BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Membership of Firm X[1] with FINRA	Redacted Decision Notice Pursuant to Rule 19h-1 Securities Exchange Act of 1934 SD11002 Date: 2011

I. Introduction

On April 14, 2009, Firm X submitted a Membership Continuance Application ("MC-400A" or "the Application") with FINRA's Department of Registration and Disclosure. The Application seeks to permit Firm X, a FINRA member firm subject to a statutory disqualification, to continue its membership with FINRA. A hearing was not held in this matter. Rather, pursuant to FINRA Rule 9523, FINRA's Department of Member Regulation ("Member Regulation") recommended that the Chair of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council, approve Firm X's continued membership with FINRA pursuant to the terms and conditions set forth below.

For the reasons explained below, we approve Firm X's Application.

II. The Statutorily Disqualifying Event

Firm X is statutorily disqualified because it consented to an order of permanent injunction ("the Permanent Injunction") by a United States District Court in March 2009. The Permanent Injunction was based on a complaint issued by the Commission alleging that Firm X traded ahead of customer orders and engaged in inter-positioning while acting as a specialist on the floor of the Chicago Stock Exchange ("CHX"), and violated related recordkeeping requirements, from 1999 through 2005. The court enjoined Firm X from further violations of federal securities laws and rules of the CHX, and ordered that Firm X disgorge funds totaling $28.3 million and pay a $5.66 million civil penalty. Firm X has made all required payments pursuant to the Permanent Injunction.

Firm X's statement in support of the Application states that the Permanent Injunction related to a subsection of the Firm's business and that it exited the specialist businesses in 2007 and no longer conducts any specialist operations on the floor of the CHX or any other stock exchange. Firm X also states that the Commission's complaint resulting in the Permanent

[1] The name of the statutorily disqualified firm and other information deemed reasonably necessary to maintain confidentiality has been redacted.

Injunction related to violations that occurred between 1999 and 2005, and that Firm X inherited a large percentage of the infractions through acquisitions of other firms.

III. Background Information

Firm X became a FINRA member in 2001. Firm X's MC-400A represents that it has one office of supervisory jurisdiction and one branch office. Firm X also represents that it employs 34 registered principals and 50 registered representatives. Firm X "is engaged in execution services including market making and exchange floor brokerage activities. Firm X also has a small proprietary trading desk."

A. Routine Examinations

Firm X's most recent routine examination in 2008 resulted in the issuance of a Letter of Caution ("LOC") with respect to violations of the following: NASD By-Laws Article IV (Registration of Branch Offices) and Article V (Notification of Terminations, Amendments to Notification); NASD Rule 1120 (Continuing Education Requirements); NASD Rule 1150 (Executive Representative); NASD Rule 3520 (Emergency Contact Information); NASD Rule 1160 (Contact Information Requirements); NASD Rule 3010(b) (Written Supervisory Procedures); NASD Rule 3011(d) (Anti-Money Laundering Compliance Program); Exchange Act Rules 17a-3 and 17a-4(f) (Records to be Preserved by Certain Exchange Members, Brokers & Dealers); and Exchange Act Rule 17a-13 (Quarterly Security Counts to be Made by Certain Exchange Members, Brokers & Dealers). Firm X responded by letter in September 2008, stating that it had corrected the noted deficiencies.

In 2007, the Firm X was issued an LOC for violations of Exchange Act Rule 17a-4(f), NASD By-Laws Article V, Section 3 (Notification of Terminations), and NASD Rules 1120, 1150 (Executive Representative), 3170 (Mandatory Electronic Filing Requirements), 3520, and IM-3011-2 (Review of Anti-Money Laundering Compliance Person Information). Firm X responded by letter in November 2007, stating that it had corrected the noted deficiencies. This matter was closed in April 2008, and no further action was required.

B. Recent Regulatory History

In January 2011, FINRA accepted a Letter of Acceptance, Waiver and Consent ("AWC") from Firm X, which found that it failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that its customers received as favorable a price as possible under prevailing market conditions. The AWC also found that Firm X violated various trade reporting obligations and that it failed to have a supervisory system reasonably designed to achieve compliance with its trade reporting obligations and short sale rules. FINRA censured Firm X, fined it $52,500, and ordered that it pay approximately $2.1 million in restitution to customers.

