

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the  
Continued Association of  
Domenick Migliorato  
(CRD No. 1482845)  
  
as a  
  
General Securities Representative  
  
with  
  
Velocity Capital, LLC  
(CRD No. 171810)

Notice Pursuant to  
Rule 19h-1  
Securities Exchange Act  
of 1934

SD-2253

**July 25, 2023**

**I. Introduction**

On October 31, 2019, Velocity Capital, LLC (“Velocity” or “Firm”) submitted a Membership Continuance Application (“Application”) to FINRA’s Department of Credentialing Registration Education and Disclosure (“CRED”).<sup>1</sup> The Application seeks to permit Domenick Migliorato (“Migliorato”), a person subject to statutory disqualification, to continue to associate with the Firm as a General Securities Representative (“GS”).<sup>2</sup> 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 (“SEA” or “Exchange Act”).

**II. The Statutorily Disqualifying Event**

Migliorato is subject to statutory disqualification pursuant to Section 3(a)(39)(F) of the Securities Exchange Act of 1934 (“Exchange Act” or “SEA”), incorporating by reference Section 15(b)(4)(E), as the result of an October 15, 2019 Order (“SEC Order”) issued by the Securities and Exchange Commission (“SEC” or “Commission”), which found that Migliorato violated

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<sup>1</sup> See the MC-400 Application, dated October 31, 2019, and a cover memo dated November 11, 2019 (collectively attached as Exhibit 1).

<sup>2</sup> The Firm proposes that Migliorato also continue in the following non-principal capacities as currently noted in CRD: an Operational Professional (“OS”) and a Securities Trader (“TD”), in addition to the proposed capacity as a General Securities Representative. See also *infra* note 16.

Exchange Act Section 15(b)(4)(E), by failing to reasonably supervise members of the securities lending desk of his firm with a view to preventing and detecting their violations of federal securities laws.<sup>3</sup>

According to the SEC Order, from September 2011 through December 2015, Migliorato's then-employer the Industrial and Commercial Bank of China Financial Services LLC ("ICBCFS") engaged in the business of obtaining and lending pre-release American Depositary Receipts ("ADRs").<sup>4</sup> Associated persons at the securities lending desk did not take reasonable steps to comply with ADR pre-release obligations, including determining whether the depository banks were obtaining and holding in custody the requisite number of ordinary shares to back the ADRs.<sup>5</sup> As a result, ADRs were issued which were not backed by ordinary shares, in violation of Section 17(a)(3) of the Securities Act of 1933.<sup>6</sup> Migliorato directly supervised the ICBCFS securities lending desk, and from "September 2011 through approximately December 2014, Migliorato failed to take reasonable steps to address whether ICBCFS personnel under his supervision confirmed ownership of the underlying ordinary shares that purportedly backed the ADRs to be pre-released."<sup>7</sup>

As a result of these findings, Migliorato was censured, ordered to pay a civil penalty in the amount of \$150,000,<sup>8</sup> and barred from acting in a supervisory capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, with the right to reapply to act in a supervisory capacity three years after the entry of the SEC Order.<sup>9</sup>

According to the Firm's application and counsel for Migliorato, Migliorato cooperated with the Commission during its investigation of ICBCFS by signing tolling agreements, assisting the Firm in the development of an automated tool, and adopting enhanced WSPs during the investigation.<sup>10</sup> Counsel for Migliorato further noted that he stepped down from his position as a supervisor of ICBCFS's securities lending desk and eventually left the firm.<sup>11</sup>

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<sup>3</sup> See SEC Order, *In re Domenick Migliorato*, Admin. Proc. File No. 3-19586, Exchange Act Release No. 87302 (October 15, 2019) (attached as Exhibit 2).

<sup>4</sup> *Id.* at p. 2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> FINRA confirmed that the civil penalty was paid in full on October 18, 2019.

<sup>9</sup> See Exhibit 2 at pp. 5-6.

<sup>10</sup> See Exhibit 1 at pp. FINRA00321-322. See also Letter from Migliorato's Counsel for the time period of the ICBCFS investigation, dated April 1, 2020 (attached as Exhibit 3).

<sup>11</sup> *Id.*

### III. Background Information

#### A. Migliorato

##### 1. Migliorato's Proposed Association, Responsibilities and Compensation

Velocity proposed that Migliorato will work from the Firm's main office location at 199 Water Street, New York, New York 10005.<sup>12</sup> The Firm stated that Migliorato is an indirect owner of the Firm<sup>13</sup> and requested that he remains as such, while also working as a general securities representative.<sup>14</sup> As a GS, he will function in an administrative capacity working on budgeting and streamlining the flow of data and systems integration;<sup>15</sup> he will also report to management on the Firm's financial performance, which includes streamlining the Firm's profit and loss ("P&L") statement calculation methodology, and financial data assimilation.<sup>16</sup> According to the Firm, Migliorato will have access to the reporting function of the Firm's Locate system, Loanet, and the Stock Loan Systems reports environment.<sup>17</sup> He will also work as a Business Systems Analyst on the design and development of internal systems such as the front-end Stock Loan order management and P&L and the trading P&L and client relation management software.<sup>18</sup> Additionally, he will work on the integration and operational integrity of third-party vendor

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<sup>12</sup> The Firm initially reported its main address as 100 Wall Street, Suite 502, New York, New York, 10005 on the MC-400 Application. See Exhibit 1 at p. FINRA00308, response 6. A review of CRD, conducted on November 16, 2022, revealed that on January 19, 2022 the Firm filed a BD amendment changing its main and mailing addresses from 100 Wall Street to 199 Water Street.

