BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

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 SD08002 Date: 2008

I. Introduction

In October 2006, the Sponsoring Firm[1] submitted a Membership Continuance Application ("MC-400" or "the Application") with the Department of Registration and Disclosure at the Financial Industry Regulatory Authority,[2] 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 Rule 9523, FINRA's Department of Member Regulation ("Member Regulation") recommended that the Chair of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council, approve X's proposed association with the Sponsoring Firm pursuant to the terms and conditions set forth below.

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

II. The Statutorily Disqualifying Event

X is statutorily disqualified pursuant to Article III, Section 4 of FINRA's By-Laws[3]

[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] As of July 30, 2007, NASD consolidated with the member firm regulation functions of NYSE and began operating under a new corporate name, the Financial Industry Regulatory Authority ("FINRA"). References in this decision to FINRA shall include, by reference and where appropriate, references to NASD.

[3] Article III, Section 4 of FINRA's By-Laws refers to Section 3(a)(39) of the Securities Exchange Act of 1934 ("the Exchange Act"), which provides that it is a statutorily disqualifying

because in March 2006, FINRA's Department of Enforcement ("Enforcement") accepted his submission of a Letter of Acceptance, Waiver and Consent ("AWC") for willfully failing to disclose material information—his bankruptcy—on a Uniform Application for Securities Industry Registration or Transfer ("Form U4"). FINRA suspended X for three months in any capacity.[4]

In the AWC, X consented to FINRA's finding that on or about November 2004, he willfully failed to disclose material facts on a Form U4 filed on his behalf by his former securities industry employer, Firm 1. The material facts at issue were that: 1) in May 2004, X filed a bankruptcy petition seeking relief pursuant to chapter 7 of the Bankruptcy Code, and 2) in September 2004, X was granted a discharge in bankruptcy.[5]

III. Background Information

A. X

1) Registration History

X first registered in the securities industry in June 1981 as a municipal securities representative (Series 52). He qualified as a general securities representative (Series 7) in April 1982 and as a uniform securities agent-state law (Series 63) in October 1982. He was associated with six securities firms between August 1983 and December 2004.

In March 2004, Firm 1 terminated X. The Uniform Termination Notice for Securities Registration ("Form U5") stated the reasons as "failure to follow customer instructions; misrepresenting investments; inappropriate investment selections and the filing of false documents supporting trades."

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event to willfully provide false or misleading statements of material fact in a membership application to a self-regulatory organization.

[4] The AWC also stated that Enforcement did not impose any monetary sanctions on X because he asserted an inability to pay and submitted a sworn financial statement to document his financial status.

[5] NASD Membership, Registration, and Qualification Requirement IM-1000-1 provides that "[t]he filing with the Association of information with respect to membership or registration as a Registered Representative which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action." *See also* NASD Rule 2110.

In December 2004, Firm 2 terminated X due to his failure to disclose his bankruptcy. The Form U5 stated the reason as "failure to disclose required information on employment and U-4 forms."

2) Criminal History

In September 2000, X was charged in a State 1 state court with child abuse, a fourth-degree felony. He entered into a pretrial intervention program, and the case was dismissed in May 2002. X also failed to disclose this felony charge on his Form U4 with Firm 2. Due to the terms of X's pretrial intervention program, however, FINRA's Department of Enforcement ("Enforcement") determined that X had not been convicted of the felony,[6] and that he mistakenly believed he did not have to disclose the charge on his Form U4. Enforcement thus concluded that it would not include X's failure to disclose the felony charge in its action against him for willful failure to disclose the bankruptcy on his Form U4.

In June 2004, X was arrested and charged with misdemeanor possession of marijuana. He was found not guilty of this charge in May 2005.

3) Customer Complaints

Member Regulation notes that five customers have filed complaints against X in his 26 years in the securities industry. Only one of those complaints, however, has resulted in a settlement involving X. In January 1993, customer one, SB, alleged that a limited partnership did not perform properly and claimed compensatory damages of $500,000. The arbitration settled in May 1998 for $26,362, and X did not contribute individually to the settlement.

