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 SD09004 Date: 2009

I. Introduction

On March 6, 2009, the Sponsoring Firm[2] 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 associate with the Sponsoring Firm. A hearing was not held in this matter. Rather, pursuant to FINRA 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 association with the Sponsoring Firm pursuant to the terms and conditions set forth below.

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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] The Sponsoring Firm was acquired by Company 2 in 2008, and effective January 2009, it was renamed Company 3. For the purposes of this decision, we will refer to the Firm as the Sponsoring Firm.

[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 after December 15, 2008, we apply the FINRA Rule 9520 Series.

For the reasons explained below, we approve the Sponsoring Firm's Application. This decision has been presented to NYSE Regulation, which concurs with this approval.

II. The Statutorily Disqualifying Event

X is statutorily disqualified under NYSE's By-Laws because in March 2000, the State 1 Department of Banking and Finance, Division of Securities and Investor Protection ("State 1 Division"), issued a final Order and Stipulation and Consent Agreement ("the 2000 Order"). Based on the complaint issued against X by the State 1 Division, the 2000 Order found that X, while employed by Firm Three, used "sales scripts" in the course of "cold calling" new customers "to convince prospective purchasers to purchase whatever security the company recommended the broker sell." The complaint stated that the sales scripts promoted "little known, high risk, thinly traded securities," "were replete with baseless price predictions and positive statements about the subject companies," and "were generally devoid of any cautionary statements or risk disclosures." The 2000 Order required X to cease and desist from any and all present and future violations of State 1 rules, imposed a $3,500 fine and a 30-day suspension, and subjected X to a two-year period of heightened supervision in State 1. X fulfilled the terms of the 2000 Order, and State 1 released him from heightened supervision in April 2002.

The Sponsoring Firm was a dual member NYSE/FINRA firm, and NYSE was the designated primary examining authority. Therefore, pursuant to the terms of the consolidation of NASD and the member regulation, enforcement and arbitration functions of NYSE Regulation into FINRA, the Sponsoring Firm submitted this Application in accordance with the Commission's interpretive guidance in a letter to the NYSE dated August 2006 ("the 2006 SEC Letter"). The 2006 SEC Letter considered the impact of Section 604 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"), which expanded the definition of statutory disqualification in Section 3(a)(39) of the Securities Exchange Act of 1934 ("the Exchange Act") to include, in pertinent part, persons "subject to any final order of a State securities commission that constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct." [4]

FINRA's rules incorporating the Sarbanes-Oxley definition of statutory disqualification became effective on June 15, 2009.[5] X triggered the application of the revised definition of statutory disqualification to him, however, when he transferred to the Sponsoring Firm in February 2009. The Sponsoring Firm therefore filed an MC-400 in March 2009, prior to the effectiveness of the relevant FINRA rule. Consequently, and under the circumstances, FINRA will process the Application in accordance with then-existing NYSE rules, which included the

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[4] X is required to file an application because he is subject to a final order from State 1 that is less than 10 years old, based on violations of laws or regulations prohibiting fraudulent, manipulative, or deceptive conduct, and imposed a suspension. X triggered the filing requirement for the Application when he changed firms in February 2009, transferring from Firm One to the Sponsoring Firm.

[5] *See FINRA Regulatory Notice* 09-19 (April 2009).

Sarbanes-Oxley definition of statutory disqualification as of 2006, and which were subject to the guidance of the 2006 SEC Letter.

III. Background Information

A. X

X first registered in the securities industry as a general securities representative in April 1994. He also qualified as a uniform securities agent state law in May 1994, and as a uniform registered investment adviser in September 1998.

X was previously associated with six other firms from January 1994 until February 2009,[6] when he filed a Uniform Application for Securities Industry Registration or Transfer ("Form U4") with the Sponsoring Firm.

One customer filed a complaint against X in January 1996, when he was associated with Firm Two. FINRA's Central Registration Depository ("CRD"®) shows that Firm Two's investigation demonstrated that X was not involved in the questioned action. Subsequently, X voluntarily resigned from Firm Two in February 1997.

