

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of
the Association

of

X

as a

General Securities Representative

with

The Sponsoring Firm

Redacted Decision

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

SD99015

On March 19, 1999, a member firm ("the Sponsoring Firm" or "the Firm") submitted an amended MC-400 application ("Application") to permit X¹, a person subject to a statutory disqualification, to associate with the Firm as a general securities representative, general securities principal, and registered options principal. In April 1999, a subcommittee of the Statutory Disqualification Committee of NASD Regulation, Inc. ("NASD Regulation") held a hearing on the matter.² X appeared and was accompanied by his proposed supervisor ("the Proposed Supervisor"). BA appeared on behalf of the Department of Member Regulation ("Member Regulation").

X. X is subject to a statutory disqualification as a result of his 1996, guilty plea and conviction for operating a motor vehicle while under the influence of alcohol, a felony.³ He was 31 years old at the

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 originally requested association with the Sponsoring Firm as a general securities representative, general securities principal, and registered options principal. During the April 20, 1999, subcommittee hearing, X elected to limit his request to association as a general securities representative.

³ X was arrested and convicted on misdemeanor charges on three earlier occasions. In 1985, X was arrested, for driving while intoxicated. In, 1985, he pleaded guilty to and was convicted of operating a motor vehicle while impaired. He was fined \$250 and his license was revoked. X was also

time of his conviction. He was sentenced to five years' probation, and as conditions of his probation, he was required to: undergo therapy as directed, attend a recidivist alcohol program and participate in an ignition interlock program, and be subjected to 60 days of electronic monitoring. X was also fined \$1,000, and assessed a \$150 mandatory surcharge. Following his probation officer's August 25, 1998, report characterizing his conduct on probation as "exemplary" and finding him "cooperative in all areas," and "(apparently) committed to his recovery and sobriety," X was discharged from probation early, in 1999.

X entered the securities industry in 1991 at Firm A as a general securities representative. He then worked at Firm B; Firm C; Firm D; and Firm E. He became a general securities principal in 1992, and a general securities sales supervisor and registered options principal in 1993. He has no disciplinary history.

The Sponsoring Firm. The Sponsoring Firm proposes to employ X as a general securities representative at an Office of Supervisory Jurisdiction. The Sponsoring Firm, a broker/dealer organized as a limited liability corporation, has been a member of the NASD since 1994. The Firm employs 48 registered representatives, 20 general securities principals, four registered options principals, and one municipal securities principal. The Sponsoring Firm is engaged in proprietary trading and provides day trading services to the retail public.

A 1995 routine examination of the Sponsoring Firm by the one of the Association's District Offices resulted in a Letter of Caution. The Firm was cited for inaccurate net capital computation, resulting in inaccurate monthly and quarterly Focus reports. A routine examination of the Sponsoring Firm begun in 1998 resulted in a Letter of Caution for continuing education deficiencies. The Sponsoring Firm submitted a reply to the Letter of Caution in 1999, outlining its explanation and its remedial actions. The panel reviewed the Sponsoring Firm's reply to this Letter of Caution and concluded that the informal action did not establish any deficiency in the Firm's ability to supervise X, particularly in light of the Sponsoring Firm's remedial action. No formal disciplinary action was taken against the Sponsoring Firm as a result of the foregoing examinations.

The Sponsoring Firm is not a member of any other self-regulatory organization, and does not employ any other statutorily disqualified individuals.

charged with operating a motor vehicle without a license and having no inspection certification. He was convicted on these charges and fined a total of \$60. In 1987, X was again arrested in , for driving while intoxicated. He pleaded guilty to the charge and was convicted of a misdemeanor in 1988. He was fined \$500, his license was suspended, and he was placed on three years' probation. X was arrested a third time for driving while intoxicated, in 1989. Later that year, he pleaded guilty and was convicted of driving while intoxicated and for being an "aggravated" unlicensed operator. He was fined \$1,000, had his license suspended, and was placed on probation for three years. Since his felony conviction, he has had no arrests.

Discussion

The sole disqualifying event before us is X's 1996 felony DWI conviction. We note that X was granted an early termination of his probation, and has not been involved in subsequent misconduct. X testified that he has not been intoxicated since May 13, 1996, and attends Alcoholics Anonymous meetings regularly. We further note that subject to the supervisory conditions stated below, Member Regulation does not oppose X's association with the Sponsoring Firm.

The Sponsoring Firm proposes that a general securities principal who has been with the Sponsoring Firm since January 1996, be responsible for X's immediate supervision. The Proposed Supervisor has been in the securities industry since 1993, has two years of supervisory experience, and has no disciplinary history.

After a thorough review of the record, we approve X's association with the Sponsoring Firm as a registered representative. In making this recommendation, we have carefully weighed the public interest in light of X's past history, his apparent rehabilitation, the history of the Sponsoring Firm, and the supervision to be accorded X.

We conclude that the Sponsoring Firm and the Proposed Supervisor are qualified to supervise X and that they have proposed an effective plan of supervision. The Sponsoring Firm will implement the following supervisory procedures:

- (1) The Sponsoring Firm's supervisory procedures will be amended to establish clearly that the Proposed Supervisor is responsible for supervising X;
- (2) X will conduct securities business on behalf of the Firm only from the office where the proposed supervisor or his designee is physically located, in close proximity to the proposed supervisor or his designee;
- (3) The Proposed Supervisor will review and approve all of X's new account forms for suitability;
- (4) The Proposed Supervisor will review and approve all of X's order tickets on a daily basis;
- (5) The Proposed Supervisor will review all of X's incoming and outgoing correspondence;
- (6) The Proposed Supervisor will keep a written record evidencing review and approval of all of X's transactions, the opening of new accounts, and all correspondence;
- (7) The Proposed Supervisor will meet with X on a quarterly basis to review all transactions with clients. The review of his transactions with clients will entail a review of the distribution of customer funds. A log shall be kept by the firm of these meetings;

(8) All customer complaints pertaining to X, whether verbal or written, will be immediately referred to the supervisor for review. The Proposed Supervisor 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 will be kept segregated for ease of review; and,

(9) The Sponsoring Firm will provide advance notification to the NASD Member Regulation Department of any proposed change in X's supervisor and must obtain NASD approval before effecting a change in X's designated supervisor.

The NASD 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 represented that they are not related by blood or marriage.

Accordingly, in conformity with the provisions of SEC Rule 19h-1, the registration of X as a general securities representative associated with the Sponsoring 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,

Alden S. Adkins
Senior Vice President and General Counsel