

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 53796 / May 12, 2006

Admin. Proc. File No. 3-12094

In the Matter of the Application of

MAY CAPITAL GROUP, LLC

and

MELVIN ROKEACH

c/o Michael Beckman, Esq.
Beckman, Lieberman & Barandes, LLP
116 John Street, Suite 1313
New York, New York 10038

For Review of Action Taken by

NASD

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DENIAL OF
MEMBERSHIP CONTINUANCE APPLICATION

Registered securities association denied member's application to permit employment of individual subject to a statutory disqualification. Held, review proceeding is remanded.

APPEARANCES:

Michael Beckman, of Beckman, Lieberman & Barandes, LLP, and Marc S. Gottlieb, of the Law Offices of Marc S. Gottlieb, for May Capital Group, LLC and Melvin Rokeach.

Marc Menchel, Alan Lawhead, and Deborah F. McIlroy, for NASD.

Appeal filed: October 28, 2005
Last brief received: January 27, 2006

I.

May Capital Group, LLC ("May Capital"), an NASD member firm, and Melvin Rokeach, an individual subject to a statutory disqualification (collectively, "Applicants"), appeal from the denial of a membership continuance application seeking permission for Rokeach to associate with May Capital as an investment company products/variable contracts representative. 1/ To the extent we make findings, we base them on an independent review of the record.

II.

A. Rokeach's statutory disqualification stems from his willful failure to disclose a felony conviction on a "Form U-4 Uniform Application for Securities Industry Registration or Transfer" and willful misrepresentation of that conviction as a misdemeanor on an amendment to the Form U-4. 2/ In October 1999, Rokeach failed to disclose on a Form U-4 filed on his behalf by Park Avenue Securities, LLC ("Park Avenue") 3/ that, in 1987, he pled guilty to one count of filing a false tax return in violation of 26 U.S.C. § 7206(1), a felony. 4/ In May 2000, Rokeach included information about the conviction on an amendment to that Form U-4, but misrepresented that his conviction involved a misdemeanor.

Rokeach failed to disclose his felony conviction on applications for insurance registration as well as on the Form U-4 and amended Form U-4. Between September 1999 and August 2000, Rokeach failed to disclose his felony conviction on applications for insurance registration with

1/ Section 15A(g)(2) of the Securities Exchange Act of 1934 gives NASD the authority to bar a person who is subject to a "statutory disqualification" from becoming associated with any of its members. 15 U.S.C. § 78o-3(g)(2). Under NASD By-Laws Article III, Section 3(b), a person "subject to a disqualification" cannot become or remain associated with an NASD member unless the disqualified person's member firm applies for relief from the disqualification under Article III, Section 3(d) of the By-Laws.

2/ A person is subject to a disqualification with respect to association with a member if, among other things, such person "has willfully made . . . in any application . . . to become associated with a member of a self-regulatory organization" "any statement which was at the time, and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application . . . any material fact which is required to be stated therein." See Exchange Act Section 3(a)(39)(F), 15 U.S.C. § 78c(a)(39)(F), and NASD By-Laws Article III, Section 4(f).

3/ Rokeach's registration with Park Avenue was his first entry into the securities industry.

4/ Rokeach reported taxable personal income of \$15,061 on his 1981 federal income tax return. The correct amount was \$48,879.

the states of New York, Connecticut, and Florida, and with the Guardian Life Insurance Company ("Guardian"). 5/

In December 2001, after "certain regulatory disclosures came to [its] attention, subsequent to his hire," Park Avenue placed Rokeach under heightened supervisory conditions. A subsequent examination of Rokeach's securities business by Park Avenue revealed that Rokeach violated certain firm policies regarding review of correspondence and seminars. 6/ Park Avenue discharged Rokeach on January 30, 2003, based on these activities, and filed a Form U-5 "Uniform Termination Notice for Securities Industry Registration" reporting that termination on February 4, 2003.

Rokeach filed a Form U-4 application for registration with May Capital on February 12, 2003. He disclosed his felony conviction on this application. Rokeach also disclosed the investigations of him by the states of Florida and New York for failing to disclose his felony conviction on their applications for insurance registration.

