

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Association of	Redacted Decision
X	<u>Notice Pursuant to</u>
as a	<u>Rule 19h-1</u>
General Securities Representative	<u>Securities Exchange Act</u>
with	<u>of 1934</u>
The Sponsoring Firm	<u>SD08001</u>
	Date: 2008

I. Introduction

In August 2006, the Sponsoring Firm¹ filed a Membership Continuance Application (“MC-400” or “the Application”) with the Department of Registration and Disclosure at the Financial Industry Regulatory Authority,² seeking to permit X a person subject to a statutory disqualification, to associate with the Sponsoring Firm as a general securities representative. A hearing was not held in this matter. Rather, pursuant to NASD Procedural 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 pursuant to the terms and conditions set forth below.

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

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 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.

II. The Statutorily Disqualifying Event

X is statutorily disqualified because he pled guilty in April 2001, in a State 1 state court to felony conspiracy to commit theft by deception.³ When he was 18 and a senior in high school, X falsely reported to his insurance company that his car had been stolen when, in fact, he had arranged for a friend to take the vehicle.⁴ The court sentenced X to 25 hours of community service and two years' probation to be served in State 2. The State 2 Department of Corrections terminated X's probation in June 2003.

III. Background Information

A. X

X has never been associated with a broker-dealer. Since January 2002, he has been employed as an administrative employee with an affiliate of the Sponsoring Firm.⁵ He qualified as a general securities representative by passing the Series 7 examination on September 2005.

B. The Sponsoring Firm

The Sponsoring Firm became a FINRA member in June 2002. The Sponsoring Firm's MC-400 represents that it has two offices of supervisory jurisdiction ("OSJ") and no branch offices. The Sponsoring Firm represents that it employs 97 people, including 60 registered representatives and five general securities principals. The Sponsoring Firm acts as an introducing broker-dealer and clears through Firm 1.

FINRA conducted routine examinations of the Sponsoring Firm in 2006, 2004, and 2002. In 2006, FINRA issued the Sponsoring Firm a Letter of Caution ("LOC") for several violations, including: failure to conduct an annual compliance meeting and a branch inspection; failure to establish written supervisory procedures for approval of customer address changes and

³ See FINRA By-Laws, Art. III, Sec. 4 (referring to Section 3(a)(39) of the Securities Exchange Act of 1934 ("Exchange Act"), which provides that a felony conviction is a statutorily disqualifying event if it occurs within 10 years of the date of the filing of an application for association with a member)

⁴ X reported on his Uniform Application for Securities Industry Registration or Transfer ("Form U4") that "[m]y senior year in high school, between school and sports it was very difficult for me to work to pay my car and I was ashamed to tell my father to pay for the car that I had promised to pay for. It was a humiliating mistake for me and my family."

⁵ Member Regulation investigated the circumstances of X's employment with the Sponsoring Firm and concluded that there was no basis for concern that he had been improperly associated with a member firm without FINRA approval.

investment objectives; and late transaction reports for nine of 28 Trace transactions. The Sponsoring Firm responded to the 2006 LOC in a letter dated January 2007, stating that it had addressed the deficiencies noted.

Following the 2004 routine examination, the Sponsoring Firm was subject to a compliance conference and submitted a Letter of Acceptance, Waiver and Consent (“AWC”). The compliance conference comprised numerous issues for discussion, including: the Sponsoring Firm’s lack of adequate procedures to address a business continuity plan; a registration violation; the failure of two representatives to attend the Sponsoring Firm’s 2004 annual compliance meeting; continuing education violations; failure to maintain complete information on customer new account forms; and failure to adequately address customer correspondence and verbal complaints.

The AWC censured the Sponsoring Firm and imposed a \$10,000 fine for failing to maintain the minimum net capital required by Exchange Act Rule 15c3-1 for two months in 2004 and for inaccurately reporting net capital computations to FINRA for the same time period.

In 2002, FINRA issued the Sponsoring Firm an LOC for inaccurately computing net capital for one month; failing to provide customers with privacy notices, failing to report three corporate bond transactions; and failing to have an established process to conduct due diligence on its foreign or institutional customers. The Sponsoring Firm responded by letter dated May 2003, stating that it had addressed the deficiencies noted.

The record shows no other complaints, disciplinary proceedings, or arbitrations against the Sponsoring Firm.

IV. X’s Proposed Business Activities and Supervision

The Sponsoring Firm proposes to employ X as a general securities representative in its main office in City 1, State 2. The Sponsoring Firm will compensate X for the first year on a salary-only basis, and thereafter on a salary and commission basis.

The Sponsoring Firm proposes that the Proposed Supervisor, who is not related by blood or marriage to X, will be X’s primary supervisor. The Proposed Supervisor has been associated with the Sponsoring Firm since May 2001, and he is the Sponsoring Firm’s chief executive officer and chief compliance officer. He has been employed in the securities industry since 1999, and he qualified as a general securities principal in March 2002.

