

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD

In the Matter of the Continued Association of

X

as a

General Securities Representative

with

The Sponsoring Firm

Redacted Decision

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

Decision No. SD06010

Date: 2006

I. Introduction

On August 30, 2005, the Sponsoring Firm¹ (or “the Firm”) completed a Membership Continuance Application (“MC-400” or “the Application”) seeking to permit X, a person subject to a statutory disqualification, to continue to associate with the Firm as a general securities representative. The Firm has employed X in a non-registered capacity as a financial analyst in its public finance department since January 1996.² 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 continued association with the Sponsoring Firm.

For the reasons explained below, we approve the Application.

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 The Firm contends that X promptly disclosed his felony charge and conviction when they occurred. Because X was working in a non-registered capacity, however, the Firm erroneously believed that it did not have to notify NASD of X’s offense. See NASD Procedural Rule 9522(e)(2)(E) (providing procedure whereby NASD’s Department of Member Regulation staff may approve an MC-400 application for an individual who will be working in a non-registered, clerical or ministerial position in the securities industry). When the Firm decided that it wished to associate X in a registered capacity, it promptly filed this Application.

II. The Statutorily Disqualifying Event

X is statutorily disqualified because in October 2000, he pled guilty to the criminal charge of “leaving the scene of a fatal accident,” a felony in State 1. X was operating an automobile that struck and killed a pedestrian in August 1999. X maintained that he had drunk several alcoholic drinks on the night of the accident and believed at the time that he struck a road barricade. X turned himself in to the police department five days after the accident, in August 1999, when he read in the newspaper that a person had been killed in a “hit and run” incident that occurred in August 1999, on the road where X had been driving. Because of the time that had elapsed between the accident and X’s appearance at the police station, the police did not perform an alcohol concentration blood test on him.

The court sentenced X to six months in jail (which he served in a work release program), four years’ probation, and 200 hours of community service, and imposed restitution of \$4,255.51 (\$2,380.51 to the victim’s family and \$1,875.00 to a victim’s compensation fund). X received an early termination from probation in April 2003.

III. Background Information

A. X’s Background

The Sponsoring Firm has employed X in a non-registered capacity since January 1996. X passed the qualification examination to be a general securities representative (Series 7) in February 2006 and now seeks to register with the Sponsoring Firm in that capacity. X has no other registrations or employment history in the securities industry.

The record shows no additional complaints or disciplinary or criminal actions against X while he was acting in a non-registered capacity.

B. The Firm

The Sponsoring Firm became an NASD member in May 1989. The Firm engages in securities brokerage and investment banking business, maintains one office of supervisory jurisdiction (“OSJ”) and one branch office, and employs 12 registered principals and 21 registered representatives.

NASD conducted its most recent routine examinations of the Sponsoring Firm in 2005, 2003, and 2001. Following the 2005 examination, NASD issued the Firm a Letter of Caution (“LOC”) for written supervisory procedure deficiencies, bond trade reporting violations, political contribution disclosure violations, and late filing of Uniform Termination Notices for Securities Industry Registration (“Forms U5”). The Firm responded in writing in December 2005, stating that it had corrected the deficiencies noted by NASD.

NASD’s 2003 routine examination of the Firm resulted in a compliance conference in September 2003. Among the issues discussed at that conference were late filing of Forms U5,

books and records violations, late trade reporting violations, research report disclosure violations, continuing education violations, and Anti-Money Laundering training violations. The Firm responded in writing in October 2003, stating that it had corrected the deficiencies noted by NASD.

NASD issued the Firm an LOC following its 2001 routine examination for several violations, including late reporting of a customer complaint, untimely updating of Uniform Applications for Securities Industry Registration or Transfer ("Forms U4"), written supervisory violations, failure to have a principal timely approve options accounts, and late trade reporting. The Firm responded by letter dated August 2002, stating that it had corrected the deficiencies noted by NASD.

NASD also consented to letters of Acceptance, Waiver and Consent ("AWCs") with the Sponsoring Firm in 2000 and 1992. The 2000 AWC censured the Firm and ordered it to pay \$22,276.06 to a municipal issuer, \$484,840.45 to the United States Treasury, and \$32,000 to NASD. The AWC found that the Firm engaged in excessive mark-ups by effecting defeasance escrow transactions with municipalities at prices that were not reasonable with respect to the current wholesale market price. The 1992 AWC fined the Sponsoring Firm \$250 for failing to report Nasdaq volume in three securities.

The Securities and Exchange Commission instituted cease and desist and administrative proceedings against the Firm and one of its principals in October 1996. The Commission alleged that, in connection with two general obligation bond issues, the Firm willfully aided and abetted a State 1 county's violation of the antifraud provisions of the federal securities laws by preparing official statements that omitted material facts. In October 1996, the Commission accepted the Sponsoring Firm's offer of settlement and ordered the Firm to pay civil penalties of \$50,000 and \$25,000 and to cease and desist from future violations of the federal securities laws.

The record also shows one state regulatory action against the Firm. In 1994 the State 2 Securities Commission fined the Firm \$750 and issued a cease and desist order because the Firm conducted business in State 2 without the benefit of registration.

