

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
NASD

	Redacted Decision
In the Matter of the Association of	<u>Notice Pursuant to</u> <u>Rule 19h-1</u> <u>Securities Exchange Act</u> <u>of 1934</u>
X	
as a	<u>Decision No. SD05005</u>
General Securities Representative	
with	Date: 2005
The Sponsoring Firm	

On October 29, 2004, the Sponsoring Firm¹ ("the Firm") submitted 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 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.

For the reasons explained below, we approve the Sponsoring Firm's Application.

A. X's Statutorily Disqualifying Event

X is statutorily disqualified because he consented to the entry of an order of permanent injunction ("the Permanent Injunction") by the United States District Court for State 1 in November 1974. The Permanent Injunction enjoined X from further violations of the federal securities acts relating to fraud in prospectus delivery. X is also disqualified because, in November 1974, the Securities and Exchange Commission issued an Order Instituting Proceedings and Imposing Remedial Sanctions ("the Order") against him in a parallel administrative proceeding. The Commission suspended X from association with any broker or dealer for nine months, and thereafter barred him from any association with a broker or dealer except as a supervised person in a non-supervisory capacity, upon a satisfactory showing to the Commission that a firm would adequately supervise him.

B. Background Information

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.

1. X

In 1978, the Commission's Division of Enforcement approved X's re-entry to the securities industry as a registered representative with Firm One. In November 1989, the Commission modified its Order and granted Firm One's request to have X associate in a supervisory capacity.

Due to a technical oversight, NASD's Central Registration Depository ("CRD[®]") did not identify X as statutorily disqualified. As a result, when Firm Two purchased Firm One, Firm Two was allowed to include X in a mass transfer of registered representatives in January 2001, notwithstanding his statutory disqualification. Further, when Firm Three purchased Firm Two, Firm Three also included X in a mass transfer of representatives in October 2002, without having to submit a membership continuance application.

In November 2003, X began his association with the Sponsoring Firm. At that time, NASD's Department of Registration and Disclosure became aware that CRD had not previously identified X as statutorily disqualified and it began to review X's application. Pursuant to NASD Rule 9522(e)(1)(A), the Sponsoring Firm initially submitted a request for X to be granted relief from the disqualification because his Permanent Injunction had been imposed more than 10 years ago. Member Regulation denied the Firm's request because the record contained evidence of customer complaints against X. In October 2004, the Sponsoring Firm submitted the instant Application.

X qualified as a general securities representative (Series 7) in November 1966 and December 1977.

Two customers filed complaints against X. The first complaint alleged that X recommended unsuitable investments when he was employed by Firm One. The complaint proceeded to NASD arbitration, and was settled for \$18,500; X did not contribute to the settlement. The second complaint alleged that X executed unauthorized trades when he was employed at Firm Two. This complaint was denied by Firm Two, and the record shows no further proceedings to date by the customer.

We are not aware of any additional regulatory actions against X.

2. The Firm

The Sponsoring Firm became an NASD member in September 1989. The Firm has two offices of supervisory jurisdiction ("OSJs") and three branch offices. It employees a total of 42 employees, with 15 registered principals and 23 registered representatives. The Firm is a retail and institutional broker/dealer, and it is actively engaged in the sales of various investment products.

In April 2005, NASD issued the Firm a Letter of Caution ("LOC"), the basis of which was a customer complaint. NASD found that the Sponsoring Firm reversed credits to customers without providing prior notice. NASD staff was advised that the Firm had made proper

restitution to the affected customers and, therefore, the Firm was not required to respond to the LOC.

In November 2001, NASD accepted a Letter of Acceptance, Waiver and Consent ("AWC") from the Firm for allowing a person associated with the Firm to act in a registered capacity while his registration status was inactive due to his failure to complete the regulatory element of NASD's continuing education requirements. NASD fined the Firm \$5,000.

The Firm's last two routine examinations in 2001 and 2003 resulted in NASD issuing LOCs in November 2001 and February 2004. The 2001 LOC cited the Firm for incorrectly reporting its principal capacity; failing to maintain order tickets that accurately reflected the time of execution; permitting an individual to conduct activities even though he had failed to fulfill the regulatory element of continuing education; and failing to investigate the qualifications and registrations of two individuals prior to submitting their registration applications. The 2004 LOC cited the Sponsoring Firm for failing to complete its anti-money laundering compliance procedures; failing to have written supervisory procedures that addressed MSRB annual assessment fees; failing to file a Treasury Form; and failing to properly report municipal transactions.

NASD has commenced, but not yet finished, the Firm's 2005 routine examination.

The Firm currently employs one other statutorily disqualified individual, Employee 1. Employee 1 is subject to a disqualification based on a 1978 permanent injunction. He has been employed with the Firm since 1999 and is supervised by the Firm's President.

Employee 1's first statutory disqualification examination in 2000 resulted in the Firm's submission of an AWC in 2001, the details of which were discussed above—Employee 1 has been identified as the individual who was allowed to act in a registered capacity even though he had not fulfilled the requirements of continuing education.

NASD filed its statutory disqualification examinations of Employee 1 from 2001, 2002 and 2004 without action. In 2003, however, NASD issued an LOC following its statutory disqualification examination because Employee 1's primary supervisor, Employee 2, failed to hold quarterly meetings with Employee 1, as was required by the heightened plan of supervision. NASD also cited the Sponsoring Firm for failing to establish and maintain adequate written supervisory procedures with respect to Employee 1's association with the Firm. The Firm responded to the LOC by detailing corrective measures that it implemented to clear the deficiencies. NASD subsequently filed its 2004 statutory disqualification examination of Employee 1 without action.

