BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Association of X[1] as a General Securities Representative with The Sponsoring Firm	Redacted Decision Notice Pursuant to Rule 19h-1 Securities Exchange Act of 1934 SD11007 Date: 2011

I. Introduction

On March 24, 2009, the Sponsoring Firm filed a Membership Continuance Application ("MC-400" or "the Application") with FINRA's Department of Registration and Disclosure, seeking to permit X, a person subject to a statutory disqualification, to associate with the Sponsoring Firm as a general securities representative. In December 2010, a subcommittee ("Hearing Panel") of FINRA's Statutory Disqualification Committee held a hearing on the matter. X appeared at the hearing, accompanied by his counsel, Attorney 1, X's Proposed Supervisor, and the Sponsoring Firm's chief financial officer, Employee 1. FINRA Employee 1, FINRA Attorney 1, and FINRA Attorney 2 appeared on behalf of FINRA's Department of Member Regulation ("Member Regulation").

For the reasons explained below, we approve the Sponsoring Firm's Application.[2]

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[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] Pursuant to FINRA Rule 9524(a)(10), the Hearing Panel submitted its written recommendation to the Statutory Disqualification Committee. The Statutory Disqualification Committee considered the Hearing Panel's recommendation and presented a written recommendation to the National Adjudicatory Council ("NAC").

II. The Statutorily Disqualifying Event

X is statutorily disqualified due to FINRA's acceptance, in 2006, of a Letter of Acceptance, Waiver and Consent ("AWC") finding that X willfully failed to disclose material information on his Uniform Application for Securities Industry Registration or Transfer ("Form U4"). Specifically, the AWC found that X failed to disclose two civil judgments against him on his Form U4 on five separate occasions between March 2002 and August 2004. The AWC also found that X failed to provide his member firm with written notice, or obtain prior authorization of, his participation in certain private securities transactions, in violation of NASD Rules 3040 and 2110. FINRA suspended X in all capacities for six months and fined him $10,000. X served the FINRA suspension from November 2006, until May 2007, and he paid the fine in full.

At the hearing, X explained that he did not disclose the civil judgments, which involved a dispute with his former firm regarding a forgivable loan, because his attorney informed him that the judgments were in dispute and did not need to be disclosed. Since May 2007, X has earned income through a retail apparel business he formed, a retail jewelry business owned by his wife, and as a marketing consultant for several months in 2009. X is currently unemployed.

III. Background Information

A. X

X first registered in the securities industry as a general securities representative (Series 7) in April 1999, and he requalified in March 2009. X also qualified as a general securities principal (Series 24) in June 2002, as a registered options principal (Series 4) in January 2003, and passed the uniform securities agent state law examination (Series 63) and the uniform investment adviser law examination (Series 65) in February 2009. X was previously associated with nine firms from November 1998 through February 2009.

A customer filed a complaint against X in April 2000, alleging that he failed to execute a transaction. X's member firm reviewed the complaint and found it to be without merit, and FINRA's Central Registration Depository shows that this matter was not pursued and was closed with no action taken. Other than this customer complaint and the AWC, the record shows no other disciplinary or regulatory proceedings, complaints, or arbitrations against X.

B. The Sponsoring Firm

The Sponsoring Firm is based in New York City, and it has been a FINRA member since April 1996. The Sponsoring Firm has three offices of supervisory jurisdiction ("OSJs") and three branch offices. The Application represents that the Sponsoring Firm has eight registered principals and 25 registered representatives, and that it is engaged in a general securities business.

1. Regulatory Actions

The Sponsoring Firm has some regulatory history. In January 2010, State 1 filed an action against the Sponsoring Firm for omitting material information, making unauthorized

trades, and failing to supervise a registered representative, in violation of State 1 law. The Sponsoring Firm paid a $1,467 civil penalty and $4,532 in restitution.

In October 2009, FINRA accepted an AWC from the Sponsoring Firm, which found that it failed to implement Anti-Money Laundering ("AML") policies and procedures in 2006 and 2007. FINRA censured the Sponsoring Firm, fined it $30,000, and ordered that all of the Sponsoring Firm's registered persons complete AML training.

In June 2007, FINRA accepted an AWC from the Sponsoring Firm, which found that the Sponsoring Firm failed to report to FINRA information related to customer complaints for the period beginning November 2002 through October 2005. FINRA censured the Sponsoring and fined it $12,500.

