

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY¹

In the Matter of the 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. SD07001

Date: 2007

I. Introduction

On October 30, 2006, the Sponsoring Firm² (“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 Firm as a general securities representative. A hearing was not held in this matter. Rather, pursuant to NASD Rule 9523, FINRA’s Department of Member Regulation (“Member Regulation”) recommended that the Chair of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council, approve X’s proposed association with the Sponsoring Firm.

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

¹ As of July 30, 2007, NASD consolidated with the member firm regulation functions of NYSE and began operating under a new corporate name, the Financial Industry Regulatory Authority (“FINRA”). References in this decision to FINRA shall include, by reference and where appropriate, references to NASD.

² 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.

II. The Statutorily Disqualifying Event

X is statutorily disqualified because in October 2003, he pled guilty in a State 1 court to felony “theft of a controlled substance.”³ *See* FINRA By-Laws, Art. III, Sec. 4 (referring to Section 3(a)(39) of the Securities Exchange Act of 1934 (“the Exchange Act”), which provides that all felony convictions are statutorily disqualifying events if they occurred within 10 years preceding the filing of an application to enter the securities industry). On that same date, he also pled guilty to three misdemeanor charges of “criminal attempt of theft of a controlled substance.”⁴ The State 1 court sentenced X to five years’ imprisonment for the felony conviction and 12 months for each of the three misdemeanor convictions. The court suspended the imposition of the prison sentences, however, and instead placed X on five years’ probation and ordered him to pay \$10,374.18 in restitution. In September 2006, X received a conditional discharge from probation,⁵ and the record shows that he paid the court-ordered restitution in full in August 2006.

III. Background Information

A. X

X has not previously been employed in the securities industry. He qualified as a general securities representative (Series 7) in December 2006. He also qualified as a uniform securities agent state law (Series 63) and as a registered options principal (Series 4) in January 2007.

X is currently employed as an office assistant for an electric company. Prior to that, he was a full-time college student, and he completed his bachelor’s degree in December 2006. While attending college, he served as an unpaid intern for the Sponsoring Firm from May to September 2006.⁶

³ X’s felony conviction stemmed from his actions while employed as a clerk in a pharmacy in June-July 2003. He stole a controlled substance from his employer.

⁴ The misdemeanor convictions are not statutorily disqualifying events. *See* FINRA By-Laws, Art. III, Sec. 4 (referring to Section 3(a)(39) of the Exchange Act, which provides that misdemeanor theft is a statutorily disqualifying event only if the theft involves “funds or securities”).

⁵ The conditional discharge released X from the supervision of his probation officer and provided that, for the remainder of his probationary period (September 2006 – November 2008), X must continue his “good behavior” and “refrain from violating the law in any respect.” X’s former probation officer informed Member Regulation that X has had no intervening offenses since his arrest in July 2003.

⁶ Member Regulation represents that the Firm terminated X’s internship immediately when Member Regulation informed the Firm that X could not associate with it in any manner without

The record shows no additional disciplinary history against X.

B. The Firm

The Sponsoring Firm became a FINRA member in June 1992. The Firm engages in a general securities business, has one office of supervisory jurisdiction and no branch offices, and employs four registered principals and five registered representatives.

FINRA has not yet commenced its 2007 routine examination of the Firm. FINRA issued a Letter of Caution (“the 2005 LOC”) and a Minor Rule Violation (“the 2005 MRV”) to the Firm after its 2005 routine examination. FINRA also issued an LOC to the Firm following its 2003 routine examination (“the 2003 LOC”).

The 2005 LOC cited the Firm for several deficiencies, including membership agreement violations, books and records inaccuracies, inadequate written supervisory procedures, failure to timely report a customer complaint, and failure to test the Firm’s Anti-Money Laundering Program. The Firm responded to the 2005 LOC in a letter dated April 2006, stating that it had corrected the deficiencies.

The 2005 MRV fined the Firm \$1,000 for untimely reporting of municipal securities transactions.

The 2003 LOC cited the Firm for inaccurate books and records, one deficient employee Uniform Application for Securities Industry Registration or Transfer (“Form U4”), inadequate written supervisory procedures, inaccurate customer records, failure to maintain options agreements, and late reporting of municipal securities transactions. The Firm responded to the 2003 LOC by letter dated June 2003, stating that it had corrected the deficiencies.

The Firm also has some recent state disciplinary history. In March 2004, the State 2 Securities Department denied the Firm’s application for registration as a dealer in State 2 because the Firm effected 69 purchase transactions for two State 2 residents prior to being registered in that state.

The record shows no additional customer complaints, disciplinary proceedings, or arbitrations against the Firm.

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FINRA approval. Member Regulation also represents that it is satisfied with the Firm’s response to this situation.

IV. X's Proposed Business Activities and Supervision

The Sponsoring Firm proposes to employ X as a general securities representative. The Firm will compensate him by a salary and a company bonus.

