BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Association of X[1] as a Floor Broker with Sponsoring Firm	Redacted Decision Notice Pursuant to Section 19(d) Securities Exchange Act of 1934 SD10006 Date: 2010

I. Introduction

On January 1, 2009, the Sponsoring Firm filed a Membership Continuance Application ("MC-400" or "the Application") with FINRA's Department of Registration and Disclosure.[2] The Application requests that FINRA permit X, a person subject to a statutory disqualification, to associate with the Sponsoring Firm as a floor broker. In February 2010, a subcommittee ("Hearing Panel") of FINRA's Statutory Disqualification Committee held a hearing on the matter. X appeared at the hearing, accompanied by his counsel, Attorney 1, and by two of his proposed supervisors, Proposed Supervisor 1 and Proposed Supervisor 2. FINRA Employee 1, FINRA Attorney 1, and FINRA Attorney 2 appeared on behalf of FINRA's Department of Member Regulation ("Member Regulation").

For the reasons explained below, we deny Sponsoring Firm's Application.[3]

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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] The Sponsoring Firm filed the original application under the firm name "Former Sponsoring Firm". Subsequently, the Firm changed its name to the Sponsoring Firm and amended its Application.

[3] Pursuant to FINRA Rule 9524(a)(10), the Hearing Panel submitted its written recommendation to the Statutory Disqualification Committee. In turn, the Statutory Disqualification Committee considered the Hearing Panel's recommendation and presented a written recommendation to the National Adjudicatory Council.

II. The Statutorily Disqualifying Event

X is statutorily disqualified because in July 2006, he pled guilty in State 1 to one felony count of driving while intoxicated ("DUI") on March 16, 2006.[4] This was a felony because he had a prior misdemeanor DUI arrest in State 1 in June 1996 (two DUI arrests within 10 years leads to a felony charge in State 1).[5] He pled guilty to the 1996 misdemeanor in October 1996, and was sentenced to three years of probation. For his 2006 felony DUI conviction, X was sentenced to five years of probation (until October 2011) and required to pay $5,295 in fines and penalties. His driver's license was also suspended for one year, and he currently drives with an interlock device on his car that prevents the car from starting if he has consumed any alcohol.

X testified at the hearing that he is in compliance with his probation requirements, and that he voluntarily completed an outpatient alcohol rehabilitation program from April to September 2006. He also testified that he has abstained from the use of alcohol since June 2006 and consults a psychiatrist on an ongoing basis for depression and anxiety, but that he is not engaged in any specific therapy for alcohol-related problems. The record includes a letter dated April 2006, from a licensed clinical psychologist that states that X's "profile does not reflect a clinical diagnosis of Alcohol Abuse Disorder," but that his difficulties had resulted from "lapses in judgment." Yet a second letter dated June 2006, from the same psychologist states that X "is dedicated to permanent sobriety and permanent safe driving."

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[4] X is statutorily disqualified under Art. III, Sec. 4 of FINRA's By-Laws which provides that "[a] person is subject to a 'disqualification' with respect to . . . association with a member, if such person is subject to any 'statutory disqualification' as such term is defined in Section 3(a)(39) of the [Securities Exchange Act of 1934 ("Exchange Act")] Act." In turn, Section 3(a)(39)(F) of the Exchange Act provides that:

> A person is subject to a 'statutory disqualification' with respect to . . . association with a member of, a self-regulatory organization, if such person—(F) . . . has been convicted of any offense specified . . . **or any other felony within ten years of the date of the filing of an application** . . . to become associated with a member of, such self-regulatory organization.

[5] X was also charged with a misdemeanor DUI in December 1995, for which his driving license was suspended for six months. Accordingly, when he was charged again in June 1996 with a misdemeanor DUI, he was also charged with driving on a suspended driver's license.

III. Background Information

A. X

1) Employment and Disciplinary History

X has been employed in the securities industry since 1989. He has been associated with seven different firms as a wire clerk or a floor broker from May 1989 until July 2007. In August 2009, he passed an NYSE Amex Series 15 examination that Member Regulation referred to as "the NYSE Amex general membership test," which qualified him to continue as a floor broker, pending the outcome of this Application.[6] Since 2007, X has worked for a car service organization in Long Island, New York.

