FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Membership of Laidlaw & Company (UK) Ltd. (CRD No. 119037)	Notice Pursuant to Rule 19h-1 Securities Exchange Act of 1934 SD-2359 **June 14, 2024**

I. Introduction

On May 25, 2023, Laidlaw & Company (UK) Ltd. ("Laidlaw" or "Firm") submitted a Membership Continuance Application ("MC-400A" or "Application") to FINRA's Credentialing, Registration, Education, and Disclosure ("CRED") Department.[1] The Application seeks permission for the Firm, a FINRA member, to continue its membership with FINRA notwithstanding its statutory disqualification. A hearing was not held in this matter; rather, pursuant to FINRA Rule 9523(b), FINRA's Department of Member Supervision ("FINRA," "Member Supervision," or "Department") approves the Application and is filing this Notice pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 ("Exchange Act" or "SEA").[2]

II. The Statutorily Disqualifying Event

The Firm is subject to statutory disqualification, as that term is defined in Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(H)(ii), as a result of a January 23, 2023 Consent Order entered by the Commissioner of the Securities and Business Investments Division of the Connecticut Department of Banking ("Consent Order").[3] The Commissioner alleged that Laidlaw violated several sections of the Connecticut Uniform Securities Act ("Act") and the Regulations of the Connecticut State Agencies ("Regulations") promulgated thereunder.[4] According to the Consent Order, Laidlaw acknowledged, without admitting or denying, the Commissioner's allegations that it engaged in dishonest or unethical business practices within the meaning of Section 36b-

[1] *See* MC-400A and related attachments compiled by CRED, with a cover memorandum dated May 30, 2023, collectively attached as Exhibit 1.

[2] This SEA Rule 19h-1 Notice replaces the Notice filed by FINRA on May 14, 2024.

[3] *See* Consent Order, *In re Laidlaw & Company (UK) Ltd.*, Matter No. CO-22-202018-S (Conn. Dept. of Banking Jan. 23, 2023), attached as Exhibit 2.

[4] *Id*. at pp. 2, 4.

31-15a of the Regulations, amongst other violations.[5] The Consent Order was based on evidence that Laidlaw violated Section 36b-31-15a because the Firm 1) caused or induced trading in at least one customer's account which was excessive in size or frequency in view of the customer's financial situation and needs as disclosed by the customer and 2) exercised discretionary trading authority for at least one client account without first obtaining written discretionary authority from the client.[6]

Laidlaw consented to a fine of $200,000, was ordered to cease and desist from further violations of Regulations Section 36b-31-15a, was ordered to cover the cost of one or more examinations of the Firm conducted by Connecticut within 18 months of the Consent Order (not to exceed $10,000), and agreed to retain an independent compliance consultant for a period of two years to review the Firm's operations and internal supervisory and compliance procedures.[7] The Firm was also ordered to refrain from engaging in the following activities for a period of two years: exercising discretionary trading in any Connecticut client account, utilizing margin in any Connecticut client account opened after the entry of the Consent Order, maintaining any Connecticut branch offices, selling private placement offerings to any Connecticut client unless the client is an accredited investor, and selling certain securities to Connecticut customers.[8]

Laidlaw's Challenge to FINRA's Statutory Disqualification Determination

In its Application, the Firm challenged FINRA's determination that the Consent Order rendered Laidlaw statutorily disqualified.[9] The Firm argued that "the Consent Order was not based on FMD conduct."[10] Laidlaw proffered two arguments in support of its position. First, Laidlaw argued that neither the conduct at issue (excessive trading) nor the statutory language of Section 36b-31-15a, specifically subsection 4, include an element of scienter (i.e. willfulness), so neither the conduct nor the statute involve FMD conduct.[11] Second,

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[5] *Id*. at p. 4.

[6] *Id.* at pp. 2, 4. Section 36b-31-15a states that it shall be considered dishonest or unethical business practices in securities when, amongst other things, a broker-dealer causes or induces trading in a customer's account which is excessive in size or frequency, and when a broker-dealer exercises discretionary power in effecting a transaction in a customer's account without first obtaining written authority. *See* Conn. Agencies Regs. § 36b-31-15a(a)(4) and (6). The Consent Order renders the Firm statutorily disqualified under Exchange Act Section 3(a)(39)(F) incorporating by reference Section 15(b)(4)(H)(ii) because it is a final order of a state securities commission or banking authority that is based on violations of laws or regulations that prohibit fraudulent, manipulative, or deceptive ("FMD") conduct, as discussed further below.

[7] *Id*. at pp. 4-6. The Firm paid the fine. *See* Exhibit 1 at pp. FINRA00082, FINRA00120-21. The Firm represented that it is in compliance with the undertakings. *Id*. at p. FINRA00117. *See also* Correspondence from Richard Babnick Jr. to FINRA dated August 24, 2023, attached as Exhibit 3, at pp. 1-2 Responses 2 and 3; Correspondence from Richard Babnick Jr. to FINRA dated May 10, 2024 (without attachment), attached as Exhibit 4.

[8] *See* Exhibit 2 at pp. 5-6.

[9] *See* Exhibit 1 at FINRA00085.

[10] *Id*. at FINRA00086.

[11] *Id*. at FINRA00085.

Laidlaw argued that the Consent Order was based on exercising discretion in a customer's account without written authority in violation of Section 36b-31-15a(6), which differs from unauthorized trading, and is not FMD conduct.[12] Member Supervision reviewed Laidlaw's challenge and addresses it further in this Notice.

