

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of
the Association

of

X

as a

General Securities Representative and
General Securities Trader

with

The Sponsoring Firm

REDACTED DECISION

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

Decision No. SD01013

On February 9, 2001, the Sponsoring Firm¹ (or "the Firm") submitted an MC-400 application ("Application") to permit X, a person subject to a statutory disqualification, to associate with the Firm as a general securities representative and general securities trader. In May 2001, a subcommittee ("Hearing Panel") of the Statutory Disqualification Committee of NASD Regulation, Inc. ("NASD Regulation") held a hearing on the matter. X appeared and was accompanied by the Firm's Compliance Officer, the Firm's Head Trader and X's Proposed Supervisor, and the Manager of the Firm's office in Miami, Florida, DP. BA and LL appeared on behalf of NASD Regulation's Department of Member Regulation ("Member Regulation").

Statutory Disqualification. X is subject to a statutory disqualification under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 and Article III, Section 4(g) of the NASD By-Laws. In June 1997, X was arrested in State 1 in connection with a traffic accident in which a passenger in another car died. He pled no contest to the charge of DUI Manslaughter (a felony) in 1999, and was sentenced to one year in the county's jail work release program, followed by five years' probation. A monetary fine of \$1,500 also was imposed. X commenced the one-year work release program in 1999. His probation is set to end in 2005.

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.

X. X has never been registered in the securities industry. He first sought registration in the securities industry with the Sponsoring Firm in 2000. He took and passed the Series 7 general securities representative qualification examination in November 2000. He also passed the Series 63 uniform securities agent state law examination in November 2000 and the Series 55 equity trader examination in 2000.

The Sponsoring Firm. The Sponsoring Firm has been a member of the NASD since 1998, and it is engaged in a retail securities business. The Firm also trades securities for its own account. The Firm has two offices of supervisory jurisdiction and three branch offices, and it employs 62 registered principals, 250 registered representatives, and 329 employees. A routine examination of the Sponsoring Firm conducted in 2000 resulted in a Letter of Caution ("LOC") that was issued in 2000. The LOC found numerous deficiencies, many of which involved the Firm's written supervisory procedures. The Sponsoring Firm responded to the LOC by letter dated 2000. It acknowledged the deficiencies and stated that it would take appropriate action to ensure compliance in the future. Based on the Sponsoring Firm's representations in its response, Member Regulation is satisfied that the deficiencies noted in the LOC have been corrected.

During the same routine examination, concerns were raised with respect to the Sponsoring Firm's net capital computation; this resulted in a compliance conference, which was held in 2000. District Office staff determined that the noted deficiencies had been corrected. Other matters stemming from this routine exam are still under review.

The Firm's 1998 routine exam resulted in an LOC that was issued in 1998. The LOC found deficiencies with respect to compliance with SEC Rules 17a-3 and 17a-5, and numerous NASD Rules, including Rules 2310 and 3110. The Sponsoring Firm responded by letter dated 1998 in which it acknowledged the deficiencies and represented that it would take appropriate action to ensure compliance in the future.

X's Proposed Duties and the Proposed Supervision. The Sponsoring Firm has asked for approval to employ X as a general securities representative in the capacity of a securities trader. The Firm proposes that the Proposed Supervisor and the Proposed Secondary Supervisor will be responsible for X's supervision. The Proposed Supervisor will be X's primary supervisor, and the Proposed Secondary Supervisor will be his secondary supervisor. The Proposed Supervisor and the Proposed Secondary Supervisor are both senior managers and have been employed in this capacity for over one year. X will be located in the Sponsoring Firm's State 1 office, where he will sit between the Proposed Supervisor and the Proposed Secondary Supervisor. The Sponsoring Firm's State 1 office employs 30 registered representatives and at least seven general securities principals. The Firm employs no statutorily disqualified individuals. The Firm represents that by providing X with supervision and guidance, it hopes to give him the opportunity to be a productive member of the community.

