

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Rel. No. 49819 / June 7, 2004

Admin. Proc. File No. 3-11277

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In the Matter of the Application of

REUBEN D. PETERS  
PETERS SECURITIES CO., LP  
c/o Schiff Hardin & Waite  
1101 Connecticut Avenue, NW  
Washington, DC 20036

For Review of Action Taken by

NASD

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OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DENIAL OF  
APPLICATION TO ASSOCIATE

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

APPEARANCES:

Laura S. Pruitt and Howard L. Kramer, of Schiff Hardin & Waite, for Reuben D. Peters and Peters Securities Co., LP.

Deborah F. McIlroy, for NASD.

Appeal filed: November 24, 2003  
Last brief received: January 6, 2004

## I.

Reuben D. Peters and Peters Securities Co., LP ("Peters Securities" or the "Firm"), an NASD member firm, appeal from NASD's denial of Peters Securities's application to employ Peters, who had been statutorily disqualified, as a registered representative. To the extent we make findings, we base them on an independent review of the record.

## II.

Peters is subject to a "statutory disqualification," as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, 1/ as a result of Peters' having been enjoined, with his consent, against future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 (the "disqualifying event"). 2/ The injunction was entered on June 16, 2000, although the conduct at issue occurred between 1993 and 1995. As part of the injunctive action, Peters was required to pay \$340,138.65 in disgorgement and prejudgment interest and a civil penalty of \$25,000. 3/

The disqualifying event occurred as a result of a manipulation, involving Peters (who was Peters Securities' managing general partner) and eight other parties, of the after-market trading in a stock traded on the NASDAQ Small Cap Market for which Peters Securities was the primary market maker. The manipulation caused the price of the stock to be artificially inflated, in violation of the Securities Act of 1933 and the

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1/ A person is deemed to be subject to a "statutory disqualification," under Securities Exchange Act Section 3(a)(39), 15 U.S.C. §78c(a)(39), if, among other things, "such person . . . is enjoined from any action, conduct, or practice specified in subparagraph (c) of such paragraph (4). . . ."

Under Article III, Section 3(b) of NASD's By-Laws, a "statutorily disqualified" person cannot become or remain associated with an NASD member unless the disqualified person's member firm applies for relief from the statutory disqualification under Article III, Section 3(d) of the By-Laws.

2/ 15 U.S.C. §§ 77q(a)(2), (a)(3).

3/ The record indicates that Peters paid these amounts.

Securities Exchange Act of 1934. In June 2000, Peters consented to the entry of a permanent injunction and agreed to disgorge profits received from the sale of the aforementioned stock and to pay a civil penalty. 4/ Peters also agreed to a settlement of a parallel administrative proceeding brought by the Commission based on the same misconduct. Pursuant to the settlement, the Commission suspended Peters for two months. 5/ The suspension ended on September 3, 2000.

Before the entry of the Commission settlement suspending Peters, NASD, on April 14, 2000, accepted Peters' and Peters Securities' Letter of Acceptance, Waiver and Consent ("AWC") in an unrelated matter for violations of NASD Rules 1120, 2110, 3010 and Commission Rule 15c3-1. The AWC stated that Peters and Peters Securities, acting through Peters, had effected securities transactions between 1996 and 1999 while the Firm failed to maintain the minimum required net capital, had operated offices of supervisory jurisdiction while failing to designate an appropriately registered principal in each of the locations, had allowed an individual to act in the capacity of a general securities principal when the individual was not qualified or registered in that capacity, and had failed to prepare, maintain and/or enforce adequate written supervisory procedures regarding both the regulatory element of the continuing education requirement and the requirement that each office have an annual inspection and a review of its activities. Peters and Peters Securities agreed to be fined \$55,000, jointly and severally. In addition, Peters was suspended as a general securities principal and financial and operations principal for 30 days, and he was required to re-qualify before acting in those capacities. 6/

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4/ SEC v. Ogle, Case No. 99-CV-609 (SBC) (N.D. Ill. 2000).

5/ Reuben D. Peters, Exchange Act Rel. No. 72977 (June 23, 2000), 72 SEC Docket 2247.

