

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

The Association of

Avery F. Byrd

as a

General Securities Representative

with

San Blas Securities, LLC

Notice Pursuant to
Rule 19h-1

Securities Exchange Act
of 1934

SD-2259

October 21, 2021

I. Introduction

On January 13, 2020, San Blas Securities, LLC (“San Blas” or the “Firm”), filed with FINRA a Membership Continuance Application (the “Application”). The Application seeks to permit Avery F. Byrd, a person subject to statutory disqualification, to associate with the Firm as a general securities representative. A hearing was not held in this matter. Rather, pursuant to FINRA Rule 9523(a), FINRA’s Department of Member Supervision (“Member Supervision”) recommends that the Chairperson of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council (the “NAC”), approve Byrd’s association with the Firm pursuant to the terms and conditions set forth below.

For the reasons explained below, we approve the Application to permit Byrd to associate with the Firm as a general securities representative, as described herein.

II. The Statutorily Disqualifying Event

Byrd is statutorily disqualified due to FINRA’s acceptance, on May 4, 2017, of a Letter of Acceptance, Waiver and Consent (the “Disqualifying AWC”). The Disqualifying AWC found that Byrd willfully failed to disclose a judgment on his Uniform Application for Securities Industry Registration or Transfer (“Form U4”).¹ Specifically, the Disqualifying AWC found that

¹ FINRA’s By-Laws provide that a person is subject to “disqualification,” and thus must seek and obtain FINRA’s approval prior to associating with a member firm, if he is disqualified under Section 3(a)(39) of the Securities Exchange Act of 1934 (“Exchange Act”). See FINRA By-Laws, Art. III. Exchange Act Section 3(a)(39)(F) provides that a person is subject to

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Byrd willfully failed to disclose a July 2014 consent judgment entered against him and entities that he owned in the amount of \$392,370 (plus prejudgment interest). Byrd and his co-defendants were held jointly and severally liable for three loans obtained from Wells Fargo Bank, N.A.² For Byrd's disclosure failure, FINRA suspended Byrd for three months.³ He has served his suspension.

III. Background Information

A. Byrd

Byrd registered as a general securities representative in September 1987 and as a general securities principal in June 2004. He also passed the uniform securities agent examination in June 2021. Prior to associating with the Firm, Byrd was previously associated with eight other member firms.

FINRA's Central Registration Depository ("CRD"®) shows that Byrd is engaged in several outside business activities. CRD shows that Byrd is: the Executive Vice President and principal owner of Bradford & Byrd Associates, Inc., a non-investment related facilities services business;⁴ the 50% owner of B&B Real Estate Investment Trust, LLC, a passive trust set up to oversee a commercial tenant property in New Jersey; and a minority (9%) owner of B&B

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statutory disqualification if he has willfully made a false or misleading statement of material fact, or has omitted a material fact required to be disclosed, in any application or report filed with a self-regulatory organization.

Question 14.M of Form U4 asks, "Do you have any unsatisfied judgments or liens against you?" Article V, Section 2(c) of FINRA's By-Laws requires that an associated person keep his Form U4 current at all times and update information on the Form U4 within 30 days. Further, FINRA Rule 1122 states that, "[n]o member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof."

² Since entry of the judgment, Byrd has made payments to Wells Fargo to reduce this debt by \$39,448.

³ Byrd submitted a sworn financial statement in connection with the Disqualifying AWC and demonstrated an inability to pay. Consequently, FINRA did not impose any monetary sanctions for Byrd's disclosure failure.

⁴ CRD shows that this entity filed a bankruptcy petition in May 2014. Although it received a discharge of certain debts, not all of its debts were discharged and Byrd was personally liable for the debts described below.

Diversified Services, LLC, a commercial cleaning services provider. Byrd currently spends four to six hours a day managing B&B Diversified Services, LLC, and plans to act solely as an owner-adviser if he reengages in the securities business. He does not currently devote time to the other entities.

