

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 89349 / July 20, 2020

Admin Proc. File No. 3-9907

In the Matter of the Application of  
  
FRED F. LIEBAU, JR.

ORDER DIRECTING ADDITIONAL SUBMISSIONS

In 1999, the Commission instituted an administrative proceeding pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 against Fred F. Liebau, Jr., resulting in a settled order (“Order”).<sup>1</sup> In the Order, the Commission found that Liebau, while president and chief compliance officer of a registered broker-dealer, had failed to reasonably supervise a registered representative for approximately five years, during which time the representative operated a Ponzi scheme involving at least 97 people.<sup>2</sup> The Order, among other things, required Liebau to pay a \$10,000 civil money penalty; suspended him from associating with any broker or dealer for three months; and barred him from associating with any broker or dealer as a supervisor or principal, with the right to reapply for such association after two years to the appropriate self-regulatory organization, or, if none, the Commission.<sup>3</sup>

On May 1, 2020, Liebau filed a “[p]etition to [v]acate . . . [his] [a]dministrative [b]ar . . . in accordance with Rule 193 [of the Commission Rules of Practice] . . . regarding applications by barred individuals for consent to associate.”<sup>4</sup> According to Liebau, while he has been employed in the financial industry for most of the past 20 years, he is requesting relief now so that he can serve as president, proprietor, and an unsupervised Investment Advisory Representative (IAR) of an investment advisor. Liebau’s petition does not explain why relief from a bar against associating with a broker or dealer in a supervisory or principal capacity would be necessary for him to associate as president, proprietor, and an unsupervised IAR of an investment advisor.

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<sup>1</sup> *Fred F. Liebau, Jr.*, Exchange Act Release No. 41434, 1999 WL 329685 (May 21, 1999).

<sup>2</sup> *Id.* at \*1.

<sup>3</sup> *Id.* at \*2-3.

<sup>4</sup> *See* 17 C.F.R. § 201.193 (providing process by which individuals can seek to reenter the securities industry despite previously being barred by the Commission).

It is unclear from Liebau's submission whether he is seeking to modify or vacate his administrative bar, or whether he is seeking consent to associate with a registered entity not regulated by a self-regulatory organization, such as an investment advisor, pursuant to Commission Rule of Practice 193. These are separate forms of relief with separate standards.<sup>5</sup> Relief granted under Rule 193 permits a particular association while the bar remains in place, while relief granted in response to petitions to vacate removes the bar in its entirety.<sup>6</sup>

Because of this lack of clarity, further briefing would be helpful to the Commission. Liebau is thus directed to file an additional written submission clarifying the relief he seeks.<sup>7</sup>

Accordingly, it is ORDERED that Fred F. Liebau, Jr. file a statement, not to exceed 3,000 words, by August 3, 2020, addressing the issues outlined in this order.<sup>8</sup>

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman  
Secretary

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<sup>5</sup> Compare *Brett Thomas Graham*, Exchange Act Release No. 84526, 2018 WL 5734348, at \*2-3 (Nov. 2, 2018) (outlining necessary showing for Rule 193 relief) and *Matthew D. Sample*, Exchange Act Release No. 75893, 2015 WL 5305992, at \*2 (Sept. 10, 2015) (describing Rule 193 relief as a "limited lifting" of a bar for the purpose of permitting association) with *Gregory Osborn*, Exchange Act Release No. 86001, 2019 WL 2324337, at \*2-3 (May 31, 2019) (outlining necessary showing to modify or vacate bar) and *Ciro Cozzolino*, Exchange Act Release No. 49001, 2003 WL 23094746, at \*2 (Dec. 29, 2003) (noting that lifting a bar is usually "the last in a series of incremental grants of relief" that is preceded by permissions to associate).

<sup>6</sup> See *Sample*, 2015 WL 5305992, at \*3 n.17 ("Rule 193 does not provide for modification of bars, which remain in effect even after consent to associate is granted . . .").

<sup>7</sup> See, e.g., *Daniel Sholom Frishberg*, Advisers Act Release No. 5399, 2019 WL 4858219 (Oct. 2, 2019) (requesting additional briefing to clarify what remedy petitioner was seeking).

<sup>8</sup> We call attention to the form and service requirements of the Commission's Rules of Practice, 17 C.F.R. §§ 201.150-154. Attention is also called to the Commission's March 18, 2020 order regarding the filing and service of papers in administrative proceedings. Pending Administrative Proceedings, Exchange Act Release No. 88415, 2020 WL 1322001 (Mar. 18, 2020), <https://www.sec.gov/litigation/opinions/2020/33-10767.pdf>.