3-15017

BEFORE THE SECURITIES AND EXCHANGE COMMISSION

In the Matter of:	Adm. Proc. No. ________
The Association of Nicholas S. Savva With Hunter Scott Financial, LLC	FINRA No. SD-1800

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APPLICATION FOR REVIEW

Pursuant to 17 CFR §201.420, Petitioners Nicholas S. Savva and Hunter Scott Financial, LLC ("Hunter Scott"), by and through their undersigned counsel, hereby apply for Commission review of a decision issued by the National Adjudicatory Council of the Financial Industry Regulatory Authority ("FINRA") on August 10, 2012, which decision held that Mr. Savva is disqualified from further association with Hunter Scott as a general securities representative. A copy of FINRA's final determination is annexed hereto.

As Petitioners will further demonstrate to the Commission's satisfaction, FINRA's determination was erroneous for the following reasons:

1. FINRA based its determination entirely upon a new ground for disqualification that was not referenced in FINRA's original notice to Mr. Savva, in violation of basic principles of due process as well as FINRA Rule 9522(a)(1), which provides: "The notice shall specify the grounds for such disqualification or ineligibility."

2. FINRA improperly and unfairly based its determination upon retroactive application of a regulation that did not come into effect until 2007, even though the underlying event giving rise to disqualification was a consent order entered in 2004.

3. FINRA improperly based its determination upon stale events from many years ago, assigning little or no weight to Mr. Savva's recent, positive track record, including the fact that he has not had a single customer complaint during the last four years.

4. FINRA improperly and unfairly based its determination on a transcript of prior testimony that was introduced and accepted for the first time after the close of the evidentiary hearing, without giving Mr. Savva an opportunity to explain any potential inconsistencies and thereby violating basic notions of due process.

5. FINRA failed to give appropriate consideration to an amended and strengthened supervision plan that was provided to FINRA in advance of its determination.

Petitioners' addresses and telephone numbers are as follows:

Nicholas S. Savva
[redacted]
Brooklyn, New York, 11209
[redacted]

Hunter Scott Financial, LLC
c/o Charles Hughes
500 Gulfstream Blvd, Suite 105
Delray, FL 33483
561-265-3614

Petitioners reserve the right to amend and/or supplement this Application for Review to the extent permitted by law.

Dated: New York, New York
September 7, 2012

WINGET, SPADAFORA &
SCHWARTZBERG, LLP

By: ______________________
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Attorneys for Hunter Scott Financial, LLC and Nicholas Savva

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Association of	
Nicholas S. Savva	Notice Pursuant to Section 19(d) Securities Exchange Act of 1934
as a	
General Securities Representative	SD-1800
with	
Hunter Scott Financial, LLC	August 10, 2012

I. Introduction

On August 17, 2009, Hunter Scott Financial, LLC ("the Firm" or "Hunter Scott") filed a Membership Continuance Application ("MC-400" or "the Application") with FINRA's Department of Registration and Disclosure ("RAD"). The Application requests that FINRA permit Nicholas S. Savva ("Savva"), a person whom RAD determined is statutorily disqualified, to continue to associate with the Firm as a general securities representative. On November 17, 2011, a subcommittee ("Hearing Panel") of FINRA's Statutory Disqualification Committee held a hearing on the matter. Savva appeared at the hearing, accompanied by counsel, Michael Schwartzberg, Esq., a general securities principal at the Firm, Michael Hechme ("Hechme"), and the Firm's chief compliance officer, Charles Hughes ("Hughes").[1] Lorraine Lee-Stepney, Ann-Marie Mason, Esq., Maureen Johansen, Esq., and Jetta Sandin, Esq. appeared on behalf of FINRA's Department of Member Regulation ("Member Regulation").

1 The Firm initially proposed that Hechme would supervise Savva from its Brooklyn, New York branch office. Pursuant to a letter dated July 25, 2012, the Firm informed FINRA that due to certain personal issues, it is no longer proposing that Hechme serve as Savva's supervisor under the Firm's heightened supervisory plan. Instead, the Firm now proposes that Savva will work at its main office in Delray Beach, Florida and that Hughes will serve as Savva's on site supervisor under the heightened supervisory plan.

For the reasons explained below, we deny the Firm's Application.[2]

II. Savva Is Statutorily Disqualified

As an initial matter, Savva disputes that he is statutorily disqualified. Savva also argues that, if he is statutorily disqualified, FINRA unfairly and retroactively applied to him a revised definition of statutory disqualification subsequent to the underlying misconduct at issue. Member Regulation argues that Savva is statutorily disqualified and, at the hearing, argued that FINRA properly applied its rules. As discussed below, we find that Savva is statutorily disqualified and that FINRA did not unfairly and retroactively apply to him the definition of statutory disqualification.

A. Background

Section 604 of the Sarbanes-Oxley Act, enacted in July 2002, expanded the definition of "statutory disqualification" contained in Section 3(a)(39) of the Securities Exchange Act of 1934 ("Exchange Act") to include several additional statutorily disqualifying events. Among other things, the Sarbanes-Oxley Act amended the Exchange Act's existing definition of statutory disqualification to include an individual who is subject to a final order of a state securities commission or state authority that supervises or examines banks that either: (i) "[b]ars such person from association with an entity regulated by such commission[;]" or (ii) "[c]onstitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative or deceptive conduct." 15 U.S.C. § 78o.[3]

Until July 2007, NASD's By-Laws tracked most of the language in Exchange Act Section 3(a)(39), but they did not include the additional categories of disqualification added by the Sarbanes-Oxley Act in 2002. In connection with the formation of FINRA, the Commission approved amendments to NASD's By-Laws that harmonized its definition of statutory disqualification with the Exchange Act's more expansive definition.[4] *See Order Approving*

2 Pursuant to FINRA Rule 9524(a)(10), the Hearing Panel submitted its written recommendation to the Statutory Disqualification Committee. The Statutory Disqualification Committee considered the Hearing Panel's recommendation and presented a written recommendation to the National Adjudicatory Council.

3 Exchange Act Section 3(a)(39)(F) provides that:

> A person is subject to a "statutory disqualification" with respect to . . . association with a member of, a self-regulatory organization, if such person— (F) has committed or omitted any act or is subject to an order or finding enumerated in subparagraph . . . (H) . . . of paragraph (4) of section 15(b).

4 As a result of the amendment, Article III, Section 4 of FINRA's By-Laws provides that, "[a] person is subject to a 'disqualification' with respect to . . . association with a member, if such person is subject to any 'statutory disqualification' as such term is defined in Section 3(a)(39) of the [Exchange] Act."

Proposed Rule Change to Amend the By-Laws of NASD to Implement Governance and Related Changes, Exchange Act Rel. No. 56145, 2007 SEC LEXIS 1640 (July 26, 2007), as amended by Exchange Act Rel. No. 56145A, 2008 SEC LEXIS 1270 (May 30, 2008).

