliance on advice of counsel will not be available to the defendant if he failed to disclose all relevant facts to the attorney.'") (quoting Douglas W. Hawes & Thomas J. Sherrard, *Reliance on Advice of Counsel as a Defense in Corporate and Securities Cases*, 62 Va. L. Rev. 1, 29 (1976)).

[68] *Berger*, 94 SEC Docket at 11631 (quoting *SEC v. McNamee*, 481 F.3d 451, 456 (7th Cir. 2007); *accord Eugene T. Ichinose*, 47 S.E.C. 393, 395 (1980) (finding that respondent could not rely on advice of counsel where record did not "show with any specificity what advice he may have received" from counsel).

[69] Arouh seeks to introduce new evidence in the form of law firm billing records for January 2005, with an accompanying sworn statement of counsel. The billing records show that Arouh's attorney spent one hour on "[a]nalysis of consulting agreements" on January 21, 2005 and one hour on "[r]eceipt and review and analysis of contracts review of comments from STG's counsel" on January 27, 2005. The billing records do not show what Arouh told counsel or what advice counsel gave to Arouh.

Rule 452 of our Rules of Practice, 17 C.F.R. § 201.452, allows us to accept additional evidence if (1) it is material and (2) there were reasonable grounds for failure to adduced such evidence previously. We find that Arouh did not have reasonable grounds for having failed to introduce this evidence at an earlier stage of this proceeding, but we nevertheless admit it as an exercise of discretion.

Nor do the letters from counsel dated March 28 and April 4, 2005 prove that Arouh reasonably relied on advice of counsel. First, the letters were written after Arouh had been providing services to STG for more than a month.[70] They do not establish that Arouh reasonably relied on the advice of counsel during the period before they were written. In addition, neither letter shows that Arouh completely disclosed to counsel the services he provided to STG. The March 28 letter mentions only the provision of "recruitment and/or training services for broker/dealer salespersons," services that Arouh was to provide pursuant to the Consulting Agreement with STG Inc. The letter is silent as to the broader array of management consulting, investment advisory, and asset management services enumerated in the Consulting Agreement with STG LLC. The April 4 letter contains a more expansive list of services that might be permitted, stating that "providing consulting services – for example, with regard to mergers and acquisitions, strategic alliances and growth planning," did not appear to involve "association" within the meaning of Section 3(a)(18),[71] but it does not indicate that Arouh disclosed the full extent of his contemplated activity. Neither letter indicates that Arouh disclosed to counsel the services he had already provided to STG; neither letter mentions the Consulting Agreements.

Both the March 28 letter and the April 4 letter advised Arouh that some activities might be permissible. However, each letter cautioned Arouh that the letter contained only a "broad overview of the limitations imposed by the Bar Order, and possible opportunities for your engagement with STG," and warned that Arouh should not simply rely on the letter without further inquiry:

> [T]he lack of clarity in the statutes and case law on this subject does not allow us to provide you with definitive advice on most points. Therefore, it is very important that you consult with us prior to engaging in any activity (other than those specifically discussed

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[70] Although the log maintained by STG's compliance officer shows that, as of February 24, 2005, Weiner "claim[ed] to have gotten three opinions" stating that Arouh's relationship with STG was "compliant," none of these are in the record, and as of March 18, 2005, the compliance officer had still not seen any of them.

A January 30, 2008 letter to a FINRA Deputy Regional Chief Counsel stated that Arouh's attorney prepared the March 28, 2005 letter in response to Arouh's request that he document his oral advice. To the extent the March 28, 2005 letter reflects the advice Arouh received in January 2005, that advice was not specific enough for Arouh reasonably to rely on it going forward with the services he provided to STG, as discussed below.

[71] Both letters provided advice as to activities that Arouh should avoid; the April 4 letter also provided a list of activities that Arouh was "clearly not permitted to engage in."

> above) that may be construed as involving association with broker/dealers so that we can re-examine the authorities in light of specific proposed fact situations.[72]

Arouh failed to show that he brought such specific fact situations to the attention of counsel, or received advice that his involvement in those situations would not constitute association. In light of these facts, we find that Arouh could not have reasonably relied on the advice of counsel when he provided the services at issue to STG.