In February 2003, X entered into a Stipulation of Facts and Consent to Penalty with the NYSE Division of Enforcement ("the NYSE Stipulation"). He was censured and fined $35,000 for: 1) conducting business with a public customer without obtaining required registration and/or NYSE approval; 2) executing transactions on the floor with respect to which he was improperly vested with investment discretion; 3) failing to process all commissions through his member firm employer's account; and 4) failing to preserve certain required books and records.

2) Non-Disclosure of Felony Charge and Conviction

In December 2008, FINRA's Division of Enforcement ("Enforcement") issued X a Letter of Caution ("LOC") for failing to disclose his 2006 felony charge and conviction.[7] Enforcement based the LOC on the following facts. At the time of his felony DUI charge in March 2006 and his felony conviction in July 2006, X was employed at Firm 1. Yet X failed to amend his Uniform Application for Securities Industry Registration or Transfer ("Form U4") to reflect affirmative answers to Question 14A(1)(a), which asks, "Have you ever been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any felony?" or to Question 14A(1)(b), which asks, "Have you ever been charged with any felony?"

Moreover, in September 2006, X signed and submitted an initial Form U4 to begin employment with Firm 2, and he answered "no" to Questions 14A(1)(a) and (b). X testified that he misunderstood his obligation to disclose the felony charge and conviction against him because he had not been required to disclose the previous misdemeanor DUI charge and conviction, and because he believed that the matter was still pending until the sentencing had occurred (in October 2006). He also testified that he believed that his State 1 Certificate of Relief from Disabilities ("State 1 Certificate") excused him from reporting his felony charge and conviction.

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6 Previously, no examination was required to operate as a floor broker.

7 This LOC and finding of failure to disclose does not result in a statutorily disqualifying event on its own because it is necessary to have a finding of *willful* failure to disclose to be a stand-alone statutorily disqualifying event. *See* Section 3(a)(39)(F) of the Exchange Act.

This belief was unfounded. Page one[8] of the State 1 Certificate specifically states that it does not function as a "pardon." Rather, it grants relief from "bars to . . . employment *automatically* imposed by law by reason of [the] conviction of the crime." Such a certificate does not remove a person's designation as a statutorily disqualified individual or FINRA's ability to subject him to discretionary review pursuant to proscribed procedures. It is merely a factor that FINRA considers in determining whether an application on behalf of such an individual to be permitted to work in the securities industry should be granted. *See Jonathan Scott Saluk*, Exchange Act Rel. No. 35623, 1995 SEC LEXIS 923, at *2 (Apr. 19, 1995).

Accordingly, X did not disclose the felony charge and conviction to Firm 2 until he answered an annual compliance questionnaire in January or February 2007. At that time, he believed that Firm 2 would undertake the filing of an amended Form U4 on his behalf. Firm 2 did not do so. X testified that he did not know that he was statutorily disqualified or realize that it was his responsibility to take action and ensure that Firm 2 filed an amendment with FINRA to his Form U4 to disclose his felony charge and conviction, even though it was not securities related. X did not answer Questions 14A(1)(a) and (b) correctly until he filed a Form U4 seeking employment with Firm 3 in July 2007. The NYSE denied X's registration with Firm 3 at that time, due to his felony conviction and resulting statutory disqualification. X testified that the NYSE's denial of his registration made X aware, for the first time, of his status as a statutorily disqualified individual.

The record shows no other criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against X.

B. The Sponsoring Firm

The Sponsoring Firm is based in City 1, and it has been a FINRA member since July 2008. The Firm represents that it is engaged in exchange floor and non-floor activities, but that it is primarily a floor brokerage business for institutional customers. Proposed Supervisor 1 testified that the Sponsoring Firm is an affiliate of Firm 4, another floor brokerage firm that she joined in 2003 when it was started by some of her colleagues. Firm 4 wanted to start a floor brokerage operation that was a FINRA member firm, and Proposed Supervisor 1 was recruited to "do all the legwork and the paperwork" to get the Sponsoring Firm started. Proposed Supervisor 1 testified that getting "the Sponsoring Firm off the ground" has "been very slow and difficult." Currently, the Sponsoring Firm has a very small equity business and is being supported by its options business. The Sponsoring Firm hopes to increase its equity business by employing X, who has connections from his prior positions as a floor broker. The Sponsoring Firm represents that it has one office of supervisory jurisdiction, no branch offices, four registered representatives, two floor brokers, and two registered principals. The Sponsoring Firm does not have any disciplinary history.

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[8] We refer only to the language contained on page one of the two-page State 1 Certificate as there is a factual dispute as to whether X was ever presented with page two, which contains further explanatory language.