The harmonization of FINRA's and the Exchange Act's definition of statutory disqualification caused all individuals subject to statutory disqualification under the Exchange Act to be subject to FINRA's then-existing procedures governing eligibility proceedings.[5] FINRA, with the Commission's approval, subsequently amended its processes and procedures to effectively address the additional individuals who became statutorily disqualified as a result of the Sarbanes-Oxley Act. *See Order Approving Proposed Rule Change to Amend the FINRA Rule 9520 Series Regarding Eligibility Procedures for Persons Subject to Certain Disqualifications*, Exchange Act Rel. No. 59586, 2009 SEC LEXIS 744 (Mar. 17, 2009). FINRA's revised procedural rules, which became effective in June 2009, required that only certain individuals statutorily disqualified as a result of the Sarbanes-Oxley Act file with RAD applications seeking relief from their ineligibility. *See FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 52 (Apr. 2009). FINRA explained that, absent changes to its procedural rules, "all persons subject to any of the additional categories of disqualification would be required to obtain approval from FINRA to enter or remain in the securities industry." *Id.* at *8. The Commission stated that the changes to FINRA's rules governing eligibility proceedings should allow FINRA "to integrate filings mandated by the revised definition of disqualification into established programs that monitor subject persons."[6] 2009 SEC LEXIS 744, at *9.

On June 15, 2009, RAD notified the Firm that Savva was subject to statutory disqualification and the Firm should file a Membership Continuance Application if it wanted Savva to continue to associate with it.

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[5] At all times, NASD's and FINRA's eligibility procedures referenced the definition of statutory disqualification in their respective by-laws. *Compare* NASD Rule 9521(a) (stating that the Rule 9520 Series provides procedures for a person to become or remain associated with a member, notwithstanding the existence of a disqualification as defined in NASD's by-laws), *available at* http://finra.complinet.com/en/display/display.html?rdid=2403_record_id=10888element_id=7826highlight=9521#r10888, *with* FINRA Rule 9521(a) (referencing the definition of disqualification contained in FINRA's by-laws).

[6] FINRA's procedures addressing how to process individuals disqualified under the expanded definition of statutory disqualification were not revised and approved by the Commission until 2009. Nevertheless, in July 2003, FINRA amended the Uniform Application for Securities Industry Registration or Transfer ("Form U4") to require the reporting of the additional disqualifying events created under the Sarbanes-Oxley Act. FINRA stated that the amendments would, among other things, "elicit reporting of regulatory actions that may cause an individual to be subject to a statutory disqualification under the expanded definition of disqualification in Section 15(b)(4)(H) of the Exchange Act, created by the passage of the Sarbanes-Oxley Act." *See NASD Notice to Members 03-42* (July 2003), *available at* http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p003209.pdf.

It is against this backdrop that we address the preliminary issues raised by Savva.

B. The Underlying Misconduct and State Order at Issue

On August 3, 2004, Vermont's Department of Banking, Insurance, Securities, and Health Care Administration (the "Vermont Department") entered against Savva an Order Imposing Administrative Sanctions and Consent to Same (the "Vermont Order"). The Vermont Order: (1) censured Savva; (2) ordered that he permanently cease and desist from violating Vermont law: (3) prohibited Savva from seeking registration in Vermont as a broker-dealer sales representative or an investment adviser representative without prior written consent from the Vermont Department, which may be granted or withheld in the Vermont Department's sole discretion; (4) prohibited Savva from supervising Vermont registered broker-dealer sales representatives or investment adviser representatives without prior written consent from the Vermont Department, which may be granted or withheld in its sole discretion; and (5) fined him $25,000.

The bases for the Vermont Order were findings that, from August 2002 until November 2003, Savva engaged in unauthorized transactions in customer accounts, made unsuitable recommendations to customers, and regularly utilized high pressure sales tactics. Before the Hearing Panel, Savva explained that his employing firm became the subject of regulatory scrutiny "due to other brokers' actions." Savva claimed that the Vermont Department identified a customer, jointly serviced by Savva and another registered representative, George T. Manhim ("Manhim"), who claimed that there was unauthorized activity in his account. Savva further elaborated that he was the senior registered representative on the account, but he did not do much business in Vermont. Savva claimed that Manhim spoke to the customer at issue, gave Savva the order in question, and Savva simply filled out the order ticket. Savva testified that he did not take the order from the customer. During an investigative interview conducted by the Vermont Department in October 2003, however, Savva testified that he spoke to the customer and recommended the securities at issue.[7]

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7 Approximately one month after the hearing in this matter, Member Regulation filed a motion to introduce the transcript of the 2003 interview when it produced the Vermont order sanctioning Manhim (as ordered by the Hearing Panel at the hearing). Member Regulation sought to introduce this transcript to rebut Savva's testimony at the hearing that he merely filled out the customer's order ticket and had no additional involvement with the customer.

Savva objected, and he argued that permitting the transcript to be introduced "merely serves to create the potential for serious prejudice" and Member Regulation should not be permitted to "reopen" the record subsequent to the hearing. We have considered the parties' arguments on this matter, and we admit this evidence into the record solely for the purpose of considering Savva's differing explanations of the events surrounding the Vermont Order. *See Jan Biesiadecki*, 53 S.E.C. 182, 185 (1997) (holding that FINRA correctly adhered to its long-standing policy of prohibiting collateral attacks on underlying disqualifying events).

After consulting with his attorney, Savva agreed to the terms of the Vermont Order to resolve the matter as a "business decision." Savva claims that he did not understand that the Vermont Order would render him statutorily disqualified.

C. The Vermont Order Is a Final Order Based upon Fraudulent, Manipulative, or Deceptive Conduct

We must first determine whether the Vermont Order is disqualifying under Exchange Act Section 3(a)(39). We find that it is.

The Vermont Order constitutes a final order based on violations of laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct under Exchange Act Section 15(b)(4)(H)(ii). Pursuant to the Uniform Disciplinary Action Reporting Form ("Form U6") filed by the State of Vermont in connection with the Vermont Order in October 2004, Vermont classified its order as a final order based on violations of laws or regulations prohibiting fraudulent, manipulative, or deceptive misconduct.[8] Generally, FINRA weighs a state's determination, as indicated on the state's Form U6, in considering whether an individual violated a law prohibiting fraudulent, manipulative, or deceptive conduct. *See Membership Continuance Application of Applicant Firm A*, Application No. 20090173549, 2010 FINRA Discip. LEXIS 11, at *7 n.4 (FINRA NAC Aug. 18, 2010).[9]

Moreover, the Vermont statutes violated by Savva, and the nature of Savva's underlying misconduct, further demonstrate that the Vermont Order constitutes a final order based upon violations of laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct. Vermont Regulation S-91-1, Section 3.03 provides that "[e]ffecting a transaction in the account of a customer without authority to do so" is an unethical or dishonest practice in the securities business.[10] "Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable" is also an unethical or dishonest practice. *See* Vermont Regulation S-91-1, Section 3.05. Vermont's regulations further provide that:

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8 Question 11 of the Form U6 asks: "Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?" Vermont answered in the affirmative.

