

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of The Continued
Association of

X¹
as a

General Securities Representative
(without heightened supervision)

with

The Sponsoring Firm

Redacted Decision

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

SD10005

Date: 2010

I. Introduction

On January 28, 2008, the Sponsoring Firm submitted a Membership Continuance Application (“MC-400” or “the Application”) with the Department of Registration and Disclosure (“Registration and Disclosure”) at the Financial Industry Regulatory Authority (“FINRA”).² The Application seeks to permit X, a person subject to a statutory disqualification, to continue to associate with the Sponsoring Firm as a general securities representative without heightened supervision. A hearing was not held in this matter. Rather, pursuant to NASD Procedural Rule 9523,³ FINRA’s Department of Member Regulation (“Member Regulation”) recommended that the Chair of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council (“NAC”), approve X’s proposed continued association with the Sponsoring Firm pursuant to the terms and conditions set forth below.

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 FINRA’s processing of this matter was delayed because the Sponsoring Firm decided to postpone the review of its Application until after FINRA completed its 2009 statutory disqualification examination of the Sponsoring Firm.

³ Following the consolidation of NASD and the member regulation, enforcement and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new “Consolidated Rulebook” of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. *See FINRA Regulatory Notice 08-57* (Oct. 2008). Because this matter involves an MC-400 that was filed before December 15, 2008, we apply the procedural rules that were in effect at the time, the NASD Rule 9520 Series.

For the reasons explained below, we approve the Sponsoring Firm's Application to permit X to continue to associate with the Sponsoring Firm as a general securities representative without heightened supervision.

II. The Statutorily Disqualifying Event

X is statutorily disqualified because he consented to the entry of an order of permanent injunction ("the Permanent Injunction") by the United States District Court for the District of Columbia in November 1974. The Permanent Injunction enjoined X from further violations of the federal securities laws relating to fraud in prospectus delivery. X is also disqualified because, in November 1974, the Securities and Exchange Commission issued an Order Instituting Proceedings and Imposing Remedial Sanctions ("the SEC Order") against him in a parallel administrative proceeding. The SEC Order suspended X from association with any broker or dealer for nine months, and thereafter, barred him from any association with a broker or dealer except as a supervised person in a non-supervisory capacity, upon a satisfactory showing to the Commission that a firm would adequately supervise him.

III. Background Information

A. X

In 1978, the Commission's Division of Enforcement approved X's re-entry to the securities industry as a registered representative with a firm.

Due to a technical oversight, FINRA's Central Registration Depository ("CRD[®]") did not identify X as statutorily disqualified. As a result, when a second firm purchased the firm that was employing X, the second firm was allowed to include X in a mass transfer of registered representatives in January 2001, notwithstanding his statutory disqualification. Further, when yet a third firm purchased the second firm that employed X, the third firm also included X in a mass transfer of representatives in October 2002, without having to submit a membership continuance application.

In November 2003, X registered with the Sponsoring Firm. At that time, Registration and Disclosure became aware that CRD had not previously identified X as statutorily disqualified, and it began to review X's application. Pursuant to NASD Rule 9522(e)(1)(A), the Sponsoring Firm initially submitted a request for X to be granted relief from the disqualification because his Permanent Injunction had been imposed more than 10 years ago. Member Regulation denied the Sponsoring Firm's request because the record contained evidence of customer complaints against X. In October 2004, the Sponsoring Firm submitted an MC-400 application X to be permitted to continue to associate with the Sponsoring Firm as a general securities representative. FINRA approved the Firm's MC-400 application in a decision in June 2005. The Commission granted approval of X's association with the Sponsoring Firm by order in October 2005.

X qualified as a general securities representative in November 1966 and December 1977. Two customers have filed complaints against X. The first complaint was filed in 2001, alleging that X recommended unsuitable investments. The complaint proceeded to FINRA arbitration and was settled for \$18,500; X did not contribute to the settlement. The second complaint was filed in 2002, and it alleged that X executed unauthorized trades. This complaint was denied by the firm that employed X at the time and the record shows no further proceedings to date by the customer.

The record shows no other criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against X.

B. The Sponsoring Firm

The Sponsoring Firm became a FINRA member in September 1989. The Sponsoring Firm has four branch offices, one office of supervisory jurisdiction, 40 registered representatives, and nine registered principals. The Sponsoring Firm is a retail and institutional broker-dealer actively engaged in transactions involving various investment products, research, and underwriting.

FINRA's most recent examination of the Sponsoring Firm was a 2009 off-cycle municipal exam that resulted in a cautionary action. The Sponsoring Firm was cited for failing to follow procedures that required two individuals under heightened supervision and their supervising principals to sign the special supervisory procedures that pertained to their supervision. The Sponsoring Firm provided a response dated August 2009, stating that it had addressed the deficiencies noted.

FINRA issued the Sponsoring Firm a Letter of Caution ("LOC") following its 2007 routine examination. The LOC cited the Sponsoring Firm for books and records violations; deficiencies in written supervisory procedures; failing to maintain certain information required by the Bank Secrecy Act; failing to comply with aspects of the anti-money laundering program; and failing to designate a registered options principal and securities futures principal on the appropriate forms. The Sponsoring Firm provided a response dated January 2008, stating that it had addressed the deficiencies noted.