CRD also shows that Byrd is subject to several judgments and liens stemming from his involvement with Bradford & Byrd Associates, Inc. Specifically, Byrd is subject to liens and judgments in favors of: (1) Basement Waterproofing Solutions, which obtained a judgment against Byrd in April 2018 totaling \$21,327; (2) Davidson, Eastman & Munoz, which obtained a judgment against Byrd in May 2019 totaling \$18,388; (3) Capital One, which obtained a judgment against Byrd in March 2019 totaling \$30,619; and (4) American Trading Company, which obtained a judgment against Byrd in November 2019 totaling \$1,860. The Firm represents that Byrd has made payments of approximately \$5,000 to pay down certain of these debts (in addition to the payments he has made to reduce the debt owed to Wells Fargo) and is making efforts to pay off these debts.

Other than the Disqualifying AWC and the matters described above, the record does not show any disciplinary or regulatory proceedings, complaints, or arbitrations against Byrd.

B. The Firm

The Firm has been a FINRA member since June 2018 and is based in Atlanta, Georgia. It has 10 branch offices, three of which are Offices of Supervisory Jurisdiction (“OSJ”). The Firm employs 47 registered individuals, 19 of whom are registered principals, and four non-registered fingerprint individuals. Two other individuals that are subject to statutorily disqualification are currently associated with the Firm.⁵

⁵ Danielle Hughes is subject to statutory disqualification as a result of an August 2011 SEC order finding that she failed to reasonably supervise an individual with a view to preventing violations of the Securities Act of 1933. The SEC suspended Hughes for four months in any supervisory capacity and fined her \$25,000. Hughes served her suspension and paid the fine in full. The Firm was not required to initiate a FINRA eligibility proceeding when Hughes joined the Firm because the sanctions imposed by the SEC are no longer in effect based upon her serving the suspension and paying the fine in full. *See FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 68, at *11-12 (Apr. 2009) (providing that for statutory disqualifications involving an order under which the sanctions are no longer in effect, a Membership Continuance Application is not required).

In addition, in September 2020, the Firm filed a Membership Continuance Application seeking to associate with Todd Wyche (“Wyche”) notwithstanding his statutory disqualification. Wyche is disqualified because of a January 2019 NAC decision finding that he willfully failed to disclose on his Form U4 a tax lien. Although Wyche is associated with the Firm, he is not currently working at the Firm while his eligibility proceeding is pending.

1. Routine Examinations

In the past two years, FINRA has conducted two routine examinations of the Firm. The Firm's most recent routine examination concluded in January 2021. No exceptions were noted in connection with this examination.

In connection with the Firm's 2019 routine examination, FINRA noted one exception, for which it elected to take no further action. Specifically, FINRA noted that the Firm failed to maintain written supervisory procedures ("WSPs") that adequately addressed internal controls and risk management systems for proprietary trading. The Firm responded in writing that it amended its WSPs to address this deficiency.

2. Regulatory History

The record shows no regulatory or disciplinary history against the Firm.

IV. Byrd's Proposed Business Activities and Supervision

The Firm proposes that Byrd will work from the Firm's main office in Atlanta. The Firm represents that Byrd will engage in debt and equity origination and distribution that will include underwriting and syndicate transactions in taxable fixed income, municipal bonds and equity new issues items. He will service institutional accounts with debt securities, including municipal securities, government securities, corporate debt securities and agency securities as well as new equity issues, stock repurchase and second equity execution with large and experienced institutional clients. Byrd will not be servicing retail accounts, and he will be paid commissions and fees.

The Firm proposes that Timothy Chin-Chung Yang ("Yang") will serve as Byrd's primary supervisor. Yang works from his residence, an OSJ located in San Jose, California. Yang devotes all of his time to supervisory responsibilities and has no other duties or responsibilities at the Firm. The Firm states that Yang is responsible for suitability reviews, audits, and new account operations at the Firm. Yang also serves as a compliance officer for two of the Firm's affiliates (SB Advisory and ES Advisory). Yang currently supervises 17 individuals who are dually registered with the Firm and its registered investment adviser affiliate (SB Advisory), and the Firm represents that Yang has more than a decade of supervisory experience (including remotely supervising an individual on heightened supervision for more than four years).⁶

Yang first registered as an investment company and variable contracts representative in March 1986, a general securities representative in July 1998, a general securities principal in September 2006, and a municipal securities principal in December 2008. Yang also passed the

⁶ The Firm has also proposed that Yang serve as Wyche's alternate supervisor in connection with that pending Membership Continuance Application.

uniform investment adviser examination in September 1997 and the uniform securities agent examination in August 1998. Yang has been with the Firm since August 2020. Yang was previously associated with eight member firms.