In January 2005, FINRA accepted an AWC from the Sponsoring Firm, which found that the Sponsoring Firm failed to show the correct time of executions and the terms and conditions of brokerage orders; failed to make publicly available for the third and fourth quarters of 2003 and the first quarter of 2004 reports on its routing of non-directed orders in covered securities; and failed to develop a supervisory system that provided supervision reasonably designed to achieve compliance with rules and regulations concerning limit order display and quote rules, short sales, and Securities Exchange Act of 1934 ("Exchange Act") Rule 11Ac1-6. FINRA censured the Sponsoring Firm, fined it $22,500, and required that it revise its written supervisory procedures ("WSPs").

In November 2003, FINRA accepted an AWC from the Sponsoring Firm, which found that it had reported incorrectly riskless principal transactions and had inadequate WSPs related to riskless principal transactions. FINRA censured the Sponsoring Firm, fined it $10,000, and required that the Sponsoring Firm revise its WSPs.

2. <u>Routine Examinations</u>

In February 2011, FINRA issued the Sponsoring Firm a Letter of Caution ("LOC"). FINRA cited the Sponsoring Firm for failing to evidence that its AML Compliance Program Independent Test covered the full applicable periods; failing to place a registered representative on heightened supervision pursuant to the Sponsoring Firm's WSPs; failing to provide all employees with copies of their Forms U5 within 30 days of termination; failing to obtain required customer information prior to approving accounts for options trading; failing to obtain employment information for several customer accounts; failing to provide FINRA with notification of the Sponsoring Firm's third-party electronic storage media provider; failing to timely file the Sponsoring Firm's FINRA Rule 3130 reports; performing inadequate branch office inspections; failing to comply with SEC Regulation S-P; and failing to maintain certain documents at a branch office. The Sponsoring Firm responded in writing that it corrected

deficiencies noted in the LOC, although the Sponsoring Firm asserted that it did comply with its WSPs regarding placing registered representatives on heightened supervision.[3]

In August 2009, FINRA issued the Sponsoring Firm an LOC. FINRA cited the Sponsoring Firm for failing to timely execute and executing transactions at a worse price than the Sponsoring Firm received in connection with proprietary transactions. The Sponsoring Firm responded in writing that it corrected deficiencies noted in the LOC.

In December 2008, FINRA issued the Sponsoring Firm an LOC for failing to comply with a number of rules and regulations, including failing to adequately supervise changes in investment objectives and failing to establish adequate supervisory control procedures. The Sponsoring Firm responded in writing that it corrected deficiencies noted in the LOC.

In October 2007, FINRA issued the Sponsoring Firm an LOC for several violations, including: (1) failing to indicate on four order tickets that the Sponsoring Firm exercised time and price discretion; (2) failing to enforce its WSPs relating to time and price discretion; (3) failing to provide staff with a new account form; and (4) exercising discretion in a customer's account without having written authorization to do so. The Sponsoring Firm responded in writing that it corrected deficiencies noted in the LOC.

In October 2006, FINRA issued the Sponsoring Firm an LOC for several violations, including: (1) failing to provide, in its business continuity plan, a description of its data back-up process and a designated alternate physical location and address; (2) failing to address in the Sponsoring Firm's WSPs procedures for review of personnel matters with regard to supervision of registered representatives, training procedures for the use of ownership information obtained in fiduciary or agency capacity, and procedures to monitor and supervise accounts maintained at other broker-dealers; (3) failing to require retention of AML books and records for five years; (4) failing in the Sponsoring Firm's WSPs to adequately address allocation procedures, customer grievances, and the reporting of options positions; and (5) failing to update its do-not-call list. The Sponsoring Firm responded in writing that it corrected deficiencies noted in the LOC.

In February 2006, FINRA issued the Sponsoring Firm an LOC for several violations, including: (1) failing to establish, maintain and enforce WSPs for financial analysis and trading risk controls; (2) failing to designate and identify an individual responsible for implementing and monitoring the AML Compliance Program and failing to have certain AML procedures; (3) failing to evidence that the Sponsoring Firm timely obtained a copy of an employee's Form U5 or Individual Withdrawal Notice (Form 8T) filed by his previous employer as part of the Sponsoring Firm's background check; (4) failing to accurately reconcile its proprietary trading account; (5) failing to file amendments to Forms U4 and U5 in connection with complaints and

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[3] On April 29, 2011, Member Regulation informed the Hearing Panel of the February 1, 2011 LOC, and asserted that this action further supports its recommendation that the Application be denied. Thereafter, the Hearing Panel permitted the parties to explain this LOC and how it impacts the Sponsoring Firm's ability to supervise X effectively. The Sponsoring Firm filed an additional pleading addressing these issues, which we have considered.

arbitrations; (6) failing to place individuals on its do-not-call list; and (7) failing to have certain account documentation and agreements. The Sponsoring Firm responded in writing that it corrected deficiencies noted in the LOC.

