

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In The Matter of the Association of

X¹

as an

Investment Company and Variable Contracts
Products Limited Representative

with

The Sponsoring Firm

Redacted Decision

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

SD12004

Date: 2012

I. Introduction

On February 8, 2010, the Sponsoring Firm submitted a Membership Continuance Application (“MC-400” or “the Application”) with the Department of Registration and Disclosure at the Financial Industry Regulatory Authority (“FINRA”). The Application seeks to permit X, a person subject to a statutory disqualification, to associate with the Sponsoring Firm as an investment company and variable contracts products limited representative. A hearing was not held in this matter. Rather, pursuant to FINRA 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 Application to permit X to associate with the Sponsoring Firm as an investment company and variable contracts products limited representative.

II. The Statutorily Disqualifying Event

X is statutorily disqualified due to FINRA’s acceptance, in 2007, of a Letter of Acceptance, Waiver and Consent (“AWC”). The AWC found that X willfully failed to disclose material information on his Uniform Application for Securities Registration or Transfer (“Form

¹ The names of the Statutorily Disqualified individual, the Sponsoring Firm, the Proposed names of the Supervisor, and other information deemed reasonably necessary to maintain confidentiality have been redacted.

U4”).² Specifically, the AWC found that between 1995 and 2006, X willfully failed to disclose numerous outstanding judgments and liens on his Form U4. FINRA suspended X for six months and fined him \$5,000. X has served his suspension and paid the fine in full.

III. Background Information

A. X

1. Employment History

X first registered in the securities industry as an investment company and variable contracts products limited representative in April 1982 and requalified in April 2010. X has previously been registered in several other capacities and associated with 14 firms from September 1981 until December 2010. In addition, since January 2008, X has been engaged in the sale of fixed insurance products through his own company, Company 1, which he started in 1992.

2. Prior Regulatory History

In 2006, X filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court, Northern District of State 1. FINRA’s Central Registration Depository (“CRD”®) shows that X received a discharge of his debts in 2006.

In 2007, the State 1 Division of Securities issued a notice of intent to revoke and suspend X’s State 1 securities and investment adviser representative license. On that same date, X agreed to a six-month suspension from the securities industry. The State 1 action was based on the same conduct on which FINRA’s AWC was based.

3. Terminations

In 2007, Firm 1 terminated X’s employment due to State 1’s suspension order.

4. Customer Complaints

One customer filed a complaint against X in June 1998, alleging “dereliction in his business practice” and forgery. The customer sought compensatory damages of \$2,500. CRD shows that this matter was not pursued and was closed with no action taken.

The record shows no other disciplinary or regulatory proceedings, complaints, or arbitrations against X.

² Section 3(a)(39)(F) of the Securities Exchange Act of 1934 (“Exchange Act”) provides that a person is subject to statutory disqualification if he has willfully made a false or misleading statement of material fact in any application or report filed with a self-regulatory organization.

5. Prior Exchange Act Rule 19h-1 Notice

In 2009, FINRA filed a notice to approve X's association with Firm 2 as a general securities representative pursuant to Exchange Act Rule 19h-1. While the matter was pending with the Commission, Firm 2 withdrew its application. Thus, X never received final approval from the Commission to associate with Firm 2.

B. The Sponsoring Firm

The Sponsoring Firm has been a FINRA member since June 1967 and is based in City 1, State 2. The Application states that the Sponsoring Firm maintains 30 branch offices and three Offices of Supervisory Jurisdiction ("OSJ"). The Sponsoring Firm employs 16 registered principals and 77 registered representatives. It currently employs one other statutorily disqualified individual, Firm Employee 1. Firm Employee 1 is not subject to heightened supervision.³

FINRA conducted an examination of the Sponsoring Firm in 2009, which resulted in a Cautionary Action and a compliance conference. The Cautionary Action cited the Sponsoring Firm for failing to establish written supervisory procedures ("WSPs") regarding SEC Regulation S-P, FINRA's prohibition against guarantees, and certain aspects of registered personnel's outside business activities. In addition, the Cautionary Action cited the Sponsoring Firm for failing to maintain an adequate Anti-Money Laundering ("AML") Compliance Program. The compliance conference covered the following violations: failing to pre-approve private securities transactions and maintain documentation related to such transactions; failing to adequately establish WSPs for documenting review of email correspondence, private securities transactions, deferred variable annuity requirements, and annual compliance meetings; failing to maintain supervisory controls in several areas; failing to conduct independent tests of the Sponsoring Firm's AML Compliance Program; paying commissions to non-member firms; failing to maintain records for certain variable annuity transactions; and having a branch office manager conduct branch office inspections. The Sponsoring Firm addressed the deficiencies noted.

