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 SD09006 Date: 2009

I. Introduction

On October 14, 2008, the Sponsoring Firm filed a Membership Continuance Application ("MC-400" or "the Application") 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 May 2009, 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 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.

Following the consolidation of NASD and the member regulation, enforcement and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new "Consolidated Rulebook" of FINRA Rules. The first phase of the new consolidated rules

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II. The Statutorily Disqualifying Event

X is statutorily disqualified because of a 2007 Securities and Exchange Commission Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions ("the 2007 SEC Order"). The 2007 SEC Order found that X failed to supervise municipal securities traders who engaged in misrepresentations and other fraudulent conduct in bond auctions and that X had also condoned and participated in such conduct. The SEC barred X for one year in all capacities with the right to reapply, permanently barred him as a supervisor, imposed a cease and desist order, and ordered him to pay a $50,000 fine. X has paid the fine in full. The 2007 SEC Order also stated that X's re-entry process may be conditioned upon the satisfaction of: 1) any disgorgement ordered against X; 2) any arbitration award related to the underlying misconduct; 3) any self-regulatory organization ("SRO") arbitration award to a customer, whether or not related to the underlying misconduct; and 4) any restitution ordered by an SRO, whether or not related to the underlying misconduct.

III. Background Information

A. X

X first registered in the securities industry as a general securities representative in September 1983. He qualified as a municipal securities principal in August 1992, a financial and operations principal in October 1994, and a general securities principal in July 1996. He was previously associated with four firms between September 1983 and November 2006.

X voluntarily resigned from Firm One in 2006. Firm One stated on the Uniform Termination Notice for Securities Industry Registration ("Form U5") that X had resigned due to an "ongoing investigation by the SEC into certain business practices." At the hearing, X testified that he resigned from Firm One due to the SEC investigation that eventually resulted in the 2007 SEC Order.

Since his voluntary termination from Firm One in 2006, X testified that he has been engaged in various types of employment unrelated to the securities industry. He has taught and tutored high school students, sold insurance, driven a limousine, and managed a tax office.

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

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became effective on December 15, 2008. *See FINRA Regulatory Notice 08-57* (Oct. 2008). Because this matter involves an MC-400 that was filed before December 15, 2008, we apply the procedural rules that were in effect at the time, the NASD Rule 9520 Series.

B. The Sponsoring Firm

The Sponsoring Firm is based in City One, State One, and it has been a FINRA member since May 1976. The Sponsoring Firm represents that its home office serves as an office of supervisory jurisdiction and that it has one non-registered branch office. The MC-400 states that the Sponsoring Firm employs five registered principals and 11 registered representatives. The Sponsoring Firm operates as a municipal bond broker's broker—it facilitates trades between professional traders. The Sponsoring Firm represents that it does not have any customer accounts, does not make recommendations, and does not take any positions or invest its own capital.

FINRA has not yet completed its most recent routine examination of the Sponsoring Firm. FINRA issued the Firm a Letter of Caution ("LOC") following its 2006 routine examination. The LOC cited the Sponsoring Firm for failing to notify FINRA regarding its use of electronic storage media, failing to compute accurately its net capital on one date, and failing to establish adequate written supervisory procedures for the supervision of outsourcing arrangements and the frequency of conducting anti-money laundering testing. FINRA stated in the LOC that the Sponsoring Firm did not need to respond in writing because it had already provided a written response to the noted deficiencies during the exit conference.

In addition, after the Sponsoring Firm's 2002 routine examination, FINRA took two separate actions. FINRA accepted the Firm's submission of an Acceptance, Waiver, and Consent ("AWC") and issued the Sponsoring Firm an LOC. The AWC found that: 1) the Sponsoring Firm, acting through the Proposed Supervisor, the Sponsoring Firm's president, permitted an individual to act as a municipal securities representative prior to qualifying in such capacity; 2) the Sponsoring Firm, acting through the Sponsoring Firm's Employee 1, the Sponsoring Firm's vice president, permitted three registered representatives (including the Proposed Supervisor) to act in a capacity that required registration while their registration statuses were inactive due to their failure to complete continuing education requirements; 3) the Sponsoring Firm's written supervisory procedures were deficient regarding continuing education requirements; and 4) two individuals acted in registered capacities without proper registration or compliance with continuing education requirements. The AWC fined the Sponsoring Firm, the Proposed Supervisor, and the Sponsoring Firm's Employee 1 $20,000, jointly and severally; fined one of the two individuals who lacked proper registration $5,000; and fined the second individual $3,000.

The 2002 LOC cited the Sponsoring Firm for inadequate written supervisory procedures, failing to conduct background checks for recently hired individuals, and failing to provide evidence of submitting copies of two terminated registered representatives' Forms U5 within 30 days of termination. The LOC also referenced several other deficiencies and stated that FINRA's legal department was reviewing them for potential disciplinary action. These additional deficiencies resulted in the AWC discussed above. FINRA stated in the LOC that the Sponsoring Firm did not need to respond in writing because it had already provided two written responses regarding the noted deficiencies during the preliminary examination findings review and the exit conference.

