

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD

<p>In the Matter of the Association of</p> <p style="margin-left: 40px;">X</p> <p style="margin-left: 40px;">as a</p> <p>General Securities Representative</p> <p style="margin-left: 40px;">with</p> <p>The Sponsoring Firm</p>
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Redacted Decision

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

Decision No. SD04002

Dated: 2004

On October 23, 2002, the Sponsoring Firm ¹(" the Firm") submitted 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 Chair of the Statutory Disqualification Committee that X's proposed association with the Sponsoring Firm be approved pursuant to the supervisory terms and conditions set forth below.

A. The Statutorily Disqualifying Event

X is subject to a disqualification because he pleaded guilty in January 1998 to the felony charge of driving while intoxicated ("DUI"). This was a felony conviction because X had three previous DUI misdemeanor convictions within the last 10 years: January 1996, May 1997, and June 1997. The court sentenced X to five years' probation with a mandatory requirement of 18 months of alcohol related treatment.

In November 1998, X violated the terms of his probation by drinking alcohol. As a result, in January 1999, the court revoked his probation, sentenced him to 16 months to four years' incarceration, and ordered that he receive mandatory alcohol related treatment at Facility 1. X successfully completed the Treatment Program at Facility 1 in October 2000. X was later transferred to Facility 2. He was released from that facility in September 2001, and successfully completed his probation in January 2003.

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.

B. Background Information

1. X

In October 2001, Member Regulation approved X's association with the Sponsoring Firm in a clerical and ministerial capacity. This approval was made pursuant to Member Regulation's authority under Securities Exchange Act ("Exchange Act") Rule 19h-1(a)(2)(i), which does not require that a notice be filed with the Commission in the case of an associated person whose functions will be purely clerical and/or ministerial in nature.

X has worked at the Sponsoring Firm in a clerical and ministerial capacity since he was approved to associate with the Sponsoring Firm in October 2001. X's current duties include distributing monthly statements of proprietary trading activity to traders for their review; distributing daily activity reports; assisting with the alphabetical filing of trading tickets; double checking trading tickets (after prior review) to ensure their accuracy; relieving the receptionist; assisting others with their inventory or trading tickets; delivering facsimiles or memoranda to intended recipients; and assisting in basic administrative tasks such as filing. X passed the general securities representative (Series 7) examination in September 2002, and he has enrolled in the Firm's equity trader (Series 55) training program. He completed the first two phases of the three-part program that do not require registration.

X was the subject of a statutory disqualification examination by NASD staff in March 2003. The examination was completed in April 2003, and filed without action. We are not aware of any regulatory action against X.

2. The Firm

The Sponsoring Firm became an NASD member in June 1985. The Firm has three offices of supervisory jurisdiction and seven branch offices. There are a total of 292 registered representatives, 40 of whom are also registered principals. The Firm is a retail broker/dealer.

In 2000, NASD accepted a Letter of Acceptance, Waiver and Consent ("AWC") from the Sponsoring Firm. The AWC stated that the Sponsoring Firm reported Nasdaq trades late to ACT without designating the trades as late by using the appropriate modifier or stating the time of execution, and erroneously reported Nasdaq trades to ACT. In addition, the Firm had several books and records violations. The Firm was censured and fined \$7,500.

In 2001, NASD accepted an AWC from the Sponsoring Firm for violations of Exchange Act Rule 15c2-11(a). NASD ordered the Firm to revise its written supervisory procedures in order to prevent future violations of Exchange Act Rule 15c2-11 and NASD Rule 6740.

The record shows no other disciplinary history for the Firm. The 2003 routine examination began in February 2003, and has not yet been completed. The Sponsoring Firm has represented that it does not employ any other statutorily disqualified individuals

C. X's Proposed Business Activities and Supervision

The Firm has represented that X will be employed as a registered representative in the Firm's trainee program.

