

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of the Association
of
X
with
The Sponsoring Firm
as a
General Securities Representative
And
Equity Trader

Redacted Decision

Notice Pursuant to
Section 19(d)
Securities Exchange Act
of 1934

SD Decision No. 02001

On October 3, 2001, the Sponsoring Firm completed a Membership Continuance Application ("MC-400" or "the Application") requesting permission for the Firm to continue its NASD membership if it permitted X¹ to be associated with it as a general securities representative and equity trader. In January 2002, a Hearing Panel of the Statutory Disqualification Committee of NASD Regulation held a hearing on the matter. X appeared, accompanied by his proposed supervisor, the Firm's Compliance Director.

A. The Statutorily Disqualifying Event

In October 2000, X pled guilty in Superior Court, State 1, to the felony offense of possession of a controlled dangerous substance with intent to distribute within 1000 feet of school property.² The court sentenced X to serve five years' probation, which sentence is due to expire in November 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.

² X testified at the hearing that the controlled dangerous substance was a "designer drug" known as "ecstasy." X testified that the offense occurred at his parents' home, which was next to a school, when he gave the drug to a police informant who had requested it. X also testified that, at the time of the offense, he had a problem with alcohol abuse.

B. Background Information

1. X

X was registered as a general securities representative with the Sponsoring Firm from January 1997 through November 2000. He passed the Series 55 (limited representative – equity trader qualification examination) in November 1999. X terminated his employment with the Sponsoring Firm in November 2000, after the court's sentence was delivered. X then served six months in an inpatient substance abuse program and completed an outpatient substance abuse program. Following his release from the inpatient program, X engaged in day trading for his own personal account from his home. X testified that in October 2001, since his day trading had not been lucrative, he started working as an estimator for a window company. X has no record of any formal or informal regulatory actions taken against him, and no record of any customer complaints filed against him during his almost four years in the industry.

2. The Firm

The Sponsoring Firm has been a member of the NASD since 1953, and it is engaged in wholesale market making in over-the-counter securities. The Firm has one office of supervisory jurisdiction ("OSJ") and no branch offices. The Sponsoring Firm employs four registered principals and 17 registered representatives. It is not a member of any other self-regulatory organization.

The Sponsoring Firm has some regulatory history. In 2000, the Sponsoring Firm consented to a Letter of Acceptance, Waiver and Consent ("AWC") for failure to comply with SEC and NASD firm quote rules. The Firm was censured and fined \$10,000. In 1999, the Sponsoring Firm consented to two AWCs. The first AWC in 1999 involved violations of the limit order display rules and two incidents of the Firm's trading ahead of a customer limit order. The Firm was fined \$3,000. The second AWC in 1999 involved trade reporting and books and records violations. The Firm was censured and fined \$6,000. In 1998, the Sponsoring Firm consented to an AWC for trade reporting violations, trading ahead of customer limit orders, and failing to make affirmative determinations for short sale transactions. The Firm was fined \$18,000.

NASD Regulation issued Letters of Caution ("LOCs") to the Sponsoring Firm for both the 1997 and 1999 routine examinations. These LOCs detailed technical violations that were addressed by the Firm. The 2001 examination of the Firm had not yet been completed at the time of the hearing.

C. Proposed Business Activities and Supervision

The Sponsoring Firm proposes to employ X as a general securities representative and equity trader. He will be located at the Firm's State 1 home office. The Proposed Supervisor, the Firm's Compliance Director, will be X's supervisor.

The Proposed Supervisor became a general securities representative in 1981 and a general securities principal in 1992. The Proposed Supervisor has been employed by the Sponsoring Firm since April 1992.

The Proposed Supervisor consented to one AWC in 1989 when he was employed by another firm. The Proposed Supervisor was fined \$2,500, jointly and severally with the other firm, for failing to make affirmative determinations prior to each of 14 short sales that he effected. There is no record of any customer complaints filed against the Proposed Supervisor.

D. Member Regulation Recommendation

Member Regulation recommends that X be permitted to associate with the Sponsoring Firm as a general securities representative and equity trader, supervised by the Proposed Supervisor, and subject to certain specified supervisory terms and conditions.

E. Discussion

After careful review of the entire record in this matter, we have determined to deny the Sponsoring Firm's Application for X to become associated as a general securities representative and equity trader. We find that it would not be in the public interest to permit X to engage in the securities business at this time and that his employment in the industry may create an unreasonable risk of harm to the market or investors.

In reaching our determination, we have considered and evaluated this Application based upon the felony involved and the circumstances relating to the felony.³ We find that X's felony conviction for possession of a controlled dangerous substance with intent to distribute within 1000 feet of school property is a very serious matter and signifies that X has poor judgment and lacks a sense of responsibility. Based on X's conviction and the related circumstances, we conclude that X presents an unreasonable risk of failing to abide by the rules governing the conduct of a general securities representative and equity trader.

We also conclude that the recency of X's conviction and the pendency of his probationary period militate against allowing his re-entry into the securities industry at this time. The arrest occurred in 1999, and X testified that, at that time, he had a substance abuse problem with both ecstasy and alcohol. Following X's 2000 guilty plea and the court's sentencing later in 2000, X served six months in an inpatient substance abuse program and completed an outpatient substance abuse program. The conviction at issue occurred less than one and one-half years ago,

³ See Frank Kufrovich, Exchange Act Rel. No. 45437 (Feb. 13, 2002) (finding that NASD Regulation properly weighed the facts in a statutory disqualification application when it denied the application based on, inter alia, the nature and recency of the felony).

and X has been out of treatment for his substance abuse problem for less than a year.⁴ At this time, X has not demonstrated that he has a sustained ability to use good judgment. Further, we note that the remedial probationary program imposed by the court does not end until November 2005. See Kufrovich, at p. 10 ("We share the NAC's concern that [the applicant] remains on probation.")

In evaluating this Application, we have considered the proposed supervisory structure offered by the Firm, including the Proposed Supervisor's role as the proposed supervisor. We find no deficiencies in the proffered structure.

The seriousness and recency of X's conviction lead us to conclude that X's re-entry into the securities industry at this time would create an unreasonable risk of harm to the market or investors. Accordingly, we deny the Sponsoring Firm's Application to employ X.

On Behalf of the National Adjudicatory Council,

Barbara Z. Sweeney, Senior Vice President and
Corporate Secretary

⁴ Our concern about the recency of X's completion of his substance abuse treatment program will be lessened if X demonstrates a longer period of having overcome his substance abuse problems.