

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of  
the Association of

X

as an

Investment Company and Variable  
Contracts Products Representative,  
General Securities Representative, and General  
Securities Principal

with

The Sponsoring Firm

**Redacted Decision**

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

Decision No. SD00012

On February 9, 2000, a member firm ("the Sponsoring Firm" or "the Firm") completed an MC-400 application ("Application") seeking to permit X<sup>1</sup>, a person subject to statutory disqualification, to continue to associate with the Firm as an investment company and variable contracts products representative, general securities representative and general securities principal. A hearing was not held in this matter. Rather, pursuant to NASD Procedural Rule 9523, NASD Regulation Inc.'s ("NASD Regulation") Department of Member Regulation ("Member Regulation") recommended to the Chair 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. In a letter dated October 24, 2000, the Sponsoring Firm consented to the imposition of the below terms and conditions. Pursuant to Rule 9523(c), the Chair of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council, has determined to accept the recommendation of Member Regulation and is filing this notice with the Securities and Exchange Commission.

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<sup>1</sup> 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.

X's Statutorily Disqualifying Event and Background. X is subject to disqualification under Article III, Section 4(g) of the NASD By-Laws as a result of his 1991 guilty plea to a misdemeanor charge of larceny, in a Superior Court of State 1. The charges stemmed from a 1991 incident, wherein X attempted to cash a check that did not belong to him.<sup>2</sup> For this misconduct, X was fined \$1,260. In 1991, pursuant to a State 1 expungement statute, a judge vacated the judgment of guilt and dismissed the charges against X.

X disclosed the incident on his original Uniform Application for Securities Industry Registration or Transfer ("Form U-4") submitted by the Sponsoring Firm, which was dated October 1997. NASD Regulation permitted X to become registered at the time without first having to obtain approval through an eligibility proceeding. At that time, NASD Regulation did not consider one to be "convicted" for the purposes of the NASD By-Laws, if that person had his/her state law conviction "expunged" under the State 1 Revised Statutes (or under a similar state law expungement statute that does not completely set aside all consequences of the conviction). NASD Regulation has since changed its policy and is now of the view that when an expungement statute does not completely set aside all consequences of the conviction, the person remains subject to statutory disqualification.

The existence of X's incident came to CRD/Public Disclosure's attention again in December 1999, when X sought to remove the incident from his CRD record. The matter was subsequently referred to NASD Regulation's Office of General Counsel, which determined that X was subject to statutory disqualification. After consulting with the staff of the Securities and Exchange Commission's ("SEC") Division of Market Regulation in February 2000, X has been permitted to continue to associate with the Sponsoring Firm in the capacities previously approved, pending the final result of the instant Application.

X has been registered with the Sponsoring Firm as an investment company and variable contracts products representative and general securities representative since December 1997, and as a general securities principal since February 1998. The record shows no other regulatory or disciplinary actions taken against X. Prior to joining the Sponsoring Firm, X represents that he was a Chief Investigator for the State 1 Corporation Securities Commission from June 1993 to October 1997.

The Sponsoring Firm. The Sponsoring Firm became a member of the Association in 1989. The Sponsoring Firm has 457 offices of supervisory jurisdiction and 434 branch offices. The Sponsoring Firm employs 717 registered principals and 2,193 registered representatives. It engages in a general securities business and clears its trades through Firm A, a division of Firm B.

NASD Regulation issued the Sponsoring Firm a Letter of Caution ("LOC") in July 1998. The LOC found that the Sponsoring Firm failed to comply with Conduct Rule 3010 in that the Firm's written supervisory procedures ("WSPs") did not indicate the date that supervisory responsibilities were assumed by specific individuals. The LOC also found that the Sponsoring Firm's WSPs did not include

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<sup>2</sup> X represents that he was with a friend and that it was his friend who cashed the check. X states, however, that because he was present, he was also charged with and convicted of the crime.

an assignment of home office registered personnel to a specific supervisor. In addition, the LOC found that the Sponsoring Firm failed to comply with reporting requirements imposed by Conduct Rule 3070, and it failed to comply with SEC Rule 15c2-12(c) (Notification of Material Events for Municipal Securities). In a letter dated August 11, 1998, the Sponsoring Firm responded to the LOC by stating that it would take immediate corrective action by updating its WSPs in accordance with the findings of NASD Regulation.

In August 1997, the Sponsoring Firm submitted a claim under its fidelity bond and paid \$97,175.00 to cover customer losses incurred as a result of a former Firm representative allegedly misappropriating \$197,175.17 from five customers. The alleged misappropriation of the customer funds was discovered upon receipt of customer complaints. A subsequent Firm internal review led to the customer claims being settled. The registered representative was terminated for cause and the NASD's "termination for cause" investigation was Filed Without Action.

The Sponsoring Firm entered into a Stipulation and Consent Agreement in 1997 with the State 2 Bureau of Securities for failing to keep adequate books and records in one of the Sponsoring Firm's branch offices. The Sponsoring Firm agreed to pay a fine in the amount of \$2,500. The Sponsoring Firm entered into another Stipulation and Consent Agreement with the Bureau of Securities in May 1996. The Sponsoring Firm agreed to pay a fine of \$2,500 for violating State 2's recordkeeping requirements in 1993.

