

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of the Association	Redacted Decision
of	<u>Notice Pursuant to</u> <u>Section 19(d)</u>
X	<u>Securities Exchange Act</u> <u>of 1934</u>
as an	<u>SD00010</u>
Investment Company and	
Variable Contracts Products Representative	
with	
The Sponsoring Firm	

On March 30, 2000, a member firm ("the Sponsoring Firm" or "the Firm") submitted an MC-400 application ("Application") seeking the registration of X¹, a person subject to a statutory disqualification, to associate with the Firm as an investment company and variable contracts products representative.² In July 2000, a subcommittee ("Hearing Panel") of the Statutory Disqualification Committee of NASD Regulation, Inc. ("NASD Regulation") held a hearing on the matter. X appeared and was accompanied by the Sponsoring Firm's Compliance Officer, and by his proposed supervisor ("the Proposed Supervisor"). BA appeared on behalf of NASD Regulation's Department of Member Regulation ("Member Regulation").

Statutory Disqualification. X is subject to a statutory disqualification under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 and Article III, Section 4(g) of the NASD By-Laws due to his

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 X is currently employed as an insurance agent of Firm A, the parent company of the Sponsoring Firm.

misdemeanor conviction for filing a false report to law enforcement. In February 1991, X pleaded guilty in a state court to a third-degree misdemeanor charge of falsely reporting the theft of a ring worth about \$1,700 to \$2,000 to a law enforcement officer in order to collect an insurance settlement. X, then 27 years old, was fined \$400 and sentenced to one year of probation. According to X, the escapade had been prompted by a personal domestic and financial crisis. X testified that about 7 to 10 days after the false report, before any investigation of his misconduct had begun or charges had been brought against him, he voluntarily admitted to the police that his report had been false. This account was generally corroborated by a letter from X's investigating officer.

X. X was initially registered in the securities industry as an investment company and variable contracts products representative at Firm B from 1989 to 1992. He was arrested and charged with making a false report in 1990. He entered his guilty plea and was convicted in early 1991. Although he was under an obligation to file an amended Uniform Application for Securities Industry Registration or Transfer ("Form U-4") at the time he was charged with making the false report, as well as upon his conviction, he failed to do so. He next became registered with Firm C. The Form U-4 that X submitted upon associating with Firm C in 1992 made no mention of his charge or conviction. In August 1993, while registered with Firm C, X was suspended by the NASD pending the outcome of eligibility proceedings for failing to disclose his 1990 false report charge and his 1991 misdemeanor conviction. Firm C filed a Form U-5 on X's behalf rather than further participate in these eligibility proceedings.

At the hearing before the Subcommittee, X explained that he had misunderstood Questions 22A and B of Form U-4, believing that they asked only about investment-related misconduct. He also stated that he had discussed the questions with his General Agent at the time and answered "no" to the questions on the advice of this supervisor. X later acknowledged that he made a mistake in not properly disclosing his conviction, but he claimed that he would not knowingly have made such a mistake given the fact that he had been fingerprinted and knew that the fact of his conviction would appear on his criminal record.

X took and passed the Series 6 (the investment company and variable contracts products qualification examination) in March 2000. We are not aware of any other regulatory or disciplinary actions taken against X in any capacity.

The Sponsoring Firm. The Sponsoring Firm became a member of the NASD in 1968. The Sponsoring Firm has six Offices of Supervisory Jurisdiction ("OSJs") and 45 branch offices. It employs 186 registered principals and 4,400 registered representatives. It is engaged in the business of underwriting and distributing mutual funds and variable contracts.

NASD Regulation's 1999 routine examination of the Sponsoring Firm resulted in a Letter of Caution ("LOC"), which was issued in 1999. The Sponsoring Firm incorrectly reported revenue on its FOCUS reports under the general category of "other revenue" rather than as separate sources of revenue, but corrected the problem immediately. The Sponsoring Firm is also the subject of a civil

action for damages related to the unauthorized sale of a promissory note by a former registered representative of the Sponsoring Firm. The Sponsoring Firm has denied liability and no determination in this matter has been reported.

We are not aware of any other complaints, disciplinary proceedings, or arbitrations against the Sponsoring Firm. The Sponsoring Firm does not employ any other individuals subject to statutory disqualification, and is not a member of any other self-regulatory organization.

The Sponsoring Firm represented that notwithstanding the outcome of the instant application and the expiration of X's statutory disqualification in February 2001, he would still be subject to special supervision. The Sponsoring Firm also represented that although X's proposed immediate supervisor had not yet passed the Series 24 general securities principal examination, the Proposed Supervisor would take and pass the Series 24 examination by the end of the year. The Proposed Supervisor currently supervises 21 representatives, some on- and some off-site. OSJ supervision and activities requiring the approval of a principal are conducted from the Sponsoring Firm's home office. The Proposed Supervisor is located in the same office as X. The Proposed Supervisor represented that he is not related to X by blood or marriage.

Member Regulation's Recommendation. Member Regulation maintained that it would not be in the public interest to allow X to participate in the securities industry through association with the Sponsoring Firm in the capacity of an investment company and variable contracts products representative at this time. Member Regulation emphasized that X's false report conviction, misconduct specifically referenced as a disqualification under the Securities Exchange Act of 1934, involved financial dishonesty. Based on the gravity of the misconduct, as well as X's failure to disclose promptly his misconduct to the NASD and his resulting improper association with a member of the NASD for two years, Member Regulation recommended that X's proposed association with the Sponsoring Firm be denied.

Discussion

After a thorough review of the record, we conclude that the Sponsoring Firm's Application to employ X as an investment company and variable contracts products representative should be denied. Despite his commission of a serious misdemeanor involving a false report to a governmental entity, X continued to work in the securities industry for two years after becoming subject to a statutory disqualification. In addition, he failed promptly to disclose his arrest and subsequent misdemeanor conviction. X was obligated to report by the filing of an amended Form U-4 his arrest or indictment in connection with the false report when it occurred in 1990, when he was convicted in 1991, and when he changed firms in 1993. Given the gravity of the underlying disqualification, as well as X's failure to disclose the event to regulatory authorities, we do not believe that it would be in the public interest to permit his association with the Firm.

Because we have made this determination, we reach no judgment regarding the adequacy of the proposed supervision. We observe that Member Regulation has noted the existence of an informal LOC and a civil action pending against the Firm. No findings have been made in the civil proceeding. We draw no inferences from these events, because the reasons stated above serve as the exclusive basis for our denial.

Although we note that the 10-year term of X's statutory disqualification will end in February 2001, we are not convinced that it would be in the public interest to permit X's association with a member firm before the expiration of the statutory term. Accordingly, we conclude that the Sponsoring Firm's Application should be denied.

On Behalf of the National Adjudicatory Council,

Joan C. Conley
Senior Vice President and Corporate Secretary