

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD

In the Matter of
the Continued Association of

X

as an

Investment Company/ Variable Contracts
Representative

with

The Sponsoring Firm

Redacted Decision

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

Decision No. SD05003

Date: 2005

On June 4, 2004, the Sponsoring Firm¹ (or "the Firm") submitted a Membership Continuance Application ("MC-400" or "the Application") with NASD. The Sponsoring Firm requests permission for X, a person subject to a statutory disqualification, to continue to associate with the Firm as an investment company/variable contracts representative, but without the continued imposition of heightened supervisory procedures. 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 continued association with the Firm, without a plan of heightened supervision, be approved.

For the reasons set forth below, we approve the Firm's Application.

A. X's Statutorily Disqualifying Event

X is statutorily disqualified because he consented to the entry of an Order of Permanent Injunction ("Permanent Injunction") in the United States District Court for State 1 in April 1984. The court enjoined him from further violations of the registration and antifraud provisions of the federal securities laws in the offer and sale of stock in a gas and oil recovery business. X is also statutorily disqualified because, in a parallel administrative proceeding, the Securities and Exchange Commission issued an Order Instituting Proceedings, Making Findings and Imposing Remedial Sanctions ("Order") dated May 1984. Pursuant to this Order, the Commission barred X from association with any broker or dealer, investment adviser or investment company. The Order provided, however, that X could continue to sell variable annuities and mutual funds as a

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.

supervised representative of an insurance company in which he does not exercise direction or control or have an ownership interest in excess of five percent, and which is registered as a broker-dealer with NASD and licensed to sell mutual funds and variable annuities but no other security.

The Order found that:

- 1) X willfully violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, by engaging in a series of transactions to raise the market price of Firm 1 artificially and, in connection with this scheme, failed to disclose material facts to purchasers and prospective purchasers of Firm 1 stock;
- 2) X violated Section 5 of the Securities Act of 1933 ("Securities Act") by causing the sale of securities for which no registration statement was in effect;
- 3) X violated and aided and abetted violations of Section 15(c)(1) of the Exchange Act, and Rules 15c1-2 and 15c1-5 thereunder by inducing the sale or purchase of securities of an issuer which controlled or was under common control with the broker, without written disclosure to the customer of the existence of the control prior to the completion of the transactions; and
- 4) X willfully violated Section 17(a) of the Securities Act in the offer, purchase and sale of certain securities, by obtaining money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made not misleading.

B. X's Background and Prior SEC Rule 19h-1 Notices

X first registered in the securities industry in 1969 as a general securities representative (Series 1, now Series 7). As set forth below, he has been registered with three different firms as an investment company/variable contracts representative since 1986.

In August 1986, NASD filed a notice pursuant to SEC Rule 19h-1 recommending approval of X's association as an investment company/variable contracts representative with Firm One. The Commission approved the notice in October 1986.

In December 1991, NASD filed an SEC Rule 19h-1 notification that approved X as an investment company/variable contracts representative with Firm Two. The Commission acknowledged this notification in January 1992. In 1997, Firm Two proposed a modification of the supervisory procedures that were imposed by the 1991 SEC Rule 19h-1 notice. The modified supervisory procedures were less stringent than the 1991 version, and they were approved pursuant to an SEC Rule 19h-1 notice filed by NASD in May 1997, and approved by the Commission in August 1997.

In December 2001, NASD filed a notice pursuant to SEC Rule 19h-1 recommending approval of Firm Two's application for X to be an investment company/variable contracts principal, without special heightened supervisory procedures. While this notice was pending

with the Commission, X left Firm Two's employ to become associated with the Sponsoring Firm. Accordingly, in August 2003, NASD withdrew the December 2001 notice from the Commission.

C. The Firm

The Sponsoring Firm became an NASD member in February 1987. The Firm has 37 offices of supervisory jurisdiction ("OSJ") and 88 branch offices. It employs 91 registered principals and 353 registered representatives. The Firm has represented that it is a full service broker-dealer.

NASD filed the Firm's 2001 routine examination without action. NASD's 2003 routine examination of the Firm resulted in a compliance conference. In March 2004, the Firm responded to NASD and detailed the corrective measures that were implemented with respect to the issues raised in the compliance conference.

NASD issued a Letter of Caution ("LOC") to the Firm after conducting a 2004 statutory disqualification examination. NASD cited the Firm for violating NASD Conduct Rule 3010(c) by failing to have its home office conduct an inspection of the branch office in which X was employed. The LOC did not specifically cite X or his supervisor, the Proposed Supervisor.

The record shows no other regulatory actions against the Firm. The Sponsoring Firm is not a member of any other self-regulatory organization.

D. X's Proposed Business Activities and Supervision

The Firm proposes that X will continue to be employed in the Firm's OSJ office located in State 2. The Firm will compensate X on a commissions-only basis.

The Sponsoring Firm also proposes that X will continue to be supervised by the Proposed Supervisor, pursuant to the Firm's standard supervisory procedures. The Proposed Supervisor has been a general securities principal (Series 24) since September 2000; a general securities representative (Series 1 n/k/a Series 7) since March 1970; a uniform securities agent (Series 63) since February 1981; and a municipal funds securities limited principal – equity trader (Series 51) since February 1981. The Proposed Supervisor has been employed with the Sponsoring Firm since June 2003.

The record shows no regulatory proceedings against the Proposed Supervisor.

E. Member Regulation's Recommendation

Member Regulation recommends approval of the Firm's request to be relieved of the continuing special supervisory procedures for X.

F. Discussion

After carefully reviewing the entire record in this matter, we approve the Sponsoring Firm's Application to continue to employ X as an investment company/variable contracts representative, without having to continue to observe the special supervisory procedures that were imposed on the Firm in the SEC Rule 19h-1 notice filed in May 1997. Although X's

misconduct was serious, we have considered that a substantial length of time has passed since the Commission's action in 1984, and that the Commission specifically stated in its Order that X should be permitted to continue his work in the variable products area. NASD permitted X to re-enter the securities industry more than 15 years ago, and he has not been the subject of any formal disciplinary incidents or customer complaints. We also note that X's activities will continue to be limited to the sale of mutual funds and variable products. We find that this record supports our approval of X to continue to act as an investment company/variable contracts representative, without the need to continue any special supervisory procedures.

We also note that X has engaged in no intervening misconduct since we previously approved X's former employer's request for the same relief currently being requested by the Sponsoring Firm. We find that the approval of X's continued association with the Sponsoring Firm as an investment company and variable products representative, without special supervisory procedures, is consistent with the public interest.

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) 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 continued association of X as an investment company/variable contracts representative with the Sponsoring Firm, without special supervisory procedures, will become effective upon the issuance of an order by the Commission 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