IV. X's Proposed Business Activities and Supervision

The Sponsoring Firm proposes that it will employ X as a floor broker executing trades on the floor of NYSE Amex. The Firm represents that it will compensate X on a commission basis only.

The Sponsoring Firm proposes a multi-tiered supervisory plan that features Proposed Supervisor 1, the Sponsoring Firm's chief executive officer, chief compliance officer, and financial and operations principal, as X's primary supervisor. Proposed Supervisor 1 is located in office space about one-half block from the floor of NYSE Amex, where X will be working. Although she is removed from X's work area, Proposed Supervisor 1 testified that she wanted to be the primary supervisor who would review all the necessary paperwork and details, and she referred to X as a "sloppy recordkeeper." Proposed Supervisor 1 first registered as a general securities representative in 1988, and she qualified as a general securities principal in 2006. She has been associated with the Sponsoring Firm since February 2006. She testified that she spends approximately 25 percent of her time working for Firm 4. The record shows no criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against Proposed Supervisor 1.

The Firm has named a Proposed Back-Up Supervisor as the back-up supervisor for Proposed Supervisor 1. The Proposed Back-Up Supervisor first registered as a general securities representative in 1995, and she qualified as a general securities principal in 2001. The Proposed Back-Up Supervisor is also located in the same office space as Proposed Supervisor 1, one-half block from the NYSE floor where X will be located. The Proposed Back-Up Supervisor has been associated with the Sponsoring Firm since September 2006, and she is currently also associated with Firm 4, which she joined in October 2005. One customer filed a complaint against the Proposed Back-Up Supervisor in 2005, alleging a failure to supervise. The Sponsoring Firm represents that the complaint named the Proposed Back-Up Supervisor in error as she was not the supervisor in charge, and was withdrawn in June 2006, after the Proposed Back-Up Supervisor paid a sum of money "in order to avoid continuing legal fees." The Proposed Back-Up Supervisor received a discharge pursuant to federal bankruptcy law due to medical expenses to care for her disabled mother in April 1995. The record shows no other criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against the Proposed Back-Up Supervisor.

Finally, the Firm proposes that Proposed Supervisor 2, the Firm's floor supervisor, will be the third person responsible for supervising X. Proposed Supervisor 2 is located on the floor of the NYSE, where X will be working. He will conduct "real time surveillance" of X by observing X's work and monitoring his conversations throughout the trading day. Proposed Supervisor 2 will then report his findings daily to Proposed Supervisor 1. Proposed Supervisor 2 was first registered as a general securities representative in 1988. He qualified as a general securities principal in July 2009. He joined the Sponsoring Firm in January 2009 and is also associated with Firm 4, which he joined in 2003. The record shows no criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against Proposed Supervisor 2.

In its Application, the Sponsoring Firm proposed the following heightened supervisory procedures for X (which we quote in their entirety), "through October 2011, subject to extension beyond such in the event of any negative reviews or upon request of FINRA":

1) Periodically, throughout the trading day, the Sponsoring Firm's Floor Supervisor will observe X's work and monitor his conversations for continuing compliance with applicable regulations and will daily report his findings to Proposed Supervisor 1;

2) At the end of the trading day, Proposed Supervisor 1 will review X's trading records with a view towards completeness and compliance with all applicable regulations. This review will include a "spot check" review of orders, reports and cancellations, and other documents generated by X;

3) Proposed Supervisor 1 will review and pre-approve each account prior to the opening of such account by X;

4) Any complaints pertaining to X, whether verbal or written, will be immediately referred to Proposed Supervisor 1 for review. Proposed Supervisor 1 will prepare a memorandum to [the] file as to what measures she took to investigate the merits of the complaint (e.g., contact with the customer) and the resolution of the matter, and will maintain the documents pertaining to such complaint in a separate file;

5) Proposed Supervisor 1 will document her supervision pursuant to these special supervisory procedures by preparing and signing periodic Compliance Checklists in the form of the attached;

6) During any period of unavailability of Proposed Supervisor 1, her supervisory responsibilities regarding X will be assumed by the Proposed Back-Up Supervisor;

7) (a) X will not engage in a supervisory capacity;
(b) X will not maintain discretionary accounts;

8) For the duration of these heightened supervisory procedures, Proposed Supervisor 1 (or the Proposed Back-Up Supervisor if Proposed Supervisor 1 is unavailable) will arrange to obtain prior approval from Member Regulation prior to changing the designated principal from Proposed Supervisor 1 to any other principal of the Firm.

