

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

SD99016

On September 14, 1998, a member firm ("the Sponsoring Firm" or "the Firm") submitted 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. In April 1999, a subcommittee ("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, ("the Proposed Supervisor"). BA appeared on behalf of the Department of Member Regulation ("Member Regulation").

X is subject to a statutory disqualification as a result of a March 1993 conviction for third-degree burglary in State 1 Superior Court. As a result of this conviction, X was sentenced to one day of incarceration (already served), 18 months of probation, a \$30 fine, and 100 hours of community service. He was discharged from probation in 1994.

X's conviction resulted from a 1991 occurrence in State 1. X was 20 years old at the time. X's version of events is as follows: X was at a casino with two friends. He encountered an individual who he and his friends believed to have stolen their bicycles during the prior summer. A verbal altercation commenced in the parking lot, and then one of X's friends and the individual started fighting with each other. X broke the window of the individual's automobile and then tried to end the altercation between

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.

the individual and his friend. He was unsuccessful and left the scene while the individual and his friend continued to fight. X denied that he stole anything from the individual. X accepted a charge of burglary as part of a plea bargain, he contends, because he was a college student at the time and could not afford to hire legal counsel. X stated that he understands that the record of his conviction stands as is, and that his explanation of the events (which was requested by the Subcommittee) was not meant as a collateral attack on his conviction.

Since the events surrounding his disqualification, X has not engaged in any misconduct. X graduated from college in 1994 cum laude, and has been employed since graduation with Company 1, a non-NASD member investment management firm that owns the Sponsoring Firm. At Company 1, X is involved in the management of trading and marketing for a repurchase agreement program designed as a cash management alternative to money market funds.

The Sponsoring Firm was admitted to membership in the NASD in 1995. Its main office is located in New York. X will work in a branch office located in another state, which is an office of supervisory jurisdiction ("OSJ"). The Firm has one OSJ, five branch offices, 105 employees, 12 principals, and 90 registered representatives. The Sponsoring Firm generally engages in mutual fund sales and private placements. The Firm has no other statutorily disqualified individuals in its employ and no disciplinary history. As stated above, X's current employer, Company 1, is affiliated with the Sponsoring Firm.

The Sponsoring Firm proposes that the Proposed Supervisor act as X's supervisor. The Proposed Supervisor is the Managing Director of the Firm. He has worked in the industry since 1981; he has been with the Sponsoring Firm as an investment company and variable products principal since 1996. The Proposed Supervisor has no disciplinary history. He was, however, terminated by Firm A in 1989 for violating an internal policy regarding involvement in an outside business venture. Firm A did not allege that the proposed supervisor violated any industry rule or standard. The Proposed Supervisor will sit within 20 feet of X, review all of X's transactions and customer ledgers weekly, and conduct a verbal review of X's actions daily.

X seeks to act as a back-up for trading and for contacts with institutional clients. He intends to interact with dealers to obtain quotations, relay information to the Firm's institutional client base, and maintain and prepare records of transactions. He will not handle cash or securities and will not have authority to exercise discretion over customer accounts. He will receive a base salary plus a discretionary bonus.

Member Regulation recommends that X's association with the Sponsoring Firm be approved subject to the enhanced supervision of X that the Firm has proposed.

Discussion

After careful review of the entire record in this matter, we conclude that the Sponsoring Firm's application to employ X as a general securities representative should be approved.

The misconduct that resulted in the statutory disqualification, while serious, occurred when X was only 20 years old and attending college. Since the occurrence, X has graduated cum laude and has been gainfully employed with a non-NASD member investment management firm. We note that his misconduct was not securities related and that he appears to understand the importance of integrity on the part of participants in the securities industry. Additionally, X has no record of any other misconduct, and his role at the Sponsoring Firm will involve dealing with institutions rather than with private individuals. We therefore conclude that it is not contrary to the public interest to allow him entry into the securities industry.

The Sponsoring Firm and the Proposed Supervisor have proposed the following plan of supervision for X:

- (1) The Sponsoring Firm will amend its supervisory procedures to establish that the Proposed Supervisor is responsible for supervising X;
- (2) X will conduct securities activities only from the Sponsoring Firm's office where the Supervisor or his designee is physically located, at a desk near the Proposed Supervisor's desk;
- (3) X will not maintain discretionary accounts at any time;
- (4) The Proposed Supervisor will review and approve all of X's new account forms for suitability;
- (5) The Proposed Supervisor will review and approve all of X's order tickets on a daily basis;
- (6) The Proposed Supervisor will review all of X's incoming and outgoing correspondence;
- (7) The Proposed Supervisor will maintain a written record evidencing his review and approval of: all of X's transactions, all new accounts opened by X, and all of X's incoming and outgoing correspondence;
- (8) The Proposed Supervisor will meet with X quarterly to review X's transactions with clients (the review will include a review of the distribution of customer funds) and will maintain a log of these meetings;
- (9) The Firm immediately will refer all written or verbal complaints regarding X to the Supervisor and to the Director of Compliance; the Proposed Supervisor will prepare a memorandum for each complaint detailing his investigation of the merits of the complaint and the manner in which he resolved the complaint; and the Firm will segregate documents pertaining to complaints regarding X for ease of review;

- (10) X will be prohibited from accepting funds from customers in his name (all funds that X accepts must be payable to the Firm or to a particular fund); and
- (11) For the duration of X's statutory disqualification, the Sponsoring Firm must obtain prior approval from Member Regulation if it wishes to change X's supervisor from the Proposed Supervisor to another person.

The Sponsoring Firm appears to be well structured to supervise X in that it has proposed a program to monitor X closely, with daily on-site supervision by the Proposed Supervisor, who has no disciplinary history and 18 years of experience in the industry. Additionally, the Firm has no disciplinary history.

NASD Regulation certifies that: (1) X meets all applicable requirements for the proposed employment; (2) the 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, X's association as a general securities representative with the Sponsoring Firm will become effective within 30 days of the receipt of this decision by the Securities and Exchange Commission, unless otherwise notified by the Securities and Exchange Commission.

On Behalf of the National Adjudicatory Council,

Joan C. Conley
Senior Vice President and Corporate Secretary

