BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Membership of J.H. Darbie & Co., Inc. with FINRA	Notice Pursuant to Rule 19h-1 Securities Exchange Act of 1934 SD-2382 May 9, 2025

I. Introduction

On October 23, 2023, J.H. Darbie & Co., Inc. (the "Firm") submitted to FINRA a Membership Continuance Application ("MC-400A" or "the Application"). The Application seeks to permit the Firm, a FINRA member subject to a statutory disqualification, to continue its membership with FINRA. A hearing was not held in this matter. Rather, pursuant to FINRA Rule 9523(a), FINRA's Department of Member Supervision ("Member Supervision") recommended that the Chairperson of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council, approve the Firm's continued membership with FINRA pursuant to the terms and conditions set forth below.

For the reasons explained below, we approve the Application.

II. The Statutorily Disqualifying Event

The Firm is subject to a statutory disqualification because of a September 13, 2023 final judgment (the "Final Judgment") entered by the United States District Court for the Southern District of New York. The Final Judgment permanently restrained and enjoined the Firm from violating Section 17(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Exchange Act Rule 17a-8 for failing to comply with the reporting, recordkeeping, and record retention requirements of the Bank Secrecy Act of 1970 (a/k/a the Currency and Foreign Transactions Reporting Act of 1970) (codified at 31 U.S.C. §§ 5311-5314, 5316-5336 and 12 U.S.C. § 1829b, 1951-1959) (the "BSA").[1] Pursuant to

[1] Exchange Act Section 17(a) and Exchange Act Rule 17a-8 require broker-dealers to comply with the recordkeeping, retention, and reporting obligations of the BSA and its implementing regulations. Exchange Act Section 3(a)(39)(F), which incorporates by reference Exchange Act Section 15(b)(4)(C), provides that a member firm is subject to

[Footnote continued on next page]

the Final Judgment, which the Firm consented to without admitting or denying any allegations, the court ordered the Firm to pay a civil penalty of $125,000 and to retain an independent Anti-Money Laundering ("AML") compliance consultant. The Final Judgment required that the independent consultant: (1) provide AML training to the Firm's management and employees; and (2) perform testing to assess whether the Firm is complying with (a) the recommendations concerning potentially suspicious customer activity in low-priced securities set forth in a May 19, 2016 report issued by a different independent AML consultant hired by the Firm in connection with another regulatory matter (the "May 2016 Report"),[2] and (b) applicable regulatory guidance regarding potentially suspicious customer activity and properly implementing its AML policies and procedures. The Firm has paid in full the civil penalty, retained an independent consultant, and the Firm and the independent consultant have certified compliance with all required undertakings, including employee training, general compliance with the May 2016 Report, and compliance with applicable regulatory guidance and implementation of its AML policies and procedures.

The Final Judgment is based on a December 2022 complaint filed against the Firm by the SEC (the "SEC Complaint"). The SEC Complaint alleged that from January 2018 to January 2020, the Firm failed to investigate and report suspicious transactions by filing Suspicious Activity Reports ("SARs") in connection with more than $100 million in transactions in low-priced securities that were traded in over-the-counter markets, despite the fact that the transactions raised red flags as identified in the Firm's written AML policies and procedures and regulatory guidance. The SEC Complaint alleged that the Firm failed to implement its AML policies and procedures, which resulted in the Firm's failure to file SARs as required by the BSA, the Exchange Act, and Exchange Act rules. The SEC Complaint also alleged that the Firm failed to update its AML policies and procedures to include additional suspicious activity identified in a 2019 FINRA notice to members.

The Firm represented that prior to the Final Judgment, it stopped engaging in transactions with customers who invest in discount convertible notes in low-priced securities that are then sold in reliance on an exemption under Regulation D of the Securities Act of 1933 (the "Securities Act"), which was the type of business that was the subject of the Final Judgment. Further, the Firm's low-priced securities business has decreased substantially since the Final Judgment. According to the May 2016 Report, "[r]eceiving deposits of low-priced securities, and then liquidating those securities into the market, [was] central to [the Firm's] business" and was responsible for half of the

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statutory disqualification if it is enjoined from, among other things, engaging or continuing to engage in any conduct or practice as a broker-dealer or investment adviser, or in connection with the purchase or sale of any security.

