

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

<p>In the Matter of the Association of</p> <p>X</p> <p>as a</p> <p>Supervising General Securities Principal</p> <p>with</p> <p>The Sponsoring Firm</p>
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REDACTED DECISION

Notice Pursuant to
Rule 19h-1
Securities Exchange Act
of 1934

Decision No. SD01025

On July 24, 2001, the Sponsoring Firm¹ completed a Membership Continuance Application ("MC-400" or "the Application") seeking to permit X, a person subject to statutory disqualification, to associate with the Firm as a supervising general securities principal. A hearing was not held in this matter. Rather, pursuant to NASD Procedural Rule 9523, the Department of Member Regulation ("Member Regulation") of NASD Regulation, Inc. ("NASD Regulation") recommended to the Statutory Disqualification Committee that X's proposed association with the Sponsoring Firm be approved pursuant to the terms and conditions set forth below. The Sponsoring Firm consented to the imposition of the below terms and conditions in its MC-400 application.

X's Statutorily Disqualifying Event and Background. X is subject to a statutory disqualification as a result of a 1991 decision issued by a Hearing Panel of the New York Stock Exchange ("Exchange" or "NYSE") that found that X, former Chief Executive Officer ("CEO") of Firm 1, violated Exchange Rules 342(a) and 342(b) (supervision). The NYSE barred X for a period of two years from employment or association in any supervisory or managerial capacity with any member or member organization, including the capacities of a partner, corporate officer or member of the board of directors. The NYSE decision also prohibited X's ownership of a controlling interest in a member or member organization, concurrent with the bar.

X also is subject to a statutory disqualification as a result of a 1993 Order Instituting Proceeding and Making Findings and Imposing Remedial Sanctions ("1993 Order") issued by the Securities and Exchange Commission ("Commission"). The 1993 Order barred him from

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.

association in a supervisory capacity with any broker, dealer, municipal securities dealer, investment adviser, or investment company, provided that, after a period of three years from the date of the 1993 Order, he may make an application to become associated with any such entity in a supervisory capacity other than that of chairperson, chief executive officer, or president.

The NYSE decision and the 1993 Order arose from X's failure reasonably to supervise MM between mid-1985 and late 1986, while X was CEO of Firm 1. MM was formerly the Manager of Firm 1's High Yield and Convertible Bond Department, and he was found to have engaged in manipulative trading and caused misrepresentations in connection with 18 new issues of securities that were underwritten and distributed by Firm 1.²

From December 1991 to December 1993, X was self-employed as a consultant. In December 1993, X became associated as a general securities representative with Firm 2, an NASD member firm, which later merged with Firm 3. In December 1996, Firm 3 submitted an MC-400 application seeking approval for X to associate with the firm as a general securities principal. In June 1997, following a hearing held before a hearing panel of the Statutory Disqualification Committee of the National Adjudicatory Council ("NAC"), NASD Regulation filed a notice pursuant to SEC Rule 19h-1 for approval of Firm 3's application. While the June 1997 Rule 19h-1 notice was under review at the Commission, however, X voluntarily terminated his employment with Firm 3 to join Firm 4, an NYSE member firm. The June 1997 Rule 19h-1 notice regarding Firm 3 was therefore withdrawn by NASD Regulation.

Firm 4 filed an application with the NYSE, requesting approval for X to act in a supervisory capacity, with responsibility for directing and overseeing investment-banking professionals working on corporate finance and investment banking matters. In 1999, following a concurrence by the NASD, the NYSE filed a notice pursuant to SEC Rule 19h-1 recommending approval. In 2000 the SEC issued an Order ("2000 Order") approving X in a supervisory capacity with Firm 4.

We are not aware of any other regulatory or disciplinary actions taken against X.

The SEC's 2000 Order Approving X's Association With Firm 4. The SEC's 2000 Order approving the association of X with Firm 4 enumerated 10 terms and conditions. The Sponsoring Firm has agreed to comply with terms and conditions that are similar in all material respects to those set forth in the Commission's 2000 Order, with two exceptions. These exceptions require us to submit this SEC Rule 19h-1 notice. First, Item (4) of the Commission's 2000 Order, which states: "X will not have any ownership interest in Firm 4," is not included. The Sponsoring Firm has represented that X currently holds an ownership interest in the Sponsoring Firm through his direct 4.36% ownership interest in Firm 5, the parent company of

² The activities of MM and other Firm 1 employees led to the institution of numerous civil enforcement actions and criminal proceedings. As a result of some of these proceedings, MM was convicted, in 1990, of criminal violations involving securities transactions ([case redacted]). MM also was barred by the Commission in 1991 from association with the securities industry. [Case Redacted].

the Sponsoring Firm, and an additional 1.77% interest held in his IRA Account. The Sponsoring Firm also has represented that X's combined ownership interest (currently 6.13%) will increase slowly during the next six months to one year, but will not increase to more than 10% of the outstanding common stock of the Sponsoring Firm. The Sponsoring Firm also represents that X's interest will not be increased to constitute a controlling interest in the future and that the Firm will seek prior approval of any proposed increase in X's interest above 10%.