<sup>13</sup> See Firm's Discovery Responses, dated January 9, 2020, at p. 4, response 14 (Firm's Discovery Responses dated January 9, 2020, July 27, 2021 and December 13, 2022 collectively attached as Exhibit 4). According to the Firm, Migliorato owns over 22% of VCT Holdings II LLC, which in turn owns 37.5% of Nexus Clearing LLC. Nexus Clearing LLC owns 100% of VCT Holdings LLC, the Firm's parent. According to the Firm's follow-up discovery response, the Firm represents that "Mr. Migliorato is a member of VCT Holdings II, LLC.... no member exercises day to day control or management over either broker dealer by virtue of their status at the parent entity. Members of the parent entity receive information from those officers and principals of the broker dealer entities and act in accordance with NTM 99-49." See Exhibit 4, Firm's Discovery Response, dated December 13, 2022, at p.15, response 3(b).

<sup>14</sup> See Exhibit 1 at pp. FINRA00307-308, Sec. 2 responses 1 and 3.

<sup>15</sup> *Id.* at pp. FINRA00308, response 4 and FINRA00322.

<sup>16</sup> *Id.* See also Exhibit 4, Firm's Discovery Response, dated December 13, 2022, at pp. FINRA00415-FINRA00416. In a follow-up response to FINRA in regard to Migliorato's registrations reflected in CRD, the Firm indicated "the firm believes that he should retain the aforementioned licenses in order to act in these capacities." See *id.* at p. FINRA00416, response 1. Staff acknowledges that its discovery demand incorrectly indicated that Migliorato's CRD registration reflected a TP registration. The Firm terminated Migliorato's Trader Principal ("TP") registration on July 23, 2021. See *infra* n. 22.

<sup>17</sup> See Exhibit 4, Firm's Discovery Response, dated December 13, 2022, at p. FINRA00415-FINRA00416 Item 1 - bullet A.

<sup>18</sup> *Id.* at bullet B.

systems.<sup>19</sup> For his work, Migliorato will be compensated by a combination of salary and bonus and as an indirect owner, he will be compensated commensurate with his investment in the Firm's parent.<sup>20</sup>

Further, Velocity represented that Migliorato will not supervise any person in his role and will not have access to discretionary accounts.<sup>21</sup> Notably, the Firm conveyed that upon learning of the likely settlement with the SEC, Migliorato pre-emptively took all necessary steps to ensure the smooth transition of his supervisory responsibilities by voluntarily withdrawing as a supervisor and terminating his general securities principal registration with the Firm.<sup>22</sup> Moreover, the Firm stated that Migliorato will not have access to funds or securities, and he will only have read-only access to the Firm's books and records.<sup>23</sup> Finally, the Firm also represented that it is reviewing Migliorato's emails on a regular basis to ensure his compliance with the SEC Order and stated that Migliorato has not engaged in any supervisory responsibilities, and will not do so without first obtaining FINRA's approval.<sup>24</sup>

## 2. Registration

Migliorato entered the securities industry as a General Securities Representative (Series 7) in May 1986.<sup>25</sup> He passed the Uniform Securities Agent State Law Examination (Series 63) in June 1996, qualified as a General Securities Principal (Series 24) in September 1997.<sup>26</sup> He also qualified as an Equity Trader (Series 55) in November 2004 and received credit for the Securities Industry Examination in October 2018.<sup>27</sup> Migliorato is also approved to work for the Firm as an Operations Professional (Series 99) as of March 2016.<sup>28</sup>

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<sup>19</sup> *Id.*

<sup>20</sup> See Exhibit 1 at p. FINRA00308, response 5.

<sup>21</sup> *Id.* at p. FINRA00323, items 2 and 3.

<sup>22</sup> *Id.* at p. FINRA00322. See also CRD Excerpt – Registrations with Current Employers (attached as Exhibit 5). The Firm terminated Migliorato's General Principal ("GP") registration on September 18, 2019 and his Trader Principal ("TP") registration on July 23, 2021.

<sup>23</sup> See Exhibit 4, Firm's Discovery Response, dated January 9, 2020, at p. FINRA00401, response 3.

<sup>24</sup> See Exhibit 4, Firm's Discovery Response, dated December 13, 2022, at p. FINRA00418, response 5.

<sup>25</sup> See CRD Report for Domenick Migliorato at p. 12 (attached as Exhibit 6).

<sup>26</sup> *Id.* at pp. 12-13.

<sup>27</sup> *Id.*

<sup>28</sup> See Exhibit 6.

### 3. Employment History

Migliorato has been associated with the following firms during the following periods:<sup>29</sup>

<u>Employer</u>	<u>Period of Employment</u>
Velocity	March 2016 – Present
Quantex Clearing, LLC	September 2018 – August 2019
ICBCFS	July 2011 – December 2015
Wedbush Securities Inc.	March 2011 – July 2011
KDC Merger Arbitrage Fund, LP	September 2005 – October 2010
Quadrivers Securities, Inc.	May 2004 – July 2005
Neuberger Berman, LLC	February 2001 – January 2004
Credit Agricole Indosuez Securities, Inc.	January 1999 – January 2001
Credit Agricole Securities Inc.	May 1996 – January 1999
Credit Lyonnais Securities (USA), Inc.	September 1988 – May 1996
CL Globalpartners Securities Corporation <sup>30</sup>	September 1988 – January 1991
Moseley Securities Corporation	September 1986 – March 1988
O.R. Securities, Inc.	March 1986 – February 1987