The record shows no disciplinary or regulatory proceedings, complaints, or arbitrations against Yang.

If Yang is unavailable, the Firm designated Gerald B. Gruenfelder (“Gruenfelder”) as Byrd’s alternate supervisor.⁷ Gruenfelder works from his residence in Hopatcong, New Jersey. Gruenfelder handles customer accounts and he will not have any supervisory responsibilities other than serving as Byrd’s alternate supervisor. The Firm represents that Gruenfelder served as a branch manager for five years where he directly supervised seven registered representatives.

Gruenfelder first registered as an investment company and variable contracts limited representative in December 1993, an investment company products/variable contracts principal in September 2000, a general securities representative in March 2003, a general securities principal in September 2003, and a municipal securities principal in June 2008. He also passed the uniform securities agent examination in July 1996 and the investment adviser representative examination in January 2006.

Gruenfelder has been associated with the Firm since August 2021. Gruenfelder was previously associated with seven firms. CRD lists several outside business activities for Gruenfelder: (1) serving as an income tax preparer at Matrix Tax Strategies, an entity in which he holds an ownership interest; (2) working with residential mortgages and commercial loans at Homeland Lending (approximately five hours per week); (3) consulting at Small Business Consulting and Commercial Lending (approximately two hours per week); and (4) serving as a licensed health and life insurance broker (approximately two hours per week). The record shows no disciplinary or regulatory proceedings, and no recent complaints or arbitrations, against Gruenfelder.⁸

⁷ The Firm originally proposed another individual to serve as Byrd’s alternate supervisor. That individual recently resigned from the Firm, at which time the Firm proposed Gruenfelder as Byrd’s alternate supervisor.

⁸ CRD lists the following disclosures for Gruenfelder: a foreclosure in 2017; a compromise with a creditor in 2010; a termination from a prior employer in 2000 for allegedly failing to return calls and provide information to a customer (for which Gruenfelder settled with the customer and paid approximately \$9,000); and a customer complaint alleging that Gruenfelder did not invest a customer’s funds and instead held them in cash, which Gruenfelder settled in 1999 for approximately \$5,100.

V. Member Supervision's Recommendation

Member Supervision recommends approving the Firm's request for Byrd to associate with the Firm as a general securities representative, subject to the terms and conditions of heightened supervision described below.

VI. Discussion

We have carefully considered the entire record in this matter. Based on this record, and pursuant to the Commission's controlling decisions in this area, we approve the Firm's Application to employ Byrd as a general securities representative, subject to the supervisory terms and conditions set forth below.

A. The Legal Standards

We acknowledge that Byrd, as a registered individual, was responsible for knowing the rules of the securities industry and for timely updating his Form U4. *See, e.g., Robert E. Kauffman*, 51 S.E.C. 838, 840 (1993) ("Every person submitting registration documents [to FINRA] has the obligation to ensure that the information printed therein is true and accurate."), *aff'd*, 40 F.3d 1240 (3d Cir. 1994) (table). The SEC has emphasized that Form U4 "is critical to the effectiveness of the screening process used to determine who may enter (and remain in) the industry. It ultimately serves as a means of protecting the investing public." *See Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *25-26 (Nov. 9, 2012). A registered representative's financial problems "raise concerns about whether [he] could responsibly manage his own financial affairs, and ultimately cast doubt on his ability to provide trustworthy financial advice and services to investors relying on him to act on their behalf as a securities industry professional." *Id.* at *32.