Second, Item (2) of the Commission's 2000 Order provides, in part, that "X will supervise small subgroups of the Corporate Finance Department comprised of investment banking professionals, but will not head the entire department." The Sponsoring Firm proposes to have X serve as a Managing Director and Co-Head of the Firm's Corporate Finance Department with RB, another Managing Director of the Firm. RB is based in the Firm's State 1 office, and X will be based in New York. We do not believe that X's functioning as Co-Head of Corporate Finance presents a risk to investors or impairs the Firm's ability to supervise him effectively since the Firm has agreed that X will be supervised on a day-to-day basis by Proposed Supervisor 1 or Proposed Supervisor 2, both Managing Directors at the Firm.

In its Application, the Sponsoring Firm represents that:

1. X has not been the subject of any disciplinary action since the effective date of the SEC's 1993 Order. He has also complied fully with the terms of the 1993 Order.
2. X will function at the Sponsoring Firm in a supervisory capacity, directing and overseeing investment-banking professionals, and he will report to Proposed Supervisor 1 and Proposed Supervisor 2. He will be a Managing Director of the Firm, but not CEO, President or Chairperson. X will act as Co-Head of the Sponsoring Firm's Corporate Finance Department with RB, a Managing Director of the Sponsoring Firm.
3. X will not handle securities accounts for retail or institutional clients, or supervise individuals who are handling such accounts. X will not conduct proprietary trading for the Sponsoring Firm, or supervise individuals who are conducting such trading.
4. X will be supervised by the Proposed Supervisor 1, who will be the primary responsible supervisor. The Proposed Supervisor 1 will be assisted by the Proposed Supervisor 2. Both the Proposed Supervisor 1 and the Proposed Supervisor 2 are Managing Directors at the Sponsoring Firm.
5. As soon as possible after X assumes a supervisory role, he will meet in person with the Proposed Supervisor 1 and the Proposed Supervisor 2 to review the Firm's supervisory policies and procedures and X's duties and responsibilities relating to those policies and procedures. A written record of this meeting will be maintained.

6. The Proposed Supervisor 1 will oversee the day-to-day performance of X's supervisory responsibilities. The Proposed Supervisor 1 acknowledges that he, as X's primary supervisor, is ultimately responsible for the supervision of X. The Proposed Supervisor 2 will assist when the Proposed Supervisor 1 is out of town or unavailable. On a weekly basis, the Proposed Supervisor 1 will speak with X to discuss any business- or compliance-related issues that have arisen in the course of X performing supervisory duties. A written record of these meetings will be maintained.
7. On a quarterly basis, the Proposed Supervisor 1 will meet with X to review more extensively the matters over which X functions in a supervisory capacity and any business- or compliance-related issues that arise in the course of X performing his supervisory duties. A written record of these meetings will be maintained.
8. X will not assume any of the duties of the positions of Chairman, Chief Executive Officer or President of the Sponsoring Firm. X may, however, participate in the Sponsoring Firm management team, if any, which oversees the State 2 operations of the Firm. Absent extraordinary circumstances, the Proposed Supervisor 1 and/or the Proposed Supervisor 2 will be present for the management team meetings, telephone conferences, and other such events in which X participates. If X becomes a member of the management team, the Proposed Supervisor 1 will review X's performance in that function with him at the same time that they discuss X's performance of his other supervisory duties.
9. X's current ownership interest in Firm 5, the parent of the Sponsoring Firm, consisting of a direct 4.36% interest and a 1.77% (combined 6.13%) interest held in X's IRA Account, does not currently represent a controlling interest. X's combined ownership interest will increase slowly during the next six months to one year, but this increase will not exceed 10% of the outstanding common stock of the Sponsoring Firm. X's ownership interest will not be increased in the future to represent a controlling interest.
10. The Sponsoring Firm will continue this supervisory plan until it applies to the NASD for approval of a modified supervisory structure, including any proposed increase in X's ownership interest above 10%, and the Commission issues an order consistent with that request.

Other than the aforementioned Items (2) and (4), we find, after reasonable inquiry, that the terms and conditions of the proposed employment are consistent in all material respects with those approved by the Commission in 2000. Our finding is conditioned on the Firm's representation that X's association will be subject to those terms and conditions.

The Firm. The Sponsoring Firm became a member of the Association in 1982. The Firm has two offices of supervisory jurisdiction (State 1 and State 2) and one branch office (State 1).