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

B. The Sponsoring Firm

The Sponsoring Firm has been a FINRA member since 1987. The Sponsoring Firm currently has 5,022 branch offices, 1,060 of which are offices of supervisory jurisdiction ("OSJs"). The Sponsoring Firm employs 4,385 registered principals and 26,106 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 in its City 1, State 1 branch office, and we agree. We list here the disciplinary actions that have resulted from FINRA's most recent examinations of the Sponsoring Firm, and from the Commission.

To date, in 2009, FINRA and the Commission have taken the following actions against the Sponsoring Firm: 1) a May 2009 FINRA Letter of Acceptance, Waiver, and Consent ("AWC"), fining the Sponsoring Firm $1.4 million for failing to deliver prospectuses to

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[6] Notwithstanding the 2000 Order, X was permitted to continue working in the securities industry without filing for relief from statutory disqualification. The Sarbanes-Oxley definition of statutory disqualification did not apply to NYSE firms until 2006, and in accordance with the terms of the 2006 SEC Letter, it only became operable when an individual re-entered the industry or changed firms. As stated previously, X's transfer from Firm One to the Sponsoring Firm in February 2009 triggered the instant Application.

customers; 2) a February 2009 FINRA AWC, fining the Sponsoring Firm $1.1 million for failing to send customers confirmation of changes in investment objectives; 3) a February 2009 FINRA AWC, fining the Sponsoring Firm $4.4 million for violations involving unsuitable recommendations of Class B and C mutual fund shares; and 4) a February 2009 Commission settlement, finding that the Sponsoring Firm had misled investors regarding the liquidity risks for auction rate securities and requiring the Sponsoring Firm to buy back those securities from certain investors.

Following its 2008 cycle examination of the Sponsoring Firm, FINRA issued it a Letter of Caution ("LOC") for several deficiencies, including: 1) filing late Uniform Termination Notices of Securities Registration ("Forms U5"); 2) engaging in mutual fund transactions below a breakpoint level; 3) incorrect change of address forms for employees; 4) an unsigned margin agreement; 5) incorrect information on employee business cards; 6) incorrect calculations of customer reserve requirements; and 6) inadequate information on option account forms. The Sponsoring Firm responded by letter dated December 2008, stating that it had corrected the noted deficiencies.

Following its 2007 cycle examination, FINRA issued the Sponsoring Firm an LOC and a Minor Rule Violation ("MRV"). The LOC cited deficiencies that included: 1) books and records violations: 2) Reg T violations; 3) inadequate written supervisory procedures; 4) one instance of non-compliance with rules governing discretion in customers' accounts; 5) failing to deliver Forms U5 timely to former employees; 6) late MSRB filings; 7) TRACE reporting violations; and 8) incorrect reporting of customer complaints. The Sponsoring Firm responded by letter dated March 2008, stating that it had corrected the noted deficiencies. The MRV that resulted from the 2007 examination fined the Sponsoring Firm $1,000 for three untimely statements to the MSRB as required by MSRB Rule G-36.

In 2005, FINRA conducted a cycle examination and two Market Regulation "sweep examinations" of the Sponsoring Firm. The cycle examination resulted in an AWC for making unsuitable recommendations of Class B and Class C shares and failing to provide customers the benefit of sales charge discounts on sales of unit investment trusts. The Sponsoring Firm was fined $4.41 million and agreed to several undertakings relating to net asset value transfer program remediation.

The 2005 "sweep" examinations resulted in two AWCs. The first AWC cited the Sponsoring Firm for inaccurate reporting of TRACE transactions and imposed a fine of $5,000. The second AWC cited the Sponsoring Firm for inaccurate reporting of TRACE transactions and imposed a fine of $7,500.

IV. X's Proposed Business Activities and Supervision

The Sponsoring Firm proposes to employ X as a registered representative in its branch office in City 1, State 1, which is also an OSJ. The Sponsoring Firm represents that X's duties will be "to offer financial services to retail customers in accordance with the Sponsoring Firm policies and procedures." The Sponsoring Firm states that it will compensate X by commissions. The Sponsoring Firm also intends to extend a loan to X when he commences employment and

pay him a transitional bonus in monthly installments. The net effect of the loan and the bonus will be that the Sponsoring Firm will forgive the loan provided to X if he meets minimum gross production requirements. Member Regulation stated that it was satisfied with the terms of the Sponsoring Firm's compensation package for X.