III. Remedial Measures

In its Application, the Firm represented that it has undertaken significant remedial measures in response to the Consent Order. First, the Firm no longer employs Mr. Fedorko, the registered representative who engaged in the specific misconduct at issue, and it hired a new Chief Compliance Officer.[13] Second, the Firm implemented a new surveillance system to provide daily alerts about trading activities and potential excessive trading.[14] Third, Laidlaw started focusing on fee-based models and is transitioning business away from commission-based trading.[15]

Fourth, Laidlaw retained an independent compliance consultant who issued an initial report with a dozen recommendations,[16] all of which Laidlaw has implemented.[17] The recommendations that Laidlaw implemented include revising the Firm's written supervisory policies and procedures related to active accounts to better a) illustrate the circumstances that must exist for remedial actions and reviews to be triggered, b) identify the specific Active Account Report data elements that inform review decisions, and c) set forth the criteria used for deeming accounts "active."[18] The Firm also implemented the consultant's recommendations that Laidlaw permanently include active accounts as a topic at its quarterly Executive Oversight Committee meetings, begin a client outreach program to notify clients by phone that turnover rates in their accounts are trending upwards, and distribute, to supervisors, lists of non-registered personnel who must not receive commission payments.[19] The consultant also confirmed that a) the Firm issued an internal training memo to all registered representatives on the topic of "active accounts," b) "active accounts" was a standing agenda topic at the Firm's weekly compliance meetings, and c) "active accounts" was a topic at the Firm's past two annual compliance meetings.[20]

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[12] *Id*.

[13] *Id.* at FINRA00088.

[14] *Id*.

[15] *Id*.

[16] *Id*. *See also Independent Consultant Report In Connection With State of Connecticut Consent Order Dated January 23, 2023*, drafted by Compliance Risk Concepts, dated April 20, 2023, attached as Exhibit 5 at p. FINRA00105-111, 114-115.

[17] *See* Exhibit 1 at pp. FINRA00088 and FINRA00117. The consultant also issued a second report but it did not contain any new recommendations for the Firm to implement. *See* Exhibit 4.

[18] *See* Exhibit 5 at pp. FINRA00107-08.

[19] *Id*. at p. FINRA00114-115.

[20] *Id*. at p. FINRA00111.

Fifth, the Firm took a significant step to prevent the future use of discretionary authority without written authorization: it banned discretionary accounts Firm-wide and updated its Written Supervisory Procedures ("WSPs") to reflect this prohibition.[21] The Firm also instructed its Supervisors and Compliance Department employees who review new accounts that no new accounts may utilize margin.[22]

Finally, the Firm took remedial measures with regards to doing business in Connecticut. The Firm confirmed it does not maintain a Connecticut branch office and that its Compliance staff is aware that the Firm may not open an office in Connecticut for two years.[23] The Firm has also taken steps to ensure that any Connecticut clients who are offered private placements meet the definition of an accredited investor, and that penny stock transactions are not solicited from clients in Connecticut.[24]

IV. Firm Background

The Firm has been a FINRA member since 2002.[25] It is headquartered in London, England with six branches, one of which is an Office of Supervisory Jurisdiction.[26] The Firm employs approximately 50 registered representatives (including 13 registered principals) and seven non-registered fingerprint individuals.[27] It employs three statutorily disqualified individuals.[28]

Laidlaw is approved to engage in the following lines of business: broker or dealer retailing corporate equity securities over-the-counter; broker or dealer selling corporate debt securities; underwriter or selling group participant (corporate securities other than mutual funds); mutual fund retailer; municipal securities broker; broker or dealer selling variable life insurance or annuities; put and call broker or dealer or option writer; non-exchange member arranging for transactions in listed securities by exchange member; private placements of securities; and other securities business[29] such as the creation and distribution of research.[30]

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[21] *See* Exhibit 3 at p. 2, Response 2. *See also* Correspondence from Richard Babnick Jr. to FINRA dated November 16, 2023, attached as Exhibit 6.

[22] *See* Exhibit 3 at p. 2, Response 2.

[23] *Id*. FINRA confirmed through analysis of FINRA records that the Firm does not maintain an office in Connecticut.

[24] *Id*.

[25] *See* CRD Excerpt: Organization Registration Status, attached as Exhibit 7.

[26] FINRA confirmed this through analysis of the Firm's information contained in CRD, last performed on April 30, 2024.

[27] *Id*.

[28] *Id*. Todd Anthony Cirella (CRD# 2396336), Richard G. Michalski (CRD# 4588706), and Michael Joseph Murray (CRD# 5034449). *See* Appendix A.

[29] *See* CRD Excerpts: Types of Business and Other Business Descriptions, collectively attached as Exhibit 8.

[30] *Id*. at p. 2.

The Firm is a member of the following self-regulatory organizations ("SROs"): Municipal Securities Rulemaking Board ("MSRB").[31]

Recent Examinations

In the past two years, FINRA completed four routine examinations of the Firm, all of which resulted in Cautionary Action Letters ("CALs"). FINRA also completed one non-routine examination that resulted in a CAL.

