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 SD12005 Date: 2012

I. Introduction

On July 28, 2009, the Sponsoring Firm filed a Membership Continuance Application ("MC-400" or "the Application") with FINRA's Department of Registration and Disclosure. 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 October 2011, 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 counsel Attorney 1X's proposed supervisor, the Proposed Supervisor-, and the Sponsoring Firm's President. FINRA Employee 1, FINRA Attorney 1, and FINRA Attorney 2 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]

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[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.

[2] Pursuant to FINRA Rule 9524(a)(10), the Hearing Panel submitted its written recommendation to the Statutory Disqualification Committee. The Statutory Disqualification Committee considered the Hearing Panel's recommendation and presented a written recommendation to the National Adjudicatory Council.

II. The Statutorily Disqualifying Event

X is statutorily disqualified under Article III, Section 4 of FINRA's By-Laws because of a 2009 Consent Order, entered by State 1's Department of Banking (the "State 1 Order").[3] The State 1 Order revoked X's registration as an agent in State 1 and barred X for seven years from transacting business in or from State 1 as a broker-dealer, agent, investment adviser, investment adviser agent, or agent of an issuer, as defined under the State 1 Uniform Securities Act, and precluded X from supervising any broker-dealer agents with respect to securities business transacted in or from State 1. The State 1 Order further provided that after five years X may reapply for registration.

The bases for the State 1 Order were allegations that X transacted business in an unregistered capacity; engaged in a dishonest or unethical practice by falsely reporting on firm records that the securities transactions he effected for a State 1 customer, while unregistered, were associated with a State 2 address; and made unsuitable recommendations to a State 1 customer.

X explained that an existing customer (DD) referred to him the customer at issue (RT). RT is DD's sister, and X opened RT's account using the same State 2 address as DD. X stated that, upon learning RT resided in State 1 and not in State 2, he immediately registered in State 1 and changed the account address, but he did not realize until later that the check originally used to fund RT's account bore a State 1 address. X also explained that, in 2007, he recommended to RT that she use most of the approximately $9,000 in her account to purchase shares in a company that eventually went bankrupt. X stated that, although RT was single, had just obtained a job as a nurse, and rented an apartment, he recommended that she purchase the shares at issue, which represented almost all of the capital in RT's account. X stated that he did not know RT's liquid net worth, although he knew that "she didn't have a lot."

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[3] 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." *FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 52, at *5-6 (April 2009). The State 1 Order constitutes a final order barring X under Exchange Act Section 15(b)(4)(H)(i), and the Uniform Disciplinary Action Reporting Form filed with FINRA's Central Registration Depository ("CRD"®) by State 1 indicates that it is also a final order based on violations of laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct under Exchange Act Section 15(b)(4)(H)(ii). *See* FINRA Rule 9145 (providing that an adjudicator may take official notice of such matters as might be judicially noticed by a court).

III. Background Information

A. X's Employment History

X qualified as a general securities representative (and passed the uniform securities agent state law exam) in June 1992 and qualified as a general securities principal in April 1995. X has been associated with the Sponsoring Firm since May 2005.[4] X was previously associated with nine firms between May 1992 and May 2005.

B. X's Disciplinary History

1. Customer Complaints

The record reflects that 11 customer complaints have been filed against X since 1996.

In 2005, a customer alleged that X used his margin account without authorization and claimed $7,035 in damages. This matter is listed as pending in CRD. At the hearing, the Sponsoring Firm's counsel explained that X inherited this account from another registered representative and did not execute any trades for this customer.

In 2004, a customer alleged breach of contract and trust and claimed $49,294 in damages. X's firm settled the claim for $12,500, and X contributed $7,800 to the settlement. The Sponsoring Firm's counsel stated that X inherited this account from another registered representative.

In 1999, a customer alleged that X recommended unsuitable securities and claimed $250,000 in damages. X paid the customer $5,000 to settle the matter. The Sponsoring Firm's counsel stated that X inherited this account from another registered representative and did not execute any trades for this customer.

In 1999, a customer alleged breach of fiduciary duties, breach of contract, misrepresentation, and failure to disclose material facts. The customer claimed $214,610 in damages. X paid the customer $2,500 to settle the matter. The Sponsoring Firm's counsel stated that X inherited this account from another registered representative and did not execute any trades for this customer.

