BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

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. SD07003 Date: 2007

I. Introduction

On June 19, 2006, the Sponsoring Firm ("the Firm") submitted a Membership Continuance Application ("MC-400" or "the Application") with FINRA's[1] Department of Registration and Disclosure, seeking to permit X,[2] a person subject to a statutory disqualification, to associate with the Firm as a general securities representative. In April 2007, a subcommittee ("Hearing Panel") of FINRA's Statutory Disqualification Committee held a hearing on the matter. X appeared at the hearing, accompanied by his counsel and by his proposed supervisor. LL and CD, appeared on behalf of FINRA's Department of Member Regulation ("Member Regulation").

For the reasons explained below, we approve the Sponsoring Firm's Application.[3]

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[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.

[3] Pursuant to NASD Rule 9524(a)(10), the Hearing Panel submitted its written recommendation to the Statutory Disqualification Committee. In turn, the Statutory Disqualification Committee considered the Hearing Panel's recommendation and presented a written recommendation to the National Adjudicatory Council, in accordance with Rule 9524(b)(1).

II. The Statutorily Disqualifying Event

X is statutorily disqualified because he pled guilty in April 2003, to the felony charge of driving under the influence of alcohol ("DUI") in State 1. X's 2003 DUI was a felony because he had two previous misdemeanor convictions for DUI in September 1997 (resulting in three years of probation, 30 days of imprisonment, a $500 fine, and a six-month license revocation) and September 1991 (resulting in 12 days in jail and a $250 fine). For the 2003 felony conviction, the court fined X $1,000, revoked his driver's license for one year, and placed him on probation for five years. In October 2005, X received early termination from probation.

III. Background Information

A. X

X first registered in the securities industry as a general securities representative (Series 7) in December 1995. He also qualified as a uniform securities agent (Series 63) in December 1995 and as a general securities principal (Series 24) in July 1997. He was previously associated with 12 firms between May 1995 and June 2006. At the hearing, X testified that he changed firms often in the beginning of his securities career because he was an "account opener" for another broker, and he followed this broker from firm to firm. X also stated that he had changed employers frequently in his early securities career because he was dissatisfied with the quality of many of his early employers' sales practices,[4] and he sought to find a group of co-workers that emphasized ethical business practices. X stated that he found such a group at Firm 2 in 2002, and that he stayed there until 2006 when the group transferred to the Sponsoring Firm.

FINRA's Central Registration Depository ("CRD"®) shows that one customer filed a complaint against X in September 2000, alleging unsuitable investments and excessive commissions. The customer sought damages of $225,000. The parties settled the complaint for $30,000 in March 2001. X testified that he contributed the entire $30,000 through monthly deductions from his gross commissions taken by the brokerage firm that employed him at the time.

The record shows no other regulatory actions against X.

B. The Firm

The Sponsoring Firm is based in State 1, and it became a FINRA member in August 2000. The Firm has one office of supervisory jurisdiction ("OSJ"), no branch offices, and it employs seven registered principals and 33 registered representatives. The Firm is engaged in a general securities business.

FINRA has begun, but not yet completed, its 2007 routine examination of the Firm.

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[4] X stated that some of his early firms encouraged "high-pressure sales tactics."

FINRA's 2005 routine examination of the Sponsoring Firm resulted in a compliance conference for several deficiencies, including continuing education violations; records violations involving inaccurate Uniform Applications for Securities Industry Registration or Transfer ("Forms U4") and Uniform Termination Notices for Securities Industry Registration ("Forms U5"); and written supervisory procedure violations. The Firm responded to FINRA in a letter dated April 2006, stating that it had addressed the deficiencies noted.

The Firm's 2001 FINRA routine examination resulted in a Letter of Caution ("LOC") for an inaccurate balance ledger and trial balance; one late FOCUS Report; and written supervisory procedure violations. The Firm responded to FINRA in a letter dated March 2001, stating that it had addressed the deficiencies noted.

The record shows no other customer complaints, regulatory proceedings, or arbitrations against the Firm.

