

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Association of	<u>Redacted Decision</u>
X ¹	<u>Notice Pursuant to</u>
as a	<u>Rule 19h-1</u>
General Securities Principal	<u>Securities Exchange Act</u>
with	<u>of 1934</u>
The Sponsoring Firm	<u>SD11004</u>
	Date: 2011

I. Introduction

On August 11, 2010, 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 principal. In January 2011, 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 Attorney 2, his Proposed Primary Supervisor, his Proposed Secondary Supervisor, and Employee 1, the Sponsoring Firm’s Head of Equities Compliance. Firm Attorney 1 and Firm Attorney 2, appeared on behalf of the Sponsoring Firm. 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

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 FINRA Rule 9524(a)(10), the Hearing Panel submitted its written recommendation to the Statutory Disqualification Committee. The Statutory Disqualification Committee considered the Hearing Panel’s recommendation and presented a written recommendation to the National Adjudicatory Council.

II. The Statutorily Disqualifying Event

X is statutorily disqualified because of a May 2005 Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions (the “SEC Order”). The SEC Order found that in 2000 and 2001, X failed to reasonably supervise a person subject to his supervision and allowed him to publish fraudulent research reports and establish unrealistic price targets on several telecommunications companies. The SEC Order barred X from associating in a supervisory capacity with any broker, dealer, or investment adviser, with the right to reapply for association in a supervisory capacity after 15 months.

The Commission also ordered that X pay \$120,001 in civil penalties. X has paid the civil penalties in full. The SEC Order further provided 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 was first registered in the securities industry as a general securities representative in October 1988, and requalified in August 2010. He qualified as a general securities principal in December 1988, and requalified in October 2010. X also passed the national commodity futures examination in September 1988 and the uniform securities agent state law exam in October 1998. He passed the uniform securities agent state law exam again in October 2010. Prior to associating with the Sponsoring Firm in June 2010, X was associated with four other firms.

Since entry of the SEC Order, X: (1) has worked for Firm 1 as a managing director (in a non-supervisory capacity), where he focused on business development in Asia, from the first quarter of 2005 through October 2007;³ (2) was a partner at a fund created to make minority investments in established alternative managers, from November 2007 through the end of 2008; and (3) performed non-supervisory duties of the current proposed position at the Sponsoring Firm since June 2010.

The record shows 17 customer complaints against X, initiated between May 2002 and August 2006. The bases for all of these complaints were the same facts and allegations that resulted in the SEC Order. All but one of these customer complaints were settled or resolved in arbitration; the other complaint was resolved in U.S. Bankruptcy Court. The complaints resulted

³ X also acted as a portfolio manager for a small fund that invested the Sponsoring Firm’s own capital from mid-2006 through October 2007.

in significant monetary awards, all of which were paid by X's firm (Firm 2, a firm acquired by the Sponsoring Firm). X did not personally contribute to any of the awards.

Other than these complaints, the SEC Order, and related settlements with NYSE and FINRA, there are no other disciplinary or regulatory proceedings, complaints, or arbitrations against X.

B. The Sponsoring Firm

The Sponsoring Firm has been a FINRA member for more than 70 years. The Sponsoring Firm has 1,169 branch offices, 215 of which are offices of supervisory jurisdiction ("OSJs"). In the Application, the Sponsoring Firm represents that it employs 2,398 registered principals and 9,090 registered representatives.

As a large firm, the Sponsoring Firm has had its share of disciplinary infractions. Member Regulation has represented that it is not concerned that this disciplinary history will prevent the Sponsoring Firm from providing suitable heightened supervision for X, and as discussed below, we agree.

1. Routine Examinations

The Sponsoring Firm's most recent Cycle Examination was conducted in 2009. In August 2010, Member Regulation issued an Examination Disposition Letter resulting in the issuance of a Letter of Caution ("LOC") and a letter of admonition.

