

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD

<p>In the Matter of the Continued Association of</p> <p>X</p> <p>as an</p> <p>Assistant in the Institutional Department</p> <p>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. SD04006

Date: 2004

On August 7, 2003, the Sponsoring Firm<sup>1</sup> ("the Firm") completed an MC-400 application ("Application") seeking to permit X, a person subject to a statutory disqualification, to continue to associate with the Firm as an assistant in its Institutional Department.<sup>2</sup> 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 Statutory Disqualification Committee that X's proposed association with the Sponsoring Firm as an assistant in its Institutional Department be approved pursuant to the terms and conditions set forth below. The Sponsoring Firm consented to the imposition of these terms and conditions in its Application.

A. X's Statutorily Disqualifying Event

In January 1999, the Securities and Exchange Commission instituted proceedings against X and others, pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"). Contemporaneously, X and others submitted offers of settlement, which the Commission determined to accept.

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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.

<sup>2</sup> In March 2001, NASD previously approved X to work with the Firm as a general securities representative and equity trader. The SEC approved this application in an Order dated May 2001. The Firm now seeks to end X's duties as a general securities representative and equity trader, and have him act solely as an assistant in its Institutional Department.

X was one of 51 individuals (along with 28 broker-dealers) sanctioned by the SEC for violations resulting from market making activities in the Nasdaq stock market. Specifically, X was found to have aided and abetted the manipulative coordinated entry of quotations in market making transactions on Nasdaq and the entry of fictitious quotations in market making transactions on Nasdaq.

The SEC issued an Order Making Findings and Imposing Sanctions ("Order") in January 1999, which ordered X to cease and desist from committing or causing any violation or future violation of Sections 15(c)(1) and (2) of the Exchange Act and Rules 15c1-2 and 15c2-7 thereunder. He was also ordered to pay a civil penalty in the amount of \$210,000 and was barred from association with any broker, dealer, municipal securities dealer, investment adviser or investment company, with the right to reapply for association after 18 months to the appropriate self-regulatory organization.

The SEC bar expired in July 2000. X paid the penalty in the amount ordered.

B. Background Information

1. X

In March 2001, NASD approved X to associate with the Sponsoring Firm as a general securities representative and equity trader. Prior to his employment with the Sponsoring Firm, X was employed as a consultant with Firm One from June to December 1998, and as a trader with Firm Two from January to February 1998. X was first registered in the securities industry with Firm Three as a general securities representative from July 1984 until December 1997.

NASD is not aware of any other regulatory or disciplinary actions taken against X.

2. The Firm

The Sponsoring Firm became a member of NASD in July 1995. The Firm has five offices of supervisory jurisdiction ("OSJ") and four branch offices. The Sponsoring Firm employs 80 registered principals and 271 registered representatives. The Firm is a leading wholesale market maker in Nasdaq/OTC securities.

NASD has commenced the Firm's 2003 routine examination, but it is not yet complete.

After completing the Firm's 2002 routine examination, NASD issued the Sponsoring Firm a Letter of Caution ("LOC"). The LOC noted violations with respect to the Firm's written supervisory procedures; anti-money laundering compliance program; reporting requirements; disclosure of policies regarding order flow arrangements; and books and records. The Firm responded to the LOC in September 2003, indicating the actions it took to clear the noted deficiencies.

NASD also issued the Firm an LOC in May 2002, following the completion of a special examination. The findings in that LOC were related to the Firm's failure to establish adequate written supervisory procedures pertaining to outside securities accounts of its registered representatives. In a response to the LOC, dated May 2002, the Firm indicated corrective measures it implemented to address the deficiencies.

The Firm's additional disciplinary history is as follows:

In 2003, NASD accepted the Sponsoring Firm's Letter of Acceptance, Waiver and Consent ("AWC"), in which the Firm agreed to the entry of findings that the Sponsoring Firm failed to honor quotations, failed to meet obligations regarding locked and crossed markets, failed to observe transaction reporting requirements, failed to meet obligations regarding reporting Automated Confirmation Transaction System ("ACT") transactions, and failed to follow SEC rules regarding dissemination of quotations. NASD censured the Firm and fined it \$43,000.

