

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of the Continued Association

of

X

as an

Investment Company and Variable Contracts
Products Principal

with

The Sponsoring Firm

REDACTED DECISION

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

Decision No. SD01023

On July 25, 2001, the Sponsoring Firm¹ (or "the Firm") completed a Membership Continuance Application ("MC-400" or "the Application") requesting permission for X, a person subject to a statutory disqualification but currently associated with the Firm as an investment company and variable contracts products representative, to continue to associate with the Firm as an investment company and variable contracts products principal ("Series 26 principal").² The Sponsoring Firm also has requested relief from the continued imposition of special supervisory procedures for X. In October 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 the Firm's Director of Compliance.

X's Statutorily Disqualifying Event. X is subject to a statutory disqualification as a result of his consent to the entry of an Order of Permanent Injunction ("PI") in a U.S. District Court of State 1 in 1984. He was enjoined from further violations of the registration and antifraud provisions of the federal securities laws in the offer and sale of stock in a gas and oil

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 X has been associated with the Sponsoring Firm as an investment company and variable contracts representative since 1991. The history of X's prior 19h-1 filings is discussed in more detail below.

recovery business. X is also statutorily disqualified because, in a parallel administrative proceeding, the Securities and Exchange Commission ("SEC" or "Commission") issued an Order Instituting Proceedings, Making Findings and Imposing Remedial Sanctions ("Order") dated 1984. Pursuant to this Order, X was barred from association with any broker or dealer, investment adviser or investment company. The Order provided, however, that X could continue to sell variable annuities and mutual funds as a supervised representative of an insurance company in which he does not exercise direction or control, in which he does not have an ownership interest in excess of five percent, and which is registered as a broker-dealer with the NASD and licensed to sell mutual funds and variable annuities but no other security.

The Order found that:

- 1) X willfully violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, by engaging in a series of transactions to raise the market price of Firm 1 artificially and, in connection with this scheme, failed to disclose material facts to purchasers and prospective purchasers of Firm 1 stock;
- 2) X violated Section 5 of the Securities Act of 1933 ("Securities Act") by causing the sale of securities for which no registration statement was in effect;
- 3) X violated and aided and abetted violations of Section 15(c)(1) of the Exchange Act, and Rules 15c1-2 and 15c1-5 thereunder by inducing the sale or purchase of securities of an issuer which controlled or was under common control with the broker, without written disclosure to the customer of the existence of the control prior to the completion of the transactions; and
- 4) X willfully violated Section 17(a) of the Securities Act in the offer, purchase and sale of certain securities, by obtaining money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made not misleading.

Other Disciplinary History Involving X. In 1998, the NASD issued a Letter of Caution ("LOC") to X in connection with his activities as an investment company and variable products representative at the Sponsoring Firm. The LOC stated that the Sponsoring Firm was in violation of NASD Rule 3010(d) because its Purchase and Sales blotter did not indicate that a registered principal had reviewed and endorsed in writing all transactions contained on that log, some of which related to transactions effected by X.

Prior SEC Rule 19h-1 Notices. In 1986, the NASD filed a notice pursuant to SEC Rule 19h-1 concerning X's association as an investment company and variable products representative with another firm. The Commission approved the notice in 1986. In 1991, the NASD filed an SEC Rule 19h-1 notification that approved X as an investment company and variable products representative with the Sponsoring Firm. The Commission acknowledged this notification in 1992. In 1997, the Sponsoring Firm proposed a modification of the supervisory

procedures that were imposed by the 1991 SEC Rule 19h-1 notice. The modified supervisory procedures were less stringent than the 1991 version and they were approved pursuant to an SEC Rule 19h-1 notice filed by the NASD in 1997 and approved by the Commission in 1997.³

X's Professional Background. X was first registered in the securities industry in 1969 as a Series 1 (now Series 7) general securities representative. As set forth above, he also has been registered as a Series 6 representative (investment company and variable products representative) since 1986.

The Sponsoring Firm. The Sponsoring Firm became a member of the NASD in February 1981. The Firm has 92 offices of supervisory jurisdiction and 575 branch offices. It employs 285 registered principals, 1,092 registered representatives, and 170 employees. The Sponsoring Firm is engaged in sales of general securities, mutual funds, life insurance, and annuities.

A routine examination of the Sponsoring Firm in 1999 resulted in a Compliance Conference. As set forth above, the Sponsoring Firm also received an LOC dated 1998, regarding its failure to have a supervisor review and endorse in writing certain transactions on the Firm's Purchase and Sales blotter. The Sponsoring Firm's 2001 routine examination has not yet been completed.