9 Although Savva disclosed the Vermont Order on his Form U4, he did not indicate that it was an order based upon violations of laws that prohibit fraudulent, manipulative, or deceptive conduct.

10 At the time the Vermont Department entered the Vermont Order, the Vermont statute pursuant to which the relevant regulations were promulgated provided that the Vermont Department's commissioner could, among other things, suspend or revoke the securities registration of a registered person or bar such person from associating with a broker-dealer if he "has engaged in unethical or dishonest practices in the securities business." *See* 9 V.S.A. 4221a(a)(8).

> Engaging or aiding in boiler room operations or high pressure tactics in connection with the solicitation of a sale or purchase of a security by means of an intensive telephone campaign or unsolicited calls to persons not known by, nor having an account with, the sales representative or broker-dealer represented by the sales representative, whereby the prospective purchaser is encouraged to make a hasty decision to buy, irrespective of his or her investment needs and objectives is an unethical or dishonest practice in the securities business.

Vermont Regulation S-91-1, Section 3.06.

The Vermont Order found that Savva violated each of these provisions in numerous ways. Specifically, the Vermont Order found that Savva entered two transactions in a customer's account without consulting the customer and obtaining his approval for each transaction. The Vermont Order found that Savva did not contact the customer (and, in fact, could not have contacted the customer because the customer was on a hunting trip and unreachable). The Vermont Order also found that Savva recommended securities to customers without reasonable grounds to believe that they were suitable by purchasing lead cards containing the names, addresses, and telephone numbers of business owners, and then "cold calling" these leads. The Vermont Order further found that Savva almost always recommended to the customers small cap, aggressive growth stocks without considering the customers' investment experience, investment objectives, or financial resources. Further, the Vermont Order found that Savva "regularly exerted high pressure on his customers and [l]eads to make hasty decisions to purchase the securities that he was recommending." Savva, through repeated, rehearsed telephone calls, "was able to coerce customers and [l]eads to make securities purchases and, on many occasions, gathered enough information from [l]eads to enable him to open accounts in their names and then [to] execute[] unauthorized transactions in those accounts."

Because the Vermont regulations at issue prohibit fraudulent, manipulative, and deceptive practices, such as the use of "boiler room" sales tactics, and given the nature of Savva's misconduct found by Vermont (which included unauthorized transactions and the use of high pressure sales tactics to coerce customers into making securities purchases or open accounts using the names of sales leads and then making unauthorized purchases in those accounts), we find that the Vermont Order was disqualifying under Exchange Act Section 15(b)(4)(H)(ii). *See SEC v. Wolfson*, 539 F.3d 1249, 1253 n.6 (10th Cir. 2008) ("[T]he term 'boiler room' is typically used to describe a telemarketing operation in which salespeople call lists of potential investors in order to peddle speculative or fraudulent securities. A broker using so-called 'boiler-room tactics' generally gives customers a high-pressure sales pitch containing misleading information about the nature of the investment, as well as the broker's own commission on the sale."); *SEC v. Hasho*, 784 F. Supp. 1059, 1110 (S.D.N.Y. 1992) (finding that defendants' unauthorized trades in connection with boiler room operations violated the antifraud provisions of the securities laws because they were the result of material deception, misrepresentation or non-disclosure); *Best Sec., Inc.*, 39 S.E.C. 931, 933-34 (1960) (finding that broker engaged in an intensive campaign of selling stock in volume "by the use of whatever representations it thought would produce the greatest number of sales in the shortest time" in violation of anti-fraud provisions and the standards of the profession); *see also* Louis Loss & Joel Seligman, *Securities Regulations*, § 9-C-

3 (3d ed. 2006) ("In the Commission's view, 'boiler rooms' fell under the ban of the fraud provisions.").

Savva argues that the meaning of fraudulent, manipulative, or deceptive conduct is unclear. In support, he points to the Commission's recent request for comment regarding similar language set forth in Section 926(2)(A)(ii) of the Dodd-Frank Act of 2010 (which disqualifies certain individuals from participating in private placement offerings). In that request for comment, the Commission stated that it had been urged to differentiate between mere technical violations and intentional or more egregious conduct when interpreting the meaning of fraudulent, manipulative, or deceptive conduct in the context of private placement offerings. *See Disqualification of Felons and Other "Bad Actors" from Rule 506 Offerings*, Securities Act Rel. No. 33-9211, 2011 SEC LEXIS 1820, at *49-50 (May 25, 2011). The Commission stated that "[w]e understand that there may be concerns that this language could be interpreted or applied very broadly, and in particular that under some state laws and regulations, conduct that some may consider to be a 'technical' violation might be defined as fraudulent, manipulative or deceptive." *See id.* at *49.

We do not find Savva's argument persuasive. To the extent that this request for comment is relevant to whether Savva is statutorily disqualified under the Exchange Act, the misconduct underlying the Vermont Order was not "technical" in nature. Rather, it involved serious misconduct and findings that Savva engaged in unauthorized transactions, made unsuitable recommendations, and regularly used high pressure sales tactics and coerced customers into purchasing securities. The Commission's concerns regarding potentially overbroad interpretations of what constitutes fraudulent, manipulative, or deceptive conduct for private placements are simply not relevant to the circumstances before us and Savva's misconduct underlying the disqualifying Vermont Order.

Savva also argues that Member Regulation did not specifically identify the Vermont Order as a final, disqualifying order based upon laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct. Rather, Savva asserts that Member Regulation asserted only that the Vermont Order was a final order barring Savva, and that it would be unfair to permit Member Regulation to assert another reason why the Vermont Order is disqualifying. We disagree.

First, we are not bound by Member Regulation's characterization of an order or event as statutorily disqualifying and the alleged basis for an individual's statutory disqualification, which are legal issues that we may raise and address as an adjudicator. *See Perez v. United States*, 830 F.2d 54, 58 (5th Cir. 1987) ("A trial court can sua sponte address a legal issue raised by neither party."); *Brown v. Termplan, Inc.*, 693 F.2d 1047, 1048-49 (11th Cir. 1982) (same)); *see also* FINRA Rule 9524(a)(3)(4) (providing that the Hearing Panel may order the parties to supplement the record with any information it deems necessary). Indeed, to promote FINRA's mission to protect the investing public, we may independently determine whether an individual, such as Savva, is statutorily disqualified under the Exchange Act on grounds other than those argued by the parties.

Second, Savva was not unfairly prejudiced by Member Regulation's apparent initial failure to identify the Vermont Order as a final order based upon fraudulent, manipulative, or deceptive conduct. The Form U6, filed by Vermont in October 2004, indicated that the Vermont Order was a final order based upon violations of regulations or statutes prohibiting such conduct and, therefore, put Savva on notice as to the basis for his statutory disqualification. Moreover, at the onset of these proceedings in June 2009. RAD identified the Vermont Order as the triggering disqualifying event. Thus, Savva has been on notice for several years that FINRA based its determination that Savva is statutorily disqualified on the Vermont Order. Contrary to Savva's argument, FINRA's identification of the Vermont Order as the grounds for Savva's disqualification under Exchange Act Section 3(a)(39) satisfied the requirement contained in FINRA Rule 9522(a) that FINRA staff specify in writing the grounds for his disqualification.

