

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 19(d)
Securities Exchange Act
of 1934

Decision No. SD010004

On July 7, 2000, the Sponsoring Firm¹ (or "the Firm") submitted a Membership Continuance Application ("MC-400" or "the Application") to permit X, a person subject to a statutory disqualification, to associate with the Firm as a general securities representative. In December 2000, a subcommittee ("Hearing Panel") of the Statutory Disqualification Committee of NASD Regulation, Inc. ("NASD Regulation") held a hearing on the matter. X appeared and was accompanied by the Proposed Supervisor, owner and President of the Sponsoring Firm. SC appeared on behalf of NASD Regulation's Department of Member Regulation ("Member Regulation").

X's Statutorily Disqualifying Event and Background. X is subject to a statutory disqualification, under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 ("Act") and Article III, Section 4(g) of the NASD By-Laws, as a result of his March 1999 guilty plea to felony charges of possession of marijuana and diazepam. The a District Court for State 1 sentenced him to a five-year term of probation, fined him \$1,000, and assessed \$250 for the cost of the investigation. He was also ordered to complete a one-year substance abuse program.

In March 2000, X successfully completed the District Drug Court's substance abuse program. X paid \$1,076.50 toward his fine in 2000. In 2000, X filed a Motion Seeking the Early Termination of Probation with the a District Court. The court granted the motion and ordered the termination of X's probation, effective 2000.

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.

X began his career in the securities industry in 1988 as a general securities representative with a member firm. He reported on his 2000 Uniform Application for Securities Industry Registration or Transfer ("Form U-4") that he was terminated from employment with that firm in 1989 for violating its compliance regulations. NASD Regulation did not conduct an investigation into the alleged misconduct.

X was registered with a second member firm from 1989 until October 1992, when he became registered with a third member firm. X reported on his May 2000 Form U-4 that he was discharged from that firm in August 1994. X then became registered with a fourth member in October 1994, but he was permitted to resign in February 1996 after failing to maintain proper records.

X became registered with a fifth member firm as a general securities representative in March 1996, and as a general securities principal in December 1996. He represented that he voluntarily resigned from that firm in July 1998 due to problems with his substance abuse. X has been employed as a manual laborer since his July 1998 resignation.

X passed the Series 7 (general securities representative examination) in April 1988. In 1996, he passed the Series 24 (general securities principal examination).

X also has a prior criminal and regulatory disciplinary history. The relevant criminal events were as follows:

In December 1993, X pleaded guilty in City A Court, Traffic Division to operating a vehicle while intoxicated, a misdemeanor. As part of the plea agreement, and pursuant to the State 1 Criminal Code, X agreed to attend a six-hour defensive driving course and was sentenced to serve 30 days in jail (suspended) and a one-year unsupervised term of probation. He was also ordered to pay a \$508 fine.

X was charged with auto theft, a felony, in 1998 in a Judicial District Court City A, State 1. X reported on his 2000 Form U-4 that he used one of his employee's vehicles and that the employee was aware of it. He further stated that when he returned the vehicle to the owner, he left the keys in it, and the vehicle subsequently was missing. In 1999, X pleaded guilty to unauthorized use of a motor vehicle, a misdemeanor. X was ordered to serve 81 hours of community service work and fined \$500.

In 1998, X was charged with the felony of operating a vehicle while intoxicated (second offense), reckless driving, improper lane usage and driving with an expired driver's license. X pleaded guilty to these charges in 1999. Sentencing was scheduled for 1999, but was continued until 2000, at which time X was fined \$504 and ordered to attend an alcohol awareness class, serve six months of jail (suspended), and serve six months of unsupervised probation. The sentence was deferred until April 2000 because X was unable to pay the fine. X did not pay the \$504 fine in April 2000 as ordered, and consequently, a bench warrant was issued for his arrest. Subsequently, the sentence was deferred until

September 2000, and the bench warrant remained in effect until he paid the remaining amount of his fine in November 2000.²

X's regulatory history is as follows:

In 1996, X was notified that his Letter of Acceptance, Waiver, and Consent ("AWC") had been accepted by the National Adjudicatory Council. The AWC stated that from June 1995 through February 1996, X received 15 checks totaling \$750 from a public customer, and failed timely to submit them for deposit into the customer's Individual Retirement Account. X was censured and fined \$2,500, and he was required to requalify as a general securities principal within 90 calendar days of the acceptance of the AWC.³

The Firm. The Sponsoring Firm has one Office of Supervisory Jurisdiction ("OSJ") and no branch offices. It employs one registered principal and six registered representatives. The Firm became a member of the NASD in 1984. It is engaged in mutual fund retail transactions, sales of variable life insurance and annuities, and private placements. The Sponsoring Firm clears its trades through Firm 1.