IV. X's Proposed Business Activities and Supervision

The Sponsoring Firm proposes to employ X as a general securities representative in its home office in State 1.

The Firm proposes that the Proposed Supervisor will be X's primary supervisor, and they will work in close proximity in the same office. The Proposed Supervisor has been employed by the Firm as a principal since September 2006, and he began working for the Sponsoring Firm full time in February 2007. The Proposed Supervisor has been employed in the securities industry since January 1994, and he first became registered as a general securities principal in May 1994. The Proposed Supervisor was previously associated with 12 different brokerage firms between January 1994 and September 2006, when he joined the Sponsoring Firm.

CRD shows one regulatory action and two customer complaints against the Proposed Supervisor. The regulatory action is a 1998 FINRA Decision and Order of Settlement against the Proposed Supervisor when he was a compliance officer at one of his former firms. Specifically, the findings against the Proposed Supervisor were: 1) from July 1996 through March 1997, the Proposed Supervisor failed to timely report to FINRA statistical and summary information regarding 19 customer complaints; 2) in March 1997, the Proposed Supervisor failed to timely report to FINRA a state securities consent judgment imposing penalties of $100,000; 3) the Proposed Suervisor failed to develop and maintain a continuing and current education program for registered persons for the year 1997; and 4) the Proposed Supervisor failed to develop a written training plan for the year 1997. FINRA censured the Proposed Supervisor, fined him $7,500, and ordered him to requalify as a general securities principal. The Proposed Supervisor paid the fine and requalified as a general securities principal in July 1998.

Two customers filed complaints in 1996 against one of the Proposed Supervisor's former employers, naming the Proposed Supervisor as the director of compliance. Both complaints were subsequently withdrawn with no action against the Proposed Supervisor.

V. Member Regulation's Recommendation

Member Regulation recommends that the Application be denied because: 1) X does not appear to recognize that his 2003 felony conviction for a third DUI offense is serious and reflects irresponsible behavior; 2) X failed to amend his Form U4 to disclose his felony conviction; 3) X's employment history has been "very sporadic"; 4) the Firm and X have not acted responsibly because the Firm compensated X at a time when he was ineligible to receive compensation; and 5) the Proposed Supervisor's regulatory history is troubling due to his 1998 FINRA settlement for supervisory failures. We address these concerns separately and more fully 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.[5] 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.

After carefully considering the entire record in this matter, including the testimony at the hearing and the post-hearing submissions from the parties, we approve the Firm's Application to employ X as a general securities representative, subject to the supervisory terms and conditions set forth below.

A. X is Responsibly Addressing His Alcoholism

Member Regulation is certainly correct in asserting that X's 2003 felony conviction for a third DUI offense is serious and reflects irresponsible behavior. Unlike Member Regulation, however, we find that X recognizes the seriousness of his offense and has acted responsibly to address his underlying problem, alcoholism, since his last arrest in January 2003. Therefore, we reject this as a reason to exclude X from associating with the Sponsoring Firm.

X testified that within two weeks of the January 2003 DUI arrest, he voluntarily placed himself in an inpatient alcoholism treatment center for 30 days. The record contains documentation to corroborate his testimony in the form of a certificate of completion of inpatient treatment dated March 2003. X further testified that immediately following his inpatient treatment, he voluntarily completed six months of intensive outpatient treatment, during which time he became committed to the ongoing program of Alcoholics Anonymous ("AA"). X stated

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[5] *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).

that he remains an active member of AA to date. This testimony was corroborated by a certificate dated August 2003 from the executive director of the outpatient treatment center and a letter dated March 2006 from X's AA sponsor. In addition, X's AA sponsor testified by telephone at the hearing and stated that X has remained sober since February 2003, attends three to five AA meetings per week, and is active in the AA program.

Accordingly, we find that X has assumed full responsibility for his addiction and has taken great strides to rehabilitate his alcoholism since his 2003 DUI arrest.

