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 SD12001 Date: 2012

I. Introduction

On July 20, 2010, the Sponsoring Firm filed a Membership Continuance Application ("MC-400" or "the Application") with FINRA's Department of Registration and Disclosure.[2] The Application requests that FINRA permit X, a person subject to a statutory disqualification, to continue to associate with the Sponsoring Firm as a general securities representative. In November 2011, a subcommittee ("Hearing Panel") of FINRA's Statutory Disqualification Committee held a hearing on the matter. X appeared at the hearing, accompanied by his counsel, Attorney 1, his proposed supervisor, the Proposed Supervisor, and the Sponsoring Firm's chief compliance officer, Firm Employee 1. FINRA Employee 1, FINRA Attorney 1, FINRA Attorney 2, and FINRA Attorney 3 appeared on behalf of FINRA's Department of Member Regulation ("Member Regulation").

For the reasons explained below, we deny X's Application.[3]

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[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] The Sponsoring Firm amended its MC-400 to include updated information and a revised heightened supervisory plan in October 2011.

[3] Pursuant to FINRA Rule 9524(a)(10), the Hearing Panel submitted its written recommendation to the Statutory Disqualification Committee. The Statutory Disqualification

[Footnote continued on next page]

II. The Statutorily Disqualifying Event

X is statutorily disqualified under Article III, Section 4 of FINRA's By-Laws because of a 2005 Order to Revoke Agent Registration (the "Disqualifying Order") issued by the State 1 Securities Commissioner.[4] The Disqualifying Order revoked X's securities registration based upon findings that he engaged in multiple violations of State 1 law and engaged in unethical or deceptive practices. The State 1 Securities Commissioner alleged that X failed to disclose on his registration application that he had been denied registration in State 2 and that he engaged in at least eight unauthorized transactions in a customer account.

X claims that he was unaware he had been denied registration by the State 2. He blames a principal at his former firm for failing to timely respond to requests for information from State 2 related to a customer complaint and for failing to withdraw his registration. X settled the customer complaint underlying the Disqualifying Order by paying the customer $9,268. At the hearing, X disputed that he engaged in any unauthorized trades and testified that State 1 only investigated the customer's complaint because of the customer's political connections.

III. Background Information

A. X's Employment and Disciplinary History

X has been employed in the securities industry since 2000. He qualified as a general securities representative in May 2000 and passed the uniform securities agent state law exam in July 2000. X was previously associated with six firms between January 2000 and February 2006. X has been associated with the Sponsoring Firm since February 2006.[5]

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Committee considered the Hearing Panel's recommendation and presented a written recommendation to the National Adjudicatory Council.

[4] Section 604 of the Sarbanes-Oxley Act expanded the definition of statutory disqualification in Section 3(a)(39) of the Securities Exchange Act of 1934 ("Exchange Act") by creating and incorporating Exchange Act Section 15(b)(4)(H) so as to include persons that are subject to any final order of a state securities commission or state authority that supervises or examines banks that: (i) "Bars such person from association with an entity regulated by such commission[;]" or (ii) "Constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative or deceptive conduct." *See FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 52, at *5-6 (April 2009). The Disqualifying Order constitutes a final order based on violations of laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.

[5] This is consistent with FINRA's interpretation of Art. III, Sec. 3(c) of FINRA's By-Laws, which permits individuals who become statutorily disqualified while they are employed to continue working pending the outcome of the statutory disqualification process. X became

[Footnote continued on next page]

In addition to the Disqualifying Order, X is the subject of a number of regulatory actions, customer complaints, and judgments. We describe each of these matters below.

1. Regulatory Actions

In 2011, State 3 Bureau of Securities fined X $2,500 for failing to report three customer complaints in violation of a heightened supervisory agreement signed as a condition of his registration in the state (which the state required because of his history of customer complaints). X paid this fine in full. At the hearing, X testified that he agreed to withdraw his registration in the state, although he later reapplied and such application is currently pending. X blamed his former compliance officer for failing to report the customer complaints to State 3.

In 2006, State 4 summarily denied X's application for registration. The record does not indicate the basis for the denial. State 4 subsequently withdrew the denial order, although X agreed that he would not reapply for registration in the state for two years.

In 2004, State 2 denied X's registration. State 2 had requested information regarding a customer complaint, to which x did not respond to. As stated above, at the hearing X blamed his former compliance officer for failing to respond to the request for information.