In 2001, the Sponsoring Firm consented to the entry of a Letter of Acceptance, Waiver, and Consent ("AWC"). Without admitting or denying the allegations, the Sponsoring Firm was fined \$10,000, jointly and severally, and consented to the entry of findings that it failed to report to the NASD statistical and summary information concerning customer complaints, and failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with NASD Conduct Rule 3070.

³ The modified supervisory procedures were as follows:

1. X's correspondence, both incoming and outgoing, will be reviewed and approved by the Proposed Supervisor.
2. Advertising and sales literature will be submitted to the Sponsoring Firm's main office.
3. X's trades will be reviewed as part of the normal Purchase & Sales blotter review by the Proposed Supervisor.
4. The Proposed Supervisor will visit X's office once a year, and a member of the Sponsoring Firm's compliance department will also conduct an annual visit.

The State 2 Securities Division entered a final order in 1997, pursuant to a settlement agreement with the Sponsoring Firm. The order made findings that the Sponsoring Firm did not sufficiently discharge its supervisory policies and procedures with regard to a former agent. As part of the settlement, the Sponsoring Firm agreed to review its compliance policies and procedures and to make a contribution of \$25,000 to an investor education fund. The order states that the Sponsoring Firm had already paid \$1,425,409.41 in restitution to individuals who suffered losses due to the former agent's actions. The Sponsoring Firm did not admit or deny the findings made in the order.

There are no pending disciplinary or regulatory proceedings, complaints or arbitrations against the Sponsoring Firm.

X's Proposed Business Activities. The Sponsoring Firm proposes that X will continue to be employed at its branch office located in State 3. The Sponsoring Firm proposes to employ X as an investment company and variable products principal whose activities will be limited to the sale of variable products and mutual funds. As a principal, X will train and supervise registered persons, including his son, who sell only mutual funds and variable products, and X also will continue to sell these products himself.

Proposed Supervision of X. The Sponsoring Firm proposes that the Proposed Supervisor, who is a manager at one of the Sponsoring Firm's offices of supervisory jurisdiction ("OSJ"), would continue to be X's responsible supervisor. The Proposed Supervisor has been registered as a general securities representative since 1971 and as a general securities principal since 1991. The Proposed Supervisor has been X's supervisor since his 1991 approval with the Sponsoring Firm.

The Proposed Supervisor has no disciplinary or regulatory history.

Member Regulation's Recommendation. Member Regulation recommends that X's proposed association with the Sponsoring Firm as an investment company and variable products principal be approved. Member Regulation does not, however, support the Sponsoring Firm's request to be relieved of the continuing special supervisory procedures for X.

Discussion. After careful review of the entire record in this matter, we have determined to approve the Sponsoring Firm's Application to continue to employ X as an investment company and variable products principal, effective upon the Commission's grant of approval and X's qualification by passing the Series 26 examination. We also approve the Sponsoring Firm's request to be relieved from the continuing special supervisory procedures that were imposed on it Firm in the SEC Rule 19b-1 notice filed in 1997. Although X's misconduct was serious, we have considered that a substantial length of time has passed since the Commission's action in 1984, and that the Commission specifically stated in its Order that X should be permitted to continue his work in the variable products area. He was permitted to re-enter the securities industry more than 15 years ago, and he has not been the subject of any formal disciplinary incidents or customer complaints. He has been employed continuously with the Sponsoring Firm for more than 10 of those last 15 years in the industry. We note that X's

activities will continue to be limited to the sale of mutual funds and variable products and the supervision of others who also sell only such products. We find that this record supports the approval of X to act in a Series 26 principal capacity, without the need to continue any special supervisory procedures.

We find that the approval of X's continued association with the Sponsoring Firm in the expanded capacity of an investment company and variable products principal, without special supervisory procedures, is consistent with the public interest.

The Sponsoring Firm employs no other individuals who are subject to a statutory disqualification, and 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 19b-1, the continued association of X as an investment company and variable contracts products principal with the Sponsoring Firm, without special supervisory procedures, will become effective upon the successful completion of the Series 26 examination by X and the issuance of an order by the Commission that it will not institute proceedings pursuant to Section 15(b) of the Exchange Act and that it will not direct otherwise pursuant to Section 15A(g)(2) of the Exchange Act. This notice shall serve as an application for such an order.

On Behalf of the National Adjudicatory Council,

Jeffrey S. Holik
Vice President and Acting General Counsel