FINRA issued an LOC to the Sponsoring Firm for violations of the following securities rules and regulations: Rule 200(g) of Regulation SHO (Order Marking Requirements); Securities Exchange Act of 1934 ("Exchange Act") Rules 15c3-3 (Exhibit A-Item 1)/02 [Non-Regulated Commodity Accounts] and (Exhibit A-Item 2)/032 [Commingled Collateral as Options Clearing Corporation Margin Deposit]; Exchange Act Rules 17a-3 (Records to be Made by Certain Exchange Members, Brokers and Dealers) and 17a-5 (Reports to be Made by Certain Brokers and Dealers); NYSE Rules 342 (Offices-Approval, Supervision and Control) and 441 (Books and Records); NASD Rule 3010 (Supervision); FINRA By-Laws Art. V, Sec. 2 (Application for Registration); NYSE Rule 342.16 (Supervision of Registered Representatives) and NASD Rule 3010(d)(2) (Review of Correspondence); and NASD Rule 3070(c) (Reporting Requirements), NYSE Rule 351(d) (Reporting Requirements), and NYSE Rule 401A (Customer Complaints).

FINRA issued the Sponsoring Firm a letter of admonition regarding a violation of NYSE Rule 132 (Comparison and Settlement of Transactions Through a Fully-Interfaced or Qualified Clearing Agency) based on a review of the NYSE Audit Trail report that disclosed improperly coded trades.

2. Regulatory Actions

Since June 2008, the Sponsoring Firm has had 70 disclosable regulatory events, of which 50 relate to the failure of the Sponsoring Firm's auction rate securities ("ARS") market. The remaining actions against the Sponsoring Firm do not involve the Equity Sales division of the Sponsoring Firm (the proposed division of the Sponsoring Firm in which X would work). We list here regulatory actions involving the Sponsoring Firm since June 2008.

In October 2010, the Sponsoring Firm entered into a Consent Order with the State 1. The Consent Order states that the Sponsoring Firm failed to properly supervise its representatives and their handling of certain brokerage accounts pursuant to State 1 law. State 1 found that the Sponsoring Firm failed to follow its procedures and policies with respect to the supervision and approval of such accounts. The Sponsoring Firm was assessed the costs of the investigation, which amounted to \$125,000, and agreed to refrain from future violations of the State 1 Uniform Securities Act.

In October 2010, the Sponsoring Firm entered into a Consent Order with State 2's Office of the Secretary of State in which it consented to a finding that it failed to supervise one of its registered representatives, in violation of State 2 law. The registered representative made misleading statements to a customer regarding the customer's retirement accounts. State 2 censured the Sponsoring Firm, ordered that it pay \$195,000 in restitution and \$75,000 to the State's Investor Education and Protection fund. State 2 also ordered that the Sponsoring Firm pay the costs of the investigation.

In June 2010, the Sponsoring Firm entered into a Letter of Acceptance, Waiver and Consent ("AWC") with FINRA for violations of FINRA Rule 2010, and NASD Rules 2110 and 3010 and IM-1000-1. Without admitting or denying the allegations set forth in the complaint, the Sponsoring Firm consented to a finding that it submitted inaccurate Uniform Termination Notices for Securities Industry Registration ("Forms U5") for registered representatives who were terminated or voluntarily resigned following allegations of theft, fraud, violations of investment-related rules, or failure to supervise for investment-related rules. The Sponsoring Firm also failed to establish, maintain, and implement an adequate supervisory system and written supervisory procedures that were reasonably designed to achieve compliance with its obligation to complete and submit accurate Forms U5 to FINRA. As a result, FINRA censured the Sponsoring Firm and fined it \$150,000.

