BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Association of X[1] as a General Securities Representative with The Sponsoring Firm	Redacted Decision Notice Pursuant to Rule 19h-1 Securities Exchange Act of 1934 SD08008 Date: 2008

I. Introduction

In September 2007, the Sponsoring Firm filed a Membership Continuance Application ("MC-400" or "the Application") with the Financial Industry Regulatory Authority's ("FINRA") Department of Registration and Disclosure, seeking to permit X, a person subject to a statutory disqualification, to associate with the Sponsoring Firm as a general securities representative. In July 2008, a subcommittee ("Hearing Panel") of FINRA's Statutory Disqualification Committee held a hearing on the matter. X appeared at the hearing, accompanied by his proposed primary supervisor ("the Proposed Supervisor). FINRA Employee 1, FINRA Attorney 1, and FINRA Attorney 2 appeared on behalf of FINRA's Department of Member Regulation ("Member Regulation).

For the reasons explained below, we approve the Sponsoring Firm's Application.[2]

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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 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 ("NAC").

II. The Statutorily Disqualifying Event

X is statutorily disqualified because in February 2001, the Securities and Exchange Commission issued an Administrative Order ("the SEC Administrative Order") barring X from associating with any broker-dealer, with the right to reapply after five years, for insider trading. The Commission's administrative action followed its filing of a complaint in January 2001, and X's final consent to a permanent injunction in February 2001, imposed by the United States District Court for State 1.

The Commission's complaint alleged that X engaged in illegal insider trading by selling Company 1 stock while in possession of material, nonpublic information concerning Company 1's disappointing quarterly financial performance and unfavorable developments in a prospective merger involving Company 1. The complaint stated that in March 1998, Company 1 retained Firm 1 to provide financial services relating to the merger. At that time, X was employed as an associate in Firm 1's investment banking communications group. In June 1998, X attended a meeting at Firm 1 during which he learned that the exchange ratio for the merger would be amended to Company 1's detriment. Less than one hour after the meeting, X sold all of his 600 shares of Company 1 stock, despite having been warned at the meeting that the information was confidential and that he was prohibited from selling his Company 1 stock. The news was announced on the next day of trading, and Company 1 stock dropped more than 40%. By selling his Company 1 stock in advance of the announcement, X avoided losses of $4,160.

In addition to the permanent injunction and the bar with the right to reapply in five years, the Commission ordered X to pay a penalty of $4,960.52, representing $4,160 in disgorgement and interest of $800.52.

III. Background Information

A. X

X first registered in the securities industry as a general securities representative (Series 7) in November 1994. He also qualified as a uniform securities agent state law (Series 63) in October 2007. He was previously employed by only one firm, Firm 1, from August 1994 until July 1998. Firm 1 terminated X's employment in July 1998. FINRA's Central Registration Depository ("CRD"®) shows that Firm 1 stated the reason for its termination of X as "[t]he sale of shares of stock after receipt of information which could have an adverse impact on the price of the security upon public disclosure of such matters."

Since his termination from Firm 1 in 1998, X completed his master's degree in business administration. He has engaged in financial consulting and was employed by two commercial banks and one private equity firm from December 1998 until June 2005, when he started his own consulting firm, Firm 2. X testified that he intends to phase out his consulting duties if he is approved to work with the Sponsoring Firm. X testified that he wants to return

to investment banking as a profession and will only engage in financial consulting until he is able to maintain an acceptable income from his work with the Sponsoring Firm.

The record shows no other disciplinary or regulatory proceedings, complaints, or arbitrations against X.

B. The Sponsoring Firm

The Sponsoring Firm is based in City 1, State 2. It became a FINRA member in April 2000. The Sponsoring Firm has one office, which serves as the home office and an Office of Supervisory Jurisdiction. The Sponsoring Firm has three registered principals and three registered representatives. The Sponsoring Firm represents that it does not have any retail customers, nor does it maintain customer accounts. The Sponsoring Firm is approved to engage in mutual fund transactions (with institutional investors), tax shelters, private placements, merger and acquisition ("M&A") advisory business, and third party marketing of hedge funds.