6/ Peters Securities, an NASD member firm since 1984, has an additional disciplinary matter. In February 2002, NASD accepted an AWC against Peters Securities which stated that the Firm committed certain market trading violations (including limit order display violations, short sale violations, and violations of rules relating to market making activities), agreed to pay a fine and provide restitution to customers. As a result of this AWC, Peters Securities underwent a restructuring in which it stopped accepting retail orders and became a proprietary trading  
(continued...)

On August 21, 2000, Peters Securities filed an application with NASD to permit Peters to continue to associate with Peters Securities despite Peters' statutory disqualification. 7/ Peters Securities proposed that Peters continue to work out of the Firm's office located in Telluride, Colorado and that Peters' work be supervised by one of the Firm's registered representatives, Matthew Bowling, who also worked in the Firm's Telluride office. In the application, Peters Securities stated that Peters would trade proprietary accounts for his own gain or loss, participate as a general partner in the Firm's gains or losses, as well as the gains or losses resulting from his own proprietary trading, but would not be involved in the supervision of the day-to-day activities of individuals at the Firm. Peters Securities noted in the application that it no longer engaged in any retail market activities, and thus no longer was engaged in the type of business that had been at issue in the 2000 disciplinary matter. In February 2001, Peters Securities filed a supplemental application with NASD requesting that NASD allow Peters to associate with Petco Trading LLC ("Petco"), an entity that was intended to become the general partner of Peters Securities. 8/

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6/ (...continued)  
firm.

7/ NASD Procedural Rule 9523(a) directs NASD's Department of Member Regulation to review such an application in light of the member firm's proposed plan of supervision for the disqualified person. If Member Regulation concludes that the application should be approved, the application is forwarded to the Chairman of the NASD Statutory Disqualification Committee ("Committee"), acting on behalf of the National Adjudicatory Council ("NAC"). The Chairman of the Committee can accept or reject the recommendation or refer the application to the NAC for acceptance or rejection. If a hearing is held, as was the case here, the hearing panel is required by Rule 9524(a)(10) to submit a recommendation in writing to the Committee, which in turn must submit a written recommendation to the NAC. Rule 9524(b)(1) authorizes the NAC to grant or deny the application after considering the proposed plan of supervision, the Committee's recommendation, the public interest, and the protection of investors.

8/ Peters Securities and Petco intended that, upon NASD's approval of the application, Peters and the other partners  
(continued...)

In October 2001, the NAC submitted a Notice to the Commission, pursuant to Exchange Act Rule 19h-1 (the "19h-1 Notice"), 9/ advising the Commission of its intention to approve Peters Securities' and Petco's applications to employ Peters. 10/ The 19h-1 Notice explained that, in making its decision, the NAC was persuaded by the fact that the Commission had been required to weigh the requirements of the public interest when the Commission suspended Peters in July 2000 and that the Commission, in reaching its sanction decision, had been aware of the misconduct underlying the statutorily disqualifying injunction imposed on Peters. The Notice, citing Commission precedent, 11/ found that the NAC was required to grant the Firm's application "absent other acts of misconduct or circumstances of record bearing adversely on the [F]irm's or Peters' fitness to continue in the securities industry." Finding that the record did not reveal any misconduct by Peters after the entry of the Commission's suspension order, and that Peters Securities' and Petco's "extensive, well-structured supervisory controls . . . will govern Peters' activities," the 19h-1 Notice concluded that Peters Securities' and Petco's applications satisfied the conditions necessary for Peters to continue in the securities industry in the agreed-upon capacities with Peters Securities and Petco.

On February 7, 2002, Peters Securities advised NASD that Petco would no longer be operating as a registered broker-dealer or as general partner of the Firm. The Firm also advised NASD that certain of its personnel had left the firm, as a result of

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8/ (...continued)

of Peters Securities would become members of Petco and limited partners of Peters Securities, and Petco would become the sole general partner of Peters Securities.