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, Series 7 broker on the trading desk of a sole broker's broker." The Sponsoring Firm represents that X's "duties will include gathering offerings, putting bonds out for the bid, making phone calls to determine prospective client's need, presenting offerings, and trying to make a match by communicating back and forth between buyers and sellers." The Sponsoring Firm will compensate X with "commissions only based on 25-55% of gross." At the hearing, the Proposed Supervisor testified that the Sponsoring Firm determines its commissions based on a structured tiered threshold system and not on the identity of a particular client.

The Sponsoring Firm proposes that the Proposed Supervisor, who is the president and a 50 percent 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, and they will be in very close proximity to each other because all of the Sponsoring Firm representatives and principals work together at one large table in one room. The Proposed Supervisor first registered as a general securities representative in November 1967. He qualified as a municipal securities principal in December 1993. The Proposed Supervisor became associated with the Sponsoring Firm in 1990, and he currently supervises nine individuals at the Sponsoring Firm. Prior to 1990, he was associated with seven other firms from 1971 until 1990.

As previously discussed, the Proposed Supervisor was named and sanctioned in the 2002 AWC. We are not aware of any other disciplinary or regulatory proceedings, complaints, or arbitrations against him.

The Sponsoring Firm also proposes that when the Proposed Supervisor is not available, Employee 1, the Sponsoring Firm's vice president and a 50 percent owner, will supervise X. Employee 1 qualified as a general securities representative in March 1983 and a municipal securities principal in December 1983. Employee 1 has been employed by the Sponsoring Firm since September 1990. Employee 1 was associated with three different firms before joining the Sponsoring Firm. He was also named and sanctioned in the previously discussed 2002 AWC. We are not aware of any other disciplinary or regulatory proceedings, complaints, or arbitrations against him.

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 reviewed the entire record in this matter. 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

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 intervening 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

Initially, we note that the 2007 SEC Order imposed two bars on X: an unqualified bar in all supervisory capacities, and a bar in all capacities with the right to reapply in one year. Because X is not seeking to be registered in a supervisory capacity, we consider only the bar in all capacities with the right to reapply in one year. Given the expiration of time for this qualified bar and the teachings of *Van Dusen*, X has thus been permitted to seek re-entry to the securities industry since September 2008.

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

First, the record shows that X has not engaged in any intervening misconduct since the Commission issued the 2007 SEC Order against him. Moreover, we find credible X's testimony that he fully understands, accepts, and respects the authority of the 2007 SEC Order against him

and that he is remorseful and wishes to re-enter the industry.[3] Since his voluntary termination from Firm One in November 2006, X has not been employed in the securities industry. Instead, he has participated in various occupations—teaching, tutoring, limousine driving, and managing a tax office. We are not aware of any complaints or disciplinary action against X during this period. Accordingly, pursuant to *Van Dusen* and its progeny, here we do not look to the underlying misconduct that led to X's statutory disqualification in evaluating the Application. We thus find that the Application meets the first prong of the *Van Dusen* framework because we are not aware that X has engaged in any intervening misconduct.

Second, the record shows that the Proposed Supervisor is well qualified. He first registered in the securities industry in 1967, and he has been a principal since 1993. Although the Proposed Supervisor is registered as a municipal securities principal, and not a general securities principal, he is nonetheless qualified to supervise X because the Sponsoring Firm engages only in municipal securities business. Accordingly, X will be able to participate only in municipal securities business while he is employed by the Sponsoring Firm. If the Sponsoring Firm seeks to expand its range of business activities in the future, or X's participation in expanded activities, it would have to seek prior approval from Member Regulation.

The Proposed Supervisor's long tenure in the industry is marred by one formal disciplinary action against him – the 2002 AWC. Given the Proposed Supervisor's experience in the securities industry, and in particular in the municipal bond broker's broker business, we find that this disciplinary history will not adversely affect his ability to effectively supervise X. At the hearing, Member Regulation represented that the Sponsoring Firm and its principals have fully addressed the registration and continuing education problems that led to the issuance of the 2002 AWC and they are currently compliant. Further, although the Proposed Supervisor currently supervises nine other individuals at the Sponsoring Firm, we also find credible the Proposed Supervisor's testimony that he will be able to supervise X pursuant to heightened supervisory conditions and that he fully understands the responsibility that he is undertaking in doing so. In particular, the Proposed Supervisor cited the Sponsoring Firm's limited business plan and the close-proximity layout of the Sponsoring Firm's office as factors that will permit him to closely monitor all of X's activities.[4]

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[3] The Hearing Panel specifically requested testimony from X on this topic because of certain written statements in the record that indicated that X had earlier questioned the legitimacy of the Commission's fraud findings against him. X testified that he was not pursuing this argument, which would have constituted an impermissible collateral attack on the underlying previously litigated statutorily disqualifying event that brings X before us now. *See Joseph Frymer*, 49 S.E.C. 1181, 1182 (1989).

