

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Association of	Redacted Decision
X ¹	<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>SD09005</u>
	Date: 2009

I. Introduction

On November 26, 2008, 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. X has been associated with the Sponsoring Firm as a general securities representative since August 1995.² A hearing was not held in this matter. Rather, pursuant to NASD Rule 9523,³ 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.

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 This is consistent with FINRA’s interpretation of Art. III, Sec. 3(c) of FINRA’s By-Laws, permitting individuals who become statutorily disqualified while they are employed to continue working pending the outcome of the statutory disqualification process.

³ 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 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 NASD Rule 9520 Series.

II. The Statutorily Disqualifying Event

X is statutorily disqualified because he pled guilty in October 2003, to driving under the influence of alcohol (“DUI”), a felony in State 1.⁴ See FINRA By-Laws Art. III, Sec. 4; Section 3(a)(39) of the Securities Exchange Act of 1934. X’s 2003 DUI conviction was a felony because he had two prior DUI misdemeanor convictions in State 1 in 1999 and 2001. State 1’s court fined X \$1,000, revoked his driver’s license, sentenced him to four months of intermittent incarceration (weekends), and placed him on five years of probation. X paid the fine, served his jail sentence, and completed his probation in 2008. His driver’s license was restored in 2007.

III. Background Information

A. X

X first registered in the securities industry as a general securities representative in March 1989. He also qualified as a uniform securities agent state law in April 1989. He was previously associated with four other firms from January 1989 until August 1995, when he filed a Form U4 with the Sponsoring Firm.

We are not aware of any other criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against X.

B. The Sponsoring Firm

The Sponsoring Firm has been registered with FINRA since 1995. The Sponsoring Firm currently has 26 branch offices, 14 of which are offices of supervisory jurisdiction (“OSJs”). The Sponsoring Firm employs 114 registered principals and 37 registered representatives, and it is engaged in a general securities business.

FINRA’s three most recent routine examinations of the Sponsoring Firm resulted in Letters of Caution (“LOCs”). The 2007 LOC cited the Sponsoring Firm for: 1) records violations; 2) failing to provide copies of Uniform Termination Notices for Securities Industry Registration (“Forms U5”) to recently terminated employees; 3) inadequate written supervisory procedures; and 4) failing to evidence review of Forms U5 submitted by representatives’ previous employers. FINRA stated in the LOC that the Sponsoring Firm did not need to respond

⁴ Although there is a long gap here between the statutorily disqualifying event and the Sponsoring Firm’s filing of the MC-400, the record shows that the Sponsoring Firm and X fulfilled their disclosure obligations, albeit not within the required time period specified in FINRA’s By-Laws. X and the Sponsoring Firm amended X’s Uniform Application for Securities Industry Registration or Transfer (“Form U4”) in September 2003, to reflect the felony DUI charge filed against X in June 2003. They also amended X’s Form U4 in January 2004, to reflect X’s October 2003 felony conviction and January 2004 sentencing. Despite these disclosures, neither FINRA nor the Sponsoring Firm recognized that X was statutorily disqualified until FINRA notified the Sponsoring Firm in November 2008 that the Sponsoring Firm needed to file an MC-400.

in writing because it had already provided a written response to the noted deficiencies during the exit conference.

The 2006 LOC noted the following deficiencies: 1) failing to enforce written procedures regarding timely reporting of municipal and TRACE-eligible transactions and proper marking of order tickets; 2) failing to maintain all required information on the Sponsoring Firm's corporate bond and municipal order tickets; and 3) untimely reporting of TRACE-eligible and municipal securities transactions. 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.

The 2004 LOC cited the Sponsoring Firm for: 1) failing to maintain evidence that several registered representatives had attended the Sponsoring Firm's 2002 annual compliance meeting; 2) inadequate written supervisory procedures; 3) failing to provide evidence of supervisory review of several pieces of correspondence; 4) charging commissions in excess of five percent for seven trades; 5) failing to record all of the transactions that occurred in one account; and 6) missing information on the securities received and forwarded blotter. The Sponsoring Firm responded by letter dated February 2004, stating that it had corrected the noted deficiencies.

IV. X's Proposed Business Activities and Supervision

The Sponsoring Firm proposes to continue to employ X as a registered representative in its home office in City 1, State 1, which is also an OSJ. The Sponsoring Firm represents that X's duties will be "to service existing retail clients, and the reg. reps. of the firm who call-in trades. He will not be allowed to solicit or prospect for new business." The Sponsoring Firm represents that X is a "salaried employee."

The Sponsoring Firm proposes that X will be supervised on-site by the Proposed Supervisor, the president and owner of the Sponsoring Firm, who is located in the same office at a desk that adjoins X's. The Proposed Supervisor first registered as a general securities representative in May 1989, and he qualified as a general securities principal in August 1991. The Proposed Supervisor has been associated with the Sponsoring Firm since June 1995. Prior to that time, he was associated with four different firms between March 1989 and June 1995. The Proposed Supervisor has also been dually registered with Firm 1 from January 2001 to the present. The Proposed Supervisor does not supervise any other statutorily disqualified individuals. The record shows no criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against the Proposed Supervisor.