B. The Record Shows that X Disclosed His Felony Conviction to His Former Employer

Member Regulation contends that X failed to disclose his felony DUI conviction to his former employer, Firm 2, when he pled guilty in April 2003. Specifically, Member Regulation cites to six Form U4 amendments filed by Firm 2 for X between January 2004 and August 2005. On each of the six amended filings, the response to question 14A(1)[6] indicates only that X had been charged with a felony, with no mention of a conviction. Member Regulation further asserts that an affidavit submitted by X dated February 2007 is insufficient documentary evidence to support his contention that he orally notified his former direct supervisor, who was also the compliance officer at Firm 2, of his felony conviction.

We find, however, that the preponderance of the evidence in this record supports X's contention that he promptly informed his supervisor at Firm 2 of his felony conviction in 2003. Our conclusion is based on the record evidence and on our assessment of X's credibility as a witness. "Credibility determinations of the initial fact-finder, which are based on hearing the witnesses' testimony and observing their demeanor, are entitled to considerable weight and deference and can be overcome only where there is substantial evidence for doing so." *Dep't of Enforcement v. Gebhart*, Complaint No. C02020057, 2005 NASD Discip. LEXIS 40, at *51 n.18 (NASD NAC May 24, 2005), *aff'd*, Exchange Act Rel. No. 53136, 2006 SEC LEXIS 93 (Jan. 18, 2006), *appeal docketed*, No. 06-71021 (9th Cir. Feb. 27, 2006).

X testified that immediately after his felony arrest in January 2003, he orally informed the Former Proposed Supervisor about the felony charge. X stated that he and the Former Supervisor prepared an amendment to X's Form U4 at that time to reflect the felony charge but that the Former Supervisor opined that it would "not be a problem" because the charge was not securities-related. X further testified that the Former Supervisor and others at Firm 2 were intimately aware of X's alcoholism treatment because he was out of the office for 30 days in February-March 2003 to attend his inpatient treatment, and for six months thereafter he attended the outpatient treatment program three days per week during work hours—from 10:00 a.m. until

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[6] Question 14A(1) of the Form U4 is in two parts. The first part, (a), asks if a person has ever "been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any *felony*?", and the second part, (b), asks if a person has ever "been *charged* with any *felony*?"

1:00 p.m. Moreover, X stated that because he was not permitted to drive, he had to add one hour each way to those days in order to use local mass transportation.

X also testified that he orally timely informed the Former Supervisor that he had pled guilty to the felony DUI charge in April 2003 and been convicted, and that the Former Supervisor again opined that it was "not a problem" because the conviction was not securities-related. He stated that he never attempted to conceal the felony conviction from Firm 2, and that he recalled timely giving court documents to the Former Supervisor and completing some paperwork to amend his Form U4 to reflect the conviction. X testified that he assumed that the Former Supervisor had submitted this revised Form U4 to FINRA, but he admitted that he had never checked his CRD on-line or later Forms U4 to see if the conviction had been properly disclosed. X stated that he did not know about the deficiency in his Form U4 until June 2006, when he attempted to register with the Sponsoring Firm. We note that X fully disclosed his felony charge and conviction to the Sponsoring Firm in June 2006, and he testified that he was surprised when the Sponsoring Firm informed him that the felony conviction was a statutory disqualification.

As to the six Forms U4 referenced by Member Regulation that had been submitted on his behalf by Firm 2 between January 2004 and August 2005, X testified that he did not recall if he had ever reviewed them or signed them. He further noted that each of those amendments appears to have been made to add a state registration for him, and that he might have reviewed only the state registration portion of the Form U4 without going back to review the remaining sections of the Form U4. We note that the copies of the six Form U4 amendments submitted by Member Regulation are not signed, and Member Regulation conceded that they were copies of electronic filings.

X also submitted affidavits from two former employees of Firm 2, attesting that they were aware in 2003 of X's arrest for DUI, that X had never attempted to conceal his arrest from anyone at Firm 2, and that several of X's co-workers were aware of his DUI and his treatment for alcohol abuse. The record does not include any statement from the Former Supervisor, and X testified that he had not had any recent communication with the Former Supervisor.

