BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In The Matter of the Continued Association of X[1] as a General Securities Representative with The Sponsoring Firm	Redacted Decision Notice Pursuant to Rule 19h-1 Securities Exchange Act of 1934 SD11006 Date: 2011

I. Introduction

On January 5, 2007, the Sponsoring Firm submitted a Membership Continuance Application ("MC-400" or "the Application") with the Department of Registration and Disclosure ("Registration and Disclosure") at the Financial Industry Regulatory Authority ("FINRA"). The Application seeks to permit X, a person subject to a statutory disqualification, to continue to associate with the Sponsoring Firm as a general securities representative. A hearing was not held in this matter. Rather, pursuant to NASD Procedural Rule 9523,[2] 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 X's proposed continued association with the Sponsoring Firm pursuant to the terms and conditions set forth below.

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[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.

[2] Following the consolidation of NASD and the member regulation, enforcement and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new "Consolidated Rulebook" of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. *See FINRA Regulatory Notice 08-57* (Oct. 2008). Because this matter involves an MC-400 that was filed before December 15, 2008, we apply the procedural rules that were in effect at the time, the NASD Rule 9520 Series.

For the reasons explained below, we approve the Sponsoring Firm's Application to permit X to continue to associate with the Sponsoring Firm as a general securities representative.

II. The Statutorily Disqualifying Event

X is statutorily disqualified because he pled guilty to a felony for Unlawful Transport of a Controlled Substance in State 1 in June 2006. The Superior Court of State 1, County 1 Division, suspended X's sentence, placed him on probation for a period of three years, and ordered that X attend a drug treatment program. X completed the drug treatment program.

In February 2007, the court set aside X's conviction, and dismissed the applicable counts on the accusatory pleading, pursuant to State 1 law. As a result, the arrest and conviction "are deemed never to have occurred" except that, among other things, X must disclose the arrest and the conviction in response to any direct question contained in any questionnaire or application for licensure by any state or local agency (such as a Uniform Application for Securities Industry Registration or Transfer ("Form U4")). Notwithstanding that the conviction was set aside, X remains convicted of a felony and is statutorily disqualified under the Securities Exchange Act of 1934 ("Exchange Act").

III. Background Information

A. X

X qualified as a general securities representative in April 2004, and passed the Uniform Securities Agent State Law Examination in August 2004. X's only association in the securities industry has been with the Sponsoring Firm, where he has been employed since January 2004. He currently works as a registered representative, processing trades for the Sponsoring Firm's institutional accounts.[3] X does not work with retail customers.

Other than the disqualifying felony conviction, X was arrested and convicted of a misdemeanor in 1995. This event was neither disqualifying nor reportable. X was sentenced to a probationary term of three years. The record shows no other criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against X.

B. The Sponsoring Firm

The Sponsoring Firm has been a FINRA member since December 1982. On the revised MC-400 filed in July 2011, the Sponsoring Firm represents that it maintains four branch offices and five Offices of Supervisory Jurisdiction ("OSJ"), and employs 73 registered employees (including 21 principals) and 27 non-registered employees.

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[3] The Application states that X "facilitates the buying and selling of secondary CDs between the Sponsoring Firm and other broker dealers[,]" "[h]andles data compilation and report generation relating to current market environment and competition[,]" and "[m]odifies internal trading systems to accommodate the needs of the department's brokers."

1. Routine Examinations

FINRA's most recent examination of the Sponsoring Firm was a 2010 off-cycle municipal exam that resulted in a Letter of Caution ("LOC") and a compliance conference. The LOC cited the Firm for failing to ensure that a registered representative completed his outside business disclosure form and failing to maintain a current Form U4 for another registered representative; failing to implement its Written Supervisory Procedures ("WSPs") related to outside brokerage accounts; failing to establish WSPs related to the use of electronic communication devices for business purposes; failing to adequately evidence its review of emails and instant messages; failing to establish procedures to address the Sponsoring Firm's use of the Limited Size and Resource Exception; failing to properly document review of branch office inspections; failing to maintain an adequate Anti-Money Laundering Compliance Program; failing to review certain notices from the Financial Crimes Enforcement Network; failing to comply with FINRA's advertising rules in connection with one advertisement; failing to provide notice to customers regarding where to direct complaints; overstating its net capital in August 2010; and failing to implement its WSPs regarding the supervisory review of its "Checks Received and Forwarded" blotter. The Sponsoring Firm provided a written response stating that it had addressed the deficiencies noted.

