

PLEASE NOTE THE LATER CASE HISTORY OF THIS DECISION FOLLOWING THE TEXT OF THE DECISION.

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD

In the Matter of
the Continued 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. SD04009

Date: 2004

On August 26, 2003, the Sponsoring Firm¹ ("the Firm") filed a Membership Continuance Application ("MC-400" or "the Application") seeking to lift the heightened terms and conditions of employment currently imposed on X, a person subject to a statutory disqualification. X is currently registered as a general securities representative with the Firm. A hearing was not held in this matter. Rather, pursuant to NASD Procedural Rule 9523, NASD's Department of Member Regulation ("Member Regulation" or the "Department") recommended to the Chair of the Statutory Disqualification Committee that X's continued association with the Firm, without a plan of heightened supervision, be approved.

A. Basis for Statutory Disqualification

X is subject to a statutory disqualification because the Securities and Exchange Commission entered an order, dated March 1974, barring him from association with any broker or dealer, investment adviser, investment company or municipal securities dealer, with the provision that after January 1975, he could apply for permission to become associated in a non-supervisory position ("the SEC Order"). X was found to have willfully violated Sections 17(a) of the Securities Act of 1933 ("Securities Act"), as well as Sections 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rules 10b-5 and 10b-6 thereunder, and Sections 17(a) and 48(a) of the Investment Act of 1940. The SEC's Order subjects X to a statutory disqualification as defined by NASD By-Laws, Art. III, Sec. 4(a) and Section 3(a)(39)(A) of the Exchange Act.

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 was first registered in the securities industry in August 1957 as a general securities representative (Series 1 a/k/a Series 7). He subsequently qualified as a uniform securities agent (Series 63) in March 1985 and as a general securities principal (Series 24) in August 1988.

The SEC first approved an application for X to re-enter the securities industry with the Sponsoring Firm in 1984. NASD subsequently approved an application in 1989, pursuant to Rule 19h-1 Short Form Notification, for X to associate with Firm 1. After his association with Firm 1, NASD approved an application in 1992 for X to return to the Sponsoring Firm as a registered representative.

X has been the subject of one customer complaint, received in March 1974. The customer alleged that X purchased and sold stocks on new issues through nameless accounts. The complaint resulted in litigation and was settled with a monetary compensation award of \$160,000. X did not contribute to the settlement.

Since 1992, all of NASD's statutory disqualification examinations of X have been filed without action ("FWA"). We are unaware of any other regulatory actions taken against X.

2. The Firm

The Sponsoring Firm became an NASD member in April 1971. The Firm has three offices of supervisory jurisdiction ("OSJ") and 44 branch offices. It employs 66 registered principals, 145 registered representatives, and 85 employees. The Firm has represented that it acts as a broker/dealer, mutual fund retailer, option writer, and underwriter.

NASD's most recent branch examination of the Firm, conducted in 2003, was filed without action ("FWA"). NASD also conducted branch examinations in 2001 and 2002, both of which resulted in the issuance of Letters of Caution ("LOC"). Following the 2001 examination, NASD cited the Firm for a violation because certain documents did not evidence supervisory review or approval. Subsequent to the 2002 examination, NASD cited the Firm for violations because its written supervisory procedures failed to address the establishment and maintenance of a supervisory system designed for the identification and review of concentrated positions in customer accounts.

NASD's last five routine examinations of the Sponsoring Firm also resulted in the issuance of LOCs. Following the 2000 examination, NASD cited the Firm for violations because its written supervisory procedures did not address all areas of its operations; the Firm received checks that were improperly endorsed to the Firm and customer checks were not promptly transmitted to the clearing firm by noon on the following business day; and the Firm failed to report municipal trading transactions properly. The 2001 LOC noted an overstatement of the

Firm's net capital position; a failure of the Firm's written supervisory procedures to detail how the branch office inspection cycle was determined and how often the branch office inspections would be conducted; a transaction reporting violation; and a Small Order Execution System ("SOES") reporting violation.

In the Firm's 2002 LOC, NASD noted numerous violations. First, NASD cited the Firm because it failed to provide its newly hired representatives with a copy of its arbitration disclosure document. Second, the Firm inaccurately computed its net capital position. Third, the Sponsoring Firm's written supervisory procedures failed to adequately address the Firm's obligation to contact other broker/dealers when a registered representative of their firm opens an account at the Sponsoring Firm. Fourth, the Firm's markups on eight of 59 municipal transactions did not adhere to NASD guidelines. Fifth, the Firm was found to have violated NASD rules regarding short trading deficiencies. Finally, the Firm's markups on corporate debt transactions did not adhere to NASD guidelines.