Also in June 2010, the Sponsoring Firm entered into an AWC with NASDAQ for violations of NASDAQ Rules 2110 and 3010. Without admitting or denying the allegations set forth in the complaint, the Sponsoring Firm consented to a finding that its supervisory system and written supervisory procedures were not reasonably designed to achieve compliance with applicable securities laws and regulations. NASDAQ also found that the Sponsoring Firm's supervisory system and written supervisory procedures were not sufficient to achieve compliance with NASDAQ rules concerning the prevention of erroneous orders and transactions and the handling of frivolous and clearly erroneous transaction complaints. The Sponsoring Firm was censured, fined \$10,000, and required to revise its written supervisory procedures.

In May 2010, the Sponsoring Firm entered into an AWC with FINRA for violations of NASD Rules 2110 and 3010. Without admitting or denying the allegations set forth in the complaint, the Sponsoring Firm consented to a finding that during a two-year period, a registered representative (“RR”) of the Sponsoring Firm, along with two of the Sponsoring Firm’s customers, who controlled and, at times, acted as trustees of certain cemeteries, misappropriated money from the cemeteries’ trust funds. The amount allegedly misappropriated was in excess of \$60 million. FINRA found that the Sponsoring Firm failed to respond adequately to supervisory red flags, which included warnings from another broker-dealer regarding the previous history of suspicious activities in accounts handled by RR; suspicious rapid movement of funds between certain customer accounts handled by RR and third parties; misrepresentations made by a customer of RR in connection with the collateral he used to obtain approval for a line of credit; and a whistleblower letter alleging specific acts of misconduct by RR. FINRA also found that the Sponsoring Firm failed to document, monitor, and implement the Sponsoring Firm’s decision to terminate its relationship with one of RR’s customers. The Sponsoring Firm was censured, fined \$750,000, and ordered to disgorge, as partial restitution, \$750,000.

In April 2010, the Sponsoring Firm entered into an AWC with FINRA for violations of NASD Rules 2110, 2210(b)(1)(A), 2210(b)(2)(A), 2210(d)(1), 3010(a), and 3010(b). Without admitting or denying the allegations set forth in the complaint, the Sponsoring Firm consented to a finding that it operated a direct borrow program (the “Program”) that entailed borrowing securities from one of the Sponsoring Firm’s customers to facilitate the short-sell strategies of another customer. In connection with these loan transactions, the Sponsoring Firm did not adequately disclose certain material facts to customers concerning the Program and the loan transactions that were necessary, in light of the circumstances under which they were made, to make them not misleading. The Sponsoring Firm also failed to establish and maintain a system, including written supervisory procedures, to effectively supervise each registered representative, registered principal, and other associated persons involved in the Program. The Sponsoring Firm also distributed versions of the Program’s marketing materials to the public which were not fair and balanced, did not provide a sound basis for evaluating the Program, and were, in some respects, misleading. In addition, the Sponsoring Firm failed to have a registered principal approve this sales literature by signature or initial and date, and failed to maintain the sales literature in a separate file for three years after the date of first use. As a result, the Sponsoring Firm was censured, fined \$650,000, and required to revise its written supervisory procedures.

In September 2009, the Sponsoring Firm entered into an AWC with FINRA for violations of NASD Rules 2110 and 3010. Without admitting or denying the allegations set forth in the complaint, the Sponsoring Firm consented to a finding that it failed to follow its written supervisory procedures, failed to establish or implement adequate supervisory procedures, and failed to respond adequately to problems in connection with a directed share program and a third party company hired to communicate with participants in the directed share program. FINRA censured the Sponsoring Firm, fined it \$175,000, ordered that it pay restitution totaling no more than \$250,000, and required the Sponsoring Firm to revise its written supervisory procedures.

In July 2009, the Sponsoring Firm entered into an AWC with FINRA for violations of NASD Rules 2110, 3010, 6420, and 6620. Without admitting or denying the allegations set forth in the complaint, the Sponsoring Firm consented to a finding that it failed to adequately

supervise the activities of its equities trading desk, and it did not timely prevent or detect the improper coordination between the Sponsoring Firm and counterparties in both U.S. and foreign equity trades. The Sponsoring Firm also did not provide for effective written procedures with respect to the implementation of the trades and monitoring of Bloomberg messages. In addition, the Sponsoring Firm failed to transmit to NASDAQ reports of transactions in eligible securities, and failed to establish and maintain appropriate procedures for supervision and control for its trading desk, including a system to follow-up and review the reporting of certain transactions. The Sponsoring Firm was censured and fined \$600,000.

