

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Association of	<u>Redacted Decision</u>
X	<u>Notice Pursuant to</u>
as a	<u>Section 19(d)</u>
General Securities Representative	<u>Securities Exchange Act</u>
with	<u>of 1934</u>
The Sponsoring Firm	<u>SD13002</u>
	Date: 2013

I. Introduction

On December 5, 2011, the Sponsoring Firm filed a Membership Continuance Application (“MC-400” or “the Application”) with FINRA’s Department of Registration and Disclosure (“RAD”). The Application requests that FINRA permit X, a person subject to a statutory disqualification, to associate with the Sponsoring Firm as a general securities representative. In February 2013, a subcommittee (“Hearing Panel”) of FINRA’s Statutory Disqualification Committee held a hearing on the matter. X appeared at the hearing, accompanied by his Proposed Supervisor. FINRA Employee 1, FINRA Attorney 1, FINRA Attorney 2, and FINRA Attorney 3 appeared on behalf of FINRA’s Department of Member Regulation (“Member Regulation”).

For the reasons explained below, we deny the Sponsoring Firm’s Application.¹

II. The Statutorily Disqualifying Event

X is statutorily disqualified because of a Final Judgment entered by a United States District Court in 2004 (the “Judgment”). The Judgment permanently restrained and enjoined X from violating Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and

¹ 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.

Exchange Act Rule 10b-5, Section 17(a) of the Securities Act of 1933, and Section 206 of the Investment Advisers Act of 1940.²

The bases for the Judgment were allegations by the SEC that in 2002, X and three other principals of a hedge fund known as Fund 1 implemented a fraudulent scheme that resulted in investors losing more than \$300 million.³ Specifically, the SEC alleged that X and others made material misrepresentations concerning, among other things, the valuation methodology that Fund 1 used for calculating net asset values, the hedging and trading strategy for its funds, and the value and performance of the funds. The misrepresentations allowed Fund 1 to maintain the appearance of positive returns and to hide losses. The SEC alleged that X contributed to the scheme by making adjustments to the prices of collateralized mortgage obligations held by Fund 1. The SEC also alleged that X and others traded between the hedge funds and other accounts managed by Fund 1 at prices that defrauded the hedge funds and hid losses. Further, the SEC alleged that X and the other owners of Fund 1 engaged in self-dealing, failed to fully disclose such transactions to investors, and later misrepresented the magnitude of losses. The Judgment ordered that X disgorge funds and pay a fine totaling approximately \$755,000. X complied with the Judgment's terms.

Subsequent to the Judgment, the SEC, pursuant to an administrative order in 2004, barred X from associating with any investment adviser based upon the same events underlying the Judgment.

² FINRA's By-Laws provide that a person is subject to "disqualification," and thus must seek and obtain FINRA's approval prior to associating with a member firm, if he is disqualified under Exchange Act Section 3(a)(39). *See* FINRA By-Laws, Article III. Exchange Act Section 3(a)(39) provides that:

A person is subject to a "statutory disqualification" with respect to . . . association with a member of, a self-regulatory organization, if such person—
(F) . . . is enjoined from any action, conduct, or practice specified in subparagraph (C) of [paragraph (4) of Exchange Act Section 15(b)].

In turn, Exchange Act Section 15(b)(4)(C) refers to any person that is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from engaging in, or continuing any conduct or practice in connection with, any activity as a broker-dealer, investment adviser, or in connection with the purchase or sale of any security.

³ X served as Fund 1's senior portfolio manager in charge of the firm's credit sensitive mortgage portfolio. X shared management responsibilities, including all trading decisions regarding the funds' investments and security valuations, with the chief investment officer.

III. Background Information

A. X's Employment History

X first qualified as a general securities representative in July 1994, and passed the uniform securities agent state law exam in August 1994. In 1996, X left the broker-dealer industry and joined an investment adviser. X requalified as a general securities representative in February 2012, and again passed the uniform securities agent state law exam in March 2012. X was previously associated with two member firms between May 1993 and January 1996. X worked at Fund 1 from December 1996 until October 2004. Since 2004, X has been a day trader for his own personal account and a manager for a residential and commercial builder.

