

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
Rule 19h-1
Securities Exchange Act
of 1934

Decision No. SD01020

On July 16, 2001, the Sponsoring Firm¹ (or "the Firm"), completed an MC-400 application ("Application") seeking to permit X, a person subject to a statutory disqualification, to associate with the Firm as a general securities representative. A hearing was not held in this matter. Rather, pursuant to NASD Procedural Rule 9523, the Department of Member Regulation ("Member Regulation") of NASD Regulation, Inc. ("NASD Regulation") recommended to the Statutory Disqualification Committee that X's proposed association with the Sponsoring Firm be approved pursuant to the terms and conditions set forth below. The Firm consented to the imposition of the below terms and conditions in its MC-400 Application.

X's Statutorily Disqualifying Event. In 1998, X was arrested for the felony offense of operating a motor vehicle while under the influence of alcohol in State 1. X pleaded guilty in 1999 and he was sentenced to five years' probation, assessed a fine of \$1,000 and his driver's license was revoked for one year. He was also required to perform 280 hours of community service in lieu of a 60-day jail sentence. X's probation period is due to end in 2004.

X's Background. X took and passed the Series 7 (general securities representatives qualifications exam) in January 1983. He has reported that he was registered at various firms between 1983 and the present.²

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² Member Regulation notified the Sponsoring Firm in July 2001 that X's registration was withdrawn and that he could not work at the Firm until the completion of the MC-400 Application process. The record shows that X promptly informed his previous two employers of his felony charge, but mistakenly did not amend his Form U-4 to show a felony conviction.

We are not aware of any other regulatory or disciplinary actions taken against X.

The Sponsoring Firm. The Sponsoring Firm became a member of the Association in January 1985. The Sponsoring Firm has two offices of supervisory jurisdiction and one branch office. The Sponsoring Firm employs three registered principals and 13 registered representatives. The Sponsoring Firm is engaged in the business of proprietary trading and has no public or retail clients.

The Firm's 2001 routine examination has been scheduled, but has not yet commenced.

The Sponsoring Firm's 2000 routine examination and 1999 off cycle municipal examination were filed without action. The Sponsoring Firm has been issued two Letters of Caution ("LOC"), one from its 1990 routine examination and the other from its 1992 routine examination. The Sponsoring Firm was not cited for failure to supervise individuals in either of those examinations. The Sponsoring Firm does not employ any other statutorily disqualified individuals and is not a member of any other self-regulatory organization. In addition, we are not aware of any other complaints, disciplinary proceedings, or arbitrations against the Firm.

X's Business Activities and Supervision. X will work out of the Sponsoring Firm's branch office located in State 1. He will be trading U.S. Treasury Bonds and Futures. X's compensation will be incentive based.

The Proposed Supervisor will be X's primary, responsible supervisor. The Proposed Supervisor has been a general securities representative since 1995 and a general securities principal since February 2000. The Proposed Supervisor has no disciplinary history. He has worked at the Sponsoring Firm since November 1998 and is currently vice president and manager of the Firm's branch office, located in State 1.

Member Regulation and the Sponsoring Firm have agreed that the following terms and conditions will govern X's association with the Firm as a general securities representative:

1. X will be located in the same office as the Proposed Supervisor. X and the Proposed Supervisor will be seated in close physical proximity of each other in the office.
2. X will act primarily as a trader for proprietary accounts and will not act as a supervisor.

(continued)

Therefore, CRD did not become aware of the conviction until he joined the Sponsoring Firm and filed an amended Form U-4 in June 2001 that revealed the felony conviction. This process began at that time.

3. X will not have direct dealings with the general public and will not maintain discretionary accounts for any customer.
4. All complaints pertaining to X, whether written or verbal, will be immediately reviewed by the Proposed Supervisor. The Proposed Supervisor will immediately forward all complaints to the Sponsoring Firm's compliance department. Documents pertaining to these complaints should be kept segregated for ease of review.
5. X's incoming and outgoing written correspondence will be reviewed by the Proposed Supervisor at the time they are received or sent. No outgoing correspondence will be sent without the Proposed Supervisor's review and approval.
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.
7. The Proposed Supervisor will review records of X's transactions on a quarterly basis.
8. The supervisory procedures of the Sponsoring Firm will be amended to specify the responsible supervisor for X, and will include the special supervisory program set forth above.

Discussion. After careful review of the entire record in this matter, we have determined to approve the Sponsoring Firm's Application to employ X as a general securities representative subject to the terms and conditions set forth above.

In reviewing this type of Application, NASD Regulation must consider whether the particular felony at issue, examined in light of the circumstances related to the felony, creates an unreasonable risk of harm to the market or investors. With the supervisory procedures outlined above in place, we find that the approval of X's association with the Sponsoring Firm is consistent with the public interest and that he does not present an unreasonable risk of harm to the market or investors.

While the misconduct that resulted in X's disqualification is serious, the activity is not securities, financial or dishonesty related. We have also considered the fact that X is still on probation with the criminal authorities, but we find that this factor is balanced by the fact that the disqualifying misconduct is not securities, financial or dishonesty related, and because X has been complying with the terms of his probation to date. The record includes a favorable report from X's probation officer, which states that X is subject to daily alcohol testing via the ignition interlock device system. This is a system which is attached to the ignition in X's vehicle. In order to start the ignition X has to exhale into the device and if it registers that he has consumed alcohol the vehicle will not start. The reports of the readings are then sent to the probation officer and he has represented that to date, those reports have all been favorable. We also note

that X has no other regulatory or disciplinary history during the 20 years that he has spent working in the securities industry. Further, X will not be engaged in any retail business.

Lastly, the Proposed Supervisor and the Sponsoring Firm have no regulatory disciplinary history. We therefore conclude that it is in the public interest to permit X to enter the securities business and that his employment in the industry will not create an unreasonable risk of harm to the market or investors.

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; 3) X and the Proposed Supervisor have represented that they are not related by blood or marriage; and 4) the Sponsoring Firm does not employ any other statutorily disqualified individuals.

Accordingly, in conformity with the provisions of SEC Rule 19h-1, the registration of X with the Sponsoring Firm will be effective, unless otherwise notified by the Commission, within 30 days of the Commission's receipt of this decision.

On Behalf of the National Adjudicatory Council,

Jeffrey S. Holik
Vice President and Acting General Counsel