In 2004, State 5 denied X's registration. State 5 had requested information regarding X's disclosures on a registration application, which X did not respond to. At the hearing, X blamed his former compliance officer for failing to respond to the request for information.

2. Customer Complaints

In 2011, a customer alleged that X failed to place a stop-loss order. The customer sought damages of $8,688. At the hearing, X testified that he believed the Sponsoring Firm denied this claim and that the customer fabricated and falsified documents in connection with this claim. Firm Employee 1 clarified that although the Sponsoring Firm denied the claim, FINRA is currently investigating this matter.[6]

[cont'd]

statutorily disqualified under FINRA's By-Laws effective as of June 2009 because of amendments to the By-Laws that revised the definition of "disqualification" to conform to the existing definition set forth in Exchange Act Section 3(a)(39). *See FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 52, at *5.

[6] X is also currently the subject of a Problem Broker Examination. Prior to the hearing, Member Regulation withdrew certain exhibits related to that examination, which is ongoing. For purposes of this decision, we have not considered this current examination as a factor supporting denial of the Application.

In 2010, a customer alleged miscommunications regarding the funds he had available for trading and sought damages of $5,000. X testified at the hearing that the customer claimed he did not know that he had purchased securities on margin. X settled the claim personally for $5,000.

In 2008, a customer alleged that X churned his account, recommended unsuitable securities, and engaged in unauthorized transactions. The customer sought damages of $541,832. The Sponsoring Firm settled the claim for $51,950, and X personally contributed $46,950 to the settlement. At the hearing, X testified that he "was being pressured by my firm to solve this" because the Sponsoring Firm's clearing agent (which was also named in the complaint) was withholding commissions from the Sponsoring Firm. X further testified that notwithstanding the complaint, X has a good relationship with the customer and the customer currently has eight accounts at the Sponsoring Firm with a value of less than $20,000 (all serviced by X). X also introduced a recent affidavit from the customer stating that X did not engage in the misconduct as previously alleged by the customer, and X testified that the customer informed him that another broker or law firm had "talked him into filing a claim against me."[7] In March 2009, FINRA issued X a Cautionary Action in connection with this matter, which cited him for excessive trading and unauthorized trading in the customer's account.

In 2005, a customer alleged "poor account performance as a result of stop-loss thresholds being exceeded." The customer sought $68,806 in damages. The matter was settled for $23,000, and X contributed $11,500 to the settlement.

In 2004, a customer filed a complaint against X regarding performance and losses in his account. The complaint sought $40,000 in damages and was settled for $17,400. X personally paid the entire settlement amount.

In 2002, a customer alleged that X engaged in unauthorized trades, and sought $75,000 in damages. The matter was settled for $25,000, and X personally contributed $12,500 to the settlement.

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[7] Despite the affidavit from the customer, the customer did not waive any amounts due and owing from X under the settlement agreement. X testified that he continues to pay the customer monthly under the terms of that agreement, although he hopes the customer will agree to further compromise his claim. We consider these facts, as well as FINRA's Cautionary Action in connection with this matter and other similar customer complaints, relevant in assessing this customer complaint.

3. Judgments, Tax Liens, and Criminal Matters

In 2011, a U.S. District Court ordered that X pay approximately $49,000 in damages to a customer in connection with a complaint filed by the customer in 2007.[8] The customer alleged that X engaged in unauthorized trading, fraud, and a breach of his fiduciary responsibilities and sought damages of $92,000. X testified that this matter is currently on appeal.

In 2011, the IRS filed a tax lien against X in the amount of $52,191. At the hearing, X testified that this lien (as well as another lien filed by the IRS in 2008) related to unpaid personal income taxes for 2003, 2004, 2006, and 2007. X stated that he sent a settlement offer to the IRS to resolve this matter, and the matter remains pending. X further testified that his Uniform Application for Securities Industry Registration or Transfer ("Form U4") was not updated to reflect the original 2008 tax lien until sometime in 2010 because his former compliance officer failed to do so.

In 2009, a judgment was entered against X in the amount of $3,978 in connection with fees owed to an electrician. X testified that he believes this judgment has been paid in full because it "was executed against my property." The record shows that the judgment may have been satisfied via garnishment of X's income.

In 2008, X's former landlord obtained a judgment against him in the amount of $4,707 for prematurely breaking his lease. X testified that he has satisfied this judgment.