We are not aware of any additional complaints, disciplinary proceedings, or arbitrations against the Firm.

C. X's Proposed Business Activities and Supervision

The Firm proposes to employ X as a general securities representative, who will work from his home office, which is a non-branch, non-OSJ location. He will be compensated on a commission basis.

The Sponsoring Firm also proposes that the Proposed Supervisor will be X's primary, responsible supervisor. The Proposed Supervisor is the Vice President and Chief Financial Officer of the Firm. He has been employed by the Sponsoring Firm since 1989, and has been in the securities industry since 1983. The Proposed Supervisor qualified as a general securities principal in May of 1999. He works from the Firm's main office in State 2.

We are not aware of any disciplinary or regulatory proceedings, complaints, or arbitrations against the Proposed Supervisor.

D. Member Regulation's Recommendation

Member Regulation recommends that the Application be approved, subject to the specified terms and conditions of heightened supervision over X set forth below.

In submitting its Application pursuant to NASD Procedural Rule 9523, the Sponsoring Firm has consented to the imposition of the following terms and conditions of supervision for X:²

1. The Sponsoring Firm will amend its written supervisory procedures to state that the Proposed Supervisor is the primary supervisor responsible for X;
2. *X will work out of his home office, located in State 2;
3. *X will not maintain discretionary accounts;
4. X will not be responsible for or involved in the custody of customer funds or securities;
5. *X will not be involved in the structuring of public offering or private placement transactions;
6. *X will not act in a supervisory capacity;
7. X will not be permitted to give final approval of advertising or sales literature for use by himself or any other associated person;
8. The Proposed Supervisor will review all of X's new account forms before the customer accounts are opened. The Proposed Supervisor will evidence his review by

² The Firm has indicated that those supervisory terms and conditions denoted with an asterisk (*) are special for X and are not required of the Firm's other registered representatives.

- initialing and dating the forms. The forms will be maintained and kept segregated for ease of review;
9. X will enter orders for securities transactions from his office into the Fiserve order entry system or to the Sponsoring Firm's main office. The Proposed Supervisor will review X's order tickets as they are presented. The Proposed Supervisor will evidence his review by maintaining a written record evidencing his review and approval of X's transactions. The record of the Proposed Supervisor's review and approval will be kept segregated for ease of review;
 10. The Proposed Supervisor will review X's outgoing and incoming written correspondence as they are either sent or received. The Proposed Supervisor will initial and file copies of all incoming and outgoing correspondences, and will keep these records segregated for ease of review;
 11. All 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. Documents pertaining to these complaints will be kept segregated for ease of review;
 12. *The Proposed Supervisor will meet with X, in a face-to-face meeting, at a minimum of once per month to ensure that X is complying with the terms of the heightened plan of supervision;
 13. *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;
 14. The Proposed Supervisor must certify quarterly (March 31st, June 30th, September 30th, and December 31st) to the Firm's Compliance Department that the Proposed Supervisor and X are in compliance with all of the above conditions of heightened supervision to be accorded X.

E. Discussion

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

In reaching our determination, we have considered that X's statutorily disqualifying event occurred more than 30 years ago. X has successfully been reinstated in the securities industry since 1978, in various positions with different firms, and he has not been the subject of any intervening formal disciplinary action.

Moreover, the Proposed Supervisor has no disciplinary record and is well qualified to supervise X. Although the Proposed Supervisor will not be located in the same office as X, the proposed supervisory procedures provide that the Proposed Supervisor will electronically review all new account forms before accounts are opened, and will review order tickets and correspondence as they are presented.

Finally, the Sponsoring Firm has been an NASD member since 1989 and it does not have an extensive regulatory history. The Firm has agreed to a well-structured plan of heightened supervisory procedures to ensure that it will be able supervise X properly.

Based on the circumstances specific to this case, we agree with Member Regulation's determination that X did not knowingly act improperly by initially associating with the Sponsoring Firm in 2003, or by previously associating with Firms Two and Three, without regulatory approval. For a long period of time, CRD's records failed to accurately reflect that X was subject to disqualification. Therefore, although X's disqualifying event dates back to 1974, Firms Two and Three were nonetheless allowed to include him in mass transfers of representatives in 2001 and 2002. Both of these associations occurred after X had been disqualified for almost 25 years. In a statement, X has indicated that he was not aware that the mass transfers were improper, and that he assumed that he was in compliance with Firms Two and Three, and initially in 2003 with the Sponsoring Firm, as CRD did not question his registration until the Fall of 2003.

NASD certifies that: 1) X meets all applicable requirements for the proposed employment; 2) the Firm is not a member of any other self-regulatory organization; 3) the Firm has represented that X and the Proposed Supervisor are not related by blood or marriage; and 4) the Firm has acknowledged that it currently employs Employee 1, an individual who is also subject to disqualification.

Accordingly, we approve X as a registered representative with the Sponsoring Firm. In conformity with the provisions of SEC Rule 19h-1, the association of X as a general securities representative with the Sponsoring Firm will become effective upon 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,

Barbara Z. Sweeney
Senior Vice President and Corporate Secretary