

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

<p>In the Matter of the Association of</p> <p style="margin-left: 40px;">X</p> <p style="margin-left: 40px;">as a</p> <p>General Securities Representative</p> <p style="margin-left: 40px;">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. SD01019

On June 7, 2001, the Sponsoring Firm¹ (or "the Firm") completed an MC-400 application ("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, 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 Firm consented to the imposition of the below terms and conditions in its MC-400 Application.

X's Statutorily Disqualifying Event. In 1993, X was arrested for the felony offense of operating a motor vehicle while under the influence of alcohol in State 1. X pleaded guilty in 1994 and was sentenced to 15 days of incarceration, five years' probation, a fine of \$1,000, participation in the Recidivist Alcohol Probationer Program, and revocation of his driver's license.² X was discharged from probation in 1997.

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 The record shows that X promptly reported both his arrest and subsequent conviction to his then employer firm. That firm apparently did not appropriately update X's Form U-4 to reflect the incident, which is why the MC-400 process did not begin at that time. We find that although X is ultimately considered to be responsible for ensuring that his employment and CRD records are correct, he did fully disclose the felony arrest and conviction and relied upon his then employer firm to complete the process.

X's Background. X took and passed the Series 7 (general securities representative) qualifications examination in July 1988 and the Series 63 (uniform securities agent) qualifications examination in May 1988. X reported that he was registered at various firms between 1988 and the present.

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

The Firm. The Sponsoring Firm became a member of the Association in 1968. The Firm has 19 offices of supervisory jurisdiction and six branch offices. The Firm employs 195 registered principals and 679 registered representatives. The Sponsoring Firm is a full service broker-dealer.

The Firm's 2001 routine examination has been scheduled, but it has not yet commenced.

The Firm's 1999 routine examination resulted in a Letter of Caution ("LOC"). The deficiencies noted were failure to comply with NASD Conduct Rules 3010(e) and 3110(c)(1)(B), Membership and Registration Rule 1120(b)(1), and SEC Rules 17f-2(d)(1) and 17a-3(a)(ii).³ The Firm also was issued LOCs in 2000 and 1997. The deficiency noted in the 2000 LOC was NASD Conduct Rule 3070(c). The 1997 LOC noted deficiencies with respect to NASD Procedural Rule 1021(a), Conduct Rule 3010, and SEC Rule 15b3-1.

In 1992, the State 2 Division of Securities & Investor Protection alleged that the Sponsoring Firm conducted business through a branch office prior to approval of its application for branch office registration, and that the Firm also conducted business through certain employees prior to their registration as associated persons with State 2. This matter was resolved by State 2 entering into a stipulation and consent agreement with the Sponsoring Firm whereby State 2 agreed to approve an application to register a State 2 branch office and the Sponsoring Firm agreed to revise its internal procedures to comply with the terms of the consent agreement. The Firm also agreed to the entry of a final order incorporating the stipulation and consent agreement and to reimburse the department for expenses incurred of \$30,195.

We are not aware of any other complaints, disciplinary proceedings, or arbitrations against the Sponsoring Firm.

X's Proposed Business Activities and Supervision. X will work at the State 3 branch of Firm 1, a division of the Sponsoring Firm. The office is located in State 3. X will act in the capacity of a financial consultant. He will be compensated based on a formula of net assets accumulated, management fees on existing assets, and sales charges on annuities and mutual funds.

³ Due to the events of September 11, 2001, the records of the Association's District 10 New York office were inaccessible and, therefore, staff was unable to secure copies of the Letters of Caution and the Firm's responses. We are, therefore, relying upon the statement offered by the Firm in its MC-400 Application.

The Proposed Supervisor will be X's primary, responsible supervisor. The Proposed Supervisor has been a general securities representative (Series 1) since 1973 and a general securities principal (Series 24) since 2001. She has been registered as a uniform securities agent (Series 63) since 1979 and a uniform investment adviser (Series 65) since 1994. The Proposed Supervisor has no regulatory disciplinary history. She has been the supervisor of the Firm 1 branch of the Sponsoring Firm since 1991.

The following conditions and restrictions are either standard operating procedures for all of the Sponsoring Firm registered persons, or were proposed by the Firm in its MC-400 Application and they will govern X's association with the Firm as a general securities representative:

1. X will be located in the same office as the Proposed Supervisor. X and the Proposed Supervisor will be seated in close physical proximity of each other in the office.
2. X will not act in a supervisory capacity and will not maintain discretionary accounts.
3. X will not accept cash from clients under any circumstances and no checks will be accepted other than those made out to either the Sponsoring Firm or a particular fund.
4. The Proposed Supervisor will monitor X's business transactions on a daily basis for client suitability and cross-check each sale for valid securities registrations and insurance licensing. AD, President of Firm 1 and Executive Vice-President of the Sponsoring Firm will also review X's business transactions on a quarterly basis.
5. Staff meetings will be held, at least monthly, to review new sales, service, compliance issues and policies. The representatives' sales presentations are formally critiqued and documented at least quarterly.
6. X will not be permitted to have a personal web page or create any type of advertising or sales literature.
7. All the Sponsoring Firm representatives receive a handbook of compliance guidelines and must acknowledge receipt and compliance with the policies outlined. The representatives are also required to participate in an annual compliance interview during which appropriate compliance topics are discussed.

8. X's incoming and outgoing correspondence will be reviewed by two representatives and approved by a supervisor prior to distribution.
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.

Discussion. After careful review of the entire record in this matter, we conclude that the Sponsoring Firm's Application to employ X as a general securities representative should be approved subject to the terms and conditions set forth above.

In reviewing this type of application, NASD Regulation considers 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. For the reasons set forth below, we find that X does not present an unreasonable risk of harm to the market or investors.

While the misconduct that resulted in X's disqualification was serious, the activity is not securities, financial or dishonesty-related. The disqualifying event occurred more than eight years ago and there has been no intervening misconduct since X's conviction in 1994. X has no regulatory or other disciplinary history in his past and the Firm has proposed appropriate supervision for X.

Moreover, the Proposed Supervisor has significant industry and supervisory experience and has no regulatory disciplinary history. The Firm has no significant disciplinary history given its longstanding association with the NASD. Accordingly, we conclude, after careful review, that it would not endanger the public interest to permit X to enter the securities business and that his employment in the industry would not create an unreasonable risk of harm to the market or investors.

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) X and the Proposed Supervisor have represented that they 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 registration of X as a general securities representative with the Sponsoring Firm will become effective, unless otherwise notified by the Commission, within 30 days of receipt of this decision.

On Behalf of the National Adjudicatory Council,

Jeffrey S. Holik
Vice President and Acting General Counsel