Finally, in 1998, X was charged with petit larceny (a misdemeanor) in a State 6 state court. The charge was dismissed in February 1999.

B. The Sponsoring Firm

The Sponsoring Firm has been a FINRA member since August 2000. The MC-400 states that the Sponsoring Firm has 34 employees, including 7 registered principals and 30 registered representatives. The Sponsoring Firm has one office of supervisory jurisdiction ("OSJ") (its home office in City 1, State 7) and one branch office. Firm Employee 1 testified that the Sponsoring Firm is "aggressive," and its customer base consists mostly of accredited investors engaging in speculative trading.

[8] The court originally entered a default judgment against X, although it subsequently vacated the default with respect to the issue of damages. The parties subsequently briefed the issue of damages, which the court considered in rendering its decision. At the hearing, X blamed his attorney for the default judgment against him.

1. Regulatory Actions

In 2011, the State 3 Bureau of Securities fined the Sponsoring Firm $10,000 for failing to comply with agreements for heightened supervision in connection with X and one other registered representative.

In 2010, FINRA accepted a Letter of Acceptance, Waiver and Consent ("AWC") from the Sponsoring Firm. This AWC was based on the combined results of three examinations and involved violative conduct from 2006 through 2009. The AWC found that the Sponsoring Firm: (a) failed to establish and implement an adequate Anti-Money Laundering ("AML") program, failed to identify, investigate and respond to red flags indicating suspicious activities, failed to timely file suspicious activity reports, and failed to provide AML training to Firm personnel; (b) facilitated the distribution of unregistered shares and sold securities to public investors using a private placement memorandum that omitted material information; (c) operated an unregistered branch office; (d) engaged in improper telephone solicitations by making materially false representations and omitting material facts in connection with the offer of securities; (e) failed to maintain accurate financial books and records, filed inaccurate FOCUS reports, and violated net capital rules; (f) failed to timely forward to an escrow agent customer funds received in connection with seven contingency offerings; (g) failed to adequately review and approve customer correspondence; (h) failed to timely and accurately report customer complaints and update Forms U4 and Uniform Termination Notices of Securities Industry Registration ("Forms U5"); (i) failed to comply with the Firm Element of the Continuing Education requirements; (j) failed to conduct annual compliance meetings; (k) failed to establish an adequate business continuity plan; (l) failed to establish adequate procedures to review producing managers' customer account activities and establish written procedures for identifying producing managers for heightened supervision; (m) failed to clearly assign each registered person to an appropriate supervisor and failed to reasonably supervise registered representatives who worked out of an unregistered branch office; (n) failed to establish and maintain a supervisory system reasonably designed to supervise Firm activities and operations; and (o) failed to perform heightened supervision over 14 individuals. FINRA censured the Sponsoring Firm; fined it $350,000 (which was reduced to $200,000 due to the Sponsoring Firm's size); ordered that it retain an independent consultant to review its policies, systems, procedures, and training; and directed the Sponsoring Firm to have each of its associated persons undergo continuing AML training.[9]

In 2008, FINRA accepted an AWC from the Sponsoring Firm, which found that it failed to transmit reportable orders for more than a year in violation of NASD Rule 6955(a). FINRA censured the Sponsoring Firm and fined it $15,000.

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[9] With respect to this AWC, the Sponsoring Firm states that "[i]t is worthy of mention that the majority of the findings concern failures of prior management and compliance, involving supervisors, registered representatives, and other associated persons who have since been terminated by the firm."

In 2008, the Sponsoring Firm entered into a Consent Order with State 8 to settle allegations that it employed unregistered agents and transacted business from an unregistered branch office, sold unregistered, non-exempt securities to customers, utilized research and sales materials in a deceptive or misleading manner, and failed to establish, enforce, and maintain an adequate supervisory system. State 8 fined the Sponsoring Firm $50,000, ordered that the Sponsoring Firm pay an additional $50,000 to the National White Collar Crime Center, and imposed restrictions on the Sponsoring Firm's business.

2. Routine Examinations

In 2011, FINRA issued the Sponsoring Firm a Cautionary Action. FINRA cited the Sponsoring Firm for submitting an inaccurate customer complaint report; failing to maintain new account documents for a customer; failing to update a Form U4 and failing to timely update a Form U5; and failing to ensure that time and price discretion and stop-loss instructions were documented.