FINRA issued the Sponsoring Firm an LOC and conducted a compliance conference following its 2008 routine examination. The LOC cited the Sponsoring Firm for failing to appoint a secondary emergency contact person; failing to keep a registered representative's Form U4 current; failing to notify regulators of its reliance on electronic storage media to maintain instant messages and certain reports; failing to capture, review and retain instant messages for a registered representative; failing to create and maintain evidence that the Sponsoring Firm reviewed instant messages; failing to identify and designate four Producing Managers; failing to establish adequate WSPs related to monitoring outside business activities and calculating net capital as a market maker; failing to conduct an interactive annual compliance meeting for certain registered representatives and to verify attendance at such session; overstating its net capital in May 2008; failing to establish WSPs to protect customer information and records and failing to keep customer information in locked file cabinets at a branch office; failing to indicate investment objectives and tax status information on certain new account forms; reporting inaccurately the precise times of certain municipal securities transactions; and failing to establish and maintain WSPs to address the suitability for certain options transactions. The Sponsoring Firm provided a written response stating that it had addressed the deficiencies noted.

FINRA issued the Sponsoring Firm an LOC after its 2007 options examination. The LOC cited the Sponsoring Firm for failing to have written procedures for the allocation of option exercise notices; failing to maintain evidence for six accounts that updated account information was requested within 36 months of account opening; and failing to update its Form BD to reflect a "piggy back" clearing arrangement. The Sponsoring Firm discussed the deficiencies with FINRA examiners during the examination.

FINRA issued the Sponsoring Firm an LOC after its 2006 routine examination for failing to send required information to FINRA prior to using electronic storage media. The Sponsoring Firm responded in writing that it had addressed the deficiency.

2. Regulatory Actions

The Sponsoring Firm has some regulatory history. In 2008, the Commission instituted an Order of Administrative and Cease-and-Desist Proceedings ("SEC Order") against the Sponsoring Firm. In the SEC Order, the Commission found that from October 2002 until August 2005, the Sponsoring Firm—through one of its registered representatives—violated Sections 5(a) and 5(c) of the Securities Act of 1933 (the "Securities Act") by selling shares in unregistered offerings under so-called employee stock option programs implemented by thirty-five issuer customers. The programs functioned as public distributions of securities using the issuers' employees as conduits so that the issuers could raise capital without complying with the registration requirements of the Securities Act. The Sponsoring Firm administered the brokerage aspects of the programs despite red flags suggesting that the shares it sold were issued through unregistered offerings. The Commission censured the Sponsoring Firm, ordered it to cease and desist from committing or causing any violations and future violations of Sections 5(a) and 5(c) of the Securities Act, and ordered that the Sponsoring Firm disgorge $271,484 and pay prejudgment interest of $74,015. The Sponsoring Firm paid all amounts due and owing under the SEC Order, and updated and implemented new policies to prevent a reoccurrence of the violations which led to the SEC Order. The Sponsoring Firm terminated the registered representative responsible for the misconduct underlying the SEC Order in December 2005.

In June 2011, FINRA accepted a Letter of Acceptance, Waiver and Consent ("AWC") from the Sponsoring Firm, which found that the Sponsoring Firm failed to report transactions to certain trade reporting facilities indicating whether each transaction was a buy, sell, sell short, or cross; submitted inaccurate, incomplete, or improperly formatted data to the Order Audit Trail System ("OATS"); and included incorrect information in reports on covered orders in national market system securities in November and December 2008. FINRA censured the Sponsoring Firm and fined it $30,000.

In April 2009, FINRA accepted an AWC from the Sponsoring Firm, which found that the Sponsoring Firm purchased municipal securities for its own account from a customer, and sold municipal securities from its own account to a customer, at an aggregate price that was not fair and reasonable. FINRA censured the Sponsoring Firm and fined it $15,000.

In September 2007, FINRA accepted an AWC from the Sponsoring Firm, which found that the Sponsoring Firm failed to report to the Automated Confirmation Transaction Service ("ACT") whether certain transactions were a buy, sell, sell short, sell short exempt, or cross; submitted quotations to the Pink Sheets without retaining certain information in its records as required by Exchange Act rules and without timely filing certain information with FINRA; submitted inaccurate, incomplete, or improperly formatted data to OATS; failed to provide written notice to customers in certain transactions where it acted as a principal for its own account; failed to show the receipt time on certain orders and failed to properly mark order tickets as short sale orders; failed to disclose certain information in SEC Rule 606 Reports; and failed to have a supervisory system designed to ensure compliance with the rules and regulations related to these matters. FINRA censured the Sponsoring Firm, fined it $42,000, and required that it revise its WSPs.

In September 2005, FINRA accepted an AWC from the Sponsoring Firm, which found that the Sponsoring Firm submitted incorrect reports to TRACE. FINRA fined the Sponsoring Firm $5,000.