In addition to various settlements with individual states, in December 2008, the Sponsoring Firm settled an action with the Commission that arose out of the failure of its ARS market. The Sponsoring Firm agreed to the following: to purchase ARS at par from those individuals, charities, and small businesses that purchased ARS from the Sponsoring Firm; use its best efforts to provide liquidity solutions for institutional and other customers; pay certain customers who sold their ARS below par the difference between par and the sale price; and reimburse certain customers for any excess interest costs associated with loans taken out from the Sponsoring Firm due to ARS liquidity issues. The Sponsoring Firm was also permanently enjoined from violations of the fraud provisions of the securities laws and regulations.

In July 2008, the Sponsoring Firm entered into an AWC with FINRA for violations of NASD Rules 1050 and 2110. Without admitting or denying the allegations set forth in the complaint, the Sponsoring Firm consented to a finding that from April 2005 through December 2006, the Sponsoring Firm permitted nearly 300 foreign-based research analysts associated with it to publish research without first obtaining the required Series 86 and 87 qualifications or an exemption. As a result, the Sponsoring Firm was censured and fined \$650,000.

IV. X's Proposed Business Activities and Supervision

The Sponsoring Firm proposes to employ X as a general securities principal and supervisor at the Sponsoring Firm's home office and OSJ, which is located in City 1. Specifically, the Sponsoring Firm proposes that X will serve as Head of Equity Sales (Americas) in the Sponsoring Firm's Equity Sales department.⁴ As such, X's duties would include managing the Sponsoring Firm's U.S. Institutional Equities Sales Group and non-U.S. Institutional Equities Sales representatives in the Americas region. X would directly supervise 11 individuals, and would serve as a "matrix" supervisor for five other individuals.⁵ X's proposed responsibilities would largely center on senior, internal management functions. X would oversee and manage the Equity Sales Managers who supervise sales people in their respective Sponsoring Firm's office. The Sponsoring Firm proposes to pay X a salary and a discretionary annual bonus.

⁴ The function of Equity Sales is to make available to institutional customers equity research and other resources from within the Sponsoring Firm to assist institutional customers in the investment process. Equity Sales does not generate its own research.

⁵ The Sponsoring Firm has described a "matrix supervisor" as being analogous to a secondary supervisor. *See infra* footnote 7.

The Sponsoring Firm proposes that the Proposed Primary Supervisor will be X's direct supervisor. The Proposed Primary Supervisor is currently employed by the Sponsoring Firm as Managing Director, Head of Equities for the Americas in its home office in City 1. The Proposed Primary Supervisor first registered as a general securities representative in January 1990. He qualified as a general securities principal in February 2001, and passed the uniform securities agent state law exam in October 2002. The Proposed Primary Supervisor became associated with the Sponsoring Firm in March 1990, where he currently supervises approximately 20 individuals.⁶ Prior to that time, he was associated with two other firms. We are not aware of any disciplinary or regulatory proceedings, complaints, or arbitrations against the Proposed Primary Supervisor.

The Sponsoring Firm proposes that the Proposed Secondary Supervisor will also be responsible for the supervision of X as a matrix supervisor and backup supervisor when the Proposed Primary Supervisor is unavailable. The Proposed Secondary Supervisor is currently employed by the Sponsoring Firm as Managing Director and Head of North American Sales in its home office in City 1. The Proposed Secondary Supervisor first registered as a general securities representative in June 1995. He qualified as a general securities sales supervisor (Series 9 (options)) in August 2005, as a general securities sales supervisor (Series 10) in October 2005, and as a registered commodity representative in December 2005. The Proposed Secondary Supervisor also passed the uniform securities agent state law exam in April 1997. The Proposed Secondary Supervisor became associated with the Sponsoring Firm in November 2008, and was previously associated with three other firms. We are not aware of any disciplinary or regulatory proceedings, complaints, or arbitrations against the Proposed Secondary Supervisor.

