PLEASE NOTE THE LATER CASE HISTORY OF THIS DECISION FOLLOWING THE TEXT OF THE DECISION.

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of the Association of X as an Investment Company and Variable Contracts Products Representative with The Sponsoring Firm	**Redacted Decision** Notice Pursuant to Section 19(d) Securities Exchange Act of 1934 SD00013

On July 7, 2000, a member firm ("the Sponsoring Firm" or "the Firm") submitted an MC-400 application ("Application") to permit X[1], a statutorily disqualified person, to associate with the Firm as an investment company and variable contracts products representative. In September 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 the proposed supervisor for X ("Proposed Supervisor") at the Sponsoring Firm.[2] BA and SC appeared on behalf of the Department of Member Regulation ("Member Regulation").

X's Background. X is subject to statutory disqualification as a result of his guilty plea to the charge of sexual abuse (third degree), a felony, in 1998. X's misconduct, which occurred between 1996 and 1997, involved non-forcible sex acts with his adopted stepdaughter, who was between the ages of 14 and 15 at the time. X was ordered to complete a sexual offender treatment and substance

[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] We note that the Sponsoring Firm represents that X and the Proposed Supervisor are not related by blood or marriage.

abuse program, was sentenced to serve 10 years in the custody of the Director of the State 1 Department of Corrections (suspended), and was placed on supervised probation for three years. X's three-year probation is scheduled to end in July 2001. He has completed substance abuse treatment and he will continue to participate in the sex offender treatment program until he is discharged from probation.

X was a life insurance sales agent employed by Firm A, from 1982 to 1998 and was registered as an investment company and variable products representative of Firm A, from 1983 to 1998. After his termination by Firm A in 1998 as a result of his guilty plea, he founded Firm B, an insurance agency where he is currently employed.

X has been named in two additional regulatory actions associated with his criminal conviction. In December 1998, X entered into a settlement with the State 1 Insurance Division ("Division") concerning administrative charges that he had failed to report to the Division that he had been charged with a felony.[3] He agreed to the entry of a cease and desist order; the suspension of his insurance producer's license for 30 days (imposed retroactively); a probationary period concurrent with his three-year criminal probationary period, during which any violation of the terms of the criminal probation would result in the immediate revocation of his State 1 insurance producer's license; special supervision and reporting requirements; and administrative costs of $2,000. X has complied with the terms of the settlement to date. In addition, in March 1999, following a hearing, the Board of Professional Review of the Certified Financial Planner Board of Standards, Inc. imposed a private censure on X, a Certified Financial Planner since 1983, for his felony conviction and the Division administrative action.

The Sponsoring Firm. The Sponsoring Firm, a full-service broker-dealer, has been a member of the NASD since 1979. It operates from two offices of supervisory jurisdiction and 40 branch offices, employing 25 registered principals and 215 registered representatives. The firm has represented that it employs no other individuals who are subject to statutory disqualification and is not a member of any other self-regulatory organizations.

The Sponsoring Firm does not have an extensive disciplinary history. A routine examination of the Sponsoring Firm conducted in 1999 resulted in a Letter of Caution ("LOC") that was issued in 1999. The LOC stated that the Sponsoring Firm's written procedures for supervising the types of business in which it engaged failed adequately to address certain areas concerning variable contracts and that the Sponsoring Firm failed timely to report two customer complaints in its 1998 quarterly statistical and summary information filings. In addition, the LOC found that written agreements governing the Sponsoring Firm's networking and brokerage affiliate arrangements (between the Firm and the financial institutions on whose premises the Firm conducts a securities business) failed to contain all information required by NASD Conduct Rule 2350 (c)(2).

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[3] Pursuant to a section of the State 1 Code, X was required to report the felony to the Division within 30 days of having been charged. The Division first learned of X's 1998 felony charge in September 1998, from the State 1 Securities Division.

NASD Regulation also issued the Sponsoring Firm an LOC in 1997. This LOC found that the Sponsoring Firm failed to transmit transactions to the National Securities Clearing Corporation via its clearing agent. The LOC also found that the Sponsoring Firm's written supervisory procedures were inadequate in that they failed to address steps designed to detect and/or prevent violations of the Municipal Securities Rulemaking Board ("MSRB") Rule G-37 and the record-keeping provisions of MSRB Rule G-8, and did not identify a municipal securities principal responsible for ensuring compliance with those MSRB Rules. In addition, the Sponsoring Firm's Schedule I for the year ending December 31, 1996, failed to reflect the municipal securities revenue generated for that year.

A 1995 routine examination of the Sponsoring Firm resulted in a Letter of Acceptance, Waiver, and Consent in 1995. The Sponsoring Firm and a registered person employed by the Firm ("Employee 1"), were censured and fined jointly and severally in the amount of $2,500 for violating SEC Rule 15c3-1 by conducting a securities business while failing to maintain required minimum net capital.