A. FINRA Routine Examinations

In February 2024, FINRA issued a CAL to the Firm for three of the eight exceptions noted in the completed routine FINRA examination.[32] An additional four exceptions were referred to FINRA's Department of Enforcement ("Enforcement") for further review and disposition.[33] FINRA took no further action with respect to one exception.[34] The three exceptions that were the subject of the CAL pertained to the Firm's failure to: maintain accurate books and records related to individuals associated with a specific registered representative code;[35] enforce its WSPs regarding due diligence by failing to ensure that disclosures were made by an issuer to the Firm's clients;[36] and provide evidence that all prospective investors in a certain offering were provided the associated term sheet for that offering.[37] The Firm responded in writing that it will strive to assign customers previously assigned to the problematic rep code to a new registered representative to handle the transaction, it added a procedure to its WSPs to ensure issuers provide the required disclosures to clients, and it revised its WSPs to obtain confirmation and make a record that an issuer's term sheet has been provided to each prospective investor.[38] The four exceptions referred to Enforcement pertained to the Firm's failure to maintain the minimum net capital requirement,[39] include the dates when reconciliations of bank accounts were performed with the evidence of review,[40] include accurate balance information in a FOCUS report filing,[41] and establish and enforce WSPs related to the

[31] Membership in this organization was verified by FINRA staff through a search of public member directories, last performed on April 30, 2024.

[32] *See* Disposition Letter for Examination No. 20230770612 dated February 26, 2024, Examination Report dated December 15, 2023, and Firm Response dated January 16, 2024, collectively attached as Exhibit 9.

[33] *Id*. at FINRA p. 1.

[34] *Id*.

[35] *Id*. at FINRA p. 7, Exception 5.

[36] *Id*. at FINRA p. 8, Exception 6.

[37] *Id*. at FINRA p. 8, Exception 7.

[38] *Id*. at FINRA pp. 13-16.

[39] *Id*. at FINRA p. 5, Exception 1.

[40] *Id*. at FINRA pp. 5-6, Exception 2.

[41] *Id*. at FINRA p. 6, Exception 3.

Firm's reconciliation process.[42] The Firm responded in writing that it hired a new Chief Accounting Officer and updated its WSPs.[43]

In November 2023, Enforcement issued the Firm a CAL stemming from a routine examination that resulted in a referral to Enforcement.[44] The CAL pertained to the Firm's failure to document that it considered whether one of its registered representative's outside business activities might interfere with his responsibilities to the Firm and his customers, or be viewed by customers or the public as part of the Firm's business.[45]

In March 2023, the Firm was issued a CAL for seven of the 13 exceptions noted in the completed routine FINRA examination.[46] The remaining six exceptions were referred to Enforcement for additional review and disposition.[47] The seven exceptions that were the subject of the CAL pertained to the Firm's failure to: establish and enforce WSPs reasonably designed to achieve compliance with Regulation Best Interest's Conflicts of Interest Obligation because the WSPs failed to eliminate sales contests, sales quotas, bonuses, and non-cash compensation that is based on sales of specific securities types within a limited period of time;[48] post Form CRS prominently on its website;[49] deliver Form CRS to certain customers;[50] acknowledge or attest that recommendations from an annual branch inspection were undertaken;[51] establish an adequate supervisory system and reasonably enforce exiting procedures in reviewing exceptions generated by asset movements;[52] accurately calculate undue concentration charges;[53] and establish an agreement to memorialize intercompany services activity including allocation of costs associated with that activity.[54] The Firm responded in writing that it updated its WSPs to expressly state that sales contests are prohibited, updated its website to prominently display a link to Form CRS, updated its procedures for sending Form CRS to customers, instituted a formal process for acknowledging when corrective actions are taken in response to an audit or inspection, updated its procedures related to reviewing exceptions pertaining to

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[42] *Id*. at FINRA pp. 6-7, Exception 4.

[43] *Id*. at FINRA pp. 11-13. As of the date of this Notice, the exceptions referred to Enforcement remain open.

[44] *See* CAL for Examination No. 20200656833 dated November 13, 2023, attached as Exhibit 10. The routine examination yielded a referral to Enforcement on October 1, 2021, which ultimately resulted in this CAL.

[45] *Id*. The Firm was not required to provide a written response.

[46] *See* Disposition Letter for Examination No. 20220732975 dated March 14, 2023, Examination Report dated December 27, 2022, and Firm Response dated January 25, 2023, collectively attached as Exhibit 11.

[47] *Id*. at FINRA p. 1.

[48] *Id*. at FINRA p. 9, Exception 4.

[49] *Id*. at FINRA p. 10, Exception 5.

[50] *Id*. at FINRA p. 10, Exception 6.

[51] *Id*. at FINRA p. 12, Exception 8.

[52] *Id*. at FINRA pp. 13-14, Exception 10.

[53] *Id*. at FINRA p. 15, Exception 12.

[54] *Id*. at FINRA pp. 15-16, Exception 13.

wire transfers, changed the way it performs its undue concentration calculation, and committed to memorializing an agreement related to the allocation of costs for intercompany activities.[55] The six exceptions referred to Enforcement pertained to the Firm's failure to: properly exercise reasonable diligence, care and skill for several customer accounts given the level and frequency of trading in those accounts;[56] establish, maintain, and enforce an adequate supervisory system including WSPs reasonably designed to achieve compliance with Regulation Best Interest, related to supervising accounts for excessive trading;[57] establish and enforce reasonable supervision over certain customer accounts related to potential unauthorized trading;[58] properly update Form U4s to report customer complaints;[59] and enforce its written procedures related to retention of records related to written customer complaints.[60] The Firm responded in writing that it updated its WSPs related to detecting and supervising excessive trading, terminated the individual representative involved with the accounts at issue, updated its procedures related to evaluating historical customer complaints, updated its customer complaint intake form to make it easier to determine whether a U4 amendment is required, and updated its procedures for retaining customer complaint files.[61]

In February 2023, Enforcement issued the Firm a CAL stemming from a routine FINRA examination that resulted in a referral to Enforcement.[62] The CAL was due to a) the Firm's failure to establish, maintain, and enforce a supervisory system reasonably designed to supervise the holding periods of non-traditional exchange-traded funds and b) the Firm's failure to report (or timely report) nine customer arbitrations on Forms U4 or Forms U5.[63]

B. FINRA Non-Routine Examination

In December 2023, FINRA issued the Firm a CAL due to its failure to submit a written request for a materiality consultation or file a continuing membership application prior to registering an individual with two or more specified risk events in the prior five years.[64]

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[55] *Id*. at FINRA pp. 26-35.