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 principal, 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

⁶ If the Application is approved, 14 of the 20 individuals that the Proposed Primary Supervisor currently supervises will report to X.

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 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

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 SEC Order against him in May 2005. Given the expiration of time for the qualified bar in all supervisory capacities and the teachings of *Van Dusen*, X has been permitted to seek re-entry to the securities industry as a supervisor since August 2006, although he did not apply for re-entry as a supervisor until the Sponsoring Firm filed the Application in August 2010. Since entry of the SEC Order, X has been employed in the securities industry in several non-supervisory capacities. We are not aware of any disciplinary action against X during this period, and are not aware of any complaints against X other than those arising from the events that led to his disqualification. 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 Primary Supervisor is well qualified. He first registered in the securities industry in 1990, and he has been a principal since 2001 and has no disciplinary history. Further, although the Proposed Primary Supervisor currently supervises approximately 20 individuals at the Sponsoring Firm, upon approval of the Application the majority of these individuals will report directly to X and only six individuals will report directly to the Proposed Primary Supervisor. The Proposed Primary Supervisor will supervise X on-site, and we find credible the Proposed Primary 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.⁷

Third, we look to the nature and disciplinary history of the Sponsoring Firm and to the plan of supervision. Although the Sponsoring Firm has a disciplinary history, the record shows that it has taken corrective actions to address noted deficiencies. Further, none of the recent regulatory events relate to X's proposed department at the Sponsoring Firm. We have no reason to believe that the Sponsoring Firm's prior disciplinary and regulatory actions will interfere with its ability to provide an effective supervisory environment for X. 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. The Sponsoring Firm's plan is specifically tailored to prevent misconduct by X and ensure that he properly discharges his supervisory responsibilities.

Finally, we find that X meets the conditions for re-entry to the securities industry that the Commission specified in the SEC Order. Member Regulation has represented that: (1) there are no unsatisfied disgorgement orders against X; (2) there are no unsatisfied arbitration awards against X that are related to the conduct that served as the basis for the SEC Order; (3) there are no unsatisfied SRO arbitration awards to a customer against X, whether or not related to the conduct that served as the basis for the SEC Order; and (4) there are no unsatisfied SRO restitution orders against X, whether or not related to the conduct that served as the basis for the SEC Order. Given the terms of the SEC Order, we have determined that under the requirements of the Commission's decision in *Van Dusen*, the Sponsoring Firm's Application satisfies the conditions necessary for X to re-enter the securities industry as a supervisor.

We are satisfied that the following 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 written supervisory procedures for the Sponsoring Firm will be amended to state that the Proposed Primary Supervisor (Head of Equities for the Americas) is the primary supervisor responsible for X and that the Proposed Secondary Supervisor (Head of North America Sales) is the matrix supervisor responsible for X.⁸ X will be supervised by the

⁷ This reasoning applies equally to the Proposed Secondary Supervisor, the proposed matrix and backup supervisor for X. The Proposed Secondary Supervisor has extensive industry experience, no disciplinary history, and is well qualified to serve as the proposed matrix and backup supervisor under the heightened plan of supervision.