The Sponsoring Firm is also the subject of a pending arbitration claim filed by a former customer. The claimant alleges that a registered representative of the Sponsoring Firm engaged in churning and recommended unsuitable investments from 1992 to 1995. The claimant is seeking damages of $100,000.

Background of Proposed Supervisor. The Sponsoring Firm proposes to have the Vice President of Compliance, serve as X's responsible supervisor. The Proposed Supervisor has been employed by the Sponsoring Firm for the last three years. She has been in the financial services industry in various capacities with a number of NASD member firms in State 2 and State 3 since 1972, and has been registered as general securities representative since 1980 and as general securities principal since 1993. She has also been registered as a registered options principal since 1995 and as a municipal securities principal since 1996. She has not been the subject of any disciplinary or regulatory proceedings, complaints, or arbitrations.

Member Regulation's Recommendation. Member Regulation recommends that X's association with the Sponsoring Firm be denied, based on two principal factors. The first is the nature of the statutory disqualification. Member Regulation argues that X's conviction was recent and that the activity that led to X's disqualifying event, although not financially related, was egregious, having continued over a period of one year and three months. The second involves X's violation of State 1 law by failing to notify the State 1 Insurance Division of his felony criminal charges. Member Regulation argues that this failure bears on X's ability to be truthful and forthcoming, and that if he were permitted to associate with a member firm, the Association's ability to monitor him and to protect the investing public would be undermined.

Discussion

After a thorough review of the facts, we conclude that the Sponsoring Firm's Application to employ X as an investment company and variable contract products representative should be denied. Although the Hearing Panel was impressed with X's representations regarding his rehabilitation and contrition, we nonetheless conclude that it would not be in the public interest to permit X to engage in the securities business at this time.

We have considered the circumstances of X's proposed employment with the Sponsoring Firm. The Sponsoring Firm proposes to employ X as a variable contracts products representative, and that the Proposed Supervisor, a Vice President and Compliance officer with 28 years of experience in the securities industry, will be X's responsible supervisor. We have no concerns as to her qualifications as the supervisor of a statutorily disqualified individual. The Sponsoring Firm, however, proposes that X be allowed to conduct his securities business during house calls, as he now conducts his insurance and financial planning business. We agree with Member Regulation that notwithstanding the Firm's ability to oversee remote transactions by means of reports, our allowing X to conduct off-site transactions without having a supervisor in close proximity would tend to undermine the effectiveness of the Firm's proposed supervisory conditions.

We have considered that X has participated in court-ordered as well as private treatment for his conditions, has complied with the conditions of his probation to date, and has availed himself of the support of his family and religious community. We have also considered X's representation that his therapist believes that rehabilitation is accomplished in part by the reestablishment of one's career, and that the risk presented to the community at large in X's case is low because his offense occurred within his family. Although we accept X's representations that he has worked hard to address his problems since he was convicted and we recognize his remorse, his felony conviction occurred only two and one-half years ago. We also note that X is still serving both criminal and administrative probationary terms and is currently under close supervision with a view toward continuing treatment and achieving rehabilitation.

We have considered all of these factors and conclude that the Sponsoring Firm's Application should be denied. X remains subject to the probationary jurisdiction of the court as well as of the State 1 Insurance Division for approximately another nine months, until July 2001, when his probation will be terminated. Even were he subject to the supervisory regime proposed by the Firm, we think it would not be in the public interest at this time to permit him to be associated with a member firm during a period when he is still serving probation in connection with both his felony conviction and his state administrative sanction. It is our view that it would be appropriate in this case to defer to the remedial and rehabilitative program imposed by the court, thereby allowing the designated social service agencies to accomplish their work. Our inclination to defer to the determination of other governmental authorities is further supported by the concerns engendered by X's failure timely to report the fact that he had been charged with a felony to state insurance regulators. Accordingly, based on the proposed off-site nature of X's proposed employment, the gravity of his demonstrated infractions, the fact that he is still on probation, and our determination that it is too early to conclude that X has been fully rehabilitated and

would represent no risk to the securities industry, we find that it is not in the public interest to allow him to become associated with a member firm at this time.

On Behalf of the National Adjudicatory Council,

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Joan C. Conley, Senior Vice President and Corporate Secretary

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LATER CASE HISTORY:

X requested a review by the SEC of the NAC's decision. The SEC rejected the appeal as late, notwithstanding its specific statutory authority under Section 19(d)(2) of the Securities Exchange Act to extend in its discretion the thirty-day deadline. Accordingly, the NAC decision is the final decision in this matter.