In May 2003, State 1 assessed an administrative penalty of \$5,000 against the Sponsoring Firm for conducting unregistered broker-dealer activities in violation of State 1 law.

In July 2002, the SEC brought administrative proceedings against the Sponsoring Firm, alleging violations of the limit order display rule between October 1997 and August 1999. The Sponsoring Firm submitted an offer of settlement and agreed to pay a \$75,000 fine.

In January 2002, NASD accepted the Sponsoring Firm's AWC for inadequate written supervisory procedures, violations of locked and crossed markets, violations of ACT reporting, violations of SEC Rule 15c2-11 regarding requirements for information maintenance on quoted companies, and violations of the rules on display of customer limit orders. The Sponsoring Firm agreed to pay a \$700,000 fine and make a payment of \$800,000 plus interest to certain of its clients. The Firm revised certain of its written supervisory procedures to address NASD's findings.

In 1999, NASD accepted the Sponsoring Firm's AWC and fined the Firm \$1,000 for effecting transactions in a particular security while a Nasdaq trading halt was in effect in that security.

In 1999, NASD accepted the Sponsoring Firm's AWC and censured and fined the Firm \$5,000 for submitting four orders to Instinet after the stock was halted for trading.

In 1998, NASD accepted the Sponsoring Firm's AWC for executing 116 short sale transactions in violation of the ACT requirements, and for executing 21 short sale transactions without making an affirmative determination for each of the transactions. NASD censured the Sponsoring Firm and fined it \$10,000.

In 1997, NASD accepted the Sponsoring Firm's AWC for failing to honor its published quotation. The Sponsoring Firm also failed to establish, maintain and enforce written supervisory procedures to ensure compliance with these rules. NASD censured the Firm and fined it \$5,500.

In 1997, NASD accepted the Sponsoring Firm's AWC for entering quotations in Nasdaq that exceeded the parameters for maximum allowable spreads. NASD fined the Firm \$1,000 and required it to conduct a compliance conference.

In 1997, NASD accepted the Sponsoring Firm's AWC and fined the Firm \$2,000 for failing to create and maintain a record of customer limit orders and for failing to enforce written supervisory procedures designed to prevent these violations.

In 1997, NASD accepted the Sponsoring Firm's AWC for entering quotations in Nasdaq National Market securities that exceeded the parameters for maximum allowable spreads in three securities. NASD fined the Firm \$2,000 and required it to conduct a continuing education class. Also in June 1997, NASD accepted the Firm's AWC for late and non-execution of customer limit orders and for failing to have written supervisory procedures designed to prevent such violations. NASD censured the Firm and fined it \$6,000.

In 1997, NASD accepted the Sponsoring Firm's AWC and fined it \$2,000 for entering or maintaining quotations in the Nasdaq Stock Market during normal business hours which caused a locked market condition to occur in two securities.

In 1996, NASD accepted the Sponsoring Firm's AWC for executing day limit orders after the orders had expired, and failing to establish, maintain and enforce written supervisory procedures that would detect and deter these violations. NASD censured the Firm, fined it \$50,000, and required it to pay \$166,230 in restitution to customers.

C. X's Proposed Business Activities and Supervision

The Sponsoring Firm proposes to employ X in the Firm's home office in State 2. He will be an assistant in the Firm's Institutional Department and he will not have any supervisory functions or responsibilities.

The Firm also proposes that the Proposed Supervisor will be X's primary, responsible supervisor. The Proposed Supervisor, who has been a general securities representative since 1984 and a general securities principal since 1997, works out of the Firm's home office. The Proposed Supervisor has no disciplinary history. The Proposed Supervisor will receive some assistance in supervising X from the Proposed Supervisor 2, who has been a general securities representative since 1994 and a general securities principal since June 2002. The Proposed

Supervisor 2 is a team leader of the Sponsoring Firm's Institutional Sales department and he also has no disciplinary history.<sup>3</sup>

Member Regulation and the Sponsoring Firm have agreed that the following terms and conditions will govern X's association with the Sponsoring Firm as an assistant in its Institutional Department:<sup>4</sup>

