

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

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

Decision No. SD05004

Dated: 2005

On September 3, 2004, the Sponsoring Firm¹ (or "the Firm") submitted a Membership Continuance Application ("MC-400" or "the Application") seeking to permit X, a person subject to a statutory disqualification, to associate with the Firm as a general securities representative. A hearing was not held in this matter. Rather, pursuant to NASD Procedural Rule 9523, NASD's Department of Member Regulation ("Member Regulation") recommended to the Chair of the Statutory Disqualification Committee that X's proposed association with the Sponsoring Firm be approved pursuant to the terms and conditions set forth below.

For the reasons explained below, we approve the Sponsoring Firm's Application.

A. X's Statutorily Disqualifying Event

X is statutorily disqualified because NASD imposed a conditional bar in all capacities on him in February 1978. NASD found that X misappropriated the proceeds of a \$1,169 check issued on a customer's life insurance policy. Further, NASD found that X retained the proceeds of a \$600 money order drawn by another customer and made payable to X, although such funds were to be applied as a premium payment on the customer's life insurance policy. The NASD conditional bar provided, however, that X could apply for reinstatement as a registered representative after a "reasonable period of time" and "upon a showing of adequate supervision."

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.

B. Background Information

1. X

X previously has requested and has been approved to re-enter the securities industry in different capacities. NASD filed a Notice Pursuant to SEC Rule 19h-1 with the Commission in April 1981, which recommended that X be approved for association as a registered representative with Firm 1. The Commission approved this association in May 1981. Thereafter, NASD also recommended, and the Commission acknowledged, X to be an investment company/variable contracts representative with Firm 2 in 1985; an investment company/variable contracts representative with Firm 3 in 1988; and an investment company/variable contracts representative with the Sponsoring Firm in 2002.

X currently is registered with the Sponsoring Firm as an investment company/variable contracts representative (Series 6), and as a uniform securities agent state law (Series 63). He qualified to be a general securities representative (Series 7) in October 2004.

NASD conducted two statutory disqualification examinations of the Sponsoring Firm and X in 2002 and 2003; both were filed without action ("FWA"). NASD commenced another SD examination of the Firm and X in 2004, which it has not yet finalized.

We are not aware of any additional regulatory actions against X.

2. The Firm

The Sponsoring Firm became an NASD member in June of 1969. The Firm has 38 offices of supervisory jurisdiction ("OSJs") and 121 branch offices. It employs 3,604 registered representatives and 491 registered principals. The Firm is a retail broker-dealer and it is actively engaged in the sale of general securities, mutual funds, and variable contracts.

In December 2000, the State 1 Division of Securities fined the Firm \$50,000 for failing to renew State 1 state registrations for three investment adviser representatives from 1998 to the present.

In October 2003, the Securities Division for State 2 accepted a Letter of Acceptance, Waiver and Consent ("AWC") from the Firm and fined it \$5,000 for allowing a registered representative to conduct business from her residence in State 2, without registering the location as a branch.

NASD commenced its most recent routine examination of the Sponsoring Firm in October 2003. This examination is not yet complete.

In addition to X, since 1998 the Sponsoring Firm has employed one other statutorily disqualified individual, Employee 1. Employee 1 is statutorily disqualified due to a 1978 Commission Order of Permanent Injunction.

We are not aware of any regulatory actions against the Firm.

C. X's Proposed Business Activities and Supervision

The Firm proposes to employ X as a general securities representative in its branch office in State 3, where X is currently registered as an investment company/variable contracts representative.

The Sponsoring Firm also proposes that the Proposed Supervisor will be X's primary, responsible supervisor. The Proposed Supervisor has been employed with the Sponsoring Firm since April 1999 and is a general securities principal in the Firm's State 3 office, where X will be employed. The Proposed Supervisor received his general securities representative registration (Series 7) in February 1998, his general securities principal registration (Series 24) in October 2003, and his uniform securities agent state law (Series 63) in April 1998. He has been employed in the securities industry since September 1997.

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

D. 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.

In submitting its Application pursuant to NASD Procedural Rule 9523, the Sponsoring Firm has consented to the imposition of the following terms and conditions of heightened supervision for X.*² The Firm will also supervise X through its regular branch office supervisory procedures, which require daily review of correspondence, new accounts, and order tickets.

1. The Sponsoring Firm will amend its written supervisory procedures to state that the Proposed Supervisor is the primary supervisor responsible for X. Employee 2, the Firm's Managing Director, will meet with the Proposed Supervisor on a monthly basis for a status report on X's activities;
2. *X will not maintain discretionary accounts;
3. X will not act in a supervisory capacity;

² The Firm has indicated that those supervisory terms and conditions denoted with an asterisk (*) are special for X and not required of the Firm's other registered representatives.

4. X will be supervised on-site by the Proposed Supervisor on a daily basis. X, the Proposed Supervisor, and Employee 2 will meet monthly to discuss any concerns or findings;
5. *The Proposed Supervisor will review all of X's new account forms on a weekly basis, and will evidence his review by signing his signature to the forms;
6. *The Proposed Supervisor will review X's order tickets on a weekly basis;
7. *The Proposed Supervisor will review X's outgoing and incoming written correspondence on a weekly basis;
8. *The Firm will immediately refer all complaints pertaining to X, whether verbal or written, to the Proposed Supervisor for review, and then to the Firm's 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 all 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 Firm's Compliance Department that he and X are complying with all of the above conditions of heightened supervision.

E. 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 heightened supervisory terms and conditions set forth above.

In reaching our determination, we have considered that X's statutorily disqualifying event, while very serious, occurred nearly 30 years ago. Moreover, NASD specifically stated in its 1978 decision that X could reapply for reinstatement as a registered representative "after a reasonable period of time" and "upon a showing of adequate supervision." X has successfully been reinstated in the securities industry since 1981, in various positions with different firms, and he has not engaged in any intervening misconduct.

We also note that NASD has conducted several statutory disqualification examinations of X during the last two and one-half years, while he has been associated with the Sponsoring Firm as an investment company/variable contracts representative. NASD filed all of these examinations without action.

Further, the proposed supervisor is well qualified and has no disciplinary history. The Firm has been an NASD member since 1969, and it does not have an extensive regulatory history. The Sponsoring Firm has demonstrated its ability to supervise X in the past, and we find

that it 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.

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 X, the Proposed Supervisor and Employee 2 are not related by blood or marriage; and 4) in addition to X, the Firm currently employs one other statutorily disqualified individual, Employee 1.

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