[4] This reasoning applies equally to Employee 1, the proposed backup supervisor, who entered the securities industry in March 1983 and became a municipal securities principal in December 1983. Employee 1 was also named and sanctioned in the 2002 AWC, his only disciplinary history.

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's only formal disciplinary action was the 2002 AWC and that FINRA issued an LOC to the Sponsoring Firm in 2002 and again in 2006. The Sponsoring Firm has been a member of FINRA since 1976, and we have no reason to believe that these few disciplinary actions will interfere with its ability to provide an effective supervisory environment for X. Member Regulation represented that the Sponsoring Firm has addressed its former deficiencies and is currently fully compliant. Moreover, 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.

Finally, we find that X meets the conditions for re-entry to the securities industry that the Commission specified in the 2007 SEC Order. Member Regulation represented that its review of FINRA's Central Registration Depository ("CRD"®) and BrokerCheck system shows that: 1) there are no disgorgement orders against X; 2) there are no arbitration awards against X that are related to the conduct that served as the basis for the 2007 SEC Order;
3) there are no SRO arbitration awards to a customer against X, whether or not related to the conduct that served as the basis for the 2007 SEC Order; and 4) there are no SRO restitution orders against X, whether or not related to the conduct that served as the basis for the 2007 SEC Order.

We are satisfied that the following heightened supervisory procedures, all of which are heightened supervisory conditions for X and are not standard operating procedures for the Sponsoring Firm, will enable the Sponsoring Firm to reasonably monitor X's activities on a regular basis:

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;

3. X will not maintain any discretionary accounts;

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

5. The Proposed Supervisor must first approve all accounts handled by X. X will only be permitted to cover accounts that the Proposed Supervisor has approved. The Proposed Supervisor will maintain a list of X's accounts and segregate it for ease of review during any statutory disqualification examination;

6. The Proposed Supervisor will monitor all "bids wanted auctions" in which X is involved. X will accomplish this by following the procedures found in The Proposed Supervisor's written supervisory procedures and by the Proposed Supervisor close proximity on the trading desk to X;

7. For the purposes of client email communication, X will be allowed to use only an email account that is held at the Sponsoring Firm, with all emails being filtered through the Sponsoring Firm's email system. X will forward any emails received through his Sponsoring Firm's email account to the Bloomberg system, enabling the Proposed Supervisor to conduct a simultaneous review of emails that X receives. 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 and through the Bloomberg system. X will also inform the Sponsoring Firm of all outside email accounts that he maintains. The Proposed Supervisor will preserve X's email messages and segregate them for ease of review during any statutory disqualification examination. It is currently the Sponsoring Firm's policy to have all employees certify, on an annual basis, that they have not engaged in any securities-related electronic correspondence, either sent or received, outside of the Sponsoring Firm's internal electronic system. The Proposed Supervisor will preserve X's annual certifications and segregate them for ease of review during any statutory disqualification examination;

8. The Sponsoring Firm's primary method of communication is the Bloomberg system. The Sponsoring Firm will configure X's system to enable the Proposed Supervisor to be copied simultaneously on all of X's incoming and outgoing correspondence. The Sponsoring Firm's communication vendor will also capture the Bloomberg correspondence. On a monthly basis, the Sponsoring Firm's communication vendor will provide the Sponsoring Firm with a disk containing all of X's communications from the prior month. The Proposed Supervisor will maintain these disks and segregate them for ease of review during any statutory disqualification examination;

9. The Proposed Supervisor will promptly review and approve all of X's order tickets within a 24-hour period, and he will evidence his review by placing his initials on the tickets;

10. X will not be permitted to engage in any outside securities transactions or any outside business activities that are investment-related. If X maintains any personal outside securities accounts, the Proposed Supervisor will review all brokerage account confirmations and statements. To evidence his review, the Proposed Supervisor will maintain copies of the statements and confirmations, initial them, and segregate them for ease of review during any statutory disqualification examination;

11. If the Proposed Supervisor is on vacation or out of the office, Employee 1 will act as X's interim supervisor.

12. All complaints pertaining to X, whether oral or written, will be immediately referred to the Proposed Supervisor for review. The Proposed Supervisor will

prepare a memorandum to the file as to what measures he took to investigate the merits of the complaint and the resolution of the matter. The Proposed Supervisor will segregate documents pertaining to these complaints for review during any statutory disqualification examination;

13. 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; and

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

FINRA certifies that: 1) X meets all applicable requirements for the proposed employment; 2) the Sponsoring Firm represents that it is also registered with the Municipal Securities Rulemaking Board; 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, Employee 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 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