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[4] This is consistent with FINRA's interpretation of Article III, Section 3(c) of FINRA's By-Laws, permitting individuals who become statutorily disqualified while they are employed to continue working pending the outcome of the statutory disqualification process. X became statutorily disqualified under FINRA's rules effective as of June 2009 because of amendments to FINRA's By-Laws that revised the definition of "disqualification" to conform to the definition set forth in Exchange Act Section 3(a)(39). *See FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 52, at *5.

The Sponsoring Firm's counsel also explained that X was named in the following seven customer complaints because X was a principal of a firm that went out of business and listed as an officer on the Sponsoring Firm's Uniform Application for Broker-Dealer Registration ("Form BD"):

In 1998, customers alleged that X recommended unsuitable securities, made misrepresentations, and churned their account. The customers claimed $96,000 in damages. X paid the customers $7,000 to settle the matter.

In 1997, customers alleged that X made misrepresentations and claimed $79,000 in damages. The customers subsequently withdrew their complaint.

In 1997, a customer alleged that X recommended unsuitable securities, breached his fiduciary duties, and engaged in fraud and made misrepresentations. The customer claimed $45,000 in damages. X paid the customer $1,000 to settle the matter. The Sponsoring Firm's counsel stated that this customer was never X's customer and never executed a trade in the customer's account.

In 1997, a customer alleged that X failed to supervise and recommended unsuitable securities, and claimed damages of $40,000. This matter was withdrawn and X paid $1,500 to the customer's attorney as reimbursement of his fees.

In 1997, a customer alleged that X failed to supervise, recommended unsuitable securities, and breached his fiduciary duties. The customer claimed $96,000 in damages. X paid the customer $6,666 to settle the matter. The Sponsoring Firm's counsel stated that X inherited this customer account and executed only one trade in the account.

In 1997, a customer alleged that X made misrepresentations and omissions, engaged in unauthorized trading, and churned his account. The customer claimed $160,000 in damages. X paid the customer $9,000 to settle the matter.

Finally, in 1996, a customer alleged that X made misrepresentations, recommended unsuitable securities, failed to execute a trade, and failed to supervise. The customer claimed $5,740 in damages. X's firm settled the matter for $2,000, and X did not personally contribute to the settlement.

2. Other Matters

In 2011, State 3 filed a tax lien against X for $383. X testified that, upon discovering this lien, he promptly paid all amounts due and owing to State 3.

In 1991, the State 3 Higher Education Services Corp. obtained a judgment against X in the amount of $11,196 for unpaid student loans. X testified that he repaid the loans in full.

In 1988, X was convicted of a misdemeanor for DWI in State 3.

Other than the State 1 Order and the matters referenced above, the record shows no other criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against X.

C. The Sponsoring Firm

The Sponsoring Firm has been a FINRA member since July 2002. The Sponsoring Firm's President testified that the Sponsoring Firm employs approximately 60 registered individuals in four offices. The Sponsoring Firm engages in a general securities business and is based in City 1, State 3.

1. Regulatory Actions

In 2009, the Sponsoring Firm entered into a Letter of Acceptance, Waiver and Consent ("AWC") with FINRA for violations of NASD Rules 2320, 2111(a), and 2110. Without admitting or denying the allegations set forth in the complaint, the Sponsoring Firm consented to findings that it demonstrated a pattern of not fully and promptly executing customer orders and failed to use reasonable diligence to identify and execute certain orders at the best inter-dealer market. FINRA censured the Sponsoring Firm, fined it $7,500, and ordered that it pay $2,381 in restitution to customers.

In 2006, the Sponsoring Firm entered into an AWC for violations of NASD Rule 3070. Without admitting or denying the allegations set forth in the complaint, the Sponsoring Firm consented to a finding that it failed to report information relating to customer complaints. FINRA censured the Sponsoring Firm and fined it $7,500.

In 2009, the Sponsoring Firm entered into a Stipulation and Agreement with the State 1 Department of Banking. The bases of the stipulation were allegations that the Sponsoring Firm employed at least two individuals as agents when they were not properly registered, employed individuals as cold callers when they were not properly registered, and failed to establish, enforce and maintain a system for supervising the activities of its agents. The Sponsoring Firm was fined $20,000. The Sponsoring Firm also agreed to retain an independent consultant to conduct a review of its internal procedures in certain specified areas and issue each quarter for two years a report to the Banking Commissioner describing any reprimands or complaints involving the Sponsoring Firm's personnel.