### 4. Outside Business Activities (“OBAs”)

According to CRD, Migliorato reports nine (9) OBAs, which include: 1) acting as a managing member of 1 Hillsborough Real Estate INV, an investment property in Staten Island, New York, an activity to which he devotes zero hours; 2) a 50% managing member of a non-investment related consulting firm FCN LLC, to which he devotes five hours per month, none during market hours; 3) a member in Double D Capital LLC, an investment related entity to which he devotes three hours per month, zero during market hours; 4) a board member of VCT Holdings LLC, Velocity’s parent company, and VCT Technologies, LLC., to which he devotes 40% of his pre/post market time; 5) a managing member of MMD Holdings LLC, an investment related entity in Greenwich, Connecticut, to which he devotes one hour per week during trading hours; 6) an owner of BDM Partners LLC, an investment related holding company in Staten Island, New York, to which he devotes three hours per month, one hour during market hours; 7) a managing member of Green Lite Analytics LLC, a non-investment related technology company located in Staten Island, New York to which he devotes two hours per month; 8) a member of FLTC Holdings, LLC., a company investing in private entities, where he devotes five hours per month during non-trading hours, managing the company’s business lines; and 9) Ellis Street Trading, an investment related entity owned by Double D Capital, to which he devotes three hours per month, two during market hours.<sup>31</sup>

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<sup>29</sup> See Exhibit 6 at pp. 4-8.

<sup>30</sup> See CRD Excerpt Legacy Employment for Migliorato (attached as Exhibit 7).

<sup>31</sup> See Exhibit 6 at p. 12.

## 5. Regulatory History, Customer Complaints, and Arbitration Claims

Other than the SEC Order, FINRA is unaware of any regulatory or disciplinary action, customer complaint or arbitration against Migliorato.

## 6. Prior SEA Rule 19h-1 Notices and Notifications

There have been no prior Notices or Notifications filed on Migliorato's behalf pursuant to SEA Rules 19h-1 or 19d-1.

### **B. The Firm**

Velocity is headquartered in New York, New York and has been a FINRA member since January 2015.<sup>32</sup> The Firm operates four (4) branch offices, one of which is an Office of Supervisory Jurisdiction ("OSJ") located at 199 Water Street, 17<sup>th</sup> Floor New York, New York 10038.<sup>33</sup> The Firm is a wholly owned subsidiary of VCT Holdings II, LLC.<sup>34</sup> According to CRD, the Firm employs thirty-two (32) registered representatives and fourteen (14) registered principals.<sup>35</sup> The Firm does not employ any other individuals subject to statutory disqualification.<sup>36</sup>

The Firm is engaged in the following lines of business: Broker or dealer retailing corporate equity securities over the counter; put and call broker or dealer or option writer; non-exchange member arranging for transactions in listed securities by exchange member and trading securities for own account.<sup>37</sup> The Firm also conducts stock loans, repurchase agreements ("repos"), stock locates and propriety trading on a self-clearing basis.<sup>38</sup> Notably, the Firm represented that it does not conduct a pre-release ADR business, the type of business that was the subject of the SEC Order.<sup>39</sup> The Firm is also a member of the following Self-Regulatory Organizations ("SROs"): Nasdaq (NQX); Nasdaq PHLX (PHLX); and Cboe Exchange, Inc. (Cboe).<sup>40</sup>

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<sup>32</sup> See CRD Report for Velocity at p. 3 (attached as Exhibit 8).

<sup>33</sup> FINRA confirmed this through analysis of the Firm's information contained in CRD, last performed on July 18, 2023. See also *supra* note 12.

<sup>34</sup> See Exhibit 8 at p. 5.

<sup>35</sup> This information was confirmed from an analysis of the Firm's information contained in CRD, last performed on July 18, 2023.

<sup>36</sup> *Id.* See also Exhibit 1 at p. FINRA00310.

<sup>37</sup> See Velocity Capital CRD Excerpt, Types of Business (attached as Exhibit 9). The Firm executes transactions for its own accounts and does not have customer accounts.

<sup>38</sup> See Velocity Capital CRD Excerpt, Other Business Descriptions (attached as Exhibit 10).

<sup>39</sup> See Exhibit 1 at p. FINRA00322.

<sup>40</sup> See Exhibit 8 at p. 3.

## *1. Recent Regulatory Examinations*

In the past three (3) years, FINRA completed two (2) routine and one non-routine examination of the Firm. The Firm was issued Cautionary Action Letters in connection with the three examinations.

### *a. Routine Examinations*

The 2021 examination, completed in March 2022, resulted in a Cautionary Action arising from the three exceptions noted therein.<sup>41</sup> These exceptions relate to the Firm's failures to submit fingerprints for individuals who had access to the Firm's books and records, to follow its Written Supervisory Procedures ("WSPs") regarding the submission of fingerprints for registered and nonregistered individuals, to conduct a supervisory review of order making to comply with the requirements of Regulation SHO, and to follow the process codified in its WSPs to ensure compliance with the locate requirements of Regulation SHO.<sup>42</sup> In response to the examination, the Firm took steps to ensure that individuals who had access to its books and records are fingerprinted and revised its WSPs to address the issues related to its review process for Regulation SHO.<sup>43</sup>

The 2019 examination, completed in September 2019, resulted in a Cautionary Action for two exceptions of the three exceptions noted.<sup>44</sup> These exceptions related to the Firm's failure to have WSPs in place when it commenced its stock borrow and stock loan business and failure to correctly calculate its net capital requirement after a capital withdrawal.<sup>45</sup> The third exception, relating to the Firm's supervision of registered representatives' private securities transactions and OBAs, including two of Migliorato's OBAs, was referred internally for further review.<sup>46</sup> The matter was closed with no action taken with respect to Migliorato's OBAs.<sup>47</sup> In response to the examination findings, the Firm stated that it updated its WSPs to reflect its current risk framework and further developed a daily report to maintain compliance, corrected the way it calculates net capital and corrected deficiencies in its reporting of OBAs and private securities transactions.<sup>48</sup>

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<sup>41</sup> See FINRA's 2021 Examination Disposition Letter for Examination No. 20210693257 dated March 29, 2022, Examination Report dated December 27, 2021, and the Firm's Response dated September 11, 2019 (collectively attached as Exhibit 11).