9/ 17 C.F.R. § 240.19h-1. Rule 19h-1 requires that, if a self-regulatory organization ("SRO") proposes to allow a person subject to a statutory disqualification to associate, or continue to associate, with an SRO member firm, the SRO shall file a notice with the Commission of the proposed association except in certain circumstances not relevant here.

10/ The record does not indicate that a hearing was held before the 19h-1 Notice was issued.

11/ Arthur H. Ross, 50 S.E.C. 1082 (1992), and Paul Van Dusen, 47 S.E.C. 668 (1981).

which the Firm would not be providing on-site supervision of Peters. In December 2002, NASD responded by withdrawing the 19h-1 Notice it had filed with the Commission. Member Regulation commenced extensive discussions with the Firm concerning its new proposed supervision of Peters.

As a result of these discussions, Peters Securities proposed to establish a number of supervisory procedures that would give the Firm direct oversight of Peters' trading activities even though there would be no on-site supervision. The Firm proposed that Peters be supervised by one of its general partners, Christopher Rosman, who worked in Peters Securities' Chicago office. 12/

In a letter dated January 21, 2003, Member Regulation recommended approval of the Firm's application. Member Regulation reiterated all the factors described in the 19h-1 Notice underlying the approval of the Firm's original application. Member Regulation then addressed the changes in the Firm's proposed supervision of Peters. Member Regulation noted first that Peters' trading activity would be limited to proprietary trading and that Peters Securities no longer conducted business with the public. Member Regulation then explained that the arrangements compensated for the lack of on-site supervision with "real-time monitoring" of Peters' activities and provided "the necessary documentation review and enhanced compliance measures necessary to monitor the activities of Peters."

A hearing was held on January 30, 2003. At the hearing, Rosman testified that the Firm's computer trading system enabled Rosman to see every trade executed by Peters on a real-time basis. Counsel for the Firm stated that this monitoring system enabled the other Peters Securities partners to look at Peters' trading, conduct random spot checks at any time during the day, and run various types of exception reports that would show, for

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12/ Peters Securities had three general partners and one limited partner. The three general partners were Peters, Rosman and Steven Helms. Robert Peters (Peters' brother) was the limited partner. Peters Securities proposed that, in the event Rosman was unavailable to supervise Peters, Helms would serve as a contingent supervisor. Helms also worked in the firm's Chicago office. Neither Rosman nor Helms has any prior disciplinary history.

example, any trades over a certain size or not executed through an electronic system. 13/

The NAC ruled on Peters Securities' application in a decision dated September 23, 2003 ("the September 23 decision"). By contrast with the 19h-1 Notice, the September 23 decision determined that the Commission's Van Dusen and Ross decisions relied upon in the 19h-1 Notice did not govern the Firm's application and, as explained in more detail below, denied the Firm's application. This appeal followed.

### III.

Exchange Act Section 19(f) provides that we will sustain NASD's denial of Peters Securities' application if we find that the denial: (1) was based on specific grounds that exist in fact; (2) was made in accordance with the SRO's rules; and (3) that these rules were applied in a manner consistent with the purposes of the Exchange Act. 14/ Because the September 23 decision misconstrued the applicability of our decisions in Van Dusen and Ross, we are unable to conclude that NASD's action meets this third requirement. 15/ We have thus determined to remand this matter to NASD for further consideration as discussed below.

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13/ A staff person from Member Regulation, Lorraine Lee, testified that both NASD's Department of Market Regulation and the district office that oversees Peters Securities were confident that Peters Securities had dealt with all of the regulatory issues raised in the prior disciplinary proceedings and that permitting Peters' association was not against the public interest.

14/ 15 U.S.C. § 78s(f).

15/ The first requirement -- that the denial be based on specific grounds that exist in fact -- is not in dispute. Peters is in fact subject to a statutory disqualification pursuant to Exchange Act Section 3(a)(39) as a result of the permanent injunction entered against him in 2000. Although not specifically raised by the parties, it is unclear whether the second requirement has been met. There is no indication in the record that the Hearing Panel or the Committee ever submitted written recommendations as required by NASD Procedural Rule 9524(a)(10), or that they were considered by the NAC, as required by Rule 9524(b)(1). See note 6, supra.

