PLEASE NOTE THE LATER CASE HISTORY OF THIS DECISION FOLLOWING THE TEXT OF THE DECISION.

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of
the Association of

X

as a

General Securities Representative

with

The Sponsoring Firm

Redacted Decision

Notice Pursuant to
Section 19(d)
Securities Exchange Act
of 1934

SD00007

On April 29, 1999, a member firm ("the Sponsoring Firm" or "the Firm") submitted a Membership Continuance Application ("MC-400" or "the Application") to permit X[1], a person subject to a statutory disqualification, to associate with the Firm as a general securities representative. In July, 2000, a subcommittee ("Hearing Panel") of the Statutory Disqualification Committee of NASD Regulation, Inc. ("NASD Regulation") held a hearing on the matter. X appeared and was accompanied by his proposed supervisor ("the Proposed Supervisor"), the sole owner and principal of the Sponsoring Firm. BA appeared on behalf of NASD Regulation's Department of Member Regulation ("Member Regulation").

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.

X's Statutorily Disqualifying Event and Background. X is subject to a statutory disqualification, under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 ("Act") and Article III, Section 4(g) of the NASD By-Laws, as a result of his 1993 guilty plea to felony charges of conspiracy to aid and abet the distribution of cocaine base (crack cocaine), and to four counts of money laundering. The charges stemmed from an indictment by the Grand Jury of a U.S. District Court ("the Indictment"), which charged X, along with eight other defendants, with: conspiracy to distribute crack cocaine; 16 counts of distribution of crack cocaine; 16 counts of sale of drug paraphernalia; 241 counts of money laundering;[2] aiding and abetting the distribution of crack cocaine; and 17 counts of forfeiture. According to the Indictment, X was the manager of what the government referred to as the "X Crack Vial Organization."[3] The government charged that from 1990 to 1993, X aided and abetted in the distribution of more than 10,000,000 grams of crack cocaine by manufacturing and selling more than 200,000,000 crack vials.

In 1996, X was sentenced to 24 months of incarceration, and was ordered to pay a $10,000 fine and to serve a five-year probationary term. X served 18 months in prison. He represented to the Hearing Panel that he has paid approximately $7,000 of the $10,000 fine.[4] His probationary term continues until October 2001.

X joined the Sponsoring Firm in July 1998 and, to date, he has been employed by an affiliated company of the Sponsoring Firm, Firm A, selling "Living Trusts."[5] The Sponsoring Firm submitted a Uniform Application for Securities Industry Registration or Transfer ("Form U-4") and a fingerprint card for X in January 1999, and X passed the Series 7 examination on May 17, 2000.

Prior to his employment with Firm A, X worked at Firm B as a designer from 1998 until July 1998. Prior to being incarcerated in 1996, X was employed as a sales representative by Firm C from

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[2] The Grand Jury found that all checks that X and his co-defendants had written and/or cashed, along with cash deposited in various accounts, were the prohibited proceeds from the sale of the drug paraphernalia.

[3] At the hearing, X asserted that the government had later "corrected" the Indictment and no longer listed him as "manager." To date, no written documentation has been submitted for the record about this alleged revised Indictment.

[4] The Hearing Panel asked the Sponsoring Firm to produce documentation supporting X's claim that he has paid approximately $7,000. To date, no documents have been submitted.

[5] X and the Proposed Supervisor described Living Trusts as an alternative to probate. They perform a service for customers, under the direction of an attorney, and provide an estate planning package for a fee of $795, half of which is paid as commission to the agent.

1994 to 1996. Further, X owned and operated Firm D which he described as a jewelry business, from 1985 to 1994.[6]

The record demonstrates that X did not disclose on his original Form U-4, dated January 21, 1999, the fact that he also previously had been charged with a state law drug-related felony in 1991.[7] Staff at the Association's Central Registration Depository ("CRD") became aware of the arrest and requested further information only after receiving notice of the event from the Department of Justice in 1999. At the hearing, X stated that he did not disclose this incident because he believed that he had paid an attorney to expunge this from his record. He also stated that his attorney had advised him to plead guilty to the offense because he would be discharged after he had attended the drug awareness program. X denied ever having used drugs.