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 lead public finance department banker in the Firm's home office in State 1. The Firm represents that its public finance department provides investment banking services to public entities such as school districts, cities, and towns. X will "perform the duties of a traditional public finance banker which will generally be to manage, provide, facilitate and assist the delivery of financial advisory services to the Firm's existing and prospective municipal clientele." The Firm will compensate X by a fixed salary with periodic bonuses based on individual/departmental performance.

The Firm further proposes that the Proposed Supervisor will be X's direct supervisor. The Proposed Supervisor has been employed in the securities industry since 1971 and became a general securities principal (Series 24) in October 1977. He has been employed by the Sponsoring Firm since 1989, currently serving as the Firm's chief executive officer as well as heading its trading, underwriting, and retail departments.

NASD's Central Registration Depository ("CRD"[®]) shows that a private plaintiff instituted a civil court action against the Proposed Supervisor in March 2000 for fraud, unjust enrichment, and misrepresentation. In January 2001, the court dismissed all claims against the Proposed Supervisor with prejudice. The record does not indicate any other disciplinary proceedings, complaints, or arbitrations against the Proposed Supervisor.

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, working in the capacity of a public finance banker, 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.³ 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 for six months and placed him on

³ See *Frank Kufrovich*, 55 S.E.C. 616, 625-26 (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).

probation for four years. X completed his prison sentence by participating in a work release program for six months, and he received an early termination from probation in April 2003.

We further note that X's felony conviction did not result from securities or financial-related activities, and that the record shows that he turned himself over to the appropriate authorities within days when he read in the newspaper about the accident described as a "hit and run." Moreover, X has been employed with the Sponsoring Firm in a non-registered capacity in the securities industry since 1996 without any disciplinary history.

We also consider the fact that the Sponsoring Firm does have a disciplinary history, but we conclude that it does not prevent us from concluding that the Firm is capable of supervising X in the proposed capacity. The supervisory deficiencies that NASD cited in the LOCs issued to the Firm in 2005 and 2001 related to the 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 sell municipal bond investment products directly to the public or institutional investors. In his role as a public finance banker, X will provide, facilitate, and assist with the delivery of financial advisory services to the Firm's existing and prospective municipal clients.

Finally, X's Proposed Supervisor, is well qualified and has worked in the securities industry since 1971 with no disciplinary history. We note that although the Proposed Supervisor is the Firm's CEO, his responsibilities with the Firm also include supervising the Sponsoring Firm's public finance department bankers in all of the Firm's underwriting engagements. Thus, the Proposed Supervisor's additional oversight duties with regard to X will be closely aligned to the supervision that he currently provides. Additionally, the Firm has proposed that when the Proposed Supervisor is out of the office, the Proposed Supervisor 2, will be responsible for performing the Proposed Supervisor's supervisory duties for X. The Proposed Supervisor 2 has been associated with the Sponsoring Firm since April 1989, and he works out of the Firm's home office in State 1 as the Firm's chief operating officer and a managing director. He has been in the securities industry since 1981, became a general securities principal in March 1989, and has 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:⁴

⁴ All of the items are denoted by an asterisk because they are heightened supervisory conditions and not standard operating procedures of the Firm.

1. *The Sponsoring Firm will amend its written supervisory procedures to state that the Proposed Supervisor is the primary supervisor responsible for X;
2. *When the Proposed Supervisor is absent from the office, the Proposed Supervisor 2 will supervise X;
3. *X will not act in a supervisory capacity;
4. *The Proposed Supervisor will supervise X on-site, in the home office;
5. *X will act in the capacity of a public finance banker;
6. *X will not sell municipal bond investment products directly to the public or institutional investors. He will provide, facilitate, and assist with the delivery of financial advisory services to the Firm's existing and prospective municipal clientele. He will be involved in financial analysis preparation; financing alternatives development; bond structuring assistance; administrative issuance; sale and delivery assistance; and marketing, advertising, liaison and presentation duties;
7. *The Proposed Supervisor will review and pre-approve all of X's work product, including any written presentation produced by X that is related to his duties as a public finance banker. The Proposed Supervisor will evidence his review by initialing copies of X's final work product and maintaining these copies in the Sponsoring Firm's home office, for audit purposes;
8. *In any financial advisory engagement in which X serves as the lead public finance banker, the Proposed Supervisor will pre-review any written proposals or client contracts before they are put in place. The Proposed Supervisor will evidenced his review by initialing copies of the final products and maintaining them in the Firm's home office, for audit purposes;
9. *The Proposed Supervisor will personally meet with X on a quarterly basis to review all aspects of his business;
10. *The Proposed Supervisor will review X's incoming written or electronic correspondence upon its arrival and will review outgoing written or electronic correspondence before it is sent;
11. *All customer complaints pertaining to X, whether verbal or written, will be immediately referred to the Proposed Supervisor for review, and then to the Firm's compliance department. 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 Proposed Supervisor will keep documents pertaining to these complaints segregated for ease of review;

12. *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; and
13. *The Proposed Supervisor must certify quarterly (March 31st, June 30th, September 30th, and December 31st) to the Firm's compliance department that he and X 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 continue 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