In August 1995, customer two, SK, alleged that her investment was not performing properly, and she settled for $14,800 in October 1995. The claims against X were dismissed.

The other three customers, JC, DA, and NW, filed complaints, respectively, in February 2000 (alleging unsuitable recommendations), February 2001 (alleging unsuitable recommendations), and January 2005 (alleging forged signatures on documents). FINRA's Central Registration Depository ("CRD"®) shows that these three matters are still pending, however they are categorized as "non-reportable" because they were filed more than 24 months ago and have not resulted in a settlement for $10,000 or more.

B. The Firm

The Sponsoring Firm became a FINRA member in April 1996. The Sponsoring Firm's MC-400 represents that it has one office of supervisory jurisdiction ("OSJ") and no branch offices. The Sponsoring Firm also represents that it employs 12 registered principals and 38 registered representatives and is engaged in a general securities business.

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[6] Due to the pretrial diversion program, Member Regulation concluded that the court did not accept a guilty plea from X and thus he was not convicted of the felony charge. Accordingly, the child abuse charge did not result in a separate statutorily disqualifying event for X.

FINRA conducted routine examinations of the Sponsoring Firm in 2006 and 2004. In 2006, FINRA issued the Sponsoring Firm a Letter of Caution ("LOC") for several violations, including: failure to comply with requirements for a business continuity plan; inadequate written supervisory procedures, inadequate retention procedures for anti-money laundering books and records; and failure to update its do-not-call list. The Sponsoring Firm responded to the 2006 LOC in a letter dated May 2006, stating that it had addressed the deficiencies noted.

Following the 2004 routine examination, FINRA issued the Sponsoring Firm an LOC for several violations, including: inadequate written supervisory procedures, anti-money laundering program deficiencies; failure to perform adequate background checks on several employees; books and records deficiencies; late amendments to Forms U4 and U5; failure to list individuals on do-not-call list; and missing new account information for several customers. The Sponsoring Firm responded to the 2004 LOC in a letter dated February 2006, stating that it had addressed the deficiencies noted.

FINRA also conducted a 2002 routine off-cycle municipal examination, after which the Sponsoring Firm accepted an AWC for untimely reporting of customer complaints. FINRA censured the Sponsoring Firm and imposed a $12,500 fine.

In addition, FINRA conducted a 2004 cause examination of the Sponsoring Firm that resulted in an AWC for books and records violations; failure to provide a report on non-directed orders in covered securities; and inadequate written supervisory procedures concerning limit order display and quote rules and short sale rules. FINRA censured the Sponsoring Firm and imposed a $22,500 fine and an undertaking to revise the Sponsoring Firm's written supervisory procedures.

The Sponsoring Firm also consented to an AWC following a 1997 FINRA cause examination for failure to maintain required minimum net capital. FINRA fined the Sponsoring Firm $500.

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

IV. X's Proposed Business Activities and Supervision

The Sponsoring Firm proposes to employ X as a general securities representative in its home office, which is an OSJ, in City 1. The Sponsoring Firm will compensate X on a commission basis.

The Sponsoring Firm proposes that the Proposed Supervisor will be X's primary supervisor. The Proposed Supervisor has been associated with the Sponsoring Firm since October 2006. He has been employed in the securities industry since 1997, and he qualified as a general securities principal in September 1998.

We are not aware of any disciplinary or regulatory proceedings, complaints, or arbitrations against the Proposed Supervisor.

V. Member Regulation's Recommendation

Member Regulation recommends that the Application be approved, subject to the specified terms and conditions of heightened supervision over X set forth below.

VI. Discussion

After carefully reviewing the entire record in this matter, 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 providing information regarding his bankruptcy to Firm 2 on a timely basis to update his Form U4. *See, e.g.*, *Robert E. Kauffman*, 51 S.E.C. 838, 840 (1993) ("Every person submitting registration documents [to NASD] has the obligation to ensure that the information printed therein is true and accurate."), *aff'd*, 40 F.3d 1240 (3d Cir. 1994) (table).

