

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

REDACTED DECISION

In the Matter of

the Association

of

X

as a

General Securities Representative

with

The Sponsoring Firm

Notice Pursuant to

Rule 19h-1

Securities Exchange Act

of 1934

Decision No. SD01014

On January 1, 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 in the capacity of an information technology specialist. 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 Proposed Supervisor, the President of the Sponsoring Firm. 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 July 1999, X was arrested for Driving Under the Influence and Causing Death (a felony), in State 1. He pled no contest to the charge in 2000, and in 2000, he was found guilty and sentenced to 305 days in jail and placed on two years' probation. After applying credits, his jail time was decreased to 244 days, 16 of which were served in the county jail and the remainder completed in a work release program. X's probation period is due to end in 2002.

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 was first registered in the securities industry as an investment company and variable contracts products representative (Series 6) from February 1988 through August 1988. He took and passed the Series 7 (general securities representative qualifications examination) in 1988. He is also registered as follows: Series 65 (Investment Advisor) since 1999; Series 6 (Investment Company and Variable Contracts Products Representative), Series 63 (Uniform Securities Agent State law) Series 4 (Registered Options Principal) all since 1998; Series 24 (General Securities Principal) since 1994; and Series 27 (Financial and Operations Principal or "FINOP") since 1993.

The Sponsoring Firm The Sponsoring Firm has been a member of the NASD since 1994 and is engaged in a general securities business including sales of options, mutual funds, variable annuities, and insurance products. The Firm has one office of supervisory jurisdiction, one branch office, and two additional offices, and it employs six registered principals and 22 registered representatives. A routine examination of the Firm conducted June 2000 resulted in a Letter of Caution ("LOC") that was issued in 2001. The LOC stated that the Firm was deficient regarding NASD Conduct Rules 3070 (failure to report a \$60,000 arbitration award) and 3010 (deficiency in written supervisory procedures); NASD Membership and Registration Rule 1021 (allowing three representatives to engage in representative activities while inactive due to a continuing education deficiency, and deficient continuing education (firm element) documentation for 1997 and 1998); NASD Membership and Registration Rule 1120 (failure to register a FINOP between July and November 2000); and SEC Rule 17a-5 (inaccurate FOCUS report for year-end 1999). The Firm was subject to two NASD Regulation cause examinations in 1998 and 1999, but both were filed without action. In 1997, deficiencies noted in an off-cycle municipal exam resulted in an LOC for violations of MSRB Rule G-14. In addition, in 2000, the Firm signed a Consent Order with State 1 for having breached a prior agreement with State 1 that required the Firm to forward all customer complaints to State 1 and to certify quarterly that an identified representative was in compliance with State 1 law. The Consent Order required the Firm to conduct certain specified heightened supervision of the representative in question for one year, and it imposed a censure and \$1,500 in administrative costs.

The Firm employs one other statutorily disqualified individual who is subject to a disqualification as a result of a 1999 DUI conviction.

X's Proposed Duties and the Proposed Supervision. The Firm proposes to employ X as a general securities representative in the capacity of an information technology specialist. X will be located in the home office, and he is to be supervised by the Proposed Supervisor. The Proposed Supervisor has been a general securities representative since 1979 and a general securities principal since 1994. In 1997, an arbitration action was brought against the Proposed Supervisor and others alleging suitability violations, breach of fiduciary duty, and misrepresentation and omission of facts. An award of \$5,000 was entered against the Proposed Supervisor in compensatory damages.²

² We view this arbitration action against the Proposed Supervisor, however, as having no significant bearing on his ability to supervise X.

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 a limited capacity. Member Regulation notes that although X has extensive industry experience, he has no prior disciplinary history. Member Regulation does not view the fact that X is still on probation until 2002 as a factor militating against approval in this case, particularly because X has been complying with the terms of his probation to date, and has received favorable reports from his probation officer and therapist about measures that he has taken to help himself as well as others. Member Regulation believes that the disciplinary history of the Firm and of the proposed supervisor is not so serious as to suggest that they would not exercise adequate supervision, particularly in light of their agreement 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 has demonstrated that he has taken substantial steps toward rehabilitation and that he has not taken an alcoholic drink since the disqualifying incident.

We also find the Firm's proposed supervision to be adequate. We have reviewed the Firm's disciplinary history -- the Consent Order with State 1 and the NASD's Letters of Caution -- and we conclude that it does not establish that the Firm is unlikely to exercise appropriate supervision over X. We note that the proposed supervisor, who is also the Firm's President, has been a principal for about seven years. With the special supervisory requirements 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 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 ask about X's compliance with his probation. 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 or his designee is 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. 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 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) X and the Proposed Supervisor have represented that they are not related by blood or marriage.

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