[56] *Id*. at FINRA pp. 5-7, Exceptions 1 and 2.

[57] *Id*. at FINRA pp. 7-9, Exception 3.

[58] *Id*. at FINRA pp. 11-12, Exception 7.

[59] *Id*. at FINRA pp. 12-13, Exception 9.

[60] *Id*. at FINRA pp. 14-15, Exception 11.

[61] *Id*. at pp. 18-34. As of the date of this Notice, the exceptions referred to Enforcement remain open.

[62] *See* CAL for Examination No. 20190606468 dated February 17, 2023, attached as Exhibit 12. The routine examination originally yielded a CAL to the Firm in April 2020 for nine exceptions, with an additional five exceptions referred to Enforcement for further review and disposition. *See* Disposition Letter for Examination No. 20190606468 dated April 6, 2020, Examination Report dated December 20, 2019, and Firm Response dated February 26, 2020, collectively attached as Exhibit 13.

[63] *See* Exhibit 12. Several additional exceptions resulted in a Letter of Acceptance, Waiver, and Consent between FINRA and the Firm on February 17, 2023. *See* FINRA AWC No. 2019060646801 dated February 17, 2023, attached as Exhibit 14.

[64] *See* CAL for Examination No. 20230796584 dated December 20, 2023, attached as Exhibit 15. The Firm

Regulatory Actions

In the past two years, Laidlaw has been the subject of two disciplinary matters in addition to the Consent Order that resulted in the instant Application: an AWC entered into with FINRA and an order entered by the Securities and Exchange Commission ("SEC" or "Commission"), which was also disqualifying.

A. FINRA Action

On February 17, 2023, Laidlaw entered into an AWC with FINRA in connection with several violations, including: 1) failing to maintain the required minimum net capital, in violation of Exchange Act Section 15(c), Rule 15c3-1 thereunder, and FINRA Rules 4110(b) and 2010; 2) failing to timely file required notices of net capital deficiency with the SEC and FINRA in violation of Exchange Act Section 17(a) and Rule 17a-11(b) thereunder and FINRA Rule 2010; 3) failing to maintain accurate books and records concerning its net capital position and timely file accurate FOCUS reports, in violation of Exchange Act Section 17(a), Rules 17a-3 and 17a-5 thereunder, and FINRA Rules 4511 and 2010; and 4) failing to maintain a supervisory system reasonably designed to achieve compliance with FINRA Rule 2111 in connection with due diligence of private placement offerings.[65] The Firm consented to a censure, a $200,000 fine, and to comply with undertakings related to its supervisory system.[66] The Firm paid the fine on March 5, 2023.[67] The Firm certified its compliance with the required undertakings on April 18, 2023.[68]

B. SEC Action and Disqualifying Event

On November 20, 2023, the SEC issued an order finding that from July 2020 through October 2021, Laidlaw willfully violated several provisions of Regulation Best Interest ("Reg BI") and failed reasonably to supervise two registered representatives who violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder ("SEC Order").[69] According to the SEC Order, Laidlaw violated Exchange Act Rule 15l-1(a)(2)(ii)(C), the quantitative prong of Reg BI's Care Obligation, when two of its registered representatives made a series of recommended transactions that placed the financial interest of the Firm ahead of the interest of the customers and without a reasonable basis to believe that the series of recommended transactions were not

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was not required to submit a written response.

[65] *See* Exhibit 14.

[66] *Id*. at p. 5.

[67] *See* CRD Disclosure Composite for Occurrence 2257973, attached as Exhibit 16, at p. 3.

[68] *See* Correspondence from Richard Babnick Jr. to FINRA dated April 18, 2023, attached as Exhibit 17.

[69] *See* SEC Order, *In re Laidlaw and Company (UK) Ltd.*, Exchange Act Release No. 98983 (Nov. 20, 2023), attached as Exhibit 18. This order subjects the Firm to statutory disqualification as defined in Exchange Act Section 3(a)(39)(F), incorporating by reference Sections 15(b)(4)(D) and (E).

excessive in light of the customers' investment profiles.[70] Laidlaw also violated Exchange Act Rule 15l-1(a)(2)(vi) when it failed to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with the quantitative prong of Reg BI's Care Obligation.[71] The Firm also violated Rule 15l-1(a)(1), Reg BI's General Obligation, as a result of the above violations.[72] Furthermore, the Firm failed to develop and implement reasonable supervisory policies and procedures, in that it did not have a system to determine whether the direct supervisor of the two representatives was carrying out his responsibility to supervise the representatives' recommendations for suitability purposes, thereby failing to reasonably supervise the representatives.[73] For these violations, the Firm was censured, ordered to cease and desist from committing or causing any future violations, and ordered to pay disgorgement ($547,712.36), prejudgment interest ($51,844.22), and civil penalties ($223,328), totaling $822,884.58.[74] The Firm fully paid these amounts by January 16, 2024.[75]

V. Prior SEA Rule 19h-1 Notices

Laidlaw has not been the subject of any prior SEA Rule 19h-1 Notices.