FINRA also issued the Sponsoring Firm an LOC after its 2005 routine examination. The 2005 LOC cited the Sponsoring Firm for certain violations, including failing to file an amended Uniform Termination Notice for Securities Industry Registration ("Form U5"); failing to report timely one sales practice related arbitration; failing to provide prompt written notice of outside business activities of five employees; failing to maintain monthly account statements and evidence review of employee outside brokerage accounts; preparing inaccurate order tickets; failing to demonstrate the review of a branch office; failing to establish and maintain adequate written supervisory procedures in certain areas; failing to timely and accurately report certain trades; and failing to report timely and accurately certain municipal transactions. The Sponsoring Firm responded by letter dated January 2006, stating that it had addressed the deficiencies noted.

The Sponsoring Firm previously employed one other individual, Employee 1, who was subject to heightened supervisory procedures due to a statutory disqualification based on a 1994 permanent injunction. In April 2009, Member Regulation filed a notification with the Commission, which permitted Employee 1 to continue to work at the Sponsoring Firm without heightened supervision.

C. X's Statutory Disqualification Examinations

FINRA conducted statutory disqualification examinations for X in 2007, 2008, and 2009. The 2007 examination resulted in a compliance conference for two issues: 1) the Sponsoring Firm failed to implement its written supervisory procedures by failing to evidence supervisory review for transactions in which X was engaged from May 2006, through March 2007; and 2) the Sponsoring Firm failed to evidence any supervisory review of X's email from May 2006, through March 2007. The Sponsoring Firm responded in letters dated March, May, and June 2007, stating that it had addressed the deficiencies noted.

FINRA issued the Sponsoring Firm an LOC after conducting its 2008 statutory disqualification examination. The LOC cited the Sponsoring Firm for failing to comply with the terms and conditions of heightened supervision for X by: 1) failing to provide evidence that it reviewed and evidenced review of all of X's order tickets; and failing to initial copies of X's incoming and outgoing correspondence during the review period. The Sponsoring Firm responded in April 2009, stating that it had addressed the deficiencies noted.

FINRA's 2009 statutory disqualification examination of X resulted in no findings against the Sponsoring Firm.

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

IV. X's Proposed Business Activities and Supervision

The Sponsoring Firm proposes that X will continue to work from his home office as a general securities representative, but that henceforward, he will no longer be subject to heightened supervision. The Sponsoring Firm will continue to compensate him on a commission basis.

The Sponsoring Firm also proposes that the Proposed Supervisor, the Sponsoring Firm's Vice President, will continue to be X's primary supervisor. The Proposed Supervisor has been employed by the Sponsoring Firm since 1989, and has been in the securities industry since 1983. He qualified as a general securities principal in May of 1999, and he works from the Sponsoring Firm's main office in New York City.

The record shows no disciplinary or regulatory proceedings, complaints, or arbitrations against the Proposed Supervisor.

V. Member Regulation's Recommendation

Member Regulation recommends approval of the Sponsoring 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 representative, without having to observe the special supervisory procedures that were imposed on the Sponsoring Firm in the NAC's June 2005 decision, as approved in the Commission's order dated October 2005.

In reaching this determination, we have considered that the underlying activity that led to X's statutorily disqualifying event occurred more than 30 years ago. X has successfully been reinstated in the securities industry since 1978, in various positions with different firms, and he has not been the subject of any intervening formal disciplinary action.

We acknowledge that FINRA cited the Sponsoring Firm for deficiencies in its statutory disqualification examinations of X in 2007 and 2008. We are satisfied, however, that the Sponsoring Firm took appropriate corrective action as evidenced in its correspondence with FINRA, and by the fact that FINRA filed a satisfactory report following its 2009 statutory disqualification examination of X.

We have also considered that X will continue to report to the Proposed Supervisor, who has supervised X since 2005. The Proposed Supervisor has been in the securities industry for 27 years, and he has no disciplinary history.

Given the standard supervisory procedures in place at the Sponsoring Firm, we conclude that X will be effectively supervised without continuing to impose a heightened plan of supervision.

For these reasons, we conclude that the public interest will not be harmed by X continuing to associate with the Sponsoring Firm as a general securities representative without special supervision.

FINRA certifies that: 1) X meets all applicable requirements for the proposed employment; 2) the Sponsoring Firm represents that it is also a member of BATS Trading, Inc., the Nasdaq Stock Market, LLC, and NYSE ARCA; and 3) the Sponsoring Firm has represented that X and the Proposed Supervisor are not related by blood or marriage.

VII. Conclusion

Accordingly, we approve X as a general securities representative with the Sponsoring Firm, without heightened supervisory conditions. In conformity with the provisions of SEC Rule 19h-1, the association of X as a general securities representative with the Sponsoring Firm, without heightened supervision, 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,

Marcia E. Asquith
Senior Vice President and Corporate Secretary