

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of
the Association of

X

as a

General Securities Representative

with

The Sponsoring Firm

Redacted Decision

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

SD99019

This matter involves the application ("Application") for a person subject to a statutory disqualification ("X")¹, to become a registered representative of a member firm ("the Sponsoring Firm" or "the Firm"), a member firm located in New York. A hearing in the matter was held before a subcommittee of the Statutory Disqualification Committee ("SD Committee") of the National Adjudicatory Council ("NAC") of NASD Regulation, Inc. ("NASD Regulation"). X appeared and was accompanied by the proposed supervisor("the Proposed Supervisor"), a principal with the Firm, and by counsel. BA appeared on behalf of NASD Regulation's Department of Member Regulation ("Member Regulation").

X is subject to a statutory disqualification under Section 3(a)(39)(F) of the Securities and Exchange Act of 1934 and Article II, Section 4(g) of the NASD By-Laws. In 1993, he pleaded guilty in a State Superior Court to one count of distribution of marijuana in the third degree. He was sentenced to four years of probation and was required to perform 400 hours of community service, to enter a 90-day in-patient drug treatment program, receive outpatient counseling, and to submit to random drug testing. He also was required to pay a \$1,000 penalty and to forfeit his 1991 Mazda automobile to the state. In 1996, he was granted early termination from probation.

¹ The names of the Statutorily Disqualified individual, the Sponsoring Firm, the Proposed Supervisor, and other information deemed reasonably necessary to maintain confidentiality have been redacted.

In September 1997, the Sponsoring Firm requested approval to employ X as a computer, telephone and systems support person, the Sponsoring Firm's Operations Manager. The NASD approved the request subject to the following: (1) X would not be involved in any securities transactions or with any customers; (2) The Sponsoring Firm would closely monitor X's activities to ensure that he did not act in any capacity requiring registration; (3) the Operations Manager would have daily contact with X and would closely monitor his activities; (4) X's compensation would be commensurate with his job responsibilities.

The Sponsoring Firm has been an NASD member since 1977 and has one Office of Supervisory Jurisdiction and no branch offices. It employs three general securities principals, 16 registered representatives, and 23 other employees. Approximately 90 percent of the Sponsoring Firm's business consists of agency transactions in listed equity securities. The Sponsoring Firm's clients are predominantly institutional investors, including registered investment companies, private placement partnerships, banks, insurance companies, and private pension plans. The Sponsoring Firm's most recent examination resulted in a finding of "Filed Without Action." The Sponsoring Firm employs no other statutorily disqualified persons.

On March 17, 1999, Member Regulation received the MC-400 application that is the subject of this proceeding. The Sponsoring Firm proposes to employ X initially as a trainee and subsequently as a trader, to be supervised by the Proposed Supervisor, who is one of the Sponsoring Firm's three principals. Member Regulation recommends approval of the Sponsoring Firm's application subject to the supervisory procedures outlined below.

Discussion

We first note that X's own conduct since the statutory disqualification weighs in favor of granting the application. The Sponsoring Firm and X have abided by the terms of X's approval to be employed with the Sponsoring Firm as a computer support person. We are impressed with the complimentary character letters submitted on X's behalf, and particularly the reference letter submitted by the Dean of a University where X attended college for several years. In addition, we note that the misconduct underlying the statutory disqualification was not securities-related and occurred more than six years ago. Finally, as a registered representative with the Sponsoring Firm, X's contact with the public largely will be limited because he will be handling primarily institutional accounts.

We consider the proposed supervisor a suitable supervisor given his nearly 30 years of experience in the industry. The Proposed Supervisor's CRD record reflects that in 1980, along with the Sponsoring Firm, he was censured and fined \$250 jointly and severally for failing to maintain net capital of not less than \$25,000, for effecting four transactions with customers at prices that reflected excessive mark-ups, and for failing adequately to stamp order tickets. Because this disciplinary history dates to nearly 20 years ago, we are of the opinion that it is not relevant to the matter at hand. In

addition, we have considered the fact that in 1996, the Sponsoring Firm and one of the Sponsoring Firm's principals, consented to an SEC order ("Consent Order") imposing sanctions for violations in 1989 and 1991 resulting from undisclosed mark-ups and mark-downs in 343 over-the-counter ("OTC") transactions. Although we consider the activity underlying the SEC's Consent Order to be serious, we note that the Sponsoring Firm has complied with the terms of the Consent Order, one of which required that the Sponsoring Firm implement an independent consultant's recommendations designed to prevent such violations in the future. In addition, we note that the activity underlying the Consent Order occurred more than eight years ago. Finally, we note that the proposed supervisor was not individually named in the SEC's complaint such that his capacity to supervise X should be questioned.

We conclude that the Sponsoring Firm and the Proposed Supervisor are qualified to supervise X and that they have proposed an effective plan of supervision. The Sponsoring Firm will implement the following supervisory procedures:

- (1) The Sponsoring Firm's supervisory procedures will be amended to establish clearly that the Proposed Supervisor is responsible for supervising X;
- (2) X will conduct securities business on behalf of the Sponsoring Firm only from the office where the Proposed Supervisor is physically located;
- (3) X will not maintain discretionary accounts;
- (4) The Proposed Supervisor will approve all new accounts for suitability;
- (5) The Proposed Supervisor will approve all order tickets daily;
- (6) The Proposed Supervisor will review X's incoming and outgoing correspondence;
- (7) The Proposed Supervisor will keep a written record evidencing review and approval of all of X's transactions, new accounts, and all correspondence;
- (8) The Proposed Supervisor will meet with X on a quarterly basis to review all transactions with customers (including a review of all distributions of customers funds) and will create a log of such review;
- (9) All customer complaints regarding X will be referred immediately to the Proposed Supervisor, who will prepare a memorandum to the file regarding investigation and resolution of the complaint; and the complaints will be segregated for ease of review;
- (10) X will be prohibited from accepting any customer funds in his name -- all funds must be

payable to either the Sponsoring Firm or the particular fund; and

- (11) The Sponsoring Firm shall provide advance notification to Member Regulation of any change in X's supervisor.

The NASD certifies that: 1) X meets all applicable requirements for the proposed employment; 2) the Sponsoring Firm is not a member of any other self-regulatory organization; and 3) X and the Proposed Supervisor have represented that they are not related by blood or marriage.

Accordingly, we recommend approval of X as a general securities representative with the Sponsoring Firm. In conformity with the provisions of SEC Rule 19h-1, the registration of X as a general securities representative associated with the Sponsoring Firm will become effective within 30 days after the receipt of this decision by the Commission, unless otherwise notified by the Commission.

On Behalf of the National Adjudicatory Council,

Joan C. Conley, Senior Vice President and Corporate Secretary

