

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of the Association

of

X

as an

Investment Company and Variable Contracts
Products Representative

with

The Sponsoring Firm

REDACTED DECISION

Notice Pursuant to
Rule 19h-1
Securities Exchange Act
of 1934

Decision No. SD01011

On February 14, 2001, the Sponsoring Firm (or "the Firm") completed a Membership Continuance Application ("MC-400" or "the Application") to permit X,¹ a person subject to a statutory disqualification, to associate with the Firm as an investment company and variable contracts products representative. In May 2001, a subcommittee ("Hearing Panel") of the Statutory Disqualification Committee of NASD Regulation, Inc. ("NASD Regulation") held a hearing on the matter. X appeared and was accompanied by the Proposed Supervisor, and by counsel for the Firm. BA appeared on behalf of the Department of Member Regulation ("Member Regulation").

X's Statutorily Disqualifying Event. X is subject to a statutory disqualification as a result of a 1993 plea of nolo contendere to the misdemeanor charge of "theft by taking" in State 1. X stated that, at the age of 20, he was employed by a store and permitted his friends to take movies without having to pay rental fees. The store manager discovered this activity and estimated the value of the uncollected rental fees at \$200. X was ordered to pay \$200 in restitution, a fine of \$200, and \$40 in costs. He also was sentenced to 12 months in jail, which sentence was suspended, and he was ordered to serve 12 months' probation. The probationary period ended in 1994.

X has no other disciplinary, regulatory, or criminal history.

X's Professional Background. X has never been registered in the securities industry. X passed the Series 6 (investment company and variable contracts products representative

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.

qualification examination) in 2000 and the Series 66 (uniform combined state law qualification examination) in 2000. He began working in a clerical and ministerial capacity at the Firm in 2000. When Member Regulation questioned the Firm about X's association at the Firm in a 2001 telephone conversation, the Sponsoring Firm was forthright about the fact that X was acting in an associated capacity and stated that it had not realized that it was in violation of NASD rules. The Firm terminated X's employment immediately in 2001.

The Firm. The Sponsoring Firm, which was formerly named Firm 1, became a member of the Association in 1999 (Firm 1 had been a member of the NASD since 1959). The Firm has nine offices of supervisory jurisdiction and 193 branch offices. It employs 195 registered principals, 809 registered representatives, and 466 employees. The Sponsoring Firm is engaged in sales of mutual funds and variable life insurance and annuities, and it offers investment advisory services.

The Sponsoring Firm's 2000 routine examination was filed without action. Firm 1 has had no formal disciplinary history in its 42 years as a member of the NASD. A routine examination of Firm 1 in 1999 resulted in a 1999 Letter of Caution ("LOC") for certain violations in its written supervisory procedures. Based on Firm 1's response to the LOC, Member Regulation is satisfied that the noted deficiencies have been corrected.

The Sponsoring Firm does not employ any statutorily disqualified individuals.

X's Proposed Business Activities. The Firm proposes to employ X as an investment company and variable contracts products representative, in the capacity of client service representative, in its home office. X would be compensated on a straight salary basis, and he would have no supervisory duties.

Proposed Supervision of X. The Firm proposes that the Proposed Supervisor, Assistant Director for Client Services, would be X's responsible supervisor. The Proposed Supervisor was an independent contractor in a Firm 1 branch office as an investment company and variable contracts products representative from 1986 through 1999. She also served as an investment company and variable contracts products principal from 1996 through 1999. The Proposed Supervisor has been employed in Firm 1's home office as a supervisor of eight registered representatives since May 2000. She currently is registered as both an investment company and variable contracts products representative and principal.

The Proposed Supervisor has no disciplinary or regulatory history.

Member Regulation's Recommendation. Member Regulation recommends that X's proposed association with the Firm as an investment company and variable contracts products representative be approved.

Discussion. After careful review of the entire record in this matter, we have determined to approve the Sponsoring Firm's Application to employ X as an investment company and variable contracts products representative.

We, like Member Regulation, are disturbed by X's misdemeanor conviction for theft by taking because it was financially related and involved dishonesty. We conclude, however, that there are numerous factors that weigh in favor of approving the Application: (a) the length of time (more than eight years) since the disqualifying conduct; (b) X's lack of a disciplinary history since the disqualifying event; (c) the Firm's lack of a disciplinary history in its 42 years in the securities business; (d) the Proposed Supervisor's experience and lack of disciplinary history; and (e) the assurances provided by the plan of supervisory procedures and operating restrictions developed by the Firm and Member Regulation, the terms of which are set forth below:

1. X will not maintain discretionary accounts;
2. X will have no supervisory duties;
3. X will not have access to client funds or securities;
4. X will conduct all securities-related business from his work station, which is within 25 feet and in full view of the Proposed Supervisor's work station;
5. The Proposed Supervisor will review and approve all of X's sales for suitability prior to execution;
6. The Proposed Supervisor will review and initial all of X's incoming securities-related correspondence prior to X's receiving it, except e-mail which she will either receive simultaneously with X or shortly after X receives it;
7. The Proposed Supervisor will review and initial all of X's outgoing securities-related correspondence prior to transmittal to clients;
8. The Proposed Supervisor will review recordings of all of X's incoming and outgoing phone conversations on a random sampling basis at least weekly;
9. The Proposed Supervisor will randomly monitor X's telephone conversations in progress at least weekly;
10. The Proposed Supervisor will observe and evaluate X's participation in weekly group training sessions;

11. The Proposed Supervisor will directly contact any client expressing concern about service received from X;
12. On a periodic basis, the Proposed Supervisor will send performance evaluations concerning X to HC, the President of the Sponsoring Firm;
13. For the duration of X's statutory disqualification, the Sponsoring Firm must obtain prior approval from Member Regulation if it wishes to change X's responsible supervisor from the Proposed Supervisor to another person;
14. The Proposed Supervisor will keep a written record evidencing her review and approval of all of X's transactions, correspondence and other securities-related activities that she monitors; and
15. All customer complaints pertaining to X, whether verbal or written, will be immediately referred to the Proposed Supervisor for review. The Proposed Supervisor will prepare a memorandum to the file detailing what measures were taken by the Sponsoring Firm to investigate the merits of the complaint (e.g., contact with the customer) and the resolution of the matter. Documents pertaining to these complaints will be kept segregated for ease of review.

The NASD certifies that: 1) X meets all applicable requirements for the proposed employment; 2) the Firm is not a member of any other self-regulatory organization; and 3) X and the Proposed Supervisor have represented that they are not related by blood or marriage.

Accordingly, in conformity with the provisions of SEC Rule 19h-1, the registration of X as an investment company and variable contracts products representative with the Sponsoring Firm will become effective within 30 days of the Commission's receipt of this decision, unless otherwise notified by the Commission.

On Behalf of the National Adjudicatory Council,

Barbara Z. Sweeney
Senior Vice President and Corporate Secretary