

## **Regulatory Circular RG95-93**

**Date:** October 27, 1995

**To:** Members, Applicants for Membership, and  
Persons Associated with Members

**From:** Legal Department

**Re:** Statutory Disqualifications

### Definition of Statutory Disqualification

Pursuant to Section 3(a)(39) of the Securities Exchange Act of 1934 ("Act"), a person is subject to a statutory disqualification if, among other things, the person:

- (i) has been convicted within the preceding 10 years of any felony;
- (ii) has been convicted within the preceding 10 years of any misdemeanor involving a securities transaction, the securities business, the making of a false report, bribery, perjury, burglary, or the misappropriation of funds or securities;
- (iii) is barred or suspended from membership in a self-regulatory organization ("SRO") or from being associated with a member of an SRO;
- (iv) is barred or suspended by the Securities and Exchange Commission ("SEC") or the Commodities Futures Trading Commission;
- (v) is enjoined from any action, conduct, or practice in connection with the securities or commodities industry or securities or commodities transactions;
- (vi) has willfully violated federal securities or commodities law or aided, abetted, or counseled others to do so; or
- (vii) has willfully made in any application, report, or proceeding of an SRO a false or misleading statement as to a material fact or has willfully omitted to state a material fact that was required to be stated in any such application, report, or proceeding.

### Members Who Become Subject to a Statutory Disqualification

Whenever a member becomes subject to a statutory disqualification, a determination is made by the Business Conduct Committee ("BCC") pursuant to Exchange Rule 3.4(e) as to whether or not the member should be permitted to continue in Exchange membership. The BCC may determine, conditionally or unconditionally, to permit or not to permit such continuance.

For example, a determination not to permit the member to continue in Exchange membership may be conditioned by, among other things, a right to reapply for Exchange membership after a specified period of time. Similarly, a determination to permit the member to continue in Exchange membership may be conditioned by, among other things, a limitation on the member's activities or functions. Set forth below is a description of the procedures that the BCC employs in making such determinations. These procedures, as well as the other Exchange procedures described below, are subject to change by the Exchange where appropriate.

When an Exchange member becomes subject to a statutory disqualification, Exchange staff will present the matter to the BCC. The member will be given the opportunity to make a personal appearance before the BCC or to make a written submission to the BCC as to why the member should be permitted to continue in Exchange membership. If, after being presented with the matter and any input from the member, the BCC determines that the member should not be permitted to continue in membership or that continuance in membership should be subject to condition, the BCC will issue a letter of intent to the member setting forth the determination that the BCC intends to make. The member will then have the opportunity to request a hearing before the BCC regarding the BCC's intended determination. Following such a hearing, the BCC will issue a written decision setting forth the BCC's determination and the grounds for making the determination. The member may appeal the BCC's determination to the Board of Directors pursuant to Exchange Rule 17.10.

#### Applicants for Membership Who Are Subject to a Statutory Disqualification

Pursuant to Exchange Rule 3.4(a) and Section 6(c)(2) of the Act, a statutory disqualification is a basis for denying membership to an applicant for Exchange membership. As with all membership applications, any membership application that is submitted by a person who is subject to a statutory disqualification is handled by the Membership Committee. Before making any determination concerning a membership applicant that is subject to a statutory disqualification, it is Membership Committee policy pursuant to Exchange Rule 3.9 to require the applicant to submit various information to the Membership Committee concerning the statutory disqualification and to make a personal appearance before both a File Review Subcommittee of the Membership Committee and the Membership Committee itself. Any decision by the Membership Committee to deny a membership application (including one submitted by a person who is subject to a statutory disqualification) may be appealed to the Appeals Committee pursuant to Chapter XIX of the Exchange's rules, and the Appeals Committee's decision may be appealed to the Board of Directors pursuant to Exchange Rule 19.5.

#### SEC Approval Process

In the event that (i) the BCC decides that a member who is subject to a statutory disqualification should continue in membership, (ii) the Membership Committee approves the membership application of a person who is subject to a statutory disqualification, or (iii) the BCC or Membership Committee does either of the foregoing subject to specified conditions placed on the effected individual (and/or firm, if any), such a decision is subject to the approval of the SEC. Specifically, SEC Rule 19h-1 requires that before the Exchange can continue in membership, or admit to membership, a person who is subject to a statutory disqualification, the Exchange must request SEC approval of such action by submitting a Rule 19h-1 filing to the SEC and the SEC must approve such action.

A Rule 19h-1 filing is an extensive filing which is required to set forth various information concerning the individual that is the subject of the filing, the individual's statutory disqualification, and the firm, if any, with which the individual intends to associate. In addition, if the individual that is the subject of the filing intends to associate with a firm that is a member of both the Exchange and another SRO, the SEC takes into consideration whether the other SRO concurs with the Exchange's request to continue such individual in Exchange membership or to admit such individual to Exchange membership, as applicable, in determining whether to grant the Exchange's request.

The status of a person who is subject to a statutory disqualification and on whose behalf the Exchange determines to make a Rule 19h-1 filing remains unchanged during the Rule 19h-1 filing process. Thus, an applicant for Exchange membership who is subject to a statutory disqualification may not become a member of the Exchange unless and until the SEC approves the Rule 19h-1 filing made by the Exchange on the person's behalf. Similarly, as long as a member who is subject to a statutory disqualification otherwise remains a member of the Exchange in good standing, the member is permitted to remain as an Exchange member pending the SEC's determination as to whether to approve the Rule 19h-1 filing made by the Exchange on the member's behalf.

#### Associated Persons Who Become or Are Subject to a Statutory Disqualification

The above-described rules and procedures apply to any person associated with an Exchange member and to any person applying to become associated with an Exchange member in the same manner that they apply with respect to Exchange members and applicants for Exchange membership.

#### Reporting Requirements

In the event that a member is a registered broker-dealer and the member or an associated person of the member (i) becomes subject to an event that gives rise to a statutory disqualification or (ii) becomes the subject of a proceeding that could result in an event that gives rise to a statutory disqualification, the member is required to report the event by promptly filing an amendment to SEC Form BD.

In addition, in the event that a person maintains any securities industry registrations (e.g., is a registered representative or registered options principal) and the person (i) becomes subject to an event that gives rise to a statutory disqualification or (ii) becomes the subject of a complaint, investigation, or proceeding that could result in an event that gives rise to a statutory disqualification, the person is required to report the event by promptly filing an amendment to Form U-4 Uniform Application for Securities Industry Registration or Transfer.

Any questions regarding this circular may be directed to Andrew Small at (312) 786-7467.