PLEASE NOTE THE LATER CASE HISTORY OF THIS DECISION FOLLOWING THE TEXT OF THE DECISION.

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD

In the Matter of X[1] as a Limited Representative – Corporate Securities Representative[2] with The Sponsoring Firm	**Redacted Decision** Notice Pursuant to Section 19(d) Securities Exchange Act of 1934 Decision No. SD03008 Dated: 2003

On March 13, 2003, the Sponsoring Firm (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 associate with the Sponsoring Firm as a limited representative – corporate securities representative (Series 62). In April 2003, a subcommittee ("Hearing Panel") of the Statutory Disqualification Committee of NASD held a hearing on the matter. X appeared, accompanied by counsel and by the Firm's former Chief Compliance Officer. PL appeared on behalf of NASD's Department of Member Regulation ("Member Regulation").

A. X's Statutorily Disqualifying Event

X is subject to a statutory disqualification because a U.S. District Court entered an Order of Permanent Injunction ("Permanent Injunction") against him in 1969. The court permanently enjoined X from further violations of the anti-fraud provisions of the federal securities acts. The Permanent Injunction was based on a complaint issued by the SEC, which alleged as follows.

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[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] Pursuant to NASD Membership Rule 1632(e), a limited representative – corporate securities representative is not permitted to engage in transactions that involve municipal securities, options, redeemable securities (except for money market funds), variable contracts, or direct participation programs.

During late 1967 and early 1968, X participated in a scheme in which various lending institutions around the country were induced to make loans totaling more than $720,000, most of which went into default, by falsely creating the appearance of a market for the stock of Company A, which was pledged as collateral for the loans. The two largest shareholders of Company A stock contacted registered representatives and convinced them to insert quotations in the pink sheets at $10 bid, $12 ask, with an understanding that the traders would be protected against loss. X, who at the time was a Vice-President, Director and 30% shareholder of a broker-dealer, inserted 45 to 50 quotations a day in the pink sheets for Company A stock on most days during the relevant time period. The SEC noted that X never questioned the protective arrangement, although it was a clear "red flag" that should have alerted him to make a proper inquiry into the business and financial condition of Company A.

The SEC also brought an administrative proceeding based on this misconduct. In 1971, X consented to an Order Instituting Public Administrative Proceeding, Making Findings and Imposing a Remedial Sanction that suspended him for three months in all capacities. That suspension was completed in 1972.

More recently, X was statutorily disqualified because he pled guilty in 1992 to falsifying business records in the second degree in a State 2 court.[3] X acknowledged that while he was employed as a trader by Firm 1, he agreed to "park" securities for another, now defunct broker-dealer. This misconduct resulted in false entries on the defunct broker-dealer's FOCUS report. Firm 1 terminated X due to this misconduct, and the state court sentenced him to a one-year period of conditional discharge. This conviction ceased to be a statutorily disqualifying event as of 2002.

B. Background Information

1. X

X has not been employed by a broker-dealer since 1992.[4] He first began working in the securities industry in 1959, as an investment company products/variable contracts representative. He qualified as a general securities representative in July 1984 and as a limited representative-corporate securities representative in 2000. He has been associated with four different broker-dealers since 1959.

a. Prior SEC Rule 19(d) Notices

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[3] This misdemeanor offense qualifies as a statutorily disqualifying offense pursuant to NASD By-Laws, Art. 3, Sec. 4(g)(1)(ii) (a conviction, within 10 years preceding the filing of any application for membership, for any felony or misdemeanor that arises out of the conduct of the business of a broker-dealer).

[4] X testified that since his termination by Firm 1, he has been trading for his account, and the accounts of his wife and step-daughter.

Prior to this Application, three separate firms have submitted MC-400 applications in support of X during the past 10 years. As described below, NASD denied each of these applications, and the SEC affirmed the two denials that were appealed to the SEC.

In 1993, NASD denied the request of firm number one for X to be associated. As its basis for denial, NASD noted that X had engaged in two serious statutorily disqualifying activities, both of which involved securities-related misconduct.

In 1995, NASD denied the MC-400 application of firm number two. Once again, NASD expressed its concern with the serious nature of X's two securities-related offenses. In addition, NASD noted that the owner and control person of the sponsoring firm was also subject to a statutory disqualification.

