

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD

In the Matter of the Association of	Redacted Decision
X	<u>Notice Pursuant to</u>
as a	<u>Rule 19h-1</u>
General Securities Representative	<u>Securities Exchange Act</u>
with	<u>of 1934</u>
The Sponsoring Firm	<u>Decision No. SD06009</u>
	Date: 2006

I. Introduction

On February 10, 2006, the Sponsoring Firm¹ (“the Firm”) completed a Membership Continuance Application (“MC-400” or “the 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, NASD’s Department of Member Regulation (“Member Regulation”) recommended that the Chair and Vice Chair of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council, approve X’s association with the Sponsoring Firm.

For the reasons explained below, we approve the Application.

II. The Statutorily Disqualifying Event

X is statutorily disqualified because in January 2005, he pled guilty to the criminal charge of “death by auto,” a felony in State 1. The two-car traffic accident that led to the felony charge against X occurred in December 2001,² and killed the driver of the other vehicle. The

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 NASD’s Central Registration Depository (“CRD[®]”) incorrectly identifies the date of the accident as December 2002. X confirmed by written statement dated September 2006, that the actual date of the accident was December 2001.

accident was attributed to “reckless driving” by X, but did not involve drugs or alcohol. The court sentenced X to 364 days in jail (X served three months in a work-release facility), five years’ probation,³ and four years’ revocation of driving privileges.

III. Background Information

A. X’s Background

X first registered in the securities industry as a municipal securities representative (Series 52) in October 1985. He subsequently qualified as a uniform securities agent state law (Series 63) in July 1991 and a general securities representative (Series 7) in April 1992.

CRD shows that X was employed by six different firms from April 1984 until May 2005. X appeared to contradict CRD’s depiction of his work history in a written statement he submitted in February 2006, asserting that he “had one job in this business . . . a plus 20 something year relationship at one firm.” When asked to address this discrepancy, X submitted a second statement dated September 2006, maintaining that he has been effectively employed by one continuous firm since 1984 because some of his previous employers merged into one another and he was subject to the same management team under different firm names.

The record shows no additional complaints or disciplinary actions against X.

B. The Firm

The Sponsoring Firm became an NASD member in June 1984. The Firm engages in a general securities business, maintains one office of supervisory jurisdiction (“OSJ”) and four branch offices, and employs four registered principals and 41 registered representatives.

NASD conducted routine examinations of the Sponsoring Firm in 2000, 2002, and 2004 and has begun, but not yet completed, its 2006 routine examination of the Firm. Following the 2004 examination, NASD issued the Firm a Letter of Caution (“LOC”) for inaccurate net capital calculations, one unfair price for a municipal securities transaction, one reporting violation, and written supervisory procedures inaccuracies. The Firm did not respond in writing to the LOC because it had provided an earlier response to NASD during an exit conference.

NASD also issued the Firm an LOC following the 2002 examination, citing the Sponsoring Firm for several infractions, including books and records violations, failure to provide certain representatives with copies of their Uniform Termination Notices for Securities Industry Registration (“Forms U5”), incomplete written supervisory procedures, inaccurate net

³ X’s five-year probation is currently scheduled to terminate in April 2010. X provided a written record of appointments he attended with his probation officer to show that he has thus far complied with his probation requirements.

capital calculations, and one excessive mark-up on a principal transaction. The Firm responded in writing in April 2002, to the preliminary examination findings; in May 2002, to the exit interview; and in July 2002 to the final LOC, stating that it had corrected the deficiencies noted by NASD.

Following the 2000 examination, NASD issued the Firm an LOC and a Letter of Acceptance, Waiver and Consent (“AWC”). The LOC cited the Firm for failing to conduct background checks of prospective employees, inaccurate net capital calculations, books and records violations, late filing of a financial report, and incomplete written supervisory procedures. The Sponsoring Firm responded by letter dated July 2000, stating that it had addressed the deficiencies noted by NASD. The AWC that resulted from the 2000 examination imposed a \$5,000 fine on the Firm for failing to designate a principal and maintain adequate written supervisory procedures for several of its business operations, including government securities and corporate debt.

The Firm also is the subject of recent state disciplinary actions. In July 1999, the State 2 Office of the Securities Commissioner fined the Firm \$500 for executing a securities transaction when it was not registered in that state. In March 1999, the State 3 Division of Securities fined the Firm \$500 for transacting business in State 3 prior to the approval of its broker-dealer registration in that state.

The record shows no additional customer complaints, disciplinary proceedings, or arbitrations against the Firm.

IV. X’s Proposed Business Activities and Supervision

The Sponsoring Firm proposes that X be employed as a trader of mortgage backed bonds. X will be responsible for maintaining inventory on such bonds for salespersons and for the Firm’s proprietary trading. The Firm represents that X will not handle individual accounts or have contact with the general public, although he may have some interaction with institutional account customers. The Firm will compensate X through a salary and a share in the profitability of his department.

The Firm further proposes that the Proposed Supervisor will be X’s primary responsible supervisor. The Proposed Supervisor has been in the securities industry since 1982 and became a general securities principal (Series 24) in February 1992. He has been employed by the Sponsoring Firm since 1986, became a sales manager for the Firm in 1993, and has been the Firm’s secretary since 1999.⁴ NASD’s Central Registration Depository (“CRD”[®]) shows no disciplinary proceedings, complaints, or arbitrations against the Proposed Supervisor.

⁴ The Proposed Supervisor was registered with three firms prior to joining the Sponsoring Firm in 1986.