Enforcement already weighed the gravity of X's failure to disclose, however, when it approved the AWC in March 2006. Moreover, during the course of its investigation of X's failure to disclose, Enforcement had the opportunity to review X's complete regulatory and employment history. At the conclusion of its review, Enforcement determined that a three-month suspension was an appropriate sanction for X, which he has served. In such circumstances, the Commission has instructed FINRA to evaluate a statutory disqualification application pursuant to the standards 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 and Melvin Rokeach*, Exchange Act Rel. No. 53796, 2006 SEC LEXIS 1245, at *22 (May 12, 2006), *recon. denied*, Exchange Act Rel. No. 54711, 2006 SEC LEXIS 2560, at *15-16 (Nov. 6, 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 Securities Exchange Act of 1934 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.

First, the record shows that X has no complaints, regulatory actions, or criminal history since FINRA's 2006 AWC.

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. Moreover, the Sponsoring Firm has proposed a comprehensive supervisory plan for X.

Third, we find that the Proposed Supervisor is well qualified. He has been in the securities industry since 1997 without any disciplinary history, and he has been a general securities principal since 1998. The Sponsoring Firm has proposed that he will supervise X on-site in accordance with the following heightened supervisory procedures.[7]

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

2. X will not maintain discretionary accounts;

3. X will not act in a supervisory capacity;

4. The Proposed Supervisor will supervise X on-site at the Firm's main office in City 1;

5. The Proposed Supervisor will review and pre-approve each securities account prior to X opening the account. The Proposed Supervisor will document the account paperwork as approved with a date and signature and maintain the paperwork at the Sponsoring Firm's home office;

6. *****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 then review the trade reports, on a T + 1 basis, evidence his review by initialing the trade reports, and keep copies of the trade reports segregated for ease of review;

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[7] The items that are denoted with an asterisk are conditions of heightened supervision for X. Other registered representatives of the Sponsoring Firm are not subject to these heightened supervisory conditions.

7. The Chief Compliance Officer, or his designee, will review X's incoming written correspondence (which would include email communications) upon its arrival and will review outgoing correspondence before they are sent;

8. *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 also inform the Sponsoring Firm of all outside email accounts that he maintains. The Proposed Supervisor will conduct a weekly review of all email messages that are either sent or received by X. The Proposed Supervisor will maintain the emails and keep them segregated for ease of review during any statutory disqualification audit;

9. All complaints pertaining to X, whether verbal or written, will be immediately referred to the Chief Compliance Officer, or his designee. The Compliance Department will prepare a memorandum to the file as to what measures were taken to investigate the merits of the complaint (e.g., contact with the customer) and the resolution of the matter, and will keep documents pertaining to these complaints segregated for ease of review;

10. If the Proposed Supervisor is on vacation or out of the office, Employee 1, the Chief Compliance Officer, will act as X's interim supervisor;[8]

11. For the duration of X's statutory disqualification, the Sponsoring Firm must obtain prior approval (or subsequent approval, if warranted) from Member Regulation if it wishes to change X's responsible supervisor from the Proposed Supervisor to another person; and

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

FINRA certifies that: 1) X meets all applicable requirements for the proposed employment; 2) the Sponsoring Firm represents that it is not a member of any other self-regulatory organization; 3) the Sponsoring Firm represents that it does not employ any other statutorily disqualified individuals; and 3) the Sponsoring Firm represents that X and the Proposed Supervisor are not related by blood or marriage.

[8] Employee 1 became registered as a general securities principal in March 1997 and he has no disciplinary history.

VII. Conclusion

Accordingly, we approve the Sponsoring Firm's Application to employ X as a general securities representative. 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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Marcia E. Asquith
Senior Vice President and Corporate Secretary