

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

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

SD00006

This matter involves the association of X¹, a person subject to a statutory disqualification, as a general securities representative with a member firm ("the Sponsoring Firm"). In May 2000, a subcommittee of the Statutory Disqualification Committee of NASD Regulation, Inc. ("NASD Regulation") held a hearing in this matter. X and his proposed supervisor ("the Proposed Supervisor"), the President of the Sponsoring Firm, participated in the hearing by telephone. BA appeared on behalf of the Department of Member Regulation ("Member Regulation") of NASD Regulation.

X has been employed in the securities industry since 1986. From 1996 until the present, X has been registered as a general securities representative with the Sponsoring Firm. The Sponsoring Firm first applied to have X continue his association with the Sponsoring Firm in 1998. After a hearing before a subcommittee of the Statutory Disqualification Committee, approval of the application by the National Adjudicatory Council, and the filing with the Securities and Exchange Commission ("SEC") of a Rule 19h-1 notice, the NASD withdrew its decision approving the Sponsoring Firm's application because X's proposed supervisor had left the Firm. The Sponsoring Firm has now reapplied and proposes a new supervisor for X.

X is subject to a statutory disqualification as a result of his 1997 guilty plea in a State 1 Circuit Court to charges of driving while his license was revoked and aggravated driving under the influence.

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.

Both of these convictions were felonies. A judge sentenced X to 60 days of incarceration, 30 months of probation, and 120 days of Alcoholics Anonymous ("AA") counseling. X completed his term of incarceration and AA counseling without incident.²

The Sponsoring Firm and X's Proposed Supervisor

The Sponsoring Firm has been a member of the NASD since 1978. The Sponsoring Firm's main office is located in Utah. The Sponsoring Firm has one other office in State 1, and that office is registered with the NASD as an Office of Supervisory Jurisdiction. The Sponsoring Firm conducts a general securities business and is a market maker in Nasdaq and OTC Bulletin Board securities. The Firm employs 20 registered representatives and five principals. The Proposed Supervisor owns the Firm.

The Sponsoring Firm's disciplinary history includes the following events: In 1999, NASD Regulation issued an order accepting the Sponsoring Firm's and the Proposed Supervisor's offer of settlement stemming from a complaint filed in 1999. The offer of settlement made the following findings of violations by the Sponsoring Firm and the Proposed Supervisor: 1) trade reporting violations for incorrect identification of principal transactions; 2) trade reporting violations for an incorrect short sale modifier; 3) an unfair mark-up on one transaction; 4) bidding for the stock of an issuer while the Firm was a distribution participant, in violation of Regulation M; 5) failing to file reports of customer complaints with the NASD; and 6) failing to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with all applicable laws, rules and regulations. The offer of settlement also contained findings that the Proposed Supervisor individually committed a continuing education violation when he functioned for two weeks as a principal while his continuing education status was inactive.

In the 1999 order, NASD Regulation censured the Sponsoring Firm and the Proposed Supervisor, fined them \$24,000 jointly and severally, and ordered them to pay \$800 in restitution to a customer. NASD Regulation fined the Sponsoring Firm an additional \$5,000, and the Proposed Supervisor \$2,000. NASD Regulation also required the Firm to retain an independent consultant to review its supervisory and compliance procedures regarding the findings in the offer of settlement.

² X submitted an amended Form U-4, the Uniform Application for Securities Industry Registration or Transfer, in 1997, disclosing a felony conviction. After correspondence with NASD Regulation staff, the Sponsoring Firm submitted an MC-400 application dated June 19, 1998. Accordingly, the applicant has pursued the SD process in a timely manner.

In 1998, NASD Regulation accepted a Letter of Acceptance, Waiver, and Consent ("AWC") from the Sponsoring Firm for failing to identify and report five short sale transactions. The Sponsoring Firm paid a \$1,000 fine and agreed to an undertaking to revise its written supervisory procedures relating to short sales.

In 1997, NASD Regulation accepted an AWC from the Sponsoring Firm for short sale violations, including failing to make affirmative determinations for eight short sale transactions, failing to identify the transactions as short sales, and executing short sales at or below the current inside bid when the current inside bid was below the preceding bid. The Sponsoring Firm paid a \$10,800 fine and remitted \$250 of profits.

X's proposed supervisor has been a general securities representative and financial and operations principal ("FINOP") since 1984. He has been a general securities principal since 1987, and he became the owner and registered principal of the Sponsoring Firm in 1991. The Proposed Supervisor works in the Sponsoring Firm's main office in Utah.