In correspondence dated February 2010, the Firm supplemented its previous submissions and stated the following "additional supervisory procedures and policies which will afford further safeguards and multiple points of supervision over" X (which we quote in their entirety):

1) The Sponsoring Firm's policy will be that X will not have any direct communication with customers;

2) X's personal cellular telephone records will be inspected monthly to insure that he is not having any communications or taking any actions that cannot be reviewed by the Sponsoring Firm;

3) The Sponsoring Firm's computer system will mirror the information on X's handheld device allowing for real-time surveillance of his activities by Proposed Supervisor 1, Proposed Supervisor 2, and others;

4) Commission runs and schedules will be reviewed and double-checked against trading records and confirmations to insure that there are no inconsistencies. Additionally, the Sponsoring Firm's error count will be checked for any irregular activity;

5) The Sponsoring Firm will utilize a system to record all orders which are received telephonically;

6) Proposed Supervisor 2, X's floor supervisor, will approve any telephone order prior to the order being routed to X. Software on the computer at Proposed Supervisor 2's workstation will mirror the information on X's handheld device and will require that he review any electronic order handled by X; and

7) Prior to execution of telephone orders received at the Sponsoring Firm's booth, such orders will be reviewed by Proposed Supervisor 2 and then be routed to X for execution. Electronic orders will be received via the NYSE's DOT system and be routed to X via the BBSS system.

V. Member Regulation's Recommendation

Member Regulation recommends that the Application be denied for several reasons: 1) X's conviction is recent; 2) he is still on probation; 3) X engaged in intervening misconduct and has a disciplinary history; 4) the Firm is new to the industry; 5) Proposed Supervisor 2 has no experience as a principal; and 6) the Firm has proposed an inadequate plan of heightened supervision for X.

VI. Discussion

A. The Legal Standard

In reviewing this type of application, we consider 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.[9] We assess the totality of the circumstances in reaching a judgment about X's future ability to deal with the public 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. In so doing, we recognize that the sponsoring firm has the burden of demonstrating that the proposed association is in the public interest despite the disqualification. *See Pedregon*, 2010 SEC LEXIS 1164, at *16 & n.17; *Continued Ass'n of X*, SD06003, slip op. at 5 (NASD NAC 2006), *available at* http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p036480.pdf (redacted decision).

We examine the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, whether the person has engaged in any intervening misconduct, and the potential for future regulatory problems, as well as other unique circumstances in the application. We also consider whether the sponsoring firm has demonstrated that it understands the need for, and has the capability to provide, adequate supervision over the statutorily disqualified person.

After carefully reviewing the entire record in this matter, we find that the Sponsoring Firm has not met its burden, and we conclude that X's participation in the securities industry will present an unreasonable risk of harm to the market or investors. Accordingly, for the following reasons, we deny the Application for X to associate with the Firm as a floor broker.

B. X's Recent Statutorily Disqualifying Event and His Ongoing Probation

First, we note that X's felony conviction for DUI is recent—July 2006—and represents his second conviction for driving under the influence of alcohol, and his third arrest for DUI. Through his recidivist actions in driving while intoxicated for many years, X has repeatedly

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[9] *See Frank Kufrovich*, 55 S.E.C. 616, 625 (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); *see also Timothy P. Pedregon, Jr.*, Exchange Act Rel. No. 61791, 2010 SEC LEXIS 1164, at *20 & n.21 (Mar. 26, 2010) (stating that FINRA's "analysis goes beyond the circumstances relating to the felony, and also encompasses circumstances relating to the proposed association"); *Timothy H. Emerson, Jr.*, Exchange Act Rel. No. 60328, 2009 SEC LEXIS 2417, at *14 (July 17, 2009) (stating that FINRA "appropriately weigh[ed] all the facts and circumstances surrounding [the applicant's] felony conviction and [the firm's] proposed supervisory plan").

demonstrated an inability to comply with the laws of society. Moreover, insufficient time has passed to enable him to demonstrate that the change in his behavioral pattern is fundamental and long-lasting and that he can conduct himself in a responsible and compliant fashion in the securities industry.

