

BEFORE THE NATIONAL ADJUDICATORY COUNCIL  
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

the Continued Association of

X<sup>1</sup>

as a

General Securities Representative

with

The Sponsoring Firm

Redacted Decision

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

SD12010

Date: 2012

**I. Introduction**

On January 10, 2012, 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 continue to associate with the Sponsoring Firm as a general securities 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 continue to associate with the Sponsoring Firm as a general securities representative.

**II. The Statutorily Disqualifying Event**

X is statutorily disqualified due to FINRA’s acceptance, in 2011, of a Letter of Acceptance, Waiver and Consent (“AWC”). The AWC found that X willfully failed to disclose

---

<sup>1</sup> 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.

felony charges on three Uniform Applications for Securities Registration or Transfer (“Forms U4”).<sup>2</sup>

Specifically, in 2001, X was charged with two felonies, first-degree murder and carrying of a firearm during a crime of violence (the “2001 Charges”). The 2001 Charges were dismissed, without prejudice, in 2001. X, however, failed to disclose the 2001 Charges on Forms U4 filed with FINRA in August 2007, March 2008, and May 2009.<sup>3</sup>

In 2008, X was again charged in connection with the same matter (the “2008 Charges”). X’s counsel represents that the government re-brought the charges because it received funds to revisit “cold cases.” The 2008 Charges were dismissed in 2009. X, however, failed to amend his Form U4 to disclose the 2008 Charges and failed to disclose the charges on his Form U4 filed with FINRA in May 2009. FINRA suspended X for 90 days and fined him \$5,000. X has served his suspension and paid the fine in full.

In support of the Application, X states that the criminal charges against him were false and that he was the victim of the offense charged, not the perpetrator. X further states that although he received conflicting advice concerning whether to report the 2001 Charges and 2008 Charges on his Form U4, “in the end the decision was mine and I exercised poor judgment all around.” X states that the statutory disqualification and suspension “is something I’m deeply ashamed of and embarrassed by.”

### **III. Background Information**

#### **A. X**

X first registered as a general securities representative in October 2007, when he also passed the uniform securities agent state law examination. X has been registered with the Sponsoring Firm since May 2009, and previously has been associated with two other Sponsoring Firms. Since May 2011, X also has provided consulting services to a division of the Sponsoring Firm, Company 1. The Sponsoring Firm represents that X “seeks to identify, perform due diligence, and raise capital for hedge fund managers” through Company 1. In addition, since June 2011, he has been a managing member of a fund of managed accounts that is not affiliated with the Sponsoring Firm.

Other than the AWC, the 2001 Charges, and the 2008 Charges, the record shows no other disciplinary or regulatory proceedings, complaints, or arbitrations against X.

---

<sup>2</sup> Section 3(a)(39)(F) of the Securities Exchange Act of 1934 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.

<sup>3</sup> Question 14A(1)(b) asks, “[h]ave you ever . . . been charged with any felony?”

## **B. The Sponsoring Firm**

The Sponsoring Firm has been a FINRA member since August 1998 and is based in City 1. The Application states that the Sponsoring Firm maintains one branch office and one Office of Supervisory Jurisdiction (“OSJ”), and employs two registered principals and 12 registered representatives. The Sponsoring Firm represents that it is a full service broker-dealer “organized to execute securities transactions for high net worth family and related accounts, and institutional DVP accounts.”

FINRA conducted an examination of the Sponsoring Firm in 2011. FINRA staff did not find any exceptions in connection with that examination. In 2009, FINRA conducted an examination that focused on the Sponsoring Firm’s financial and operational practices. Although that examination found an exception, it was resolved without any further action.

In 2001, the Sponsoring Firm entered into an AWC with FINRA for violations of NASD Rules 2110, 3010, and 6955. Without admitting or denying the allegations set forth in the complaint, the Sponsoring Firm consented to findings that it failed to transmit to the Order Audit Trail System (“OATS”) order data for equity securities and that the Sponsoring Firm’s supervisory system did not provide supervision reasonably designed to achieve compliance with rules and regulations concerning OATS. FINRA censured the Sponsoring Firm and fined it \$10,000.

Finally, the Sponsoring Firm is a defendant in a civil suit filed in the United States District Court for State 1 in 2011. The plaintiff, a trust created as part of a company’s bankruptcy reorganization, alleges that company insiders transferred stock to an account held at the Sponsoring Firm (rather than delivering the stock to an escrow agent). The plaintiff further alleges that the Sponsoring Firm, at the direction of the company insiders, subsequently sold such stock without the plaintiff’s authorization. This suit is pending.

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

## **IV. X’s Proposed Business Activities and Supervision**

The Sponsoring Firm proposes that X will continue to work as a registered representative from the Sponsoring Firm’s home office in City 1. X “seeks to identify, perform due diligence on, and grow” the business of hedge funds and raise capital for such funds from institutional investors. The Sponsoring Firm proposes that it will continue to compensate X on a commission basis.

The Sponsoring Firm also proposes that the Proposed Supervisor will be X’s primary supervisor. The Proposed Supervisor registered as a general securities representative in August 1998 and qualified as a general securities principal in February 1999. The Proposed Supervisor also qualified as a registered options principal in January 2000, an equity trader limited representative in March 2000, and an operations professional in December 2011. Further, the Proposed Supervisor passed the uniform securities agent state law examination in April 1999. The Proposed Supervisor has been employed with the Sponsoring Firm since 1997, and he

currently serves as the Sponsoring Firm's managing director and works from the Sponsoring Firm's City 1 office. The Proposed Supervisor was previously associated with one other member firm.

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 continue to associate with the Sponsoring Firm as a general securities 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 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 further acknowledge that the 2001 Charges and the 2008 Charges involved extremely serious felony charges (which were subsequently dismissed on two separate occasions).

