

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	<b>Redacted Decision</b>  Notice Pursuant to Section 19h-1 Securities Exchange Act of 1934  SD99022
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On March 25, 1999, a member firm (“the Sponsoring Firm” or “the Firm”) submitted an MC-400 application (“Application”) to permit X (“X”)<sup>1</sup>, a person subject to a statutory disqualification, to associate with the Firm as a general securities representative. In June 1999, a subcommittee of the Statutory Disqualification Committee (“Hearing Panel”) of NASD Regulation, Inc. (“NASD Regulation”) held a hearing on the matter. X appeared and was accompanied by his proposed supervisor (“the Proposed Supervisor”), the President of Equity Trust. 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 Exchange Act of 1934 (“Act”) and Article III, Section 4(g) of the NASD By-Laws. When X was 18 years old, in 1991, he pleaded “no contest” in California to vehicular manslaughter with gross negligence (a felony), driving under the influence of alcohol or drugs with injury (a felony), and driving while under the influence of alcohol (a felony).<sup>2</sup> He was placed on probation for

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<sup>1</sup> 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.

<sup>2</sup> Although X also pleaded “no contest” to the misdemeanor of driving with a suspended license, that event is not considered a statutory disqualification under Section 3(a)(39)(F) of the Act and Article III, Section 4(g) of the By-Laws.

three years, fined \$390, and ordered to serve 30 days in the county jail. His probation terminated in 1994.

After the event that led to the statutory disqualification, in March 1995, X was charged with operating a vehicle under the combined influence of drugs and alcohol (both misdemeanors), the sale or transportation of marijuana (a felony), and possession of marijuana for sale (a felony). X pleaded guilty to the misdemeanor of driving under the influence of drugs and alcohol, was placed on probation for three years, and was sentenced to 193 days in jail for which he received credit for six days' time served. A jury trial was held on the remaining two counts, and X was found not guilty of the felony of possession of marijuana for sale, and guilty of the misdemeanor of possession of marijuana, a lesser included offense to the felony charge of sale or transportation of marijuana. He was fined \$100 for possession of marijuana. Under Section 3(a)(39)(F) of the Act and Article II, Section 4(g) of the By-Laws, this misdemeanor conviction is not considered a disqualifying event.

The Sponsoring Firm. The Sponsoring Firm became a member of the Association in August 1998. The Firm engages in general securities business, primarily in equity trading. It currently does not make markets or handle initial public offerings. The Sponsoring Firm has one office and employs five general securities principals, eight registered representatives, and three other employees. A routine examination conducted in 1999 was "Filed Without Action." The Sponsoring Firm does not employ any statutorily disqualified individuals.

The Sponsoring Firm proposes that the President of Firm, will be responsible for supervision of X as a general securities representative. X would primarily assist in handling the president's accounts, take orders from other brokers at the Firm, handle referral accounts and new account paperwork, and maintain the trade logs and trade blotters. The Proposed Supervisor has been a registered principal since November 1998, and a registered representative since 1993. In 1996, he was convicted of driving under the influence of alcohol, a misdemeanor, and was fined \$1,234. The Proposed Supervisor also was the subject of a customer complaint alleging an unauthorized trade, but no action was ever taken on the matter and the case was closed. The record shows no disciplinary proceedings, other complaints, or arbitrations against the Proposed Supervisor or the Sponsoring Firm.

Member Regulation recommends that X's association with the Sponsoring Firm be approved with certain supervisory restrictions, as set forth below.

### Discussion

After a careful review of the entire record in this matter, we agree with Member Regulation's recommendation for approval. We first note that the event underlying X's disqualification occurred more than eight years ago and was not financial or securities-related. Although we are concerned with X's subsequent misdemeanor convictions for possession of marijuana and driving under the influence, X represented at the hearing on this matter that he has

taken measures to avoid such substance abuse in the future. Based on his representations, we are satisfied that he is not a threat to the investing public and is able to conduct himself in a manner required of securities industry professionals. Although we also are concerned with the Proposed Supervisor's misdemeanor conviction, we are satisfied with the proposed supervisor's representations at the hearing that he is able to avoid such situations in the future and that he will responsibly undertake his duty of heightened supervision of X. In addition, we have reviewed the circumstances surrounding the unauthorized trading complaint and note that the case was closed without action. We also note that neither the Proposed Supervisor nor the Sponsoring Firm has any disciplinary history.

Finally, we have considered that the Proposed Supervisor has been a principal for only approximately one year. We note, however, that X will be working closely with the Proposed Supervisor and we find that the supervisory structure agreed to by Member Regulation and by X and the Proposed Supervisor provides stringent supervision.

Our recommendation is based upon the following plan for supervision of X, which has been agreed to by the Sponsoring Firm and Member Regulation:

1. The supervisory procedures of the Sponsoring Firm will be amended to establish clearly that the Proposed Supervisor is X's only supervisor;
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 keep a written record evidencing review and approval of all of X's new account forms for suitability;
5. The Proposed Supervisor will keep a written record evidencing review and approval of X's order tickets on a daily basis;
6. The Proposed Supervisor will keep a written record evidencing review and approval of 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, the opening of new accounts, and all correspondence;
8. The Proposed Supervisor will meet with X on a quarterly basis to review his transactions with clients and the distribution of customer funds. A log shall be kept by the Sponsoring Firm of these meetings;

9. All customer complaints pertaining to X, whether verbal or written, will be immediately referred to the Proposed Supervisor for review, and then to the Director of Compliance. The Proposed Supervisor will prepare a memorandum to the file as to what measures he took to investigate the merits of the complaint (e.g., contact with the customer) and the resolution of the matter. Documents pertaining to these complaints should be kept segregated for ease of review;
10. X will be prohibited from accepting funds from customers in his name. Rather, all funds must be payable to either the Sponsoring Firm or the particular fund;
11. The Proposed Supervisor must certify quarterly (March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup>) to the Director of Compliance that the Firm is in compliance with all of the above conditions of heightened supervision of X; and
12. 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 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 Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the Commission.

On Behalf of the National Adjudicatory Council,

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Joan C. Conley  
Senior Vice President and Corporate Secretary