Other than the Judgment and related SEC administrative order, the record shows no other criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against X.

B. The Sponsoring Firm

The Sponsoring Firm has been a FINRA member since February 1989. The MC-400 states that the Sponsoring Firm has one Office of Supervisory Jurisdiction and two branch offices. The Sponsoring Firm has 10 employees, and it employs four registered principals and nine registered representatives. The Proposed Supervisor testified that the majority of the Sponsoring Firm's business is comprised of sales of fixed income products to institutional customers. The Proposed Supervisor is the sole owner of the Sponsoring Firm.

1. Regulatory Actions

In 2007, the Sponsoring Firm entered into a Letter of Acceptance, Waiver and Consent ("AWC") with FINRA for violations of NASD Rules 6230(a), 3010, and 2110. Without admitting or denying the allegations set forth in the complaint, the Sponsoring Firm consented to findings that it failed to report timely numerous transactions to FINRA's Trade Reporting and Compliance Engine ("TRACE"), and failed to enforce its written supervisory procedures ("WSPs") with respect to TRACE. FINRA censured the Sponsoring Firm and fined it \$12,500.

In 2007, the Sponsoring Firm and the Proposed Supervisor entered into an AWC with FINRA for violations of Exchange Act Section 10(b), Exchange Act Rule 10b-9, and NASD Rules 3010 and 2110. Without admitting or denying the allegations set forth in the complaint, the Sponsoring Firm and the Proposed Supervisor consented to findings that they failed to terminate a best efforts, "minimum-maximum" offering and return investor funds as required by the terms of the offering memorandum. The Sponsoring Firm and the Proposed Supervisor also consented to findings that they failed to establish and maintain a supervisory system that contained provisions for contingent securities offerings. FINRA censured the Sponsoring Firm and the Proposed Supervisor and fined them, jointly and severally, \$10,000.

In 2005, the Sponsoring Firm and the Proposed Supervisor entered into an AWC with FINRA for violations of MSRB Rules G-2 and G-3. Without admitting or denying the allegations set forth in the complaint, the Sponsoring Firm and the Proposed Supervisor

consented to findings that they effected municipal securities transactions without having a municipal securities principal registered with the Sponsoring Firm. FINRA censured the Sponsoring Firm and the Proposed Supervisor and fined them, jointly and severally, \$7,500.

2. Routine Examinations

In 2012, FINRA issued the Sponsoring Firm a Cautionary Action. FINRA cited the Sponsoring Firm for the following deficiencies: failing to properly supervise employees' outside business activities because the Proposed Supervisor approved all outside business activities by employees, including his own; failing to adequately review electronic correspondence; failing to adequately supervise, pursuant to heightened supervision, the Proposed Supervisor as a producing manager; failing to conduct an adequate test of the Sponsoring Firm's Anti-Money Laundering ("AML") Compliance Program for 2009, 2010, and 2011; and failing to consistently record execution times on order tickets. The Sponsoring Firm responded in writing that it corrected the deficiencies noted in the Cautionary Action.

In 2010, FINRA issued the Sponsoring Firm a Cautionary Action. FINRA cited the Sponsoring Firm for the following deficiencies: failing to document adequately its review of electronic correspondence; failing to maintain inter-office communications; failing to establish a system to maintain instant messages; preparing inaccurate net capital computations in 2009; failing to independently test the Sponsoring Firm's AML Compliance Program in 2007 and 2008; improperly listing the Sponsoring Firm's AML Compliance Officer as the responsible party for conducting the annual test of the Sponsoring Firm's AML program; failing to document adequately the Sponsoring Firm's testing of its supervisory controls; failing to establish adequate written supervisory control policies and procedures addressing the annual test and verification of the Sponsoring Firm's supervisory procedures; and failing to complete the Annual Certification of Compliance and Supervisory Processes. The Sponsoring Firm responded in writing that it corrected the deficiencies noted in the Cautionary Action.

The record shows no other recent complaints, disciplinary proceedings, or arbitrations against the Sponsoring Firm.