2. Routine Examinations

In 2010, FINRA issued the Sponsoring Firm a Cautionary Action. FINRA cited the Sponsoring Firm for the following deficiencies: failing to apply an appropriate "haircut" in calculating the Sponsoring Firm's net capital; failing to timely report certain complaints and settlements; failing to comply with Section 220.8 of Regulation T in connection with a customer's account; and failing to adequately supervise a registered representative in connection with unsuitable recommendations to a customer. The Sponsoring Firm undertook remedial action to address these deficiencies.

In 2009, FINRA issued the Sponsoring Firm a Cautionary Action for the following deficiencies: failing to address certain matters in its written supervisory procedures ("WSPs") and having inadequate procedures with respect to heightened supervision for registered personnel; failing to report a customer complaint; failing to adequately supervise trading activity in customer accounts; charging excessive markups/markdowns and excessive commissions; carrying the registrations of a registered representative despite the fact that she was not active in the Sponsoring Firm's securities business; and failing to ensure that an executing member firm provided duplicative confirmations and statements to the Sponsoring Firm for a registered person's personal account. The Sponsoring Firm undertook remedial action to address these deficiencies.

In 2007, FINRA conducted a compliance conference with the Sponsoring Firm, and also issued the Sponsoring Firm a Cautionary Action for the following deficiencies: failing to report and update secondary emergency contacts; failing to timely file a Uniform Termination Notice for Securities Industry Registration; failing to timely obtain information related to employee background checks; failing to notify FINRA prior to its use of electronic storage media for Firm email; inaccurately naming the Sponsoring Firm's proprietary trader; failing to adequately supervise the Sponsoring Firm's research analyst; failing to obtain permission from an individual before running a pre-registration check; failing to comply with certain requirements of the Sponsoring Firm Elements of Continuing Education Requirements; failing to capture instant messages discussing Firm business; failing to maintain adequate WSPs in a number of areas; failing to forward customer complaints received by branch offices to the Sponsoring Firm's main office; failing to place a registered representative on heightened supervision pursuant to the Sponsoring Firm's WSPs; failing to report a customer complaint and timely report customer complaints; failing to maintain customer complaint files pursuant to its WSPs; maintaining order tickets with missing information; failing to provide customers with the Sponsoring Firm's annual privacy notice; failing to comply with Section 503 of Regulation D; failing to make required options reports to senior Firm management; and failing to follow its WSPs with regard to supervision of options accounts and failing to comply with all requirements regarding the opening of options accounts. The Sponsoring Firm undertook remedial action to address these deficiencies.

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

IV. X's Proposed Business Activities and Supervision

The Sponsoring Firm proposes that it will continue to employ X as a general securities representative in its home office in City 1, State 3. The Sponsoring Firm represents that X will be compensated by commissions and fees generated.

X will be supervised by the Proposed Supervisor. The Proposed Supervisor first registered as a general securities representative in May 1997 (when he also passed the uniform securities agent state law exam) and qualified as a general securities principal in February 2005. The Proposed Supervisor has been registered with the Sponsoring Firm since August 2002. Prior to joining the Sponsoring Firm, the Proposed Supervisor was associated with two other firms.

The Proposed Supervisor currently serves as an operations manager at the Sponsoring Firm and supervises two registered representatives, including X. The other registered representative supervised by the Proposed Supervisor is on heightened supervision.

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

In the Application, the Sponsoring Firm stated that it "does not deem it necessary to place X under heightened supervision. The State 1 disclosure is the only item on X's CRD within the past 4 years." At the hearing, the Sponsoring Firm's President stated that the Sponsoring Firm typically placed registered personnel under heightened supervision only after receiving three written customer complaints within a specified period. Under the Sponsoring Firm's WSPs, it did not deem the State 1 Order an event that required imposing heightened supervision.