We are not aware of any 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 over X set forth below.

VI. Discussion

After carefully reviewing the entire record in this matter, we approve the Sponsoring Firm's Application to employ X as a general securities representative, subject to the supervisory terms and conditions set forth below.

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.⁶ 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 2001, more than six 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 state court, which ordered him to do 25 hours of community service and placed him on probation for two years. X satisfied his community service requirement, and he received a discharge from probation in June 2003.

Further, although we were initially concerned with the fact that X's felony involved a plan to defraud a car insurance company through theft by deception, we recognize that X engaged in this activity when he was only 18 years old and still in high school. Moreover, X's actions since that time have demonstrated his efforts to rehabilitate himself. He has not been the subject of any further criminal or disciplinary actions. He performed his required community service and served his probation without incident. He has completed a substantial number of credits to obtain an Associate's degree from a community college, and he hopes to complete a bachelor's degree in finance and economics. He has also successfully been employed by an affiliate of the Sponsoring Firm, for more than five years.

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

⁶ 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).

The Sponsoring Firm has been a member of FINRA since 2002, with no formal disciplinary history. The Sponsoring Firm has agreed to the following comprehensive supervisory plan to ensure that it will be able to maintain heightened supervision for X.⁷

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;
3. * X will not act in a supervisory capacity;
4. * The Proposed Supervisor will supervise X on-site at the Sponsoring Firm's main office in City 1, State 2. X will not be permitted to establish or work from a primary residence office;
5. * X will not be permitted to hold seminars;
6. * X will not be permitted to meet with customers outside of the Sponsoring Firm's main office in City 1, State 2;
7. * X will not be permitted to engage in any outside business activity unrelated to the Sponsoring Firm or its affiliates. He will be required to confirm in writing, on an annual basis, that he is not and has not engaged in any outside business activities;
8. * X will not be permitted to engage in any private placements. He will be required to confirm in writing, on an annual basis, that he has not engaged in any private placement activities;
9. * X will not be permitted to maintain any personal securities accounts other than through the Sponsoring Firm. He will be required to confirm in writing, on an annual basis, that he does not maintain any personal securities accounts other than through the Sponsoring Firm;
10. X will not be permitted to arrange financing for any customer. He will, however, be permitted to establish margin accounts for customers through Firm 1, the Sponsoring Firm's clearing firm;
11. * The Proposed Supervisor will review and pre-approve each securities account, prior to the opening of the account by X. The Proposed Supervisor will document

⁷ The items that are denoted with an asterisk are conditions of heightened supervision for X. Other registered representatives of the Sponsoring Firm are not subject to these heightened supervisory conditions.

his approval by dating and signing the paperwork and maintaining it at the Sponsoring Firm's main office;

12. * The Proposed Supervisor will review and approve X's orders after execution, or as soon as practicable. The Proposed Supervisor will then review the trade reports, evidence his review by initialing the trade reports, and keep copies of the trade reports segregated for ease of review;
13. * X will not be permitted to solicit the sale of or effect transactions in options;
14. X will not be permitted to act in the capacity of a trustee, executor, administrator, conservator, or guardian of any customer accounts;
15. The Proposed Supervisor will review X's incoming written correspondence (including email communications) upon its arrival and will review outgoing correspondence before it is sent;
16. * For the purposes of client communication, X will only be allowed to use an email account that is held at the Sponsoring Firm, with all emails being filtered through the Sponsoring Firm's email system. If X receives a business-related email message in another email account outside the Sponsoring Firm, he will immediately deliver that message to the Sponsoring Firm's email account. X will also inform the Sponsoring Firm of all outside email accounts that he maintains. The Proposed Supervisor will preserve and segregate X's email messages for ease of review during statutory disqualification audits;
17. All complaints pertaining to X, whether written or oral, will immediately be referred to the Proposed Supervisor for review and then to the Sponsoring Firm's 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 segregate documents pertaining to these complaints for ease of review;
18. If the Proposed Supervisor is out of the office, Employee 1 will act as X's interim supervisor;⁸
19. * For the duration of X's statutory disqualification, the Sponsoring Firm must obtain prior approval from Member Regulation if it wishes to change X's primary supervisor from the Proposed Supervisor to another person; and

⁸ Employee 1 qualified as a general securities principal in April 2007 and has no disciplinary history.

20. * The Proposed Supervisor must certify quarterly (March 31, June 30, September 30, and December 31) to the compliance department of the Sponsoring 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 Sponsoring Firm represents that it is not a member of any other self-regulatory organization; 3) the Sponsoring Firm represents that it does not employ any other statutorily disqualified individuals; and 4) the Sponsoring Firm represents that X and the Proposed Supervisor are not related by blood or marriage.

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 Sponsoring 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,

Marcia E. Asquith
Vice President and Deputy Corporate Secretary