

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Association of

X¹

as a

General Securities Representative

with

The Sponsoring Firm

Redacted Decision

Notice Pursuant to
Rule 19h-1
Securities Exchange Act
of 1934

SD09001

Date: 2009

I. Introduction

In April 2008, the Sponsoring Firm, filed a Membership Continuance Application (“MC-400” or “the Application”)² with FINRA’s 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 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 counsel, Attorney 1, and the Sponsoring Firm’s chief compliance officer, CCO 1.³ 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.⁴

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 The Application was undated, but the record indicates that it was filed sometime in April 2008.

³ The Firm initially proposed that CCO 1 would be X’s primary supervisor and that CCO 1 would supervise X from an office approximately 1,200 miles away from the one in which X was employed. At the Hearing Panel’s request, the Sponsoring Firm submitted a new plan of heightened supervision, as set forth below, that specified a different on-site supervisor for X, with periodic visits by CCO 1.

⁴ Pursuant to NASD Rule 9524(a)(10), the Hearing Panel submitted its written recommendation to the Statutory Disqualification Committee. In turn, the Statutory

II. The Statutorily Disqualifying Event

X is statutorily disqualified due to FINRA's acceptance, in 2007, of a Letter of Acceptance, Waiver and Consent ("AWC"), finding that X willfully failed to disclose material information on his Uniform Application for Securities Registration or Transfer ("Form U4"). See Securities Exchange Act of 1934, Sec. 3(a)(39)(F); FINRA By-Laws, Article III, Sec. 4. Specifically, the AWC found that between 1995, and 2006, X willfully failed to disclose numerous outstanding judgments and liens on his Form U4 to his former employer, Firm One. FINRA suspended X for six months and fined him \$5,000. X served the FINRA suspension, and he is currently making installment payments to complete the payment of the \$5,000 fine, pursuant to an agreement with FINRA.

III. Background Information

A. X

1. *Employment History*

X first registered in the securities industry as an investment company and variable contracts products limited representative (Series 6) in April 1982. He qualified as a general securities representative (Series 7) in October 1994, and as a general securities principal (Series 24) in September 1995. He was previously associated with 13 firms from September 1981 until May 2007.

Since January 2008, X has been engaged in the sale of fixed insurance products through his own company, Firm 2, which he started in 1992.

2. *Prior Regulatory History*

In February 2006, X filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court, Northern District of State 1. FINRA's Central Registration Depository ("CRD"®) shows that the court granted a bankruptcy discharge to X in July 2006.

In June 2006, State 1 filed a \$10,000 tax lien against X for the 2001 tax year. X testified that he is currently repaying the remaining \$8,500 of this lien in installments of \$200 to \$500 per month.

In May 2007, the State 1 Division of Securities ("the State 1 Division") issued a notice of intent to revoke and suspend X's State 1 securities and investment adviser representative license. On that same date, X entered into a consent agreement with the State 1 Division and agreed to a

[cont'd]

Disqualification Committee considered the Hearing Panel's recommendation and presented a written recommendation to the National Adjudicatory Council ("NAC").

six-month suspension from the securities industry. The State 1 Division's action was based on the same conduct on which FINRA's June 2007 AWC was based.

3. *Terminations*

In May 2007, Firm One terminated X's employment due to the State 1 Division's suspension order.

4. *Customer Complaints*

One customer filed a complaint against X in June 1998, alleging "dereliction in his business practice" and forgery and seeking compensatory damages of \$2,500. CRD shows that this matter was not pursued and was closed with no action taken.

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, and it has been a FINRA member since October 1958. The Sponsoring Firm has four offices, three of which are offices of supervisory jurisdiction ("OSJs"). The Sponsoring Firm represents that it has 13 registered principals and 36 registered representatives, and that it is engaged in a general securities business.

The Sponsoring Firm has some informal regulatory history. FINRA issued Letters of Caution ("LOCs") to the Sponsoring Firm after its last three routine examinations. In 2003, FINRA cited the Sponsoring Firm for inadequate written supervisory procedures. The Sponsoring Firm responded in a letter dated June 2003, stating that it had corrected the deficiencies noted in the LOC.

In 2005, FINRA issued the Sponsoring Firm an LOC for failing to comply with its anti-money laundering ("AML") procedures by not providing written notice to customers indicating that the Sponsoring Firm would request information to verify their identity. The Sponsoring Firm responded in a letter dated December 2005, stating that it had corrected the noted deficiency.