The Sponsoring Firm's counsel further provided that, after discussions with Member Regulation, the Sponsoring Firm drafted and implemented a heightened plan of supervision that the Sponsoring Firm represented has been in place since July 2011. Subsequent to the hearing, the Sponsoring Firm submitted the following revised heightened plan of supervision:[5]

1. The Sponsoring Firm will amend its written supervisory procedures to state that the Proposed Supervisor will be X's primary on-site supervisor. The Sponsoring Firm's Director of Compliance, will act in his capacity as chief compliance officer and assist the Proposed Supervisor and his alternate in the supervision of X;

2. X will not act in a supervisory capacity and will allow his Series 24 registration to lapse;

3. X will not maintain any discretionary accounts;

4. The Proposed Supervisor will act as X's primary on-site supervisor and will be present at the office on all days that the office is open. X will not work from home. Every document associated with X's transactions will be reviewed by the Proposed Supervisor no later than the next business day. the Proposed Supervisor will review, as per the conditions listed below, all correspondence that X may have received as well as review any correspondence prepared by X;

5. The Sponsoring Firm will compensate the Proposed Supervisor for his duties as X' heightened supervisor, but such compensation will not be

[5] At the hearing, the Hearing Panel had questions concerning the proposed plan of supervision and concerns regarding several proposed terms of the plan. The Hearing Panel requested that the Sponsoring Firm provide for its consideration a post-hearing submission containing revised heightened supervisory procedures to address its questions and concerns.

based on X's production. The Sponsoring Firm's Director of Compliance will act in his capacity as chief compliance officer and assist the Proposed Supervisor in supervising X by conducting unannounced reviews of X's transactions;

6. The Proposed Supervisor will review and initial all of X's trade and check blotters weekly (with input from X) and will segregate copies of the reviewed trade and check blotters for ease of review;

7. The Proposed Supervisor will review and pre-approve each securities account, prior to the opening of the account by X. The Proposed Supervisor will document his approval by signing and dating the paperwork and maintaining copies in segregated file for ease of review;

8. The Proposed Supervisor will randomly review 10 percent of X's client files on a monthly basis. The Proposed Supervisor will indicate the findings of his review in a memorandum, which he will segregate for ease of review;

9. The Proposed Supervisor will review X's incoming written communications (which will include both correspondence and e-mail communications) upon their arrival and will review X's outgoing correspondence before it is sent;

10. For the purposes of client communications, 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 e-mail system. If X nevertheless receives a business related e-mail message in another e-mail account outside the Sponsoring Firm, he will immediately deliver that message to the Sponsoring Firm's e-mail account. X will also inform the Sponsoring Firm of all outside e-mail accounts that he maintains. The Proposed Supervisor will preserve all of X's e-mail messages and segregate them for ease of review;

11. The Proposed Supervisor must certify quarterly (March 31, June 30, September 30, and December 31) 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;

12. All complaints pertaining to X, whether oral 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 The Proposed Supervisor will segregate documents pertaining to these complaints for ease of review;

13. If the Proposed Supervisor is to be out of the office, Firm Employee 1 will act as X's interim supervisor;[6]

14. 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 primary supervisor from the Proposed Supervisor to another person;

15. The Sponsoring Firm certifies that: 1) X meets all applicable requirements for the proposed employment; 2) that the Sponsoring Firm represents that it is not a member of any other self-regulatory organization; 3) that the Sponsoring Firm represents that it does not employ any other statutorily disqualified individuals; and 4) that the Sponsoring Firm represents that the Proposed Supervisors and X are not related by blood or marriage; and

16. In submitting its revised plan of heightened supervision, the Sponsoring Firm specifies that the compensation for the Proposed Supervisor's supervision of X and others would come directly from the Sponsoring Firm in an agreed upon amount and not compensated by overrides from X's transactions.

V. Member Regulation's Recommendation

Member Regulation recommends that the Application be denied because, in its view: (1) X's statutorily disqualifying event is serious and recent; (2) X has a large number of customer complaints; (3) X has demonstrated a pattern of being unable to comply with rules and regulations, as evidenced by his 1988 DWI conviction, student loan default, and tax lien; and (4) the Sponsoring Firm has a "significant" regulatory history.[7]

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[6] Employee 1 became registered as a general securities principal in June 1993. CRD indicates that Employee 1 has been the subject of five customer complaints (two of which went to arbitration and were dismissed). In 2008, a customer alleged that Employee 1 failed to supervise in connection with unauthorized and excessive trading in the customer's account and claimed damages of $24,222. The Supervising Firm paid the customer $12,795 to settle this matter, and Employee 1 did not contribute personally to the settlement. In 1994, a customer alleged that Employee 1 caused losses in the customer's account and claimed damages of $13,702. This matter was settled for $3,700, and Employee 1 did not contribute personally to the settlement. In 1997, a customer alleged that Employee 1 failed to supervise, made misrepresentations, and engaged in unsuitable transactions. This matter was settled for $9,000, with Employee 1 contributing $2,000 to this settlement. Finally, in 1997, -- State 4 filed a complaint against Employee 1 that alleged he failed to supervise and engaged in the sale of securities while unregistered. CRD indicates that the matter was dismissed.