In June 2005, FINRA accepted an AWC from the Sponsoring Firm, which found that it transmitted to OATS reports that contained inaccurate, incomplete, or improperly formatted data and failed to have a supervisory system to ensure compliance with trade reporting rules. FINRA censured the Sponsoring Firm, fined it $7,000, and required that it revise its WSPs.

In March 2004, FINRA accepted an AWC from the Sponsoring Firm, which found that it failed to timely report to OATS Reportable Order Events and failed to have a supervisory system reasonably designed to achieve compliance with rules and regulations concerning OATS reporting. FINRA censured the Sponsoring Firm, fined it $8,000, and required that it revise its WSPs.

The record shows no additional recent complaints, disciplinary proceedings, or arbitrations against the Sponsoring Firm.

In addition, the Sponsoring Firm currently employs a statutorily disqualified person, Employee 1. Employee 1 works in a clerical and ministerial capacity for the Sponsoring Firm's affiliated financial advisor. The Sponsoring Firm received FINRA's approval for Employee 1's association with the Sponsoring Firm in April 2011. Employee 1 is not subject to heightened supervision.

IV. X's Proposed Business Activities and Supervision

The Sponsoring Firm proposes that X will continue to work from the Sponsoring Firm's main office in City 1, State 1 as a general securities representative. The Sponsoring Firm proposes that it will continue to compensate X on a commission basis.

The Sponsoring Firm also proposes that the Proposed Supervisor will be X's primary supervisor. The Proposed Supervisor entered the securities industry in 1995, when he became registered as a general securities representative and passed the Uniform Securities Agent State Law Examination. The Proposed Supervisor has been employed with the Sponsoring Firm since February 1998, and qualified as a general securities principal in June 1998. The Proposed Supervisor works from the Sponsoring Firm's main office in City 1, State 1.

The record shows no disciplinary or regulatory proceedings, complaints, or arbitrations against the Proposed Supervisor.

V. Member Regulation's Recommendation

Member Regulation recommends approval of the Sponsoring Firm's request for X to continue to associate with the Sponsoring Firm as a registered representative, subject to the terms and conditions of heightened supervision described below.

VI. Discussion

After carefully reviewing the entire record in this matter, we approve the Sponsoring Firm's Application to continue to employ X as a general securities representative, subject to the supervisory terms and conditions set forth below.

In reviewing this type of application, we have considered whether the particular felony at issue, examined in light of the circumstances related to the felony and other relevant facts and circumstances, creates an unreasonable risk of harm to the market or investors.[4] We assess the totality of the circumstances in reaching a judgment about X's future ability to work in the securities industry in a manner that comports with FINRA's requirements for high standards of commercial honor and just and equitable principles of trade in the conduct of his business.

For the reasons set forth below, we conclude that X's participation in the securities industry, subject to the supervisory terms and conditions set forth below, will not present an unreasonable risk of harm to the market or investors.

We acknowledge the seriousness of X's criminal conviction. We note, however, that his felony conviction did not involve securities or fraudulent misconduct and occurred more than five years ago. We are not aware of any intervening misconduct by X. Further, less than a year after X's plea of guilty, the court set aside his conviction based upon X's successful completion of a drug treatment program. In addition, X has been registered in the securities industry since 2004 without any evidence of regulatory wrongdoing or customer complaints.

X's Proposed Supervisor, has worked in the securities industry for 16 years and has an unblemished regulatory history. He has been employed with the Sponsoring Firm since 1998 and has not been named in any of the Sponsoring Firm's formal regulatory actions. Based on the Proposed Supervisor's tenure in the industry and his lack of disciplinary history, it appears that he would be a capable and qualified supervisor to oversee X's activities with the Sponsoring Firm's institutional customers. Indeed, the Sponsoring Firm has represented that X is the only individual at the firm that the Proposed Supervisor will supervise, and in fact he has been supervising X subject to heightened supervision, as implemented by the Sponsoring Firm, from the time that it first submitted the Application in January 2007.

We acknowledge that the Sponsoring Firm has some disciplinary history. The record, however, shows that most of the Sponsoring Firm's formal regulatory actions were related to trade reporting and market timing deficiencies, and the Sponsoring Firm has taken corrective actions to address noted deficiencies. In addition, with respect to the SEC Order, the underlying misconduct occurred more than six years ago, and the registered representative responsible for

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[4] *See Frank Kufrovich*, 55 S.E.C. 616, 625-26 (2002) (upholding FINRA's denial of a statutory disqualification applicant who had committed non-securities related felonies "based upon the totality of the circumstances" and FINRA's explanation of the bases for its conclusion that the applicant would present an unreasonable risk of harm to the market or investors).

the misconduct is no longer with the Sponsoring Firm. We have no reason to believe that the Sponsoring Firm's prior disciplinary and regulatory actions will interfere with its ability to provide an effective supervisory environment for X, who has worked under heightened supervision at the Sponsoring Firm since 2007 without any evidence of regulatory wrongdoing or customer complaints. Moreover, the Sponsoring Firm has proposed a comprehensive supervisory plan, with a well qualified supervisor, to ensure that it will be able to maintain future compliance with the plan of heightened supervision.

