

BEFORE THE NATIONAL BUSINESS CONDUCT COMMITTEE

NASD REGULATION, INC.

In the Matter of
the Association of

X

as a

General Securities Representative

with

The Sponsoring Firm

Redacted Decision

Amended

Notice Pursuant to

Section 19(d)

Securities Exchange Act

of 1934

Decision No. SD98003

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" or "Firm") located in New Jersey. A hearing in the matter was held in October 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 the Compliance Officer and general securities principal at the Sponsoring Firm and X's proposed supervisor; the general counsel for the Sponsoring Firm; and counsel for X and the Sponsoring Firm. A compliance consultant ("Compliance Consultant") participated telephonically.

X previously was employed as the general securities principal of Firm A from 1975 to 1985, and then as a general securities representative at Firm B from 1985 through 1992. X has been unemployed since 1992, but has devoted significant time and energy to charitable causes and to raising his children.

X became statutorily disqualified after pleading guilty in a U.S. District Court in 1992 to one count of failure to file a currency transaction report. For failing to report the \$12,500 transaction, X

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.

was sentenced to 3 years' incarceration (with all but three months suspended) and four years of probation, fined \$200,000, and ordered to perform 150 hours of community service during each year of his probation. X's misconduct occurred while he was President of Firm A, and involved cash-for-bond exchange transactions for a particular customer.

In October 1992, the NASD denied X's application to continue his registration with Firm B because X was still on probation for an offense that occurred while he was President of an NASD member firm. In denying X's continued association with Firm B, the NASD acknowledged that Firm B did not handle cash in its business and that X's duties would be limited.

The Court terminated X's probation effective October 1994, and he then submitted a second application to become associated with a member firm, this time with the Sponsoring Firm. Despite the Sponsoring Firm's detailed supervisory program and X's laudable community service, in January 1995, the NASD denied this application because of the recent and serious nature of X's violation.

The Sponsoring Firm has been a member of the NASD since 1983 and is a full service broker-dealer specializing in fixed-income investments. The firm clears on a fully disclosed basis and employs four registered principals, 24 registered representatives and has three branch offices. The firm proposes to employ X as a registered representative at its home office in New Jersey. X will be directly supervised by the firm's Executive Vice President and Chief Compliance Officer (the "Proposed Supervisor"). In 1974, the SEC suspended the Proposed Supervisor for six months for violating various registration, bookkeeping, and trade practice rules. The Sponsoring Firm proposes to have their General Counsel supervise X simultaneously with the Proposed Supervisor, although the Proposed Supervisor would be accountable as X's primary supervisor. Together, the General Counsel and the Proposed Supervisor own 98 percent of the Firm; they testified that X will not become an owner.

The Sponsoring Firm proposes that X function as a registered representative of the firm, selling primarily fixed-income products, and that he be supervised as follows:

1. X and the Proposed Supervisor will be located in close physical proximity;
2. All transactions will be reviewed and approved by the Proposed Supervisor (or in his absence, a duly registered principal of the firm) on a daily basis. The Proposed Supervisor will conduct a weekly review of all client accounts;
3. X will be prohibited from entering the Firm's wire room and accounting facility;
4. The Proposed Supervisor will review all correspondence and monthly statements;

5. The Proposed Supervisor will authorize all requests for client checks; and
6. X will not be permitted to have discretionary accounts, nor will he have contact with customer funds or securities.

The Sponsoring Firm employs no other individuals who are subject to a statutory disqualification and no familial relationship exists between X, the Proposed Supervisor, or the General Counsel. The 1997 examination of the Sponsoring Firm was filed without action.

After careful review of the entire record in this matter, we conclude that the application of X for association with the Sponsoring Firm as a general securities representative should be denied. The Sponsoring Firm's proposed supervisory plan is thorough and well designed for use with an individual subject to a statutory disqualification. We were persuaded by the testimony of the Compliance Consultant, who testified as an expert on this issue, that the Sponsoring Firm as a Firm and the Proposed Supervisor and the General Counsel as individuals are qualified supervisors.

We find, however, that it is not in the public interest to grant the Sponsoring Firm's application because X's violation was: (1) serious, as evidenced by the sanctions imposed; (2) securities related, as X cashed municipal bond coupons for a customer of his firm; and (3) committed while X was President and owner of an NASD member firm. For these reasons, we find that, given proper regard for the public interest and protection of investors, X should not be permitted to rejoin the securities industry until the full 10-year disqualification period has expired (2002).

On Behalf of the National Business Conduct Committee,

Joan C. Conley, Corporate Secretary