

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Association of X ¹ as an Investment Company and Variable Contracts Products Limited Representative with The Sponsoring Firm	Redacted Decision <u>Notice Pursuant to</u> <u>Rule 19h-1</u> <u>Securities Exchange Act</u> <u>of 1934</u> <u>SD08005</u> Date: 2008
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I. Introduction

In November 2005, the Sponsoring Firm submitted a Membership Continuance Application (“MC-400” or “the Application”) with the Department of Registration and Disclosure at the Financial Industry Regulatory Authority (“FINRA”). The Application seeks to permit X, a person subject to a statutory disqualification, to continue to associate with the Sponsoring Firm as an investment company and variable contracts products limited representative, without heightened supervisory procedures. 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 continued 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.

II. The Statutorily Disqualifying Event

In March 1999, X pled guilty in the United States District Court for the District of State 1 to a charge of tax fraud (a felony). Specifically, X admitted that he failed to provide accurate information to his accountants regarding additional income that he received in 1991. As a result, X’s 1991 return did not include approximately \$32,676 in taxable income that X received from

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.

his insurance brokerage business. X pled guilty to evading approximately \$4,759 in taxes, in violation of 26 U.S.C. § 7201 (1999).

The court placed X on probation for a term of five years, fined him \$4,000, confined him to his residence for a period of six months, and ordered him to perform 500 hours of community service. After X completed his six months of house arrest and his community service requirements, and paid his fine, he moved for early termination of his probation. By order dated July 2002, the United States District Court for the District of State 1 granted X's request for early termination, effective December 2002.²

III. Background Information

A. X's Background and Prior SEC Rule 19h-1 Notice

X first registered in the securities industry as an investment company and variable contracts products limited representative (Series 6) in October 1981. He subsequently qualified as a uniform securities agent state law (Series 63) in January 1988.

X was previously employed by two other firms from March 1981 until October 1999.

One customer complaint was filed against X. In May 1996, married customers DD and SD alleged that X misrepresented both the cost and withdrawal features associated with their fixed and variable life insurance policies. Their complaint did not specify any amount of damages. The claim was denied by X's employer at the time because it found no basis for the customers' allegations.

X filed for Chapter 13 bankruptcy protection in April 1998. He voluntarily withdrew the action in May 1999.

Because of X's disciplinary history, in November 2003, the State 2 Division of Securities imposed a plan of heightened supervision on him, as a condition of X's continued registration in State 2. X subsequently terminated his State 2 registration because he has no clients in State 2.

In April 2003, FINRA filed a notice pursuant to SEC Rule 19h-1 with the Securities and Exchange Commission, recommending approval of the Sponsoring Firm's MC-400 application to sponsor X's association with the Sponsoring Firm as an investment company and variable contracts products limited representative. The Commission approved X's re-entry to the securities industry in August 2003 ("the 2003 Decision"), and since that date, the Sponsoring Firm has supervised X pursuant to the following plan:

1. Employee 1 is the Proposed Supervisor responsible for X;
2. The Sponsoring Firm's written supervisory procedures state that the Proposed Supervisor is the primary supervisor responsible for X;

² X's probation was originally scheduled to terminate on or about June 2004.

3. Each day, X provides a list of all sales contacts, including the nature of the contacts, to the Proposed Supervisor;
4. Each day, the Proposed Supervisor reviews X's written sales contacts as to the nature of the contact. The Proposed Supervisor verifies: 1) that the financial information included in the account records for each of X's customers is correct for purposes of making a suitability determination; and 2) that each transaction that X effects for his customers is suitable;
5. The Proposed Supervisor reviews all of X's written presentations and/or proposals;
6. Before any sales are placed for X, an employee of the Sponsoring Firm, acting on behalf of the Proposed Supervisor, contacts the client to verify the accuracy of the sale;
7. At least once a month, the Proposed Supervisor accompanies X on sales appointments to verify that X has adhered to all standards and disciplines established by the Sponsoring Firm;
8. Once a month, the Proposed Supervisor meets with X to review X's activity and compliance procedures;
9. Once during a calendar quarter, the Proposed Supervisor reviews X's activity by making an unannounced visit to X's office;
10. Once a year, the Proposed Supervisor presents to X a written report as to X's compliance with all necessary requirements in order for him to fulfill his obligations;
11. If, at any time, the Proposed Supervisor feels that X has not complied with these heightened supervisory terms and conditions, the Proposed Supervisor submits a written report to X requesting X's acknowledgement and understanding of the deficiencies and requiring X to sign and submit a plan as to how the deficiencies will be corrected. The Proposed Supervisor keeps a copy of this signed report in X's file; and
12. The Proposed Supervisor certifies quarterly (March 31, June 30, September 30, and December 31) to the compliance department of the Sponsoring Firm that X and the Proposed Supervisor are in compliance with all of the above conditions of heightened supervision to be accorded X.