X amended his Form U-4 in July 1999 and provided an account of the 1991 arrest. X's Form U-4 summarized the circumstances as follows:

> I was a passenger in a car that had been stopped by the highway patrol. Upon searching the car and the driver, the officer found that the driver had an empty container in his pocket which contained cocaine. . . . I had no idea the driver had this in his possession, but since I was a passenger in the auto, I was charged along with the driver. The officer found a plastic bag which contained ten empty small plastic vials without tops.
>
> I had no idea that the driver possessed plastic vials.

In June 2000, Member Regulation staff conducted a telephone conversation with X and the Proposed Supervisor. During the conversation, Member Regulation staff asked X about his 1991 arrest. X stated:

> I was the driver. I was pulled over for tailgating. . . . I had a plastic bag with plastic vials with tops in my right front pant's pocket. It was my business partners (co-defendants) . . . who were the passengers in

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[6] The 1993 guilty plea states that X forfeited all rights to certain assets, including "drug paraphernalia" and jewelry from Firm D seized by the government during its investigation.

[7] In 1991, X was charged with two counts of cocaine/narcotics possession, a felony. X was discharged conditionally in 1992. He completed a drug awareness diversion program and the charges were dismissed in March 1993. The record includes a copy of a Municipal Court document certifying the adjudication.

the car . . . one of them had two vials without the tops.

When asked about the significance of the tops' being on the vials, X stated that his co-defendant had two vials without the tops and that "lint" from the co-defendant's pocket is what was suspected, but never proven, to be cocaine residue in the vial.

X originally told Member Regulation staff that the 1991 arrest was not related to the subsequent federal indictment in 1993. Upon further questioning by Member Regulation staff, however, X admitted that the reference in the Indictment to X's and others having attempted to transport $15,000 in U.S. currency on the a State Turnpike in 1991, was a reference to the incident when he was found with the crack vials in his possession.

At the hearing before the Hearing Panel, X stated that he had always maintained and disclosed that he had been the driver of the car during the 1991 arrest, and the Proposed Supervisor stated that he may have transferred the information incorrectly to the amended Form U-4 because X originally completed the Form U-4 in handwriting and the Proposed Supervisor typed the final version. X admitted, however, that he had read the final version of the amended Form U-4 before signing it, and that he did not understand how he could have signed the version that listed him as a passenger who had not been found to have vials in his pocket.

We also note an additional questionable answer on X's January 1999 Form U-4 -- his negative response to question 23M, which asks: "Do you have any unsatisfied judgments or liens?" As stated earlier, X has not satisfied the $10,000 fine imposed as part of his sentence. At the hearing, X's only explanation for his failure to disclose the imposition of the fine was that he did not consider a fine to be an "unsatisfied judgment or lien." In addition, a search of a Lexis-Nexis database disclosed that a federal tax lien was filed against X by the Internal Revenue Service ("IRS") in 1996 in the amount of $287,275. X stated at the hearing that the IRS lien was a tax on the $400,000 in assets that the government had seized in forfeiture from him in 1993, following his guilty plea. X further stated that he did not disclose the lien on his Form U-4 in January 1999, because he believed that he had been informed in writing by the IRS in 1998 that there was no lien. X provided a document for the record that appears to be a letter from the IRS, stamped April 1, 1998, stating "[w]e have researched our records and could not locate any outstanding liabilities assessed against Mr.[X] ...." X stated that he had received this document during his efforts, with an attorney, to resolve the lien situation by an "Offer in Compromise" with the IRS. X also stated that in 1999 he sold the property on which the lien had been placed, and that this sale gave him further reason to believe that the lien had been cleared.

The Sponsoring Firm. The Sponsoring Firm became a member of the Association in 1990. The Firm has one office of supervisory jurisdiction ("OSJ") and no branch offices. It employs one registered principal (the Proposed Supervisor) and two registered representatives. The Sponsoring Firm clears its trades through Firm E. As indicated previously, the Sponsoring Firm shares its premises

with an affiliated company, Firm A, which is also owned and operated by the Proposed Supervisor. Firm A provides estate planning services and sells Living Trusts and long-term care insurance.