In the event that the Proposed Supervisor is not available to supervise X, the Sponsoring Firm has designated Employee 1 as the alternate supervisor. Employee 1 qualified as a general securities representative in April 1996 and as a general securities principal in March 2001. The record also shows no criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against Employee 1.

V. Member Regulation's Recommendation

Member Regulation recommends approval of the Sponsoring Firm's request for X to continue to associate with the Sponsoring Firm as a general securities representative, subject to the terms and conditions of heightened supervision listed below.

VI. Discussion

In reviewing this type of application, we consider 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.⁵ 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. In so doing, we recognize that the sponsoring firm has the burden of demonstrating that the proposed association of the statutorily disqualified individual is in the public interest and does not create an unreasonable risk of harm to the market or investors. *See Continued Association of X*, SD06003, slip op. at 5 (NASD NAC 2006) (redacted decision).

Factors that bear on our assessment include the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, whether the person has engaged in any intervening misconduct, and the potential for future regulatory problems. We also consider whether the sponsoring firm has demonstrated that it understands the need for, and has the capability to provide, adequate supervision over the statutorily disqualified person.

After carefully reviewing the entire record in this matter, we find that the Sponsoring Firm has met its burden, and we conclude that X's continued participation in the securities industry will not present an unreasonable risk of harm to the market or investors. Accordingly, for the reasons set forth below, we approve the Application for X to continue to associate with the Sponsoring Firm as a general securities representative, subject to the supervisory terms and conditions detailed herein.

We acknowledge the seriousness of X's criminal conviction. We note, however, that his felony DUI conviction occurred in 2003, almost six years ago, and we are not aware of any intervening criminal misconduct. We also recognize that X has been punished for his felony offense by State 1's state court, which fined him \$1,000, revoked his driver's license, sentenced him to four months of intermittent incarceration, and placed him on probation for five years. X paid his fine, served his weekend jail sentences, completed his probation in April 2008, and had his driver's license reinstated in August 2007. X also completed a 16-session alcohol treatment program in August 2004, and he continues to attend Alcoholics Anonymous meetings on a maintenance basis. Moreover, X has been continuously employed in the securities industry since 1989 and has no disciplinary history.⁶

⁵ *See Frank Kufrovich*, 55 S.E.C. 616, 625 (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); *Timothy H. Emerson, Jr.*, Exchange Act Rel. No. 60328, 2009 SEC LEXIS 2417, at *14 (July 17, 2009) (stating that FINRA "appropriately weigh[ed] all the facts and circumstances surrounding [the applicant's] felony conviction and [the firm's] proposed supervisory plan").

⁶ As previously mentioned, FINRA did not require X to pursue the MC-400 process when he amended his Form U4 in 2004 to show that he had been convicted of a felony. As a result, he

We also find that the Sponsoring Firm and the proposed supervisor are qualified to supervise a statutorily disqualified individual such as X. The Sponsoring Firm has minimal recent informal regulatory history. Further, the Proposed Supervisor has been a general securities principal since 1991, has no disciplinary history, and will be located in close proximity to X. Moreover, we are satisfied that the following heightened supervisory procedures will enable the Sponsoring Firm to reasonably monitor X's activities on a regular basis:⁷

1. * The Sponsoring Firm will amend its written supervisory procedures to clearly state that the Proposed Supervisor is the primary supervisor responsible for X and that Employee 1 is the alternate supervisor;
2. *The Proposed Supervisor, Employee 1, and X will all work from the Sponsoring Firm's City 1, State 1 office, which is an OSJ;
3. *X will not be allowed to solicit or prospect for new business, but rather will be servicing/assisting existing retail clients and entering transactions for outside registered representatives who call in trades;
4. X will not act in a supervisory capacity;
5. X will not maintain any discretionary accounts;
6. Throughout each day, the Proposed Supervisor will continually review and initial all transactions entered by X;
7. X will not be permitted to accept any funds or securities from a client;
8. The Proposed Supervisor will review and approve X's incoming written correspondence (which will include email communications) on at least a weekly basis and will review and approve X's outgoing correspondence before it is sent. The Proposed Supervisor will keep a written record evidencing review and approval of all of X's correspondence;
9. 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;
10. For the duration of X's heightened supervision period, the Sponsoring Firm must obtain prior approval from Member Regulation if it wishes to change X's responsible supervisors from the Proposed Supervisor and Employee 1 to another person or change the scope of his heightened supervision;

has been continuously employed in the securities industry since his statutorily disqualifying event.

⁷ The items that are denoted by an asterisk are heightened supervisory conditions for X and are not standard operating procedures of the Sponsoring Firm.

11. The Proposed Supervisor must certify quarterly (March 31st, June 30th, September 30th, and December 31st) each year to the Sponsoring Firm's chief compliance officer that both he and X are in compliance with all of the conditions of heightened supervision to be accorded X; and
12. 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 chief compliance officer. The Proposed Supervisor will prepare a memorandum to the file as to what measures they took to investigate the merits of the complaint (e.g., contact with the customer) and the resolution of the matter. The Proposed Supervisor will keep documents pertaining to these complaints segregated for ease of review during any examination.

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; and 3) X, The Proposed Supervisor, and Employee 1 represent that they are not related by blood or marriage.

VII. Conclusion

Accordingly, we approve the Sponsoring Firm's Application to continue 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 continued 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