

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of
the Association

of

X

as a

Registered Representative

with

The Sponsoring Firm

Redacted Decision

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

SD98008

This matter involves the association of X¹, a person subject to a statutory disqualification, as a general securities representative with a member firm located in New Jersey ("the Sponsoring Firm"). A hearing in this matter was held in December 1997 before a subcommittee ("Hearing Panel") of the Statutory Disqualification Committee ("SD Committee") of NASD Regulation, Inc. ("NASD Regulation"). X appeared and was accompanied by a general securities principal from the Sponsoring Firm, who is proposed to be X's supervisor ("the Proposed Supervisor").

X has been employed by various brokerage firms since 1993. The record shows that X properly disclosed his 1993 felony-equivalent drug conviction to those firms on his Uniform Application for Securities Industry Registration or Transfer ("Form U-4"), but that through a series of clerical errors, the Association was unable to ensure that X was subjected to the appropriate statutory disqualification application process until the instant application.

X is subject to a statutory disqualification as the result of his 1993 guilty plea in a state Superior Court to one count of possession of a controlled substance (LSD). X was sentenced to one year's probation, \$1,106 in fines and penalties, participation in an out-patient after-care program with random

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.

urinalysis testing, and six months' suspension of his driver's license. His probation terminated in 1995, having been extended for one year to allow for the full payment of his fines and penalties.

The Sponsoring Firm has been a member of the NASD since 1991 and is engaged in a general securities business. The Sponsoring Firm employs eight registered principals and 63 registered representatives, and has three branch offices and one Office of Supervisory Jurisdiction. The Sponsoring Firm derives 90 percent of its revenue from sales of Nasdaq National Market securities and approximately 10 percent of its revenue from sales of listed securities, and the Firm engages in very few options transactions. The Sponsoring Firm makes markets in 15 or 16 securities and occasionally participates in initial public offerings. Ninety percent of the Sponsoring Firm's trades are done on a principal basis and 10 percent are agency trades.

The Sponsoring Firm proposes to employ X as a registered representative on a commission-only basis at its branch office located in New York. X will be supervised daily on the premises of the branch office by the Proposed Supervisor, who has been a general securities principal since 1987 and has no formal disciplinary history.² In 1989, the Sponsoring Firm settled an action brought against it by the NASD, in which the Sponsoring Firm neither admitted nor denied the allegations of engaging in securities transactions with customers at unfair prices, and paid a fine of \$12,500. In 1985, the Sponsoring Firm settled an action, also brought by the NASD, without admitting or denying the allegations of effecting securities transactions with customers at unfair prices, and paid a fine of \$15,000.³

At the hearing and in written submissions the Sponsoring Firm outlined the following supervisory plan:

- (1) X and the Proposed Supervisor will be located in close proximity in the branch office;
- (2) The Proposed Supervisor will be able to observe X's activities and monitor his telephone conversations because X will be located outside the door of the Proposed Supervisor's office;
- (3) The Proposed Supervisor also will tour the office at random points each day to observe the activities of the representatives, including X;
- (4) The Proposed Supervisor will review all activities in X's customer accounts.

² The Sponsoring Firm originally proposed that X be supervised by two general securities principals. At the hearing, the Sponsoring Firm verbally amended its application and, subsequently, provided a supplemental letter stating that the Supervisor would assume sole responsibility for the supervision of X.

³ The Sponsoring Firm also entered into several consent orders with states, involving recordkeeping and registration violations. These actions did not involve the branch office and the supervisor proposed here to supervise X.

The Sponsoring Firm employs no other individuals who are subject to a statutory disqualification, and no familial relationship exists between X and his proposed supervisor. The results of the Sponsoring Firm's 1997 routine examination are pending; the 1995 routine examination resulted in a Letter of Caution for inaccurate trade reporting of Nasdaq National Market securities.

After careful review of the entire record in this matter, the NASD concludes that the Sponsoring Firm's application to employ X as a general securities representative should be approved. We note that X's probation was terminated successfully in 1995 and that he has been employed in the securities industry, without incident, at various times since his 1993 conviction. The Sponsoring Firm has proposed a program to monitor X closely by providing that he will be physically located outside the door of his proposed supervisor, who has been a registered principal for 10 years and has no formal disciplinary history. We conclude that X will be supervised sufficiently by the Sponsoring Firm and its proposed branch office and supervisor to permit him to be associated with the Sponsoring Firm.

Accordingly, X's association as a general securities representative with the Sponsoring Firm will be effective within 30 days of the issuance of this decision, unless otherwise notified by the Securities and Exchange Commission.

On Behalf of the National Adjudicatory Council,

Joan C. Conley
Corporate Secretary