The Firm proposes that the Proposed Supervisor will be X's primary supervisor. He will supervise X on-site at the Firm's home office in State 1. The Proposed Supervisor has been employed by the Sponsoring Firm since June 1999, when he entered the securities industry. He qualified as a general securities representative in September 1999 and as a general securities principal (Series 24) in July 2003. FINRA's Central Registration Depository ("CRD"[®]) shows no disciplinary or regulatory proceedings, complaints, or arbitrations against the Proposed Supervisor.

V. Member Regulation's Recommendation

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

VI. Discussion

In reviewing this type of application, we have considered 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.⁷ 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 FINRA'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, subject to the supervisory terms and conditions set forth below, will not present an unreasonable risk of harm to the market or investors.

We acknowledge the seriousness of X's criminal conviction. We note, however, that his felony conviction occurred in 2003, almost four years ago, and we are not aware of any other misconduct by X. We also recognize that X has been punished for his felony offense by a State 1 court, which ordered him to pay \$10,374.18 in restitution and placed him on probation for five years. X paid the restitution, and he received a conditional discharge from probation in September 2006.

⁷ See *Frank Kufrovich*, 55 S.E.C. 616, 625-26 (2002) (upholding FINRA's denial of a statutory disqualification applicant who had committed non-securities related felonies "based upon the totality of the circumstances" and FINRA's explanation of the bases for its conclusion that the applicant would present an unreasonable risk of harm to the market or investors).

Further, although we were initially concerned with the fact that X's felony involved theft from a former employer, we recognize that X did not steal money, but rather stole drugs to support his then addiction. The record indicates that since his 2003 arrest, however, X has been participating successfully in a program of recovery with Alcoholics and Narcotics Anonymous. X's recovery sponsor submitted a letter stating that he and X attend meetings together several times each week and actively work to continue X's sobriety. X has also demonstrated his commitment to his rehabilitation by completing his college degree and by maintaining an office assistant position with an electric company, where he has been responsible for accounts payable and receivable, as well as payroll. Moreover, as an added precaution, we note that the Firm has specifically provided that X will not have access to cash or securities of customers.

The proposed supervisor is well qualified and has worked in the securities industry since 1999 with no disciplinary history.

The Sponsoring Firm has been a member of FINRA since 1992, with no formal disciplinary history. The Firm has agreed to the following comprehensive supervisory plan to ensure that it will be able to maintain heightened supervision for X:⁸

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 not maintain discretionary accounts and will not have access to cash or securities of customers;
3. *X will be employed as a general securities representative and will not be permitted to act in a supervisory capacity;
4. *The Proposed Supervisor will supervise X on-site at the Firm's home office in State 1;
5. The Proposed Supervisor will review and pre-approve each securities account prior to X's opening of the account. The Proposed Supervisor will document his review by dating and signing the account paperwork and maintaining it at the Firm's home office;
6. *The Proposed Supervisor will review and approve X's orders after execution, or as soon as practicable, on a "T + 1" basis. The Proposed Supervisor will also review the trade reports on a T + 1 basis and document his review by dating and initialing them and maintaining them at the Firm's home office;

⁸ The items that are denoted with an asterisk are conditions of heightened supervision for X. Other registered representatives of the Firm are not subject to these heightened supervisory conditions.

7. The Proposed Supervisor will review X's incoming written correspondence (including e-mail communications) upon its arrival and will review outgoing correspondence before it is sent;
8. *For the purposes of client communication, X will only be allowed to maintain an e-mail account that is held at the Firm, with all e-mails being filtered through the Firm's e-mail system. If X receives a business-related e-mail message in another e-mail account outside the Firm, he will immediately deliver that message to the Firm's e-mail account. X will also inform the Firm of all outside e-mail accounts that he maintains. The Proposed Supervisor will conduct a weekly review of all e-mail messages that X sends or receives and will print the e-mail messages and keep them segregated for ease of review during any statutory disqualification audit;
9. All complaints pertaining to X, whether oral or written, will be immediately referred to the Proposed Supervisor for review, and then to the Compliance Department of the Firm. 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 all documents pertaining to these complaints segregated for ease of review;
10. If the Proposed Supervisor is out of the office, the Proposed Supervisor 2, president of the Firm, will act as X's interim supervisor;⁹
11. *For the duration of X's statutory disqualification, the Firm must obtain prior approval from Member Regulation if it wishes to change X's responsible supervisor from the Proposed Supervisor to another person, or if it wishes to make a material change in X's job responsibilities; and
12. *The Proposed Supervisor must certify quarterly (March 31st, June 30th, September 30th, and December 31st) to the Compliance Department of the Firm that he and X are in compliance with all of the above conditions of heightened supervision.

FINRA 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 organizations; 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.

⁹ The Proposed Supervisor 2 entered the securities industry as a general securities representative in 1973. She qualified as a general securities principal in January 1986, and she has no formal disciplinary history.

VII. Conclusion

Accordingly, we approve the Sponsoring Firm's Application to employ X as a general securities representative. In conformity with the provisions of Exchange Act 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