V. Member Regulation's Recommendation

Member Regulation recommends approval of the Application for X to associate as a general securities representative with the Sponsoring Firm, pursuant to the terms and conditions of heightened supervisory procedures set forth below.

VI. Discussion

After carefully reviewing the entire record in this matter, we approve the Application to employ X as a general securities representative, subject to the supervisory terms and conditions set forth below.

In reviewing this type of application, we consider whether the particular felony at issue, examined in light of the circumstances related to the felony, and other relevant facts and circumstances, creates an unreasonable risk of harm to the market or investors.⁵ We assess the totality of the circumstances in reaching a judgment about X's future ability to deal with the public in a manner that comports with NASD's requirements for high standards of commercial honor and just and equitable principles of trade in the conduct of his business.

For the reasons set forth below, we conclude that X's participation in the securities industry as proposed with the Sponsoring Firm will not present an unreasonable risk of harm to the market or investors.

We acknowledge the seriousness of X's criminal conviction in connection with the tragic accident that resulted in a person's death. We also recognize that X has been punished for his crime by the State 1 legal system, which imprisoned him and placed him on probation for five years. X completed his prison sentence by complying with a three-month work release program, and the record shows that he has thus far complied fully with the terms of his probation.

We further note that although X's felony conviction is a recent event, it did not result from securities or financial-related activities, and did not involve drugs or alcohol. Moreover, X has been employed in the securities industry since 1985 without any disciplinary history.

We have also considered the fact that the Sponsoring Firm does have a disciplinary history, but we conclude that it does not raise substantive concerns about the Firm's business activities or supervisory system. The supervisory deficiencies that NASD cited in the LOCs issued to the Firm in 2004, 2002, and 2000, and the AWC issued in 2000 related to the

⁵ See *Frank Kufrovich*, Exchange Act Rel. No. 45437, 2002 SEC LEXIS 357, at *16 (Feb. 13, 2002) (upholding NASD's denial of a statutory disqualification applicant who had committed non-securities related felonies "based upon the totality of the circumstances" and NASD's explanation of the bases for its conclusion that the applicant would present an unreasonable risk of harm to the market or investors).

sufficiency of the Firm's written supervisory procedures and not to actual supervisory failures. In addition, the Sponsoring Firm responded in each instance and stated that the noted deficiencies had been resolved.

The Firm has also agreed to a comprehensive supervisory plan to ensure that it will be able to maintain future compliance with the plan of heightened supervision for X. The Firm has proposed a limited role for X. He will not have contact with the general public as a securities representative and will not handle individual accounts. Moreover, for the duration of X's statutory disqualification, the Firm must obtain prior approval from Member Regulation to change either X's job responsibilities or his supervisor.

Finally, X's Proposed Supervisor, is well qualified and has worked in the securities industry since 1982 with no disciplinary history.

In sum, given the nature of X's felony offense and the fact that he previously has been successfully employed in the securities industry, we conclude that the following supervisory conditions agreed to by the Sponsoring Firm will provide the enhanced compliance measures necessary to monitor X's activities:⁶

1. *The Sponsoring Firm will amend its written supervisory procedures to state that the Proposed Supervisor is X's primary supervisor;
2. *X will not have contact with the general public as a securities representative, will not cover individual accounts, and will not maintain discretionary accounts;
3. *X will not act in a supervisory capacity;
4. *X will be supervised on-site by the Proposed Supervisor;
5. *If the Proposed Supervisor is out of the office, the Proposed Supervisor 2 a registered principal of the Firm, will act as X's interim supervisor;⁷
6. *The Proposed Supervisor will review X's trade reports on a daily basis and will evidence his review by initialing the reports. The reports will detail all trades that are filled by X, as trader. Trade reports for X will be kept separate from those of other traders, and will be kept segregated for ease of review;

⁶ All of the items are denoted by an asterisk because they are heightened supervisory conditions and not standard operating procedures of the Firm.

⁷ The Proposed Supervisor 2 has been in the securities industry since 1986, became a general securities principal (Series 24) in 1991, joined the Sponsoring Firm in 1993, and has no disciplinary history.

7. *The Proposed Supervisor will review X's incoming written correspondence (which will include e-mail communications) upon its arrival and will review X's outgoing correspondence before it is sent;
8. *All complaints pertaining to X, whether verbal or written, will be immediately referred to the Proposed Supervisor for review, and then to the Compliance Department of the Sponsoring Firm. 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. The Firm will keep documents pertaining to these complaints segregated for ease of review;
9. *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 employment to a role that would involve more direct interaction with the public (i.e. from trader to representative);
10. *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 primary supervisor from the Proposed Supervisor to another person; and
11. *The Proposed Supervisor must certify quarterly (March 31st, June 30th, September 30th, and December 31st) to the Compliance Department of the Sponsoring Firm that X and the Proposed Supervisor are in compliance with all of the above conditions of heightened supervision.

NASD certifies that: 1) X meets all applicable requirements for the proposed employment; 2) the Firm represents that it is not a member of any other self-regulatory organization; 3) the Firm represents that X and the Proposed Supervisor are not related by blood or marriage; and 4) the Firm represents that it does not employ any other statutorily disqualified individuals.

Accordingly, we approve the Application for the Sponsoring Firm to employ X as a general securities representative. In conformity with the provisions of SEC Rule 19h-1, the association of X as a general securities representative with the Firm 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,

Barbara Z. Sweeney
Senior Vice President and Corporate Secretary