

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD

In the Matter of the Continued Association of	Redacted Decision
X	<u>Notice Pursuant to</u>
as a	<u>Rule 19h-1</u>
General Securities Principal (without	<u>Securities Exchange Act</u>
heightened supervision)	<u>of 1934</u>
with	<u>Decision No. SD06008</u>
The Sponsoring Firm	Date: 2006

I. Introduction

On October 31, 2005, the Sponsoring Firm¹ (“the Firm”) completed a Membership Continuance Application (“MC-400” or “the Application”), seeking to permit X, a person subject to a statutory disqualification, to continue to associate with the Firm as a general securities principal, but without heightened supervision. A hearing was not held in this matter. Rather, pursuant to NASD Procedural Rule 9523, NASD’s Department of Member Regulation (“Member Regulation”) recommended that the Chair of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council, approve X’s proposed continued association with the Sponsoring Firm.

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

II. The Statutorily Disqualifying Event

X is statutorily disqualified because in September 1985, the Securities and Exchange Commission entered an administrative order (“the 1985 SEC Order”) barring him from association in any principal capacity for three years. The 1985 SEC Order also provided that if X was employed by a broker-dealer in a non-principal capacity during the period of the three-year bar, the broker-dealer would submit an affidavit to the Commission to certify that X was not

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.

acting in a proscribed capacity. Further, the 1985 SEC Order provided that after three years, X could apply to re-enter the securities industry in a principal capacity.

The 1985 SEC Order stemmed from X's activity as president of a former brokerage firm, Firm 1. The Commission determined that from October 1984, until after November 1984, X aided and abetted violations of the federal securities laws, including net capital, recordkeeping, and reporting rules.

III. Background Information

A. X's Background and Prior SEC Rule 19h-1 Notice

X first registered in the securities industry as a general securities representative (Series 7) in October 1981. He subsequently qualified as a general securities principal (Series 24) in January 1982 and as a financial and operations principal (Series 27) in July 1983.

Firm 1 employed X as a compliance officer from May 1981 until the spring of 1984. X became president of Firm 1 in the spring of 1984. Firm 1 experienced net capital and reporting problems in October 1984 and began self-liquidation proceedings in December 1984, at which time X resigned. X was unemployed from December 1984 until March 1985, when he registered with the Sponsoring Firm as head of the Firm's due diligence area.

In July 1985, the Commission notified X and the Sponsoring Firm that it was seeking to suspend X's principal registration due to the violations that had occurred at Firm 1. With the Commission's approval, X remained in his role as head of the Sponsoring Firm's due diligence area during the three-year term of his principal bar. Pursuant to the 1985 SEC Order, the Sponsoring Firm monitored X's duties to ensure that he would not violate the principal bar order and provided the Commission with a copy of X's job description.

After completing his three-year principal bar, X requalified as a general securities principal in February 1989 by retaking and passing the qualification examination. In May 1989, NASD filed a notice pursuant to SEC Rule 19h-1 with the Commission, recommending approval of the Sponsoring Firm's MC-400 application to sponsor X's continued association with the Firm as a general securities principal. The Commission approved X's re-entry to the securities industry as a general securities principal with the Sponsoring Firm in June 1989. Pursuant to the Commission's June 1989 approval order, the Sponsoring Firm has since supervised X in accordance with the following representations that it made to the Commission in 1989:

- 1) The firm, a wholly owned subsidiary of Firm 2, has been an NASD member since 1969. It is engaged in a general securities business with an emphasis on mutual funds and direct participation programs. The firm clears on a fully disclosed basis. It employs 36 registered principals and 1168 registered representatives. It has no branch offices. The firm's registered representatives are insurance agents who work at their own offices. The firm proposes to employ X as a general securities principal to

oversee the shareholder servicing operation, to assist in overall compliance activities and to review direct participation programs proposed for sale by the firm.

- 2) The Chief Executive Officer of the Member and registered principal since 1985 will supervise X.²
- 3) X will not sell securities products to investors. He will not be involved in any senior management or financial and operations activities[.] X and the Proposed Supervisor will meet regularly to discuss X's activities.

Since the 1985 SEC Order, X has been the subject of one customer complaint. In February 1996 a customer alleged that a representative at the Sponsoring Firm sold him an unsuitable product and that the Sponsoring Firm and X failed to perform adequate due diligence. The complaint proceeded to an arbitration panel, which awarded the customer \$14,000. X did not contribute individually to this award.

NASD subsequently conducted 10 annual statutory disqualification examinations of the Sponsoring Firm and X and filed them without noting any incidents.

The record shows no additional complaints or disciplinary actions against X.

B. The Firm

The Sponsoring Firm became an NASD member in January 1969. Today, the Firm engages in a general securities business, has 13 offices of supervisory jurisdiction ("OSJs") and 63 branch offices, and employs 141 registered principals and 1175 registered representatives.

NASD conducted routine examinations of the Sponsoring Firm in 2002 and 2004. Following the 2002 examination, NASD issued the Firm a Letter of Caution ("LOC") for written supervisory procedures inaccuracies, continuing education violations, failure to conduct audits of two OSJs, and books and records violations. The Firm responded to the LOC in a letter dated 2002, stating that it had corrected the deficiencies. NASD also issued the Firm an LOC following the 2004 examination for sales contest violations and certain inadequate written supervisory procedures. The Firm responded in a letter dated February 2005, stating that it had corrected the deficiencies.