The Sponsoring Firm received a Letter of Caution ("LOC") dated 1999 for failing to file its Schedule I FOCUS Report within the prescribed time period. The Sponsoring Firm responded by letter, acknowledged the oversight, and stated that it would take appropriate action to ensure timely filings in the future.

NASD Regulation's 1999 routine examination of the Sponsoring Firm resulted in a LOC. The LOC found that the Sponsoring Firm had failed to comply with Article IV, Section 3 of the NASD By-Laws in that the Sponsoring Firm could not provide NASD staff with evidence that it had provided a copy of a Uniform Notice of Securities Termination ("Form U-5") to three individuals within the required 30 calendar days following their termination dates. The LOC also found that the Sponsoring Firm had failed to comply with Securities and Exchange Commission ("SEC" or "Commission") Rule 17a-4 by failing to obtain a Form U-5 for three of six registered representatives who were employed by the Firm within the required 60 days of filing each person's application for registration. The Sponsoring Firm responded in 1999 by stating that it would take appropriate action to prevent similar violations in the future.

² X explained that he had relied on his attorney to notify him of court dates and fine amounts and that the attorney had overlooked this event. X stated that, as a result of his substance abuse convictions, he had many court dates, community service dates, and drug testing dates, and that he did not intentionally miss any of them.

³ X stated that these checks had been opened by an office assistant, and then placed into a drawer, where they were all located at a later date. X accepted responsibility for not following through with proper procedures, but we note that there is no indication that customer funds were converted.

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

The Proposed Supervisor and X's Proposed Duties. The Sponsoring Firm proposes to employ X as a general securities representative. The Firm represents that X would be employed at its office located in State 1. X's duties would include all responsibilities associated with being a general securities representative.

The Firm proposes that the Proposed Supervisor would be X's responsible supervisor. The Proposed Supervisor is the owner and President of the Sponsoring Firm. He has been registered with the Sponsoring Firm as a general securities representative and general securities principal since 1984. He has also been registered as an introducing broker-dealer/financial and operations principal with the Sponsoring Firm since 1990.

There are no disciplinary or regulatory proceedings, complaints, or arbitrations against the Proposed Supervisor.

Member Regulation's Recommendation. Member Regulation recommends denial of the Sponsoring Firm's Application to employ X as a registered representative. In making this recommendation, Member Regulation mentions its concern with X's disqualifying event and other misconduct and its conclusion that these events "demonstrate a serious pattern of misconduct." Member Regulation states that X's transgressions demonstrate that he has not rehabilitated himself, that he has not learned from past mistakes, and that his "extensive, long-standing problems raise an unacceptable risk to investors."

Discussion. After careful review of the entire record in this matter, we have determined to deny the Sponsoring Firm's Application to employ X. We find that it would not be in the public interest to permit X to engage in the securities business at this time and that his employment in the industry may create an unreasonable risk of harm to the market and/or investors.

In reaching our conclusion, we have considered the arguments asserted by Member Regulation staff, and we too are troubled by X's past history. We note that his most recent conviction occurred only two years ago, which is a short duration when considered in relation to his extensive history of misconduct and substance abuse. We are not convinced that sufficient time has elapsed to enable X to demonstrate that he has achieved the judgment and ability to handle the responsibility necessary for employment in the securities industry. X's past transgressions include mishandling customer funds. Although he argued that all of his prior misconduct resulted from his serious substance abuse, we believe that his record shows that he does not handle stress and responsibility in a mature and trustworthy manner. Further evidence that insufficient time has passed to show that X is ready to re-enter the securities industry is demonstrated by the fact that X did not pay the fine associated with his 1999 conviction until 2000. This failure resulted in a bench warrant for his arrest that was issued in 2000, and that remained in effect until the payment was made – which payment occurred only after notification by Member Regulation. Although X asserted that he had relied on his attorney to organize court dates and

payment schedules related to his series of offenses, we believe that his inability to comply with the demands of the criminal justice system indicates that he may not be ready to engage once again in the demanding world of the securities business. X's activities cast doubt on his character and lead us to question his judgment and his ability to act in a trustworthy and responsible manner in interactions with the investing public.

Since we have based our conclusion on X's misconduct, we have not found it necessary to evaluate the supervisory proposals advanced by the Firm and the Proposed Supervisor, although we note that the Proposed Supervisor has no disciplinary history and the Firm has no formal disciplinary history.

Based on these reasons, we conclude that, in light of the circumstances, X's re-entry into the securities industry at this time would create an unreasonable risk of harm to the market and investors. Accordingly, we deny the Sponsoring Firm's Application to employ X.

On Behalf of the National Adjudicatory Council,

Joan C. Conley
Senior Vice President and Corporate Secretary