

a particular registered entity and may also be subject to specific terms and conditions.

Normally, the applicant's burden of demonstrating that the proposed association is consistent with the public interest will be difficult to meet where the applicant is to be supervised by, or is to supervise, another barred individual. In addition, where an applicant wishes to become the sole proprietor of a registered entity and thus is seeking Commission consent notwithstanding an absence of supervision, the applicant's burden will be difficult to meet.

In addition to the factors set forth in paragraph (d) of this rule, the Commission will consider the nature of the findings that resulted in the bar when making its determination as to whether the proposed association is consistent with the public interest. In this regard, attention is directed to Rule 5(e) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.5(e). Among other things, Rule 5(e) sets forth the Commission's policy "not to permit a \* \* \* respondent [in an administrative proceeding] to consent to \* \* \* [an] order that imposes a sanction while denying the allegations in the \* \* \* order for proceedings." Consistent with the rationale underlying that policy, and in order to avoid the appearance that an application made pursuant to this rule was granted on the basis of such denial, the Commission will not consider any application that attempts to reargue or collaterally attack the findings that resulted in the Commission's bar order.

(a) *Scope of Rule.* Applications for Commission consent to associate, or to change the terms and conditions of association, with a registered broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, investment company or transfer agent may be made pursuant to this rule where a Commission order bars the individual from association with a registered entity and:

(1) such barred individual seeks to become associated with an entity that is not a member of a self-regulatory organization; or

(2) the order contains a proviso that application may be made to the Commission after a specified period of time.

(b) *Form of Application.* Each application shall be supported by an affidavit, manually signed by the applicant, that addresses the factors set forth in paragraph (d) of this rule. One original and three copies of the

application shall be filed pursuant to Rules 151, 152 and 153. Each application shall include as exhibits:

(1) a copy of the Commission order imposing the bar;

(2) an undertaking by the applicant to notify immediately the Commission in writing if any information submitted in support of the application becomes materially false or misleading while the application is pending;

(3) the following forms, as appropriate:

(i) a copy of a completed Form U-4, where the applicant's proposed association is with a broker-dealer or municipal securities dealer;

(ii) a copy of a completed Form MSD-4, where the applicant's proposed association is with a bank municipal securities dealer;

(iii) the information required by Form ADV, 17 CFR 279.1, with respect to the applicant, where the applicant's proposed association is with an investment adviser;

(iv) the information required by Form TA-1, 17 CFR 249b.100, with respect to the applicant, where the applicant's proposed association is with a transfer agent; and

(4) a written statement by the proposed employer that describes:

(i) the terms and conditions of employment and supervision to be exercised over such applicant and, where applicable, by such applicant;

(ii) the qualifications, experience, and disciplinary records of the proposed supervisor(s) of the applicant;

(iii) the compliance and disciplinary history, during the two years preceding the filing of the application, of the office in which the applicant will be employed; and

(iv) the names of any other associated persons in the same office who have previously been barred by the Commission, and whether they are to be supervised by the applicant.

(c) *Required Showing.* The applicant shall make a showing satisfactory to the Commission that the proposed association would be consistent with the public interest.

(d) *Factors to be Addressed.* The affidavit required by paragraph (b) of this rule shall address each of the following:

(1) the time period since the imposition of the bar;

(2) any restitution or similar action taken by the applicant to recompense any person injured by the misconduct that resulted in the bar;

(3) the applicant's compliance with the order imposing the bar;

(4) the applicant's employment during the period subsequent to imposition of the bar;

(5) the capacity or position in which the applicant proposes to be associated;

(6) the manner and extent of supervision to be exercised over such applicant and, where applicable, by such applicant;

(7) any relevant courses, seminars, examinations or other actions completed by the applicant subsequent to imposition of the bar to prepare for his or her return to the securities business; and

(8) any other information material to the application.

(e) *Notification to Applicant and Written Statement.* In the event an adverse recommendation is proposed by the staff with respect to an application made pursuant to this rule, the applicant shall be so advised and provided with a written statement of the reasons for such recommendation. The applicant shall then have 30 days to submit a written statement in response.

(f) *Concurrent Applications.* The Commission will not consider any application submitted pursuant to this rule if any other application for consent to associate concerning the same applicant is pending before any self-regulatory organization.

#### *Initiation of Proceedings and Prehearing Rules*

##### *Rule 200. Initiation of Proceedings.*

##### *(a) Order Instituting Proceedings: Notice and Opportunity For Hearing.*

(1) *Generally.* Whenever an order instituting proceedings is issued by the Commission, appropriate notice thereof shall be given to each party to the proceeding by the Secretary or another duly designated officer of the Commission. Each party shall be given notice of any hearing within a time reasonable in light of the circumstances, in advance of the hearing; provided, however, no prior notice need be given to a respondent if the Commission has authorized the Division of Enforcement to seek a temporary sanction *ex parte*.

##### *(2) Stop Order Proceedings:*

##### *Additional Persons Entitled to Notice.*

Any notice of a proceeding relating to the issuance of a stop order suspending the effectiveness of a registration statement pursuant to Section 8(d) of the Securities Act of 1933, 15 U.S.C. 77h(d), shall be sent to or served on the issuer; or, in the case of a foreign government or political subdivision thereof, sent to or served on the underwriter; or, in the case of a foreign or territorial person, sent to or served on its duly authorized representative in the United States named in the registration statement, properly directed in the case of telegraphic notice to the address