In 2010, FINRA issued the Sponsoring Firm a Cautionary Action. FINRA cited the Sponsoring Firm for, among other things, failing to have adequate supervisory procedures for X from December 2008 through July 2010 and failing to provide evidence that it employed adequate heightened supervision over X's customer account activities.

The Sponsoring Firm was subject to a compliance conference in 2007 for the following violations: permitting an inactive registered representative to perform and be compensated for activities requiring active securities registration; conducting a pre-registration review of an individual without first obtaining his approval; failing to train its employees with respect to telemarketing activities and the maintenance requirements of do-not-call lists; charging commissions in excess of five percent and markups in excess of five percent; utilizing written supervisory procedures ("WSPs") with inadequate procedures regarding compliance with Reg. T and margin disclosure requirements; failing to maintain a log for gifts, gratuities and entertainment; failing to timely report a customer complaint; failing to maintain complete and accurate customer account files; failing to maintain complete and accurate order tickets; maintaining inaccurate financial ledgers; inaccurately calculating the Sponsoring Firm's net capital; and failing to maintain copies of certain bills.

The Sponsoring Firm was subject to a compliance conference in 2006 for the following violations: maintaining inadequate Continuing Education Firm Element training materials; failing to maintain Forms U4; conducting pre-hire registration review without authorization; charging excessive commission in connection with two trades; failing to maintain an adequate attendance list for the Sponsoring Firm's annual compliance meeting; failing to maintain adequate WSPs; failing to timely obtain copies of employees' Forms U5 from prior employers; failing to maintain an adequate AML Compliance Program; failing to request duplicate account documentation for employees maintaining accounts at other broker-dealers; failing to maintain books and records; and inaccurately calculating the Sponsoring Firm's net capital.

Finally, in 2004 FINRA issued the Sponsoring Firm a Cautionary Action. FINRA cited the Sponsoring Firm for failing to timely file an annual audit report.

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

IV. X's Proposed Business Activities and Supervision

A. Proposed Employment and Supervisor

The Sponsoring Firm proposes that it will continue to employ X as a general securities representative in its main office in City 1, State 7. The Sponsoring Firm represents that X will be compensated by commission.

X will be supervised by the Proposed Supervisor. The Proposed Supervisor first registered as a general securities representative in August 1997, at which time he also passed the uniform securities agent state law examination. He qualified as a general securities principal in March 2001. The Proposed Supervisor has been registered with the Sponsoring Firm since October 2011. The Sponsoring Firm hired the Proposed Supervisor to supervise X. Currently, his only duties at the Sponsoring Firm are to supervise X. The Proposed Supervisor has no customers.

Prior to joining the Sponsoring Firm, the Proposed Supervisor was associated with eight other member firms, although he has not actively worked in the securities industry since 2007 when he worked as a compliance officer for a broker-dealer. Instead, he worked as a personal banker, insurance telemarketer, and insurance salesperson with various firms (while maintaining his securities licenses) from 2007 until joining the Sponsoring Firm.

A customer filed a complaint against the Proposed Supervisor in 2006, alleging that he failed to supervise a registered representative in connection with his account. The customer claimed damages of $107,873. The claim was denied, and no other action was taken with respect to this matter.

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

B. Previous Heightened Supervision and Current Plan of Heightened Supervision

The record indicates that the Sponsoring Firm originally placed X on heightened supervision in December 2008. That supervisory plan consisted of monthly compliance reviews, monitoring daily all trading activity, compliance updates, a random sampling of customers "to determine that fair dealings with clients (i.e., proper sales practices) are being adhered to if the Sponsoring Firm deems [it] necessary," and the opportunity for X to ask questions "of a regulatory nature to assist in [his] ability to deal fairly" with customers. Firm Employee 1, who became the Sponsoring Firm's chief compliance officer in September 2010, described this initial heightened supervisory plan as inadequate. X similarly described the initial heightened supervisory plan as inadequate and testified that certain of his prior supervisors, including his former supervisors at the Sponsoring Firm, were incompetent.

Firm Employee 1 testified that in December 2010 he altered the terms of the initial heightened supervisory plan to provide for more frequent supervisory reviews of X's activities (from monthly to weekly). Firm Employee 1 testified that the supervisory plan in place beginning in December 2010 closely resembled the revised plan proposed by the Sponsoring Firm prior to the hearing.[10] The following are the revised heightened supervisory procedures for X dated October 31, 2011 (which are currently in place and are quoted in their entirety):

1. The "Proposed Supervisor[,]" would agree to be the primary supervisor responsible for X, the "Proposed Registered Rep."