Further, in July 2011, the Hearing Panel sua sponte ordered the parties to address whether Savva is disqualified because he is the subject of a final order barring him from associating with a broker-dealer, or because he is the subject of a final order based on violations of laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct. The parties each filed multiple briefs on the matter and Member Regulation expressly argued that the Vermont Order is disqualifying under both Exchange Act Sections 15(b)(4)(H)(i) and (ii). Savva had ample opportunity to argue the legal issue of whether the Vermont Order was disqualifying under either Exchange Act Section 15(b)(4)(H)(i) or (ii), and he in fact made such arguments in briefs filed with the Hearing Panel.[11] Savva was afforded a full opportunity to argue these matters, and he was not unfairly prejudiced.

For all of these reasons, we find that the Vermont Order is disqualifying because it is a final order based upon fraudulent, manipulative, or deceptive conduct.[12]

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[11] In his briefs, Savva argued that permitting Member Regulation to assert a new basis for disqualification more than two years after FINRA issued notice of the disqualification "would be akin to allowing a prosecutor to add new charges against a defendant during his opening statement at trial." We reject this argument. First, FINRA eligibility proceedings are not criminal proceedings. *See Pacific On-Line Trading & Sec., Inc.*, 56 S.E.C. 1111, 1123 n.21 (2003) (holding that FINRA proceedings are not criminal matters). Second, the Hearing Panel ordered the parties to brief this issue in July 2011, more than four months prior to the hearing on this matter.

[12] In light of our findings that the Vermont Order is disqualifying because Savva's misconduct involved violations of Vermont laws prohibiting fraudulent, manipulative, or deceptive conduct, we need not decide whether the Vermont Order is also disqualifying because it is a final order barring Savva. To promote judicial efficiency, Member Regulation should in the future identify, as early in an eligibility proceeding as practicable, *all* statutory bases pursuant to which it asserts an order is disqualifying where an applicant disputes that the order is disqualifying.

D. FINRA Did Not Retroactively Impose upon Savva the Definition of Statutory Disqualification or Rules Concerning Eligibility Proceedings

Having determined that the Vermont Order rendered Savva statutorily disqualified, we now address Savva's argument that FINRA retroactively applied the definition of statutory disqualification, which Savva argues makes this entire proceeding unfair.

Generally, without clear evidence of a statute's intent, a presumption exists against statutory retroactivity. *Landgraf v. USI Film Prod.*, 511 U.S. 244, 264 (1994). "Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted." *Id.* at 265. With respect to federal statutes, courts first ask whether Congress has expressed its intent to apply the statute retroactively. *Id.* at 280. Absent such intent, courts must determine whether the statute would have a retroactive effect. Factors courts consider in making this determination include whether the statute would impair rights a party possessed at the time he acted, increase liability for past conduct, or impose new duties concerning transactions already completed. *Id.* "Changes in procedural rules may often be applied . . . without raising concerns about retroactivity." *Id.* at 275. Rules of procedure regulate secondary conduct, and parties hold "diminished reliance interests in matters of procedure." *Id.* For example, intervening statutes conferring jurisdiction on a particular tribunal have regularly been applied whether or not the tribunal possessed jurisdiction when the underlying conduct occurred. *Id.* at 274.

We reject Savva's retroactivity arguments. First, Congress amended the definition of statutory disqualification set forth in Exchange Act Section 3(a)(39) two years *prior* to entry of the Vermont Order in August 2004. Thus, at the time of Savva's underlying misconduct, from August 2002 until November 2003, and at the time Vermont entered the Vermont Order in August 2004, the existing Exchange Act provisions at issue rendered Savva statutorily disqualified. Savva's professed ignorance of the law or the effect of entry of the Vermont Order is irrelevant to our determination that retroactivity arguments are inapplicable to Savva's disqualified status under Exchange Act Section 3(a)(39).[13] *Cf. Kirk A. Knapp*, 51 S.E.C. 115, 134 (1992) ("The NASD is correct in emphasizing that participants in the industry must take responsibility for their compliance and cannot be excused for lack of knowledge, understanding or appreciation of these requirements.").

Second, FINRA intended that its changes to the definition of statutory disqualification contained in its by-laws and procedures governing eligibility proceedings apply to all individuals statutorily disqualified as a result of Sarbanes-Oxley. At the time FINRA amended the definition of statutory disqualification to conform to the Exchange Act definition, it stated that "[t]he revised definition of 'disqualification' will cause a limited number of individuals to be subject to NASD eligibility proceedings for persons subject to disqualification (i.e., NASD Rule 9520) who were not subject to those proceedings before the definitional change." *See* Shaswat Das. Esq.,

[13] Savva was represented by counsel at the time the Vermont Order was entered.

NASD, SEC No-Action Letter, 2007 SEC No-Act. LEXIS 540, at *2 (July 27, 2007). Indeed, as early as July 2003, FINRA amended the Form U4 to start requiring the "reporting of regulatory actions that may cause an individual to be subject to a statutory disqualification under the expanded definition of disqualification in Section 15(b)(4)(H) of the Exchange Act, created by the passage of the Sarbanes-Oxley Act."[14] *See NASD Notice to Members 03-42.*

Even if we were to find that FINRA did not clearly intend these amendments to apply to individuals such as Savva who were disqualified after 2002, FINRA's amendments to its by-laws and procedures governing eligibility proceedings simply did not have a retroactive effect. FINRA's changes to its by-laws and procedures did not alter the fact that the Exchange Act was amended before entry of the Vermont Order and the misconduct at issue. Nor did these changes alter the fact that Savva was statutorily disqualified under the Exchange Act upon entry of the Vermont Order in August 2004. FINRA's amendments to its by-laws and procedures did not impair any rights that Savva possessed or increase liability for his misconduct, and they did not impose any new substantive duties upon Savva. Indeed, either the Commission or FINRA could have sought, anytime after entry of the Vermont Order, to bar Savva from associating with a broker-dealer. *See* 15 U.S.C. § 78o-3 (providing that the Commission or a registered securities association may bar from associating with a member any person who is subject to statutory disqualification); *see also Bradley v. School Bd. of Richmond*, 416 U.S. 696, 721 (1974) (new statute specifically authorizing attorneys' fees for prevailing parties in school desegregation cases did not impose an additional or unforeseeable obligation, and did not upset the reasonable expectations of the parties, because courts had pre-existing options available to impose attorneys fees).