In 2007, FINRA issued the Sponsoring Firm an LOC for several violations, including: 1) failing to provide evidence that the Sponsoring Firm had contacted two registered representatives' previous employers; 2) failing to have adequate supervisory control procedures; 3) inadequate written supervisory procedures; 4) inadequate AML procedures; and 5) failing to demonstrate principal review of Firm advertisements prior to use. The Sponsoring Firm responded in a letter dated May 2007, stating that it had corrected the deficiencies noted in the LOC.

The Sponsoring Firm also has three formal regulatory actions on its record—one in 1997, one in 1975, and one in 1970. In 1997, FINRA accepted an AWC from the Sponsoring Firm for

engaging in a securities business while failing to maintain required net capital. FINRA censured the Sponsoring Firm and imposed a \$2,500 fine. In 1975, the State 3 Securities Division (“the State 3 Division”) issued a cease and desist order against the Sponsoring Firm for failing to promptly notify the State 3 Division of the termination of two salespersons from the Sponsoring Firm. In 1970, FINRA issued a decision finding that the Sponsoring Firm and a control affiliate had violated books and records requirements and improperly extended credit to a customer. FINRA censured the Sponsoring Firm and imposed a \$500 fine.

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 an “independent contractor registered representative” in an office in City 2, State 1, that will be designated as an OSJ. The Sponsoring Firm will compensate X with “fixed commission[s] based on sales, or set fees for fee-based advisory services, depending upon the client.”

The Sponsoring Firm proposes that the Proposed Supervisor will be X’s primary on-site supervisor. The Proposed Supervisor qualified as a general securities representative in July 2001 and as a general securities principal in December 2002. He has been employed in the Sponsoring Firm’s City 2 office since February 2008. Prior to that time, he was associated with four other firms. The Sponsoring Firm will compensate the Proposed Supervisor for his supervisory responsibility for X and other representatives in the City 2 office.⁵

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

The Sponsoring Firm also proposes that CCO 1 will assist the Proposed Supervisor in supervising X by making unannounced visits to the City 2 office every three weeks for the first three months of X’s employment, then every six weeks for the next three months, and thereafter on a quarterly basis. During those visits, CCO 1 will review all of the conditions of the heightened plan of supervision to ensure that the Proposed Supervisor and X are in compliance. CCO 1 serves as the Sponsoring Firm’s chief compliance officer, chief financial officer, executive vice president, and the sales, marketing, and training supervisor. CRD indicates that he owns less than five percent of the Sponsoring Firm. CCO 1 first registered as a financial and operations principal (Series 27) in July 1985, and he qualified as a general securities representative in March 1987 and as a general securities principal in April 1997. CCO 1 was

⁵ In submitting its revised plan of heightened supervision, the Firm specified that the compensation for The Proposed Supervisor’s supervision of X and others would come directly from the Firm in an agreed upon amount. This provision was in response to the Hearing Panel’s stated concern at the hearing that any person designated to supervise X should not be compensated by overrides from X’s transactions.

associated with three firms before he registered with the Sponsoring Firm in April 2004, 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

We have carefully considered the entire record in this matter, including the post-hearing submissions from the parties. Based on this record, and pursuant to the Commission's controlling decisions in this area, 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

We acknowledge that X, as a registered representative, was responsible for knowing the rules of the securities industry and for providing information to Firm One on a timely basis to update his Form U4. *See, e.g., Robert E. Kauffman*, 51 S.E.C. 838, 840 (1993) ("Every person submitting registration documents [to FINRA] has the obligation to ensure that the information printed therein is true and accurate."), *aff'd*, 40 F.3d 1240 (3d Cir. 1994) (table).

We also recognize, however, that FINRA's Department of Enforcement ("Enforcement") weighed the gravity of X's failure to disclose when it approved the AWC on June 5, 2007. After considering X's entire history in the securities industry, Enforcement concluded that a six-month suspension was an appropriate sanction for X, which he has served. In such circumstances, the Commission has instructed FINRA to evaluate a statutory disqualification application pursuant to the standards enunciated in the Commission's decisions in *Paul Van Dusen*, 47 S.E.C. 668 (1981) and *Arthur H. Ross*, 50 S.E.C. 1082 (1992). *May Capital Group, LLC* (hereinafter "*Rokeach*"), Exchange Act Rel. No. 53796, 2006 SEC LEXIS 1068, at *22 (May 12, 2006) (holding that FINRA must apply *Van Dusen* standards to the membership continuance applications of statutorily disqualified individuals whose disqualifications resulted from FINRA enforcement action).

