BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Association of X[1] as a General Securities Representative with The Sponsoring Firm	Redacted Decision Notice Pursuant to Section 19(d) Securities Exchange Act of 1934 SD08007 Date: 2008

I. Introduction

In November 2006, the Sponsoring Firm submitted a Membership Continuance Application ("MC-400" or "the Application") with the Financial Industry Regulatory Authority's ("FINRA") Department of Registration and Disclosure, seeking to permit X, a person subject to a statutory disqualification, to continue to associate with the Sponsoring Firm as a general securities representative. In March 2008, a subcommittee ("Hearing Panel") of FINRA's Statutory Disqualification Committee held a hearing on the matter. X appeared at the hearing, accompanied by the Sponsoring Firm's chief compliance officer, Employee 1. FINRA Employee 1 and FINRA Attorney 1, appeared on behalf of FINRA's Department of Member Regulation ("Member Regulation").

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

II. The Statutorily Disqualifying Event

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

X is statutorily disqualified because in September 2006, he pled guilty to driving under the influence of alcohol ("DUI"), a felony in the state of State 1. X's 2006 DUI conviction was a felony because he had three prior DUI misdemeanor convictions in State 1 in 1995, 1987, and 1985.[3] The court sentenced X to 90 days in jail and 12 months' post-release treatment, and imposed a $2,500 fine. X served his jail sentence, paid his fine, and completed his required treatment. He testified that he continues to be active in Alcoholics Anonymous and has a sponsor in the program. X stated that he has maintained his sobriety since April 2006.

III. Background Information

A. X

1. Employment History

X first registered in the securities industry as a general securities representative (Series 7) in September 1989. FINRA's Central Registration Depository ("CRD"®) shows that X was previously associated with five firms[4] between July 1989 and June 2006, when he registered with The Sponsoring Firm.

X was discharged by a previous employer, Firm 1, in March 1999.[5]

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[3] The record shows that X was arrested for his fourth DUI in June 2005, and initially charged with a misdemeanor because the State 1 records showed that two of his prior DUI arrests were eliminated through youthful diversionary programs. At the hearing, however, X testified that due to changes in State 1's DUI laws, the State 1 court reevaluated his prior conviction record and determined to count all three of his prior DUI arrests as misdemeanor DUI convictions. X also produced documentation to show that in August 2005, the State 1 court upgraded the fourth DUI charge against him to a felony DUI, to which he pled guilty in September 2006.

[4] At the hearing, X testified that he had really only been associated with two firms during that time. He stated that he was very briefly associated with a firm from July 1989 until September 1989, which sponsored him until he qualified as a general securities representative. Subsequently, X associated with two different firms that were merged into other firms between October 1999 and May 2003.

[5] We are unable to cite to the exact language used by Firm 1 for its termination of X because the record does not include a copy of the Uniform Termination Notice for Securities Industry Registration ("Form U5"). However, FINRA's record for X shows that, prior to the discharge, Firm 1 conducted a routine review of X's customer accounts and questioned him about certain of his accounts that involved retired persons purchasing initial public offerings. The record also includes subsequent amendments that Firm 1 made to X's Form U5 that indicate that two customers filed complaints against X for unsuitable recommendations.

X was discharged by another previous employer, Firm 2, in May 2003. The Form U5 filed by Firm 2 stated that it terminated X for "violating firm policy. The [financial advisor] took discretion in client accounts."[6]

X is currently employed as a general securities representative with the Sponsoring Firm. He works from his home office in City 1, State 2.

2. Customer Complaints Against X

X's record includes four customer complaints filed against him, resulting in two denials of action and two settlements.

In November 2006, customers SE and MC alleged that X had engaged in unauthorized trading in their accounts from 2002 until 2005 and asserted $8,000 in losses. Firm 2 stated that its "review of the matter revealed no evidence of wrongdoing" and denied this claim "in its entirety" in January 2007.[7]

In January 2000, customers RA and MA alleged that their account was mismanaged. Firm 1 denied this complaint in January 2000.

In July 1999, customer MM alleged that X had engaged in an unsuitable strategy of investing in initial public offerings and that she incurred losses of $59,000. Firm 1 settled the complaint in August 1999 for $20,000, and the record shows no individual contribution from X.

In March 1999, customer KC alleged that X made unsuitable investment recommendations in connection with her account and that she incurred losses of $52,000. Firm 1 settled the complaint in April 1999 for $35,433, and the record shows no individual contribution from X.