The Firm employs 10 registered persons, including four general securities principals and one financial and operations principal. The Firm's business consists of investment banking and research, direct participation programs, private placements, and limited partnership offerings on a "best efforts" or an "all or none" basis.

The Firm's 1999 routine examination resulted in a Letter of Caution ("LOC"), for violation of NASD Rule 3010(a)(1) concerning the establishment and maintenance of written procedures. We, like Member Regulation, have reviewed the LOC and we are satisfied that the Firm has responded to the deficiencies identified. The Firm has no formal disciplinary history.

Discussion

After careful review of the entire record in this matter, we have determined to approve the Application of the Sponsoring Firm to permit X to act as a supervising general securities principal.

In reaching our determination to approve X's association with the Sponsoring Firm, we have considered that when the Commission issued its 1993 Order, the Commission was charged with weighing the requirements of the public interest in light of X's misconduct. The Commission concluded that it was appropriate to bar X from association in a supervisory capacity with any broker or dealer, with the proviso that he could seek to be employed again in such a capacity in three years. Accordingly, in reviewing the Sponsoring Firm's Application sponsoring X's association, NASD Regulation must follow the guidance set forth by the Commission in Paul Van Dusen, 47 S.E.C. 668 (1981) and Arthur H. Ross, 50 S.E.C. 1082 (1992). Van Dusen and Ross require that this application must be granted absent other acts of misconduct or circumstances of record bearing adversely on the Firm's or X's fitness to continue in the securities industry. Accordingly, we have focused our inquiry on any "other [intervening] misconduct in which the applicant may have engaged, the nature and disciplinary history of a prospective employer, and the supervision to be accorded the applicant." Van Dusen, at 671.

The record shows that X has not engaged in any misconduct since the entry of the Commission's Order in 1993. We also note that X's association with his prior firm, Firm 4, in the capacity of supervising principal did not produce any reportable events in CRD. The supervisory controls that the Sponsoring Firm has agreed to implement – including the day-to-day oversight of X's performance of his supervisory responsibilities – are thorough, well-structured, and adequate to govern X's activities. Moreover, the Firm has no formal disciplinary history since its inception in 1982.

We do not believe that removing the condition in the Commission's 2000 Order regarding X's not having an ownership interest in the broker-dealer would detract from the adequacy of the overall supervisory scheme governing X's association with the Firm. Our conclusion is based on the Firm's representations that X's current 6.13% combined ownership interest is not a controlling interest. The Sponsoring Firm also represents that X's combined ownership interest will increase slowly during the next six months to one year, but it will not exceed 10% of the

outstanding common stock of the Sponsoring Firm. Moreover, as stated previously, the Firm represents that X's ownership interest will not be increased to constitute a controlling interest in the future, and that the Firm must seek prior approval of any proposed increase in X's ownership interest above 10%.

Likewise, we do not believe that modifying the limitation to permit X to act as Co-Head of the Corporate Finance Department would impair the adequacy of the Firm's supervision of X. In making this determination, we have considered the fact that Item (2) of the Commission's 2000 Order approving X's association with Firm 4 in a supervisory capacity permitted him to "direct and oversee both individual investment banking professionals and teams of such professionals who are working on corporate finance and investment banking matters." Moreover, X's record since 1993 does not include any disciplinary matters or other intervening misconduct arising out of corporate finance or any other area.

The proposed primary responsible supervisor for X, the Proposed Supervisor 1, is a Managing Director of the Firm, and he appears to be fully capable of supervising X's activities according to the agreed upon terms and conditions. The Proposed Supervisor 1 has been in the securities industry for 35 years and he has no disciplinary history. The proposed contingent supervisor, the Proposed Supervisor 2, has been in the securities industry for 45 years and has no disciplinary history. Based on the foregoing, we conclude that the public interest would not be harmed by the removal of the previously imposed conditions (specifically, those concerning X's ownership interest and acting as Co-Head of the Corporate Finance Department) and the approval of the Sponsoring Firm's Application for X to associate as a supervising general securities principal.

NASD Regulation 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; 3) the Firm has represented that X and the Proposed Supervisor 1 and the Proposed Supervisor 2 are not related by blood or marriage; and 4) the Firm does not employ any other statutorily disqualified individuals.

Accordingly, in conformity with the provisions of SEC Rule 19h-1, the association of X as a supervising general securities principal, according to the terms and conditions set forth herein, will become effective upon the issuance of an order by the Commission that it will not institute proceedings pursuant to Section 15A(g)(2) of the Act. The NASD is also seeking relief under Section 19(h) of the Act. This Notice shall serve as an application for such an order.

On Behalf of the National Adjudicatory Council,

Barbara Z. Sweeney
Senior Vice President and Corporate Secretary