

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

SD98005

This matter involves the association of X¹, a person subject to a statutory disqualification, as a general securities representative with the Sponsoring Firm, a member firm located in Florida ("the Sponsoring Firm"). A hearing in the matter was held in December 1997 before a subcommittee ("Hearing Panel") of the Statutory Disqualification Committee ("SD Committee") of NASD Regulation, Inc. ("NASD Regulation"). X appeared and was accompanied by counsel and by his proposed supervisor("the Proposed Supervisor"), the President of the Sponsoring Firm.

X is subject to a statutory disqualification as the result of his 1991 guilty plea in a United States District Court to one count of conspiracy to possess with intent to distribute five kilograms or more of cocaine. This very serious offense carries a mandatory minimum term of incarceration of 121 months under the federal sentencing guidelines. X, however, was sentenced to five years' probation, fined \$6,000, and ordered to perform 500 hours of community service. The leniency of this sentence is attributable to an unusual motion filed by the Assistant United States Attorney who prosecuted X's case, who described X's unhesitating and enthusiastic cooperation with the federal government in X's own case and in other cases as well. X's assistance apparently triggered one of the largest steroid trafficking investigations in United States' history.

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.

Since his conviction, X has earned Associate of Arts and Bachelor of Science degrees from a community college and a university, respectively, where he garnered numerous academic honors and widespread faculty respect. The Sponsoring Firm hired X part-time to perform clerical and administrative work in 1992, based upon a recommendation by the Dean of X's School of Business. In 1994, when X graduated, the Sponsoring Firm hired him for full-time clerical, record-keeping, research, and technology support services. X and the Proposed Supervisor testified that X has not performed any work for nor had any contact with customer accounts at the Sponsoring Firm. X completed his probation without incident in 1996.

A Disclosure Reporting Page attached to X's Uniform Application for Securities Industry Registration or Transfer ("Form U-4") also disclosed an unsatisfied 1992 judgment for \$7,507.15 against X. After the hearing on this matter, X presented proof that he has satisfied the judgement.

The Sponsoring Firm has been a member of the NASD since 1981. Currently, the Sponsoring Firm has one office, which is located in Florida, and employs two registered principals and three registered representatives. The Sponsoring Firm specializes in providing brokerage and financial advisory services to high-net-worth individuals and to institutions, and clears on a fully-disclosed basis through a clearing firm. The Sponsoring Firm is not a member of any other self-regulatory organization.

X will be supervised by the Sponsoring Firm's President, who became a general securities representative in 1976 and a general securities principal in 1981. The Proposed Supervisor operated his own consulting company from 1965 to 1975, worked as a registered representative at Firm A, from 1975 to 1981, and opened the Sponsoring Firm in 1981. The Proposed Supervisor and the Sponsoring Firm share a single incident in their disciplinary histories. In 1992 the Proposed Supervisor sold a "hot issue" to a registered representative who, at the time, was inactive and not an employee of the Sponsoring Firm. The Acceptance, Waiver and Consent that was executed in 1992 reflects that the violation was neither intentional nor for profit. The Proposed Supervisor and the Sponsoring Firm were each censured and were fined \$2,300, jointly and severally.

Although the Proposed Supervisor and X appear to share strong rapport and mutual respect, we are troubled that X failed to disclose his criminal record to the Proposed Supervisor immediately upon his employment; the Proposed Supervisor first learned of it when the Sponsoring Firm attempted to register X. X testified that he did not disclose the incident because he thought that he was not required to, and he feared that the Proposed Supervisor would not hire him. X's disclosure triggered a heated debate at the Sponsoring Firm, and the Proposed Supervisor testified that when X did disclose the incident, the Supervisor's first impulse was to fire X. The Proposed Supervisor decided to retain X because X had proven himself talented and hard-working and because the Proposed Supervisor believed that X deserved a second chance.

The Sponsoring Firm proposes to employ X as a general securities representative to prepare financial analyses and portfolio performance reports, and to provide administrative support to three registered representatives. At the hearing and in written submissions the Sponsoring Firm outlined the following supervisory plan:

- (1) X and the Proposed Supervisor will be located in close proximity in the office;
- (2) X and the Proposed Supervisor will meet daily to discuss X's assignments and business; and
- (3) The Proposed Supervisor will personally monitor and review X's business correspondence and work product.

The Sponsoring Firm employs no other individuals who are subject to a statutory disqualification and no familial relationship exists between X and his proposed supervisor. The Sponsoring Firm's 1995 examination was filed without action.

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. X committed a serious offense. We are impressed, however, by the federal prosecutor's unusually strong words to the sentencing judge on X's behalf. X was immediately remorseful for his dangerous, youthful offense and worked diligently to prove his worth by assisting the government. X successfully completed his probation, and he has worked hard to educate and rehabilitate himself. X has worked for the Proposed Supervisor for almost five years without incident and has earned the Proposed Supervisor's trust and respect. We thus certify, that X meets all applicable requirements for the proposed employment.

For his part, the Proposed Supervisor appears to be well qualified and equipped to supervise X. In fact, he has closely supervised X for almost five years and will continue to employ the same supervisory techniques that have worked well for him thus far. The Proposed Supervisor has been employed in the securities industry for 21 years with only one disciplinary incident, which the NASD agreed was unintentional. The Proposed Supervisor has acknowledged the gravity of supervising a representative who is subject to a statutory disqualification and has undertaken that duty with deliberation.

The Sponsoring Firm appears to be well structured to supervise X, in that the Sponsoring Firm has only one office, has proposed a supervisory program to monitor X closely, and has the resources to implement that program.

Accordingly, the application of X to become associated as a general securities representative with the Sponsoring Firm will become effective in 30 days unless otherwise notified by the Securities and Exchange Commission.

On Behalf of the National Adjudicatory Council,

Joan C. Conley, Corporate Secretary