The record shows no other recent complaints, disciplinary proceedings, or arbitrations against the Sponsoring Firm.[4]

IV. X's Proposed Business Activities and Supervision

The Sponsoring Firm proposes to employ X in the Sponsoring Firm's home office in City 1 as a general securities representative. X's compensation will be entirely commissions based. X testified that his business will focus primarily on institutional businesses and high net worth individuals in the Indian-American community.

The Sponsoring Firm proposes that the Proposed Supervisor will be X's primary on-site supervisor. The Proposed Supervisor qualified as a general securities representative in 1997 and as a general securities principal in 1998. The Proposed Supervisor also registered as an options principal in 2003, and passed the uniform securities agent state law examination in 1998 and the uniform investment adviser law examination in 2007. The Proposed Supervisor has been employed with the Sponsoring Firm since October 2006. Prior to that time, he was associated with three other firms. The Proposed Supervisor currently supervises one other individual, and at the hearing the Proposed Supervisor and the Sponsoring Firm represented that the Proposed Supervisor will not be compensated by overrides from X's transactions.

In December 2009, the IRS filed a tax lien in the amount of $214,362 against the Proposed Supervisor. At the hearing, the Proposed Supervisor explained that the lien arises from unpaid taxes for several years related to a change in his filing status and separating from his wife. The Proposed Supervisor further testified that his accountant is currently attempting to reduce the amount owed and is in discussions with the IRS.

Other than the foregoing, we are not aware of any disciplinary or regulatory proceedings, complaints, or arbitrations against the Proposed Supervisor.

The Sponsoring Firm also proposes that when the Proposed Supervisor is not available, Employee 2, the Sponsoring Firm's chief compliance officer, will supervise X. Employee 2 qualified as a general securities representative in March 2000, as a general securities principal in

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[4] The Sponsoring Firm previously has sought approval for two statutorily disqualified individuals to associate with the Sponsoring Firm. FINRA approved the association of these individuals with the Sponsoring Firm. At the hearing, the Hearing Panel requested that the Sponsoring Firm provide the results from any statutory disqualification examinations conducted with respect to these individuals. The Sponsoring Firm subsequently informed FINRA that both individuals left the Sponsoring Firm before FINRA conducted any statutory disqualification examinations.

April 2000, and as a financial and operations principal in May 2000. Employee 2 also passed the uniform securities agent state law examination in April 2010. He has been employed by the Sponsoring Firm since December 2009, and was associated with five different firms before joining the Sponsoring Firm. We are not aware of any disciplinary or regulatory proceedings, complaints, or arbitrations against Employee 2.

V. Member Regulation's Recommendation

Member Regulation recommends that the Application be denied because, in its view, the Sponsoring Firm has an extensive regulatory history and the Proposed Supervisor has a regulatory history that demonstrates that he cannot adequately supervise X.[5] Member Regulation also asserts that the Sponsoring Firm has demonstrated a "lack of appreciation for the need to comply with securities laws, rules and regulations."

VI. Discussion

We have carefully considered the entire record in this matter, including documents submitted by the parties subsequent to the hearing at the Hearing Panel's request. Based on this record, and pursuant to the Commission's controlling decisions in this area, we approve the Sponsoring Firm's Application to employ X as a general securities representative, subject to the supervisory terms and conditions set forth below.

A. The Legal Standards

We acknowledge that X, as a registered representative, was responsible for knowing the rules of the securities industry and for timely updating his Form U4. *See*, *e.g.*, *Robert E. Kauffman*, 51 S.E.C. 838, 840 (1993) ("Every person submitting registration documents [to FINRA] has the obligation to ensure that the information printed therein is true and accurate."), *aff'd*, 40 F.3d 1240 (3d Cir. 1994) (table).

