

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD

In the Matter of
the Association of

X

as a

General Securities Principal

with

The Sponsoring Firm

Redacted Decision

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

SD Decision No. 02008

On December 12, 2001, a member firm ("the Sponsoring Firm" or "the Firm") completed a Membership Continuance Application ("MC-400" or "Application") requesting permission for X¹, a person subject to a statutory disqualification but currently associated with the Firm as a general securities representative, to continue to associate with the Firm as a general securities principal.² A hearing was not held in this matter. Rather, pursuant to NASD Procedural Rule 9523, NASD's Department of Member Regulation ("Member Regulation") recommended to the Chairman of the Statutory Disqualification Committee that X's proposed association with the Sponsoring Firm be approved pursuant to the terms and conditions set forth below.

A. X's Statutorily Disqualifying Event

X is subject to a statutory disqualification as a result of his 1993 guilty plea to petit larceny, a Class A Misdemeanor in the District Court of State 1.³ The disqualifying event occurred when X was pledging a fraternity in his senior year of college. The pledges were asked to go to a sorority dormitory on campus and retrieve a "a pledge plaque." While X and several

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 has been associated with the Sponsoring Firm as a general securities representative since July 1999. The history of X's prior 19h-1 filing is discussed in more detail below.

³ This misdemeanor comes within the definition of a statutory disqualification since there was an allegation involving the theft of currency.

other pledges were in the dorm, apparently other things were taken, along with a woman's pocketbook containing cash. For this misconduct, X was placed on probation for three years. He received an early discharge from probation in 1996.

B. Background Information

1. Other Disciplinary History Involving X

Two customer complaints were filed against X, one in early 2001 and the other in late 2001. These complaints were investigated by NASD's District 10 office and both were filed without action ("FWA").

2. Prior SEC Rule 19h-1 Notices

In June 1999, NASD filed a notice pursuant to SEC Rule 19h-1 concerning X's association as a general securities representative at the Sponsoring Firm. The Commission acknowledged the notice in July 1999.

3. X's Background

X was first registered in the securities industry in November 1996 as a general securities representative. He also qualified as a uniform securities agent (Series 63) in 1996 and as a general securities principal (Series 24) in February 2000.

After the events surrounding his disqualification, X was employed in the securities industry for more than one year before he and his employers understood that his misdemeanor conviction caused him to be statutorily disqualified. He was employed by a different firm and then by the Sponsoring Firm from December 1996 to February 1998. X reported the petit larceny conviction on each Uniform Notice of Securities Registration or Transfer ("Form U-4"), but he was not notified by the Central Registration Depository ("CRD") of NASD that he had to go through the statutory disqualification process until April 1998, when he tried to transfer to another firm.⁴ The MC-400 Application that NASD forwarded to that firm was not returned. X resigned from that firm and rejoined the Sponsoring Firm in May 1998, at which time the Firm filed an MC-400 Application for X to associate as a general securities representative.

We are not aware of any other regulatory actions taken against X in any capacity.

⁴ The CRD did not notify X of his status as a statutorily disqualified individual because the Forms U-4 mistakenly mentioned only the theft of property (the sorority pledge plaque) and not the theft of currency as the basis for the 1993 misdemeanor conviction.

4. The Firm

The Sponsoring Firm became a member of NASD in April 1996. The Firm has no offices of supervisory jurisdiction or branch offices. It employs 11 principals, 38 registered representatives, and 44 employees. The Firm is engaged in the business of investment banking and the marketing of securities.

The Firm's 2000 routine examination resulted in a compliance conference. The conference focused on record-keeping and registration violations.

The 1998 routine examination resulted in a Letter of Caution ("LOC"). The Firm was found to be deficient with respect to certain continuing education and trade reporting violations.

A 1997 financial operations special examination resulted in a letter of Acceptance, Waiver and Consent ("AWC"). The Firm was censured and fined \$500 for failing to maintain its minimum required net capital.

5. Results of X's Statutory Disqualification Examinations

X's 2001 statutory disqualification examination was FWA.

The 2000 statutory disqualification examination resulted in an LOC. The Firm was cited for its failure to comply with the provisions of SEC Rule 19h-1 because Proposed Supervisor 1 was unable to provide a written record evidencing the review and approval of X's correspondence and the opening of all new accounts. Proposed Supervisor 1 has since resigned from the Firm. In November 2001, the Firm requested and was granted permission to change the primary supervisor from Proposed Supervisor 1 to Proposed Supervisor 2.

