

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of the Association
of
X
as a
General Securities Representative and Equities Trader
with
The Sponsoring Firm

Redacted Decision

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

SD99005

On August 19, 1998, a member firm ("the Sponsoring Firm" or "the Firm") completed an MC-400 application ("Application") to permit X¹, a person subject to a statutory disqualification, to associate with the Firm as a general securities representative and an equities trader. In December 1998, a subcommittee of the Statutory Disqualification Committee of NASD Regulation, Inc. ("NASD Regulation") held a hearing on the matter. X appeared and was accompanied by counsel and his proposed supervisor ("the Proposed Supervisor"), a Branch Manager and general securities principal with the Sponsoring Firm. The President of the Sponsoring Firm also appeared. BDK appeared on behalf of the Department of Member Regulation ("Member Regulation").

X is subject to a statutory disqualification as a result of his 1990 guilty plea to an Information, issued by the United States District Court for State 1, which charged X with willfully giving false material testimony under oath in a proceeding before the Securities and Exchange Commission ("Commission"). The Commission was investigating Firm A, a broker/dealer with which X had been employed, because of numerous customer complaints alleging manipulation of stock prices.² In 1994, X was sentenced to five years' probation, which was terminated early in 1997.

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 Specifically, X testified that certain orders were merely "indications of interest" when he knew that they were real orders that were actually unlawfully executed at pre-determined and manipulatively designed prices.

After his guilty plea, but prior to his sentencing, X was employed by Firm B (1989 through 1990) and Firm C (1990 through 1992). Neither of these firms was required to file an MC-400 application.³ After the sentencing, X became employed by Firm D (1996) and by Firm E (1996 until 1997). Both of these firms were notified by the NASD that an MC-400 application was necessary, and both firms terminated X without filing any application. Since that time, X has been a customer at the Sponsoring Firm and actively trades his own account.

The Sponsoring Firm is organized as a corporation. The Sponsoring Firm became a member of the NASD in 1994 and it is engaged in a general securities business. The Sponsoring Firm's main office is located in New York and it has four branch offices. The Sponsoring Firm employs 27 general securities principals, 126 general securities representatives, and 73 associated persons. The Sponsoring Firm has no disciplinary history. In 1997, NASD Regulation's New York District Office completed a routine examination of the Sponsoring Firm's financial operations and sales practices which resulted in a disposition of "Filed Without Action" ("FWA"). Similarly, in 1996, NASD Regulation's New York District Office completed a routine examination which also resulted in a disposition of "Filed Without Action."

The Sponsoring Firm proposes to have X supervised by the Proposed Supervisor, who is a general securities principal and the Branch Manager of a Florida office of the Sponsoring Firm, where X will be employed. The Proposed Supervisor has been employed in the securities industry since 1977, and he has been a general securities principal since 1996.

Discussion

Member Regulation did not object to X's association with the Sponsoring Firm as a general securities representative, as long as the Sponsoring Firm agreed to additional supervisory restrictions. Following the hearing, Member Regulation staff and the Applicant negotiated and agreed upon particular procedures, which are listed below, and which are acceptable to us.

We conclude that X should be permitted to associate with the Sponsoring Firm as a general securities representative. The activity that resulted in X's statutory disqualification, while serious, occurred more than nine years ago (1989). X has successfully completed his probation. Since the disqualifying event, X has not been subject to any other regulatory or disciplinary incidents.⁴ X's activities at the Sponsoring Firm will be restricted to trading for the Firm's account, because he and the Sponsoring Firm have agreed that he will be prohibited from any business contact with the Sponsoring Firm's customers.

³ These two firms were apparently not notified by the NASD's Central Registration Depository ("CRD") that X was a statutorily disqualified individual as of the date of his guilty plea, regardless of whether or not he had yet been sentenced.

⁴ Four customer complaints were filed against X during his association with Firm B; each complaint, however, was investigated by NASD Regulation's New York District Office and was "Filed Without Action."

The Sponsoring Firm and the Proposed Supervisor have no disciplinary histories, and they have proposed an effective plan of supervision. We therefore conclude that they are qualified to supervise X pursuant to the following terms of that plan:

1. The Proposed Supervisor shall review and approve, on a real-time basis and at least by the close of business each day, all transactions entered by X. X's transactions shall also be monitored by the Sponsoring Firm's computer oversight system.
2. X will transmit orders for transactions via the Sponsoring Firm's electronic facilities. In those rare instances in which such electronic transmission is not possible, such transactions will be executed by a registered representative other than X.
3. X will be prohibited from having any business contact, via telephone, electronic communications or written correspondence, with the Sponsoring Firm's customers.
4. X's activities at the Sponsoring Firm shall be the subject of quarterly reviews by the Sponsoring Firm's Compliance Officer and/or its President. There will be four reviews a year, and they will be divided equally between the Compliance Officer and the President. The reviews will be completed at the branch office where X is employed, and conducted to ensure that his trading activities comply with all pertinent rules and regulations. The results of the reviews will be documented, and a copy thereof will be maintained in an accessible location at the branch office and at the Sponsoring Firm's main office.
5. X will conduct his business on behalf of the Sponsoring Firm from the branch office where the Proposed Supervisor, or his designee, is physically located.
6. The Sponsoring Firm's written supervisory procedures shall be amended in writing to establish the Proposed Supervisor' responsibility to supervise X.
7. The Sponsoring Firm's written supervisory procedures shall be amended in writing to memorialize the specific supervisory procedures to be employed for the supervision of X.
8. All of X's incoming and outgoing correspondence shall be reviewed by the Proposed Supervisor.
9. If the pending application is approved and X begins to trade the capital of the Sponsoring Firm, X shall no longer engage in day trading, or any other short-term trading activities, for his own account. This policy shall not prohibit X from investing in the U.S. capital markets for his own account(s) by exercising a strategy of buying and holding for investment purposes (for at least 30 days). If there is an opportunity for shorter-swing trading activity, X will obtain the prior approval of the Proposed Supervisor or one of his immediate subordinates.

The Sponsoring Firm employs no other individuals who are subject to statutory disqualification.

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, 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 issuance of this decision unless otherwise notified by the Commission.

On Behalf of the National Adjudicatory Council,

Joan C. Conley
Senior Vice President and Corporate Secretary