Instead, FINRA's amendments clarified the procedures and mechanism pursuant to which Savva's existing statutorily disqualifying event and his continued association with a broker-dealer notwithstanding his disqualification would be resolved and that it would be resolved by FINRA adjudicators. *See Landgraf*, 511 U.S. at 275 (holding that application of new procedural rules generally do not raise retroactivity concerns); *see also Piamba Cortes v. Am. Airlines, Inc.*, 177 F.3d 1272, 1283 (11th Cir. 1999) (holding that if a statute clarifies an existing law it has no retroactive effect). We find that FINRA's amendments to its by-laws and

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[14] FINRA also explained, in a notice to members describing the changes to FINRA's rules governing eligibility proceedings, that absent changes to its procedural rules "all persons subject to any of the additional categories of disqualification would be required to obtain approval from FINRA to enter or remain in the securities industry." *See FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 52, at *8. The notice detailed the amendments to FINRA's eligibility proceedings and described circumstances under which certain individuals who were already subject to an existing disqualification (such as Savva) would be required to file an application with FINRA to continue to associate with a member firm notwithstanding the existing disqualification. The notice further informed FINRA members that not all individuals statutorily disqualified as a result of the Sarbanes-Oxley Act would be required to go through an eligibility proceeding because of the changes to FINRA's rules governing eligibility proceedings. FINRA always intended that the change to its rules governing eligibility procedures would apply to individuals statutorily disqualified after the changes and prior to the changes.

procedures governing eligibility proceedings took away none of Savva's existing substantive rights and did not deprive him of an opportunity to know what the law was and to govern his conduct accordingly. *Landgraf*, 511 U.S. at 265. Consequently, we reject Savva's arguments.

III. Background Information

We now turn to the merits of the Application.

A. Savva's Employment History

Savva has been employed in the securities industry since August 1996, when he qualified as a general securities representative. He also passed the uniform securities agent state law exam in September 1996. Savva has been associated with Hunter Scott since January 2004.[15] Savva was previously associated with eight firms between May 1992 and May 2005.

B. Savva's Disciplinary History

1. Customer Complaints

The record reflects that ten customer complaints have been filed against Savva since 1999.[16]

In August 1999, a customer alleged that Savva engaged in unauthorized trading and failed to execute trades in his account. The customer sought damages of $5,400. Savva personally settled the claim for $5,585. This complaint is neither disclosable nor reportable on CRD. Savva testified that this complaint was filed several months after he left his firm, and another broker was handling this account.

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15 This is consistent with FINRA's interpretation of Article III, Section 3(c) of FINRA's By-Laws, which permits individuals who become statutorily disqualified while they are employed to continue working pending the outcome of the statutory disqualification process.

16 Nine of these complaints are listed on Savva's report filed with FINRA's Central Registration Depository ("CRD"[®]), and one was disclosed by the Firm pursuant to NASD Rule 3070 (although it was not listed on Savva's CRD report). From 1998 through the end of 2008, several other customers lodged complaints against Savva and the Firm disclosed such complaints pursuant to Rule 3070. Several of these complaints were denied by the Firm with no further customer action. The remaining complaints are either insufficiently described in the record or were resolved by the Firm through a settlement with the complaining customer (with no additional explanation). We do not consider these additional complaints in connection with this decision.

In November 1999, a customer alleged that Savva engaged in unauthorized trading. The customer sought damages of $166,000. Savva's former firm settled the claim for $100,000, and Savva contributed $8,333 to that settlement. Savva testified that he did not handle this account.

In April 2000, a customer alleged that Savva charged excessive commissions, and the customer sought damages of $5,057. Although CRD lists this matter as currently pending, and neither disclosable nor reportable, Savva testified that he believes that he personally paid between $1,500 and $4,000 to settle this matter.

In March 2003, a customer alleged that Savva improperly handled his account, and the customer sought damages of $31,000. Savva's former firm settled the matter for $19,980, without Savva personally contributing to the settlement. Savva stated that the customer's mother, also Savva's customer, had a dispute with Savva that "created a negative sentiment" in the customer's relationship with Savva and that the customer complained about the amount of commissions earned by Savva and the firm.[17]

In April 2003, a customer alleged that Savva engaged in unauthorized trading. The customer sought $86,000 in damages. The matter was dismissed, and it is neither disclosable nor reportable on CRD.

In September 2003, a customer alleged that Savva engaged in excessive trading. The customer sought damages of $60,000. The matter was settled for $24,000, without Savva personally contributing to the settlement. Savva testified that this customer was his but he could not remember the details of the matter except that he disputed the allegations.

In August 2005, a customer alleged that Savva charged excessive commissions, and the customer sought damages of $47,000. Hunter Scott settled the matter for $40,000 without Savva personally contributing to the settlement. Savva testified that this customer "knew the game" and simply wanted to recoup from Savva some of the losses in his account due to market fluctuations.

In June 2007, a customer alleged that Savva charged excessive commissions and sought $60,000 in damages. Hunter Scott settled the complaint for $37,000, without Savva personally contributing to the settlement. Savva testified that this customer was being "coached" by his local broker who wanted more of the customer's business and explained that the customer informed Savva's supervisor that he had pulled Savva's CRD and asked that the Firm "just give him some money back and he'll go away." Hechme testified that he reviewed the customer's account and determined that Savva did not excessively trade the account.

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17 After the hearing, the Hearing Panel requested that Savva provide an explanation in writing for this customer complaint and another complaint filed in July 2007. With respect to the March 2003 customer complaint, Savva states that the Firm settled the matter for $9,990 (versus $19,980 as disclosed on CRD). We do not find this discrepancy to be material.

In July 2007, a customer alleged that Savva engaged in improper and unsuitable trading. The customer sought $45,057 in damages. The matter was settled for $9,995 by Savva's former firm, without Savva personally contributing to the settlement. The matter is neither disclosable nor reportable on CRD. Savva stated that he handled this account with two other brokers at his former firm, the customer closed the account without ever complaining about Savva's handling of the account, and several years later the customer filed a claim in arbitration against Savva, his former firm, and the other two registered representatives.

Finally, in January 2008, a customer alleged that Savva engaged in an unauthorized transaction. Hunter Scott settled the matter for $2,284. Hechme testified that he was familiar with this matter, disputed the customer's allegations, and reversed the commissions earned on the transaction as a courtesy.

2. Other Matters

In November 2005, the State of Illinois entered a Consent Order of Withdrawal, which required Savva to withdraw his registration in Illinois. The Illinois order also prohibited Savva from reapplying for registration in Illinois for two years and required Savva to pay $750. The Illinois order was based upon Savva's failure to timely update his Form U4 to reflect the November 1999 customer complaint (described above). Savva testified that he was "shocked" that the complaint had not been listed on his Form U4 because he had disclosed the matter to his supervisor at his prior firm, although he admittedly did not follow up to ensure that the complaint was reported on his Form U4.