The routine examinations of the Sponsoring Firm conducted by NASD Regulation in 1998 and 2000 both resulted in Letters of Caution ("LOC"). The Firm responded to these LOCs in writing and indicated that the noted problems had been addressed.

The Proposed Supervisor and X's Proposed Duties. The Sponsoring Firm proposes that X be employed as a general securities representative in the Firm's only office. In addition to continuing to sell Living Trusts, X would be responsible for selling stocks, bonds, and mutual funds.

The Sponsoring Firm proposes that the Proposed Supervisor would be responsible for supervising X. The Proposed Supervisor has been registered as a general securities representative since 1983, and he has been a general securities principal since 1990. The Proposed Supervisor holds Series 7, 63, 53, 28 and 24 licenses. He has been registered at the following broker-dealers: Firm F. (9/85-5/90); Firm G. (5/90-8/90); and the Sponsoring Firm (8/90-present).

The record shows no disciplinary or regulatory proceedings, complaints, or arbitrations against the Proposed Supervisor. X and the Proposed Supervisor are not related by blood or marriage.

Member Regulation's Recommendation. Member Regulation recommends denial of the Sponsoring Firm's Application to employ X as a registered representative based on the seriousness of the underlying misconduct, including the financially-related offense of money laundering; the continuing probation until October 2001; and Member Regulation's concern that X has not been truthful in disclosing certain events on his Form U-4.

Discussion. After careful review of the entire record in this matter, we conclude that the Sponsoring Firm's Application to employ X as a registered representative should be denied.

In reaching this conclusion, we, like Member Regulation, note that the incident that resulted in X's statutory disqualification involved serious misconduct. He pleaded guilty to conspiring to aid and abet the distribution of crack cocaine and to money laundering. The Indictment stated that, from 1990 to 1993, the "X Crack Vial Organization" and X aided and abetted in the distribution of more than 10,000,000 grams of crack cocaine by manufacturing and selling more than 200,000,000 crack vials. All monies associated with X's business were deemed to be "fruits of the crime" and were forfeited to the government. X remains on probation for these serious offenses until October 2001. We are not persuaded by the Sponsoring Firm's Application that approval of X in these circumstances would be in the public interest.

Further, we agree with Member Regulation's concerns that X has not been straightforward in

disclosing matters on his Form U-4. As to the 1991 state law felony charges, he did not disclose the incident at all on the initial Form U-4 filed in January 1999. He amended the Form U-4 only after he was prompted by CRD, which learned of the arrest from the Justice Department after analysis of X's fingerprints. There are major discrepancies between the version of events provided in the initial amendment to the Form U-4 and in X's subsequent telephone interview with Member Regulation staff and in his testimony at the hearing. These discrepancies relate not only to the possibility that the Supervisor may have mistranscribed whether X was the driver or the passenger of the vehicle when the 1991 arrest occurred. There are references to X's having had "no idea that the driver possessed plastic vials," whereas X asserts that he always maintained that he was the driver and that some of the vials were found on him. Moreover, X never disclosed the $10,000 fine imposed on him pursuant to his 1993 guilty plea, or the controversy regarding the tax lien by the IRS. We find that these discrepancies are numerous, and are not justified by any of the arguments advanced by X and the Sponsoring Firm.

Based on the above, we conclude that it is not in the public interest to allow X in the securities industry through association with the Sponsoring Firm, in the capacity of a general securities representative.

Accordingly, the Sponsoring Firm's Application is denied.

On Behalf of the National Adjudicatory Council,

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Joan C. Conley
Senior Vice President and Corporate Secretary

LATER CASE HISTORY:

X subsequently appealed this decision to the SEC. The SEC dismissed the appeal as abandoned for X's failure to file a brief. Accordingly, the NAC decision is the final decision in this matter.