⁸ A primary supervisor is responsible for an employee's day-to-day activities, and managing and approving key employee life-cycle transactions such as transfers, status changes and terminations. A "matrix supervisor" is analogous to a secondary supervisor. That is, an associated person has a "dotted line" to his or her matrix supervisor. For example, X reports directly up through his product area, US Equities, to the Proposed Primary Supervisor, Head of Equities for the Americas, and secondarily through his region and function, North American

Proposed Primary Supervisor and the Proposed Secondary Supervisor in the Sponsoring Firm's home office. The Proposed Primary Supervisor and the Proposed Secondary Supervisor's qualification for their roles are further discussed in Addendum 1 to this Revised Exhibit H and Revised Exhibits F-1 and F-2. The Proposed Primary Supervisor will serve as X's direct (section 15(b)(4)(E)) supervisor. In addition to serving as a matrix supervisor, the Proposed Secondary Supervisor will act as X's direct supervisor in the Proposed Primary Supervisor's absence.

2. X will attend weekly management meetings with the Proposed Primary Supervisor and the Proposed Secondary Supervisors. In addition, X will formally meet in person with the Proposed Primary Supervisor at least four times a month to review X's performance and his supervisory responsibilities (a "Formal Supervisory Meeting"). If the Proposed Primary Supervisor is unavailable, X will attend the Formal Supervisory Meeting with the Proposed Secondary Supervisor (or a person of similar status or occupying a similar role as the Proposed Primary Supervisor or the Proposed Secondary Supervisor who is designated by the Proposed Primary Supervisor to conduct such meetings). The Compliance Department will maintain a record of the Formal Supervisory Meetings and X will sign the record acknowledging his participation in each meeting. The record of the Formal Supervisory Meetings will be segregated and maintained for a period of three (3) years to facilitate review during FINRA Statutory Disqualification Examinations, and will be subject to the Sponsoring Firm's internal audit process and procedures.⁹
3. The Proposed Primary Supervisor and the Proposed Secondary Supervisor will report any compliance concerns regarding X or his reports to the Compliance Department. The Compliance Department will handle any concerns according to compliance policies and procedures, including, if necessary, escalation of the event as set forth in the Sponsoring Firm's Escalation Policy.

[cont'd]

sales, to the Proposed Secondary Supervisor, Head of North America Sales. A matrix supervisor, along with the primary supervisor, has input into decisions regarding an employee, but does not manage the Human Resources aspects affecting the employee (i.e., transfers, status changes). The primary supervisor has control over his or her designated personnel, but it is expected that the primary and matrix supervisors will have regular dialogue about the employees.

⁹ The three-year recordkeeping obligation noted throughout the Heightened Supervisory Plan refers specifically to the length of time for which the records in question must be kept; it is not meant to limit the duration of the Heightened Supervisory Plan in any way.

4. X will be assigned a dedicated senior compliance officer (the “Dedicated Senior Compliance Officer”) – currently Employee 1, Managing Director, Head of Equity Compliance – who will be responsible for answering any compliance, regulatory or supervisory questions or concerns that X might have, and for helping X address any such issues.¹⁰ X will be required to meet formally in person with the Dedicated Senior Compliance Officer at least twice a month (a “Formal Compliance Meeting”) to discuss compliance, regulatory and supervisory issues that have arisen since their last meeting. The Compliance Department will maintain a record of the Formal Compliance Meetings and X will sign the record acknowledging his participation in each meeting. The record of meetings will be segregated and maintained for a period of three (3) years to facilitate review during FINRA Statutory Disqualification Examinations, and will be subject to the Sponsoring Firm’s internal audit process and procedures.
5. The Dedicated Senior Compliance Officer will participate in calls, at least once every other month, with X and his direct reports to discuss regulatory and compliance issues, such as existing firm policies and procedures, changes to firm policies and procedures, SEC/FINRA rule proposals and rule changes, and legal/regulatory events in the news that are relevant to the industry. The Dedicated Senior Compliance Officer will respond to questions raised in these calls.
6. The Dedicated Senior Compliance Officer will implement a quarterly individualized training program for X, which will cover such issues as supervisory processes and procedures, gifts and entertainment practices, customer correspondence, allocation practices, market commentary, employee trading, insider trading, outside activities, and escalation of compliance issues. The Dedicated Senior Compliance Officer will document each training class and X will sign the record acknowledging his participation in the training. The record of these training sessions and any related materials will be segregated and maintained by the Compliance Department for a period of three (3) years to facilitate review during FINRA Statutory Disqualification Examinations, and will be subject to the Sponsoring Firm’s internal audit process and procedures.
7. X will conduct all Sponsoring Firm-related business using Sponsoring Firm-provided devices and accounts (e.g., Blackberry, email accounts). Any business communications received by X on a personal device or account will be forwarded by X immediately to the Proposed Primary Supervisor (or, in his absence, to the Dedicated Senior Compliance Officer). To the extent such communications raise a “red flag,” the