FINRA also named Savva in an informal action. Specifically, in April 2009, FINRA issued Savva a Cautionary Action in connection with unsuitable recommendations in a customer's account, excessive trading in customer accounts, and using personal email accounts for business purposes. With respect to the unsuitable recommendations, Savva stated in writing that he obtained an updated customer account form from the customer reflecting his investment objectives as "speculation" and "active trading" rather than "preservation of capital" and "conservative" as inaccurately listed on the form. With respect to the excessive trading, Savva disputed that the trading was excessive and blamed the high turnover ratios on substantial declines in the accounts' equity. Savva further stated that the Firm subsequently implemented new procedures pursuant to which it would conduct more frequent reviews of turnover and cost-to-equity ratios in certain active accounts. Savva explained that the use of personal email was an isolated incident resulting from problems with the Firm's email account.

Finally, in 1995, Savva was charged by the State of New York with criminal possession of marijuana, a misdemeanor. The matter was adjourned in consideration of dismissal, and the charges were ultimately dismissed.

Other than the Vermont Order, and the matters referenced above, the record shows no other criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against Savva.

C. The Firm

Hunter Scott has been a FINRA member since January 1999 and is based in Delray Beach, Florida. Hughes testified that the Firm has two offices in New York (including the Brooklyn office), the Firm's home office, and one other office in Florida. Hughes further testified that the Firm employs seven registered representatives and six registered principals. The Firm describes its business as "corporate equities, corporate debt, mutual funds, U.S. Government securities, non-exchange member arranging for transactions in listed securities by exchange member, [and] private placements."

1. Regulatory Actions

On November 16, 2007, FINRA accepted a Letter of Acceptance, Waiver and Consent ("AWC") from Hunter Scott and Peter Gouzos (the Firm's owner, president, and chief operating officer), which found that the Firm and Gouzos failed to report timely customer complaints, failed to retain emails and to maintain supervisory procedures designed to ensure compliance with applicable rules regarding the maintenance of emails, failed to implement a written training plan to comply with continuing education requirements, failed to conduct annual branch office inspections, and permitted customers to purchase securities in accounts that should have been frozen in violation of Reg. T. FINRA censured the Firm and Gouzos and fined them (jointly and severally) $125,000.

On June 23, 2006, FINRA accepted an AWC from the Firm and Gouzos, which found that they failed to adequately implement the Firm's Anti-Money Laundering ("AML") compliance program. FINRA censured the Firm and Gouzos, fined the Firm $15,000, and fined Gouzos $10,000. FINRA also required that Gouzos take a training program.

2. Routine Examinations

In December 2010, FINRA conducted a compliance conference with the Firm for failing to prevent and detect churning in at least 10 customer accounts. FINRA also issued the Firm a Cautionary Action, which cited it for failing to include required language in its 2010 annual CEO certification and for failing to effect such certification prior to the anniversary date of the previous year's certification.

In April 2010, FINRA issued the Firm a Cautionary Action for the following deficiencies: effecting transactions in accounts while they were on restriction; failing to establish and maintain an adequate supervisory system to monitor activities in restricted accounts and failing to test its Regulation S-P procedures in 2008; and failing to document the time the Firm received certain customer orders.

In April 2009, FINRA conducted a compliance conference with the Firm for the following deficiencies: failing to follow its heightened supervisory procedures with respect to Savva; failing to identify Hechme as a producing manager and failing to place him on heightened supervision; making unsuitable recommendations in soliciting certain accounts to trade at levels for which there was no reasonable basis and failing to issue two "happy" letters to customers on the Firm's active account report; failing to establish a supervisory system that required the branch office manager and compliance officer to review the branch activities in customer accounts to detect excessive trading and unsuitable recommendations; making unsuitable recommendations in a customer account managed by Savva; placing trades in accounts while they were under restriction and held insufficient cash; making an erroneous FOCUS report filing; failing to establish and maintain Written Supervisory Procedures ("WSPs") that included procedures concerning instant messages or Bloomberg Station correspondence and procedures for performing account turnover or cost-to-equity ratio analyses; permitting several employees (including Savva and Hechme) to use personal email accounts for business related purposes; failing to capture and preserve several Firm emails accounts; failing to identify the registered representative responsible for certain order tickets and to properly record entry times for orders; and reporting a settlement one day late. FINRA also issued the Firm a Cautionary Action for certain of these deficiencies.

In December 2007, FINRA conducted a compliance conference with the Firm for the following deficiencies: failing to provide customers with the Firm's business continuity plan disclosure documents at account opening; failing to update its Uniform Application for Broker-Dealer Registration and Uniform Branch Office Registration Form to reflect that a branch office had been terminated; failing to have the Firm's third party vendor notify FINRA of its use of electronic storage media; failing to provide an annual report by the Firm's designated principal to senior management regarding the Firm's supervisory controls and procedures; failing to approve in writing Hechme's outside business activity; failing to ensure that all registered representatives attended the Firm's 2006 Annual Compliance Meeting; failing to establish WSPs for holding customer mail, failing to implement WSPs concerning the review of excess commissions and approval of outside business activities, and failing to implement WSPs regarding the accuracy and timelines of certain forms; failing to implement the Firm's AML procedures; failing to charge fair and reasonable commissions on nine transactions; and failing to ensure that recommendations to customers were suitable.

In November 2006, FINRA issued the Firm a Cautionary Action for failing to comply with MSRB rules, including MSRB supervisory rules and FINRA supervisory rules.

The record shows no other recent complaints, disciplinary proceedings, or arbitrations against the Firm.

IV. Savva's Proposed Business Activities and Supervision

The Firm originally proposed that it would continue to employ Savva as a general securities representative in the Firm's Brooklyn, New York branch office, and that Savva would be supervised at the Brooklyn office by Hechme.[18] However, on July 25, 2012, the Firm informed FINRA that "Mr. Hechme has encountered certain complications in his personal life" that have required him to spend time overseas. The Firm now proposes that it will employ Savva as a general securities representative in the Firm's main office in Delray Beach, Florida, and that Hughes will serve as Savva's supervisor. The Firm represents that Hughes "will be supervising Mr. Savva pursuant to the same strict conditions and restrictions set forth in the original plan submitted by the firm," which is described below. Savva will be compensated by commission.

Hughes first registered as a general securities representative in August 2000 and qualified as a general securities principal in December 2004. Hughes was registered with Hunter Scott from April 2003 through September 2005, and again from March 2006 to the present. In addition to Hunter Scott, Hughes has been associated with seven other firms. Hughes currently serves as Hunter Scott's chief compliance officer, and he testified that the Firm's operations staff also reports to him.

According to CRD, two customer complaints have been filed against Hughes. In April 2007, a customer alleged that Hughes engaged in excessive and unsuitable trading. The customer sought damages of $400,000. The Firm settled this matter for $75,000, without Hughes personally contributing to the settlement. Hughes stated that he had no personal involvement with the investments at issue and he was named in the complaint because he is a control person of the Firm.

In July 2008, customers alleged that Hughes churned their account and charged excessive commissions and fees. The customers sought damages of $443,056. The Firm settled this matter for $112,500, without Hughes personally contributing to the settlement. Hughes stated that he had no personal involvement with the customers and believed he was named in the complaint because he is a control person of the Firm.