The Proposed Supervisor's disciplinary history includes two additional NASD actions. In 1998, the Proposed Supervisor and the Sponsoring Firm accepted an AWC in which they were fined \$4,500, jointly and severally. The AWC found that the Sponsoring Firm had violated its exemption from SEC Rule 15c3-3 by accepting customer securities, sending customer securities to a transfer agent, and failing to keep appropriate books and records for such activities. The AWC also found that the Proposed Supervisor and the Sponsoring Firm had failed to comply with the firm element of the continuing education requirements.³

In 1994, the SEC upheld the NASD's disciplinary action against the Proposed Supervisor and Firm A. The NASD had found that in 1991, Firm A -- acting through the Proposed Supervisor -- charged excessive mark-ups and failed to maintain its required net capital. The Proposed Supervisor was suspended for five days in all capacities and was required to requalify as a general securities principal and FINOP. The NASD imposed a \$5,000 fine on the Proposed Supervisor, jointly and severally with Firm A, and ordered him to pay \$56,335 in restitution, jointly and severally with Firm A.

X is currently employed by the Sponsoring Firm in its State 1 office and is registered as a general securities representative. The Sponsoring Firm proposes to continue X's employment as a salesman of 401(k) and other qualified plans to corporate customers and as a registered representative for retail clients. The Firm does not employ any other statutory disqualified individuals.

³ The Proposed Supervisor is also the subject of an unresolved State 2 order to show cause and administrative complaint. We do not consider this proceeding significant, because it does not involve any allegations of new or separate violations by the Proposed Supervisor and it is pending.

Member Regulation's Recommendation

Member Regulation has recommended approval of this application. Member Regulation notes that X's statutory disqualification arose from convictions for driving offenses, which did not involve securities, financial or honesty issues, and that X has not been the subject of any complaints or regulatory proceedings in the 14 years that he has been registered.

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. We recognize that X committed a serious criminal offense. We are impressed, however, by the thoroughness of his efforts to reform himself. Immediately after his arrest in 1995, X sought treatment for his alcohol dependence by successfully completing a 30-day in-patient alcohol treatment program. He then successfully completed a 12-week intermediate recovery group program. Since these treatment programs, X has been a member of AA and has maintained his sobriety for more than four years. The record contains two letters, signed by members of the securities industry, that verify X's on-going participation in the AA program.

In addition, in 1999, a State 1 Circuit Court Judge granted X's motion to terminate his probation early. The Judge found that X had "complied with all terms of his probation."

As to the Sponsoring Firm's disciplinary history, we note that none of these incidents involved the Sponsoring Firm's failure to supervise a registered representative. We conclude that the Firm's disciplinary history is not so grave that we will deny the application on this basis.

We are mindful of the fact that X will be remotely supervised by the Proposed Supervisor, in another state. Although we prefer direct, daily, on-site supervision for an individual who is subject to a statutory disqualification, we are satisfied with the heightened supervisory procedures that the Sponsoring Firm has agreed to implement based on the specific facts involved in this application. We hold that under the circumstances presented by this case, the Sponsoring Firm's supervisory plan possesses the necessary safeguards to detect possible future securities-related violations. The Proposed Supervisor's 16 years of experience as a general securities principal give him the seasoning to understand and identify potential "red flags" of questionable securities-related activities. In addition, the Proposed Supervisor has acknowledged the gravity of supervising a representative who is subject to a statutory disqualification.

We conclude that the Proposed Supervisor is qualified to supervise X, and that the Sponsoring Firm has proposed an effective plan of supervision. The Sponsoring Firm will implement the following supervisory procedures:

1. The Sponsoring Firm will amend its supervisory procedures to establish clearly that the Proposed Supervisor is X's responsible supervisor.

2. X will act as a salesman of 401(k) and other qualified plans to corporate customers and as a registered representative for retail clients (mainly selling mutual funds).
3. X will not maintain discretionary accounts.
4. The Proposed Supervisor will review and approve all of X's new account forms for suitability on a weekly basis.
5. The Proposed Supervisor will review and approve all of X's order tickets on a weekly basis.
6. The Proposed Supervisor will review all of X's incoming and outgoing correspondence on a weekly basis.
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. (The Proposed Supervisor may take part in these meetings by conference call.) 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. The Proposed Supervisor will prepare a memorandum to a 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) in a memorandum to a file that the Sponsoring Firm is in compliance with all of the above conditions of heightened supervision to be accorded X.
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 to another person.

NASD Regulation 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, in conformity with the provisions of SEC Rule 19h-1, the registration of X as a general securities representative with the Sponsoring Firm will become effective within 30 days of the receipt of this notice by the Securities and Exchange Commission, unless otherwise notified by the Commission.

On Behalf of the National Adjudicatory Council,

Alden S. Adkins

Senior Vice President and General Council