We also recognize, however, that FINRA's Department of Enforcement ("Enforcement") weighed the gravity of X's failures to disclose when it approved the AWC in November 2006. After considering X's entire history in the securities industry, Enforcement concluded that a six-month suspension and $10,000 fine were appropriate sanctions for X's misconduct. X served this suspension and has paid the fine in full. In such circumstances, the Commission has instructed FINRA to evaluate a statutory disqualification application pursuant to the standards

[5] Member Regulation also expressed concern that the Sponsoring Firm has had three chief compliance officers since March 2009. At the hearing, Employee 1 explained that the Sponsoring Firm's chief compliance officer of seven or eight years left to go to a larger firm, and his replacement left after several months to go into the construction business. His replacement and the Sponsoring Firm's current chief compliance officer, Employee 2, has been with the Sponsoring Firm since December 2009. We are satisfied with Employee 2's explanation, and under the circumstances do not consider this turnover relevant.

enunciated in the Commission's decisions in *Paul Van Dusen*, 47 S.E.C. 668 (1981), and *Arthur H. Ross*, 50 S.E.C. 1082 (1992). *See May Capital Group, LLC* (hereinafter "*Rokeach*"), Exchange Act Rel. No. 53796, 2006 SEC LEXIS 1068, at *21 (May 12, 2006) (holding that FINRA must apply *Van Dusen* standards to the membership continuance applications of statutorily disqualified individuals whose disqualifications resulted from FINRA enforcement action).

Van Dusen and *Rokeach* thus provide that in situations where an individual's misconduct has already been addressed by the Commission or FINRA, and certain sanctions have been imposed for such misconduct, FINRA should not consider the individual's underlying misconduct when it evaluates a statutory disqualification application. The Commission stated that when the period of time specified in the sanction has passed, in the absence of "new information reflecting adversely on [the applicant's] ability to function in his proposed employment in a manner consonant with the public interest," it is inconsistent with the remedial purposes of the Exchange Act and unfair to deny an application for re-entry. *Van Dusen*, 47 S.E.C. at 671.

The Commission also noted in *Van Dusen,* however, that an applicant's re-entry is not "to be granted automatically" after the expiration of a given time period. *Id.* Instead, the Commission instructed FINRA to consider other factors, such as: (1) other misconduct in which the applicant may have engaged; (2) the nature and disciplinary history of the prospective employer; and (3) the supervision to be accorded the applicant. *Id.*

B. Application of the *Van Dusen* Standards

After applying the *Van Dusen* standards to this matter, we have determined to approve the Sponsoring Firm's Application to employ X.

First, the record shows that X has no complaints, regulatory actions, or criminal history since FINRA issued the November 2006 AWC. Given the expiration of time for the suspension imposed upon X, and the teachings of *Van Dusen*, X has been permitted to seek re-entry to the securities industry since May 2007 (although he did not seek re-entry until March 2009 with the filing of the Application). Moreover, we find credible X's expression of remorse for his failure to disclose the civil judgments on his Forms U4. We disagree with Member Regulation's assertion that his failure to disclose reflects X's character and should preclude his reentry into the securities industry. *See id.*

Second, we look to the nature and disciplinary history of the Sponsoring Firm. The Sponsoring Firm does have some formal disciplinary history, but the record shows that the Sponsoring Firm has taken corrective actions to address its noted deficiencies. Member Regulation's assertion that the Sponsoring Firm does not appreciate the need to comply with securities rules and regulations and is unwilling to accept responsibility for its disciplinary history, which appears to be based primarily upon the testimony of Employee 1 at the hearing, is not supported by the record. Moreover, and as set forth below, X will be subject to a

comprehensive supervisory plan.[6]

Third, based on the facts presented to us in the record, we find that the proposed primary on-site supervisor, the Proposed Supervisor, is qualified. He has been in the securities industry since 1997 without any disciplinary history, and he qualified as a general securities principal in 1998. He will be located in the same office as X, and X will sit immediately outside of the Proposing Supervisor's office (which will permit him to closely monitor all of X's activities). Further, the Proposed Supervisor supervises only one other individual, and we find credible the Proposed Supervisor's testimony that he will be able to supervise X pursuant to heightened supervisory conditions and that he fully understands the responsibility that he is undertaking in doing so. We find that under the circumstances, the Proposed Supervisor's tax lien will not adversely affect his ability to effectively supervise X. The Proposed Supervisor credibly explained the circumstances leading to the tax lien, and testified that he will pay all amounts due and owing once his accountant resolves the matter with the IRS.