On November 24, 2003, NASD accepted Rokeach's submission of a Letter of Acceptance, Waiver, and Consent ("AWC") containing the findings that 1) Rokeach willfully failed to disclose his felony conviction on the Form U-4 filed on his behalf by Park Avenue and 2) Rokeach misrepresented on an amendment to that Form U-4 that his conviction involved a misdemeanor when he "knew or should have known" that the conviction involved a felony. 7/ The AWC specified explicitly that "Rokeach understands . . . he is therefore subject to a statutory disqualification with respect to association with a member." Rokeach consented to a six-month suspension from associating with any NASD member firm in any capacity. 8/ NASD imposed the suspension from January 5, 2004 to July 4, 2004.

B. On July 30, 2004, after Rokeach signed the AWC and served his suspension, May Capital filed a membership continuance application with NASD seeking to permit Rokeach to continue associating with it despite Rokeach's statutory disqualification. 9/ May Capital is engaged in

5/ On February 26, 2002, Florida placed Rokeach on probation for one year and imposed a \$1,500 fine, and New York imposed a \$500 fine on July 30, 2002.

6/ Rokeach "sen[t] correspondence that did not go through compliance."

7/ The AWC did not discuss Rokeach's failure to disclose his conviction on any of the applications for insurance registration or the sanctions imposed by Florida and New York.

8/ Rokeach also consented to a fine in the amount of \$7,500.

9/ May Capital has no formal disciplinary history. In 2003, following a routine examination, NASD issued a Letter of Caution to May Capital for certain failures having
(continued...)

retail sales of mutual funds and acts as a broker or dealer selling "variable life insurance or annuities" and "tax shelters or limited partnerships in primary distributions." May Capital employs one registered principal and two registered representatives and seeks to employ Rokeach as an investment company products/variable contracts representative. 10/

May Capital proposed that Rokeach work out of its office in New York City and that his work be supervised by Lawrence May, May Capital's president. 11/ Rokeach's office would be next door to May's office, May would receive and open all of Rokeach's mail, and May would review and approve all correspondence, mail, faxes, and e-mail sent out by Rokeach to his clients. 12/ The application stated further that Rokeach would not have any supervisory duties and would be compensated only through commissions.

On April 5, 2005, NASD's Department of Member Regulation ("Member Regulation") recommended denying the application. 13/ Member Regulation found that Rokeach's failures to disclose his felony conviction on the Form U-4, on the amendment to the Form U-4, and on the applications for insurance registration evinced "a troubling trail of serious dishonest

9/ (...continued)

to do with continuing education requirements, and for failing to file a Form U-5 within thirty days of an individual's termination. The record indicates that the firm corrected these deficiencies promptly.

10/ Initially, NASD believed May Capital sought to employ Rokeach as a general securities representative, but May Capital subsequently clarified that "[a]lthough Mr. Rokeach has a series 7 license, [May Capital was] not approved for general securities business and therefore we are not seeking to employ him as a general securities representative."

11/ Lawrence May has no disciplinary history. He testified that Rokeach would be "the only individual that I would be supervising." May testified further that he knew "heightened supervisory requirements" applied to Rokeach, that he would "have a consulting firm that will advise me what has to be done so we're not in any violation," and that he understood supervising Rokeach constituted "an additional burden" that he did not take lightly because he probably had "more to lose than I do to gain."

12/ May Capital's written supervisory procedures for disqualified persons also state that May will review and approve, and keep a written record evidencing such review and approval of, the disqualified individual's correspondence, transactions, and new accounts, that May will meet with the disqualified individual on a quarterly basis and keep a log of these meetings, and that all customer complaints pertaining to the disqualified individual will be immediately reviewed, investigated, and documented.

