

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

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. SD01021

On September 24, 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.

X's Statutorily Disqualifying Event. In 1994, X was convicted of cultivating marijuana. The offense is a felony in State 1 in violation of Section 11378 of the Health and Safety Code. X was fined \$1,000 and given three years' probation. In 1995, the probation was terminated upon X's payment in full of the \$1,000 fine. In 1996, X received an order from State 1 Superior Court, which set aside the conviction.

X had disclosed the felony conviction on his original Uniform Application for Securities Industry Regulation or Transfer ("Form U-4") with another member firm, which was dated 1996, before the 1996 order to set aside the conviction was issued.² The Form U-4 disclosed that X had been charged and convicted of the felony. X remained at that firm until July 1998.

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 According to employment information on CRD/Public Disclosure X was not employed in the securities business from August 1994 to June 1996, when this Form U-4 was filed.

When X first registered in 1996, NASD Regulation did not consider a person to be "convicted" for the purposes of the NASD By-Laws if that person had his/her state law conviction set aside under State 1 Penal Code section 1203.4. When X's conviction was set aside in 1996, X was no longer considered to be a statutorily disqualified individual, and he did not need to go through the Membership Continuance process.

As of late 1997, NASD Regulation modified its policy with regard to expungements. Accordingly, NASD Regulation determined that if an expungement statute does not completely set aside all consequences of the conviction, the person remains subject to statutory disqualification. The State 1 statute relied upon by X is within this category; therefore, X is still subject to statutory disqualification due to the original 1994 conviction.

The existence of X's conviction came to CRD/Public Disclosure's attention again in 2001 when X sought to become employed with the Sponsoring Firm, and the Sponsoring Firm filed a Form U-4. The Form U-4, which was filed in August 2001, and amended in August 2001, disclosed both the charge and the conviction.

X's Background. X is registered as a Series 7 (general securities representative), Series 3 (national commodity futures), Series 22 (direct participation programs), and Series 63 (uniform securities agent state law). He has reported that he was registered at various firms from 1992 to the present.

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

The Sponsoring Firm: The Sponsoring Firm became a member of the Association in 1998.³ The Sponsoring Firm has one office of supervisory jurisdiction and no branch offices. The Sponsoring Firm employs three registered principals and six registered representatives. The Sponsoring Firm markets direct participation programs, mutual funds, and oil and gas contracts.

The Sponsoring Firm does not employ any other statutorily disqualified individuals, and it is not a member of any other self-regulatory organization. In addition, we are not aware of any complaints, disciplinary proceedings, or arbitrations against the Sponsoring Firm. There is no record of any cause exams, and none of the Sponsoring Firm's cycle exams has resulted in any action.

X's Proposed Business Activities and Supervision. X will work out of the Sponsoring Firm's home office located in State 1. He will work in the capacity of a registered representative and will have no supervisory responsibilities.

The Sponsoring Firm proposes that the Proposed Supervisor will be X's primary, responsible supervisor. The Proposed Supervisor is the president and a partial owner of the Sponsoring Firm. The Proposed Supervisor is registered as a Series 1 (national commodity

³ The Sponsoring Firm was formerly known as Firm 1. The name of the Firm was changed to the Sponsoring Firm in 2001.

futures), Series 7 (general securities representative), Series 22 (direct participation programs), Series 24 (general securities principal), Series 39 (direct participation programs principal), Series 53 (municipal securities principal), and Series 63 (uniform securities agent State Law). The Proposed Supervisor has no disciplinary history, and he has been employed with the Sponsoring Firm since 1998. He has been employed in the securities industry since 1968.

Member Regulation and the Sponsoring Firm have agreed that X will be supervised pursuant to the standard operating procedures of the Sponsoring Firm. According to the Sponsoring Firm's written supervisory procedures manual, these terms and conditions are as follows:

1. All order tickets must be reviewed and initialed by the Proposed Supervisor on a daily basis.
2. All written correspondence must be reviewed and initialed by the Proposed Supervisor prior to mailing.
3. All customer statements will be reviewed and initialed on a monthly basis by the Proposed Supervisor.
4. Telephone solicitations will be periodically monitored on a weekly basis by the Proposed Supervisor.
5. The Proposed Supervisor will conduct periodic compliance meetings with X.

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, we must consider whether the particular felony at issue, examined in the light of the circumstances related to the felony, 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 led to X's disqualification is serious, the activity was not securities, financial, or dishonesty-related. The offense took place over eight years ago, and the conviction was set aside almost five years ago. X paid his \$1,000 fine and completed his probation. In addition, there is no formal disciplinary history for either the Firm, or his proposed supervisor. Finally, X previously has been employed in the securities industry without any customer complaints or other incidents.

We thus conclude that it would be in the public interest to permit X to associate with the Sponsoring Firm as a general securities representative and that this association 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 Sponsoring 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 Sponsoring Firm does not employ any other statutorily disqualified individuals.

Accordingly, in conformity with the provisions of SEC Rule 19h-1, the registration of X will become effective, unless otherwise notified by the Commission, within 30 days of receipt of this decision.

On Behalf of the National Adjudicatory Council,

Patrice M. Gliniecki
Vice President and Deputy General Counsel