In both Van Dusen and Ross, we considered NASD action denying association to persons subject to statutory disqualifications. In both cases, applicants had been barred in certain associational capacities subject to a right to reapply for association after a specified period (a "conditional bar"). 16/ NASD denied the applications, despite the fact that they were made after the prescribed waiting period had expired.

In reversing those NASD determinations, we held that, where the period specified in a conditional bar order has passed, in the absence of "new information reflecting adversely on [the applicant's] ability to function in his proposed employment in a manner consonant with the public interest," it was inconsistent with the remedial purposes of the Exchange Act and unfair to deny the application for reinstatement. 17/ We noted, however, that these decisions "[do] not mean that re-entry is to be granted automatically when an application is made after the period specified . . . ." 18/ Consideration of various factors, including "other misconduct in which the applicant may have engaged, the nature and disciplinary history of a prospective employer, and the supervision to be accorded the applicant," can justify the denial of such an application. 19/

We were careful to note in our Ross opinion that, although 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. 20/ We discussed, for example, how underlying conduct might legitimately play a role if such conduct was similar to other misconduct brought to NASD's attention, since such similarity might indicate a pattern of misconduct. We also said that NASD could consider how well a prospective employer's proposed scheme of supervision is designed to prevent the

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16/ In Van Dusen, the applicant also was subject to a statutory disqualification based on his having been enjoined.

17/ Van Dusen, 47 S.E.C. at 671; Ross, 50 S.E.C. at 1084.

18/ Van Dusen, 47 S.E.C. at 671.

19/ Id.

20/ 50 S.E.C. at 1085 n.10.



problems that provided the basis for the statutorily disqualifying event. 21/

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21/ Id.

The September 23 decision sought to distinguish Van Dusen from Peters' situation in two respects. 22/ First, the September 23 decision observed that Peters' sole statutorily disqualifying event - the permanent injunction - included no right to reapply, unlike the conditional bar imposed in Van Dusen. Second, the September 23 decision claimed that our order imposing Peters' suspension did not indicate that we had carefully weighed the requirements of the public interest in light of Peters' alleged misconduct, as we had done in Van Dusen. 23/ The September 23 decision concluded that, accordingly, the NAC was not limited to a consideration of whether Peters engaged in any intervening misconduct, but could "examine the seriousness of the underlying misconduct that led to the imposition" of the injunction against Peters.

Although the administrative sanctions at issue in both Van Dusen and Ross were conditional bars, nothing in the rationale of those two decisions suggests that the standard set forth therein is not equally applicable to any statutorily disqualified person whose disqualifying conduct has also resulted in administrative sanctions imposed by us pursuant to Section 15 of the Exchange Act. In this regard, we stated in Van Dusen that we "'have been cognizant of the importance of exercising the discretionary power reposed in us in this area in a manner that will afford investors protection without visiting upon the wrongdoers adverse consequences not required in achieving the statutory objectives." 24/ Thus, our determination to impose a conditional bar on Van Dusen involved a weighing of the seriousness and nature of Van Dusen's conduct against the importance of avoiding adverse consequences to him not necessary to protect the public interest.

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22/ The NAC included no analysis of the applicability of Ross to its decision-making.

23/ NASD further explains this position in its brief before us. NASD states that our order imposing the two-month suspension on Peters offered "no indication that the Commission intended that the public interest was adequately served for all purposes by that suspension . . . . Rather the Commission could rely on NASD's full statutory disqualification review process to protect the public interest in assessing Peters Application."

24/ 47 S.E.C. 671 (citation omitted, emphasis in original).

The two-month suspension imposed on Peters, a less severe sanction than the conditional bars imposed in Van Dusen and Ross, involved a similar weighing process in our determination of what best served the public interest. 25/ Indeed, our authority to impose any sanction pursuant to Section 15 is proscribed unless we make such a public interest finding. NASD's suggestion in this appeal that, in imposing the suspension on Peters, we did not carefully consider the public interest but intended instead to "rely on NASD's full statutory disqualification review process" is without support.

