

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
NASD

In the Matter of the Association of

X

as a

General Securities Representative

with

The Sponsoring Firm

Redacted Decision

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

Decision No. SD06005

Date: 2006

I. Introduction

On February 3, 2005, the Sponsoring Firm¹ (or “the Firm”) filed a Membership Continuance Application (“MC-400” or “the Application”) with NASD’s Department of Registration and Disclosure, seeking to permit X, a person subject to a statutory disqualification, to associate with the Firm as a general securities representative.² A hearing was not held in this matter. Rather, pursuant to NASD Procedural Rule 9523, NASD’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 association with the Sponsoring Firm pursuant to the terms and conditions set forth below.

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

II. The Statutorily Disqualifying Event

X is statutorily disqualified because in September 1999, he pled guilty in a State 1 court to a felony charge of driving while intoxicated (“DWI”). The 1999 DWI was a felony because X had been convicted twice before in State 1 for misdemeanor DWI offenses in April 1993, and

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 This Application was not complete until X requalified by passing the general securities representative examination (Series 7) in January 2006.

May 1996.³ For the 1999 felony, the court sentenced X to one year in jail and ordered him to pay a \$2,655 fine. X served eight months in jail and was granted the remaining time off for good behavior.

III. Background Information

A. X

X first registered in the securities industry as a general securities representative in May 1983, and he requalified in that capacity in January 2006. He previously qualified as a general securities principal, a financial and operations principal, and a municipal securities principal in 1985. These registrations have expired due to inactivity, and X does not seek to be registered at this time in any capacity other than as a general securities representative.

Four different firms employed X between 1982 and 1999. Since becoming statutorily disqualified in October 1999, X has sold life insurance policies and has been involved with several real estate developments.

X's background includes the two DWI misdemeanor convictions (in 1993 and 1996) mentioned previously. In addition, in 1985 X was a named party in a civil action against him and others, alleging that they had solicited customers of a former employer. This action was discontinued with prejudice in May 1986.

B. The Firm

The Sponsoring Firm became an NASD member in February 2001. As of the fourth quarter of 2005, the Sponsoring Firm has five offices of supervisory jurisdiction ("OSJs") and seven branch offices, and employs 42 registered representatives and 18 registered principals. The Firm is engaged in transactions involving mutual funds, variable annuities, equities, municipal securities, and options.

NASD conducted routine examinations of the Sponsoring Firm in 2001 and 2003. NASD filed the 2001 examination without action. The 2003 routine examination led to a compliance conference in September 2003, during which NASD and the Firm discussed several deficiencies.

In 2005, NASD conducted an alternative municipal examination of the Firm, and issued a Letter of Caution ("LOC") dated 2005. The LOC cited the Firm for a registration violation, a written supervisory procedures violation, and a violation of an MSRB rule.

³ The court sentenced X to three-years' probation for each of the 1993 and 1996 misdemeanor convictions. X successfully completed these probations.

The record shows no additional customer complaints, regulatory proceedings, or arbitrations against the Firm.

IV. X's Proposed Business Activities and Supervision

The Firm proposes to employ X as a general securities representative in its branch office in State 1, which is also an OSJ. The Sponsoring Firm will compensate X on a commissions-only basis.

The Sponsoring Firm proposes that the Proposed Supervisor will be X's primary, responsible supervisor. The Proposed Supervisor has been employed by the Sponsoring Firm since June 2000 and is the Firm's president. He has been employed in the securities industry since 1996, becoming registered as a general securities representative in October 1996 and a general securities principal in June 1998.

The Proposed Supervisor has no disciplinary or regulatory proceedings, complaints, or arbitrations against him.

V. Member Regulation's Recommendation

Member Regulation recommends that the Application be approved, subject to the specified terms and conditions of heightened supervision over X set forth below.

VI. Discussion

After carefully reviewing the entire record in this matter, we approve the Firm's Application 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 deal with the public in a manner that comports with NASD'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

⁴ See *Frank Kufrovich*, Exchange Act Rel. No. 45437, 2002 SEC LEXIS 357, at *16 (Feb. 13, 2002) (upholding NASD's denial of a statutory disqualification applicant who had committed non-securities related felonies "based upon the totality of the circumstances" and NASD's explanation of the bases for its conclusion that the applicant would present an unreasonable risk of harm to the market or investors).

industry 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 occurred in 1999, almost seven years ago, and that he has not committed any intervening criminal misconduct. We also recognize that X was punished for his felony offense by a State 1 court, which imprisoned him for one year and fined him \$2,655. X completed his jail sentence and paid his fine. X also states that after his felony conviction in 1999, he completed the required substance abuse evaluation and has been involved with Alcoholics Anonymous ever since. Moreover, X was employed in the securities industry from 1982 until 1999, and has an unblemished regulatory record. He timely disclosed his felony conviction to his then employer in October 1999 on a Uniform Application for Securities Industry Registration or Transfer ("Form U4").

The Proposed Supervisor is well qualified and has worked in the securities industry since 1996 with no disciplinary history. As for the Firm, although it is a relatively new member of NASD, we find that its short tenure and informal disciplinary history will not negatively affect its ability to supervise X. The Sponsoring Firm has agreed to a comprehensive supervisory plan to ensure that it will be able to maintain future compliance with the plan of heightened supervision for X.

In sum, given the nature of X's felony offense, his timely disclosure of that offense, and the fact that he previously has been successfully employed in the securities industry, we conclude that the following supervisory conditions agreed to by the Sponsoring Firm will provide the enhanced compliance measures necessary to monitor X's activities:⁵

1. The Sponsoring Firm will amend its written supervisory procedures 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 capacity;
4. *The Proposed Supervisor will supervise X on-site. When the Proposed Supervisor is out of the office, another principal on-site will perform the necessary review for X, and when the Proposed Supervisor returns to the office, he will complete his review in a timely fashion and evidence his review by counter-signing the documents;
5. The Proposed Supervisor will review all of X's new account forms prior to opening the accounts and will evidence his review by signing the forms;

⁵ The items denoted by an asterisk are heightened supervisory conditions and not standard operating procedures of the Firm.

6. *The Proposed Supervisor will review and approve X's order tickets on the day they are entered and will evidence his review by initialing the order tickets;
7. *The Proposed Supervisor will review X's outgoing correspondence before it is sent, and his incoming written correspondence when it is received and prior to issuance to X;
8. All complaints pertaining to X, whether verbal or written, will be immediately referred to the Proposed Supervisor for review, and then to the Compliance Department. The Proposed Supervisor will prepare a memorandum to the file as to what measures he took to investigate the merits of the complaint (e.g., contact with the customer) and the resolution of the matter. The Proposed Supervisor will keep documents pertaining to these complaints segregated for ease of review;
9. *For the duration of X's statutory disqualification, the Sponsoring Firm must obtain prior approval from Member Regulation if it wishes to change X's responsible supervisor from the Proposed Supervisor to another person; and
10. *The Proposed Supervisor must certify quarterly (March 31st, June 30th, September 30th, and December 31st) to the Compliance Department of the Sponsoring Firm that X and the Proposed Supervisor are in compliance with all of the above conditions of heightened supervision to be accorded X.

NASD 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 the Proposed Supervisor and X are not related by blood or marriage; and 4) the Firm currently employs no other statutorily disqualified individuals.

Accordingly, we approve the Sponsoring Firm's Application to employ X as a general securities representative. In conformity with the provisions of SEC Rule 19h-1, the association of X as a general securities representative with the 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,

Barbara Z. Sweeney
Senior Vice President and Corporate Secretary