In 2010, the CHX fined Firm X $35,000 for violating Regulation SHO of the Exchange Act and the following CHX rules: CHX Article 17, Rule 3(c) (Responsibilities-Maintenance of Specific Accounts), CHX Article 17, Rule 3(e) (Responsibilities-Reporting of Transactions),

CHX Article 11, Rule 4, Interpretation and Policy .01 (Participant Communications), and CHX Article 11, Rule 3(b)(9) (Record of Orders and Executions).

In 2009, FINRA accepted an AWC from Firm X, which found that it violated Rule 604 of Regulation NMS, and NASD Rules 2110, 2320 (Best Execution and Inter-positioning), 6130(d) (Trade Report Input), 8211 (Automated Submission of Trading Data Requested by the Association), and 8213 (Automated Submission of Trading Data for Non-Exchange-Listed Securities Requested by the Association). The AWC related to: (1) Firm X's submission, in 2005, of certain electronic blue sheets in response to requests for such information that did not include the correct buy, sell, or short sale indicator; (2) Firm X's failure, in 2006, to execute certain customer orders fully and promptly, failure to use reasonable diligence to ascertain the best inter-dealer market and failure to purchase or sell in such market so that the resultant price to its customers was as favorable as possible; and (3) Firm X's execution and failure to report, in 2007, certain short sale transactions and failure to display immediately certain customer limit orders in listed securities in its public quotation. FINRA censured Firm X, fined it $52,500, and ordered it to pay restitution of $1,163.

In 2009, Firm X and the National Stock Exchange ("NSX") agreed to a Letter of Consent in connection with violations of Exchange Act Section 10(a)(1), Exchange Act Rule 10a-1, and NSX rules. The NSX alleged that in 2006, Firm X maintained written supervisory procedures ("WSPs") which were insufficient in that they failed to enable it to adequately supervise two associated persons' use of the NSX's limit order protection or out-of-sequence indicators to place trades through or outside the national best bid or offer or the NSX's best bid or offer. The NSX also alleged that Firm X's procedures were insufficient to supervise another associated person's use of the NSX's out-of-sequence indicator to execute agency short sales on a downtick, and that Firm X incorrectly canceled a customer's all or none limit order. The NSX censured and fined Firm X $15,000.

In 2008, FINRA accepted an AWC from Firm X, which found that Firm X violated NASD Rules 2110, 3010, and 6955(a). The AWC related to Firm X's failure to submit Order Audit Trail System ("OATS") reports for two automated proprietary trading desks and Firm X's failure to have a supervisory system that provided supervision reasonably designed to achieve compliance with rules related to OATS reporting during the period of January 2006 through June 2008. FINRA censured Firm X, fined it $100,000, and required Firm X to revise its written supervisory procedures regarding OATS reporting.

In 2008, FINRA accepted another AWC from Firm X, which found that Firm X violated SEC Rules 10b-10, 606 of Regulation NMS, NASD Rules 2110, 3010, 4632(d), 6130(d), and IM-2110-2. This AWC related to Firm X's failure, in 2005, to: (1) contemporaneously or partially execute 44 limit orders; (2) report or correctly report 37 riskless principal transactions; (3) report the correct symbol indicating whether 13 transactions were long, short, or short exempt; (4) provide written notification to customers for 10 transactions when Firm X acted in a principal capacity; (5) provide customers with annual notification that hard copies of Firm X's order routing information were available upon request; (6) enforce WSPs with respect to soft dollar trades; (7) maintain records confirming Firm X conducted an annual compliance meeting; and (8) provide supervision reasonably designed to achieve compliance with certain securities

laws and regulations. FINRA censured Firm X, fined it $40,000, and required it to revise its WSPs in certain respects.

In 2007, Firm X settled an action brought by the CHX for alleged violations of Rule 602(b)(2) of Regulation NMS, CHX Article XX, Rule 39(b)(4), and Rule 200(g) of Regulation SHO in connection with orders entered by Firm X from the CHX in 2005 to other market centers using private routing networks that transmit orders without properly marking such orders as "short." During this period, Firm X also entered sell orders designated as "long" when Firm X had a short position at the time of order entry. Firm X paid a $90,000 fine.