13/ NASD Procedural Rule 9523(a) directs Member Regulation to review such an application in light of the member firm's proposed plan of supervision for the disqualified person.

misconduct." Member Regulation also noted that Rokeach's conviction involved financial fraud, that Rokeach's termination from Park Avenue evidenced Rokeach's inability to act responsibly, and that Rokeach's disqualifying event, the AWC, occurred recently. Member Regulation recognized that May had no disciplinary history and the firm had no formal disciplinary history, 14/ but found these factors outweighed by "the risk to investors presented by Rokeach's recent disqualifying event and history of dishonest actions." Member Regulation concluded that permitting Rokeach's employment in the securities industry would not be in the public interest and would create an unreasonable risk of harm to the market or investors.

On April 19, 2005, a Hearing Panel of NASD's Statutory Disqualification Committee conducted a hearing on the membership continuance application. 15/ At the hearing, Rokeach testified initially that he failed to disclose his felony conviction "three times," in documents filed with "Florida, New York, and NASD," but later admitted, after questioning by Member Regulation, that he also did not disclose the conviction on the Connecticut and Guardian applications. 16/ Rokeach acknowledged repeatedly that he acted inappropriately by making all these omissions. He explained that on the amended Form U-4 he stated that he pled guilty to a misdemeanor because he "saw nothing that stated that it was a felony." 17/ Rokeach testified further that, although "the original applications, in fact, were not correct," he "disclosed to every one of these agencies" after his original error that "in fact [he] was convicted of a felony." 18/

On September 29, 2005, NASD's National Adjudicatory Council ("NAC") issued a decision denying the membership continuance application. 19/ The NAC, as an initial matter,

14/ See *supra* note 9.

15/ NASD Rule 9524 provides that the National Adjudicatory Council or Review Subcommittee shall, upon the request of the disqualified member, sponsoring firm, or applicant, appoint a Hearing Panel to conduct a hearing and recommend a decision.

16/ Rokeach noted that he disclosed the felony conviction on a New Jersey application.

17/ Rokeach added that none of the documents he looked at "specifically say or state felony" but that "it's not an excuse" and that he "was wrong" and "should know that it's a felony."

18/ Rokeach also acknowledged that the AWC stated that he was subject to a disqualification and that he signed the AWC knowingly. He thought, based on conversations with his then-counsel, that he would be allowed back into the industry after he served his suspension as long as he didn't have any "intervening actions." The record reveals that Rokeach has not been subject to any disciplinary actions since he signed the AWC.

19/ NASD Rule 9524(b)(1) provides that the NAC should grant or deny the request for relief. Rule 9524(a)(10) provides that the Hearing Panel should submit a written

(continued...)

rejected Rokeach's argument that the Commission's decision in Paul Edward Van Dusen ^{20/} governed its analysis. According to the NAC, Van Dusen held that, where "an individual is applying to re-enter the securities industry after previously having been subject to a permanent injunction and a bar by the Commission, with a right to reapply, . . . NASD should not again consider the individual's underlying misconduct when it evaluates a statutory disqualification application." The NAC found this standard inapplicable to this proceeding because "[h]ere, NASD's Department of Enforcement -- not the Commission -- was the entity that took action on the misrepresentations contained in Rokeach's Form U4 and amended Form U4." The NAC concluded, therefore, "that the restrictive analysis of Van Dusen does not apply in this matter and that we must consider all of the factors concerning Rokeach's statutory disqualification, including the events that led to the November 2003 AWC."

The NAC found, after "examin[ing] all the evidence presented in this matter," that "May Capital has not demonstrated that Rokeach is willing and able to operate responsibly in the securities industry at this time." According to the NAC, Rokeach had a "propensity for misrepresenting his past" and a "continuing inability to acknowledge his history of misrepresenting facts about his background to regulators." The NAC highlighted the misconduct underlying the AWC, the "misrepresentations in numerous applications for insurance registration" "at the same time Rokeach was filing false Form U4 information with securities regulators," and Rokeach's initial failure at the hearing to acknowledge his omissions in the Connecticut and Guardian insurance applications. Additionally, the NAC considered that Park Avenue's termination of Rokeach for failure to comply with heightened supervisory conditions indicated that he "may not be able to comply with heightened supervisory conditions placed on him if he were to be permitted to associate with May Capital." ^{21/} The NAC thus concluded that "it is not in the public interest, and would create an unreasonable risk of harm to the market or investors, for Rokeach to become associated with May Capital." This appeal followed.