Based on this evidence, we are convinced that X fully and timely disclosed his felony DUI conviction to his supervisor at Firm 2, supplied court documents, and completed some paperwork to amend his Form U4 at that time. As X testified, such complete disclosure was necessary to address the questions of his continuing employment while attending six months of outpatient alcoholism treatment and the suspension of his driver's license. Although X should have been more diligent by checking his CRD online or by following up with his employer to ascertain that the amended Form U4 had been promptly filed with FINRA, we find that he did not willfully fail to disclose the DUI felony conviction to Firm 2.

C. X's Employment History Does Not Support Denial of the Application

Member Regulation states that it is concerned with X's "sporadic employment history in the securities industry," calling his work history "rather checkered and inconsistent."

As stated earlier, X first entered the securities industry in 1995. Between May 1995 and June 2006, he was employed by 12 different firms. While such a work record may not be ideal, we do not find that it supports denial of the Application. First, the Forms U5 filed by X's former employers indicate that the terminations were voluntary. Second, the record shows that only one regulatory event stemmed from those associations—the March 2001 settlement of a customer complaint against X for $30,000. Third, X testified credibly that, early in his career, he acted as an account opener for another broker and chose to follow this broker from firm to firm. X also credibly testified that he was dissatisfied with the work ethic at many of his early firms and moved to other firms to attempt to find a group of co-workers that employed good business practices.

Based on this record, we find that Member Regulation has not demonstrated sufficient reason to deny the Application based on X's work history.

D. The Firm's Compensation of X Does Not Support Denial of the Application

Similarly, we find that the Firm's payments to X at a time when he was ineligible to receive compensation are not a sufficient reason to deny the Application. The record shows that the Sponsoring Firm submitted the MC-400 on June 19, 2006. X was listed in CRD as being registered with the Sponsoring Firm solely for the purpose of satisfying FINRA prerequisites for the pending Application. In January 2007, FINRA's District office commenced its 2007 routine examination of the Firm. During the course of that examination, FINRA staff discovered that X had been receiving compensation from the Firm. In answer to FINRA staff's written questions, the Sponsoring Firm responded by letter dated January 2007, that between August and November 2006, the Firm engaged X as "a recruiter of personnel pursuant to an oral contractor arrangement unrelated to his registration at the Sponsoring Firm." The Firm paid X $6,500 per month, for a total of $26,000.

At the hearing, X testified that he has been out of work since June 2006, supporting his family with his savings and a second mortgage on his home. He stated that he welcomed the opportunity to make some money when the Sponsoring Firm offered to pay him to speak to brokers that he knew and try to get them to interview with the Firm. X stated that he and the Firm did not realize that this activity was prohibited because he acted only as an "introducer" of possible brokers to the Firm and did not receive an override on any production that those brokers achieved if they did join the Firm. X and the Firm did not make any effort to conceal the relationship or the payments, which FINRA examiners readily identified in the Firm's routine examination. As soon as FINRA informed the Firm that this practice was not permitted during the Application process, the Firm ceased the payments, and X again began living off his savings. X stated that he and the Firm were extremely sorry to have made this error.

Based on this evidence, we find that the Firm's payments to X as a "recruiter" from August to November 2006 do not provide sufficient reason to deny the Application.

E. The Firm and the Proposed Supervisory Structure for X

Next, we consider the nature and disciplinary history of the Sponsoring Firm and the proposed supervisory structure for X. The record shows that the Firm has no formal disciplinary history. FINRA held a compliance conference with the Firm after its 2001 routine examination and issued an LOC to the Firm after its 2005 routine examination. We are persuaded that the Firm has satisfactorily responded to FINRA regarding the deficiencies cited in those reviews and has made the necessary corrections to its procedures.