<sup>42</sup> See Exhibit 11, Examination Disposition Letter at pp. 5-7.

<sup>43</sup> See Exhibit 11, Firm's Response at pp 6-9.

<sup>44</sup> See FINRA's 2019 Examination Disposition Letter for Examination No. 20190609962 dated September 23, 2019, Examination Report dated September 5, 2019, and the Firm's Response dated September 11, 2019 (collectively attached as Exhibit 12).

<sup>45</sup> See Exhibit 12, Examination Disposition Letter at p. 1.

<sup>46</sup> *Id.*

<sup>47</sup> See FINRA Cautionary Action Letter in connection with Exam 20190637066 dated, March 19, 2020 (attached as Exhibit 13).

<sup>48</sup> See Exhibit 12, Firm's Response at pp. 11-12.

*b. Non-Routine Examination*

On November 19, 2019, FINRA issued the Firm a Cautionary Action in connection with two exceptions relating to violations of FINRA rules applicable to Order Audit Trail Systems (“OATS”).<sup>49</sup> The first exception pertained to the Firm’s failure to transmit Reportable Order Events to OATS in violation of FINRA Rule 7450.<sup>50</sup> The second exception pertained to the failure of the Firm’s supervisory system to provide for supervision reasonably designed to achieve compliance with applicable securities rules and regulations and FINRA Rules concerning OATS in violation of FINRA Rules 2010 and 3110.<sup>51</sup> In response to the examination findings, the Firm stated that it took corrective measures pertaining to OATS reporting and revised its written supervisory procedures on November 1, 2019.<sup>52</sup>

*2. Disciplinary History and Customer Complaints*

FINRA is unaware of any formal disciplinary or regulatory proceedings, customer complaints, or arbitration claims against Velocity.

**IV. Proposed Supervision**

**A. Primary Supervisor – Frank Bracero (CRD No. 2178318)**

The Firm proposed Frank Bracero (“Bracero”), a General Securities Principal and the Controller of Velocity, as Migliorato’s primary supervisor.<sup>53</sup> Bracero works from the Firm’s office location at 199 Water Street, 17th Floor, New York, New York, the same location as Migliorato.<sup>54</sup> Bracero is the Controller for Velocity Capital, LLC, performing various accounting and regulatory related functions.<sup>55</sup> Bracero and Migliorato are not related by blood or marriage.<sup>56</sup> Other than Migliorato, Bracero does not supervise any other person at Velocity.<sup>57</sup> According to the Firm, Bracero worked as a licensed Series 24 and 27 for over twenty years managing multiple departments and teams.<sup>58</sup>

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<sup>49</sup> See FINRA’s 2019 Examination Disposition Letter for Examination No. 20180601807 dated November 19, 2019 and the Firm Response dated November 19, 2019 (collectively attached as Exhibit 14)

<sup>50</sup> See Exhibit 14, Examination Disposition Letter at p. 1 Exception 1.

<sup>51</sup> *Id.* at Exception 2.

<sup>52</sup> See Exhibit 14, Firm’s Response at p. 3.

<sup>53</sup> See Exhibit 1 at p. FINRA00309, Section Three, response 1(a).

<sup>54</sup> See CRD Snapshot for Bracero at p. 3 (attached as Exhibit 15).

<sup>55</sup> See Exhibit 4, Firm’s Discovery Response, dated July 27, 2021, at p. FINRA00409, response 6 (a).

<sup>56</sup> See Exhibit 1 at p. FINRA00309, Section Three, response 1(b).

<sup>57</sup> *Id.* at p. FINRA00310.

<sup>58</sup> See Exhibit 4, Firm’s Discovery Response, dated July 27, 2021, at p. FINRA00409, response 6 (c).

In addition to his role as Controller for Velocity, Bracero is the Chief Financial Officer and Financial and Operations Principal (“FINOP”) of Velocity Clearing, LLC. (f/k/a Quantex Clearing, LLC),<sup>59</sup> where he supervises two (2) employees of Velocity Clearing.<sup>60</sup> The Firm represents that neither of these employees are subject to heightened supervision or statutory disqualification.<sup>61</sup> The Firm represents that Bracero dedicates about 15-20 hours weekly to Velocity, 30-35 hours to Velocity Clearing, and travels between both office locations and works remotely as needed.<sup>62</sup> Velocity Clearing is located at 1301 Route 36, Suite 109, Hazlet, New Jersey 07730.<sup>63</sup> The Firm further represents that, aside from Migliorato, Bracero will not manage any other Velocity employees.<sup>64</sup>

### 1. Registration and Employment History

In December 1994, Bracero entered the securities industry as a General Securities Representative (Series 7).<sup>65</sup> He passed the Financial and Operations Principal Examination (Series 27) in February 1997, the Uniform Securities Agent State Law Examination (Series 63) in March 1997 and qualified as a General Securities Principal (Series 24) in July 1997.<sup>66</sup> He received credit for the Securities Industry Examination in October 2018.<sup>67</sup> He is also approved to work with the Firm as an Operations Professional, a Securities Trader (Series 57) and a Securities Trader Principal (Series 24) since October 2019.<sup>68</sup>

Bracero has been associated with the following firms:<sup>69</sup>

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<sup>59</sup> On February 3, 2020, Quantex Clearing filed a Form BD Amendment, changing its name to Velocity Clearing. *See* BD Amendment (attached as Exhibit 16). VCT Holdings LLC. is a 100% direct owner of Velocity Capital and part owner of Velocity Clearing. The Firm represents that Migliorato does not have any functional responsibility with Velocity Clearing and is not registered with Velocity Clearing, although he does have an indirect ownership interest derived from his ownership in VCT Holdings II LLC described above. *See* Exhibit 4, Firm’s Discovery Response, dated December 13, 2022, at pp. FINRA00416 – FINRA00417.