Second, the New York court imposed a five-year probation on X, until October 2011. The record shows that if X fails to comply with the terms of his probation, the court could revoke his probation and order him to serve time in prison. The Commission has expressly shared FINRA's concern in not allowing disqualified individuals serving probation to be associated with member firms. *See, e.g.*, *Pedregon*, 2010 SEC LEXIS 1164, at *26 & n.29 ("FINRA did not treat [the applicant's] probation as an absolute bar to his re-entry; it properly considered it as one factor, along with many others."); *Kufrovich*, 55 S.E.C. at 627-28 ("We share the NAC's concern that Kufrovich remains on probation."); *Funding Capital Fin. Corp.*, 50 S.E.C. 603, 606 (1991) (same).

Accordingly, we conclude that the recency of X's conviction, and the pendency of the probationary period through October 2011, militate against allowing X's re-entry into the securities industry at this time.

C. X's Regulatory History and His Failure to Timely Disclose the Felony Charge and Conviction

We are also troubled by X's prior regulatory history, and by the intervening misconduct in which he engaged after his felony conviction. X's prior history consists of the 2003 NYSE Stipulation for: 1) doing business with a public customer without the required registration and NYSE approval; 2) exercising improper discretion in a customer's account; 3) failing to process commissions for that customer through his employer's account; and 4) failing to maintain certain required books and records. The NYSE Stipulation censured X and fined him $35,000. We are particularly concerned because the Sponsoring Firm is seeking to have X act as a floor broker on the NYSE—which is precisely the same position that he held when he engaged in his violative conduct in 2003. As discussed in further detail below, we are not persuaded that the Firm has proposed a sufficient heightened supervisory plan to monitor X's actions as he has already shown an inability and an unwillingness to comply with the rules imposed on a floor broker.

X's intervening misconduct resulted in Enforcement's 2008 LOC against him for failing to disclose his felony charge and conviction on Forms U4 to two different employers. The LOC found that X failed to amend his Form U4 with Firm 1 after he was arrested and charged with a felony in March 2006 and convicted of a felony in July 2006. X further exacerbated this misconduct when he left Firm 1 in September 2006 and submitted an initial Form U4 to begin employment with Firm 2. X had to read through the initial Form U4 at that point and still he answered "no" to Questions 14A(1)(a) and (b), which asked if he had ever been charged with or convicted of a felony. X did not answer these questions correctly until he filed a Form U4 seeking employment with Firm 3 in July 2007, 16 months after his felony arrest and one year after his felony conviction.

The responsibility for maintaining the accuracy of a Form U4 lies with each registered representative. *Dep't of Enforcement v. Howard*, Complaint No. C11970032, 2000 NASD Discip. LEXIS 16, at *31-32 (NASD NAC Nov. 16, 2000), *aff'd*, 55 S.E.C. 1096 (2002), *aff'd*, 77 F. App'x 2 (1st Cir. 2003); *see also Dep't of Enforcement v. Mathis*, Complaint No. C10040052, 2008 FINRA Discip. LEXIS 49, at *23 (FINRA NAC Dec. 12, 2008), *aff'd*, Exchange Act Rel. No. 61120, 2009 SEC LEXIS 4376 (Dec. 7, 2009), *appeal pending*, No. 10-429-ag (2d Cir. Feb. 3, 2010). FINRA relies on the information provided on Forms U4 "to monitor and determine the fitness of securities professionals." *Emerson*, 2009 SEC LEXIS 2417, at *16 & n.18. The Commission has consistently found that an individual's failure to notify a firm promptly about a felony charge or to ensure that a Form U4 is accurate "raises questions about his ability to maintain his obligations under the securities laws." *Id*. at *16; *see also Jason A. Craig*, Exchange Act Rel. No. 59137, 2008 SEC LEXIS 2844, at *11-16 (Dec. 22, 2008) (rejecting claims that individual's failure to amend Form U4 was due to doubt about the disposition of his conviction, a mistaken belief that the charge would be expunged, or a failure to understand the wording of the Form U4).

We find that X's disciplinary history, his failure to disclose, and his repeated criminal convictions for DUI all raise questions about his ability to maintain his obligations under the securities laws.

D. The Sponsoring Firm and the Proposed Supervisors' Ability to Supervise X

We also find that the Sponsoring Firm has failed to demonstrate that it could effectively supervise a statutorily disqualified individual such as X. Given that the Sponsoring Firm proposes to employ X on the floor of NYSE Amex, it is necessary for the Sponsoring Firm to designate a qualified effective supervisor and construct an adequate plan of heightened supervision for X, who has a history of disregarding floor rules. Moreover, Proposed Supervisor 1 testified that the Sponsoring Firm will be relying on X to build its equity business as the Sponsoring Firm currently has only one client and is struggling. The Sponsoring Firm's proposed plan of supervision fails in both regards — it does not propose an adequate supervisor or an effective plan.

