

BEFORE THE NATIONAL BUSINESS CONDUCT COMMITTEE

NASD REGULATION, INC.

In the Matter of
the Association

of

X

as a

General Securities Principal

with

The Sponsoring Firm

Redacted Decision

Notice Pursuant to

Rule 19h-1

Securities Exchange Act

of 1934

SD97007

This matter involves the association of X¹, a person subject to a statutory disqualification, as a general securities principal with a member firm ("the Sponsoring Firm" or "the Firm") located in New York. A hearing on the matter was held in February 1997² before a subcommittee ("SD hearing panel") of the Statutory Disqualification Committee ("SD Committee") of NASD Regulation, Inc. ("NASD Regulation"). X appeared and was accompanied by the Chairman and Chief Executive Officer of the Sponsoring Firm ("the Proposed Supervisor").

X has been employed as a registered representative and government securities representative with the Sponsoring Firm since January 1993. He was previously employed by Firm A (1969 - 1991) as a Senior Executive Vice President and Director.

X is subject to a statutory disqualification as a result of SEC Administrative Proceedings, from 1993, in which he was barred from association in a supervisory capacity with any broker, dealer, municipal securities dealer, investment adviser or investment company with the proviso that, after three years, he may apply with such entity in a supervisory capacity other than that of head of a department, desk, or other organizational subdivision. In addition, X was barred for one year in a supervisory or

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 This matter was deferred pending the results of SEC and NASD examinations of the Firm.

managerial capacity by the New York Stock Exchange ("NYSE") in 1992 for the same misconduct.

Both sanctions arose from X's conduct as a Senior Executive Vice President and a Director of Firm A and as the direct supervisor of a registered rep. The SEC and NYSE found that, between 1985-86, X failed reasonably to supervise the registered representative with a view to preventing the registered representative's violations of the federal securities laws in connection with two unrelated schemes. (The registered rep pleaded guilty to securities fraud and mail fraud and was the subject of an injunction and bar by the SEC.)

X testified at the hearing as to his employment history since his disqualification. He stated that he has been acting as an advisor and consultant to the Proposed Supervisor, and has been involved in the investment banking department. He owns a 7.5 percent limited partnership interest and is an officer of the Sponsoring Firm by virtue of his title of Vice Chairman. X testified that he has no supervisory or managerial duties at the Firm. Attorneys representing the Sponsoring Firm and X supplemented the record with statements indicating that X and the Firm sought legal advice before bestowing the title of Vice Chairman. Examiners from NASD Regulation reviewed the Sponsoring Firm's correspondence file, customer complaints, underwriting documents and supervisory procedures and could find no evidence that X had been acting in a supervisory role. In addition, a recent (1997) SEC examination noted minor recordkeeping and net capital deficiencies and the SEC likewise found no indication that X was performing supervisory functions at the Firm.

The Sponsoring Firm has been a member of the NASD since 1992 and is engaged in a general securities business. The Sponsoring Firm clears on a fully disclosed basis, employs 7 registered principals and 73 registered representatives, and has no branch offices. The Firm proposes to employ X as a general securities principal to work from the firm's home office, in New York. Kantor will be supervised by the Proposed Supervisor, who has been a registered principal since 1988 and has no disciplinary history. It is proposed that X's primary duties will be to exercise general supervision of all Firm activities with the exception of the trading and market making departments.

At the hearing and in written submissions the Sponsoring Firm outlined the following supervisory plan:

1. X will report to the Proposed Supervisor, who will supervise all aspects of the Sponsoring Firm's business.

The Sponsoring Firm employs one other individual who is subject to a statutory disqualification. That individual, whose association with the Firm was approved in 1995, was convicted of attempted possession of marijuana in 1991. (Upon examination, NASD staff discovered that the disqualified individual's supervisor had changed twice during 1996, and the Firm did not amend the Form MC400 as required. The Firm did notify the NASD of these changes by letter dated June 18, 1997.) No familial relationship exists between X and the Proposed Supervisor. The 1997 NASD examination results are pending. The 1994 NASD examination resulted in a Letter of Caution for Free-Riding and

Withholding violations. The 1997 SEC examination resulted in a deficiency letter for minor books and records and net capital violations.

We have carefully reviewed the entire record in this matter, and have taken into consideration the standards enumerated by the Commission in its decision, In the Matter of the Application of Paul Edward Van Dusen, 47 S.E.C. 668 (1981), (holding that, "in the absence of new information reflecting adversely on [an individual's] ability to function in his proposed employment in a manner consistent with the public interest," it is inconsistent not to permit an individual to reenter the securities industry when the time specified in a limited bar order has expired). Under that standard, we conclude that the application of X to become associated with the Sponsoring Firm as a general securities principal should be approved. We note that the 1993 SEC order specifically allowed X to make application to become associated in a supervisory capacity after three years, and such time has elapsed.

The NASD certifies that X meets all applicable requirements for the proposed employment. The Sponsoring F is not a member of any other self-regulatory organization.

Accordingly, in conformity with the provisions of SEC Rule 19h-1, the registration of X as a general securities principal with the Sponsoring Firm will become effective upon the issuance of an order by the Commission that it will not institute proceedings pursuant to Section 15A(g)(2) of the Act. The NASD is also seeking relief under Section 19(h) of the Act. This notice shall serve as an application for such an order.

On Behalf of the National Business Conduct Committee,

Joan C. Conley
Corporate Secretary