We also recognize, however, that FINRA weighed the gravity of Byrd's failure to disclose the consent judgment when it agreed to the Disqualifying AWC in May 2017. After considering Byrd's entire history in the securities industry, FINRA concluded that a three-month suspension was an appropriate sanction for his disqualifying misconduct. Byrd served this suspension. In such circumstances, the Commission has instructed FINRA to evaluate a statutory disqualification application pursuant to the standards enunciated in the Commission's decisions in *Paul Edward Van Dusen*, 47 S.E.C. 668 (1981), and *Arthur H. Ross*, 50 S.E.C. 1082 (1992). *See May Capital Group, LLC* (hereinafter "*Rokeach*"), Exchange Act Release No. 53796, 2006 SEC LEXIS 1068, at *21 (May 12, 2006) (holding that FINRA must apply *Van Dusen* standards to the membership continuance applications of statutorily disqualified individuals whose disqualifications resulted from FINRA enforcement action).

Van Dusen and *Rokeach* provide that in situations where an individual's misconduct already has been addressed by the Commission or FINRA, and sanctions have been imposed for such misconduct, FINRA should not consider the individual's underlying misconduct when it evaluates a statutory disqualification application. The Commission stated that when the period of time specified in the sanction has passed, in the absence of "new information reflecting adversely on [the applicant's] ability to function in his proposed employment in a manner

consonant with the public interest,” it is inconsistent with the remedial purposes of the Exchange Act and unfair to deny an application for re-entry. *Van Dusen*, 47 S.E.C. at 671.

The Commission also noted in *Van Dusen*, however, that an applicant’s re-entry is not “to be granted automatically” after the expiration of a given time period. *Id.* Instead, the Commission instructed FINRA to consider other factors, such as: (1) other misconduct in which the applicant may have engaged; (2) the nature and disciplinary history of the prospective employer; and (3) the supervision to be accorded the applicant. *Id.*

B. Application of the *Van Dusen* Standards

After applying the *Van Dusen* standards to this matter, we have determined to approve the Firm’s Application to employ Byrd for the following reasons.

First, the record does not show any complaints, regulatory actions, or criminal history for Byrd since the Disqualifying AWC. Given the expiration of time for the suspension imposed upon Byrd, and the teachings of *Van Dusen*, he is now permitted to seek re-entry to the securities industry.

Second, the Firm does not have any formal disciplinary history. The Firm also represented that it addressed the single deficiency noted in its 2019 routine examination. Further, the Firm has in place well-qualified individuals to supervise Byrd. Yang, Byrd’s primary proposed supervisor, has an unblemished history and is well qualified to supervise a statutorily disqualified individual such as Byrd. Yang has substantial industry experience and also has experience remotely supervising an individual on heightened supervision. We agree with Member Supervision that Yang will have sufficient time to stringently supervise Byrd notwithstanding his supervisory duties at the Firm (including his proposed service as an alternate supervisor for Wyche if his Membership Continuance Application is approved). Similarly, Gruenfelder is qualified to supervise Byrd, and the record does not show any regulatory or disciplinary history for Gruenfelder. We find nothing in the record to suggest that the Firm will be unable to provide the stringent supervision necessary for a statutorily disqualified individual such as Byrd.

Third, based on the record before us, we find that the Firm’s proposed plan of supervision is sufficiently stringent and comprehensive.⁹ The plan contains provisions to help ensure that misconduct similar to the misconduct underlying the Disqualifying AWC does not reoccur.

⁹ We also find that under the circumstances, the fact that Byrd will be supervised remotely does not serve as a basis to deny the Application. See *The Cont’d Ass’n of Allan Wolfe*, SD-2157, slip op. at 21 (FINRA NAC Dec. 20, 2018) (stating that although in-person supervision is preferred, it is not always required and approving application where disqualified individual engaged in limited business and had a lengthy career that was mostly without incident); *The Ass’n of X*, SD10003, slip op. at 8 (FINRA NAC 2010), http://www.finra.org/sites/default/files/NACDecision/p125898_0_0.pdf (redacted decision) (“While we agree that on-site supervision is the ideal standard for most statutorily disqualified individuals, we do not find that it is always necessary.”). Other than the Disqualifying AWC,