The Sponsoring Firm proposes that X will be supervised on-site by the Proposed Supervisor. The Proposed Supervisor first registered as a general securities representative in July 1991, and he qualified as a general sales supervisor in April 1999. As such, Member Regulation represents that he is qualified to supervise the day to day operations of X as a general securities representative. The Proposed Supervisor has been associated with the Sponsoring Firm since February 2007. Prior to that time, he was associated with eight different firms between May 1991 and February 2007. The Proposed Supervisor currently supervises 64 people, 39 of whom are registered representatives. The Proposed Supervisor does not supervise any other statutorily disqualified invididuals. Member Regulation stated that given the Proposed Supervisor's many years of experience, and the nature of X's nine-year old 2000 Order, it was satisfied with the Sponsoring Firm's proposal to have the Proposed Supervisor supervise X.

The record shows no 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 the Secondary Supervisor as the alternate supervisor. The Secondary Supervisor qualified as a general securities representative in February 1991 and as a general sales supervisor in July 1991. CRD shows one reportable customer complaint against the Secondary Supervisor that remains pending in arbitration.

V. Member Regulation's Recommendation

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

VI. Discussion

After carefully reviewing the entire record in this matter, we approve the Sponsoring Firm's Application for X to associate with the Sponsoring Firm as a general securities representative, subject to the supervisory terms and conditions set forth below.

In evaluating an application like this, we assess whether the sponsoring firm has demonstrated 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); *see also Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (holding that FINRA "may deny an application by a firm for association with a statutorily-disqualified individual if it determines that employment under the proposed plan would not be consistent with the public interest and the protection of investors"); FINRA By-Laws, Art. III, Sec. (3)(d). 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 there has been 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.

We find that the Sponsoring Firm has met its burden in this Application and that X's association with the Sponsoring Firm will not create an unreasonable risk of harm to the market or investors. We recognize that the conduct underlying the 2000 Order was serious and involved deceptive sales scripts, but we note that X engaged in this misconduct 12 years ago, in 1997. In addition, the record shows that X accepts responsibility for his mistake in 1997 and seeks to move forward with his career as a securities professional.

Moreover, the 2000 Order that resulted from X's 1997 misconduct is more than nine years old, and it imposed on X only a 30-day suspension and a two-year period of heightened supervision. X fulfilled the requirements of the 2000 Order in April 2002, and he has not engaged in any intervening misconduct. Indeed, he was continuously employed in the securities industry, without incident, from the completion of his suspension in November 2000 until February 2009 when he transferred to the Sponsoring Firm. At that time, X was required to refrain from working in the securities industry, pending the outcome of this Application.

We also find that the Sponsoring Firm and the proposed supervisor are qualified to supervise a statutorily disqualified individual such as X. Although the Sponsoring Firm, as a large firm, has a disciplinary history, the record shows that it has taken corrective actions to address noted deficiencies. Further, the Proposed Supervisor has been a supervisor since 1999, and he has no disciplinary history. 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 state clearly that the Proposed Supervisor is the primary supervisor responsible for X and that the Secondary Supervisor is the alternate supervisor;

2. *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 supervisor from the Proposed Supervisor to another person;

3. X, the Proposed Supervisor, and the Secondary Supervisor will all work from the Sponsoring Firm's City 1, State 1 office, which is an OSJ;

4. X will not act in a supervisory capacity;

5. X will not maintain any discretionary accounts;

[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.

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. 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 X's outgoing correspondence before it is sent. With respect to email communications, this condition will not include any email communication that would prevent best execution of any trade, however, such communication would be subject to post-use review. The Proposed Supervisor will keep a written record evidencing review and approval of all of X's correspondence;

9. *****The Proposed Supervisor will randomly review X's client accounts, including, but not limited to, the top 10 percent of X's commission-generating accounts, on a quarterly basis and will submit the results to the Sponsoring Firm's Compliance Department on a Quarterly Heightened Supervision Checklist;

10. For the purposes of client email 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;

11. *****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 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 keep documents pertaining to these complaints segregated for ease of review during any examination; and

12. *****The Proposed Supervisor must certify quarterly (March 31, June 30, September 30, and December 31) 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.

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, NQX, BSE, NYSSE, CHX, and PHLX; and 3) X, the Proposed Supervisor, and the Secondary Supervisor represent that they 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,

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Marcia E. Asquith
Senior Vice President and Corporate Secretary