IV. X's Proposed Business Activities and Supervision

The Sponsoring Firm proposes that it will employ X as a general securities representative in its home office in City 1, State 1. X will focus on institutional fixed income sales, including asset and mortgage-backed securities and private placements. The Sponsoring Firm represents that X will be compensated by commission.

The Sponsoring Firm represents that the Proposed Supervisor will be X's supervisor. The Proposed Supervisor first registered as a general securities representative in November 1976, qualified as a general securities principal in March 1981, and has qualified in a number of other capacities. The Proposed Supervisor has been registered with the Sponsoring Firm since February 1996, and he serves as the Sponsoring Firm's general partner and chief compliance officer. The Sponsoring Firm represents that he supervises 12 other employees, and the

Proposed Supervisor is the only principal in the Sponsoring Firm's home office. Prior to joining the Sponsoring Firm, the Proposed Supervisor was associated with at least two other firms.

Other than the two AWCs referenced above, the record shows no other criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against the Proposed Supervisor.

The Sponsoring Firm submitted the following proposed heightened plan of supervision:

1. The WSPs for the Sponsoring Firm will be amended to state that the Proposed Supervisor is the primary supervisor for X;
2. X will not maintain discretionary accounts;
3. X will not act in a supervisory capacity;
4. X's activities at the Sponsoring Firm will be supervised by the Proposed Supervisor at the Sponsoring Firm's home office. The alternate supervisor will be Sponsoring Firm Employee 1 (see item 11 for details);
5. The Proposed Supervisor will review and pre-approve each securities account, prior to the opening of the account and prior to the processing of any transaction in the account by X. New account documentation will be prepared in accordance with the Sponsoring Firm's Written Supervisory Procedures and documented as approved with a date and signature, and will be maintained at the Sponsoring Firm's home office;
6. The Proposed Supervisor will review all incoming written correspondence (which would include e-mail communications via any media, including but not limited to Bloomberg and the firm's e-mail system) upon its arrival and will review outgoing customer correspondence before they are sent. X will forward proposed customer e-mails to the Proposed Supervisor who will then approve the content of the e-mail. When X sends the e-mail, he will copy the Proposed Supervisor who will again review the e-mail to ensure that the approved content has not been altered;
7. The Proposed Supervisor will review and approve X's order tickets prior to execution. The Proposed Supervisor will evidence his review by initialing the order tickets;
8. X must disclose to the Proposed Supervisor on a weekly basis details related to all sales activity. The disclosure must contain X's activity log, phone call log, appointment log and a to-do list;
9. X's personal e-mails will be reviewed monthly by the Proposed Supervisor;
10. In order to reinforce the ethical responsibilities of a registered representative and familiarize himself with the current FINRA rules and regulations, X will be

required to take and complete continuing education courses on a monthly basis. The curriculum will be established in conjunction with the Sponsoring Firm's legal counsel. The Continuing Education Plan will be amended to include X's courses and the Proposed Supervisor will be responsible to ensure that the courses selected are completed timely and he will initial the applicable courses in the CE Plan to evidence his review of the completed courses;

11. If the Proposed Supervisor is on vacation or out of the office for an extended period, Sponsoring Firm Employee 1 will act as X's interim supervisor.⁴ Sponsoring Firm Employee 1's office is located off-site in City 2, State 2. Prior to execution of a trade, X will e-mail the proposed transaction to Sponsoring Firm Employee 1 with a copy of the customer new account document and copy the Proposed Supervisor. After reviewing the proposed transaction, Sponsoring Firm Employee 1 will e-mail his approval or disapproval of the transaction. Once the transaction is executed a copy of the execution will be forwarded to Sponsoring Firm Employee 1 via e-mail, who will maintain a separate file of X's transactions (approved or disapproved);
12. All complaints pertaining to X, whether oral or written, will be immediately referred to the Proposed Supervisor for review. The Proposed Supervisor will review the complaint in accordance with the Sponsoring Firm's Written Supervisory Procedures, and 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. Documents pertaining to these complaints including the filing pursuant to Rule 4530 will be kept segregated for ease of review;
13. For the duration of X's statutory disqualification, the Sponsoring Firm must obtain prior approval from Member Regulation if they wish to change X's responsible supervisor from the Proposed Supervisor to another person; and