The 2003 LOC cited the Firm because its written supervisory procedures failed to address the establishment and maintenance of a supervisory system designed for compliance with NASD rules. Second, NASD noted that the Firm was unable to evidence that it met adequate review and compliance requirements. Third, NASD noted that the Firm permitted a registered representative to generate commissions during his inactive status period. Fourth, the Firm did not show evidence that it had promptly approved 31 discretionary account transactions. Fifth, 14 out of 60 customer account records at the Firm did not contain the customer's tax status. Finally, two of 20 customer checks were made payable to the Firm instead of the clearing firm.

The Sponsoring Firm has also been the subject of one recent disciplinary action by NASD's Market Surveillance Committee ("the Committee"), which resulted in the Firm's submission of a March 1996 letter of Acceptance, Waiver and Consent ("AWC"). The AWC stated that the Firm entered orders on seven occasions on an agency basis into SOES for securities for which it was a registered market maker. The Sponsoring Firm was fined \$1,200.

The Firm has represented that it is currently involved in two outstanding litigation matters with regard to the securities industry. The pending matters are related to customer complaints that resulted in arbitrations.

The record does not show any other complaints, disciplinary proceedings, or arbitrations against the Firm. The Sponsoring Firm is not a member of any other self-regulatory organization.

C. X's Proposed Business Activities and Supervision

The Sponsoring Firm proposes that X will continue to be employed in one of the Firm's branch offices, located in State 1. X will be compensated by earned commissions.

The Firm proposes that the Proposed Supervisor will be X's primary, responsible supervisor. The Proposed Supervisor currently serves as president of the Sponsoring Firm and has been employed with the Firm since September 1982. The Proposed Supervisor has been a

registered principal (Series 24) since February 1994. He has also been registered as a general securities representative (Series 7) since October 1982; a uniform securities agent (Series 63) since December 1984; and a municipal funds securities limited principal – equity trader (Series 51) since May 2003.

We know of no disciplinary or regulatory proceedings, complaints, or arbitrations against the Proposed Supervisor.

The Proposed Supervisor is currently supervising X under the following conditions that were established in the SEC's approval notice dated April 1984:

1. The designated supervisor will supervise X on a daily basis;
2. The designated supervisor will review X's securities transactions on a daily basis;
3. A registered options principal will review X's options transactions; and
4. The Sponsoring Firm will forbid the use of nominee accounts by clients of X and his accounts will be reviewed periodically to ensure that no nominee accounts are listed.

D. Discussion

After carefully reviewing the entire record in this matter, we approve the Firm's Application to lift the heightened supervisory plan for X.

In reviewing this Application, we have considered the fact that X's disqualifying event occurred nearly 30 years ago. During that time, with the exception of one customer complaint, X has not had any intervening misconduct. We further note that all of the NASD statutory disqualification examinations conducted of X since 1992 have been filed without action. In light of these factors, we find that it is no longer necessary to require heightened supervision for X.

We also reviewed the disciplinary history of the Proposed Supervisor,. The Proposed Supervisor has no regulatory disciplinary history and he has been employed with the Firm for nearly 22 years, without incident.

Finally, although the record reveals that the Firm has been the subject of several regulatory actions, we find that the Firm's disciplinary history does not raise substantive concerns about its business activities or its compliance system.

NASD certifies that: 1) X meets all applicable requirements for the proposed employment; and 2) X and the Proposed Supervisor have represented that they are not related by blood or marriage.

Accordingly, in conformity with the provisions of SEC Rule 19h-1, the continued association of X as a general securities representative with the Sponsoring Firm, without a plan

of heightened supervision, will become effective upon the issuance of an order by the SEC that it will not institute proceedings pursuant to Section 15(b) of the Exchange Act and that it will not direct otherwise pursuant to Section 15A(g)(2) of the Exchange 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

LATER CASE HISTORY:

In 2005, after issuance of this NAC decision, but before the SEC approved this association, the Firm withdrew its MC-400 application. The SEC issued an order withdrawing this matter in 2006.