FINRA has conducted two routine examinations of the Sponsoring Firm. FINRA took no action after the first examination in 2000. FINRA issued the Sponsoring Firm a Letter of Caution ("LOC") after the 2004 examination for several violations, including: 1) inadequate written supervisory procedures; 2) continuing education infractions; 3) inadequate disclosure by two representatives on Uniform Applications for Securities Industry Registration or Transfer; 4) books and records infractions; and 5) the failure to file a website with FINRA advertising. The Sponsoring Firm promptly responded to the LOC by letter, stating that it had addressed the noted deficiencies.[3]

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 registered representative "focusing primarily on M&A activity" in the Sponsoring Firm's home office in City 1, State 2. The Sponsoring Firm represents that X will support the Sponsoring Firm in evaluating M&A opportunities that have been identified by the Sponsoring Firm, and he will assist in "determining both the present condition/value of a business and the appropriate financing which will increase that value." The Sponsoring Firm will pay X based on the transactions he brings in—he will receive 80% of the fees generated on deals he originates, or 52% on deals he completes that have been originated by others in the Sponsoring Firm.

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[3] The copy of the Sponsoring Firm's response letter in the record is actually dated January 2004. Since this letter responds to the LOC dated June 2004, however, the Sponsoring Firm's response letter must be misdated. The LOC requests the Sponsoring Firm to respond by June 2004; accordingly, we assume that the Sponsoring Firm responded to the LOC on June 2004, and not January 2004.

The Sponsoring Firm proposes that the Proposed Supervisor, who is the president and owner of the Sponsoring Firm, will be X's primary supervisor. The Proposed Supervisor will supervise X on-site at the Sponsoring Firm's home office. The Proposed Supervisor first registered as an investment company products/variable contracts limited representative (Series 6) in May 1992. He qualified as a general securities principal (Series 24) in 1994. The Proposed Supervisor started the Sponsoring Firm in August 1999. Prior to that time, he was associated with one other firm from 1992 until 2000.

We are not aware of any disciplinary or regulatory proceedings, complaints, or arbitrations against the Proposed Supervisor.

The Sponsoring Firm also proposes that when the Proposed Supervisor is not available, Secondary Supervisor will supervise X. The Secondary Supervisor qualified as a general securities representative in February 2005 and as a general securities principal in March 2007. He has been employed by the Sponsoring Firm since June 2006. The Secondary Supervisor has not previously been associated with any other broker-dealers, and he has no disciplinary history.

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.

A. The Legal Standards

The legal framework that governs our review is set forth in *Paul Edward Van Dusen*, 47 S.E.C. 668 (1981) and *Arthur H. Ross*, 50 S.E.C. 1082 (1992). *Van Dusen* and *Ross* provide that in situations where the Commission has already addressed an individual's misconduct through its administrative process and has chosen to impose certain sanctions for that misconduct, FINRA generally should not evaluate a statutory disqualification application based on the individual's underlying misconduct. The Commission stated that when the period of time specified in its order has passed, in the absence of "new information reflecting adversely on [the applicant's] ability to function in his proposed employment in a manner consonant with the public interest," it is inconsistent with the remedial purposes of the Securities Exchange Act of 1934 ("Exchange Act") and unfair to deny an application for re-entry. *Van Dusen*, 47 S.E.C. at 671.

The Commission also noted in *Van Dusen*, however, that an applicant's re-entry is not

"to be granted automatically" after the expiration of a given time period. *Id.* Instead, the Commission instructed FINRA to consider other factors, such as: 1) other misconduct in which the applicant may have engaged; 2) the nature and disciplinary history of the prospective employer and supervisor; and 3) the supervision to be accorded the applicant. *Id.*

B. Application of the *Van Dusen* Standards

After applying the *Van Dusen* standards to this matter, we have determined to approve the Sponsoring Firm's Application.

First, the record shows that X has no intervening misconduct. He has no complaints, regulatory actions, or criminal history since the Commission issued the 2001 SEC Administrative Order. Since his termination from Firm 1 in 1998, X has been actively employed in commercial banking, private equity, and financial consulting without incident. He has also furthered his education by completing a graduate degree in business.

Second, we note that the proposed primary supervisor, the Proposed Supervisor, is well qualified. He has been in the securities industry since 1992 without any disciplinary history, and he has been a general securities principal since 1994. He will be located on-site with X in the Sponsoring Firm's City 1, State 2 home office.