<sup>60</sup> *See* Exhibit 4, Firm’s Discovery Response, dated December 13, 2022, at p. 15, response 4 (a).

<sup>61</sup> *Id.*

<sup>62</sup> *See* Exhibit 4, Firm’s Discovery Response, dated January 9 2020, at p. 3, response 7.

<sup>63</sup> *See* Exhibit 16 at p. 1.

<sup>64</sup> *See* Exhibit 4, Firm’s Discovery Response, dated July 27, 2021, at p. FINRA00410, response 6 (d).

<sup>65</sup> *See* Exhibit 15 at p. 20.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at p. 4.

<sup>69</sup> *Id.* at pp. 4-14

<u>Employer</u>	<u>Period of Employment</u>
Velocity Capital, LLC	October 2019 – Present
Velocity Clearing, LLC	October 2019 – Present
Electronic Transaction Clearing, Inc.	February 2018 – September 2019
AXA Advisors, LLC	November 2017 – February 2018
BNP Paribas Investment Services, LLC <sup>70</sup>	April 2015 – July 2016
BNP Paribas Prime Brokerage, Inc. <sup>71</sup>	November 2011 – July 2016
BNP Paribas Securities Corp. <sup>72</sup>	November 2000 – July 2016
Credit Lyonnais Securities (USA), Inc.	October 1996 – November 2000
Bear, Stearns & Co. Inc.	October 1995 – October 1996
Morgan Stanley & Co., Incorporated	September 1991 – October 1995

## 2. Recent Regulatory and Disciplinary History

FINRA is unaware of any disciplinary or regulatory proceedings, customer complaints, or arbitration claims against Bracero.

## 3. OBAs

According to CRD, Bracero owns Frank Bracero Consulting, LLC., a non-investment related business which provides accounting and finance related consulting services.<sup>73</sup> In response to a FINRA Discovery Demand, dated November 17, 2022, asking the Firm to explain how Bracero will divide his time between his duties at Velocity and his OBA, the Firm clarified that Bracero's duties at Frank Bracero Consulting LLC. are limited to five (5) hours per month and all services are performed after business hours.<sup>74</sup>

### **B. Alternate Supervisor – Jeffery Smith (CRD No. 2492551)**

If Bracero is out of the office, the Firm has proposed that Migliorato will be supervised by Jeffrey Smith (“Smith”), Velocity’s Chief Compliance Officer.<sup>75</sup> Smith works out of the same office as Migliorato, located at 199 Water Street, 17<sup>th</sup> Floor, New York, New York.<sup>76</sup> Smith is not related

<sup>70</sup> Bracero was discharged due to a non-securities related policy violation. *Id.* at p. 9.

<sup>71</sup> *Id.* at p. 10.

<sup>72</sup> *Id.* at p. 11.

<sup>73</sup> See Exhibit 15 at p. 20.

<sup>74</sup> See Exhibit 4, Firm’s Discovery Response, dated December 13, 2022, at p. FINRA00417 – FINRA00418, response 4 (b).

<sup>75</sup> See Exhibit 4, Firm’s Discovery Response, dated July 27, 2021, at p. FINRA00410, response 7.

<sup>76</sup> See CRD Report for Jeffery Smith at p. 4 (attached as Exhibit 17).

to Migliorato by blood or marriage.<sup>77</sup> According to the Firm, Smith oversees all aspects of the Firm's compliance program and does not maintain or manage any client accounts.<sup>78</sup> The Firm further noted that Smith has approximately thirteen (13) years of supervisory experience.<sup>79</sup> With respect to the supervision of Migliorato, the Firm notes that Smith will interact with Migliorato on a daily basis and will allocate his time, on an as needed basis, to his supervision.<sup>80</sup>

1. Registration and Employment History

Smith entered the securities industry as a General Securities Representative (Series 7) in July 1994 and requalified as a GS in May 2004.<sup>81</sup> He passed the Equity Trader Examination (Series 55) in June 2005, qualified as a General Securities Principal (Series 24) in September 2009 and was given waiver for the Uniform Securities Agent State Law Examination (Series 63) in January 2010.<sup>82</sup> Smith received credit for the Securities Industry Essential Examination (SIE) in October 2018.<sup>83</sup> Smith is also approved to work as a Securities Trader (Series 57) and a Securities Trader Principal (Series 24) in February 2020.<sup>84</sup>

Smith has been associated with the following firms:<sup>85</sup>

<u>Employer</u>	<u>Period of Employment</u>
Velocity	February 2020 – Present
Velocity Clearing, LLC	February 2020 – March 2021
The Benchmark Company, LLC.	August 2017 – February 2020
LPL Financial, LLC.	September 2014 – May 2015
E1 Assets Management, Inc.	July 2009 – February 2010
Pershing, LLC. <sup>86</sup>	September 2007 – November 2008
Hold Brothers On-Line Investment Services L.L.C.	May 2004 – December 2006
National Financial Services Corporation	March 1996 – May 1998
Smith Barney Inc.	June 1995 – February 1996

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<sup>77</sup> See Exhibit 4, Firm's Discovery Response, dated July 27, 2021, at p. FINRA00411, response 7 (g).

<sup>78</sup> *Id.* at p. FINRA00410, responses 7 (b) and (c).

<sup>79</sup> *Id.* response 7 (d).

<sup>80</sup> *Id.* response 7 (b).

<sup>81</sup> See Exhibit 17 at p. 19.

<sup>82</sup> *Id.* at pp. 19-20.