2. 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 responsible supervisor from the Proposed Supervisor to another person.

3. X will conduct business only from the same office where the Proposed Supervisor is located.

4. X will present to the Proposed Supervisor all new account applications and incoming ACATS for his review and approval.

5. The Proposed Supervisor shall confirm X's rep. code, the customers' personal and financial information, risk tolerance, as well as investment objectives at the time each account is opened.

6. At the time the Proposed Supervisor is reviewing all trades, he shall access, on-line or in the office file, the customers' accounts to ascertain that the trades are suitable, commissions are reasonable and that the trades in all respects comport with the Sponsoring Firm's obligations to its customers and regulators.

[10] A copy of the specific supervisory plan in place from December 2010 until October 2011 is not part of the record.

7. The Proposed Supervisor will approve all customer orders in the form of paper or electronic tickets clearly reflecting all pertinent information specific to each transaction at issue, and will transmit copies of the order tickets in his heightened supervision report before the end of the following week by fax or email to the compliance office. In signing order tickets, the Proposed Supervisor will be representing to the Sponsoring Firm that he has fulfilled the requirements of Nos. 3 through 7 herein.

8. The Proposed Supervisor or his designee will approve in writing, and keep in a segregated chronological file, copies of all outgoing correspondence by X (except as to pre-approved forms, if any), and will also keep in the same file copies of all incoming customer correspondence.

9. The Proposed Supervisor will immediately furnish the compliance office with copies of all incoming correspondence received from X's customers.

10. The Proposed Supervisor will routinely monitor X's sales activities, presentations and/or sales proposals by periodically listening to his telephonic communications and solicitations, and reviewing the resulting status of and transactions in the customers' accounts.

11. X must obtain pre-approval for any Bulletin Board, pink sheet or option order.

12. X will not maintain discretionary accounts.

13. All complaints pertaining to X, whether verbal or written, will be immediately referred to the Proposed Supervisor for review, and then to the Sponsoring Firm's Director of Compliance. 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 will be kept segregated in a file for easy review.

14. X will be required to attend an annual compliance meeting, and evidence of his attendance will be kept segregated in a file for easy review.

15. At least once per month, the Proposed Supervisor will contact X's customers to verify that he has adhered to all standards and disciplines established by the Sponsoring Firm.

16. At least once per month, the Proposed Supervisor will meet with X to review his activities against existing compliance procedures and assess the need for further supervisory procedures.

17. Once a year, the Proposed Supervisor will present to X a written report as to his compliance with all necessary requirements in order for X to fulfill his compliance obligations.

18. If at any time the Proposed Supervisor feels that X has not complied with these heightened supervisory terms and conditions, a written report will be submitted to X requesting his acknowledgement and understanding of the compliance deficiencies in question and requiring the signature of X; this same report will include a proactive plan as to how these compliance deficiencies will be corrected.

19. A copy of this signed report and proposed plan to correct compliance deficiencies will be maintained in X's personnel file.

20. The Proposed Supervisor will be required to certify to the Compliance Department of the Sponsoring Firm on a quarterly basis (March 31st, June 30th, September 30th, and December 31st of each year) that Proposed Supervisor and X are in compliance with all of the above conditions of heightened supervision of X, as specifically set forth herein.

21. In the event X becomes a part to any arbitration or litigation, whether or not reportable on a Form U4, X shall notify the Proposed Supervisor or his designee immediately, who in turn will immediately present written notification to the Sponsoring Firm's compliance officer.

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

V. Member Regulation's Recommendation

Member Regulation recommends that the Application be denied because, in its view: (1) X's disqualifying event is recent, serious, and securities-related; (2) "X's Form U4 filings reflects a steady pattern of electing to either misrepresent or not disclose information to regulators[;]" (3) X is the subject of numerous customer complaints (including several since the Disqualifying Order), IRS tax liens (entered subsequent to the Disqualifying Order), and had his registration revoked by State 4 subsequent to the Disqualifying Order; and (4) the Sponsoring Firm has an extensive regulatory history. At the hearing, Member Regulation also argued that the Proposed Supervisor was not a suitable supervisor because he has little supervisory experience and because of potential conflicts caused by the limitation of his job duties to supervising X.