While we note the lack of disciplinary history for the proposed three supervisors, we remain concerned by the Firm's plan to have all three supervisors—two of whom will be off-site—monitoring X's actions. Moreover, all three of those proposed supervisors have significant obligations elsewhere, as they are dually registered with Firm 4 and the Sponsoring Firm. Indeed, Proposed Supervisor 1 testified that she currently spends 25 percent of her time on duties for Firm 4. Further, the Firm proposes that X's primary supervisor will be Proposed Supervisor 1, who appears to be qualified, but she is removed from his work area and has many other responsibilities as the Sponsoring Firm's chief executive officer, chief compliance officer, and financial and operations principal. Proposed Supervisor 1's back-up supervisor the Proposed Back-Up Supervisor who also appears to be qualified, but is also in a location different from that of X. The only supervisor who is proposed to be on-site on the NYSE floor with X is Proposed Supervisor 2, who is listed third in the Sponsoring Firm's multi-tiered supervisory responsibility plan and has been a general securities principal for less than one year. While the Sponsoring Firm argues that this fact should not be held against Proposed Supervisor 2 because a general

securities principal registration was not required "at any previous stage in Proposed Supervisor 2's career[,]" a proposed supervisor of a statutorily disqualified individual must be qualified.

The Sponsoring Firm further argues that the dual registrations at Firm 4 and the Sponsoring Firm for these three supervisors have been approved by Amex, NYSE Amex, and FINRA. While it may be true that their concurrent responsibilities are sufficiently satisfactory for normal business functions, the supervision of a statutorily disqualified person involves detailed and extensive supervision that requires a significant amount of a supervisor's time and attention. We are concerned that Proposed Supervisor 1, the Proposed Back-Up Supervisor, and Proposed Supervisor 2 may not be able to devote the resources necessary to enforce an effective plan of heightened supervision for X.

We are also troubled by the lack of detail in certain of the Sponsoring Firm's proposals to supervise X. A firm that requests FINRA's approval to employ a statutorily disqualified individual must establish that it will be able to adequately supervise the individual by imposing a stringent plan of heightened supervision. *See Emerson*, 2009 SEC LEXIS 2417, at *18. The Sponsoring Firm's proposed supervisory plan does not meet this standard as it fails to address many issues, such as what the Sponsoring Firm will do following its proposed monthly inspection of X's personal cellular telephone records to ensure that FINRA will be able to verify that the inspection was done. There is also no plan for verification of the proposed real-time surveillance on the Sponsoring Firm's computer system, or any identification of who will conduct the proposed review of commission runs and schedules. With respect to X's handheld device, there is no specification in the plan of how often the Sponsoring Firm will review it, how the Sponsoring Firm will evidence the review, or how FINRA will verify the review. The Sponsoring Firm also proposes to use a "system" to record all orders that are received telephonically, but the plan does not state what that system is, or how the data will be captured, reviewed, and verified.

The Commission has consistently stated that "the burden of proposing a suitable supervisory plan is on [the Firm], and it cannot satisfy this burden by waiting until [the statutorily disqualified individual] is in the job to work out the details of the plan." *Pedregon*, 2010 SEC LEXIS 1164 at *28 & n.32. Given X's past disciplinary history as a floor broker, we conclude that it was especially important for the Firm to produce a detailed and workable heightened supervisory proposal for X, and to demonstrate that it was capable of enforcing such a plan. The Sponsoring Firm failed to do so.

For these reasons, we conclude that under the proffered supervisory plan, the Sponsoring Firm, Proposed Supervisor 1, the Proposed Back-Up Supervisor, and Proposed Supervisor 2 are unable to provide the required heightened level of supervision necessary to assure us that they will effectively prevent and detect possible misconduct on the part of X.

VII. Conclusion

Accordingly, we find that it is not in the public interest, and would create an unreasonable risk of harm to the market or investors, for X to associate with the Sponsoring Firm as a floor trader. We therefore deny the Application.

On Behalf of the National Adjudicatory Council,

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Marcia E. Asquith
Senior Vice President and Corporate Secretary