The Sponsoring Firm has represented that it does not employ any other statutorily disqualified individuals. In addition, we are not aware of any other complaints, disciplinary proceedings, or arbitrations against the Firm. The Firm is not a member of any other self regulatory organization.

C. X's Proposed Business Activities and Supervision

The Firm proposes that X be employed in the Firm's retail sales department as a general securities principal. X will be responsible for sales supervision and training of retail brokers. The Sponsoring Firm will compensate X with commissions and a percentage override on commissions.

The Firm proposes that Proposed Supervisor 2 will continue to be X's primary, responsible supervisor. Proposed Supervisor 2 is an Executive Vice President in the Firm's home office. He is registered as a general securities representative (Series 7), uniform securities agent

(Series 63), and a general securities principal (Series 24). He has been registered as a principal since February 1996. Proposed Supervisor 2 has no disciplinary history and was first employed in the securities industry with the Sponsoring Firm in 1995.

In the event that Proposed Supervisor 2 is absent from the office, the Firm will designate Proposed Supervisor 3 as X's secondary supervisor.⁵ Proposed Supervisor 3 is the Chief Financial Officer of the Sponsoring Firm and he has no regulatory disciplinary history. He has been registered as a general securities principal since June 1999.

We know of no other disciplinary or regulatory proceedings, complaints, or arbitrations against Proposed Supervisor 2 or Proposed Supervisor 3.

The Sponsoring Firm consents to the imposition of the below terms and conditions:

1. X will conduct securities business on behalf of the Sponsoring Firm only from the office where Proposed Supervisor 2 is physically located;
2. X will act as a principal, specifically involved with sales training and supervision of registered representatives;
3. The supervisory procedures of the Sponsoring Firm shall be amended clearly to establish Proposed Supervisor 2's responsibility to supervise X. In Proposed Supervisor 2's absence, X will be supervised by Proposed Supervisor 3;
4. X will not maintain discretionary accounts at any time;
5. The review of New Account Forms will include a review for suitability;
6. Proposed Supervisor 2 will review and approve all of X's order tickets on a daily basis. Proposed Supervisor 2 will review X's incoming and outgoing correspondence at the time that they are either received or sent;
7. Proposed Supervisor 2 will keep a written record evidencing review and approval of all of X's transactions, the opening of new accounts, and all correspondence;
8. X will be prohibited from accepting funds from customers in his name. Rather, all funds must be payable to either the Firm or the particular fund. The Firm will develop a procedure to compare X's customer requests for disbursement to monthly statements;

⁵ Although Proposed Supervisor 3 has been designated as a secondary supervisor, Proposed Supervisor 2 nevertheless has fully acknowledged his understanding that he will be ultimately responsible as the primary supervisor for X.

9. All complaints pertaining to X, whether verbal or written, will be immediately referred to Proposed Supervisor 2 for review, and then to the Firm's Director of Compliance. Proposed Supervisor 2 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. Documents pertaining to these complaints should be kept segregated for ease of review;
10. X will be required to attend an annual compliance meeting, and evidence of his attendance will be kept segregated in a file for easy review; and
11. For the duration of X's statutory disqualification, the Sponsoring Firm must obtain prior approval from Member Regulation if it wishes to change X's responsible supervisor from Proposed Supervisor 2 to another person.

D. Discussion

After careful review of the entire record in this matter, we conclude that the Firm's application to employ X as a general securities principal should be approved.

In reviewing this Application, we note that X's disqualifying event occurred almost nine years ago and there has been no evidence of misconduct since that time. We also note that Proposed Supervisor 2 has no regulatory disciplinary history, and the Firm's disciplinary history does not reveal a pattern of formal disciplinary proceedings. We have considered the fact that the Firm was cited in its 2000 statutory disqualification examination for failing to implement all of the supervisory requirements in the Rule 19h-1 Notice applying to X. The specific concern raised at that time was that the Firm did not provide a written record evidencing the review and approval of X's opening of all new accounts and correspondence by Proposed Supervisor 1, the previous designated supervisor. Proposed Supervisor 1 is no longer employed with the Firm and Proposed Supervisor 2 has been supervising X successfully since November 2001. The 2001 statutory disqualification examination was filed without action, which demonstrates that the Firm has been successful in overcoming the deficiency from the 2000 examination.

NASD certifies that X meets all applicable requirements for the proposed employment, and X and Proposed Supervisor 2 have represented that they are not related by blood or marriage.

Accordingly, we approve X as a registered securities principal with the Sponsoring Firm. In conformity with the provisions of SEC Rule 19h-1, the association of X 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,

Barbara Z. Sweeney
Senior Vice President and Corporate Secretary