Finally, while the Sponsoring Firm currently employs one other statutorily disqualified person (Employee 1), we find that permitting X to continue to associate with the Sponsoring Firm will not present an undue regulatory burden on the Sponsoring Firm or compromise its ability to supervise both Employee 1 and X. In fact, based upon Employee 1's clerical and ministerial role with the Sponsoring Firm's investment advisor affiliate, Employee 1 is not subject to heightened supervision.

We are satisfied that the following heightened supervisory procedures will enable the Sponsoring Firm to reasonably monitor X's activities on a regular basis:[5]

1. *The written supervisory procedures for the Sponsoring Firm will be amended to state that the Proposed Supervisor is the primary supervisor responsible for X;

2. *X will not maintain discretionary accounts;

3. *X will not act in a supervisory or principal capacity;

4. *X will work in very close proximity to the Proposed Supervisor. X will work from the same office and on the same floor as the Proposed Supervisor;

5. X will be placed on a recorded phone line;

6. *The Proposed Supervisor will review and pre-approve each securities account, prior to the opening of the account by X. The Proposed Supervisor will document the account paperwork as approved with a date and signature and will maintain the paperwork at the Sponsoring Firm's home office, located in City 1, State 1. The Proposed Supervisor will keep copies of the paperwork segregated for ease of review during any statutory disqualification examination;

7. The Proposed Supervisor will review and approve X's orders after execution, on a "T + 1" basis, or as soon as practicable, and evidence his

[5] The items that are denoted by an asterisk are proposed heightened supervisory conditions for X and are not standard operating procedures of the Sponsoring Firm.

review by initialing them. Copies of the trade reports will be kept segregated for ease of review;

8. The Proposed Supervisor will review X's incoming written correspondence (which includes email communications) upon its arrival and will review outgoing correspondence before it is sent;

9. For the purposes of client communication, X will only be allowed to use an email account that is held at the Sponsoring Firm, with all emails being filtered through the Sponsoring Firm's email system. If X receives a business-related email message in another email account outside the Sponsoring Firm, he will immediately deliver that message to the Sponsoring Firm's email account. X will also inform the Sponsoring Firm of all outside email accounts that he maintains. The Proposed Supervisor will conduct a weekly review of all email messages that are either sent to or received by X. X will maintain the emails and keep them segregated for ease of review during any statutory disqualification audit;

10. All complaints pertaining to X, whether verbal or written, will be immediately referred to the Chief Compliance Officer, or his designee. The Compliance Department will prepare a memorandum to the file as to what measures were taken to investigate the merits of the complaint and the resolution of the matter, and will keep documents pertaining to these complaints segregated for ease of review. The CCO will make the Proposed Supervisor aware of any and all complaints filed against X. Documents pertaining to these complaints will be kept segregated for ease of review during any statutory disqualification audit;

11. If the Proposed Supervisor is to be on vacation or out of the office for an extended period, Employee 2,[6] the Sponsoring Firm's Compliance Officer, will act as X's interim supervisor;

12. For the duration of X's statutory disqualification, the Sponsoring Firm must obtain prior approval from Member Regulation if they wish to change X's responsible supervisor from the Proposed Supervisor to another person; and

13. *The Proposed Supervisor must certify quarterly (March 31st, June 30th, September 30th, and December 31st) to the Compliance Department of the Sponsoring Firm that he and X are in compliance with all of the above conditions of heightened supervision to be imposed upon X.

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[6] Employee 2 became registered as a general securities principal in 2006, and the record does not disclose any customer complaints or regulatory actions against her.

FINRA certifies that: (1) X meets all applicable requirements for the proposed employment; (2) the Sponsoring Firm represents that is also a member of NYSE ARCA, BATS Trading, Inc., and the NASDAQ Stock Market, LLC; (3) the Sponsoring Firm has represented that X and the Proposed Supervisor are not related by blood or marriage; and (4) the Sponsoring Firm currently employs one other statutorily disqualified individual, Employee 1, who performs clerical and ministerial tasks for the Sponsoring Firm's affiliated investment advisor.

VII. Conclusion

Accordingly, we approve the Sponsoring Firm's Application to continue to employ X as a registered representative, subject to the above-mentioned heightened supervisory procedures. In conformity with the provisions of Exchange Act Rule 19h-1, the association of X 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,

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Marcia E. Asquith
Senior Vice President and Corporate Secretary