

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. SD04007

Date: 2004

On August 2, 2003, the Sponsoring Firm¹ ("the Firm") filed an MC-400 application ("MC-400" or "the Application") seeking to lift the heightened terms and conditions of employment currently imposed on X, a person subject to a statutory disqualification. X has been registered as a general securities representative with the Firm since April 2003. 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 continued association with the Firm, without a plan of heightened supervision, be approved.

A. Basis for Statutory Disqualification

X is statutorily disqualified because NASD revoked his registration in a decision dated April 1963. NASD found that X was the proprietor of a broker-dealer that engaged in the securities business and represented that it was ready and able to consummate securities transactions and meet all other liabilities when, in fact, it was unable to do so. NASD's revocation subjects X to statutory disqualification as defined by NASD By-Laws, Art. III, Sec. 4(a) and Section 3(a)(39)(A) of the Securities Exchange Act of 1934 ("Exchange Act").

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.

B. Background Information

1. X

X was first registered in the securities industry in 1960 as a general securities representative (Series 1 a/k/a Series 7). He subsequently qualified as a uniform securities agent (Series 63) in October 1977 and as a foreign currency options agent (Series 15) in April 1985.

NASD first approved an MC-400 application for X to associate with Firm One in 1965. NASD later approved an MC-400 application in 1968 for X to associate with Firm Two. NASD informed the Commission of this association in a Rule 19h-1 notification in August 1968. The Commission approved the association of X as both a registered representative and a registered principal, without officer ownership status, in November 1968. Subsequent to this approval, according to CRD[®] records, NASD approved MC-400 applications for X to work as a registered representative for the following firms on the following dates:

<u>Employer</u>	<u>Date of Approval</u>
Firm Three	3/1971
Firm Four	4/1976
Firm Five	9/1978
Firm Six	10/1979
Firm Seven	11/1991
Firm Eight	1/1994
Firm Nine	2/2002
The Sponsoring Firm	5/2003

X has been the subject of one customer complaint, received in February 1992. The customer alleged that X recommended investment products that were not suitable. The complaint was dismissed and settled with prejudice. The customer received monetary compensation of \$75,000. X did not contribute to the settlement.

NASD's last nine statutory disqualification examinations of X's employment at various firms were filed without action.

We are unaware of any other regulatory actions taken against X.

2. The Firm

The Sponsoring Firm became an NASD member in January 1998. The Firm has 12 offices of supervisory jurisdiction ("OSJ") and 20 branch offices. It employs 44 registered principals, 135 registered representatives, and 158 employees. The Firm acts as an interdealer broker of corporate debt, U.S. Government securities, mortgage-backed securities, and emerging market debt.

Following routine examinations in 1999 and 2001, NASD issued the Firm Letters of Caution ("LOC"). The 1999 LOC found the Firm to be deficient in its trade reporting procedures. The 2001 LOC noted several violations. First, the Firm was cited because four transaction trade reports failed to include the "T" modifier and three transaction trade reports failed to include execution times. Second, the Firm was cited due to its failure to accurately mark 12 out of 60 equity transactions. Finally, the Firm was cited because it permitted two individuals to act in a registered capacity, notwithstanding their inactive status for continuing education requirements. The Firm responded to both LOCs and stated that it had corrected the noted deficiencies.

The Firm's last routine examination, conducted in 2002, resulted in a Compliance Conference. There were several deficiencies noted for discussion, including registration violations, inaccurate calculations on a FOCUS IIA Report, failure to obtain required information on customer account records, and inadequate written supervisory procedures. Additionally, in 2003, NASD issued the Firm an LOC for failing to respond to a breakpoint survey.

NASD's Department of Market Regulation has also brought three disciplinary actions against the Sponsoring Firm. In the first action, dated March 2003, the Firm submitted a Minor Rule Violation ("MRV") Letter and consented to a fine of \$2,000 for failure to display 10 customer limit orders. In two subsequent disciplinary actions, the Firm submitted Letters of Acceptance, Waiver and Consent ("AWC"). In the first AWC, dated June 2003, the Firm was cited for short sale violations and it consented to fines totaling \$17,500. In the second AWC, dated August 2003, the Firm was cited for deficiencies with respect to NASD's firm quote rule and it consented to a \$5,000 fine.

In its MC-400 Application, the Firm also noted that it is currently involved in 14 litigation matters with regard to the securities industry.

The record does not show any other complaints, disciplinary proceedings, or arbitrations against the Firm. The Sponsoring Firm is not a member of any other self-regulatory organization.

C. X's Proposed Business Activities and Supervision

The Sponsoring Firm proposes that X will continue to be employed in one of the Firm's branch offices, located in State 1. The branch office also operates as an OSJ. X will be compensated with a percentage of his commissions less his expenses.

The Firm proposes that the Proposed Supervisor will continue to be X's primary, responsible supervisor. The Proposed Supervisor has been a registered principal (Series 24) since April 1997. She has also been registered as a general securities representative (Series 7) since May 1993; a uniform securities agent (Series 63) since September 1996; and a limited representative – equity trader (Series 55) since April 2000. She has been registered with the Sponsoring Firm since April 2003.

The record shows no disciplinary or regulatory proceedings, complaints, or arbitrations against the Proposed Supervisor.

The Proposed Supervisor is currently supervising X under the following conditions established in NASD's May 2003 notification letter to the Commission permitting X's association with the Sponsoring Firm:

1. The Sponsoring Firm will amend its supervisory procedures to state that the Proposed Supervisor is X's primary supervisor;
2. X will have no supervisory duties;
3. The Proposed Supervisor, or another registered principal of the Firm, will review and initial X's order tickets on a daily basis;
4. The Proposed Supervisor will review all of X's incoming and outgoing correspondence;
5. The Proposed Supervisor will be located within 30 feet of X; and
6. For the duration of X's statutory disqualification, the Firm must obtain prior approval from Member Regulation if it wishes to change X's supervisor from the Proposed Supervisor to another person.

D. Discussion

After carefully reviewing the entire record in this matter, we approve the Firm's Application to lift the heightened supervisory plan for X.

In reviewing this Application, we have considered the fact that X's disqualifying event occurred more than 40 years ago. Since that time, with the exception of one customer complaint, X has not had any intervening misconduct. Further, we note that NASD's last nine statutory disqualification examinations of X have been satisfactory and filed without action. In light of these factors, we find that it is no longer necessary to require heightened oversight for X.

We also considered that the Proposed Supervisor, X's supervisor, has no regulatory disciplinary history and has supervised X since May 2003, without incident.

Finally, the Sponsoring Firm has been a member of NASD since 1998. It does have a disciplinary history, but not one that raises substantive concerns about its business activities or its supervisory system. The supervisory deficiencies that resulted in the Compliance Conference in

2002 related to the sufficiency of the Firm's written supervisory procedures and did not involve a demonstrated failure to supervise a registered person.

NASD certifies that: 1) X meets all applicable requirements for the proposed employment; and 2) X and the Proposed Supervisor have represented that they are not related by blood or marriage.

Accordingly, in conformity with the provisions of SEC Rule 19h-1, the continued association of X as a general securities representative with the Sponsoring Firm, without a plan of heightened supervision, 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