Finally, in January 1998, Hughes received a discharge in bankruptcy. Other than the matters referenced above, CRD shows no other criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against Hughes.

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18 Hechme currently serves as the branch manager of the Firm's Brooklyn office. Hechme has been the subject of three customer complaints. In addition, in June 2002, Hechme consented to a stipulation and consent with the American Stock Exchange, pursuant to which he was fined $5,000. FINRA also issued Hechme a Cautionary Action for failing to adequately supervise representatives of the Brooklyn office (including Savva) because of excessive trading in customer accounts and Savva's unsuitable recommendations to a customer, failing to properly supervise the accuracy of order tickets, and the improper use of personal email by Savva and Hechme.

The Firm originally submitted the following heightened plan of supervision, which has been in place since March 2004:[19]

1. Customer account activity will be monitored on a monthly basis.

2. All new accounts will be reviewed, and a sample of these accounts will be called to verify the information on the new account application is accurate and complete.

3. All of Mr. Savva's tickets must be initialed by Mr. Hechme, or his designee in the case of his absence, prior to execution.

4. Mr. Savva will receive training in addition to the continuing education firm element. This training will involve customer suitability and ethics. He will be required to submit proof of completion to Mr. Hechme.

5. A monthly review of Mr. Savva's accounts will be performed to review items such as: extensions, liquidations, and trade corrections.

6. All of Mr. Savva's margin accounts will be reviewed monthly.

As stated above, the Firm has represented that Hughes is now supervising Savva under this plan and will be Savva's supervisor going forward.

V. Member Regulation's Recommendation

Member Regulation recommends that the Application be denied because, in its view: (1) Savva's disciplinary history "is replete with customer complaints and regulatory actions" and he has been the subject of regulatory actions and complaints since entry of the Vermont Order (which remains in effect); (2) the plan of heightened supervision is inadequate; (3) Hechme is not suitable to supervise Savva based upon his regulatory history and customer complaints filed against him; and (4) the Firm has an extensive disciplinary history, which includes violations of supervisory controls and procedures.

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19 Savva testified that he was also under heightened supervision at his prior firm because of several customer complaints, and that his prior supervisor preapproved all of his transactions.

VI. Discussion

In evaluating this application, we assess whether the sponsoring firm has demonstrated that the proposed association of the statutorily disqualified individual is in the public interest and does not create an unreasonable risk of harm to the market or investors. *See Continued Ass'n of X*, Redacted Decision No. SD06002, slip op. at 5 (NASD NAC 2006), *available at* http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p036476.pdf; *see also Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (holding that FINRA "may deny an application by a firm for association with a statutorily-disqualified individual if it determines that employment under the proposed plan would not be consistent with the public interest and the protection of investors"); FINRA By-Laws, Article III, Section 3(d) (providing that FINRA may approve association of statutorily disqualified person if such approval is consistent with the public interest and the protection of investors). Factors that bear upon our assessment include the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, the totality of the regulatory and criminal history, and the potential for future regulatory problems. We also consider whether the sponsoring firm has demonstrated that it understands the need for, and has the capability to provide, adequate supervision over the statutorily disqualified person. The sponsoring firm has the burden of demonstrating that the proposed association is in the public interest despite the disqualification. *See Timothy P. Pedregon, Jr.*, Exchange Act Rel. No. 61791, 2010 SEC LEXIS 1164, at *16 (Mar. 26, 2010).

After carefully reviewing the entire record in this matter, we find that Savva's proposed continued association with the Firm would create an unreasonable risk of harm to investors and the market. Accordingly, we deny the Application for Savva to continue to associate with the Firm as a general securities representative.

We find that Savva's disqualifying event is serious and securities-related. The Vermont Order found that Savva engaged in unauthorized transactions in customer accounts, made unsuitable recommendations to customers, and regularly utilized high pressure sales tactics. These matters are highly troubling. *See SEC v. Wolfson*, 539 F.3d at 1253 n.6 (stating that boiler rooms typically involve salespeople making calls to lists of potential investors in order to peddle speculative or fraudulent securities and using high-pressure sales pitches containing misleading information about the nature of the investment); *Howard Alweil*, 51 S.E.C. 14, 18 (1992) ("[u]nauthorized trading is very serious misconduct"); *Dep't of Mkt. Regulation v. Kresge*, Complaint No. CMS030182, 2008 FINRA Discip. LEXIS 46, at *15 n.12 (FINRA NAC Oct. 9, 2008) (holding that "it is axiomatic that fraud and unsuitable recommendations rank among the most serious kinds of securities law violations"). Further, the Vermont Order prohibits Savva from even seeking registration in Vermont as a broker-dealer sales representative or an investment adviser representative without prior written consent from the Vermont Department (which may be granted or withheld in the Vermont Department's sole discretion). We do not credit Savva's attempts at the hearing to minimize his role in certain of the misconduct underlying the Vermont Order.[20] *Cf. Am. Inv. Serv., Inc.*, 54 S.E.C. 1265, 1273 (2001) (denying a firm's application to associate with statutorily disqualified persons who "demonstrate[d] a troubling lack of understanding . . . of their own role in the events that were at issue in the [statutorily disqualifying event]").

We have also considered that at least ten customers have filed complaints against Savva since 1999. Savva personally paid at least $15,400 to settle these matters, and his firms paid approximately $225,000 to settle matters filed against Savva. Although Savva provided explanations for some of the customer complaints, we find that at least three of the customer complaints (not including the complaint underlying the Vermont Order) involved allegations of unauthorized transactions, and Savva personally contributed funds to settle two of these three complaints. In addition, we find that Illinois' order requiring Savva to withdraw his registration (and prohibiting him from reapplying for two years) in connection with his failure to timely update his Form U4, and FINRA's 2009 Cautionary Action, involve serious matters. As a whole, we find Savva's explanations concerning these matters to be inadequate and raise serious concerns regarding his dealings with customers and his ability to comply with securities laws and regulations. *See Timothy H. Emerson Jr.*, Exchange Act Rel. No. 60328, 2009 SEC LEXIS 2417, at *17-18 (July 17, 2009) (holding that FINRA reasonably concluded that several customer complaints filed against disqualified individual and settled by his firm, as well as discharges from prior firms, reflected poorly on his judgment and trustworthiness).