The Sponsoring Firm proposes that the Proposed Supervisor will be X's primary, responsible supervisor. The Proposed Supervisor, who is the General Counsel and Director of Compliance at the Sponsoring Firm, has been in the securities industry since 1987. He passed the general securities representative qualification examination (Series 7) in May 1986 and the general securities principal qualification examination (Series 24) in July 1986.

We are not aware of any formal or informal disciplinary action against the Proposed Supervisor.

The Sponsoring Firm consents to the imposition of the below terms of supervisory conditions for X:²

1. The Sponsoring Firm will amend its supervisory procedures to state that the Proposed Supervisor is the primary responsible supervisor for X;
2. The Proposed Supervisor will conduct weekly sign-offs on X's activities including the maintenance of a supervisory log;
3. As part of X's training, he will be assigned to a mentor. The mentor will be someone with no disciplinary related disclosures, or customer complaints;
4. X will not have any access to client's funds or securities;
5. X will have no customers, and no customer contact;
6. Once a month, the Proposed Supervisor will conduct meetings with members of the training department responsible for X's training, including X's mentor, in order to receive progress reports with respect to his performance, and will keep a log of the monthly meetings. This log will be kept in X's file, and be accessible by NASD examiners;

² These supervisory terms and conditions are special for X and not required of all the Sponsoring Firm's registered representatives.

7. The Proposed Supervisor will conduct a formal compliance meeting with X to cover various subjects including trading rules and current relevant compliance issues, once every two weeks. The Proposed Supervisor will keep a log of these meetings. This log will be kept in X's file, and will be accessible by NASD examiners;
8. X will work in the home office where the Proposed Supervisor is located;
9. X will have no supervisory duties;
10. All order tickets must be reviewed and initialed by the Proposed Supervisor, or a designated principal qualified to carry out this function, on a daily basis; and
11. For the duration of X's statutory disqualification, the Firm must obtain prior approval from Member Regulation if it wishes to change X's responsible supervisor from the Proposed Supervisor to another person.

D. Discussion

After carefully reviewing the entire record in this matter, we approve the Firm's Application to employ X as a registered representative.

In reviewing this type of application, NASD considers 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.³ For the reasons set forth below, we conclude that X's association with the Sponsoring Firm as a registered representative, with the proposed plan of supervision, does not present an unreasonable risk of harm to the market or investors.

We acknowledge that X's disqualifying event was serious; however, several factors overcome our concerns. X successfully completed the terms of his substance abuse treatment program, as well as the terms of his probation with the criminal authorities. Further, while X has been associated with the Sponsoring Firm in a clerical and ministerial capacity, both X and the Firm have remained compliant with the terms and conditions of his employment as authorized by NASD. NASD's State 1 District Office conducted a statutory disqualification examination of X in 2003, and the examination was filed without action.

³ See Frank Kufrovich, Exchange Act Rel. No. 45437 (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 basis for its conclusion that the applicant would not present an unreasonable risk of harm to the market or investors).

The record demonstrates that X understands the nature of his alcohol dependence problem and has taken appropriate steps to ensure that he will continue to deal successfully with his condition. Since X successfully completed his counseling at Facility 1 and began associating with the Sponsoring Firm, there have been no regulatory or any other disciplinary actions taken against X.

The Firm has minimal formal and informal regulatory disciplinary history and there is no formal or informal regulatory history for the Proposed Supervisor. In addition, the Proposed Supervisor has many years of experience in the securities industry and has demonstrated that he is a competent supervisor. In X's new position as a registered representative, the Firm has agreed to heightened supervisory terms and conditions to ensure that he will continue to present no risk to the market or investors.

NASD certifies that X meets all applicable requirements for the proposed employment, and X and the Proposed Supervisor have represented that they are not related by blood or marriage. The Sponsoring Firm is also a member of the International Securities Exchange, which has provided a letter of concurrence with this approval.

Accordingly, we approve X as a registered 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