[2] The May 2016 Report stems from a 2015 settlement agreement between the Firm and FINRA, which required the Firm to hire an independent consultant to review, among other things, the Firm's AML systems, policies, procedures, and training. *See infra* Part III.B.2.

Firm's revenue. For the period from 2022 to 2024, however, the Firm's low-priced securities business diminished substantially and was responsible for less than 5% of the Firm's revenue.

III. Background Information

A. The Firm

The Firm, which is dually-registered as a broker-dealer and investment adviser, is based in New York, New York and has been a FINRA member since 1998. According to the Firm's Central Registration Depository ("CRD"®) record, it has five branch offices, one of which is an Office of Supervisory Jurisdiction ("OSJ"). The Firm employs 41 registered representatives, 20 of whom are registered principals, and three non-registered fingerprinted individuals. The Firm currently does not employ any statutorily disqualified individuals.

B. Recent Examinations and Relevant Regulatory History

In the past two years, FINRA completed one routine examination, one non-routine examination, and one statutory disqualification examination of the Firm.[3]

1. Examinations

In June 2024, in connection with a non-routine examination of the Firm, FINRA issued the Firm a Cautionary Action for failing to transmit to the Consolidated Audit Trail ("CAT") Central Repository reportable equities events in violation of FINRA Rules 6893 and 2010.

In December 2022, in connection with the Firm's 2022 routine examination (which included review of the Firm's detection and reporting of suspicious transactions), FINRA issued the Firm a Cautionary Action. The Cautionary Action cited the Firm for the following deficiencies: submitting an inaccurate Form CRS; failing to maintain a record of the date Form CRS was sent to customers and failing to properly deliver Form CRS to new and potential customers; failing to timely file with FINRA the required offering documentation associated with four non-public offerings and failing to establish and maintain written supervisory procedures ("WSPs") reasonably designed to achieve compliance with FINRA Rule 5123; failing to establish and maintain WSPs reasonably designed to achieve compliance with Regulation Best Interest and compliance with Exchange Act Rule 17a-14 concerning Form CRS; and failing to adequately document office inspections and failing to establish and maintain WSPs that are reasonably designed to achieve compliance with rules and regulations concerning branch office

[3] *See infra* note 4 for a discussion of the statutory disqualification examination.

inspections. The Firm responded in writing to the deficiencies noted and represented that it took remedial steps to help ensure that the deficiencies do not reoccur.

2. Relevant Regulatory History

In addition to the Final Judgment, the Firm has been the subject of several regulatory matters relevant to our consideration of the Application.

In April 2018, the Firm entered into a Letter of Acceptance, Waiver and Consent ("AWC") with FINRA addressing violations of FINRA Rules 3110 and 2010 and NASD Rule 3010. Without admitting or denying the allegations, the Firm consented to findings that it failed to supervise a registered representative's variable annuity recommendations and related retail communications (which failed to comply with the content standards of FINRA's advertising rules). FINRA censured the Firm, fined it $25,000, and required it to certify that its systems, policies, and procedures were reasonably designed to achieve compliance with FINRA Rule 3110(b)(6)(C) and to pre-file with FINRA for six months all new retail communications concerning any variable annuity product. The Firm paid the fine and complied with the undertakings.

In March 2018, the SEC issued an order against the Firm. The order found that the Firm willfully violated Exchange Act Section 15(c)(3) and Exchange Act Rule 15c3-1 because it failed to maintain the required minimum net capital, as well as Exchange Act Section 17(a)(1) and Exchange Act Rules 17a-3 and 17a-5 because it filed inaccurate monthly Financial and Operational Combined Uniform Single ("FOCUS") Reports.[4] The SEC censured the Firm, ordered it to cease and desist from committing future violations, ordered it to pay a civil monetary penalty of $50,000 plus post-order interest, and required that it retain for no less than three years a new financial and operations principal ("FINOP") and certify compliance with this undertaking. The Firm paid the penalty and complied with the undertakings.

