

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
Rule 19h-1
Securities Exchange Act
of 1934

SD99007

On July 17, 1998, a member firm ("the Sponsoring Firm" or "the Firm") completed an MC-400 application ("Application") to permit X¹, a person subject to a statutory disqualification, to associate with the Firm as a general securities representative.² In December 1998, a subcommittee of the Statutory Disqualification Committee of NASD Regulation, Inc. ("NASD Regulation") held a hearing on the matter. X appeared and was accompanied by his proposed supervisor, and the President and Chief Financial Officer ("CFO") of the Sponsoring Firm. BK and DB appeared on behalf of the Department of Member Regulation ("Member Regulation").

X is subject to a statutory disqualification that arose from his 1990 guilty plea to the criminal sale of a controlled substance, a felony. X was sentenced in February 1991 to five years' probation and fined \$2,500. In April 1991, a judge granted X a Certificate of Relief from Civil Disabilities. This certificate relieved X of all disabilities and bars to employment, excluding the right to be eligible for public office. X's statutory disqualification expires in December 2000, the tenth anniversary of his disqualifying event.

In November 1997, X was arrested for driving while intoxicated. This is not a disqualifying

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.

² NASD Regulation received an MC-400 application from Firm A in July 1992, but no further action was taken on this application and X terminated without having registered when his sponsoring supervisor left that firm.

event. The NASD has no record of any customer complaints, arbitration, or lawsuits filed against X since his conviction in December 1990.

The Sponsoring Firm is organized as a limited liability corporation and has been a member of the NASD since October 1997. The Sponsoring Firm employs nine general securities representatives, two general securities principals, two investment company and variable contracts products representatives and one unregistered associated person, X. Pursuant to its membership agreement, the Firm is authorized to act as a broker/dealer in mutual funds and variable annuities and therefore derives its income from these areas. The Sponsoring Firm's President and CFO, and the Secretary and Chief Executive Officer ("the Proposed Supervisor"), each have an ownership share in the Firm and are the only general securities principals of the Firm. Neither the CFO nor the Proposed Supervisor has any disciplinary history.

The Sponsoring Firm's first routine examination, begun in April 1998, resulted in a Letter of Caution for violating NASD Rules 3010(a)(b) and 3110A. The Sponsoring Firm had failed to enforce its written supervisory procedures by not accurately recording the receipt and disbursement of cash, and the procedures did not provide for the supervision of electronic communication with the public by associated persons. The NASD has no record of any customer complaints, arbitrations or lawsuits filed against the Sponsoring Firm. The Sponsoring Firm is not a member of any other self-regulatory organization.

The Sponsoring Firm proposes that X function as a general securities representative selling mutual funds and annuities only. X would have no supervisory responsibilities. He is to be supervised by the Proposed Supervisor, a general securities principal. The Proposed Supervisor has been in the securities industry more than 19 years, and he has no formal disciplinary history. One customer complained about him in January 1997, alleging losses due to unsuitable recommendations. The complaint went to arbitration and the charges were denied with prejudice.

The Sponsoring Firm has outlined the following supervisory plan for X:

- (1) X will work approximately one mile from the Proposed Supervisor and will work in the capacity of a self-employed insurance broker representing various insurance companies. When a client inquires about financial planning, X will bring that client to the Sponsoring Firm's offices, where X and the Proposed Supervisor will interview and counsel the client jointly.
- (2) The Proposed Supervisor will complete a new account form for each of X's customers and will review each customer for suitability by scrutinizing the customer's objectives and goals. The Proposed Supervisor, as principal, will sign all new account forms. In his absence, the CFO will perform this function.

The Sponsoring Firm employs no other individuals who are subject to statutory disqualification, and no familial relationship exists between X and the Proposed Supervisor or CFO.

Discussion

The activity which resulted in X's disqualification occurred more than 10 years ago and was not

financially or securities related. As stated previously, his probationary period has ended, and he was granted a Certificate of Relief from Civil Disabilities by a judge in 1991. He has been employed in non-registered capacities in the industry for approximately 12 years and has not been the subject of any investigations or proceedings involving securities matters, nor has he received any customer complaints. Neither the Firm, nor the Proposed Supervisor has any formal disciplinary history with the Association.

Member Regulation recommends that X's association with the Sponsoring Firm be approved. However, in making this recommendation to approve, Member Regulation recommends imposing the following conditions:

- (1) X must conduct securities business on behalf of the Sponsoring Firm only from the office where the Proposed Supervisor is physically located, as represented in the MC-400 application.
- (2) The supervisory procedures of the Sponsoring Firm must be amended to establish clearly the Proposed Supervisor's responsibility to supervise X.
- (3) The specific steps for heightened supervision of X by the Proposed Supervisor must be written and incorporated into the Sponsoring Firm's written supervisory procedures.
- (4) Until X's disqualification expires, the heightened supervision of X by the Proposed Supervisor must include, at a minimum, review and approval of any transaction or other business on behalf of a Sponsoring Firm customer whereby X serves as the Firm's representative.
- (5) The Proposed Supervisor must keep a written ledger evidencing review and approval of all transactions, the opening of new accounts, and correspondence.
- (6) The Proposed Supervisor is required to have quarterly meetings with X to review all aspects of his work..
- (7) X is restricted to those transactions permissible for a Series 6 investment company and variable contracts products representative.
- (8) X is restricted from the access to and use of all securities-related forms and documents except while conducting business on behalf of the Sponsoring Firm at the Firm's offices.

The Statutory Disqualification Committee supports these recommendations, and X and the Sponsoring Firm have agreed to them.

We certify that X meets all applicable requirements for the proposed employment. Accordingly, the application of X to become associated as a general securities representative with limitations with the Sponsoring Firm will become effective in 30 days unless otherwise notified by the Securities and Exchange Commission.

On Behalf of the National Adjudicatory Council,

Alden S. Adkins
Senior Vice President and General Counsel