^{19/} (...continued)
 recommendation to the Statutory Disqualification Committee and that the committee should consider the recommendation and itself present a written recommendation to the NAC. The record contains neither recommendation, but the NAC, in its denial of the membership continuance application, stated that both the Hearing Panel and Statutory Disqualification Committee provided the requisite recommendations.

^{20/} 47 S.E.C. 668 (1981).

^{21/} The NAC also noted that the conviction "was financially related and involved deceitful misconduct" and that the AWC "occurred very recently."

III.

Our review is governed by the standards set forth in Section 19(f) of the Securities Exchange Act of 1934. 22/ We must dismiss Applicants' appeal if we find that the specific grounds on which NASD based its action exist in fact, that the action is in accordance with NASD rules, that NASD applied those rules in a manner consistent with the purposes of the Exchange Act, and that NASD's action does not impose an undue burden on competition. 23/

A. NASD based its denial of the application on Rokeach's failure to disclose his felony conviction to securities and insurance regulators, his failure to acknowledge all these omissions before the Hearing Panel, and his termination from Park Avenue Securities. Applicants do not dispute Rokeach's multiple failures to disclose his conviction or to acknowledge these omissions before the Hearing Panel, and the record confirms this misconduct.

Applicants object that NASD "erroneously concluded that Rokeach's termination from Park Avenue Securities was based solely upon his failure to comply with Park Avenue's policies and procedures" whereas the termination "was based, in part, upon the very violations that led to Rokeach's disqualification." Rokeach's Form U-5 establishes that, although the false U-4 filings triggered Park Avenue's special supervision of Rokeach, Park Avenue terminated Rokeach based on his correspondence and seminar review violations. 24/ Moreover, Applicants do not explain where NASD concludes that the termination was based solely on these latter violations or why NASD could not consider these violations if the termination was also based on the misconduct underlying the AWC. Applicants do not dispute that Rokeach committed the correspondence

22/ 15 U.S.C. § 78s(f).

23/ Id.; see also Harry M. Richardson, Securities Exchange Act Rel. No. 51236 (Feb. 22, 2005), 2005 SEC LEXIS 414, at *5. Applicants do not claim, and the record does not support a finding, that NASD's action imposes an undue burden on competition.

24/ The Form U-5 states: "Mr. Rokeach was placed on special supervision after certain regulatory disclosures came to our attention, subsequent to his hire by [Park Avenue]. During a recent examination of his securities business, it was determined that he had violated certain firm policies in regard to correspondence review and seminar review. The decision to terminate was based on these violations."

and seminar review violations. 25/ Accordingly, the grounds on which NASD based its action exist in fact. 26/

B. Applicants do not dispute that NASD followed its rules in reviewing the application. Member Regulation considered the application in accordance with NASD Rule 9523(a), the NAC appointed a Hearing Panel to conduct a hearing and recommend a decision in accordance with Rule 9524, and the Hearing Panel submitted its written recommendation to the Statutory Disqualification Committee which considered the panel's recommendation and presented its own recommendation to the NAC in accordance with Rule 9524(a)(10). Accordingly, NASD conducted its review of the application in accordance with its rules.

C. One of the purposes of the Exchange Act that Section 19(f) requires us to consider is fairness. 27/ Thus, we have previously analyzed whether NASD applied its rules in a manner consistent with the purposes of the Exchange Act in denying a membership continuance application by "determin[ing] whether or not [NASD's] application of its rules was 'unfair.'" 28/ Applicants argue that NASD's action is inconsistent with the purposes of the Exchange Act because NASD improperly refused to apply Van Dusen to this case and NASD should have approved the membership continuance application under the principles articulated in Van Dusen. NASD responds that it need not apply those standards here because NASD, rather than the Commission, imposed the suspension for the underlying misconduct.

Although NASD notes accurately that Van Dusen is not controlling because NASD, rather than the Commission, imposed Rokeach's suspension, 29/ Van Dusen's rationale supports

25/ Applicants acknowledge in their brief that "Rokeach's conduct may have involved technical violations of the firm's policies and procedures."