<sup>83</sup> *Id.* at p. 19.

<sup>84</sup> *Id.* at p. 5.

<sup>85</sup> *Id.* at pp. 4-18 and 20-21.

<sup>86</sup> Smith was permitted to resign due to non-regulatory performance related issues. See Exhibit 17 at p. 8

Olde Discount Corporation  
Citigroup Global Markets, Inc.  
Ameriprise Advisor Services, Inc.  
L.C. Wegard & Co., Inc.

September 1994 – May 1995  
June 1995 – February 1996  
September 1994 – May 1995  
May 1994 – August 1994

## 2. Recent Regulatory and Disciplinary History

FINRA is unaware of any disciplinary or regulatory proceedings, customer complaints, or arbitration claims against Smith.

## 3. Outside Business Activity

Smith reports no outside business activities.<sup>87</sup>

### **C. Proposed Plan of Heightened Supervision**

Velocity has agreed to the following Plan of Heightened Supervision (“Plan”) of Migliorato:<sup>88</sup>

1. The written supervisory procedures for Velocity Capital, LLC (“Velocity” or “Firm”) shall be amended to state that Frank Bracero (CRD# 2178318) (“Bracero”) shall serve as the primary supervisor for Domenick Migliorato (CRD 1482845) (“Migliorato”). If at any time Bracero is on vacation or away for an extended period, Jeffrey Smith (CRD# 2492551) (“Smith”) would serve as Migliorato’s on-site interim supervisor;
2. Bracero shall supervise Migliorato from 199 Water Street, 17th Floor, New York, New York;
3. Migliorato shall not maintain customer accounts. His role shall be exclusively administrative in nature, concentrating on budgeting, reporting to management on the Firm’s financial performance, streamlining the flow of data and working on systems integration;
4. Migliorato shall not act in a supervisory capacity;
5. Migliorato shall not be permitted to use any email address other than a Firm approved email address for Firm business communications. Should Migliorato receive business-related email messages in an email account outside of the Firm, he shall immediately deliver the message to his Firm’s email address and copy Bracero;
6. All of Migliorato’s outgoing emails shall be blind copied to Bracero and reviewed by Bracero on a bi-weekly basis. Bracero shall also review all of Migliorato’s incoming emails on a bi-weekly basis. Records of such reviews shall be kept segregated for ease of review by FINRA staff;

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<sup>87</sup> See Exhibit 17 at p. 19.

<sup>88</sup> See Plan of Heightened Supervision executed on April 21, 2023 (attached as Exhibit 18).

7. Migliorato shall only use Digital Communication Channels<sup>89</sup> for Firm business purposes which the Firm has provided prior approval. The Firm shall document the steps taken to approve each of Migliorato's individual messaging medium(s) and the date of approval(s). The Firm shall only approve messaging services that are captured by a record-keeping service in compliance with securities laws and regulations. Records of such requests for approval shall be kept segregated for ease of review during any FINRA examination.
8. Bracero shall review Migliorato's messages sent and received through the approved Digital Communication Channels referenced in Item 7 above on a weekly basis. Records of such reviews shall be kept segregated for ease of review by FINRA staff;
9. Bracero shall review all of Migliorato's outgoing written correspondence on a weekly basis. Bracero shall also review any incoming written correspondence directed to, authorized by, or sent by Migliorato of receipt or transmission of said correspondence on a weekly basis. Records of such reviews shall be kept segregated for ease of review by FINRA staff;
10. All complaints pertaining to Migliorato, whether verbal or written, shall be immediately referred to Bracero for review, and then to the Compliance Department. Bracero shall prepare a memorandum to the file as to what measures he took to investigate the merits of the complaint and the resolution of the matter. Documents pertaining to these complaints shall be kept segregated for ease of review by FINRA staff;
11. Bracero and Migliorato shall meet in person at least once per quarter at a Firm OSJ location to discuss Migliorato's business activities and to review the provisions of the Plan of Heightened Supervision. Bracero shall maintain a record of these meeting which must include a description of the matters discussed. Records of such meetings shall be maintained in a segregated file and be kept segregated for ease of review by FINRA staff;
12. On an annual basis, the Firm shall utilize a third-party vendor to conduct an annual public records search for liens, judgments, and other reportable matters incurred by Migliorato. Bracero shall ensure that Migliorato has complied with his regulatory disclosure obligations. Records of all search results and reviews shall be kept segregated for ease of review by FINRA staff;
13. Migliorato shall promptly disclose any of the following (if applicable): liens, judgments, bankruptcy and any other reportable matters, updates to outside business activities, evidence of payment of liens and ordered fines, disgorgement, or civil penalties. Documents pertaining to any disclosure shall be kept segregated for ease of review by FINRA staff;
14. Bracero must certify quarterly (March 31st, June 30th, September 30th, and December 31st) to the Compliance Department of the Firm that Bracero and Migliorato are in compliance with all of the

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<sup>89</sup> For the purpose of this supervisory plan, the term "Digital Communication Channels" means all written electronic methods of communication used to conduct Firm business, including but not limited to, text message platforms, whether via SMS messaging, iMessage, or other messaging services such as WhatsApp; direct messaging platforms including Twitter, Instagram, LinkedIn, Slack, or Bloomberg Messaging; email accounts; and any other written electronic business-related correspondence. "Digital Communication Channels" encompass platforms used to exchange messages with internal or external stakeholders using either a personal or Firm-provided device.

above conditions of heightened supervision to be accorded disqualified individuals. Evidence of such certifications shall be kept segregated for ease of review by FINRA staff;

15. Semi-annually (as of June 30th and December 31st), Migliorato 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 compliance with the plan of heightened supervision. Evidence of such certifications shall be kept segregated for ease of review by FINRA staff; and
16. The Firm must obtain prior approval from Member Supervision, if it wishes to change Migliorato's primary or alternate supervisors or if the Firm wishes to change any provisions of this plan. The Firm shall submit any proposed changes or other requested information under this Plan to FINRA's Statutory Disqualification Group at [SDMailbox@FINRA.org](mailto:SDMailbox@FINRA.org).