¹⁰ In the event the Dedicated Senior Compliance Officer is absent or otherwise unavailable, he will designate a senior compliance person to serve in his place.

Proposed Primary Supervisor (or the Dedicated Senior Compliance Officer) will escalate the item pursuant to the Sponsoring Firm's Escalation Policy.

8. In addition to the Sponsoring Firm procedures for correspondence and email review that apply generally, the Compliance Department also will separately review all of X's outgoing and incoming electronic correspondence to and from external sources (which would include email communications, instant messages and Bloomberg messages) for compliance issues. This correspondence will be collected by the Compliance Department for each day and reviewed weekly. The Compliance Department also will review a random sample of X's daily incoming and outgoing internal electronic correspondence on a weekly basis. These electronic correspondence reviews will be in addition to any supervision of electronic communications conducted pursuant [to] FINRA Notice-to-Members 07-59. Any "red flags" resulting from the internal and external electronic correspondence reviews will be reported to the Proposed Primary Supervisor, who will, as necessary, escalate the issue pursuant to the Sponsoring Firm's Escalation Policy.
9. In addition to the Sponsoring Firm procedures for correspondence and email review that apply generally, the Compliance Department separately will, on a monthly basis, review a sampling of outgoing and incoming electronic correspondence of X's direct reports to and from external sources (which would include email communications, instant messages, and Bloomberg messages) for compliance issues.¹¹ Any "red flags" resulting from the review will be reported to X, who will, as necessary, escalate the issue pursuant to the Sponsoring Firm's Escalation Policy.
10. Any complaints (internal or external) pertaining to X, whether oral or written will be referred to the Proposed Primary Supervisor immediately for review, as well as to the Compliance Department. The Proposed Primary Supervisor will prepare a memorandum to the file as to the measures taken to investigate the merits of the complaint and the resolution of the matter. Documents pertaining to any complaints will be segregated and maintained by the Compliance Department for a period of three (3) years to facilitate review during FINRA Statutory Disqualification Examinations.
11. The Proposed Primary Supervisor and the Dedicated Senior Compliance Officer will certify quarterly to the Compliance Department of the Sponsoring Firm that both the person making the certification and X are in

¹¹ This sampling will include all such correspondence, for each of X's direct reports, on a randomly selected day.

compliance with the above-referenced conditions of heightened supervision. A record of these certifications will be segregated and maintained by the Compliance Department for a period of three (3) years to facilitate review during FINRA Statutory Disqualification Examinations, and will be subject to the Sponsoring Firm's internal audit process and procedures.

FINRA certifies that: (1) X meets all applicable requirements for the proposed employment; (2) the Sponsoring Firm represents that it is registered with several other self-regulatory organizations, including AMEX, CBOE, CHX, ISE, NSX, NYSE, NYSE ARCA, MSRB, NQX, BATS, EDGA, and EDGX; (3) the Sponsoring Firm represents that it does not employ any other statutorily disqualified individuals; and (4) the Sponsoring Firm represents that the Proposed Primary Supervisor, the Proposed 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 principal, 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 Exchange Act Section 15(b) and that it will not direct otherwise pursuant to Exchange Act Section 15A(g)(2). This notice shall serve as an application for such an order.

On Behalf of the National Adjudicatory Council,

Marcia E. Asquith
Senior Vice President and Corporate Secretary