

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

<p>In the Matter of the Association of</p> <p style="margin-left: 100px;">X</p> <p style="margin-left: 100px;">as a</p> <p>General Securities Representative</p> <p style="margin-left: 100px;">with</p> <p>The Sponsoring Firm</p>
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**REDACTED DECISION**

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

Decision No. SD01022

On June 21, 2001, the Sponsoring Firm<sup>1</sup> (or "the Firm") completed an MC-400 application ("Application") seeking to permit X, a person subject to a statutory disqualification, to associate with the Firm as a general securities representative. A hearing was not held in this matter. Rather, pursuant to NASD Procedural Rule 9523, the Department of Member Regulation ("Member Regulation") for NASD Regulation, Inc. ("NASD Regulation") recommended to the Statutory Disqualification Committee that X's proposed association with the Sponsoring Firm be approved pursuant to the terms and conditions set forth below. The Firm consented to the imposition of the below terms and conditions in a letter dated September 2001.

X's Statutorily Disqualifying Event. In 1993, X pleaded guilty to the criminal sale of marijuana in the 3rd degree, a Class E felony, in State 1. In 1994 he was sentenced to one month of incarceration and five years' probation with participation in the Alternative Sentencing Program. X was discharged early from probation in 1998.

X's Background. X is registered as a Series 63 (North American Securities Association Administration State Law) and a Series 7 (general securities representative). He has reported that he was previously registered with two firms between April 2000 and the present.

X properly disclosed the 1993 felony conviction in his previous Uniform Application for Securities Industry Registration or Transfer ("Form U-4") filings. With regard to his first employer, X left that firm prior to its having provided CRD with sufficient documentation regarding the felony conviction to begin the MC-400 process. As to the second employer, the

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<sup>1</sup> 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.

MC-400 process was initiated promptly, but that firm decided to withdraw its MC-400 application in July 2001.

We are not aware of any other regulatory or disciplinary actions taken against X.

The Sponsoring Firm. The Sponsoring Firm became a member of the Association in December 1996. The Sponsoring Firm has two offices of supervisory jurisdiction and one branch office. The Firm employs three registered principals and 19 registered representatives. The Sponsoring Firm operates as a general securities broker/dealer.

The Sponsoring Firm's 2001 routine examination resulted in a compliance conference, held in 2001. The issues discussed at the conference were the Firm's failure to comply with Securities and Exchange Commission ("SEC") Rule 17a-3(a)(6) in that a review of 50 consecutive customer order tickets from December 5 through 7, 2000 indicated 27 time stamp deficiencies. The Sponsoring Firm also was deemed deficient with respect to NASD Conduct Rule 3010 (b)(1) in that the Firm did not establish, maintain, and enforce written procedures to supervise the types of business in which it had engaged. Specifically, it was found that the Sponsoring Firm did not establish and maintain adequate procedures with regard to SEC Rule 17a-3(a)(6). In 2001 the Sponsoring Firm responded to the issues by outlining measures it planned to institute to ensure further compliance.

The Sponsoring Firm has been issued two Letters of Caution ("LOC"), one from its 1999 routine examination and the other from the 1997 routine examination. In the 1999 routine examination the deficiencies noted were NASD Conduct Rules 2860(b)(16), 3010(a), 3010(b), 3010(d)(1), 3110(c), 2110, 2230, SEC Rules 17a-4, 15c3-3(k)(2)(ii), 10b-10, and MSRB Rule G-8(a)(xvi), MSRB Rule G-27(a). The Sponsoring Firm provided a written response in 1999, wherein it outlined steps to ensure future compliance. In the 1997 LOC the Firm was cited for failure to comply with NASD Conduct Rules 2310, 2860(b)(16), 3110(c) and SEC Rule 10b-10.<sup>2</sup> With respect to the LOCs, we believe that the Sponsoring Firm addressed the issues noted and was active in taking steps to avoid the deficiencies in the future.

The Sponsoring Firm does not employ any other statutorily disqualified individuals and it is not a member of any other self-regulatory organization. In addition, we are not aware of any other complaints, disciplinary proceedings, or arbitrations against the Sponsoring Firm.

X's Proposed Business Activities and Supervision. X will work as a registered representative out of the Sponsoring Firm's home office located in State 1.

The Sponsoring Firm proposes that the Proposed Supervisor will be X's primary, responsible supervisor. The Proposed Supervisor is the President of the Sponsoring Firm. He is

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<sup>2</sup> Due to the tragic events of September 11, 2001, Member Regulation has been unable to secure a copy of the 1997 LOC and the Firm's response, both of which were housed in the New York District office.

registered as a Series 7 (general securities representative), Series 8 (general securities sales supervisor), Series 63 (uniform securities agent), Series 27 (financial and operations principal), Series 4 (registered options principal), Series 55 (equity trader), and Series 24 (general securities principal). He has been registered as a principal since April 1994. The Proposed Supervisor has no disciplinary history and has been employed with the Sponsoring Firm since 1996. He was first employed in the securities industry in 1993.

Member Regulation and the Sponsoring Firm have agreed that the following terms and conditions will govern X's association with the Firm as a general securities representative:

1. X and the Proposed Supervisor will be located in close physical proximity of each other, in the same office building, separated by floors.
2. X will not act as a supervisor.
3. X will not maintain discretionary accounts.
4. All complaints pertaining to X, whether written or verbal, will be immediately reviewed by the Proposed Supervisor. The Proposed Supervisor will immediately forward all complaints to the Sponsoring Firm's compliance department. Documents pertaining to these complaints should be kept segregated for ease of review.
5. X's incoming and outgoing written correspondence will be reviewed by the Proposed Supervisor at the time they are received or sent. No outgoing correspondence will be sent without the Proposed Supervisor's review and approval.
6. 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.
7. The Proposed Supervisor will review records of X's transactions on a quarterly basis.
8. The supervisory procedures of the Sponsoring Firm will be amended to specify the responsible supervisor for X, and will include the special supervisory program set forth above.

Discussion. After careful review of the entire record in this matter, we approve the Sponsoring Firm's Application to employ X as a general securities representative, subject to the terms and conditions set forth above.

In reviewing this type of Application, NASD Regulation considers whether the particular felony at issue, examined in light of the circumstances related to the felony, creates an unreasonable risk of harm to the market or investors. For the reasons set forth below, we do not

believe that X's felony conviction presents an unreasonable risk of harm to the market or investors.

While the misconduct that led to X's disqualification is serious, the activity is not securities, financial or dishonesty-related. X is no longer on probation and he has no other regulatory or disciplinary history. Further, the disqualifying event occurred more than eight years ago, X received an early release from probation in March 1998, and there has been no intervening misconduct since his conviction in 1993.

Lastly, the Proposed Supervisor and the Sponsoring Firm have no formal regulatory disciplinary history. We therefore conclude that it would be in the public interest to permit X to enter the securities business and that his employment in the industry would not create an unreasonable risk of harm to the market or investors.

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; 3) X and the Proposed Supervisor have represented that they are not related by blood or marriage; and 4) the Sponsoring Firm does not employ any other statutorily disqualified individuals.

Accordingly, in conformity with the provisions of SEC Rule 19h-1, the registration of X with the Sponsoring Firm will become effective, unless otherwise notified by the Commission, within 30 days of receipt of this decision.

On Behalf of the National Adjudicatory Council,

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Barbara Z. Sweeney  
Senior Vice President and Corporate Secretary