We are satisfied that the following heightened supervisory procedures will enable the Sponsoring Firm to reasonably monitor X's activities on a regular basis:[7]

1. The Sponsoring Firm will amend its WSPs to state that the Proposed Supervisor is the primary supervisor responsible for X.*

2. If the Proposed Supervisor is on vacation or out of the office for an extended period, Employee 2 will act as X's interim supervisor.*

3. X will work the same hours as the Proposed Supervisor. The Proposed Supervisor or the alternate supervisor will be in the office at all times that X is in the office.*

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[6] Subsequent to the hearing, the Hearing Panel requested that the parties submit, among other things, a revised heightened plan of supervision to address certain deficiencies in the existing plan (which had not been the subject of negotiation between the Sponsoring Firm and Member Regulation). Although the Sponsoring Firm submitted a revised plan, Member Regulation and the Sponsoring Firm were unable to agree on all provisions in the revised plan. Specifically, Member Regulation recommended that the Sponsoring Firm amend its WSPs to reflect that the Proposed Supervisor would be X's primary supervisor and expressed concern that X would conduct business in languages other than English, thus impeding the Proposed Supervisor's ability to effectively supervise him. We agree with Member Regulation that that Sponsoring Firm's WSPs should be amended to reflect that the Proposed Supervisor will be X's primary supervisor. Further, at the hearing, the Sponsoring Firm and X represented that it would not be problematic for X to conduct his business only in English. The supervisory plan contained herein reflects both of these conditions.

[7] The items that are denoted by an asterisk are heightened supervisory conditions for X and are not standard operating procedures of the Sponsoring Firm.

4. X will not maintain discretionary accounts.

5. X will not act in a supervisory capacity.*

6. The Sponsoring Firm will not allow X to conduct any outside business activities or private securities transactions.*

7. The Sponsoring Firm will review and pre-approve each of X's customer securities accounts, prior to opening of the account by X. Account paperwork will be documented as approved with a date and signature maintained at the Sponsoring Firm's home office. Documents pertaining to the review and approval of such accounts will be segregated for ease of review during any SD examination.*

8. The Proposed Supervisor will review and approve X's orders after execution, or as soon as practicable, on a T+1 basis. The Proposed Supervisor will evidence his review by initialing the reports, and keep copies of the reports in a separate file for ease of review during any SD examination.*

9. X agrees that he shall not: (a) share accounts with others; (b) split or share with others any commissions (other than his standard commission split with the Sponsoring Firm, as outlined in his employment agreement); (c) receive overrides on the commissions, fees, or profits generated by others. In order to ensure compliance with these prohibitions, the Proposed Supervisor will review each account and trade (as indicated in conditions nos. 7 and 8) to ensure that X is complying with the stipulations of this condition.*

10. All complaints pertaining to X, whether verbal or written, will be immediately referred to the Proposed Supervisor for review, and then to the Compliance Department. 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 should be kept segregated for ease of review during an SD examination.*

11. X agrees not to engage in the following activities: training or advising registered representatives or persons seeking to become registered representatives. X also agrees to conduct all business solely in English.*

12. The Sponsoring Firm will only permit X to conduct business at the Sponsoring Firm's office in City 1, State 2, which is the principal place of business of the Sponsoring Firm and where X's designated supervisor, the Proposed Supervisor, is located.*

13. The Proposed Supervisor will review X's incoming correspondence (including email), upon its arrival and review outgoing correspondence

before it is sent.*

14. For the purposes of client communication, X will only be allowed to use an email account that is held at the Sponsoring Firm, with all emails being filtered through the Sponsoring Firm's email system. If X receives a business-related email message in another email account outside the Sponsoring Firm, he will immediately deliver that message to the Sponsoring Firm's email account. X will inform the Sponsoring Firm of all outside email accounts that he maintains. The email messages are to be preserved and kept segregated for ease of review during any statutory disqualification examination.*

15. For the duration of X's statutory disqualification, the Sponsoring Firm will obtain prior approval from Member Regulation before changing the permanent supervisor of X from the Proposed Supervisor to another person.*

16. The Proposed Supervisor must certify quarterly (March 31st, June 30th, September 30th, and December 31st) to the Compliance Department of the Sponsoring Firm that the Proposed Supervisor and X are in compliance with all of the above conditions of heightened supervision to be accorded X.*

17. The plan of heightened supervision will be forwarded to and maintained by the Sponsoring Firm's chief compliance officer.

FINRA certifies that: (1) the Sponsoring Firm represents that it is also registered with the Nasdaq Stock Market, LLC; and (2) the Sponsoring Firm represents that the Proposed Supervisor and X are not related by blood or marriage.[8]

VII. Conclusion

Accordingly, we approve the Sponsoring Firm's Application to employ X as a general securities representative, subject to the above-mentioned heightened supervisory procedures. In conformity with the provisions of Exchange Act Rule 19h-1, the association of X as a general securities representative 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,

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[8] Prior to associating with the Sponsoring Firm as set forth herein, X shall satisfy all applicable requirements for his proposed employment (including requalifying as a registered representative).

Marcia E. Asquith
Senior Vice President and Corporate Secretary