

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD

In the Matter of
the Continued Association of

X

as an

Associated Person

with

The Sponsoring Firm

Redacted Decision

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

SD Decision No. 02010

On January 21, 2002, the Sponsoring Firm (or "the Firm") completed a Membership Continuance Application ("Form MC-400" or "the Application") seeking to permit X¹, a person subject to a statutory disqualification, to continue to associate with the Firm in a non-registered capacity. 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 Chairman of the Statutory Disqualification Committee approve X's proposed continued association with the Sponsoring Firm, pursuant to the terms and conditions set forth below.

A. X's Statutorily Disqualifying Event

X is statutorily disqualified under Article III, Section 4(g)(1) of NASD's By-Laws because he entered a guilty plea in July 2000 to Driving While Intoxicated ("DUI"), a third degree felony in State 1. The July 2000 conviction was X's third DUI offense; he was previously convicted in December 1987 and August 1996. For his most recent conviction, the court assessed X \$1000 in court costs, sentenced him to 60 days in jail, placed him on "community supervision" (a/k/a "probation") for six years, suspended his driving privileges for two years, and prohibited him from operating a motor vehicle that is not equipped with an ignition interlock device for 48 months. X currently holds an occupational driver's license that allows him to drive to and from work during designated times. X served his jail term in a work release program, which enabled him to work during the day and return to the prison for night and weekend stays.

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.

B. Background Information

1. X

X is a non-registered person. He has been employed as a graphic artist with the Firm since November 1999, and the Sponsoring Firm proposes that he will continue to be employed as an associated person. X has never been registered in the securities industry. The record shows no other regulatory or disciplinary actions taken against him.

2. The Firm

The Sponsoring Firm became a member of NASD in January 1998. The Firm has two offices of supervisory jurisdiction and no branch offices. It employs 57 principals, 124 registered representatives, and 266 employees. The Sponsoring Firm has been an affiliate of Firm 1 since March 2000, and the Firm acts as a direct access broker specializing in electronic trading and brokerage services.

The Firm's 2002 routine examination has just commenced and therefore the findings are not yet available.

The Firm received a Letter of Caution ("LOC") and submitted a letter of Acceptance, Waiver and Consent ("AWC") after its 2000 routine examination. The LOC cited the Firm for twice violating the regulatory continuing education requirements. Without admitting or denying the alleged violations, the Firm submitted an AWC for nine violations of equity trader registration requirements. The Firm was censured, fined \$16,000, and ordered to disgorge commissions of \$4,000.

NASD also issued an LOC to the Firm after its 1998 routine examination. NASD found that the Firm failed to follow municipal securities registration rules, and committed recordkeeping and trade reporting violations. The Firm responded to this LOC in February 1999, acknowledging the areas in which it was deficient and promising compliance in the future.

NASD's Advertising Regulation Department conducted an examination of the Firm in 1999 and issued an LOC for the Firm's failure to follow NASD rules on pre-filing advertisements and balancing the information presented in the advertisements. The Firm responded to this LOC in February 1999 and explained the new procedures that it had implemented to ensure future compliance in the advertising area.

The Sponsoring Firm has represented that it does not employ any other statutorily disqualified individuals. We are not aware of any other complaints, disciplinary proceedings, or arbitrations against the Firm. The Firm is also a member of the National Futures Association and the International Securities Exchange.

C. X's Proposed Business Activities and Supervision

The Firm proposes to continue to employ X in its marketing department as a graphic artist. X will be responsible for developing graphics for the Firm's website, print advertisements, and online advertising. X's duties will not include any direct dealings with the investing public, and he will not act in a supervisory capacity.

The Firm proposes that the Proposed Supervisor will be X's primary, responsible supervisor. The Proposed Supervisor is the manager of the Sponsoring Firm's marketing department. He registered as an options principal (Series 4) in January 1995, a general securities representative (Series 7) in January 1994, a municipal securities principal (Series 53) in February 2000, a uniform securities agent (Series 63) in January 1994, and a general securities principal (Series 24) in November 1996. The Proposed Supervisor has no disciplinary history, and he has been employed with the Sponsoring Firm since November 2000. He was first employed in the securities industry in 1994 with another firm. We are not aware of any disciplinary or regulatory proceedings, complaints, or arbitrations against the Proposed Supervisor.