Because the September 23 decision stated at the outset of its analysis that the NAC was not bound by the standards set forth in Van Dusen and Ross, we are unable to discern whether the September 23 decision appropriately considered the record before it. The September 23 decision makes clear that the seriousness of Peters' misconduct underlying the injunction provided support for its determination to deny the application. It also considers Peters' other disciplinary history. The September 23 decision does not, however, engage in the analysis required by Van Dusen and Ross of the relevance of any of this misconduct.

We are also unable to discern the impact of the different legal standard applied in the September 23 decision on the NAC's assessment of other factors. For example, the September 23 decision finds that the restructuring of the Firm, under which it no longer engages in the types of conduct that led to its and Peters' earlier disciplinary actions, is too recent for the Firm to have had sufficient time to demonstrate regulatory compliance within the newly reorganized format. However, the restructuring was even more recent at the time that the 19h-1 Notice was submitted approving the Firm's application. The September 23 decision also expressed concern about Peters' ability to control the Firm given the level of his and his family's ownership interest, but there is no indication in the record that this was a changed circumstance from when the 19h-1 Notice was filed with the Commission. 26/ To the extent NASD considers these factors

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25/ We expressly stated in that order that we found "it appropriate and in the public interest to accept the Offer of Settlement . . . ."

26/ As of January 2003, when the hearing on Peters Securities' application was held, Peters owned 52% of Peters Securities' partnership interest, Helms and Rosman each owned an 18% interest, and Robert Peters (Peters' brother) owned a 12%

(continued...)

on remand, it should explain their relevance under the standard articulated in Van Dusen and Ross.

The September 23 decision identified the issue of off-site supervision of Peters as significant. However, it does not discuss Membership Regulation's examination of the proposed off-site supervisory procedures, and its consultation with NASD's Market Regulation division, in support of Member Regulation's conclusions that the procedures would be adequate. While the NAC is not obligated to follow the recommendations of NASD staff, the September 23 decision does not make clear its views of the staff's position. 27/

Accordingly, because we are unable to conclude that the September 23 decision applied NASD's rules in a manner consistent with the purposes of the Exchange Act, 28/ we remand the

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26/ (...continued)  
interest. Pursuant to Peters Securities' partnership agreement, Peters had a 45% voting interest in the partnership, Helms and Rosman each had a 22.5% voting interest, and Robert Peters had a 10% voting interest. The partnership agreement required the approval of 75% of the partnership interests for the partnership to undertake any actions.

27/ The decision did acknowledge that neither of Peters' proposed supervisors, Rosman and Helms, had been the subject of any formal or informal disciplinary action.

28/ See Van Dusen, 47 S.E.C. at 670 (holding NASD's "unfair" application of its rules in this context inconsistent with purposes of the Exchange Act).

application to NASD for further consideration of the matters we have discussed. 29/ In remanding, we express no view as to the outcome. 30/

An appropriate order will issue. 31/

By the Commission (Chairman DONALDSON and Commissioners GLASSMAN, ATKINS and CAMPOS); Commissioner GOLDSCHMID not participating.

Jonathan G. Katz  
Secretary

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29/ See Ross, 50 S.E.C. at 1085; see also First Potomac Investment Services, Inc., 50 S.E.C. 848, 850 n. 4 (1992); Stephen R. Flaks, 46 S.E.C. 891, 895 n. 8 (1977).

30/ Peters Securities and Peters attached an affidavit to their brief to the Commission describing a purported April 30, 2003 amendment to the Firm's partnership agreement reflecting certain changes to the partnership ownership and structure. NASD objected to this affidavit arguing that it was not part of the record considered by the NAC. Given our disposition here, we need not rule on this issue.

31/ We have considered all of the contentions advanced by the parties. We reject or sustain them to the extent that they are inconsistent or in accord with the views expressed herein.

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

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ORDER REMANDING APPEAL FROM 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  
Peters Securities Co., LP to continue to employ Reuben D. Peters  
as a registered representative is hereby remanded to NASD for  
further consideration.

By the Commission.

Jonathan G. Katz  
Secretary