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We are satisfied that the following heightened supervisory procedures will enable the Firm to reasonably monitor Byrd's activities on a regular basis:

1. The written supervisory procedures for San Blas will be amended to state that Yang will serve as the primary supervisor for Byrd. If at any time Yang is not available to perform these functions, Gruenfelder, who has been designated as Byrd's alternate supervisor, shall perform Yang's responsibilities for Byrd.
2. Byrd will work from the Firm's OSJ located at 3424 Peachtree Road NE, Suite 2200, Atlanta, Georgia 30326.¹⁰
3. Byrd will not act in a supervisory or principal capacity.¹¹
4. Byrd will not be permitted to service retail accounts or take on retail customers.
5. Byrd will not be permitted to maintain discretionary accounts for customers.

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Byrd does not have any regulatory or disciplinary history in his more than 33 years in the securities industry. Further, as stated herein, the Firm represents that Byrd will service institutional customers, and the supervisory plan prohibits Byrd from servicing retail accounts or taking on retail customers. Moreover, the heightened supervisory plan contains procedures to ensure that Byrd is stringently supervised, including daily telephonic or video conference meetings with Yang each day that Byrd conducts business (and at least a weekly telephonic or video conference if Byrd does not conduct any business), and four yearly in-person meetings. Finally, Member Supervision represents that the Firm has operated under remote conditions throughout the COVID-19 pandemic and FINRA staff have not identified any issues surrounding the Firm's remote supervision of its employees. We conclude that these factors, along with the backgrounds of Byrd's supervisors, support offsite supervision of Byrd.

¹⁰ During the pendency of the COVID-19 pandemic, Byrd will work from his residence in Buford, Georgia. The Firm will inform FINRA's Statutory Disqualification Group when Byrd is permitted to return to the Firm's OSJ located at 3424 Peachtree Road NE, Suite 2200, Atlanta, Georgia 30326.

¹¹ We have amended this provision to clarify that Byrd shall not act in a supervisory or principal capacity at the Firm.

6. Yang and Byrd will meet via teleconference or video conference each day that Byrd conducts business, including, but not limited to, municipal and underwriting transactions. Yang and Byrd will meet via teleconference or video conference at least once per week if Byrd does not conduct any business activities. Discussions will include, but not be limited to, Byrd's business activities and any issues regarding the plan of supervision. Yang will maintain a record of these meetings, which will include the purpose of the meeting and a description of the matters discussed. Records of such meetings will be maintained in a segregated file for ease of review during any FINRA examination.
7. Yang and Byrd will meet in person at least once per quarter at the Firm's OSJ located at 3424 Peachtree Road NE, Suite 2200, Atlanta, Georgia 30326. Yang and Byrd's discussions will include, but not be limited to, a review the provisions of the plan, Byrd's business activity, Byrd's customers, and the status of Byrd's outstanding liens. Yang will maintain a record of these meeting which will include a description of the matters discussed. Records of such meetings will be maintained in a segregated file for ease of review during any FINRA examination.
8. Byrd shall input all meetings and telephone calls with customers on an electronic calendar, which is accessible by Yang. Yang will review the calendar daily. Records of such reviews will be kept segregated for ease of review during any FINRA examination.
9. All of Byrd's outgoing emails will be blind copied to Yang and reviewed by Yang within one business day. Yang will also review all of Byrd's incoming emails within one business day. Yang will review any other written correspondence directed to, authorized by, or sent by Byrd within one business day of receipt or transmission of said correspondence. Records of such reviews will be kept segregated for ease of review during any FINRA examination.
10. Byrd will only be permitted to use an email account that is held at the Firm for the purposes of communications with clients, with all emails being filtered through the Firm's email system. If Byrd receives a business-related email message to an account that is held outside the Firm, he will immediately deliver that email to the Firm's email account. Byrd will also inform Yang of all outside email accounts he maintains and will provide access to those accounts to the Firm upon request.
11. Byrd is only allowed to communicate with clients through electronic devices that can be monitored by the Firm. The Firm will capture records of all of Byrd's incoming/outgoing phone records and Yang shall conduct a daily review of the records. Records of such reviews will be kept segregated for ease of review during any FINRA examination.