VI. Discussion

In evaluating an application like this, we assess whether the sponsoring firm has demonstrated that the proposed association of the statutorily disqualified individual is in the public interest and does not create an unreasonable risk of harm to the market or investors. *See Continued Ass'n of X*, Redacted Decision No. SD06002, slip op. at 5 (NASD NAC 2006), *available at* http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p036476.pdf; *see also Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (holding that FINRA "may deny an application by a firm for association with a statutorily-disqualified individual if it determines that employment under the proposed plan would not be consistent with the public

interest and the protection of investors"); FINRA By-Laws, Art. III, Sec. 3(d) (providing that FINRA may approve association of statutorily disqualified person if such approval is consistent with the public interest and the protection of investors). Factors that bear upon our assessment include the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, the totality of the regulatory and criminal history, and the potential for future regulatory problems. We also consider whether the sponsoring firm has demonstrated that it understands the need for, and has the capability to provide, adequate supervision over the statutorily disqualified person. The sponsoring firm has the burden of demonstrating that the proposed association is in the public interest despite the disqualification. *See Timothy P. Pedregon, Jr.*, Exchange Act Rel. No. 61791, 2010 SEC LEXIS 1164, at *16 & n.17 (Mar. 26, 2010).

After carefully reviewing the entire record in this matter, we find that X's proposed continued association with the Sponsoring Firm would create an unreasonable risk of harm to investors and the market. Accordingly, we deny the Application for X to continue to associate with the Sponsoring Firm as a general securities representative.

We find that X's disqualifying event is serious and securities-related. The Disqualifying Order was based on findings that X made at least eight unauthorized trades in a customer's account and failed to disclose information. *See Keith L. DeSanto*, 52 S.E.C. 316, 323 (1995) (holding that unauthorized trading is a "fundamental betrayal of the duty owed by a salesman to his customers"), *aff'd*, 101 F.3d 108 (2d Cir. 1996) (unpublished table decision); *Edward Mawod & Co.*, 46 S.E.C. 865 (1977) (holding that recordkeeping rules are the "keystone of the surveillance of brokers and dealers"), *aff'd*, 591 F.2d 588 (10th Cir. 1979). The Hearing Panel found that, at the hearing, X failed to take responsibility for this matter, and he instead blamed his former compliance officer for failing to promptly respond to requests for information. We adopt this finding. *See Dep't of Enforcement v. Jordan*, Complaint No. 2005001919501, 2009 FINRA Discip. LEXIS 15, at *53 (FINRA NAC Aug. 21, 2009) (holding registered representative is responsible for her actions and cannot shift her responsibility to her member firm or its staff). Indeed, X contested the assertion that he did anything inappropriate regarding this customer's account, and he characterized these proceedings as resulting entirely from his former compliance officer's failure to withdraw his state registration (which, in X's view, would have avoided entry of the Disqualifying Order notwithstanding the serious allegations of unauthorized trading in a customer's account and failure to disclose information).

X also has a considerable list of customer complaints, regulatory actions, and several judgment liens. Since 2002, at least seven customers have filed complaints against X. The complaints involved allegations that X engaged in unauthorized trading, failed to place stop-loss orders, and engaged in fraud. Although X describes having settled these complaints for "nuisance" value, to date he has personally agreed to pay more than $102,000 in connection with these matters (which does not include the recent $49,000 judgment entered against him). We are troubled by X's explanations concerning certain of these complaints, which fail to appreciate the seriousness of the allegations. Further, we strenuously disagree with X's characterization of the customer complaints and regulatory matters since 2005 as "negligible." Indeed, since 2005 at least five customer complaints have been filed against X, along with two regulatory actions by State 3 and State 4 and three judgment liens. Further, in 2009 FINRA cited X for excessive and

unauthorized trading. X's characterization of these events as negligible shows that he fails to appreciate the serious issues presented by these matters and is a risk to the investing public.

Moreover, X continually blamed others for the issues underlying the regulatory actions (including the recent action by State 3 and the 2009 Cautionary Action citing him for excessive and unauthorized trading). *Id.* We reject X's assertion that the claims resulted from his youth and inexperience. *See Scott Epstein*, Exchange Act Rel. No. 59328, 2009 SEC LEXIS 217, at *73 (Jan. 30, 2009) (holding that youth or inexperience does not excuse a registered representative's duty to his customers), *aff'd*, 2010 U.S. App. LEXIS 24119 (3d Cir. Nov. 23, 2010). The record shows that X has continued to be the subject of customer complaints and regulatory actions for the duration of his 11-year tenure in the securities industry. The numerous complaints, regulatory actions, and judgments filed against X raise serious concerns regarding his dealings with customers and his ability to comply with securities laws and regulations.