In August 2015, the Firm and an affiliate of the Firm entered into an AWC with FINRA addressing violations of Securities Act Section 5, FINRA Rules 3310 and 2010, and NASD Rules 3010, 3011, and 2110. Without admitting or denying the allegations, the Firm consented to findings that from March 2008 through March 2014 it: facilitated the deposit and liquidation of billions of shares of low-priced, microcap securities for customers without having in place adequate procedures to ensure that the transactions were sufficiently scrutinized; failed to reasonably detect and investigate red flags

[4] As a result of the SEC's order, the Firm was statutorily disqualified under Exchange Act Sections 3(a)(39)(F) and 15(b)(4)(D) (providing that a firm is statutorily disqualified if it has willfully violated federal securities laws). In April 2019, FINRA filed with the SEC a notice pursuant to Exchange Act Rule 19h-1 approving the Firm's continued membership notwithstanding its disqualification, which the SEC acknowledged in June 2019. In connection with this disqualification, FINRA conducted one statutory disqualification examination of the Firm, which was closed with no further action in November 2023.

indicative of potentially suspicious activity which may have required the Firm to file a SAR; and failed to establish and implement adequate AML programs and procedures. The Firm also consented to findings that in 2010 it facilitated the sale and unregistered distribution of securities on behalf of a group of customers and failed to establish and maintain a reasonable supervisory system to ensure that securities being sold were registered or that certain sales transactions were exempt from registration. FINRA censured the Firm and fined it $230,000 ($10,000 of which was payable jointly and severally with its affiliate). The Firm paid the fine in full.

In connection with the August 2015 AWC, the Firm also agreed to hire an independent consultant to conduct a comprehensive review of the Firm's policies, systems, procedures, and training relating to, among other things, FINRA Rule 3310 and the BSA (including but not limited to compliance with rules and regulations related to the monitoring for, identifying, investigating, and responding to red flags of suspicious transactions in general and with respect to low-priced securities) and to produce an initial report of its findings. FINRA required the Firm to adopt and implement the independent consultant's initial recommendations, and further required the Firm to engage the independent consultant to conduct follow-up reviews and produce reports annually for three years assessing the Firm's implementation of the systems, policies, procedures, and training recommended by the consultant and to make further recommendations the consultant deemed necessary. The Firm complied with all required undertakings, and the independent consultant issued its preliminary report (the May 2016 Report) on May 19, 2016. The independent consultant issued three follow-up reports on March 17, 2017, December 28, 2017, and July 30, 2018.

The May 2016 Report noted that although the Firm had "devoted considerable attention to" its low-priced securities business, there were significant ways in which the Firm's policies and procedures could be improved and that the Firm's written AML policies had "numerous shortcomings." The May 2016 Report recommended that the Firm, among other things: (1) conduct an overall review of AML risks; (2) identify relevant red flags for deposit and liquidation activities in low-priced securities; (3) revise the Firm's AML policies to reflect stated practices and integrate those policies in the Firm's WSPs; (4) describe in the Firm's AML policies the AML compliance officer's responsibilities; (5) "tighten" the customer identification program process in several ways; (6) revise provisions related to customers who refuse to provide information and maintain a list of, and supporting documents relating to, rejected accounts; (7) strengthen the Firm's policy regarding lack of verification and revise new account procedures (and clarify the Firm's new account procedures to conform to Firm practices); (8) clarify the scope of enhanced due diligence procedures; (9) establish written procedures for heightened supervision accounts; (10) revise the Firm's AML policies concerning diligence practices for foreign accounts; and (11) provide more specific descriptions of AML training.

In connection with the independent consultant's three follow-on reports, the independent consultant found that the Firm had made significant improvements to its AML policies and procedures, demonstrated a "strong commitment" to implementing

improvements recommended by the independent consultant and had devoted significant resources to strengthening its AML compliance. The independent consultant further found that the Firm adopted additional recommendations identified by the independent consultant subsequent to the May 2016 Report, and ultimately concluded that the Firm had adequately addressed each of the recommendations contained in the May 2016 Report.