12. Prior to Byrd's dissemination of any marketing materials to current or potential customers, the materials shall be reviewed and approved by Yang. Records of such reviews and approvals will be kept segregated for ease of review during any FINRA examination.
13. Prior to the opening of any new account by Byrd, it shall be reviewed and approved by Yang. Account paperwork will be documented, as approved, with a date and signature. At the time of the new account opening, Yang will reach out to each client and thereafter on a quarterly basis. Records of such reviews, approvals, and customer contract will be kept segregated for ease of review during any FINRA examination.
14. All of Byrd's customer transactions shall be approved prior to execution by Yang.¹² The Firm will maintain a separate blotter of Byrd's customer transactions evidencing Yang's reviews. Records of such reviews will be kept segregated for ease of review during any FINRA examination.
15. On a monthly basis, Yang will utilize LexisNexis, or a comparable legal search engine, to conduct a review of Byrd's liens, judgments, and other reportable matters. This review will include liens, judgments, and other reportable matters in connection with Byrd's outside businesses. Yang will ensure that Byrd has complied with his regulatory disclosure obligations. Records of all search results and reviews will be kept segregated for ease of review during any FINRA examination.
16. The Firm will conduct an annual credit check for Byrd. Yang will subsequently review Byrd's regulatory disclosures to ensure that he has complied with his regulatory disclosure obligations. Records of all reports and reviews will be kept segregated for ease of review during any FINRA examination.
17. All complaints pertaining to Byrd, whether oral or written, will be immediately referred to Yang for review. Yang will prepare a memorandum to the file with full details as to the review, investigation and disposition of the matter. Documents pertaining to these complaints will be kept segregated for ease of review during any FINRA examination.

¹² We have amended this provision to clarify that Byrd's customer transactions shall be pre-approved.

18. Quarterly (as of March 31st, June 30th, September 30th, and December 31st), Byrd will provide the Firm with documentation of balances and details of any payment plans in connection with all disclosable judgments and liens. Documentation will include proof of payments. Yang will review the evidence of payments and maintain a record of his review for ease of review during any FINRA examination.
19. Quarterly (as of March 31st, June 30th, September 30th, and December 31st), Byrd shall certify that he has reviewed his Form U4, and that all his answers are complete, accurate, and were made in a timely manner. Such certifications will be kept segregated for the ease of review during any FINRA examination.
20. Quarterly (as of March 31st, June 30th, September 30th, and December 31st), Yang will certify that Byrd is in compliance with all of the above conditions of heightened supervision. Such certifications will be kept segregated for the ease of review during any FINRA examination.
21. Semi-annually (as of June 30th and December 31st), Byrd shall certify that he has read the Firm's Compliance Manual, Written Supervisory Procedures, this plan of heightened supervision, and any other documents containing Firm policies related to his obligations to his clients and the Firm, that he understands those policies, and that he has acted, and is acting, in complete compliance with the plan of heightened supervision. Such certifications will be kept segregated for the ease of review during any FINRA examination.
22. For the duration of Byrd's statutory disqualification, the Firm must obtain prior approval from Member Supervision if it wishes to change Byrd's primary or alternate supervisors or if the Firm wishes to change any provisions of this plan. The Firm will submit any proposed changes or other requested information under this Plan to FINRA's Statutory Disqualification Group at SDMailbox@FINRA.org.

FINRA certifies that: (1) Byrd meets all applicable requirements for the proposed employment; (2) the Firm is a member of the Municipal Securities Rulemaking Board; (3) the Firm has represented that Byrd is not related to Yang or Gruenfelder by blood or marriage; and (4) two other statutorily disqualified individuals are currently associated with the Firm.

VII. Conclusion

Accordingly, we approve the Firm's Application to employ Byrd as a general securities representative. In conformity with the provisions of Exchange Act Rule 19h-1, the association of Byrd with the Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the Commission.

On Behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell

Jennifer Mitchell Piorko
Vice President and Deputy Corporate Secretary