26/ Applicants contend further that NASD inferred improperly from Rokeach's Form U-5 that his "violations of [Park Avenue's] policies and procedures were far more egregious than what these violations actually entailed." According to Applicants, "the true facts do not reveal anything remotely as nefarious" as NASD "make[s] it seem in [its] findings." NASD did not depict the violations as "nefarious." It also drew no inferences from the record. It noted simply that "Park Avenue terminated Rokeach for failing to follow 'certain firm policies in regard to correspondence review and seminar review.'"

27/ Stephen R. Flaks, 46 S.E.C. 891, 895 n.8 (1977) ("Fairness is thus one of those 'purposes of this title' that Section 19(f) admonishes us to keep in mind.").

28/ Van Dusen, 47 S.E.C. at 670; Arthur H. Ross, 50 S.E.C. 1082, 1085 & n.11 (1992).

29/ Van Dusen involved a statutorily disqualified individual subject to a bar with a right to reapply imposed by the Commission. 47 S.E.C. at 671. Subsequently, the Commission

(continued...)

applying its holding here. In Van Dusen, we reasoned that where the Commission previously imposed a bar with a right to reapply, it was unfair, in the absence of new information, to deny a membership continuance application, once the right to reapply commenced, on the sole basis of the underlying misconduct. ^{30/} Subsequent decisions explained that, because "an analysis of public interest requirements based solely on the underlying misconduct has already been performed," "an application to associate after the time determined to be in the public interest has expired requires a different analysis." ^{31/} Here, NASD itself determined that the underlying misconduct warranted a six-month suspension. ^{32/} We believe that it is no less unfair for NASD to deny a membership continuance application on the sole basis of that misconduct where it, rather than the Commission, previously imposed the suspension or bar with a right to reapply. NASD's evaluation of a membership continuance application made after the expiration of that suspension cannot rely solely on that same underlying misconduct.

An additional consideration influencing our application of the Van Dusen standards to cases where the Commission imposes a suspension or bar with a right to reapply for misconduct supports the application of Van Dusen here. As we have noted,

If persons contemplating settlements with the Commission know that SROs, through denial of reentry applications, may, in effect, routinely extend those persons' bar from the securities industry beyond the period after which the settlement would allow them to reapply, based solely on the misconduct leading to the settlement, the incentive to settle

^{29/} (...continued)
held that Van Dusen applied to the membership continuance applications of any statutorily disqualified person whose disqualifying conduct resulted in administrative sanctions imposed by the Commission. Reuben D. Peters, Exchange Act Rel. No. 49819 (June 7, 2004), 82 SEC Docket 3959, 3968; see also Reuben D. Peters, Order Denying Motion for Reconsideration, Exchange Act Rel. No. 51237 (Feb. 22, 2005), 84 SEC Docket 3497, 3499-3500 (noting that, whereas Van Dusen and Ross involved conditional bars imposed by the Commission, Peters extended the analysis to applications for reentry after the period of a Commission-imposed suspension).

^{30/} See Van Dusen, 47 S.E.C. at 670-71.

^{31/} See, e.g., Richardson, 2005 SEC LEXIS 414, at *14.

^{32/} In Van Dusen, we stated that, "[w]hether taken by this Commission or the NASD, the purpose of all [disciplinary actions under the Exchange Act] is remedial, not penal. They are not designed to punish, but to protect the public interest against further risk of harm." 47 S.E.C. at 671 (citing Commonwealth Secs. Corp., 44 S.E.C. 100, 101-02 (1969) (stating that sanctions should "afford investors protection without visiting upon the wrongdoers adverse consequences not required in achieving the statutory objectives"))).

would diminish markedly. . . . Settlement terms should be administered in accordance with the fair expectations of the settling parties. 33/

While NASD's enforcement program, including its efforts to settle appropriate cases, is within its administrative purview, we believe the considerations addressed in Richardson are relevant to NASD's use of settled proceedings in the context of reentry applications. 34/

NASD highlights our past statement in Richardson that "different considerations may apply" "[w]here an initial public interest determination was made by an entity other than the Commission." 35/ This statement, however, referred to our belief that NASD might not be bound by the initial public interest determination of another self-regulatory organization, as opposed to that of the Commission. 36/ Where NASD itself determines that misconduct warrants a suspension or bar with a right to reapply, it would be inconsistent with the purposes of the Exchange Act, for the reasons outlined above, for NASD to thereafter deny a membership continuance application solely on the basis of the same misconduct. Accordingly, we hold that the principles articulated in Van Dusen also apply to the membership continuance applications of statutorily disqualified individuals whose statutory disqualifications result from enforcement action undertaken by the self-regulatory organization evaluating the application.