FINRA issued the Sponsoring Firm a Cautionary Action in 2006 and cited the Sponsoring Firm for the following: maintaining inadequate supervisory control procedures and WSPs with regard to several areas; failing to conduct annual branch office inspections for several OSJs in 2005; failing to amend a Form U4 to reflect the outside business activities for a registered representative; failing to amend the Sponsoring Firm's Uniform Application for

³ Firm Employee 1 is statutorily disqualified pursuant to a permanent injunction and administrative order entered against him in 1984. The permanent injunction enjoined Firm Employee 1 from further violations of the registration and antifraud provisions of federal securities laws, and the Commission's administrative order barred him from associating with any broker-dealer. Firm Employee 1 was first approved to associate with a broker-dealer notwithstanding his statutory disqualification in 1986, and Firm Employee 1 was approved to associate with the Sponsoring Firm with no heightened supervision in April 2009.

Broker-Dealer Registration to designate a chief compliance officer; failing to include required language in the Sponsoring Firm's annual certification to senior management; failing to file certain forms with respect to municipal securities transactions; and failing to notify FINRA prior to employing electronic storage media and failing to have an audit system in place with respect to electronic storage media. The Sponsoring Firm provided a written response stating that it had addressed the deficiencies noted.

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

IV. X's Proposed Business Activities and Supervision

The Sponsoring Firm proposes that X will work from the Sponsoring Firm's branch office located in City 2, State 1, where X currently operates Company 1. X will work as an investment company and variable contracts products limited representative. The Sponsoring Firm proposes that it will compensate X on a commission basis.

The Sponsoring Firm also proposes that the Proposed Supervisor will be X's primary supervisor. The Proposed Supervisor entered the securities industry in July 2001, when he became registered as a general securities representative. The Proposed Supervisor qualified as a general securities principal in October 2002. The Proposed Supervisor has been employed with the Sponsoring Firm since January 2010. The Proposed Supervisor works from the Sponsoring Firm's City 2, State 1 branch office.

The record shows no disciplinary or regulatory proceedings, complaints, or arbitrations against the Proposed Supervisor.

V. Member Regulation's Recommendation

Member Regulation recommends approval of the Sponsoring Firm's request for X to associate with the Sponsoring Firm as an investment company and variable contracts products limited representative, subject to the terms and conditions of heightened supervision described below.

VI. Discussion

We have carefully considered the entire record in this matter. 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 an investment company and variable contracts products limited 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 2007. After considering X’s entire history in the securities industry, Enforcement concluded that a six-month suspension and \$5,000 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 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 June 2007 AWC. Given the expiration of time for the suspension imposed upon, and the teachings of *Van Dusen*, has been permitted to seek re-entry to the securities industry since November 2007 (although he did not seek re-entry until April 2008 when Firm 2 filed its application with FINRA).

Second, we look to the nature and disciplinary history of the Sponsoring Firm. The record shows that the Sponsoring Firm does not have any formal disciplinary history, and the record further shows that the Sponsoring Firm has taken corrective actions to address deficiencies noted in the two Cautionary Actions and one compliance conference since 2006. Moreover, as discussed below, X will be subject to a comprehensive supervisory plan.

Third, based on the record before us, we find that the proposed primary on-site supervisor, the Proposed Supervisor, is qualified. He has been in the securities industry since 2001 without any disciplinary history or customer complaints, and he qualified as a general securities principal in October 2002. He will be located in the same office as X, and currently X is the only person that the Proposed Supervisor supervises. Although the Sponsoring Firm has disclosed that the Proposed Supervisor and X “worked together in a past broker dealer relationship” where X “was the person in charge of the office,” nothing in the record suggests that this fact will adversely affect the Proposed Supervisor’s ability to effectively supervise X pursuant to the proposed heightened plan of supervision.