In 2007, FINRA accepted an AWC from Firm X, which found that Firm X violated NASD Rule 6955(a). The AWC related to Firm X submitting OATS reports with respect to NASDAQ-traded equity securities that were not in the electronic form prescribed by FINRA and were rejected by the OATS system in 2005. Firm X did not correct or replace all of the rejected reports. FINRA censured Firm X and fined it $17,500.

We are not aware of any other recent complaints, disciplinary proceedings, or arbitrations against Firm X.

V. Firm X's Proposed Continued Membership with FINRA and Member Regulation's Recommendation

Firm X seeks to continue its membership with FINRA notwithstanding the Permanent Injunction. Firm X represents it is no longer in the specialist business, although it "has made every effort to ensure that its traders are aware of the rules and regulations regarding inter-positioning and trading ahead[.]" Firm X further states it has enhanced and updated its trading platforms to prevent such activity, and will notify FINRA in the event it engages in any specialist activity in the future.

Member Regulation recommends approval of Firm X's request to continue its membership in FINRA.

VI. Discussion

After carefully reviewing the entire record in this matter, we approve Firm X's Application, subject to the terms and conditions set forth below.

In evaluating an application like this, we assess whether the statutorily disqualified firm seeking to continue its membership in FINRA has demonstrated that its continued membership is in the public interest and does not create an unreasonable risk of harm to the market or investors. *See* FINRA By-Laws, Art. III, Sec. (3)(d); *cf. Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (holding that FINRA "may deny an application by a firm for association with a statutorily-disqualified individual if it determines that employment under the proposed plan would not be consistent with the public interest and the protection of investors"). Factors that bear on our assessment include the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, whether there has been any intervening misconduct, and the potential for future regulatory problems.

We find, based in part upon Firm X's representations set forth below, that Firm X has met its burden in this Application and that Firm X's continued membership in FINRA will not create an unreasonable risk of harm to the market or investors. We recognize that the Permanent Injunction involved serious violations of securities rules and regulations. Firm X has represented, however, that it is no longer in the specialist business that resulted in the violations underpinning the Permanent Injunction. Indeed, Firm X shall notify FINRA prior to engaging in any specialist activity in the future, which will further ensure Firm X's compliance with securities rules and regulations. Firm X has also represented that it has enhanced and updated its trading platforms to ensure that its traders comply with inter-positioning and trading ahead rules and regulations, and has updated its Written Supervisory Procedures related to trading ahead and the Manning Rule.

We further find that although the Permanent Injunction is fairly recent, the majority of the violations occurred between 1999 and 2002, and Firm X inherited a large percentage of the violations when it purchased another member firm in 2001. The record does not show any similar violations subsequent to entry of the Permanent Injunction. Further, although Firm X has a disciplinary history, the record shows that it has taken corrective actions to address noted deficiencies. The record also shows the majority of the Firm X's recent disciplinary history relates to activities that occurred in 2005 and 2006. We have no reason to believe that these disciplinary actions reflect upon Firm X's current ability to comply with securities rules and regulations, and agree with Member Regulation that Firm X's disciplinary history should not prevent Firm X from continuing as a FINRA member. We are satisfied that Firm X's continued membership in FINRA will not create an unreasonable risk of harm to the market or investors.

FINRA certifies that Firm X meets all qualification requirements and represents that it is registered with several other self-regulatory organizations, including BATS Trading, Inc., the Nasdaq Stock Market, LLC, NYSE ARCA, the Boston Stock Exchange, the NSX, the CHX, the Chicago Board Options Exchange, and ISE.

Accordingly, we approve Firm X's Application to continue its membership in FINRA as set forth herein. In conformity with the provisions of SEC Rule 19h-1, the continued membership of Firm X with FINRA will become effective upon the issuance of an order by the Commission that it will not institute proceedings pursuant to Section 15(b) of the Exchange Act and that it will not direct otherwise pursuant to Section 15A(g)(2) of the Exchange Act.

This notice shall serve as an application for such an order.

On Behalf of the National Adjudicatory Council,

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Marcia E. Asquith
Senior Vice President and Corporate Secretary