NASD stated explicitly that it did not conduct its evaluation of the membership continuance application in accordance with Van Dusen. We are unable, therefore, to determine

33/ Richardson, 2005 SEC LEXIS 414, at *18 & n.32. NASD stresses repeatedly that Rokeach consented to findings that he acted willfully and was subject to a statutory disqualification as a result. These findings, however, only require Rokeach to apply for relief from the disqualification. See supra notes 1 & 2. They do not, in and of themselves, serve as a basis for the denial of such an application.

34/ NASD argues that "[t]he AWC evidences the agreement between Enforcement and Rokeach that he would be subject to the full process that NASD ordinarily applies to statutorily disqualified individuals." This process, however, is subject to Commission oversight. See Richardson, 2005 SEC LEXIS 414, at *15 n.26 (noting that self-regulatory organizations "exercise authority subject to [Commission] oversight" and "have no authority to regulate independently of the [Commission's] control") (quoting S. Rep. No. 94-75, at 23). "To the extent that NASD by-laws might allow consideration of [applicant's] underlying misconduct beyond that permitted under Commission precedent, Commission precedent controls." Richardson, 2005 SEC LEXIS 414, at *15 n.26.

35/ Richardson, 2005 SEC LEXIS 414, at *8 n.14.

36/ See Ross, 50 S.E.C. at 1085 n.13 (stating that "the [New York Stock Exchange's] settlement of its disciplinary action should not bind the NASD in discharging its function of determining whether [applicant] is fit to re-enter the supervisory sphere").

whether its denial of the application is consistent with the purposes of the Exchange Act. We believe it is thus appropriate to remand the matter to NASD for its reconsideration. 37/

IV.

In remanding to provide NASD an opportunity to apply Van Dusen, we note that NASD mischaracterizes the holdings of Van Dusen and its progeny by stating that such holdings preclude NASD from "again consider[ing] the individual's underlying misconduct when it evaluates a statutory disqualification application." 38/ This statement unduly circumscribes the manner in which NASD may consider the underlying misconduct consistent with Van Dusen. Our cases "do not preclude consideration of the misconduct." 39/ As we said in Richardson, "Van Dusen and Ross instruct that an SRO ordinarily may not deny reentry based solely on the underlying misconduct that led to the statutory disqualification and the conditional bar; something more is needed." 40/

____ "[A]lthough the circumstances resulting in the statutorily disqualifying event should not be the primary focus of a determination regarding a re-entry application, they are relevant to such a determination." 41/ For example, "if the cited conduct underlying the bar order were similar to other misconduct brought to the NASD's attention, then the former conduct may be considered along with the latter as forming a significant pattern." 42/ We have also noted previously that misconduct underlying a statutory disqualification may be considered "in evaluating how well the employer firm's proposed scheme of supervision [is] designed to prevent the type of conduct that

37/ Cf. Richardson, 2005 SEC LEXIS 414, at *19-20 ("We hold that Van Dusen and Ross remain the appropriate standards by which NASD should evaluate Richardson's application. NASD did not conduct its evaluation of Richardson's application consistently with those precedents Therefore we are unable to determine whether the denial of Richardson's application is consistent with the purposes of the Exchange Act, and accordingly we remand for further consideration not inconsistent with this opinion.").

38/ NASD mischaracterized these holdings previously. See id., 2005 SEC LEXIS 414, at *7 (rejecting NASD's argument that Van Dusen set forth a "rigid 'exclusionary rule'").

39/ Richardson, 2005 SEC LEXIS 414, at *8.