VI. The Firm's Proposed Continued Membership with FINRA and Plan of Heightened Supervision

The Firm seeks to continue its membership with FINRA notwithstanding its status as a disqualified member. The Firm has agreed to the following Plan of Heightened Supervision ("Supervision Plan" or "Plan") as a condition of its continued membership with FINRA:[76]

Laidlaw & Company (UK) Ltd. (the "Firm") is subject to statutory disqualification pursuant to Section 3(a)(39)(F) of the Securities Exchange Act of 1934, which incorporates by reference Section 15(b)(4)(H)(ii), as a result of a Consent Order issued by the Connecticut Department of Banking dated January 23, 2023, which is based on the Firm's violations of Regulations of Connecticut State Agencies Section 36b-31-15a.

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[70] *Id*. at p. 2.

[71] *Id*.

[72] *Id*.

[73] *Id*.

[74] *Id*. at pp. 8-9.

[75] *See* Affidavit of Theologos S. Basis dated January 22, 2024 and accompanying proof of payment, collectively attached as Exhibit 19. Since there are no sanctions in effect for statutory disqualification purposes, an application to continue in membership is no longer required under FINRA rules. *See also* FINRA Regulatory Notice 09-19 (June 15, 2009). As such, a 19h-1 Notice was not filed in connection with this matter.

[76] Pursuant to FINRA Rule 9523(b)(1), the Firm executed a Plan of Heightened Supervision. *See* Executed Consent to Plan of Heightened Supervision dated April 29, 2024, attached as Exhibit 20.

In consenting to this Supervision Plan, the Firm agrees to the following:

1. The Firm must comply with all of the undertakings outlined in the Consent Order issued by the Banking Commissioner of Connecticut Department of Banking ("Banking Department"), *In re Laidlaw & Company (UK) Ltd.*, Matter No. CO-22-202018-S (Conn. Dept. of Banking Jan. 23, 2023) ("Consent Order").

2. The Firm must maintain copies of all correspondence between the Firm and the Banking Department's staff relating to the Consent Order, including documenting when the Banking Department's staff grants extensions to the deadlines set forth in the Consent Order. The Firm must maintain copies of all such correspondence in a segregated place for ease of review by FINRA staff.

3. The Firm must provide FINRA's Statutory Disqualification Group with copies of all certifications submitted to the Banking Department upon completion of the undertakings as specified in the Consent Order. The Firm must also maintain copies of all certifications in a segregated place for ease of review by FINRA staff.

4. The Firm must maintain copies of all reports submitted to the Banking Department in accordance with the Consent Order, as well as any other documentation needed to evidence the status and completion of each of the undertakings outlined in the Consent Order. The Firm must maintain copies of such documentation in a segregated place for ease of review by FINRA staff.

5. Within 90 days of the SEC's Letter of Acknowledgement ("LOA") in this matter, the Firm must update its WSPs to require every active account report and exception report that detects potential violative active account behavior to be reviewed by a supervisor within 10 calendar days of the report. The supervisor must document the action taken (if any) on each identified account and the reasoning behind the action or inaction. The Firm must maintain a copy of the reports and documented actions or inactions taken in a segregated place for ease of review by FINRA staff.

6. Within 90 days of the SEC's LOA in this matter, and annually for three years thereafter, the Firm must circulate to all the Firm's sales, supervision, trading, and compliance personnel an internal compliance bulletin or memorandum regarding securities rules and regulations pertaining to quantitative suitability, monitoring and prevention of excessive trading, calculating cost-to-equity ratios and turnover rates, and how to comply with the quantitative prong of Regulation Best Interest's Care Obligation. The Firm must also circulate this compliance bulletin or memorandum to all newly hired sales, supervision, trading, and compliance personnel within 90 days from the date of hire. The Firm must obtain written certifications from the covered personnel that they received and reviewed the compliance bulletin or memorandum. The Firm must maintain a copy of the compliance bulletin or memorandum and certifications in a segregated place for ease of review by FINRA staff.

7. To the extent it has not already done so, within 90 days of the SEC's LOA in this matter, the Firm must implement annual mandatory training for all sales, supervision, trading, and compliance personnel regarding securities rules and regulations pertaining to quantitative suitability, monitoring and preventing excessive trading, calculating cost-to-equity ratios and turnover rates, and how to comply with the quantitative prong of Regulation Best Interest's Care Obligation. New sales, supervision, trading, and compliance personnel must complete said training within 90 days of date of hire. The Firm must maintain and segregate the training materials, along with documentation of the completion of the training by the above covered persons, for ease of review by FINRA staff.

8. Within 90 days of the SEC's LOA in this matter, and annually thereafter, the Firm must circulate to all the Firm's sales, supervision, trading, and compliance personnel an internal compliance bulletin or memorandum reminding them of the Firm's policies regarding discretionary accounts. The Firm must obtain written certifications from the covered personnel that they received and reviewed the compliance bulletin or memorandum. The Firm must maintain a copy of the compliance bulletin and certifications in a segregated place for ease of review by FINRA staff.

9. If the Firm decides to permit discretionary accounts in the future, before the Firm opens any new discretionary accounts, it must update its WSPs with respect to the use of discretion in customer accounts. The updates must include policies and procedures related to obtaining written customer authorization prior to using full-trading discretion. The Firm must document the updates made, maintain the documentation for ease of review by FINRA staff, and notify the Firm's assigned Risk Monitoring Analyst at FINRA in writing.

10. If the Firm decides to permit discretionary accounts in the future, before the Firm permits any registered representative to use discretion in any customer account, the Firm must obtain a written certification from the registered representative and the representative's immediate supervisor that they have reviewed and understand the Firm's WSPs relating to the use of discretion in customer accounts.

