

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the
Continued Membership of

Firm X¹

with

FINRA

Redacted Decision

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

SD12007

Dated: 2012

I. Introduction

On April 7, 2009, Firm X (or the “Firm”) submitted a Membership Continuance Application (“MC-400A” or “the Application”) with FINRA’s Department of Registration and Disclosure. The Application seeks to permit the Firm, a FINRA member firm subject to a statutory disqualification, to continue its membership with FINRA. A hearing was not held in this matter. Rather, pursuant to FINRA Rule 9523, 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 the Firm’s continued membership with FINRA pursuant to the terms and conditions set forth below.

For the reasons explained below, we approve the Firm’s Application.

II. The Statutorily Disqualifying Event

The Firm is statutorily disqualified because it consented to an order of permanent injunction (the “Permanent Injunction”) by a United States District Court in 2009. The Permanent Injunction was based on a complaint issued by the Commission alleging that from 1999 through 2005, the Firm traded ahead of customer orders and engaged in interpositioning while acting as a specialist on the floor of the Chicago Stock Exchange (“CHX”) and violated related recordkeeping requirements. The court enjoined the Firm from further violations of federal securities laws and rules of the CHX, and ordered that it disgorge \$70,000, plus post-judgment interest, in three installments over a one-year period. The Firm has fully complied with the terms of the disgorgement.

¹ The name of the statutorily disqualified firm and other information deemed reasonably necessary to maintain confidentiality has been redacted.

The Firm's statement in support of the Application states that the majority of the violative conduct underlying the Permanent Injunction occurred between 1999 and 2002 and was not attributable to the Firm, but rather trades effectuated by Firm Y.² The Firm states that it ceased acting as a specialist in 2005, and no affiliated firm presently conducts a specialist business. The Firm views the misconduct underlying the Permanent Injunction as "historical in nature, and isolated," and states that "[t]here is no likelihood of future violation given the Firm's present and anticipated business activity, which does not contemplate conduct of a specialist business."

III. Background Information

Firm X became a FINRA member in 1992. The Firm currently has two branch offices and one Office of Supervisory Jurisdiction, and currently employs three non-registered persons and six registered persons, including three registered principals. The Firm is engaged in the following types of businesses: underwriting or selling group participant, municipal securities broker-dealer, and proprietary trading. The Firm no longer has a CHX membership nor conducts any activities on the CHX, including acting as a specialist. Further, the Firm does not conduct activities on any other exchange or have any exchange membership.

The Firm's most recent routine examination in 2010 resulted in a compliance conference with respect to the following violations: making disclosures three business days late to the MSRB's Electronic Municipal Market Access ("EMMA") system in connection with certain bond offerings and maintaining inadequate written supervisory procedures ("WSPs") for EMMA submission requirements; overstating the Firm's net capital and inaccurately classifying certain liabilities in November 2009; failing to maintain minimum net capital as required by the Firm's membership agreement in May and June 2009, and again in January 2010; and failing to file timely a Uniform Termination Notice for Securities Industry Registration. The Firm responded by letter in 2010, stating that it had corrected the noted deficiencies.

In 2009, the National Futures Association ("NFA") issued a notice of intent to suspend and thereafter revoke the Firm's registration. The NFA's suspension and revocation notice was based upon the same facts underlying the Permanent Injunction. The Firm entered into a settlement with the NFA allowing it to remain a member subject to certain conditions. Member Regulation represents that although the Firm withdrew its registration from the NFA in 2011, the Firm had previously complied with all terms of the NFA settlement.

In 1999, FINRA accepted a Letter of Acceptance, Waiver and Consent ("AWC") from the Firm, which found that it inaccurately reported short sales; failed to note an affirmative determination for short sales that it would receive each security by settlement date; failed to correct trade reports; inaccurately reported a buy transaction as a sale; failed to immediately display limit orders in its public quotation; failed to prepare and accurately prepare order tickets; and failed to establish and maintain adequate WSPs regarding trading and market making activities. FINRA censured the Firm and fined it \$8,500.

² Firm Y was a registered broker-dealer and affiliate of the Firm until 2004. In 2005, Firm Y filed a certificate of corporate dissolution. Company 1 was Firm Y's parent company and is also the Firm X's parent company.

We are not aware of any other complaints, disciplinary proceedings, or arbitrations against the Firm.

IV. The Firm's Proposed Continued Membership with FINRA and Member Regulation's Recommendation

The Firm seeks to continue its membership with FINRA notwithstanding the Permanent Injunction. The Firm represents it is no longer in the specialist business, the majority of the underlying misconduct did not occur under the Firm's operations, and the violations were isolated incidents.

Member Regulation recommends approval of the Firm's request to continue its membership in FINRA.

VI. Discussion

After carefully reviewing the entire record in this matter, we approve the Firm's Application, subject to the terms and conditions set forth below.

In evaluating an application like this, we assess whether the statutorily disqualified firm seeking to continue its membership in FINRA has demonstrated that its continued membership is in the public interest and does not create an unreasonable risk of harm to the market or investors. See FINRA By-Laws, Art. III, Sec. (3)(d); *cf. 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"). 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 find, based in part upon the Firm's representations and the special procedures set forth below, that the Firm has met its burden in this Application and that its continued membership in FINRA will not create an unreasonable risk of harm to the market or investors. We recognize that the Permanent Injunction involved serious violations of securities rules and regulations. The Firm has represented, however, that it is no longer in the specialist business. Indeed, as set forth below, the Firm must obtain FINRA's approval prior to engaging in any specialist or market making activities, which will further ensure the Firm's compliance with securities rules and regulations. The Firm must also amend its WSPs relating to trading ahead, interpositioning, and related recordkeeping requirements if it seeks and obtains FINRA's approval to engage in specialist or market making activities or seeks to engage in any retail brokerage activities.

We further find that although the Permanent Injunction is fairly recent, the underlying misconduct occurred from 1999 to 2005, and the Commission alleged that most of the underlying misconduct occurred between 1999 and 2002. The record does not show any similar violations subsequent to entry of the Permanent Injunction. Further, other than the Permanent

Injunction, the Firm has a relatively clean disciplinary history and the record shows that it has taken corrective actions to address noted deficiencies. We have no reason to believe that the Firm's regulatory history reflects upon its current ability to comply with securities rules and regulations.

We are satisfied that the Firm's continued membership in FINRA will not create an unreasonable risk of harm to the market or investors based upon the foregoing and the following special procedures for the Firm:

1. Prior to engaging in any specialist or market making activities, the Firm must first obtain FINRA's approval by filing an application as provided for in NASD Rule 1017.
2. Prior to commencing a specialist, market making, or retail brokerage business, in connection with obtaining FINRA's approval as referenced in paragraph 1 above, the Firm will amend its WSPs relating to trading ahead, interpositioning, and recordkeeping requirements.
3. Prior to seeking membership in any exchange, the Firm will notify FINRA of its intent to seek such membership. Further, the Firm will notify FINRA if and when it obtains such membership. Such notification will be in writing and sent to the FINRA district office in which the Firm's principal place of business is located.

FINRA certifies that the Firm meets all qualification requirements and represents that it is not registered with any other self-regulatory organizations.

Accordingly, we approve the Firm's Application to continue its membership in FINRA as set forth herein. In conformity with the provisions of SEC Rule 19h-1, the continued membership of the 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