Third, we look to the nature and disciplinary history of the Sponsoring Firm and to the plan of supervision. We note that the Sponsoring Firm has no formal disciplinary history and that it has proposed a comprehensive supervisory plan to ensure that it will be able to maintain future compliance with the plan of heightened supervision for X. In particular, we note that condition five of the plan listed below focuses on monitoring for insider trading by requiring X to deliver to the Proposed Supervisor account statements and confirmations for any securities in which X maintains an interest. Further, the Proposed Supervisor is required to review these statements and confirmations and confirm that X is not an owner of securities from any company in which he had any dealings on behalf of the Sponsoring Firm. The Proposed Supervisor is also required to initial copies of the statements and confirmations and segregate them for review during any statutory disqualification examination.

We are satisfied that the following heightened supervisory procedures will enable the Sponsoring Firm to reasonably monitor X's activities on a regular basis:[4]

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 act in a supervisory capacity;

[4] The items that are denoted by an asterisk are heightened supervisory conditions for X and are not standard operating procedures of the Firm.

3. *X will not maintain any discretionary accounts;

4. *The Proposed Supervisor will supervise X on-site;

5. *X will provide the Proposed Supervisor with all account statements and brokerage account confirmations for any account in which X has a beneficial interest or any account owned by members of X's immediate family. The Proposed Supervisor will confirm that X is not an owner of securities from any company in which he had any dealings on behalf of the Sponsoring Firm. The Proposed Supervisor will review all brokerage account confirmations and statements of any securities accounts provided by X. To evidence his review, the Proposed Supervisor will initial and maintain copies of the statements and confirmations and segregate them for review during any statutory disqualification examination;

6. *The Proposed Supervisor will review and approve all of X's new account forms for complete information, suitability, and required documentation on a weekly basis, at a minimum. He will initial the new account forms, make copies, and segregate them for review during any statutory disqualification examination;

7. *The Proposed Supervisor will attend at least 25% of the in-person meetings between X and his clients during which a proposal or agreement is being presented, with the exception that the Proposed Supervisor is not required to attend more than two meetings per month. The Proposed Supervisor will indicate his findings from those meetings in a log, which he will segregate for review during any statutory disqualification examination;

8. *The Proposed Supervisor will review all of X's client files on a monthly basis. He will indicate the findings of his review in a memo, which he will segregate for review during any statutory disqualification examination;

9. *The Proposed Supervisor will participate in at least 25% of the telephone conversations between X and his clients during which proposals are being presented, with the exception that the Proposed Supervisor will not be required to participate in more than two calls per month. The client will be informed that the Proposed Supervisor is a participant on the call, as if it were the normal course of business. The Proposed Supervisor will indicate his findings from the monitoring of these calls in a log, which he will segregate for review during any statutory disqualification examination;

10. *The Proposed Supervisor or his designee will review all of X's correspondence, including proposals or agreements, upon receipt (if incoming) or before it is sent (if outgoing);

11. *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 nevertheless 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, and will make those accounts subject to inspection at the Sponsoring Firm's request. The Proposed Supervisor will conduct a weekly review of all email messages that are either sent to or received by X. The Proposed Supervisor will preserve the email messages and segregate them for review during any statutory disqualification audit;

12. *The Proposed Supervisor will conduct monthly meetings with X to discuss the securities business of the Sponsoring Firm and to have X address any concerns or issues noted or discovered during the Proposed Supervisor's supervision of X. The Proposed Supervisor will indicate when such meetings have taken place and maintain and keep a log segregated for review during any statutory disqualification examination;

13. *The Proposed Supervisor must certify quarterly (March 31, June 30, September 30, and December 31) to the Sponsoring Firm's compliance department that he and X are in compliance with all of the above conditions of heightened supervision to be accorded X;

14. *All complaints pertaining to X, whether oral or written, will be immediately 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 review during any statutory disqualification examination;

15. *If the Proposed Supervisor is on vacation or out of the office, the Secondary Supervisor will act as X's interim supervisor; and

16. *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 responsible supervisor from the Proposed Supervisor to another person.

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 the Proposed Supervisor, the Secondary Supervisor, and X 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, subject to the above-mentioned heightened supervisory procedures. In conformity with the provisions of SEC Rule 19h-1, the association of X with the Sponsoring Firm as a general securities representative will become effective upon the issuance of an order by the Commission that it will not institute proceedings pursuant to Section 15(b) of the Exchange Act and that it will not direct otherwise pursuant to Section 15A(g)(2) of the Exchange Act. This notice shall serve as an application for such an order.

On Behalf of the National Adjudicatory Council,

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Marcia E. Asquith
Senior Vice President and Corporate Secretary