We also recognize, however, that FINRA's Department of Enforcement ("Enforcement") weighed the gravity of X's failures to disclose when it executed the AWC in 2011. After considering X's entire history in the securities industry, Enforcement concluded that a 90-day suspension and \$5,000 fine were appropriate sanctions for X's misconduct. X served this suspension and 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 continue to employ X.

First, other than the charges underlying the AWC and the AWC itself, X's record shows no complaints, regulatory actions, or criminal history, and the record does not show any such matters since the 2011 AWC. Given the expiration of time for the suspension imposed upon X, and the teachings of *Van Dusen*, X is now permitted to seek re-entry to the securities industry.

Second, we look to the nature and disciplinary history of the Sponsoring Firm. The record shows that the Sponsoring Firm does not have any recent formal disciplinary history, and the only regulatory action against the Sponsoring Firm is a 2001 AWC. The record further shows that the Sponsoring Firm's past two FINRA examinations resulted in a single exception that resulted in no further action by FINRA. Moreover, as discussed below, the Sponsoring Firm has proposed that X will be subject to a comprehensive supervisory plan. We find nothing in the record to suggest that the Sponsoring Firm will be unable to provide the stringent supervision necessary for a statutorily disqualified individual such as X.

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 1998 without any disciplinary history or customer complaints, and he qualified as a general securities principal in February 1999. He will be located in the same office as X, and currently X is the only person that the Proposed Supervisor supervises.

We are satisfied that the following heightened supervisory procedures, which are specifically tailored to prevent misconduct similar to the misconduct underlying the AWC, will enable the Sponsoring Firm to reasonably monitor X's activities on a regular basis:<sup>4</sup>

1. The written supervisory procedures of the Sponsoring Firm will be amended to state that the Proposed Supervisor is the primary supervisor for X;

---

<sup>4</sup> The Sponsoring Firm has indicated that none of the provisions of the heightened supervisory plan is a standard operating procedure at the Sponsoring Firm.

2. X will not maintain discretionary accounts;
3. X will not act in a supervisory capacity;
4. X will be supervised on-site by the Proposed Supervisor;
5. 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 the Proposed Supervisor will maintain the paperwork at the Sponsoring Firm's home office located in City 1, State 2. The Proposed Supervisor will keep copies of the paperwork segregated for ease of review during any statutory disqualification examination;
6. The Proposed Supervisor will review and approve X's orders after execution, on a T + 1 basis. The Proposed Supervisor will evidence his review by initialing the order tickets. Copies of the trade tickets will be kept segregated for ease of review during any statutory disqualification examination;
7. The Proposed Supervisor will continue to supervise X's outside business activities and X will continue to disclose to The Proposed Supervisor, on a monthly basis, details related to X's outside business activities. The disclosure must contain, but not be limited to, X's activity log, phone call log, appointment log and a summary of pending transactions;
8. The Proposed Supervisor will review all incoming correspondence (which includes emails) addressed to or relating to X, upon its arrival and will review outgoing correspondence before it is sent;
9. 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 and will provide the Sponsoring Firm access to the accounts upon request. The Proposed Supervisor will conduct a weekly review of all email messages that are either sent to or received by X (in addition to the Proposed Supervisor's review pursuant to item number 8). All of X's emails will be maintained and kept segregated for ease of review during any statutory disqualification audit;

10. If The Proposed Supervisor is to be on vacation or out of the office for an extended period, the Firm Employee 1, also located at the Sponsoring Firm's headquarters office, will act as X's interim supervisor;<sup>5</sup>
11. All complaints pertaining to X, whether verbal or written, will be immediately referred to the Proposed Supervisor for review. the Proposed Supervisor will prepare a memorandum to the file with full details as to the review, investigation and resolution of the matter. Documents pertaining to these complaints will be kept segregated for ease of review during any statutory disqualification examination;
12. The Sponsoring Firm must obtain prior approval from Member Regulation if it wishes to change X's responsible supervisor from the Proposed Supervisor to another person;
13. On a quarterly basis, X will certify in writing to the Proposed Supervisor that he has read the Sponsoring Firm's current Code of Conduct and other applicable Sponsoring Firm policies pertaining to his obligations to disclose legal and regulatory matters to the Sponsoring Firm, and that he fully understands his obligations thereunder. The Proposed Supervisor will maintain copies of X's certifications and will keep them segregated for ease of review during any statutory disqualification examination;
14. On a quarterly basis, X will certify in writing to the Proposed Supervisor that he is in full compliance with all of his disclosure reporting obligations pursuant to FINRA 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, and the Proposed Supervisor will confirm the accuracy of X's certifications and will perform any necessary review in connection therewith; and
15. The Proposed Supervisor will certify quarterly (March 31st, June 30th, September 30th and December 31st) to the Compliance Department that he and X are in compliance with all of the above conditions of heightened supervision to be imposed upon X. The certifications will be maintained and kept segregated for ease of review during any statutory disqualification examination.

FINRA certifies that: (1) X meets all applicable requirements for the proposed employment; (2) the Sponsoring Firm is a member of two other self-regulatory organization, NYSE ARCA and BATS; (3) the Sponsoring Firm has represented that X, the Proposed

---

<sup>5</sup> Firm Employee 1 is the Firm's president and chief compliance officer. He became registered as a general securities principal in April 1989. The record shows no disciplinary or regulatory proceedings, complaints, or arbitrations against Firm Employee 1.

Supervisor, and Firm Employee 1 are not related by blood or marriage; and (4) the Sponsoring Firm does not employ any other statutorily disqualified individuals.

## **VII. Conclusion**

Accordingly, we approve the Sponsoring Firm's Application to continue 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 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