We further find that the Firm has not demonstrated that it can properly supervise a statutorily disqualified individual such as Savva, regardless of who serves as Savva's primary supervisor. *See id.* at *18 (holding that an applicant must establish that it will be able to adequately supervise a statutorily disqualified individual by imposing a stringent plan of heightened supervision); *Citadel Sec. Corp.*, Exchange Act Rel. No. 49666, 2004 SEC LEXIS 949, at *13 (May 7, 2004) ("[I]n determining whether to permit the employment of a statutorily disqualified person, the quality of the supervision to be accorded that person is of utmost importance. We have made it clear that such persons must be subject to stringent oversight by supervisors who are fully qualified to implement the necessary controls.") (internal quotation omitted). The Firm's proposed plan of heightened supervision is skeletal, lacks specificity, and is not specifically tailored to Savva and preventing misconduct similar to the Vermont Order. For example, although Savva and Hechme testified that Hechme listened to some of Savva's phone calls with customers, the proposed plan contains no provisions regarding the monitoring or review of Savva's communications and correspondence with customers by anyone at the Firm. The plan does not specify how or whether Hughes' monthly monitoring of customer account activity will be documented and maintained. Further, despite the fact that Savva has received

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[20] At the hearing, other than stating that he did not use sales scripts at his prior firm, Savva did not attempt to explain the findings in the Vermont Order concerning his use of high pressure sales tactics. In addition, we reject Savva's explanations that "he was a kid" and "still learning" regarding the misconduct underlying the Vermont Order and early customer complaints. *See Scott Epstein*, Exchange Act Rel. No. 59328, 2009 SEC LEXIS 217, at *72-73 (Jan. 30, 2009) (holding that youth or inexperience does not excuse a registered representative's duty to his customers), *aff'd*, 416 F. App'x 142 (3d Cir. 2010).

numerous complaints throughout his career, the plan does not contain any special provisions concerning how future customer complaints against Savva will be handled.

In addition, the supervisory plan does not designate a backup supervisor or provide specific provisions concerning who will supervise Savva in Hughes' absence.[21] *Cf. Pedregon*, 2010 SEC LEXIS 1164, at *27 (finding "troubling" designation of unqualified individual as backup supervisor). Hechme also testified that the supervisory procedures for the other registered representative he supervised at the Firm's Brooklyn, New York office are substantially similar to the plan proposed for Savva. We find that the Firm's proposed plan does not reflect the careful consideration required to effectively supervise a statutory disqualified individual and lacks the specifically tailored provisions necessary to prevent and deter future misconduct.[22] *See Leslie A. Arouh*, Exchange Act Rel. No. 62898, 2010 SEC LEXIS 2977, at *38-39 (Sept. 13, 2010) (finding inadequate proposed plan of supervision where much of the plan applies to all firm employees).

Moreover, even though Savva has been on heightened supervision since October 1999, the Vermont Order and almost all of Savva's customer complaints have occurred while he has been on heightened supervision, including at least four customer complaints since the Firm implemented its heightened supervisory plan currently under consideration. During this period, Illinois also sanctioned Savva and FINRA issued Savva a Cautionary Action. Under these circumstances we are simply not persuaded that the Firm can effectively supervise Savva pursuant to the same heightened plan that has been in place at the Firm since 2004. We further find that in 2009 FINRA cited the Firm for failing to follow its heightened supervisory procedures with respect to Savva and failing to place Hechme under the Firm's heightened procedures. *See Emerson*, 2009 SEC LEXIS 2417, at *20-21 (considering a firm's prior violation of its own rules regarding heightened supervision in denying application). These facts support our finding that the Firm is unable to provide the stringent supervision required of a statutorily disqualified individual under the proposed heightened supervisory plan.

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[21] Hughes testified that he was the backup supervisor under the original proposed plan.

[22] Although counsel for the Firm represented that the Firm would incorporate into the heightened supervisory plan any other terms necessary for the Application to be approved, it is the applicant's burden to draft and propose a supervisory plan that provides for stringent supervision. *See Pedregon*, 2010 SEC LEXIS 1164, at *28 n.32 (holding that FINRA was fully justified in requiring a firm to provide specifics before approving an application rather than accepting assurances that the firm would later devise an appropriate plan); *Emerson*, 2009 SEC LEXIS 2417, at *20 (holding that drafting a supervisory plan is the firm's responsibility, not FINRA's).

VII. Conclusion

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

On Behalf of the National Adjudicatory Council,

Marcia E. Asquith

Marcia E. Asquith
Senior Vice President and Corporate Secretary

FINRA
Financial Industry Regulatory Authority

Andrew J. Love
Associate General Counsel

Direct: (202) 728-8281
Fax: (202) 728-8264

August 10, 2012

VIA MESSENGER

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: **SD-1800: In the Matter of the Association of Nicholas S. Savva with Hunter Scott Financial, LLC**

Dear Ms. Murphy:

Enclosed please find notice pursuant to Section 19(d) of the Securities Exchange Act of 1934 in the matter of the association of Nicholas S. Savva as a general securities representative with Hunter Scott Financial, LLC.

Very truly yours,

Andrew J. Love

cc: VIA FACSIMILE/CERTIFIED MAIL

Charles Hughes
Chief Compliance Officer
Hunter Scott Financial
500 Gulfstream Blvd, Suite 105
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Fax: (561) 279-2643

VIA FACSIMILE/INTER-OFFICE MAIL

Lorraine Lee-Stepney
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FINRA

Financial Industry Regulatory Authority

Marcia E. Asquith
Senior Vice President and Corporate Secretary
(202) 728-8831-Direct
(202) 728-8300-Fax

August 10, 2012

VIA FIRST-CLASS MAIL AND CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Michael Schwartzberg, Esq.	Charles Hughes
Winget, Spadafora & Schwartzberg, LLP	Hunter Scott Financial
45 Broadway, 19th Floor	500 Gulfstream Blvd., Suite 105
New York, NY 10006	Delray Beach, FL 33483

RE: **SD-1800: In the Matter of the Association of Nicholas S. Savva with Hunter Scott Financial, LLC**

Dear Mr. Schwartzberg and Mr. Hughes:

Enclosed herewith is the decision of the National Adjudicatory Council in the above-referenced matter. The FINRA Board of Governors did not call this matter for review, and the attached decision is the final decision of FINRA.

If the decision contains any findings against you, you may appeal this decision to the U.S. Securities and Exchange Commission ("SEC"). To do so, you must file an application with the Commission within 30 days of your receipt of this decision. A copy of this application must be sent to the FINRA Office of General Counsel as must copies of all documents filed with the SEC. Any documents provided to the SEC via fax or overnight mail should also be provided to FINRA by similar means.

The address of the SEC is:	The address of FINRA is:
Office of the Secretary	Attn: Andrew J. Love
U.S. Securities and Exchange Commission	FINRA
	Office of General Counsel
100 F Street, NE	1735 K Street, NW
Washington, DC 20549	Washington, DC 20006

If you file an application for review with the SEC, the application must identify the FINRA case number and set forth in summary form a brief statement of alleged errors in the determination and supporting reasons therefore. You must include an address where you may be served and phone number where you may be reached during business hours. If your address or phone number changes, you must advise the SEC and FINRA. Attorneys must file a notice of appearance.

Michael Schwartzberg, Esq.
Charles Hughes
August 10, 2012
Page 2

Questions regarding the appeal process may be directed to the Office of the Secretary at the SEC. The phone number of that office is (202) 551-5400.

Very truly yours,

Marcia E Asquith

Marcia E. Asquith
Senior Vice President and Corporate Secretary

cc: Lorraine Lee-Stepney
Andrew J. Love