The Proposed Supervisor has been a general securities representative and a general securities principal since 1997. He passed the Series 55 (Equity Trader) examination in March 2000. The

Proposed Supervisor previously worked at three NASD member firms. The Proposed Supervisor has no disciplinary history.

The Proposed Secondary Supervisor has been a general securities representative since 1995 and a general securities principal since 2000. He passed the Series 55 (equity trader) examination in March 2000. The Proposed Secondary Supervisor has worked at three NASD member firms. The Proposed Secondary Supervisor has no disciplinary history.

Member Regulation's Recommendation. Member Regulation recommends approval because the disqualifying event is not related to securities or other financial misconduct and does not impugn X's honesty. Member Regulation takes additional comfort in the fact that the Firm intends to employ X only in the limited capacity of a securities trader, and has proposed in-depth and close supervision of X. Member Regulation notes that X has no prior regulatory or disciplinary history and no other criminal history. Member Regulation does not consider the fact that X is still on probation until 2005 as a factor militating against approval in this case, particularly because X has been complying with the terms of his probation to date, and he has received favorable reports from his probation officer about the measures that he has taken to help himself as well as others. Member Regulation believes that the Firm's disciplinary history is not so serious as to suggest that the Firm would not exercise adequate supervision. Neither the Proposed Supervisor nor the proposed secondary supervisor has had any regulatory or disciplinary actions taken against them. Member Regulation's approval recommendation is supported by its assessment of the Proposed Supervision, particularly in light of the fact that the Firm and X's proposed supervisors have agreed to enforce the special supervisory conditions referenced below.

Discussion

After a thorough review of the record, we conclude that the Sponsoring Firm's Application to employ X as a registered representative should be approved. We recognize his remorse over having engaged in the misconduct that led to his felony conviction. X was only 23 years old at the time of the accident that resulted in his disqualification. X has pursued his education while in the work release program and should emerge as a more mature and disciplined individual. X thus has demonstrated that he has taken substantial steps toward rehabilitation, and he has not been the subject of charges involving alcohol or traffic violations since the disqualifying incident.

We find the Firm's proposed supervision to be adequate. We have reviewed the Firm's disciplinary history, which for the most part is informal in nature and reflects the Firm's cooperation with regulatory authorities to correct identified problems. This record does not establish that the Firm is unlikely to exercise appropriate supervision over X. We note that the proposed supervisors have appropriate experience and intend to monitor X's activities closely. With the supervisory provisions outlined below in place, we find that the approval of X's association with the Sponsoring Firm in the capacity requested is consistent with the public interest and that he does not present an unreasonable risk of harm to the market or investors. Approval is granted subject to the following supervisory conditions:

1. The Proposed Supervisor will conduct a weekly review with X of all of the securities business that X conducted during the past week, and any business that he contemplates conducting in the coming week. The Proposed Supervisor will also review X's progress with respect to his compliance with the terms of his probation in these weekly meetings. The Proposed Supervisor will keep a log of these meetings.
2. X will conduct securities business on behalf of the Sponsoring Firm only from the office where the Proposed Supervisor and the Proposed Secondary Supervisor are physically located, at a desk near the Proposed Supervisor or his designee.
3. X will not maintain discretionary accounts.
4. The Proposed Supervisor will review and approve all of X's new account forms for completeness and suitability.
5. The Proposed Supervisor will review and approve all of X's order tickets on a daily basis for suitability, among other things.
6. The Proposed Supervisor will review all of X's incoming and outgoing correspondence.
7. 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 detailing what measures were taken by the Sponsoring Firm 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.
8. The Sponsoring Firm's supervisory procedures will be amended to establish clearly that the Proposed Supervisor is X's responsible supervisor.
9. 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 primary, responsible supervisor from the Proposed Supervisor to another person.
10. 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.

The NASD 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) the Proposed Supervisor and the Proposed Secondary Supervisor have represented that they are not related to X by blood or marriage.

Accordingly, in conformity with the provisions of SEC Rule 19h-1, the registration of X as a general securities representative and general securities trader with the Sponsoring 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,

Jeffrey S. Holik
Senior Vice President and Acting General Council