As to the Proposed Supervisor, we find that he is well qualified to supervise X under heightened supervisory conditions. We reject Member Regulation's assertion that the Proposed Supervisor's "sporadic work history" makes him an unacceptable supervisor for X. The record shows that the Proposed Supervisor has been in the securities industry since 1994, qualifying as a general securities principal (Series 24) in May 1994 and requalifying in such capacity in July 1998. Prior to 1994, he was employed by FINRA for more than four years as a compliance examiner. There is no indication in the record that the Proposed Supervisor left any of his prior employers on other than a voluntary basis, and the two customer complaints that named him in his role as compliance director of a firm were withdrawn with no action against the Proposed Supervisor. We were initially concerned that the Proposed Supervisor entered into a settlement with FINRA in 1998 for certain violations that occurred while he was acting as a compliance officer for a former firm. We note, however, that the Proposed Supervisor complied with the terms of the settlement by requalifying as a general securities principal in July 1998. The Proposed Supervisor also testified that he has had experience with supervising certain individuals who are subject to heightened supervision due to various state infractions. Accordingly, after reviewing the Proposed Supervisor's entire CRD record and listening to his testimony, we are persuaded that the Proposed Supervisor will be a satisfactory supervisor for X.

The Firm also proposed the beginning of a well-structured plan of heightened supervisory conditions to impose on X. After reviewing the Firm's proposal, we accept it, with the addition of several enhancements.

In sum, after considering the entire record and the nature of X's statutory disqualification, we approve X as a general securities representative with the Sponsoring Firm, supervised by the Proposed Supervisor, and subject to the following terms and conditions of employment:

1. The Firm will amend its written supervisory procedures to state that the Proposed Supervisor is the primary supervisor responsible for X;

2. The Proposed Supervisor will supervise X on-site, in the Firm's home office in State 1;

3. The Proposed Supervisor must approve every new account to be serviced by X prior to the commencement of trading and will evidence his review by signing the new account paperwork. The Proposed Supervisor will also review all account suitability updates and initial the paperwork as evidence of his review;

4. On at least a daily basis, the Proposed Supervisor will promptly review every order placed by X on behalf of his customers, including a review for suitability with the client's investment objectives. X must place all orders while he is located on-site at the Firm's home office in State 1. In the Proposed Supervisor's absence, another qualified principal will perform this review. Upon the Proposed Supervisor's return, he will review the orders and initial them to indicate such review;

5. On at least a monthly basis, the Proposed Supervisor will meet with X to review all aspects of his work at the Sponsoring Firm, including compliance with the Sponsoring Firm's policies and procedures. the Proposed Supervisor will maintain a log of the meetings and the matters discussed and reviewed;

6. On a quarterly basis, the Proposed Supervisor will review reports and/or account statements and will discuss the accounts with X at their monthly meetings. The Proposed Supervisor will certify quarterly (March 31, June 30, September 30, and December 31) to the Firm's compliance department that he and X are in compliance with the conditions of heightened supervision to be accorded X;

7. X will not be allowed to have any discretionary accounts;

8. X will not act in a supervisory capacity;

9. The Proposed Supervisor will review X's incoming correspondence (which includes e-mail communications) upon its arrival and will review outgoing correspondence before X sends it out;

10. For the purposes of client communication, X will only be allowed to maintain an e-mail account that is held at the Firm and all e-mails will be filtered through the Firm's e-mail system. The Proposed Supervisor will conduct a weekly review of all e-mail messages that X sends or receives, print them, and keep them segregated for ease of review during any statutory disqualification audit (in addition to complying with the e-mail retention requirements in NASD Rule 3110 and Rules 17a-3 and 17a-4 of the Exchange Act);

11. 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. 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 documents pertaining to these complaints segregated for ease of review;

12. The Firm's compliance department will amend the Firm's special supervision list to include the special supervision procedures relating to X that the Proposed Supervisor will perform;

13. X will not be allowed to maintain securities accounts at any other broker-dealer except the Sponsoring Firm; and

14. 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.

FINRA certifies that: 1) X meets all applicable requirements for the proposed employment; 2) the Firm has represented that X and the Proposed Supervisor are not related by blood or marriage; 3) the Firm is not a member of another self-regulatory organization; and 4) the Firm currently employs no other statutorily disqualified individuals.

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,

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Barbara Z. Sweeney, Senior Vice President and Corporate Secretary