FINRA has conducted one statutory disqualification examination since X re-entered the securities industry in 2003. That examination occurred in 2006, and FINRA noted no deficiencies.

B. The Sponsoring Firm

The Sponsoring Firm became a FINRA member in January 1966. The Sponsoring Firm's MC-400 represents that it has two offices of supervisory jurisdiction and eight branch offices. The Sponsoring Firm also represents that it employs eight registered principals and 40 registered representatives, and that it is engaged as a "full service introducing broker/dealer" that deals primarily with retirement plans and retirement planning.

FINRA conducted its most recent routine examinations of the Sponsoring Firm in 2006 and 2002. After the 2006 examination, FINRA conducted a compliance conference. FINRA cited the Sponsoring Firm for failing to record journal entries into its general ledger; failing to properly compute its net capital; and failing to file an accurate FOCUS report. In addition, in 2006 FINRA issued the Sponsoring Firm a Letter of Caution ("LOC"), citing the Sponsoring Firm for inadequate anti-money laundering procedures; incomplete written supervisory procedures; inadequate supervisory control policies and procedures; and failing to apply appropriate sales charges and discounts for three out of six purchases. The Sponsoring Firm responded in a letter dated January 2007, stating that it had addressed the noted deficiencies.

Following the 2002 examination, FINRA conducted a compliance conference that addressed numerous issues, including inaccurate net capital computations; inadequate written supervisory procedures; continuing education violations; inaccurate FOCUS filings; and incomplete customer account information.

FINRA also issued the Firm an LOC after the 2002 examination for selling mutual fund class B shares to a customer who was eligible to purchase class A shares at net asset value. The Sponsoring Firm responded in a letter dated October 2004, stating that it had corrected the noted deficiencies.

Finally, the 2002 examination led to the Sponsoring Firm consenting to a Letter of Acceptance, Waiver and Consent for inadequate written supervisory procedures in the area of instructing customers regarding mutual fund purchases. FINRA censured the Sponsoring Firm and imposed a \$7,500 fine.

IV. X's Proposed Business Activities and Supervision

The Sponsoring Firm proposes to continue to employ X as an investment company and variable contracts products limited representative in its branch office in City 1, State 1. The Sponsoring Firm will also continue to compensate X on a commission basis, and the Proposed Supervisor will continue to supervise X. The Proposed Supervisor has been employed in the securities industry since 1967, has been a general securities principal since 1994, and has no disciplinary history.

What the Sponsoring Firm's new proposal entails is that X will now be supervised in accordance with the Sponsoring Firm's general supervisory procedures, and will no longer be supervised under the heightened supervisory terms set forth in the 2003 Decision.

V. Member Regulation's Recommendation

Member Regulation recommends approval of the Sponsoring Firm's request to be relieved of the continuing heightened supervisory procedures for X.

VI. Discussion

After carefully reviewing the entire record in this matter, we approve the Sponsoring Firm's Application to continue to employ X as an investment company and variable contracts products limited representative, without having to continue to observe the heightened supervisory procedures that were imposed on the Sponsoring Firm in the 2003 Decision.

In reviewing this Application, we have considered that X's statutorily disqualifying event occurred nearly 10 years ago, and that X has not engaged in any intervening misconduct. We also note that X has been employed in the securities industry since 1981, and that FINRA conducted its 2006 statutory disqualification examination of the Sponsoring Firm and X and found no deficiencies in the Sponsoring Firm's supervision of X.

X will continue to be supervised pursuant to the Sponsoring Firm's standard written supervisory procedures, under the general supervision of the Proposed Supervisor. The Sponsoring Firm has been a FINRA member since 1966, and it has minimal formal disciplinary history. The Proposed Supervisor has no disciplinary history, and he has sufficiently supervised X during the period of heightened supervision. Given the history of the Sponsoring Firm and the Proposed Supervisor, we find that X will be adequately supervised under the general supervisory procedures of the Sponsoring Firm, and that X's continued association with the Sponsoring Firm as an investment company and variable contracts products limited representative, without heightened supervisory procedures, is consistent with the public interest.

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 organization; 3) the Proposed Supervisor and X represent that they are not related by blood or marriage; and 4) the Sponsoring Firm represents that it does not employ any other statutorily disqualified individuals.

Accordingly, in conformity with the provisions of SEC Rule 19h-1, the continued association of X as an investment company and variable contracts products limited representative with the Sponsoring Firm, without heightened supervisory procedures, 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
Senior Vice President and Corporate Secretary