In 1995, the Sponsoring Firm submitted a claim under its fidelity bond and paid \$566,792.31 to cover customer losses incurred as a result of a former Firm representative allegedly misappropriating \$591,792.31 from 36 customers. The alleged misappropriation of the customer funds was discovered upon receipt of customer complaints. A subsequent Firm internal review led to the customer claims being settled. The registered representative was terminated for cause and the NASD's "termination for cause" investigation was Filed Without Action.

The Sponsoring Firm. The Sponsoring Firm employs two other persons subject to statutory disqualification. Employee 1 is subject to a statutory disqualification for a 1992 felony conviction for aggravated driving while under the influence of intoxicating liquor or drugs. His association as a general securities representative with Firm C was the subject of a Notice pursuant to SEC Rule 19h-1 filed by the NASD in March 1993, and approved by the SEC in April 1993. Employee 1 was permitted to become associated with the Sponsoring Firm as a general securities representative in November 1999, pursuant to an SEC Rule 19h-1(a)(3)(ii) "short form notification" letter. He has been employed at the Sponsoring Firm's main office under the supervision of a general securities principal, who has not been the subject of any formal disciplinary proceedings.

Employee 2 is subject to a statutory disqualification for a 1969 Order from the SEC that barred him in all capacities. That Order stemmed from Employee 2's activities between 1963 and 1964, during which period he made misleading representations and failed to disclose material facts to customers. He was subsequently indicted on charges of violations of the antifraud provisions, but was acquitted following a jury trial in 1970. In 1982, Employee 2 was approved as a general securities representative

with Firm D. In 1988, he was approved by a "short form notification" letter to the SEC to be registered with the Sponsoring Firm at its branch office, where he continues to be employed today.

We do not consider the existence of these two additional statutorily disqualified individuals at the Sponsoring Firm to be a problem. The Sponsoring Firm is a large firm, and we note that Employee 2 is employed in the Firm's branch office, not the home office where X is employed. Further, although Employee 1 is also employed in the Sponsoring Firm's home office, he is supervised by someone other than the Director of Compliance, who will be supervising X ("the Proposed Supervisor").

X's Business Activities and Supervision. The Sponsoring Firm proposes that X continue to act as an Assistant Director of Compliance out of the Firm's home office. X will continue to develop and implement compliance and supervisory procedures as well as enhance existing policies. He will conduct surveillance and branch office examinations. X will also be involved with the management-resolution of compliance-related matters that cannot be resolved at lower levels.

The Sponsoring Firm proposes that the Proposed Supervisor will be X's primary, responsible supervisor. The Proposed Supervisor, who is the Sponsoring Firm's Sr. Vice President, General Counsel, and Director of Compliance, is located at the Firm's home office. She has been registered as a general securities representative and a general securities principal since February 2000. The Director of Compliance has no disciplinary history and her employment history is as follows:

|                 |        |                                                                   |
|-----------------|--------|-------------------------------------------------------------------|
| 10/95 - present | Firm E | Sr. Vice President/<br>General Counsel/<br>Director of Compliance |
| 4/86 - 9/95     | Firm F | Attorney                                                          |

Discussion. After careful review of the entire record in this matter, we conclude that the Sponsoring Firm's Application to employ X as an investment company and variable contracts products representative, general securities representative and general securities principal should be approved.

In reaching this conclusion, we recognize that the incident that resulted in X's statutory disqualification involved financial misconduct. However, there are a number of circumstances that weigh in favor of granting X permission to remain in the securities industry. The incident that triggered X's misdemeanor conviction occurred nine years ago, when he was 21 years old. He has no other criminal history, nor does he have any regulatory or disciplinary history. Moreover, a State 1 court expunged X's conviction.

We also note that the Sponsoring Firm does not have an extensive disciplinary history for a firm of its size that has been an NASD member for 11 years, and its history does not suggest an inability to supervise X effectively. The Proposed Supervisor is both the Director of Compliance and General Counsel, and she has no disciplinary history. We believe that the proposed supervisory procedures that the Sponsoring Firm has agreed to implement are well-structured. With these provisions in place, which

are set forth below, we conclude that the public interest will not be harmed by X's association with the Sponsoring Firm:

1. The supervisory procedures of the main office of the Sponsoring Firm will be amended to establish clearly that the Proposed Supervisor is X's responsible supervisor;
2. X will be situated in an office directly adjacent to the Proposed Supervisor;
3. The Proposed Supervisor will exercise daily supervision over X's work product;
4. X will not process any client transactions and will not handle any client funds;
5. The Proposed Supervisor must certify monthly in a memorandum to a file that the Sponsoring Firm is in compliance with all of the above conditions of heightened supervision of X; and
6. 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 the Proposed Supervisor to another person.

NASD Regulation certifies that: 1) X meets all applicable requirements for the proposed employment; 2) The Sponsoring Firm is not a member of any other self-regulatory organization; and 3) X and the Proposed Supervisor have represented that they are not related by blood or marriage.

Accordingly, we approve X as an investment company and variable contracts products representative, general securities representative and general securities principal with the Sponsoring Firm. In conformity with the provisions of SEC Rule 19h-1, the continued registration of X as an investment company and variable contracts products representative, general securities representative and general securities principal 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 Statutory Disqualification Committee,

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Alden S. Adkins  
Senior Vice President and General Counsel