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

The Firm seeks to continue its membership with FINRA notwithstanding the Final Judgment, which renders the Firm statutorily disqualified. The Firm has therefore agreed to the following Plan of Heightened Supervision as a condition of its continued membership with FINRA:[5]

1. The Firm must comply with all of the undertakings outlined in the Final Judgment entered on September 13, 2023 by the U.S. District Court for the Southern District of New York issued in connection with *Securities and Exchange Commission v. J.H. Darbie & Co., LLC* Case No. 22-cv-10482 (JHR), wherein the Firm was permanently restrained and enjoined from violating Section 17(a) of the [Exchange Act] [15 U.S.C. § 78q(a)] and Rule 17a-8 promulgated thereunder [17 C.F.R. § 240.17a-8].

2. The Firm must send to its assigned FINRA Risk Monitoring Analysts copies of all correspondence between the Firm and SEC staff regarding requests to extend the procedural dates relating to the undertakings specified in the Final Judgment. The Firm must maintain copies of all documentation regarding such extensions in a segregated file for ease of review by FINRA staff.

3. The Firm shall send the Firm's assigned Risk Monitoring Analysts copies of all reports issued by the Firm's AML consultant ("Consultant") in relation to the Final Judgment. The Firm shall maintain copies of all reports issued by the Consultant in relation to the Final Judgment along with all recommendations, the Firm's responses to such reports, whether contesting the Consultant's recommendations or documenting compliance, and implementation plans. The Firm must maintain said documents in a segregated file for ease of review by FINRA staff.

4. The Firm must, not less than annually, review and update, as necessary, its written AML policies and procedures in connection with the adequate

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[5] In connection with the plan, the Firm "acknowledges its ongoing obligations under the [BSA], Rule 17a-8 under the Exchange Act, Section 5 of the Securities Act of 1933 and FINRA rules and its important role in identifying and reporting suspicious activities."

identification of red flags for further due diligence and reporting. All AML red flag updates must be tailored to address risks specific to the Firm's business model and incorporate any additional provisions to detect red flag activity subsequently identified in applicable regulatory guidance, including without limitation FINRA Regulatory Notice 19-18. The Firm must document this review and any corresponding updates made to its AML policies and procedures. The Firm must maintain a copy of its AML policies and procedures, documentation of the mechanism or progress,[6] and any edits to the relevant Firm policy in a segregated file for ease of review by FINRA staff.

5. Should the Firm revise its AML policies and procedures or update its AML training in any way, the Firm must distribute the updated relevant policies and procedures and training to Firm management and employees. The Firm must segregate and maintain all documentation evidencing the required dissemination of the relevant Firm policy for ease of review by FINRA staff.

6. The Firm must conduct ongoing monitoring of the reviews and updates conducted by third-party vendors of its internal AML reporting processes to ensure that internal AML reports are up to date and effective. The Firm must segregate and maintain evidence of all reviews and updates for ease of review by FINRA staff.

7. The Firm must, not less than annually, review its training materials with respect to the identification and escalation of AML red flags. The Firm must document this review and corresponding updates made to the training materials. The Firm must segregate and maintain all documentation for ease of review by FINRA staff.

8. If any updates are made with respect to the AML training materials referenced in the foregoing section, the Firm must incorporate said updates into its annual training that must be mandatory for all Firm managers and employees and all other relevant FINRA registered persons. To the extent updates are made to AML training material, the Firm must maintain and segregate all updates, along with documentation of the completion of the training by the aforementioned persons, for ease of review by FINRA staff.

9. New Firm employees and other relevant FINRA registered persons must complete AML training within 60 days of onboarding. The Firm must maintain and segregate documentation of the completion of AML training by the aforementioned persons for ease of review by FINRA staff.

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[6] Member Supervision clarified that "documentation of the mechanism or progress" requires the Firm to document how the policies and procedures are to be implemented or monitored, including tools used to enforce the policies, as well as evidence of progress in applying the policies.