X appealed this denial to the SEC, and in 1996, the SEC dismissed the appeal. The SEC agreed that X's misconduct reflected poorly on his integrity and that NASD's determination gave proper regard to the public interest and the protection of investors.

In 2000, NASD denied the MC-400 application of firm number three. With regard to this denial, NASD reiterated its concern with the nature of X's two securities-related statutorily disqualifying offenses, and stated that X had demonstrated a pattern of securities-related misconduct. NASD also noted that it had found recent deficiencies in the supervisory procedures of one of the branch offices of firm number three, and that the proposed supervisor was not qualified because he had very limited experience in the securities industry and had only been a general securities representative for a short time.

The SEC dismissed X's appeal in a 2001 decision. The SEC stated that it could not conduct a proper evaluation of the application because the proposed supervisor had been replaced and the record did not contain the required information regarding the new supervisor's qualifications. Accordingly, the SEC concluded that the record did not support the approval of X's proposed employment, and that NASD had applied its rules in a manner consistent with the Securities and Exchange Act of 1934 ("Exchange Act").

2. The Firm

The Sponsoring Firm became a member of NASD in 1980. The Firm has one main office in State 2 that is an office of supervisory jurisdiction ("OSJ"), and four branch offices that are also registered as OSJs. The Sponsoring Firm employs 61 registered representatives, 20 of whom are also registered principals. The Firm is engaged in a general securities business, and has also been a member of the Pacific Exchange since December 2002.

In 2003, NASD issued the Sponsoring Firm a Letter of Caution ("LOC") for failing to submit a copy of a response to an information request. The Firm responded to the LOC in 2003.

In 2002, the Firm consented to a fine of $7,500 in an Acceptance, Waiver and Consent for failing to comply with the reporting requirements of the Order Audit Trail System rules.

C. X's Proposed Business Activities and Supervision

The Sponsoring Firm proposes that X be permitted to register only as a limited representative-corporate securities representative. He will place orders with the Sponsoring Firm to buy or sell securities for his own brokerage account with the Firm, and for the brokerage accounts of his two immediate family members (his wife and step-daughter) if they grant appropriate trading authority to X and the Firm. In addition, X will introduce potential customers to the Sponsoring Firm who are expected to place orders with the Firm to buy or sell securities for their own accounts solely on an unsolicited basis. X will be listed on the Firm's new account form as the representative who introduced the account, but he will not accept the account on behalf of the Sponsoring Firm. Once the account has been accepted by the Firm, moreover, he will not perform any of the duties of a registered representative for the account imposed by applicable SEC, NASD, or other securities laws, rules, or regulations. For all accounts except the three family accounts that X trades, the Sponsoring Firm will compensate him solely by an override of the commissions earned by the Firm from unsolicited transactions in securities executed by the Firm for the accounts that X introduces. The Sponsoring Firm has represented that X would receive a maximum override of 50¢ per transaction.

The Sponsoring Firm originally proposed that Employee 1 would supervise X at the Firm's main office. Employee 1 resigned from the Sponsoring Firm and the Firm subsequently proposed that the Proposed Supervisor would act as X's supervisor. The Proposed Supervisor is the Firm's Chief Operating Officer. He has been in the securities industry since September 1993. He has been a general securities representative since February 1994 and a general securities principal since August 1999. The Proposed Supervisor has no formal or informal disciplinary history.

D. Member Regulation Recommendation

In a letter dated April 2003, supplemented by a letter dated May 2003, Member Regulation recommended that the NAC deny the Sponsoring Firm's Application to employ X. Member Regulation expressed its concern that the two securities-related offenses that X committed demonstrated a pattern of fraudulent conduct. Further, Member Regulation questioned the Firm's regulatory history and Employee 1's ability to provide meaningful supervision for X, given that Employee 1 has never been employed as a trader and has been a general securities principal only since January 2002. After Employee 1's resignation, Member Regulation supplemented its recommendation by a letter dated September 2003, which continued to recommend denial of the Sponsoring Firm's Application.