## V. Discussion

After a careful review of the entire record in this matter, FINRA approves Velocity's Application to permit the continued association of Migliorato, as a general securities representative, subject to the supervisory terms and conditions outlined herein.

In recommending approval, Member Supervision relies primarily on the principles articulated in *In re Paul Edward Van Dusen*, 47 S.E.C. 668, 1981 SEC LEXIS 270 (1981). *Van Dusen* stands for the proposition that where the Commission has addressed an individual's misconduct through its administrative process that gave rise to a statutory disqualification, and the time period specified in the order has elapsed, in the absence of new information reflecting adversely on the individual's ability to function in their proposed employment, it is "inconsistent with the remedial purposes of the Securities and Exchange Act of 1934" and unfair to deny an application for re-entry into the securities industry.<sup>90</sup> Importantly, these principles provide that Member Supervision should not reconsider events the Commission has taken into account in addressing the misconduct that gave rise to the disqualification and should not deny an application for reentry solely on the basis of the same misconduct. However, *Van Dusen* does not require the automatic reentry after a period of time has elapsed. Instead, the Commission instructed that other factors must be carefully weighed and considered such as other misconduct in which the applicant may have engaged, the nature and disciplinary history of a prospective employer, and the supervision to be accorded the applicant.<sup>91</sup>

In recommending this current approval, Member Supervision applied the standards articulated in *Van Dusen* and carefully considered their principles. At the time of this filing, Member Supervision is not aware that Migliorato has engaged in any intervening misconduct since the time of his disqualifying event. The Firm also has limited regulatory/disciplinary history. In the past three years, the Firm was issued three Cautionary Actions as a result of FINRA's examinations, one of which pertained to the supervision of OBAs. The Firm subsequently provided clarification

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<sup>90</sup> See *Van Dusen*, 47 S.E.C. at 671.

<sup>91</sup> *Id.*

regarding its conduct and amended its procedures and systems to address FINRA's concerns. It should be further noted that the 2019 spin-off examination pertaining to the supervision of OBAs, and PSTs was closed with the issuance of a Cautionary Action to one registered representative. There were no findings with respect to Migliorato or the Firm.

In approving the Application, Member Supervision took into consideration that prior to the entry of the SEC Order, Migliorato relinquished his supervisory responsibilities in June 2019 and voluntarily terminated his Series 24 license on September 18, 2019.<sup>92</sup> Furthermore, the Firm represented that Migliorato has been employed in an administrative capacity, reporting to management on budgeting, performance, streamlining the flow of data and systems integration since the entry of the SEC Order.<sup>93</sup> The Firm also represented that it is reviewing Migliorato's emails on a regular basis to ensure his compliance with the SEC Order<sup>94</sup> and that Migliorato has not engaged in any supervisory responsibilities, and will not do so without first obtaining FINRA's approval.<sup>95</sup> The Firm's representations reinforce the Firm's commitment to complying with the SEC Order.

Member Supervision recognizes that Migliorato engaged in serious misconduct that led to his disqualification. However, the Commission weighed the gravity of his misconduct and accepted Migliorato's offer of settlement to settle the allegations laid out in the SEC Order. The SEC ultimately concluded that a supervisory bar with a right to reapply in three (3) years, which has since expired, along with censure and a monetary fine were appropriate sanctions to levy against him for his violation. In addition, weighing the principles articulated in *Van Dusen*, the Department notes that prior to the SEC's order, Migliorato participated in the securities industry for over thirty years and, other than the disqualifying event, he has not been subject of any other disciplinary actions, customer complaints or arbitrations.<sup>96</sup> In addition, Member Supervision also considered that during the Commission's investigation of ICBCFS, Migliorato cooperated with the Commission, including signing tolling agreements, seeking to have ICBCFS develop an automated tool and adopt enhanced WSPs, stepping down from his position as a supervisor of ICBCFS' securities lending desk, and eventually leaving the firm itself,<sup>97</sup> thus demonstrating his willingness to comply with his obligations under securities laws and regulations.

When employing a disqualified individual, a firm must prove that it will be able to adequately supervise that individual. To do so, the firm must establish a stringent plan of heightened supervision and show that it will be able to effectively implement such plan. *See Timothy H.*

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<sup>92</sup> See Exhibit 1 at p. FINRA00321 and Exhibit 5 at p. 4.

<sup>93</sup> See Exhibit 1 at p. FINRA00308 at response 4.

<sup>94</sup> See Exhibit 4, Firm's Discovery Response, dated July 27, 2021, at p. FINRA00409, response 5 (a).

<sup>95</sup> See Exhibit 4, Firm's Discovery Response, dated December 13, 2022, at p. FINRA00418, response 5.

<sup>96</sup> See Exhibit 5 at pp. 18-23.

<sup>97</sup> See Exhibit 1 at pp. FINRA00321-322. See also Exhibit 3 where ICBCFS's cooperation is noted. Migliorato's counsel for the time period of the ICBCFS investigation also provided to FINRA documentation of his cooperation with the SEC investigation on April 1, 2020.

*Emerson, Jr.*, Exchange Act Rel. No. 60328, 2009 SEC LEXIS 2417. The Commission has held that a supervisory plan lacks the necessary intensive scrutiny when the supervisor will not be in close, physical proximity to the statutorily disqualified person. See *Robert J. Escobio*, Exchange Act Release No. 83501, 2018 SEC LEXIS 1512. Here, the Firm is proposing in-person supervision. Moreover, the Firm has agreed to a stringent plan of heightened supervision and proposed qualified and experienced supervisors, Bracero and Smith, with collectively 33 years of experience and unblemished regulatory histories.

