

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 <u>Notice Pursuant to</u> <u>Section 19h-1</u> <u>Securities Exchange Act</u> <u>of 1934</u> <u>SD00005</u>
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On February 9, 2000, a member firm ("the Sponsoring Firm" or "the Firm") submitted a Membership Continuance Application ("MC-400" or "the Application") to permit X¹, a person subject to a statutory disqualification, to associate with the Firm as a general securities representative. In May 2000, a subcommittee ("Hearing Panel") of the Statutory Disqualification Committee of NASD Regulation, Inc. ("NASD Regulation") held a hearing on the matter. X appeared and was accompanied by his proposed supervisor and the Chief Compliance Officer of the Sponsoring Firm. BA appeared on behalf of NASD Regulation's Department of Member Regulation ("Member Regulation").

X's Statutorily Disqualifying Event and Background. X is subject to a statutory disqualification, under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 ("Act") and Article III, Section 4(g) of the NASD By-Laws, as a result of his May 1994 guilty plea to the felony charge of second-degree assault, in a County Circuit Court. The charges stemmed from a July 1992 incident wherein X, while under the influence of alcohol, operated a motor vehicle, which collided with another vehicle and caused injury to that vehicle's occupant. X was ordered to be imprisoned for three years in the shock incarceration program and to serve a five-year probationary term. X's incarceration was reduced to 90 days and was completed in 1994. X was granted an early termination from probation in 1997.

X has never been registered in the securities industry. He has held various non-investment-related positions in other businesses since the 1992 motor vehicle accident. X passed the Series 7 examination in 1999. Pursuant to a letter dated July 19, 2000, from Member Regulation, X has been

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.

permitted to work in a clerical/ministerial capacity at the Sponsoring Firm, pending the final result of the instant Application. The record shows no other regulatory or disciplinary actions taken against X.

The Sponsoring Firm. The Sponsoring Firm became a member of the Association in 1987. The Firm has 23 offices of supervisory jurisdiction and 31 branch offices. The Sponsoring Firm employs 53 registered principals and 204 registered representatives. It engages in a general securities business and clears its trades through Firm A.

The 1999 routine examination of the Sponsoring Firm resulted in a Letter of Caution ("LOC") that noted deficiencies with respect to reporting requirements related to inter-dealer municipal securities transactions and failing to employ a qualified equity trader. The Firm has rectified these problems.

In 1999, the Sponsoring Firm entered into a Stipulation and Consent Agreement with State 1 whereby the Sponsoring Firm agreed to pay a fine of \$1,500 for selling eight promissory notes that were not registered with the State.

In 1998, the Sponsoring Firm also entered into a Stipulation and Consent Agreement with the State for conducting a securities business without state registration. The Sponsoring Firm agreed to cease and desist from state registration violations and to pay a fine of \$5,000.

In 1998, the National Adjudicatory Council ("NAC") accepted a Letter of Acceptance, Waiver and Consent ("AWC") from the Sponsoring Firm for failing timely to file a Form G-37 with the Municipal Securities Rulemaking Board ("MSRB"). The Firm paid a \$2,500 fine in 1998. In 1997, pursuant to an AWC accepted in 1997, the Sponsoring Firm paid a \$250 fine (jointly and severally with its president) for an untimely Form G-37 filing.

In 1996, the Sponsoring Firm paid a fine of \$5,000 and consented to an order issued by the State 2 Corporation Commission that the Firm had failed reasonably to supervise a salesperson.

In 1993, the Sponsoring Firm paid a fine of \$6,748 to State 1 pursuant to a Stipulation and Consent Agreement that one of the Firm's representatives had conducted a securities business prior to becoming registered in the state.

Currently, two customer complaints are pending against the Sponsoring Firm, alleging unsuitable transactions and misrepresentation. The Firm does not employ any statutorily disqualified individuals.

The Proposed Supervisor and X's Proposed Duties. The Sponsoring Firm proposes that the branch manager ("the Proposed Supervisor") will be responsible for the supervision of X as a general securities representative. The Proposed Supervisor is the branch manager of the office at which the Sponsoring Firm proposes that X be employed. The Proposed Supervisor has been a general securities representative since 1998, a general securities principal since 1999, and a registered options principal since 1999. The Proposed Supervisor has no disciplinary history.

The Sponsoring Firm proposes that X will act as a "commissioned paid investment

representative" out of the Sponsoring Firm's branch office. X will sell investment products and perform clerical work. He will have no management or supervisory responsibilities.

Member Regulation's Recommendation. Member Regulation recommends that X's association with the Sponsoring Firm be approved, with certain supervisory restrictions, as set forth below.

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.

In reaching this conclusion, we recognize that the incident that resulted in X's statutory disqualification involved serious misconduct. We also find, however, that a number of circumstances weigh in favor of granting X permission to enter the securities industry. The motor vehicle accident that triggered X's felony conviction occurred eight years ago, when he was 20 years old. The felony conviction for second-degree assault did not involve securities, financial or fraudulent misconduct. X completed his 90-day incarceration in 1994, and his probation terminated more than three years ago. There are no other regulatory or disciplinary actions against X.

We also note that the Sponsoring Firm's disciplinary history, for a firm of its size which has been an NASD member for 13 years, does not establish the Firm's inability to supervise X effectively. The Proposed Supervisor has no disciplinary history. Although we have considered that the Proposed Supervisor has been a principal for only one year, we find, given the nature and the age of X's underlying statutorily disqualifying event, that the supervisory procedures to which the Sponsoring Firm has agreed, which are set forth in detail below, are well-structured. With these provisions in place, we conclude that the public interest will not be harmed by X's association with the Sponsoring Firm:

1. The supervisory procedures of the branch office and of the main office of the Sponsoring Firm will be amended to establish clearly that the Proposed Supervisor is X's responsible supervisor;
2. X will conduct securities business on behalf of the Sponsoring Firm only from the office where the Proposed Supervisor is physically located;
3. X will not maintain discretionary accounts;
4. The Proposed Supervisor will review and approve all of X's new account forms for suitability;
5. The Proposed Supervisor will review and approve all of X's order tickets on a daily basis;
6. The Proposed Supervisor will review all of X's incoming and outgoing correspondence;
7. The Proposed Supervisor will keep a written record evidencing review and approval of all of X's transactions, the opening of new accounts, and all correspondence;

8. The Proposed Supervisor will meet with X on a quarterly basis to review his transactions with clients. This will entail a review of the distribution of customer funds. The Sponsoring Firm shall keep a log of these meetings;
9. All customer complaints pertaining to X, whether verbal or written, will be immediately referred to the Proposed Supervisor for review, and then to the Director of Compliance. The Proposed Supervisor will prepare a memorandum to the file as to what measures he took to investigate the merits of the complaint (e.g., contact with the customer) and the resolution of the matter. Documents pertaining to these complaints should be kept segregated for ease of review;
10. X will be prohibited from accepting funds from customers in his name. Rather, all funds must be payable to either the Sponsoring Firm or the particular fund;
11. The Proposed Supervisor must certify quarterly (March 31st, June 30th, September 30th, and December 31st) to the Director of Compliance that the Sponsoring Firm is in compliance with all of the above conditions of heightened supervision of X; and
12. 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 supervisor from the Proposed Supervisor to another person.

The NASD 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; and 3) X and the Proposed Supervisor have represented that they are not related by blood or marriage.

Accordingly, we approve X as a general securities representative with the Sponsoring Firm. In conformity with the provisions of SEC Rule 19h-1, the registration of X as a general securities representative associated with the Sponsoring Firm 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,

Joan C. Conley
Senior Vice President and Corporate Secretary