11. If the Firm decides to permit discretionary accounts in the future, before the Firm opens any new discretionary accounts, the Firm must implement mandatory annual training for all sales, supervision, trading, and compliance personnel with respect to the use of discretion in customer accounts. All newly hired sales, supervision, trading, and compliance personnel must complete said training within 90 days of date of hire. The Firm must maintain and segregate the training materials, along with documentation of the completion of the training by the above covered persons, for ease of review by FINRA staff.

12. All requested documents and certifications under this Supervision Plan shall be sent directly to FINRA's Statutory Disqualification Group at SDMailbox@FINRA.org.

13. The Firm shall obtain written approval from FINRA's Statutory Disqualification Group prior to changing any provision of the Supervision Plan.

14. The Firm shall submit any proposed changes or other requested information under this Supervision Plan to FINRA's Statutory Disqualification Group at SDMailbox@FINRA.org.

VII. Discussion

A. Laidlaw's Challenge to FINRA's Statutory Disqualification Determination[77]

In reviewing the Firm's Application, Member Supervision considered Laidlaw's challenge to FINRA's statutory disqualification determination. Laidlaw makes two arguments contesting FINRA's determination regarding the Firm's statutory disqualification.[78] First, with regard to excessive trading, Laidlaw argues that neither its conduct nor Section 36b-31-15a(a)(4) include an element of scienter, so neither the conduct nor regulation involve FMD conduct.[79] Second, Laidlaw argues that the Consent Order was based on exercising discretion in a customer's account without written authority in violation of Section 36b-31-15a(6), which differs from unauthorized trading, and is not FMD conduct.[80]

The Consent Order subjects Laidlaw to disqualification under Exchange Act Section 15(b)(4)(H)(ii). Exchange Act Section 3(a)(39)(F), incorporating by reference Section 15(b)(4)(H)(ii), states that "a person is subject to a statutory disqualification … if such person … is subject to any final order of a State securities commission (or any agency or officer performing like functions), … [or] State authority that supervises or examines banks, … that constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive [i.e. FMD] conduct."[81]

In terms of the order itself, the Consent Order is a final order of a State securities commission or State authority that supervises or examines banks.[82] The SEC has defined a final order as "a written directive or declaratory statement issued by a state agency under

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[77] Although the Firm's Application challenged FINRA's statutory disqualification determination, as noted in footnote 76, the Firm subsequently executed a letter consenting to the Supervision Plan thereby waiving its right to a hearing before a Hearing Panel and any right of appeal to the National Adjudicatory Council, the SEC, and the courts. *See* FINRA Rule 9523(b)(1)(A).

[78] *See* Exhibit 1 at FINRA00085-86.

[79] *Id*.

[80] *Id*.

[81] 15 U.S.C. § 78o(b)(4)(H)(ii).

[82] *See In re Meyers Associates, L.P. and Bruce Meyers*, Exchange Act Release No. 81778, 2017 SEC LEXIS 3096, at *14 (SEC Sept. 29, 2017) (finding that a consent order entered with the Connecticut Department of Banking constituted a final order under Section 15(b)(4)(H)). *See also In re Nicholas S. Savva and Hunter Scott Financial, LLC*, Exchange Act Release No. 72485, 2014 SEC LEXIS 5100, at *15-20 (SEC June 26, 2014) (providing a lengthy discussion affirming that a consent order that contains "neither admit nor deny" language constitutes a final order under Section 15(b)(4)(H)).

statutory authority that provides for notice and opportunity for a hearing and constitutes a final disposition or action by the state agency."[83] The Consent Order was issued by the Commissioner for the Connecticut Department of Banking, a state banking authority,[84] and Laidlaw was provided notice and an opportunity for a hearing, both of which it voluntarily waived.[85] Additionally, the Consent Order expressly states in pertinent part, "the Commissioner and Laidlaw reached an agreement, the terms of which are reflected in this Consent Order, in full and final resolution of the matters described herein"[86] and that "[t]his Consent Order shall become final when entered."[87] Based on the agreement, the explicit language of the Consent Order, and settled case law, this Consent Order is a final order that satisfies the first prong of Exchange Act Section 15(b)(4)(H).[88]

Turning to the Firm's violative conduct underlying the order, the Consent Order is based on violations of laws or regulations that prohibit FMD conduct. Laidlaw acknowledged that one of the bases for the Commissioner entering the Consent Order was that the Firm engaged in dishonest or unethical business practices within the meaning of Regulations Section 36b-31-15a.[89] In further support, the Consent Order is based upon evidence that Laidlaw "caused or induced trading in at least one customer's account which was excessive in size or frequency in view of the customer's financial situation and needs as disclosed by the customer" and "exercised discretionary trading authority for at least one client account without first obtaining written discretionary authority from the client."[90] Contrary to Laidlaw's argument, the act of causing excessive trading in a customer's account is deceptive because it may convey to the customer that the amount of trading in the account is appropriate, when, in fact, it is not.[91] Further, the SEC has stated that "the phrase 'fraudulent, manipulative or deceptive conduct' in Exchange Act Section 15(b)(4)(H) is not limited to scienter-based violations."[92]

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[83] *In re Meyers Associates, L.P.*, 2017 SEC LEXIS 3096, at *14.

[84] *See* Exhibit 2 at p. 1.

[85] *Id*. at p. 3 ("Laidlaw, through its execution of this Consent Order, voluntarily waives the following rights: to be afforded notice and an opportunity for a hearing [under Connecticut law]").

[86] *Id*.

[87] *Id*. at p. 6 ¶ 7.

[88] *Id*. at pp. 3-4 ("Laidlaw … voluntarily waives the following rights: … to seek judicial review of, or otherwise challenge or contest, the matters described herein, including the validity of this Consent Order").

