

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

<p>In the Matter of the Association of</p> <p>X</p> <p>as a</p> <p>Direct Participation Program Representative</p> <p>with</p> <p>The Sponsoring Firm</p>

REDACTED DECISION

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

Decision No. SD01012

On April 26, 2001, the Sponsoring Firm (or "the Firm") completed a Membership Continuance ("MC-400") application ("Application") seeking to permit X¹, a person subject to statutory disqualification, to associate with the Firm as a Direct Participation Program Representative. A hearing was not held in this matter. Rather, pursuant to NASD Procedural Rule 9523, NASD Regulation Inc.'s ("NASD Regulation") Department of Member Regulation ("Member Regulation") recommended to the Chair of the Statutory Disqualification Committee that X's proposed association with the Sponsoring Firm be approved pursuant to the terms and conditions set forth below. Pursuant to Rule 9523(c), the Chair of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council, has determined to accept the recommendation of Member Regulation and is filing this notice with the Securities and Exchange Commission ("Commission").

X's Statutorily Disqualifying Event and Background. X is subject to disqualification under Article III, Section 4(h) of the NASD By-Laws as a result of an Order of Permanent Injunction issued by a U.S. District Court for State 1 in 1999. The Commission's complaint, filed in 1998, alleges the following;

- 1) that X and others made misleading statements in offering limited partnership interests to potential investors and;

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) that during Company 1's offering period, X and others made misrepresentations in their solicitations of investors regarding the amount of Company 1's returns, the amount by which an investment in Company 1 would increase in value, and their own purported investment in Company 1.

In 1999, the Commission issued an Order Instituting Public Administrative Proceeding, Making Findings and Imposing Remedial Sanctions, pursuant to which X was suspended from association with any broker or dealer for a period of 12 months.

X was first registered as a securities sales agent (Series 63) in 1995. He has been qualified as a direct participation program representative license (Series 22) since 1995 and as a direct participation principal (Series 39) since 1997. The record shows no other regulatory or disciplinary actions taken against X.

The Firm. The Sponsoring Firm became a member of the Association in 2001. The Firm has no offices of supervisory jurisdiction and no branch offices. Its home office is located in State 1. The Firm employs three registered principals and five registered representatives. The Firm is a broker-dealer selling limited partnerships in primary distribution on a best efforts basis and it also conducts business in Regulation A and Regulation D offerings of private placements.

The Sponsoring Firm has represented that it does not employ any statutorily disqualified individuals and is not a member of any other self-regulatory organization. In addition, the record shows no complaints, disciplinary proceedings, or arbitrations against the Firm. Due to the newness of the Firm, its first routine exam is yet to be scheduled.

X's Business Activities and Supervision. The Firm proposes that X be employed as a direct participation program representative out of the Firm's home office located in State 1. X will be marketing private placement issues and direct participation products.

The Firm proposes that the Proposed Supervisor will be X's primary, responsible supervisor. The Proposed Supervisor is a principal at the Firm's home office. He has been registered as a general securities representative (Series 7) and agent (Series 63) since 1992, a general securities principal (Series 24) since 1993, and a financial and operations principal (Series 27) since December 2000. The Proposed Supervisor has no disciplinary history and has been employed with the Sponsoring Firm since its inception in January 2001. He was first employed in the securities industry in 1993 with another member firm.

The Sponsoring Firm consented to the imposition of the below terms and conditions in its MC-400 Application dated April 26, 2001. Member Regulation and the Sponsoring Firm have agreed that

the following terms and conditions will govern X's association with the Sponsoring Firm as a direct participation program representative:

1. X will be located in the same office as the Proposed Supervisor. X and the Proposed Supervisor will be seated in close physical proximity of each other in the office.
2. X will not maintain discretionary accounts.
3. The Proposed Supervisor will review and initial X's order tickets on a daily basis.
4. The Proposed Supervisor will review X's contact list on a monthly basis.
5. The Firm will restrict X's activities primarily to institutional clients.
6. The Proposed Supervisor will review and approve all of X's new account forms for suitability. The Proposed Supervisor will maintain a written record evidencing review and approval of all of X's transactions and the opening of new accounts.
7. X will not engage in supervisory activity, nor will he be involved in the training of other registered representatives.
8. X's incoming and outgoing correspondence will be reviewed by the Proposed Supervisor. The Proposed Supervisor will maintain a separate correspondence review file with a ledger sheet that indicates by his initials that he has reviewed X's correspondence daily.
9. The Proposed Supervisor will meet with X on a quarterly basis to review his transactions with clients. This will entail a review of the distribution of customer funds. A log shall be kept by the Firm of these meetings.
10. All customer complaints pertaining to X, whether verbal or written, will be immediately referred to the Proposed Supervisor for review, and then to the Director of Compliance. The Proposed Supervisor will prepare a memorandum to the file as to what measures he took to investigate the merits of the complaint (e.g., contact with the customer) and the resolution of the matter. Documents pertaining to these complaints should be kept segregated from customer complaints pertaining to other associated persons for ease of review.

11. The Proposed Supervisor will hold a quarterly compliance meeting with X and certify to the Firm's Director of Compliance that all of the above conditions of heightened supervision applicable to X are being complied with by the Firm.
12. For the duration of X's statutory disqualification, the Firm must obtain prior approval from Member Regulation if it wishes to change X's responsible supervisor from the Proposed Supervisor to another person.

Discussion. After careful review of the entire record in this matter, we conclude that the Sponsoring Firm's application to employ X as a direct participation program representative should be approved.

In reviewing this type of application, NASD Regulation must follow the guidance set forth by the Commission in Paul Van Dusen, 47 S.E.C. 668 (1981) and Arthur H. Ross, 50 S.E.C. 1082 (1992). Under Van Dusen and Ross, we are to act favorably upon an application submitted after the specified period of time has elapsed, absent other acts of misconduct or circumstances of record bearing adversely on a firm or a sponsored person's fitness to re-enter the securities industry. More specifically, we focus our inquiry on any "other [intervening] misconduct in which the applicant may have engaged, the nature and disciplinary history of a prospective employer, and the supervision to be accorded the applicant." Van Dusen, at 671. X has had no intervening misconduct. Neither the Firm nor the proposed supervisor have a regulatory disciplinary history.² Further, the Sponsoring Firm appears to be fully capable of supervising X's activities according to the agreed-upon terms and conditions.

NASD Regulation certifies that: 1) X meets all applicable requirements for the proposed employment; 2) the Sponsoring 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, we approve X as a direct participation program representative with the Sponsoring Firm. In conformity with the provisions of SEC Rule 19h-1, the registration of X as a direct participation program representative will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the Commission.

On Behalf of the National Adjudicatory Council,

² We note that the Firm just became a member in 2001 and no routine examination has yet been scheduled.

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Barbara Z. Sweeney
Senior Vice President and Corporate Secretary