We also find that the Sponsoring Firm has failed to demonstrate that it could effectively supervise a statutorily disqualified individual such as X. *See Timothy H. Emerson, Jr.*, Exchange Act Rel. No. 60328, 2009 SEC LEXIS 2417, at *18 (July 17, 2009) (holding that an applicant must establish that it will be able to adequately supervise a statutorily disqualified individual by imposing a stringent plan of heightened supervision). As an initial matter, we find the Sponsoring Firm has not established that the Proposed Supervisor can adequately supervise X. While we note that the Proposed Supervisor has a relatively clean disciplinary history, he testified that he has supervised "probably one or two" other individuals since becoming a principal in 2001 and that he has not been actively engaged in the securities industry since 2007. Further, because the Proposed Supervisor's only duties at the Sponsoring Firm involve supervising X, the Proposed Supervisor's employment appears to depend entirely on X's continued employment with the Sponsoring Firm. Such an arrangement could lead to a less stringent standard of supervision than is required for a statutorily disqualified individual.

Moreover, the Sponsoring Firm has a regulatory history that includes supervisory problems, and FINRA specifically cited the Sponsoring Firm for failing to have adequate supervisory procedures for X (from December 2008 through July 2010) and failing to provide evidence that it employed adequate heightened supervision over X's customer account activities. To date, the Sponsoring Firm's heightened supervision over X has failed to eliminate customer complaints and regulatory problems. Indeed, notwithstanding that X has been on heightened supervision at the Sponsoring Firm since 2008, at least two customers have filed complaints against X and State 3 fined X for failing to comply with its terms of heightened supervision.[11] Although the Disqualifying Order involved serious, securities-related misconduct, Firm Employee 1 testified that a regulatory matter such as this order would not ordinarily prompt the Sponsoring Firm to place a registered representative on heightened supervision, and it did not cause the Sponsoring Firm to do so here. And similar to X, Firm Employee 1 downplayed X's

[11] In a 2010 statement that accompanied the Application, X stated that he has "grown to appreciate the heightened supervision that I receive at the Sponsoring Firm" and praised his then supervisor. At the hearing, however, X reversed course and testified that the same supervisor was incompetent and that the initial heightened plan was insufficient.

numerous customer complaints and the Disqualifying Order and stated that "[w]e are here because somebody did not withdraw X from the CRD system." Under the circumstances, we question the Sponsoring Firm's dedication to supervising X, and we do not believe that the Sponsoring Firm is capable of providing stringent supervision over him.

Finally, several elements of the Sponsoring Firm's latest plan of heightened supervision are troubling. As a general matter, Employee 1 testified that almost all of the provisions of the proposed plan apply to all registered personnel on heightened supervision at the Sponsoring Firm and were not designed specifically for X. *See Leslie A. Arouh*, Exchange Act Rel. No. 62898, 2010 SEC LEXIS 2977, at *38-39 (Sep. 13, 2010) (finding inadequate proposed plan of supervision where much of the plan applies to all firm employees). In addition, the proposed plan does not identify a backup supervisor and does not specify what will happen if the Proposed Supervisor is out of the office. *Id.* at *39-40 (holding that plan was further flawed because it contained no special provisions for supervising disqualified individual when his proposed supervisor was out of the office). Further, item six of the plan does not specify the frequency with which the Proposed Supervisor will review X's trading, and item 10 provides that the Proposed Supervisor will "routinely" monitor X's sales activities without specifying exactly how often this monitoring will occur. *See Pedregon*, 2010 SEC LEXIS 1164, at *27 (finding plan inadequate where it did not describe specifically the frequency of certain reviews). Were we otherwise inclined to approve this Application, which we are not, we would have given the Sponsoring Firm an opportunity to submit another revised plan that cures these deficiencies. The myriad factors set forth above, however, alone warrant denial of this Application regardless of the deficiencies in the proposed plan.

For all of these reasons, we conclude that the Sponsoring Firm and the Proposed Supervisor are unable to assure us that they will effectively prevent and detect possible misconduct on the part of X.

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 associate with the Proposed Supervisor 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