⁴ Sponsoring Firm Employee 1 has been employed in the securities industry since 1987, at which time he qualified as a general securities representative and passed the uniform securities agent state law exam. He qualified as a general securities principal in April 2005, and has worked at the Sponsoring Firm since April 2009. At the hearing, Member Regulation questioned the Proposed Supervisor concerning Sponsoring Firm Employee 1's alleged failure to disclose a lien on his Uniform Application for Securities Industry Registration or Transfer ("Form U4"). The Proposed Supervisor was aware that Sponsoring Firm Employee 1 had an outstanding lien, but did not know if he had disclosed the lien on his Form U4. Subsequent to the hearing, Member Regulation continued to assert that Sponsoring Firm Employee 1 had still not updated his Form U4 to disclose the lien (which it asserted he should have disclosed 21 months ago). Although he has not updated his Form U4 to reflect any liens or judgments against him, the record is silent concerning how late he is in disclosing this lien. Other than this undisclosed lien, the record shows no criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against Sponsoring Firm Employee 1.

14. The Proposed Supervisor must certify quarterly (March 31, June 30, September 30, and December 31) to the Compliance Department of the Sponsoring Firm that he and X are in compliance with all of the above conditions of heightened supervision to be accorded X. Additionally, to the extent there are any customer complaints, the Proposed Supervisor will forward copies of the complaint documentation with the certification.

V. Member Regulation's Recommendation

Member Regulation recommends that the Application be denied because, in its view: (1) X's disqualifying event is "undeniably egregious" and involved fraudulent and manipulative acts; (2) X has failed to properly acknowledge the seriousness of his misconduct; (3) the passage of eight years since X's disqualifying event does not mitigate the underlying misconduct given the facts and circumstances; (4) the Sponsoring Firm's proposed heightened supervisory plan "does not include procedures above and beyond the Sponsoring Firm's normal WSPs and it is not specifically tailored to address the issues that led to X's disqualification, which is especially important because he will be selling the same type of securities he valued at Fund 1"; and (5) the Proposed Supervisor may not have the time to supervise X, and the Sponsoring Firm does not have the ability to carry out the proposed plan. Subsequent to the hearing, Member Regulation also argued that the Sponsoring Firm's proposed backup supervisor, Sponsoring Firm Employee 1, could not adequately supervise X in the Proposed Supervisor's absence. *See supra* note 4.

VI. Discussion

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 Ass'n of X*, Redacted Decision No. SD06002, slip op. at 5 (NASD NAC 2006), available at <http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p036476.pdf>; *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, Article III, Section 3(d) (providing that FINRA may approve association of statutorily disqualified person if such approval is consistent with the public interest and the protection of investors). Factors that bear upon our assessment include the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, the totality of the regulatory and criminal history, 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. The sponsoring firm has the burden of demonstrating that the proposed association is in the public interest despite the disqualification. *See Timothy P. Pedregon, Jr.*, Exchange Act Release No. 61791, 2010 SEC LEXIS 1164, at *16 (Mar. 26, 2010).

After carefully reviewing the entire record in this matter, we find that X's proposed association with the Sponsoring Firm would create an unreasonable risk of harm to investors and

the market. Accordingly, we deny the Application for X to associate with the Sponsoring Firm as a general securities representative.