E. Discussion

After carefully reviewing the entire record in this matter, we deny the Sponsoring Firm's Application to employ X as a limited representative-corporate securities representative. We find that it would not be in the public interest to permit X to re-enter the securities business and that his employment in the industry may create an unreasonable risk of harm to the market or investors.

1. Standards for Evaluating X's Disqualifying Events

At different times, X committed two disqualifying events – the 1969 Permanent Injunction and the 1992 state court misdemeanor. We consider both of these events in evaluating the Sponsoring Firm's Application.

First, we consider the 1969 Permanent Injunction because – pursuant to NASD's By-Laws – such an injunction creates a statutory disqualification for an individual's entire career. See NASD By-Laws, Art. 3, Sec. 4(h). Second, we consider the 1992 state court misdemeanor because it involved securities-related misconduct. Although we acknowledge that the 1992 state court misdemeanor ceased to be a statutorily disqualifying event in 2002, we evaluate the misconduct as part of X's regulatory history.

Member Regulation also considered both of these events in formulating its recommendation; however, we disagree with Member Regulation's reasoning. Member Regulation followed the SEC's guidance in Arthur H. Ross, 50 S.E.C. 1082 (1992) and considered the 1992 state court misdemeanor because, it concluded, the misdemeanor demonstrated that X had engaged in a pattern of misconduct. We disagree that Ross applies to this situation and our reasoning allows us to consider both events without making a predicate finding that the two events demonstrate a pattern of misconduct.[5]

2. Gravity of X's Regulatory Events

We find that X's regulatory history is so grave that we must deny him re-entry into the securities business. In making this finding, we recognize that the 1969 Permanent Injunction is more than 30 years old, and that the 1992 state court misdemeanor ceased to be a statutorily disqualifying event in 2002. Nonetheless, we conclude that X's repeated securities-related violations demonstrates that he should not be permitted employment in the securities industry.

The 1969 Permanent Injunction stemmed from X's activities as a trader in aiding and abetting a fraudulent market manipulation by placing fictitious quotations for a stock in the National Daily Quotations Sheets ("Pink Sheets"). Later in his securities career, X again engaged in serious misconduct and pled guilty to participating in what was described by the State 2 District Attorney in an October 1992 letter to NASD as "a massive stock-rigging scheme in the over-the-counter market."

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[5] Member Regulation relied on Ross because it views X's 1969 Permanent Injunction as involving a bar with a right to reapply. See Paul Van Dusen, 47 S.E.C. 668 (1981). We find that X's situation differs from a Van Dusen case in two important aspects. First, the 1969 Permanent Injunction included no right to reapply after a specified period of time. In a Van Dusen case, the SEC bars the individual and determines how long that individual must wait before applying to rejoin the industry by setting a time period for the right to reapply. Second, X's 1971 settlement of the SEC's administrative proceeding did not indicate that the SEC had carefully weighed the requirements of the public interest in light of X's alleged misconduct, as the SEC stated that it had done in Van Dusen.

We conclude that this regulatory history militates against allowing X to re-enter the securities industry. As the SEC stated in its 1996 decision affirming NASD's decision to deny X permission to re-enter the industry at that time:

> The conviction at issue, while a misdemeanor, reflects poorly on [X]'s integrity. Moreover, the fact that we suspended [X], at an earlier point in his career, from association with a broker or dealer, and obtained an injunction against his committing securities fraud, underscores for us . . . that he lacks the integrity demanded of those working in the securities industry.

[CASE REDACTED].

We reach this conclusion based solely on X's commission of the two acts of securities-related misconduct. We do not find the Firm's regulatory history to be troublesome, nor do we find the proposed heightened supervisory structure with the Proposed Supervisor as the supervisor to be inadequate.

Accordingly, we find that it would not be in the public interest for X to become associated with the Sponsoring Firm. We therefore deny the Application.

On Behalf of the National Adjudicatory Council,

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Barbara Z. Sweeney
Senior Vice President and Corporate Secretary

LATER CASE HISTORY:

X subsequently appealed this decision to the SEC. In 2005, the SEC remanded this matter to NASD's NAC. Later in 2005, the NAC issued a decision on remand denying X's association with the Firm (see Decision No. SD05010). In 2006, X appealed the NAC's 2005 decision to the SEC. Later in 2006, the SEC dismissed the application for review in this matter.