

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

SD98006

This matter involves the association of X¹, a person subject to a statutory disqualification, as a general securities representative with the a member firm located in New York ("the Sponsoring Firm" or "the 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"), a general securities principal and branch manager at the Sponsoring Firm.

X is subject to a statutory disqualification as the result of his 1995 guilty plea in State 1 Superior Court to one felony-equivalent count of cocaine possession. X was sentenced to 18 months' probation, and fined \$1,000. In addition, his driver's license was suspended for six months, and he was required to pay various fees. His probation terminated without incident.

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.

X failed to disclose this statutorily disqualifying incident to the NASD, but now claims that his failure was unintentional.² X was represented in State 1 Superior Court by a court-appointed attorney with limited criminal law experience. X and his family members repeatedly told his court-appointed attorney that X would plead guilty only to a misdemeanor and not to a felony. The attorney assured them that, although State 1 did not classify its offenses as misdemeanors or felonies, the cocaine possession charge against X was not a felony equivalent. Apparently, the attorney was mistaken. When X learned that he had pleaded guilty to a felony - equivalent offense, he initiated an unsuccessful proceeding to have his guilty plea nullified. The State 1 Superior Court denied X relief, despite the attorney's career-threatening admission that he had misinformed X that the offense was not a felony-equivalent. Therefore, we conclude that X's failure to disclose this incident was not intentional.³

X has attempted, unsuccessfully, to register with two member firms: Firm A (1996) and Firm B (1996). X was permitted to resign from Firm A for non-disciplinary reasons, and Firm B terminated his association when it discovered X's disqualifying incident. As described above, X mistakenly believed that he was not required to disclose the incident. X testified that he has not performed any securities-related business on behalf of the Sponsoring Firm and that his employment was limited to preparing for the Series 7 examination, which he passed.

The Sponsoring Firm has been a member of the NASD since 1995. Currently, the Sponsoring Firm has only one office, which is located in New York. The Sponsoring Firm's prior home office, located in Texas, closed in 1997. The Sponsoring Firm employs six registered principals and 27 registered representatives at its home office. The Sponsoring Firm's three owners are all in good standing with the Association and have no disciplinary histories. The Sponsoring Firm derives 90 percent of its revenues from stocks and 10 percent from bonds and options. The Sponsoring Firm currently makes markets in three stocks, has completed several private placements, and intends to become involved in initial public offerings soon. Until recently, the Sponsoring Firm's entire business was done on an agency basis. The Sponsoring Firm is not a member of any other self-regulatory organization.

The Sponsoring Firm has one disciplinary violation. In 1997, the Sponsoring Firm entered into a consent agreement with the Texas State Securities Board that imposed a \$30,000 fine, a reprimand, and suspension, based upon findings that the Sponsoring Firm violated Securities and Exchange

² If X were collaterally attacking a valid judgment of a state or federal court, we would not entertain his argument. He is not doing so. Rather, X conceded the underlying facts and the validity of the State 1 judgment, and simply explained why he considered the conviction to be for a misdemeanor and not for a felony.

³ Earlier in 1995 X was sentenced to three years' probation, 40 hours of community service, and fines and fees of \$865 for the following offenses: one misdemeanor count of possession of marijuana, one sub-misdemeanor count of possession of marijuana, one count of reckless driving, three counts of speeding, and six other, unspecified traffic offenses. X completed this probation without incident.

Commission margin rules and state, federal and self-regulatory organization record-keeping requirements and used unregistered agents. The consent order required the Sponsoring Firm to retain a compliance officer and to submit a compliance report within 90 days setting forth certain revisions in the Sponsoring Firm's compliance system. The Sponsoring Firm decided to close the Texas office and now has its sole office in New York.

The Sponsoring Firm proposes to employ X as a registered representative. X will be supervised by the Proposed Supervisor who became a general securities representative in 1989, a general securities principal in 1996, and an options principal in 1997. The Proposed Supervisor became a branch manager for The Sponsoring Firm in January of 1997, and he has no disciplinary history.⁴

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) The Proposed Supervisor will personally monitor and review X's business correspondence, new account forms, and order tickets;
- (3) The Proposed Supervisor will make monthly calls to X's active accounts and engage in random call-monitoring; and
- (4) X's activities will be limited to retail business in stocks, bonds, and mutual funds; X will not be permitted to open discretionary accounts.

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 last 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. We note that X's probation was successfully terminated and that his failure to disclose his disqualifying incident was unintentional. 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. In addition, his proposed supervisor has no disciplinary history and appears to understand the serious responsibility he has agreed to undertake in supervising a

⁴ The Proposed Supervisor's complete employment history is as follows: Firm C (1987 to 1994); Firm D (1994 to 1996); and the Sponsoring Firm. (1996 to present).

representative who is subject to a statutory disqualification. We certify that X meets all applicable requirements for the proposed employment.

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