We find that X's disqualifying event is extremely serious and securities-related. The Judgment related to troubling allegations of fraud, numerous misrepresentations, and self-dealing by X and his partners. *See, e.g., Citadel Secs. Corp.*, 57 S.E.C. 502 (2004) (affirming FINRA's denial of an MC-400 where individual was disqualified by virtue of being enjoined from violating the anti-fraud provisions of the Exchange Act); *Jan Biesiadecki*, 53 S.E.C. 182, 185 (1997) (affirming FINRA's denial of an MC-400 based upon the seriousness of a disqualifying event involving applicant's participation in a fraudulent scheme to induce investments in commodity futures contracts); *Dep't of Mkt. Regulation v. Kresge*, Complaint No. CMS030182, 2008 FINRA Discip. LEXIS 46, at *15 n.12 (FINRA NAC Oct. 9, 2008) (holding that "it is axiomatic that fraud . . . rank[s] among the most serious kinds of securities law violations"), *aff'd*, Exchange Act Release No. 55988, 2007 SEC LEXIS 1407 (June 29, 2007). X's misconduct resulted in substantial losses to investors, and X was permanently enjoined from violating the anti-fraud provisions of the Exchange Act and other securities laws.⁵ Although X testified that he took responsibility for the actions underlying the Judgment and felt "bad about all the events that took place," at various points he endeavors to excuse his conduct. For example, X testified that the problems underlying the Judgment arose when he was involved in a completely separate business at Fund 1, that "there can be disagreements between how the events [underlying the Judgment] were interpreted," and "[a] lot of people knew us and felt that we got caught in an unfortunate set of circumstances and this event occurred." Even if we credit X's explanations of the Judgment and the events surrounding it, we remain highly troubled by his misconduct. *See Am. Inv. Serv., Inc.*, 54 S.E.C. 1265, 1273 (2001) (denying a firm's application to associate with statutorily disqualified persons who "demonstrate[d] a troubling lack of understanding . . . of their own role in the events that were at issue in the [statutorily disqualifying event]").

We further find that the Sponsoring Firm has not demonstrated that it can properly supervise a statutorily disqualified individual such as X. *See Pedregon*, 2010 SEC LEXIS 1164, at *27 (holding that an applicant must establish that it will be able to adequately supervise a statutorily disqualified individual by imposing a stringent plan of heightened supervision); *Citadel Sec.*, 57 S.E.C. 509-10 ("[I]n determining whether to permit the employment of a

⁵ Applicants argue that the SEC did not bar X from associating with a broker-dealer when it issued its Administrative Order in 2004. Applicants therefore reason that X should not be "barred" from associating with the Sponsoring Firm in this proceeding, as such a result would be incongruous with the SEC's order. Applicants are mistaken. X is statutorily disqualified under the Exchange Act and FINRA's By-Laws pursuant to the Judgment, not because of the SEC's subsequent Administrative Order. Further, FINRA's denial of an application to permit a statutorily disqualified individual from associating with a member firm is not akin to the imposition of a penalty or a remedial sanction. *See Timothy H. Emerson Jr.*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, at *26 (July 17, 2009) (explaining that when FINRA denies a request to continue to associate with a firm notwithstanding a statutory disqualification, it is not imposing a penalty or sanction).

statutorily disqualified person, the quality of the supervision to be accorded that person is of utmost importance. We have made it clear that such persons must be subject to stringent oversight by supervisors who are fully qualified to implement the necessary controls.” (internal quotation omitted)). We find that while the Proposed Supervisor is qualified as a supervisor, he currently serves as the Sponsoring Firm’s general partner and chief compliance officer, is the only principal located at the Sponsoring Firm’s home office, and supervises the Sponsoring Firm’s branch offices in North Carolina and Houston. The Proposed Supervisor also currently supervises 12 employees, and serves in several other capacities for at least five outside entities. Under the circumstances, we conclude that the Proposed Supervisor has insufficient time to devote to the heightened supervision of a statutorily disqualified individual such as X. *See Emerson*, 2009 SEC LEXIS 2417, at *18-19 (finding that FINRA reasonably questioned whether a proposed supervisor had sufficient time to supervise a statutorily disqualified individual when he already supervised nine other individuals). The 2012 Cautionary Action, which cited the Sponsoring Firm for several supervisory deficiencies and failing to adequately review electronic correspondence, amplifies our concerns that the Proposed Supervisor may not have sufficient time to supervise stringently a statutorily disqualified individual such as X pursuant to a heightened supervisory plan.