1. X will work in the Sponsoring Firm's home office located in State 2;
2. The Sponsoring Firm will employ X as an assistant in the Firm's Institutional Department;
3. The Proposed Supervisor will act as the primary, responsible supervisor for X;
4. The Proposed Supervisor and X will work out of the same office, on the same floor;
5. As an assistant in the Institutional Department, X will work on gathering, sorting, filtering and summarizing publicly available information for use internally by the Sponsoring Firm's traders and externally by the Firm's clients;
6. X will assist in the preparation of daily "call sheets," which are a combination of publicly disseminated news items, market indicators and perspectives, and which will be distributed internally to the Sponsoring Firm's salespersons and traders as well as externally to the Firm's institutional and broker-dealer clients;
7. \*The Proposed Supervisor will review the "call sheets" on a weekly basis with X. During these weekly meetings, the Proposed Supervisor will also review all aspects of X's work at the Firm, including compliance with the Firm's policies and procedures. the Proposed Supervisor shall maintain a record of the various matters discussed and reviewed with X during such weekly meetings;

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<sup>3</sup> The Proposed Supervisor has acknowledged that he is the primary, responsible supervisor for X, although he will receive occasional assistance from the Proposed Supervisor 2.

<sup>4</sup> Those supervisory terms and conditions denoted with an asterisk (\*) are special for X and are not required of all the registered representatives.

8. X will have contact with the Firm's institutional and broker-dealer clients solely in a clerical and ministerial capacity, through the dissemination of the daily "call sheets;"
9. \*The Sponsoring Firm will obtain prior approval from Member Regulation if the Sponsoring Firm wishes to change X's responsible supervisor from the Proposed Supervisor to another person; and
10. \*The Firm will amend its written supervisory procedures to state that the Proposed Supervisor is the primary responsible supervisor for X.

D. Discussion

After carefully reviewing the entire record in this matter, we approve the Sponsoring Firm's Application to employ X as an assistant in its Institutional Department, subject to the terms and conditions set forth above.

In reaching this determination, we note that we previously approved X to associate with the Sponsoring Firm as a general securities representative and equity trader in 2001. Since that time, the Sponsoring Firm and X have complied with the heightened supervisory terms and conditions of NASD's March 2001 19h-1 Notice and the SEC's May 2001 Order of Approval. NASD conducted statutory disqualification examinations of the Sponsoring Firm and X in 2001 and 2002, and both were filed without action.

In addition, the Firm has agreed to extensive, well-structured supervisory controls that will govern X's activities as an assistant in the Firm's Institutional Department. Moreover, the Proposed Supervisor, who has extensive supervisory experience and no regulatory disciplinary history, appears to be fully capable of supervising X's activities.

Given these factors, we find that the Sponsoring Firm's disciplinary history, especially given the relatively large size of the Firm and the numerous transactions in which it engages on a daily basis, does not raise regulatory concern as to the Firm's ability to supervise X in the proposed capacity.

We conclude that the Sponsoring Firm's Application satisfies the conditions necessary for X to continue to be employed in the securities industry as an assistant in the Firm's Institutional Department, and that the public interest will not be harmed by X's continued association with the Sponsoring Firm.

NASD certifies that: 1) X meets all applicable requirements for the proposed employment; 2) X, the Proposed Supervisor and the Proposed Supervisor 2 have represented that they are not related by blood or marriage; and 3) the Firm does not employ any other statutorily disqualified individuals.

The Firm is also a member of the Pacific Stock Exchange and the Cincinnati Stock Exchange. Concurrence notices have been filed with these self regulatory organizations, pursuant to NASD's agreement under Rule 17d-2 of the Exchange Act.

Accordingly, in conformity with the provisions of SEC Rule 19h-1, the association of X as an assistant in the Sponsoring Firm's Institutional Department will become effective upon the issuance of an order by the Commission that it will not institute proceedings pursuant to Section 15A(g)(2) of the Exchange Act. The NASD is also seeking relief under Section 19(h) of the Exchange Act. This notice shall serve as an application for such an order.

On Behalf of the National Adjudicatory Council,

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Barbara Z. Sweeney  
Senior Vice President and Corporate Secretary