With respect to the Plan itself, the Firm agreed to a stringent plan of supervision that addresses the underlying misconduct described in the SEC Order and limits the ability of Migliorato to repeat similar misconduct in the future. Specifically, the Plan prohibits him from acting in any supervisory capacity. It further limits his role to be exclusively administrative in nature, concentrating on budgeting, reporting to management on the Firm's financial performance, streamlining the flow of data and working on systems integration. The Plan also prohibits him from maintaining customer accounts. The Firm's Plan also calls for Migliorato's incoming and outgoing emails to be regularly monitored, as well as outgoing correspondence, and restricts his use of messaging applications without the Firm's prior written approval, when conducting Firm business. Moreover, the Firm has agreed to utilize the services of a third-party vendor to conduct semi-annual public records searches to ensure that Migliorato does not have any liens, bankruptcies or undisclosed outside business activities.

Member Supervision is satisfied that Migliorato's association with Velocity would not pose a risk to the investing public given Migliorato preemptively relinquished his principal registration with the Firm, Migliorato's restricted business activities, and the Firm's consent to a stringent Plan of heightened supervision. In its Application, the Firm represented that Migliorato's proposed business activities would be administrative in nature and he will not have access to funds or securities nor maintain any customer accounts. Although Migliorato is an indirect owner of Velocity, the Firm has restricted his access to the books and records and granted him read access only. These actions evidence a serious approach to requirements for Migliorato's continued association with Velocity and the Firm's commitment to preventing a reoccurrence of the misconduct.

FINRA is approving the Firm's Application pursuant FINRA Rule 9523(b) which authorizes Member Supervision to accept the continuing association of a disqualified person pursuant to a supervisory plan where the sponsoring member consents to the imposition of a supervision plan. Upon this approval, Migliorato and the Firm will be subject to routine FINRA examinations to ensure its ongoing compliance and FINRA intends to also utilize its surveillance processes to further monitor Migliorato and the Firm.

In the absence of either new information that provides evidence that Migliorato has engaged in misconduct since his disqualifying event, or other aggravating facts, FINRA approves the Firm's Application based on the principles set forth in *Van Dusen*.

## VI. Conclusion

After applying the Van Dusen standard to this matter, FINRA approves Velocity's Application to continue its association with Migliorato for the following reasons:

- Migliorato is compliant with the SEC Order and has paid the civil penalty;
- There has been no intervening misconduct by Migliorato since the issuance of the disqualifying order of which Member Supervision is aware;
- The Firm, Migliorato, and the proposed supervisors have relatively clean disciplinary records;
- The Firm has proposed qualified and experienced supervisors to supervise Migliorato;
- The Plan is stringent and specifically tailored to Migliorato's misconduct; and
- Migliorato and the Firm will be subject to routine FINRA examinations and surveillance processes to ensure the Plan's ongoing compliance.

FINRA states that, to its knowledge, Migliorato meets all applicable requirements for the proposed employment and the Firm represents that Migliorato, Bracero, and Smith are not related by blood or marriage. Pursuant to Rule 9523(b)(1), the Firm has submitted an executed letter consenting to the Plan and thus waiving certain rights, as detailed in the Rule.

Member Supervision concludes that it would not constitute unreasonable risk of harm to the market and investors to permit Migliorato's association with Velocity. The Firm is registered with several other SROs including CBOE, PHLX, and NQX. The SROs have been provided with the terms and conditions of Migliorato's proposed continued association with Velocity and concur with FINRA.

In conformity with the provisions of Rule 19h-1, the association of Migliorato with Velocity will become effective within 30 days of receipt of this Notice by the Commission, unless otherwise notified by the Commission.

On Behalf of FINRA,



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Marcia E. Asquith,  
Executive Vice President & Corporate Secretary

Exhibit List  
SD-2253

1. MC-400 Application of Velocity Capital, LLC on behalf of Domenick Migliorato, dated October 31, 2019, with cover memo dated November 11, 2019.
2. SEC Order, *In Re Domenick Migliorato*, Admin. Proc. File No. 3-19586, Exchange Act Release No. 87302 (October 15, 2019).
3. Letter dated April 1, 2020 with attachments, regarding Migliorato's cooperation with the SEC investigation of ICBCFS.
4. Velocity Discovery Responses to FINRA, dated January 9, 2020, July 13, 2021, and December 13, 2022 and related attachments.
5. CRD Excerpt for Domenick Migliorato – Registrations with Current Employer.
6. CRD Report for Domenick Migliorato.
7. CRD Excerpt for Domenick Migliorato – Legacy Employment.
8. CRD Report for Velocity Capital, LLC.
9. CRD Excerpt for Velocity – Types of Business.
10. CRD Excerpt for Velocity - Other Business Description.
11. FINRA's 2021 Examination Disposition Letter for Examination No. 20210693257 dated March 29, 2022, Examination Report dated December 27, 2021, and the Firm's Response dated September 11, 2019.
12. FINRA's 2019 Examination Disposition Letter for Examination No. 20190609962 dated September 23, 2019, Examination Report dated September 5, 2019, and the Firm's Response dated September 11, 2019.
13. FINRA Cautionary Action Letter, dated March 19, 2020.
14. FINRA Cautionary Action Letter for Examination 20180601807 dated November 19, 2019 and Firm Response.
15. CRD Report for Frank Bracero.
16. Velocity Clearing BD Amendment.

17. CRD Report for Jeffrey Smith.

18. Plan of Heightened Supervision, executed on April 14, 2023.