At the hearing, X testified that the 1999 complaints settled by Firm 1 were due to the aggressive business "culture" at Firm 1 that encouraged him to "raise assets under management [and] grow [his] accounts." X stated that he has "drastically changed [his] business" since then, decreasing the number of households he serves and focusing "only on high net worth individuals that had excellent investor experience."

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[6] At the hearing, X submitted documents to show that the questionable trades were done on behalf of the widow of a deceased account holder, at the request of the widow's attorney. X did not submit any documents, however, to show that he had written proof at that time that the widow had appropriate authority to request the trades in the account.

[7] X testified that his ex-wife and her mother instituted this complaint and that it had no substance. Employee 1 testified that the complaint was a "malicious, frivolous attempt to defame" X.

The record shows no other disciplinary actions, complaints, arbitrations, or criminal actions against X.

B. The Sponsoring Firm

The Sponsoring Firm is based in City 2, State 3, and City 1, State 2. It became a FINRA member in July 2005 when it purchased a shell company named Firm 3, a former brokerage firm that had been a FINRA member since April 1983. The Sponsoring Firm is a full-service broker-dealer that has 29 branch offices, 20 offices of supervisory jurisdiction ("OSJs"), 14 registered principals, and 85 registered representatives.

1. Firm 3

Firm 3 has some disciplinary history. The record shows that FINRA issued Letters of Caution ("LOCs") to Firm 3 following routine examinations in 2000, 2002, and 2004. The 2000 LOC cited Firm 3 for failing to have provisions in its clearing agreement regarding the handling of customer complaints and the availability of exception reports, and for the untimely filing of its annual audit for the fiscal year ending December 31, 1999. FINRA did not require Firm 3 to file a written response to this LOC because the firm had responded to these items in an exit interview.

The 2002 LOC cited Firm 3 for failing to timely report a notice of arbitration and for failing to restrict the duties of a representative who had not complied with continuing education requirements. Again, FINRA did not require Firm 3 to file a written response to this LOC because the firm had responded to these items in an exit interview.

The 2004 LOC cited Firm 3 for several violations, including untimely filing of a disclosure event, failure to report a termination for cause, continuing education requirement violations, and failure to maintain option agreements for two option accounts. Firm 3 responded by letter dated February 2005, listing the actions it had taken with regard to the deficiencies noted by FINRA.

In January 2005, FINRA suspended Firm 3 because it had failed to comply with an arbitration award or pay fees in an arbitration case, or to satisfactorily respond to a FINRA request to provide information concerning the status of compliance. FINRA lifted the suspension in February 2005 when Firm 3 paid the applicable fees.

2. The Sponsoring Firm

FINRA issued The Sponsoring Firm an LOC in February 2006, following an alternative municipal examination of the Sponsoring Firm in January 2006. The LOC cited the Sponsoring Firm for failing to file a required form on a timely basis and failing to timely update its designation of an individual responsible for anti-money laundering compliance. The Sponsoring

Firm responded by letter dated March 2006, listing the actions it had taken with regard to the deficiencies noted by FINRA.

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 continue to employ X as a general securities representative, but states that he will move from his current home office to the Sponsoring Firm's OSJ in City 4, State 1. The Sponsoring Firm also proposes that the Proposed Supervisor will be X's primary supervisor, and that he will be located in the same OSJ as the one where X is employed. The Proposed Supervisor qualified as a general securities representative in February 2000 and as a general securities principal (Series 24) in September 2003. The Proposed Supervisor joined the Sponsoring Firm in March 2006. The Proposed Supervisor currently supervises nine registered representatives and is an active producer. The record shows no disciplinary history for the Proposed Supervisor.

At the hearing, the Firm proposed the following heightened supervisory procedures:[8]

1. The Proposed Supervisor agrees to be the primary supervisor responsible for X;

2. The Proposed Supervisor and X certify that they are not related by blood or marriage;

3. 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 supervisor from the Proposed Supervisor to another person;

4. X will be required to maintain his office of employment at the same office as the Proposed Supervisor in City 4, State 1;

5. X will have no supervisory responsibilities;

6. The Proposed Supervisor will review and approve all new account forms and forward them to the Sponsoring Firm's compliance department for final approval;

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[8] The Sponsoring Firm submitted newly revised proposed heightened supervisory procedures at the hearing because its previously drafted procedures had been rejected by Member Regulation. The Sponsoring Firm had first proposed that Employee 1 supervise X from an off-site location, with personal meetings twice per month. When Member Regulation rejected this proposal as inadequate, the Sponsoring Firm redrafted its procedures with the Proposed Supervisor as X's on-site supervisor, with the specific provisions listed above. The Sponsoring Firm did not indicate by asterisk which of the proposed procedures were heightened as to X and not required for other registered representatives.