[7] Prior to the hearing, Member Regulation also argued that the Sponsoring Firm had proposed no heightened plan of supervision, the supervisor proposed initially by the Sponsoring Firm (Employee 2) had three customer complaints and a tax lien, and did not appear to have the

[Footnote continued on next page]

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, Article III, Section 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, securities-related, and recent. The State 1 Order was based on allegations that X recommended an unsuitable investment to a customer, acted in an unregistered capacity, and falsely reported to the Sponsoring Firm information concerning a customer. *See Dep't of Mkt. Regulation v. Kresge*, Complaint No. CMS030182, 2008 FINRA Discip. LEXIS 46, at *15 n.12 (FINRA NAC Oct. 9, 2008) (holding that "it is axiomatic that fraud and unsuitable recommendations rank among the most serious kinds of securities law violations"); *Michael F. Flannigan*, 56 S.E.C. 8, 13 (2003) (holding that registration requirements provide "an important safeguard in protecting public investors") (internal quotations omitted); *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). State 1's Department of Banking issued the State 1 Order in 2009, and the misconduct underlying the order occurred in 2007. Further, the State 1 Order barred X

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time to adequately supervise X. The Sponsoring Firm subsequently replaced Employee 2 with the Proposed Supervisor.

for seven years, and the bar runs until 2016 (with the right to reapply for reinstatement in 2014). X's explanations at the hearing concerning the unsuitable recommendation underlying the State 1 Order (and the circumstances of the customer at issue) indicate that he fails to appreciate the suitability issues presented by that transaction and is a risk to the investing public.

Moreover, eleven customers have filed complaints against X since 1996, and X has personally paid more than $40,000 to settle certain of these complaints. Although the Sponsoring Firm's counsel explained that the majority of X's customer complaints related to his former firm shutting its doors (and the fact that he was listed as an officer on the Sponsoring Firm's Form BD), these complaints involved serious allegations such as unauthorized trading, misrepresentations, failures to disclose material facts, and churning customer accounts. We find the explanations concerning these complaints and X's monetary contributions to settle many of the complaints to be inadequate. Further, the four most recent customer complaints did not involve X's former firm, and several of the complaints alleged that X made unsuitable recommendations similar to the State 1 Order. The numerous complaints filed against X raise serious concerns regarding X's dealings with customers and compliance with securities laws and regulations.

Finally, we are troubled by several matters involving the Sponsoring Firm's supervision generally and the Sponsoring Firm's proposed plan for heightened supervision. *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). The Sponsoring Firm explained that it only places a registered representative on heightened supervision if he has been the subject of three customer complaints, and the Sponsoring Firm's President stated that an order such as the State 1 Order would not necessarily warrant heightened supervision even though the State 1 Order involved serious, securities-related misconduct. Indeed, the State 1 Order did not immediately trigger any heightened supervisory standards for X, and the Sponsoring Firm only placed X on heightened supervision in July 2011, approximately two years after entry of the State 1 Order and after discussions with Member Regulation concerning the necessity of stringent supervision of a disqualified individual such as X.

In addition, several elements of the Sponsoring Firm's plan of heightened supervision, submitted by the Sponsoring Firm after the hearing at the Hearing Panel's request, are troubling. For instance, the proposed backup supervisor has been the subject of numerous customer complaints and a regulatory action. Several of the complaints and the regulatory action alleged failures to supervise. Further, although one provision of the Sponsoring Firm's proposed supervisory plan provides that the Proposed Supervisor will review "[e]very document associated with X's transactions" no later than the next business day, another provision states that the Proposed Supervisor will review X's trade and check blotters weekly. In addition, although the Sponsoring Firm states that the Proposed Supervisor will not be compensated based upon X's production, the Proposed Supervisor will receive additional compensation for supervising X (the amount and conditions of which are unclear). Were we otherwise inclined to approve this Application, which we are not, we would have given the Sponsoring Firm an opportunity to submit a second revised plan that cures these deficiencies. As we have explained, however, X's disqualifying misconduct was serious and recent, and he is the subject of numerous customer complaints. These facts alone warrant denial of this Application.

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 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