10. The Firm must provide the SD Group with proof of compliance with the undertakings upon completion of the provisions specified in Section IV.(d) of the Final Judgment.[7]

11. All requested documents and certifications under this Plan of Heightened Supervision must be sent directly to the Statutory Disqualification Group at SDMailbox@finra.org.

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

13. The Firm must submit any proposed changes or other requested information under this Plan of Heightened Supervision to FINRA's Statutory Disqualification Group at SDMailbox@finra.org.

If the Firm's request to continue its membership in FINRA is approved, Member Supervision represents that FINRA intends to utilize its examination and surveillance processes to assess the Firm's continued compliance with the standards prescribed by Exchange Act Rule 19h-1 and FINRA Rule 9523.

V. Discussion

Member Supervision recommends approving the Firm's request to continue its membership in FINRA. After carefully reviewing the entire record in this matter, we approve the Application.

In evaluating an application like this, we assess whether the statutorily disqualified firm seeking to continue its membership in FINRA has demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors. *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"). Factors that bear on our assessment include the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, and whether there has been any intervening misconduct.

We recognize that the Final Judgment involved serious violations of securities rules and regulations and the BSA. We note, however, that the Final Judgment did not

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[7] Section IV.(d) of the Final Judgment requires the Firm to certify and cause the Consultant to certify, in writing, the completion of testing to assess whether the Firm is complying with the recommendations set forth in the May 2016 Report and applicable regulatory guidance regarding potentially suspicious customer activity.

expel or suspend the Firm. Nor did the Final Judgment restrict or limit the Firm's securities activities beyond enjoining the Firm from violating the Exchange Act and requiring the Firm to engage an independent consult to provide AML training to the Firm's personnel and to review the Firm's compliance with the May 2016 Report and applicable regulatory guidance regarding potentially suspicious customer activity. The Firm has complied with all terms of the Final Judgment, and represents that it no longer engages in the type of business that was the subject of the Final Judgment. Further, the Firm's low-priced securities business currently comprises a much smaller portion of the Firm's overall revenue than it did at the time of the Final Judgment.

Moreover, FINRA did not identify any issues similar to those underlying the Final Judgment in connection with the Firm's most recent examination, and the independent consultant hired in connection with the Final Judgment found that the Firm had generally complied with the May 2016 Report and applicable regulatory guidance. Further, the independent consultant that authored the May 2016 Report found that the Firm consistently improved its AML policies and procedures pursuant to the consultant's recommendations. We also agree with Member Supervision's assessment that the Firm's regulatory history—including the August 2015 FINRA AWC and the SEC's 2018 order—should not prevent the Firm's continuance as a FINRA member. The Firm has paid all fines and penalties imposed by these actions, has complied with all undertakings imposed by these and other regulatory actions, and represented that it addressed deficiencies noted by FINRA examinations (including updating its WSPs). These steps, coupled with the provisions of the heightened supervisory plan, should help ensure that similar misconduct does not reoccur. The Firm's heightened supervisory plan includes provisions addressing the Firm's AML compliance, including an annual review and update of its AML policies and procedures and training materials. Any update to training materials will be incorporated the Firm's annual AML training for all employees.

At this time, we are satisfied, based in part upon the Firm's representations, Member Supervision's representations, the heightened supervisory plan, and the record currently before us, 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, we approve the Firm's Application to continue its membership in FINRA as set forth herein.[8] In conformity with the provisions of Exchange Act Rule 19h-1, the approval of the continued membership of the Firm will become effective

[8] FINRA certifies that the Firm meets all qualification requirements and represents that it is registered with the Municipal Securities Rulemaking Board, as well as the Nasdaq Stock Market (which concurs with the Firm's proposed continued membership).

within 30 days of the receipt of this notice by the SEC, unless otherwise notified by the SEC.

On Behalf of the National Adjudicatory Council,

Jennifer Mitchell Piorko
Vice President and Deputy Corporate Secretary