7. X will not maintain discretionary accounts;

8. X will not participate in initial public offerings;

9. The Sponsoring Firm's chief compliance officer, Employee 1, will review and approve all of X's trades on a daily basis by utilizing the Sponsoring Firm's electronic trading surveillance software;

10. The Proposed Supervisor will review X's incoming and outgoing mail on a daily basis. X will not send correspondence without the Proposed Supervisor's review and approval;

11. The Proposed Supervisor will review all written presentations and sales proposals that X intends to use;

12. The Proposed Supervisor will review X's sales contacts as to the nature of the contact;

13. The Proposed Supervisor will make random calls to X's customers on a monthly basis to verify that X has adhered to all standards and disciplines established by the Sponsoring Firm;

14. At least once per week, the Proposed Supervisor will meet with X to review his activities to assure compliance with the Sponsoring Firm's written supervisory procedures and with the heightened supervisory procedures;

15. All complaints pertaining to X, whether oral or written, will be immediately referred to the Proposed Supervisor for review and then to the Sponsoring Firm's compliance officer. 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. The Proposed Supervisor will segregate documents pertaining to these complaints for review during any statutory disqualification examination;

16. If, at any time, The Proposed Supervisor feels that X has not complied with these heightened supervisory terms and conditions, he will submit a written report to X that requests his acknowledgement and understanding of the compliance deficiencies in question, and will propose a plan as to how the deficiencies will be corrected. X will be required to sign this report and the Proposed Supervisor will forward it to the Sponsoring Firm's chief compliance officer for review and approval. The Proposed Supervisor will also maintain a copy of the signed report and proposed corrective plan in X's personnel file;

17. The Proposed Supervisor will be required to certify to the Sponsoring Firm's compliance department on a quarterly basis (March 31, June 30, September 30,

and December 31 of each year) that the Proposed Supervisor and X are in compliance with all of the above conditions of heightened supervision of X; and

18. At least once during each calendar quarter, a member of the Sponsoring Firm's compliance department will make an unannounced visit to X's office to ensure compliance with this agreement.

V. Member Regulation's Recommendation

Member Regulation recommends that the Application be denied because: 1) X has repeatedly shown a disregard for the law, as evidenced by his fourth DUI conviction, which is "indicative of irresponsible behavior"; 2) X failed to timely inform his then employer and amend his Uniform Application for Securities Industry Registration or Transfer ("Form U4") to reflect his fourth DUI arrest in June 2005 and its upgrade to a felony charge against him in August 2005; 3) X's record includes "serious" customer complaints against him; 4) Firm 1 discharged X in 1999 for inappropriate recommendations to seniors; and 5) Firm 2 discharged X in 2003 for taking "discretion in client accounts."

VI. Discussion

In reviewing this type of application, we consider 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.[9] We assess the totality of the circumstances in reaching a judgment about X's future ability to deal with the public in a manner that comports with FINRA's requirements for high standards of commercial honor and just and equitable principles of trade in the conduct of his business.

For the reasons set forth below, we conclude that X's participation in the securities industry will present an unreasonable risk of harm to the market or investors, and we therefore deny the Sponsoring Firm's Application to continue to employ X as a general securities representative.

First, we note that X's felony conviction for DUI is recent—September 2006—and represents his fourth conviction for driving under the influence of alcohol. We appreciate that X has taken steps to deal with his addiction by attending the court-ordered 12-month treatment program and attending Alcoholics Anonymous meetings. Nonetheless, we find that insufficient time has passed to enable X to demonstrate that the change in his behavioral pattern is fundamental and long-lasting and that he can conduct himself in a responsible and compliant fashion in the securities industry.

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[9] *See Frank Kufrovich*, 55 S.E.C. 616, 625 (2002) (upholding FINRA's denial of a statutory disqualification applicant who had committed non-securities related felonies "based upon the totality of the circumstances" and FINRA's explanation of the bases for its conclusion that the applicant would present an unreasonable risk of harm to the market or investors).