The Firm also is the subject of recent state disciplinary actions. In July 2005, the State 1 Securities Commission ordered the Sponsoring Firm to pay a total of \$20,000 and hire an independent consultant to address "supervisory oversight of certain registered representatives."

² In August 2005, the Firm advised Member Regulation that the Proposed Supervisor was deceased and requested permission to change X's supervisor to the Firm's new Chief Executive Officer. Member Regulation approved the Firm's request in August 2005.

The Firm represents that it paid the assessment and had previously hired an independent consultant commencing in May 2005. In August 1992, the State 2 Department of Insurance & Finance cited the Firm for failure to reasonably supervise a registered representative. The Sponsoring Firm was ordered to cease and desist from violating State 2 rules and assessed a \$1,000 civil penalty.

In June 1998, the Firm's bonding company reimbursed a customer \$84,683.33. The customer had alleged that a representative misappropriated monies from him.

The record shows no additional customer complaints, disciplinary proceedings, or arbitrations against the Firm.

IV. X's Proposed Business Activities and Supervision

The Sponsoring Firm proposes that X continue to serve as the Senior Vice President for Operations and Advisory Services in the Firm's home office in State 3, which is also an OSJ. The Firm represents that X currently supervises 15 employees and is compensated by a salary.

The Firm also proposes that the Proposed Supervisor 2 will continue to be X's primary responsible supervisor. He has been supervising X since August 2005. The Proposed Supervisor 2 has been in the securities industry since August 1986, became a general securities principal (Series 24) in March 1991, and has been employed by the Sponsoring Firm since May 1999.³ NASD's Central Registration Depository ("CRD"[®]) shows no disciplinary or regulatory proceedings, complaints, or arbitrations against the Proposed Supervisor 2.

The Firm further represents that X will be subject to its standard written compliance, supervisory, and supervisory control procedures; will continue to attend monthly staff meetings, annual compliance meetings, and continuing education meetings; will continue to meet with the Proposed Supervisor 2 "as necessary" to discuss his activities and other pertinent regulatory issues; and that X's correspondence and e-mails will be subject to periodic supervisory review as set forth in the Firm's written compliance procedures.

V. Member Regulation's Recommendation

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

VI. Discussion

After carefully reviewing the entire record in this matter, we approve the Sponsoring Firm's Application to continue to employ X as a general securities principal, without having to observe the special supervisory procedures that were imposed on the Firm.

³ The Proposed Supervisor 2 was registered with four firms prior to the Sponsoring Firm.

In reaching this determination, we have considered that the underlying activity that led to X's statutorily disqualifying event occurred almost 26 years ago and that the 1985 SEC Order that imposed the three-year principal bar on X was entered more than 20 years ago. The time period contained in that qualified bar expired in 1988.

X has been continuously employed in the securities industry since 1981 except for a brief period of unemployment from December 1984, when he left Firm 1, to March 1985, when he joined the Sponsoring Firm. X was employed by the Sponsoring Firm in July 1985 when the Commission notified him and the Firm of its intention to suspend X's principal registration due to the events that occurred at Firm 1 in 1984. Thus, the Commission was fully aware of X's position with the Sponsoring Firm when it issued the 1985 SEC Order. Pursuant to the terms of that order, X continued to be employed by the Sponsoring Firm as head of due diligence, and the Sponsoring Firm provided a description of X's job responsibilities to the Commission and monitored X's activities to ensure that he would not violate the three-year principal bar order.

In June 1989, the Commission approved X's application to re-enter the securities industry as a general securities principal with the Sponsoring Firm. With the exception of the 1996 customer complaint described above, CRD shows no reportable incidents for X since 1989.

Although the Firm has some recent disciplinary history, we conclude that it is capable of continuing to supervise X. Specifically, we note that NASD has conducted numerous statutory disqualification examinations of the Sponsoring Firm and X and has filed satisfactory reports in all instances. Moreover, the Firm represents that X will be subject to its standard written supervisory procedures, which will include periodic review of X's correspondence and e-mails.

We have also considered that X will continue to report to the Proposed Supervisor 2, who has successfully supervised X, without incident, since August 2005. As we previously noted, the Proposed Supervisor 2 has been in the securities industry since 1986 and has no disciplinary history.

Given these factors, we conclude that the public interest will not be harmed by permitting the Sponsoring Firm to supervise X as a general securities principal without the continued imposition of a heightened plan of supervision.

NASD certifies that: 1) the record shows that X meets all applicable requirements for the proposed employment; 2) the Firm represents that it is not a member of any other self-regulatory organizations; 3) the Firm represents that X and the Proposed Supervisor 2 are not related by blood or marriage; and 4) the Sponsoring Firm represents that it does not employ any other statutorily disqualified individuals.

Accordingly, in conformity with the provisions of SEC Rule 19h-1, the continued association of X with the Sponsoring Firm as a general securities principal, 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