[89] *Id.* at p. 4. *See also* Conn. Agencies Regs. § 36b-31-15a(a)(4) and (6) (Section 36b-31-15a is a regulation that prohibits FMD conduct because it prohibits, amongst other things, "causing or inducing trading in a customer's account which is excessive in size or frequency in view of the customer's financial situation and needs as disclosed by the customer" and "exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer.")

[90] *See* Exhibit 2 at p. 2.

[91] *See In re Refco Capital Mkts*., 06 Civ. 643, 2007 U.S. Dist. LEXIS 68082, *24-25 (S.D.N.Y. Sept. 13, 2007) (to be considered deceptive, "the defendant's conduct must create in the victim a sense that things are otherwise than they are"); *U.S. v. Finnerty*, 533 F.3d 143, 148 (2nd Cir. 2008) (deception "irreducibly entails some act that gives the victim a false impression").

[92] *In re Nicholas S. Savva*, 2014 SEC LEXIS 5100, at *8 n. 54.

Laidlaw also argues that the exercise of discretion in a customer's account without written authority is not FMD conduct because this conduct is distinctly different from unauthorized trading.[93] While unauthorized trading and exercising discretion without written authority are different acts of misconduct, nonetheless, exercising discretion without written authority is deceptive conduct as the practice circumvents the regulatory protections afforded to customers from whom written authority is obtained prior to the execution of trade transactions in their accounts.[94] Additionally, failing to obtain discretionary authority in writing "undermine[s] the firm's compliance system which likely otherwise would have subjected the accounts to greater supervision."[95] Exercising trading authority in at least one customer's account without written authority and causing trading that was excessive in size presents a narrative that deceives customers into believing that the amount of trading activity in their accounts is appropriate and their accounts are appropriately supervised. This type of deceptive conduct is prohibited by Conn. Agencies Regs. § 36b-31-15a(a)(4) and (6) and supports that Laidlaw is statutorily disqualified under Exchange Act Section 15(b)(4)(H)(ii).

Importantly, the Connecticut Department of Banking reported the Consent Order on its Uniform Disciplinary Action Reporting Form ("Form U6") filed in the Central Registration Depository ("CRD") and answered "yes" to Question 11 ("Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?").[96] FINRA gives significant weight to a state's determination, as reported on a Form U6, in considering whether a firm violated a law prohibiting FMD conduct.[97]

Therefore, Laidlaw is subject to statutory disqualification under Exchange Act Section

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[93] *See* Exhibit 1 at FINRA00085.

[94] *See Dept. of Enforcement v. Roric E. Griffith,* 2014 FINRA Discip. LEXIS 23, *17 (FINRA OHO June 13, 2014) (discretionary trading "is a practice that is inherently susceptible to abuse," so authority to exercise discretion must be in writing "to assure that the trading is being done with the consent of the customer and to alert the firm that extra oversight of the sales representative's handling of the account may be necessary to protect against improper for unsuitable trading"). *See also In re Protective Group Securities Corp*., Exchange Act Release No. 34547, 1994 SEC LEXIS 2516, *18 (Aug. 18, 1994) ("the requirement that a salesman obtain his client's written authorization to exercise discretion in the client's account permits the member firm's effective supervision of all discretionary accounts").

[95] *In re Gerald E. Donnelly*, Exchange Act Release No. 36690, 1996 SEC LEXIS 89, at *14-15 (SEC Jan. 5, 1996). *See also In re Protective Group*, 1994 SEC LEXIS 2516, *23 ("we view the requirement at issue as intended to do more than confirm that the broker is acting consistently with a client's wishes: the receipt of prior written authorization for discretionary trading is essential to effective firm supervision").

[96] *See* Form U6 dated January 23, 2023, attached as Exhibit 21 at p. 2 Question 11. Connecticut also filed a Form U6 reporting a consent order it entered with Laidlaw's former employee Joseph Fedorko, Jr. (CRD# 2007317) for the same misconduct at issue, and that Form U6 also indicates that Mr. Fedorko's consent order was based on violations of laws that prohibit FMD. *See* Form U6 dated May 17, 2022, attached as Exhibit 22 at p. 2 Question 7 and p. 3 Question 12.

[97] *See In re Ronald M. Berman*, SD-1997 at pp. 3-4 (FINRA NAC Dec. 11, 2014) (holding that a state order was disqualifying under Exchange Act Section 15(b)(4)(H)(ii) in part because the state's Form U6 indicated the order was based on violations of laws that prohibit FMD conduct).

15(b)(4)(H)(ii) because the Consent Order is a final order based on Laidlaw's violation of Section 36b-31-15a, a regulation that prohibits FMD conduct.

B. Member Supervision's Approval

After carefully reviewing the entire record, FINRA approves the Firm's request to continue its membership with FINRA, subject to the terms and conditions set forth herein. In evaluating Laidlaw's Application, Member Supervision assessed whether the Firm has demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm to investors or the markets. *See* FINRA By-Laws, Art. III, Sec. 3(d); *cf. 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"). Typically, factors that bear on FINRA's assessment include, among other things, the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, the Firm's regulatory history, and whether there has been any intervening misconduct.