Second, we find that the record does not support X's claim that he promptly informed Firm 2 of his June 2005 misdemeanor DUI arrest and its August 2005 upgrade to a felony. Firm 2 did not file an amendment to X's Form U4 at that time to reflect disclosure of such information. As a registered representative, X was responsible for knowing the rules of the securities industry and for providing information about the 2005 criminal charges to Firm 2 on a timely basis. *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). It is axiomatic that the responsibility for maintaining the accuracy of a Form U4 lies with each registered representative. *Dep't of Enforcement v. Howard*, Complaint No. C11970032, 2000 NASD Discip. LEXIS 16, at *31-32 (NASD NAC Nov. 16, 2000), *aff'd*, 55 S.E.C. 1096 (2002), *aff'd*, 77 F. App'x 2 (1st Cir. 2003).

At the hearing, X testified that he provided timely information regarding the 2005 charges to his former compliance officer at Firm 2 and that he did not understand why his Form U4 did not reflect such information. The Hearing Panel granted X's request to file a post-hearing submission consisting of deposition testimony from his former compliance officer on this topic. The deposition testimony, however, is inconsistent. The former compliance officer readily agreed that X promptly informed him orally of the June 2005 arrest, which was a misdemeanor DUI. The former compliance officer also testified that he relayed this information to Firm 2's management and legal department, and that he understood that they were waiting to see the ultimate disposition of the arrest before reporting it on the Form U4. The former compliance officer also testified, however, that he did "not recall" that X told him in August 2005 that the DUI arrest had been upgraded to a felony, although he did recall that X came to him shortly after the June 2005 DUI arrest with a "sob story" about how the misdemeanor was "more of a serious offense." The August 2005 upgrade of the charge to a felony was a particularly important fact for X to have disclosed to Firm 2 because a felony conviction results in a person being subject to statutory disqualification. Based on this inconsistent evidence, we cannot find that X fulfilled his obligation to promptly inform his employer of the gravity of the charges against him in order to make proper disclosure on his Form U4.

Third, we are troubled by X's regulatory history. Four customers filed complaints against X between 1999 and 2006. Two of those complaints were denied, but the other two, which both alleged unsuitable transactions, were settled by Firm 1 for $20,000 and $35,433. Moreover, X was discharged by two of his former employers. Firm 1 discharged X in March 1999 after conducting a review of his customer accounts and questioning him about inappropriate purchases of initial public offerings by seniors. Firm 2 discharged X in May 2003 for taking "discretion in client accounts."[10] X's disciplinary history and his repeated criminal

[10] The account in question at Firm 2 involved the trades made by X on behalf of the widow of a deceased account holder, at the request of the widow's attorney. X had no proof that the widow had appropriate authority at that time to request the trades or make the withdrawals, and this led to an NYSE Letter of Admonition dated June 2007, against X.

convictions for DUI demonstrate a lack of respect for authority and an inability to conform to the regulatory atmosphere of the securities industry.

Finally, although we note the lack of formal disciplinary history for the Sponsoring Firm, the Proposed Supervisor, and Employee 1, these facts do not outweigh our concerns about the seriousness and recency of X's conviction, his history of customer complaints, and the relatively short period of his sobriety. We are also not persuaded that the Sponsoring Firm has structured an adequate plan of heightened supervision for X. At the hearing, the Proposed Supervisor testified that he is a producing principal who currently supervises nine other individuals and that he expects to receive an override on X's production. We question whether the Proposed Supervisor has sufficient time to devote to the heightened supervision of a statutorily disqualified individual such as X, and whether X's supervisor should directly profit from X's production. Further, the proposed supervisory procedures continue to place sole responsibility for the review and approval of X's daily trades upon Employee 1, via the Sponsoring Firm's electronic trading surveillance software, and not on the Proposed Supervisor, the primary on-site supervisor.

Employee 1's testimony at the hearing also fails to establish the Sponsoring Firm's ability to comply with terms of heightened supervision for a statutorily disqualified person. Employee 1 stated that he currently employs eight representatives, including X, who are subject to the Sponsoring Firm's own heightened supervisory procedures due to certain disclosures on their Forms U4. The Sponsoring Firm's procedures restrict such individuals from working alone from their homes, yet Employee 1 concedes that X has been permitted to work from his home since he started at the Sponsoring Firm in June 2006. When Employee 1 was questioned about this discrepancy at the hearing, he stated: "I guess I can't answer that." Such inattention to the requirements of heightened supervision is not acceptable in statutory disqualification matters.

VII. Conclusion

Accordingly, we find that it is not in the public interest, and would create an unreasonable risk of harm to the market or investors, for X to continue to be associated with the Sponsoring Firm as a general securities representative. We therefore deny the Application.

On Behalf of the National Adjudicatory Council,

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Marcia E. Asquith
Senior Vice President and Corporate Secretary