

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD

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| In the Matter of the Association of X as a General Securities Representative with The Sponsoring Firm |
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REDACTED DECISION

Notice Pursuant to

Rule 19h-1

Securities Exchange Act
of 1934

Decision No. SD03002

On May 5, 2002, 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, 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.

X's Statutorily Disqualifying Event and Background

X is statutorily disqualified under Article III, Section 4(g)(2) of the NASD By-Laws because a State 1 court convicted her in 2000² of Aggravated Driving Under the Influence of Alcohol ("DUI"). This offense is a felony in State 1.³ A Circuit Court sentenced X to two years' probation, ordered her to perform 240 hours of public service, fined her \$1,000, and revoked her driver's license. The court discharged her from probation in 2002. X completed early

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 The actual DUI incident occurred in 1999.

³ X was initially charged with a misdemeanor. Due to the injuries sustained by the passengers in the car that she struck, X's charge was subsequently changed to a felony.

intervention counseling as part of her rehabilitative efforts, but the counselors did not recommend continued treatment and X was deemed to be "fully capable of preventing any further alcohol related difficulties." X's driving privileges have been reinstated, but only on a restricted basis. She currently holds an occupational driver's license that allows her to drive only to and from work during designated times.

X was first registered in the securities industry in 1988 with a member firm as an investment company products/variable contracts representative (Series 6). She also qualified as a uniform securities agent (Series 63) in 1988, and as a uniform investment adviser (Series 65) and general securities representative (Series 7) in 1997. From 1997 until 2000, X was also associated with a second member firm, which was affiliated with her first employer.⁴ She has been employed by Company 1, a "sister" company to the Sponsoring Firm, as the Senior Vice President of Marketing since June 2001.

A customer complaint was filed against X in 1999, while she was employed with the second member firm. The complaint alleged that the customers, husband and wife, had not been informed that they were purchasing insurance policies with monthly charges. X was the agent who sold the policy to the customers. The complaint was settled for \$12,546.22, with the firm rescinding the policy and returning the total premiums paid by the customers.

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

The Firm

The Sponsoring Firm became a member of NASD in 1996. It is engaged in a retail broker/dealer business, with 11 offices of supervisory jurisdiction ("OSJs") and 60 branch offices. The Firm employs a total of 1,932 registered representatives and 209 registered principals. The home office in State 2 employs 38 employees, 15 of whom are registered principals and 10 of whom are registered representatives.

NASD issued Letters of Caution ("LOC") to the Firm for its last three routine examinations in 1997, 2000, and 2002. The 1997 LOC noted problems with the Firm's written supervisory procedures and one recordkeeping violation. The Firm responded in a letter dated April 1997, stating that it had noted the deficiencies and had taken action to ensure future compliance.

The 2000 LOC indicated that the Firm failed to provide required information to customers who purchased mutual funds and variable contracts. The Firm responded in a letter dated November 20, 2000, explaining that it had corrected its procedures.

⁴ Both firms terminated X after the felony conviction.

The 2002 LOC noted that the Firm had improperly calculated its net capital on one date. In a letter dated 2002, the Firm stated that its accounts had been adjusted to provide proper calculation in the future.

A 1999 off cycle municipal examination was filed without action ("FWA").

We are not aware of any other complaints, disciplinary proceedings, or arbitrations against the Firm.

X's Proposed Business Activities and Supervision

X is currently employed with the Firm's parent and life insurance entity, Company 1, as a Senior Vice President of Marketing. In this position, she manages and supervises the Company 1 field executive team, which works with Company 1's brokerage agencies and agents. Company 1 characterizes X's position with the life company as a "high profile, senior level position." Due to the nature of X's position, the Sponsoring Firm proposes that X be registered as a general securities representative so that she may engage in training her marketing staff and be permitted to interact freely with other registered representatives to discuss products. The Firm is not proposing that X be engaged in the retail sales of securities or be involved with supervising registered representatives. X will continue to be compensated by Company 1 in the form of salary and bonus.

The Firm proposes that the Proposed Supervisor will be X's primary, responsible supervisor. The Proposed Supervisor is the President and Chief Marketing Officer of the Sponsoring Firm. She was first employed in the securities industry with another firm in 1994. She registered as a general securities representative (Series 7) in 1995, a uniform securities agent (Series 63) in 1991, an investment company products/variable contracts representative (Series 6) in 1991, and a general securities principal (Series 24) in 1995. The Proposed Supervisor has been employed by the Sponsoring Firm since 2001, and she has no disciplinary history.

The Sponsoring Firm and Member Regulation have agreed to the imposition of the following terms and conditions.⁵

1. X will conduct business on behalf of the Sponsoring Firm only from the office where the Proposed Supervisor is physically located;
2. X will act in a marketing capacity and will have no dealings with the retail investing public;
3. X will not maintain discretionary accounts at any time;*

⁵ The Firm has confirmed that those items denoted with an asterisk are standard operating procedures of the Firm.

4. The Proposed Supervisor will review and initial X's incoming and outgoing correspondence, none of which will be with the retail investing public, at the time that they are either received or sent. No correspondence will be sent without the Proposed Supervisor's review and approval;
5. All complaints pertaining to X, whether verbal or written, will be immediately referred to the Proposed Supervisor for review, and then to the Firm's Director of Compliance. The Proposed Supervisor will prepare a memorandum to the file as to what measures she 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;
6. X will be required to attend an annual compliance meeting,* and evidence of her attendance will be kept segregated in a file for easy review;
7. The supervisory procedures of the Sponsoring Firm shall be amended clearly to establish the Proposed Supervisor's responsibility to supervise X;
8. 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; and
9. At no time, in her capacity as a marketing supervisor, will X supervise registered representatives.

Discussion

After carefully reviewing the entire record in this matter, we approve the Firm's Application to employ X as a general securities representative, subject to the terms and conditions of supervision set forth above.

In reviewing this type of application, we have considered whether the particular felony at issue, examined in light of the circumstances related to the felony, and other relevant facts and circumstances, creates an unreasonable risk of harm to the market or investors.⁶ For the reasons

⁶ See Frank Kufrovich, Exchange Act Rel. No. 45437, 2002 SEC LEXIS 357, at *16 (Feb. 13, 2002) (upholding NASD's denial of a statutory disqualification applicant who had committed non-securities related felonies "based upon the totality of the circumstances" and NASD's explanation of the bases for its conclusion that the applicant would present an unreasonable risk of harm to the market or investors).

set forth below, we conclude that X's participation in the securities industry will not present an unreasonable risk of harm to the market or investors.

We note that X committed her felony offense almost four years ago, and she was released from probation in 2002. The record shows that X has completed all of the requirements imposed on her by the court for her offense, including the required alcohol counseling. The record also shows that the addiction counselors determined that X did not have an alcohol abuse problem and therefore she was not required to seek further rehabilitation.

We also note that the felony conviction did not involve securities or financial products, nor did the court find that X acted dishonestly. Further, X has no formal disciplinary history and the Proposed Supervisor is a qualified general securities principal with no formal or informal regulatory history. Moreover, the Sponsoring Firm has been a member of NASD since 1996, and it does not have a significant disciplinary history that raises regulatory concern. We have examined the three LOCs that NASD issued to the Sponsoring Firm and we conclude that they do not rise to a level of seriousness that should influence our decision to approve the Application.

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 have represented that they are not related by blood or marriage.

Accordingly, we approve X as a registered securities representative 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