Similarly, while the Sponsoring Firm submitted an amended heightened supervisory plan after the hearing,⁶ we remain concerned with several aspects of the proposed plan. For example, when the Proposed Supervisor is out of the office, X’s proposed backup supervisor, Sponsoring Firm Employee 1, will supervise X remotely from the Sponsoring Firm’s State 2 office. We are concerned that Sponsoring Firm Employee 1 will not be capable of effectively preventing and detecting potential misconduct from a remote location. *See Kufrovich*, 55 S.E.C. at 629 (finding supervisory plan inadequate where supervisor would not be physically present and in close proximity to disqualified individual during all working days). In addition, it is unclear from the record whether Sponsoring Firm Employee 1 has any supervisory experience. *See Pedregon*, 2010 SEC LEXIS 1164, at *27-28 (finding troubling the assignment of an unqualified individual to serve as a backup supervisor). Further, the record indicates that Sponsoring Firm Employee 1 has not timely updated his Form U4 with respect to at least one lien. *See* FINRA By-Laws, Article V, Section 2(c) (providing that associated persons must keep current every application for registration by filing amendments to such applications within 30 days after learning of the facts or circumstances giving rise to the amendment); *see also Robert D. Tucker*, Exchange Act

⁶ At the hearing, the Hearing Panel emphasized to applicants the need for a stringent plan of supervision that is specifically tailored to X, and afforded them the opportunity to submit a revised heightened plan to correct deficiencies that the Hearing Panel identified in the Sponsoring Firm’s original plan. The Sponsoring Firm submitted an amended plan, which we have considered. Although the Proposed Supervisor represented that the Sponsoring Firm would welcome additional “input and suggestions” regarding the amended heightened supervisory plan, it is the applicant’s burden to draft and propose a supervisory plan that provides for stringent supervision. *See Pedregon*, 2010 SEC LEXIS 1164, at *28 n.32 (holding that FINRA was fully justified in requiring a firm to provide specifics before approving an application rather than accepting assurances that the firm would later devise an appropriate plan); *Emerson*, 2009 SEC LEXIS 2417, at *20 (holding that drafting a supervisory plan is the firm’s responsibility, not FINRA’s).

Release No. 68210, 2012 SEC LEXIS 3496, at *26 (Nov. 9, 2012) (stating that the importance of Form U4 and the information contained therein, including information concerning a registered representative's financial history, "cannot be overstated").⁷ Sponsoring Firm Employee 1's failure to timely update his Form U4 and comply with FINRA's rules does not give us confidence that he can adequately supervise X when the Proposed Supervisor is out of the office and ensure that X will comply with securities rules and regulations.

Finally, we are not assuaged by the Proposed Supervisor's argument that X could not commit at the Sponsoring Firm the specific fraudulent misconduct underlying the Judgment because of the nature of the Sponsoring Firm's business. Fraudulent misconduct and misrepresentations can take numerous forms. The fact that a disqualified individual's previous fraud is unlikely to be repeated in identical form because of the nature of a sponsoring firm's business, does not negate the requirement that a firm adequately supervise a disqualified individual pursuant to a stringent plan of heightened supervision.

In sum, the Judgment that resulted in X's statutory disqualification involved highly serious, securities-related misconduct. We also have significant concerns regarding the Proposed Supervisor's ability to devote the time and attention necessary to supervise stringently a statutorily disqualified individual such as X under heightened supervision, and find that Sponsoring Firm Employee 1 is not qualified to serve as a backup supervisor. Consequently, we find that applicants have not met their burden to demonstrate that X's proposed association with the Sponsoring Firm is consistent with the public interest.

VII. Conclusion

Accordingly, we find that it is not in the public interest, and would create an unreasonable risk of harm to the market or investors, for X to associate with the Sponsoring Firm as a general securities representative. We therefore deny the Application.

On Behalf of the National Adjudicatory Council,

Marcia E. Asquith
Senior Vice President and Corporate Secretary

⁷ It is also unclear from the Sponsoring Firm's amended plan which of its provisions are specifically tailored to X and to prevent misconduct similar to the Judgment. *See Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at *38-39 (Sept. 13, 2010) (finding inadequate proposed plan of supervision where much of the plan applies to all firm employees). At the hearing, the Proposed Supervisor testified that certain provisions of the Sponsoring Firm's original plan were unique to X. Although the Sponsoring Firm did not indicate which provisions of its amended plan are unique to X, the amended plan contains a number of provisions similar to the original plan. Thus, it appears that Items 1, 3-4, 7-8, 11, and 13-14 contained in the Sponsoring Firm's amended plan are unique to X.