Van Dusen and *Rokeach* thus provide that in situations where an individual's misconduct has already been addressed by the Commission or FINRA, and certain sanctions have been imposed for such misconduct, FINRA should not consider the individual's underlying misconduct when it evaluates a statutory disqualification application. The Commission stated that when the period of time specified in the sanction 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 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 to employ X.

First, the record shows that X has no complaints, regulatory actions, or criminal history since FINRA issued the June 5, 2007 AWC.

Second, we look to the nature and disciplinary history of the Sponsoring Firm. We note that the Sponsoring Firm has been a FINRA member for almost 50 years and has minimal regulatory history. We also find that the Sponsoring Firm 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.

Third, based on the facts presented to us in the record, we find that the proposed primary on-site supervisor, the Proposed Supervisor, is well qualified. He has been in the securities industry since 2001 without any disciplinary history, and he qualified as a general securities principal in October 2002. He will be located in the same office as X, and he will be assisted in his duties by CCO 1, who will make periodic visits to the City 2 office to ensure that the Proposed Supervisor and X are in compliance with the plan of heightened supervision.

We are satisfied that the following heightened supervisory procedures will enable the Sponsoring Firm to reasonably monitor X's activities on a regular basis:⁶

1. *The Sponsoring Firm will amend its written supervisory procedures to state that the Proposed Supervisor will be X's primary on-site supervisor. CCO 1 will act in his capacity as chief compliance officer and assist the Proposed Supervisor in the supervision of X;
2. X will not act in a supervisory capacity;
3. X will not maintain any discretionary accounts;
4. *CCO 1 will work from the Sponsoring Firm's OSJ in City 1, State 2, while the Proposed Supervisor and X will be located in an office in City 2, State 1. The Proposed Supervisor will act as X's primary on-site supervisor and will be present at

⁶ The items that are denoted by an asterisk are heightened supervisory conditions for X and are not standard operating procedures of the Firm.

the office on all days that the office is open, Mondays, Wednesdays, and Fridays. Additionally, on those Tuesdays and Thursdays when the market is open, and when X is working from the office, the Proposed Supervisor will also be at the office. If X chooses to work from home, he must have all paperwork and every document associated with said paperwork reviewed by the Proposed Supervisor on the next business day. Upon X's return to the office, the Proposed Supervisor will review, as per the conditions listed below, all correspondence that X may have received while out of the office. the Proposed Supervisor will also review any correspondence prepared by X that has not yet been sent;

5. *The Proposed Supervisor will supervise all representatives employed at the City 2 office. The Sponsoring Firm will compensate the Proposed Supervisor for his duties as supervisor, but such compensation will not be based on X's production. CCO 1 will act in his capacity as chief compliance officer and assist the Proposed Supervisor in supervising X by conducting unannounced visits to the City 2 office every three weeks for the first three months, then every six weeks for the next three months, then every quarter thereafter;
6. *The Proposed Supervisor will review and initial all of X's trade and check blotters weekly and will segregate copies of the reviewed trade and check blotters for ease of review;
7. *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 his approval by signing and dating the paperwork and maintaining copies at the City 2 office, as well as in the Sponsoring Firm's home office. The Proposed Supervisor will segregate the paperwork for ease of review;
8. *The Proposed Supervisor will randomly review 10 percent of X's client files, on a monthly basis. The Proposed Supervisor will indicate the findings of his review in a memorandum, which he will segregate for ease of review;
9. *The Proposed Supervisor will review X's incoming written communications (which will include both correspondence and e-mail communications) upon their arrival and will review X's outgoing correspondence before it is sent;
10. *For the purposes of client communications, X will only be allowed to use an email account that is held at the Sponsoring Firm, with all e-mails being filtered through the Sponsoring Firm's e-mail system. If X nevertheless receives a business related e-mail message in another e-mail account outside the Sponsoring Firm, he will immediately deliver that message to the Sponsoring Firm's e-mail account. X will also inform the Sponsoring Firm of all outside e-mail accounts that he maintains. The Proposed Supervisor will preserve all of X's e-mail messages and segregate them for ease of review;
11. *The Proposed Supervisor must certify quarterly (March 31, June 30, September 30,

and December 31) each year to the compliance department of the Sponsoring Firm that he and X are in compliance with all of the above conditions of heightened supervision;

12. *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 Sponsoring 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 segregate documents pertaining to these complaints for ease of review;
13. *If the Proposed Supervisor is to be out of the office, CCO 1 will act as X's interim supervisor; and
14. *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.

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, CCO 1, 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 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
Senior Vice President and Corporate Secretary