Arouh argues that, by his attorney's letter of April 11, 2005, he disclosed his activities in connection with STG to FINRA's predecessor, NASD, and that he thereafter reasonably relied on the lack of any response in assuming that NASD found his activities unobjectionable. "We have repeatedly held that members and their associated persons 'cannot shift their burden of compliance to the NASD.'"[73] Moreover, the letter notifying NASD of Arouh's involvement with STG was written only a few weeks before the end of the two-month period at issue. Arouh's alleged reliance on the lack of a response could have no bearing on his conduct between February 25 and April 11. Additionally, the April 11 letter contains only general descriptions of Arouh's activities: it does not mention his leadership in developing STG's fixed income business, his recruitment of traders, his travel on behalf of STG, or his interviewing of and recommendations about potential new hires and acquisition targets. Any implicit approval would therefore have been too general to establish that FINRA had no objection to Arouh's conduct.

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We find that FINRA's basis for denying Raymond James's application to continue in membership with Arouh as Senior Vice President, Taxable Fixed Income Sales, exists in fact, and

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[72] The quoted passage is from the April 4 letter; the language in the March 28 letter is similar.

[73] *Hans Beerbaum*, Exchange Act Rel. No. 55731 (May 9, 2007), 90 SEC Docket 1863, 1871 n.22 (quoting *B.R. Stickle & Co.*, 51 S.E.C. 1022, 1025 (1994)); *see also, e.g., Kirk A. Knapp*, 50 S.E.C. at 862 n.15 (holding that president of brokerage firm "cannot shift his responsibility for compliance with regulatory requirements to . . . the NASD" (citing *Steven C. Pruette*, 46 S.E.C. 1138, 1141 (1978))); *cf. Apex Fin. Corp.*, 47 S.E.C. 265, 267 (1980) (holding that broker-dealer "cannot shift its responsibility for compliance . . . to regulatory authorities" (citations omitted)).

In February 2008, in response to an inquiry from Arouh's counsel, FINRA's Department of Enforcement advised that it would not take any action against Arouh at that time for his 2005 conduct with respect to STG. That decision was an exercise of prosecutorial discretion and did not constitute a determination as to whether Arouh was associated with STG in 2005 while the Bar Order was in effect or whether any subsequent attempt to associate with a member firm was in the public interest.

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.[74] Arouh engaged in serious intervening misconduct by associating with STG while the Bar Order was in effect. Faced with a Commission order intended to protect the investing public and the markets, Arouh sought to avoid its impact by styling himself as a "consultant," avoiding the formal titles that would have marked him as a principal. He actively involved himself in the management of STG, hoping to match the remuneration he had enjoyed in prior positions in the securities industry and to someday acquire an ownership interest in STG's holding company. He received a $75,000 signing bonus, and he maintained the relationship with STG for approximately two months, abandoning it only when he was not paid as promised. By disregarding the terms of the Bar Order, Arouh put his personal interests above those of the investing public.

We find that Raymond James's proposed supervisory plan was inadequate because it lacked sufficient elements and details to ensure that the Firm would prevent and detect possible misconduct by Arouh. The plan contains few details about the proposed reviews, and it fails to provide adequately for in-person supervision of Arouh when either Arouh or Specht is traveling.

For these reasons, we conclude that Arouh's proposed association with Raymond James would pose an unreasonable risk of harm to investors and the markets. We further conclude that Arouh has not established that it is in the public interest to permit his re-entry into the securities industry as Senior Vice President, Fixed Income Sales at Raymond James. We therefore dismiss this review proceeding. An appropriate order will issue.[75]

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

Elizabeth M. Murphy
Secretary

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[74] We also find that FINRA's action imposed no undue burden on competition. *See supra* note 29 and accompanying text (discussing requirements of Exchange Act Section 19(f), 15 U.S.C. § 78s(f)).

[75] 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. 62898 / September 13, 2010

Admin. Proc. File No. 3-13701

In the Matter of the Application of

LESLIE A. AROUH

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 Leslie A. Arouh be, and it hereby is, dismissed.

By the Commission.

Elizabeth M. Murphy
Secretary