40/ Id.

41/ Peters, 82 SEC Docket at 3967.

42/ Ross, 50 S.E.C. at 1085 n.10; see also Richardson, 2005 SEC LEXIS 414, at *8 (citing Ross, 50 S.E.C. at 1085 n.10); Peters, 82 SEC Docket 3967 (same); Morton Kantrowitz, Exchange Act Rel. No. 51238 (Feb. 22, 2005), 84 SEC Docket 3501, 3506 (same).

had resulted in the [disqualification]." 43/ Therefore, "misconduct underlying a statutory disqualification may play a role in the consideration of" a membership continuance application and may "be considered in an appropriate context and given appropriate weight." 44/

_____ In the present case, although NASD stated that it was not applying Van Dusen, it considered the misconduct underlying the statutory disqualification in the context of other misconduct brought to its attention. NASD found that Rokeach's failure to disclose the felony conviction on the Form U-4 and amended Form U-4, in conjunction with his failures to disclose the conviction on applications for insurance registration and to acknowledge these omissions before the Hearing Panel, indicated that Rokeach had a "propensity for misrepresenting his past" and a "continuing inability to acknowledge his history of misrepresenting facts about his background to regulators." However, we have held that NASD should generally confine its analysis to new information when evaluating a membership continuance application. 45/ We are unable to determine from the record what information on which NASD relied in denying Applicants' membership continuance application NASD knew (and presumably considered) at the time it accepted the AWC. Rokeach's failures to disclose his felony conviction on the four applications for insurance registration all occurred before NASD accepted the AWC, but the record is unclear regarding whether NASD knew about these failures at that time. 46/ We cannot determine whether enough new information was brought to NASD's attention to allow it to

43/ See, e.g., Richardson, 2005 SEC LEXIS 414, at *8 (citing Ross, 50 S.E.C. at 1085 n.10).

44/ Richardson, 2005 SEC LEXIS 414, at *9.

45/ See, e.g., Ross, 50 S.E.C. at 1084-85 (stating that, "in cases of this type, the NASD [should] generally confine its analysis to new information"); Van Dusen, 47 S.E.C. at 671 (concluding that, "in the absence of new information reflecting adversely on Van Dusen's ability to function in his proposed employment in a manner consonant with the public interest, it is inconsistent with the remedial purposes of the Exchange Act and unfair to exclude him any longer from the position he seeks"); see also Richardson, 2005 SEC LEXIS 414, at *9 ("Requiring that NASD generally consider new information leaves ample room for NASD to consider a wide range of appropriate factors.").

46/ Rokeach's failure to acknowledge before the hearing panel all his previous omissions constituted new information because this misconduct occurred subsequent to the AWC.

consider the conduct underlying the AWC as forming a significant pattern with Rokeach's other misconduct. 47/

Accordingly, we remand the application to NASD for further consideration in accordance with this opinion. In remanding, we express no view as to the outcome.

An appropriate order will issue. 48/

By the Commission (Chairman COX and Commissioners GLASSMAN, ATKINS, CAMPOS and NAZARETH).

Nancy M. Morris
Secretary

47/ Park Avenue's termination of Rokeach was not new information because the AWC mentions Rokeach's discharge from Park Avenue. NASD did not address whether considering Park Avenue's termination of Rokeach was consistent with Van Dusen. Cf. Peters, 82 SEC Docket at 3969 (noting that NASD considered applicant's unrelated misconduct which occurred prior to the disqualification but did not engage in the analysis required by Van Dusen and Ross of the relevance of that misconduct). For example, NASD did not address specifically enough whether Park Avenue's supervisory experience with Rokeach had any relevance to the supervisory procedures proposed by May Capital. See Van Dusen, 47 S.E.C. at 671.

48/ 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
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NASD

ORDER REMANDING PROCEEDINGS TO REGISTERED SECURITIES ASSOCIATION

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

ORDERED that the review proceeding of the application by May Capital Group, LLC to employ Melvin Rokeach as an investment company products/variable contracts representative is hereby remanded to NASD for further consideration.

By the Commission.

Nancy M. Morris
Secretary