We are satisfied that the following heightened supervisory procedures will enable the Sponsoring Firm to reasonably monitor X’s activities on a regular basis:⁴

1. The written supervisory procedures for the Sponsoring Firm will be amended to state that the Proposed Supervisor will be X’s primary supervisor;
2. X will not act in a supervisory capacity;
3. X will not maintain any discretionary accounts;
4. The Proposed Supervisor will supervise X on-site at the Sponsoring Firm’s branch office, located in City 2, State 1;
- *5. On a quarterly basis, X will certify in writing to the Proposed Supervisor that he is in full compliance with all of his disclosure obligations pursuant to FINRA reporting rules. The Proposed Supervisor will maintain copies of X’s certifications and will keep them segregated for ease of review during any statutory disqualification examination;
- *6. The Proposed Supervisor will review and initial all of X’s trade and check blotters weekly. The Proposed Supervisor will keep copies of the reviewed trade and check blotters segregated for ease of review during any statutory disqualification examination;
7. The Proposed Supervisor will review and pre-approve each securities account, prior to the opening of the account by X. Account paperwork will be documented as approved with a date and signature and maintained at the branch office in City 2, State 1 as well as the Sponsoring Firm’s

⁴ The items that are denoted by an asterisk are heightened supervisory conditions for X and are not standard operating procedures of the Sponsoring Firm. In addition to the provisions of the heightened supervisory plan, the Sponsoring Firm’s home office will review and pre-approve all of X’s securities transactions. This is standard procedure at the Sponsoring Firm.

home office. The Proposed Supervisor will keep copies of the account paperwork segregated for ease of review during any statutory disqualification examination;

- *8. The Proposed Supervisor will randomly review 10% of X's client files, on a monthly basis. He will indicate the findings of his review in a memo, which he will keep segregated for ease of review during any statutory disqualification examination;
- 9. The Proposed Supervisor will review X's incoming written correspondences (which will include e-mail communications) upon its arrival and will review X's outgoing correspondence before it is sent;
- *10. For the purposes of client communications,⁵ 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. As well, X will inform the Sponsoring Firm of all outside email accounts, which he maintains. The email messages are to be preserved and kept segregated for ease of review during any statutory disqualification examination;
- *11. The Proposed Supervisor must certify quarterly (March 31st, June 30th, September 30th, and December 31st) each year 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;
- 12. 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 of the Sponsoring Firm. 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 any statutory disqualification examination;
- *13. If the Proposed Supervisor is to be on vacation or out of the office for an extended period, Firm Employee 2⁶ will act as X's interim supervisor.

⁵ In addition, the Sponsoring Firm has procedures in place concerning its review of any websites established by X and prohibits X from establishing or maintaining any social networking pages for at least a one-year period.

⁶ Firm Employee 2 became registered as a general securities principal in May 1999. The record indicates that Firm Employee 2 was terminated (permitted to resign) based upon

[Footnote continued on next page]

Firm Employee 2 is a registered principal of the Sponsoring Firm and currently works from the Sponsoring Firm's branch office, located in City 3, State 3. Whenever Firm Employee 2 is expected to supervise X on an interim basis, he will relocate to the City 2, State 1 branch office, where X is to be located and he will then supervise X on-site;⁷ and

- *14. For the duration of X's statutory disqualification, the Sponsoring Firm must obtain prior approval from Member Regulation if they wish to change X's responsible supervisor from the Proposed Supervisor to another person.

FINRA certifies that: (1) X meets all applicable requirements for the proposed employment; (2) the Sponsoring Firm is not a member of any other self-regulatory organization; (3) the Sponsoring Firm has represented that X and the Proposed Supervisor are not related by blood or marriage; and (4) the Sponsoring Firm currently employs one other statutorily disqualified individual, who is not subject to heightened supervision.

[cont'd]
allegations by a prior firm that he failed to fully and accurately complete or amend his Form U4 because he was functioning as a recruiter.

⁷ In the Proposed Supervisor's absence, Firm Employee 2 will perform all of the Proposed Supervisor's duties under the supervisory plan. In addition, Firm Employee 2 will conduct office inspections of the City 2, State 1 branch office on no less than an annual basis.

VII. Conclusion

Accordingly, we approve the Sponsoring Firm's Application to employ X as an investment company and variable contracts products limited representative, subject to the above-mentioned heightened supervisory procedures. In conformity with the provisions of Exchange Act Rule 19h-1, the association of X 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,

Marcia E. Asquith
Senior Vice President and Corporate Secretary