The Sponsoring Firm consents to the imposition of the following supervisory terms and conditions:²

1. X will conduct business on behalf of the Sponsoring Firm only from the office where the Proposed Supervisor is physically located, at a desk near the Proposed Supervisor;
2. X will not have any direct dealings with the investing public;
3. X will not act in a supervisory capacity;
4. The Proposed Supervisor will review all of X's work before it goes into production;*
5. The Proposed Supervisor will review X's incoming and outgoing written correspondence at the time that it is either received or sent;*
6. All complaints pertaining to X, whether verbal or written, will immediately be referred to the Proposed Supervisor for review, and then to the Firm's Director of Compliance. The Proposed Supervisor will prepare a memorandum to the file explaining the measures he took to investigate the merits of the complaint and the resolution of the matter. Documents pertaining to these complaints should be kept segregated for ease of review; and

² The Firm confirms that the items denoted with an asterisk are standard operating procedures of the Sponsoring Firm.

7. 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.

D. Discussion

After careful review of the entire record in this matter, we approve the Firm's Application to continue to employ X in a non-registered capacity.

In reviewing this Application, we have considered 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.³ For the reasons set forth below, we conclude that X's continued participation as an associated person in the securities industry will not present an unreasonable risk of harm to the market or investors.

In conducting this analysis, we have primarily focused on the fact that X will continue to be employed with the Sponsoring Firm only in a non-registered capacity, and he will not have any dealings with the investing public. His continued employment will be in the Firm's marketing department as a graphic artist, designing graphics for the Firm's website, print advertisements, and online advertising. He will not have access to any customer records, and all of the Firm's employees who do have customer contact are located on a separate floor from the marketing department. Given the nature of this proposed employment, we cannot conclude that X poses an unreasonable risk of harm to the market or investors.

Further, X committed the offense more than two years ago.⁴ The record shows that he has taken appropriate measures and has successfully addressed the problems that led to his felony conviction by seeking rehabilitation by completing an outpatient treatment program and continuing to associate with Alcoholics Anonymous.

We also note that X's felony conviction did not involve securities or financial products, nor did the court find that he acted dishonestly. X has no intervening misconduct, and the Proposed Supervisor is a qualified general securities principal with no formal or informal disciplinary history. Although the Firm has one AWC and several LOCs in its regulatory history, we note that none of those actions alleged that the Firm had failed to supervise individuals, and we recognize that the Firm has taken steps to rectify its past deficiencies.

³ See Frank Kufrovich, Exchange Act Rel. No. 45437, 2002 SEC LEXIS 357, at *16 (Feb. 13, 2002) (upholding NASD's denial of a statutory disqualification applicant who had committed non-securities related felonies "based upon the totality of the circumstances" and NASD's explanation of the bases for its conclusion that the applicant would present an unreasonable risk of harm to the market or investors).

⁴ The offense was committed in 2000.

We also recognize that X currently remains under "community supervision," or probation. In a letter dated 2002, however, X's community supervisor states that X is complying with all of the terms and conditions of the court-ordered supervision. Again, given the nature of the proposed job responsibilities for X, we do not believe that his continued probationary status presents an unreasonable risk of harm to the market or investors.

NASD certifies that X meets all applicable requirements for the proposed employment, and that X and the Proposed Supervisor have represented that they are not related by blood or marriage. NASD provided the International Securities Exchange ("ISE") with notice of this proceeding and will provide it with a copy of this decision.

Accordingly, we approve X to continue as a non-registered, associated person with the Sponsoring Firm. In conformity with the provisions of SEC Rule 19h-1, the continued association of X will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the Commission.

On Behalf of the National Adjudicatory Council,

Barbara Z. Sweeney
Senior Vice President and Corporate Secretary