

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

<p>In the Matter of the Continued 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**

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

Decision No. SD01010

On February 8, 2001, the Sponsoring Firm<sup>1</sup> (or "the Firm") completed an MC-400 application ("Application") seeking to permit X, a person subject to statutory disqualification, to continue 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, 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(g) of the NASD By-Laws as a result of his 1992 guilty plea to Operating a Motor Vehicle While Under the Influence of Alcohol ("DUI"), a felony, in a County Court of State 1. X was first cited for Driving While Intoxicated in March 1992. Therefore, the second citation and resulting guilty plea in June 1992 constituted a felony in State 1. In July 1992 X was sentenced to five years' probation, a \$750 fine, a \$155 surcharge, and his driver's license was revoked. In 1995 X was discharged from probation.

X had filed his Application for Securities Industry Registration or Transfer ("Form U-4") and had been registered with the Sponsoring Firm since 1991. X had no occasion to file another Form U-4 because he remained with the Firm. X was unaware that, following a 1990

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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.

amendment to the Securities Exchange Act of 1934, he was required to update his Form U-4 with information about the felony conviction.<sup>2</sup> This matter came to the attention of the Firm when X completed a form for an insurance industry license in August 2000 and honestly answered "yes" to a question asking whether he had ever been convicted of a felony. The Firm and X have since fully cooperated with NASD Regulation in its efforts to move this matter through the eligibility proceedings.

X has been registered with the Firm as a general securities representative since 1991. The record shows no other regulatory or disciplinary actions taken against X.

The Firm. The Sponsoring Firm became a member of the Association in 1981. The Firm has 238 offices of supervisory jurisdiction and 51 branch offices. The Applicant employs 292 registered principals and 996 registered representatives. The Firm is a full service broker-dealer engaging in a general securities business.

NASD Regulation issued the Applicant a Letter of Caution ("LOC") in 2000. The LOC found that the Sponsoring Firm failed to comply with NASD Rule 3070(c) because it failed to file quarterly statistical data with the Association for 16 customer complaints received from January 1999 through April 2000, and NASD Rule G-14(a) because three of 54 municipal transactions reviewed during March 2000 had not been reported to the MSRB as required by Rule G-14. In a letter dated 2000, the Sponsoring Firm responded to the LOC by stating that it had taken immediate corrective action to remedy the deficiencies noted.

In 2000, the Firm was cited by the State 2 Division of Securities for failure to renew the registration of two State 2 branch offices for a period in 2000. The Firm was fined \$1,859 and the state issued a Cease and Desist Order. The state approved the reinstatement of both branch offices in 2000.

In 1998, a LOC was issued to the Firm by NASD Regulation. The Firm was found to be in violation of SEC Rule 15c3-3 because its reserve account was short by approximately \$1,487,554 for the period in 1997. The Firm was also found to be in violation of NASD Rule 3070 because it failed to report, within 10 days, theft allegations made against two of its registered representatives, who were subsequently terminated for cause, and NASD Rule 1030 because neither the Firm's head trader nor his three assistants had taken or filed to take the Series 55 Equity Trader exam. The Firm responded, by letter dated 1999, noting that the deficiencies had been addressed and corrected.

A 1996 NASD off-cycle municipal examination also resulted in an LOC. The Firm was cited for violations of MSRB Rules G-37, G-8, G-9, G-27 and G-30. Furthermore, the Firm's written supervisory procedures, as required by MSRB Rule G-27, were inadequate in that they

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<sup>2</sup> X recently entered into a Letter of Waiver, Acceptance, and Consent ("AWC") with NASD Regulation for his violation in not timely updating his Form U-4, pursuant to which he was fined \$2,500 and served a 30-day suspension in all capacities.

did not address MSRB Rules G-8, G-9, or G-37. The Firm responded, by letter dated April 1997, acknowledging that the deficiencies had been addressed and corrected.

In 1995, the State 3 Department of Banking alleged that the Firm failed to supervise and register three offices as State 3 branch offices and failed to adopt and enforce a reasonable system of supervision based on the actions of two brokers who engaged in deceptive sales practices. The Firm was fined \$25,000 and was ordered to reimburse the state for investigation costs.

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.

X's Business Activities and Supervision. The Firm proposes that X continue to be employed as a general securities representative at the Firm's branch office located in State 1. X will continue his financial planning activities which include the offer and sale of securities, variable products, and life and disability insurance.

The Firm proposes that the Proposed Supervisor will be X's primary, responsible supervisor. The Proposed Supervisor is a branch manager at the Firm's office of supervisory jurisdiction in State 1. He has been registered as a general securities representative since 1987 and a general securities principal since 1992. The Proposed Supervisor has no disciplinary history and has been employed with the Sponsoring Firm since 1991.

The Sponsoring Firm consented to the imposition of certain terms and conditions in its MC-400 application dated February 8, 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 general securities 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 be subject to, and required to abide by, the normal supervision of registered representatives by the Sponsoring Firm supervisors.
3. The Proposed Supervisor will maintain a separate correspondence review file with a ledger sheet indicating by his initials that he has reviewed X's correspondence daily.
4. The Proposed Supervisor will hold a quarterly compliance meeting with X and discuss industry rules, regulations, trends and other related issues.

5. X would be required to review NASD Notices to Members ("NTM") on a monthly basis and also be required to initial his review on the NTM. The Proposed Supervisor would keep the NTM in a file indicating such a review.
6. 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 Compliance Department.
7. The Firm will conduct its independent examination of X's work location on a random basis, at least three to four times annually. At least two of these examinations will be unannounced.
8. 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 have determined to approve the Sponsoring Firm's Application to employ X as a registered general securities representative.

In reaching this determination, we have considered that X has not engaged in any misconduct since his DUI felony conviction in 1992, and the nature of that offense was not securities-, financial-, or dishonesty-related. We also note that X has been employed by the Sponsoring Firm since 1991 without incident. Further, the supervisory controls that the Firm has agreed to implement – including the daily review of X's accounts and order tickets – are thorough, well-structured, and adequate to govern X's activities. We conclude that the Sponsoring Firm appears to be fully capable of supervising X's activities according to the agreed-upon terms and conditions.

We also note that the Applicant does not have an extensive disciplinary history for a firm of its size that has been an NASD member for 19 years, and its history does not suggest an inability to supervise X effectively. Moreover, the Proposed Supervisor has been in the securities business since 1987 and has no disciplinary history.

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 to continue as a general securities representative with the Sponsoring Firm. In conformity with the provisions of SEC Rule 19h-1, the continued registration of X as a general securities 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,

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Barbara Z. Sweeney  
Senior Vice President and Corporate Secretary