As of the date of this Notice, Member Supervision has determined that the Firm's continued membership is consistent with the public interest and does not create an unreasonable risk of harm to investors or the markets. While the Consent Order identified serious violations of securities laws, the Firm has complied with the sanctions/undertakings ordered and has taken measures to remediate its misconduct. The Firm promptly paid the fine, retained an independent consultant, and adopted all of the consultant's recommendations designed to help the Firm prevent and detect instances of excessive trading in customer accounts. The Firm also took other steps to combat potential excessive trading including implementing a new surveillance system to provide daily alerts related to potential excessive trading, ensuring that active accounts is a topic at regular compliance meetings, and even transitioning Firm business away from commission-based trading. In order to address the issue of using discretion without written authority, the Firm took the significant steps of banning discretionary accounts Firm-wide and updating its WSPs to reflect this new policy. Prohibiting discretionary accounts and shifting away from commission-based trading will help ensure that the Firm will not repeat the conduct identified in the Consent Order that led to the Firm's statutory disqualification.

In evaluating the Firm's Application, FINRA noted the Firm's limited regulatory history, its corrective measures taken in response to its recent exam findings, and the actions taken to implement the independent consultant's recommendations in connection with the disqualifying event. In addition to paying the monetary sanctions associated with the disqualifying event, Laidlaw has paid all fines ordered by other regulators and none of the other regulatory matters would prevent the continuance of the Firm as a FINRA member. While the Firm was recently the subject of an SEC order that also rendered the Firm statutorily disqualified, the SEC did not impose any additional undertakings on Laidlaw because the Commission acknowledged that the Firm was already working with a compliance consultant required by the Consent Order to prevent future violations related

to excessive trading.[98]

Furthermore, with this approval, the Firm agreed to a Supervision Plan which is sufficiently stringent to address the misconduct identified in the Consent Order and strengthens the Firm's overall compliance with the issues identified for years to come. With regards to the issue of excessive trading, the Firm agreed to update its WSPs to require supervisors reviewing the Firm's active account reports to document the actions taken upon completion of those reviews and the reasoning behind those actions. It will also allow other Firm personnel, and regulators, to review the supervisors' determinations in order to detect any areas of concern related the supervisors' analysis and take further remedial action. The Firm also agreed to circulate a compliance bulletin and additional training to its staff, including new hires, on several topics related to excessive trading. This additional education will aid in preventing excessive trading by reminding staff of acceptable trading practices. To demonstrate its compliance with these provisions of the Plan, the Firm will keep records of its actions and copies of its updated materials, as well as evidence that its employees received the bulletin and training. Although the Firm has stopped offering discretionary accounts, it has agreed to take several steps in the future if it decides to offer them again, including updating its WSPs, circulating a compliance bulletin, and providing updated training to its employees. The Firm's agreement to such a stringent plan demonstrates its commitment to comply with the Consent Order and to prevent future violative conduct related to the areas of concern.

Following the approval of the Firm's continued membership in FINRA, FINRA also intends to utilize its examination and surveillance processes to monitor the Firm's continued compliance with the standards prescribed by Exchange Act Rule 19h-1 and FINRA Rule 9523.

Thus, FINRA is satisfied, based on the foregoing and on the Firm's representations made pursuant to the Supervision Plan, that the Firm's continued membership in FINRA is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors. Accordingly, FINRA approves Laidlaw's Application to continue its membership with FINRA.

In conformity with the provisions of Rule 19h-1 of the Exchange Act, the continued membership of the Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the SEC.

On Behalf of FINRA,

Marcia E. Asquith

Marcia E. Asquith
Executive Vice President & Corporate Secretary

[98] *See* Exhibit 18 at p. 8, Paragraph 31.

APPENDIX A
Statutorily Disqualified Individuals Associated with the Firm

[redacted]

[redacted]

[redacted]

EXHIBITS
SD-2359

1. MC-400A and related attachments compiled by CRED, with a cover memorandum dated May 30, 2023.
2. Consent Order, *In re Laidlaw & Company (UK) Ltd.*, Matter No. CO-22-202018-S (Conn. Dept. of Banking Jan. 23, 2023).
3. Correspondence from Richard Babnick Jr. to FINRA dated August 24, 2023.
4. Correspondence from Richard Babnick Jr. to FINRA dated May 10, 2024.
5. *Independent Consultant Report In Connection With State of Connecticut Consent Order Dated January 23, 2023*, drafted by Compliance Risk Concepts, dated April 20, 2023.
6. Correspondence from Richard Babnick Jr. to FINRA dated November 16, 2023.
7. CRD Excerpt: Organization Registration Status.
8. CRD Excerpts: Types of Business and Other Business Descriptions.
9. Disposition Letter for Examination No. 20230770612 dated February 26, 2024, Examination Report dated December 15, 2023, and Firm Response dated January 16, 2024.
10. CAL for Examination No. 20200656833 dated November 13, 2023.
11. Disposition Letter for Examination No. 20220732975 dated March 14, 2023, Examination Report dated December 27, 2022, and Firm Response dated January 25, 2023.
12. CAL for Examination No. 20190606468 dated February 17, 2023.
13. Disposition Letter for Examination No. 20190606468 dated April 6, 2020, Examination Report dated December 20, 2019, and Firm Response dated February 26, 2020.
14. FINRA AWC No. 2019060646801 dated February 17, 2023.
15. CAL for Examination No. 20230796584 dated December 20, 2023.
16. CRD Disclosure Composite for Occurrence 2257973.
17. Correspondence from Richard Babnick Jr. to FINRA dated April 18, 2023.
18. SEC Order, *In re Laidlaw and Company (UK) Ltd.*, Exchange Act Release No. 98983 (Nov. 20, 2023).
19. Affidavit of Theologos S. Basis dated January 22, 2024 and accompanying proof of payment.
20. Executed Consent to Plan of Heightened Supervision dated April 29, 2024.
21. Form U6 dated January 23, 2023.
22. Form U6 dated May 17, 2022.