

BEFORE THE NATIONAL BUSINESS CONDUCT COMMITTEE

NASD REGULATION INC.

In the Matter of
the Association

of

X

as a

Registered Representative

with

The Sponsoring Firm

Redacted Decision

Notice Pursuant to
Section 19(d)
Securities Exchange Act
of 1934

SD97002

This matter involves the association of X¹, a person subject to a statutory disqualification, as a corporate securities representative with a member firm located in Florida ("the Sponsoring Firm" or "the Firm"). A hearing on the matter was held on May 29, 1997, before a subcommittee ("SD hearing panel") of the Statutory Disqualification Committee of NASD Regulation, Inc. ("NASD Regulation"). X appeared and was accompanied by the President and general securities principal ("the Proposed Supervisor"). X was previously employed as a general securities principal and representative with Firm A from 1984 to 1991.

X is subject to a statutory disqualification as a result of his conviction in U.S. District Court for State 1 in 1994 for wire fraud. He was placed on probation for five years, fined \$10,000 and ordered to perform 100 hours of community service. In addition, X was expressly prohibited from marketing or promoting securities, and must inform his probation officer in the event he plans to seek re-entry into the securities business.

X's misconduct involved his activities with Firm B, a publication production company for

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.

publicly-traded companies. X used the U.S. Postal System to mail out brochures that contained fraudulent information about a specific company. The SEC has also instituted proceedings based on the same misconduct. In a complaint dated 1996, the SEC alleged that Firm B, and others, violated the anti-fraud provisions of federal securities laws in that a broker/dealer paid bribes to several registered representatives to induce them to sell promoted stocks to their retail customers. The promoted companies paid the defendants in stock options, which was not disclosed in the marketing brochures. Settlement negotiations between X and the SEC are pending.

X was also named in two NASD disciplinary actions. In an AWC dated 1990, X was censured and fined \$7,180 for violations of the Free-Riding and Withholding provisions. In an Offer of Settlement dated 1986, X was censured and jointly and severally fined \$2,000 for selling securities at unfair prices.

X testified at the hearing as to his employment history since his disqualification. He stated that he has performed odd jobs involving manual labor, and he has been trading options for his own account. He also stated that he was employed by the Sponsoring Firm as a computer programmer, but ceased this activity when he was advised by NASD staff that this employment was not permitted under Article II, Section 3 of the NASD By-Laws.

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 and employs two registered principals, three registered representatives and has no branch offices. The Sponsoring Firm proposes to employ X as a registered representative to work from the home office, which is located in Florida. X will be supervised by the Supervisor, President of the Sponsoring Firm. The Supervisor has been a registered principal since 1988 and has no disciplinary history. It is proposed that X's primary duties will be to act as a wholesale trader.

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

1. X and the Supervisor will be located next to each other.
2. The Supervisor will review and sign all tickets.
3. X will be a wholesale trader only, and will not have customer contact or handle customer orders.

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 1996 examination results are pending.

After a careful review of the entire record in this matter, we conclude that the application of X to become associated with the Sponsoring Firm as a registered representative should be denied. We are concerned by the serious and recent misconduct that led to X's conviction, and note that he is currently on probation and will be until 1999. We also note that X's probation contains conditions expressly prohibiting him from marketing or promoting securities and/or stock, either personally or through

members of any company which he owns or manages, for five years. In addition, this serious, securities-related conviction is not an isolated incident, as X was the subject of two NASD complaints in the past 10 years.

For these reasons, we do not believe it is appropriate, given proper regard for the interest and protection of investors, to allow X to become associated with the Sponsoring Firm

On Behalf of the National Business Conduct Committee,

Joan C. Conley
Corporate Secretary