

MEMO# 27530

August 30, 2013

SEC Sanctions Portfolio Manager Under the Compliance Rule for Misleading the CCO Regarding Personal Trading Activity

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TO: CHIEF COMPLIANCE OFFICER COMMITTEE No. 7-13 RE: SEC SANCTIONS PORTFOLIO MANAGER UNDER THE COMPLIANCE RULE FOR MISLEADING THE CCO REGARDING PERSONAL TRADING ACTIVITY

The Securities and Exchange Commission recently settled a case brought against a Respondent who served as an assistant portfolio manager and an officer of several registered investment companies. * As discussed in more detail below, the Respondent engaged in conduct including submitting false quarterly and annual reports under the firm's Code of Ethics and physically altering brokerage statements, trade confirmations, and pre-clearance approvals to cover up his conduct. Among other violations, he was found to have violated SEC Rule 38a-1(c), which prohibits an officer, director, or employee of a fund or its investment adviser from directly or indirectly taking any action to coerce, manipulate, mislead, or fraudulently influence the fund's CCO in the performance of his or her duties under the Investment Company Act (the "Act"). As a result of his conduct, the Respondent was ordered to cease and desist from further violations of the law, barred from the industry, and ordered to pay disgorgement of \$231,169, prejudgment interest of \$23,889, and a civil penalty of \$100,000. The Respondent's conduct and violations of law are discussed in more detail below.

According to the Order, the Respondent engaged in active personal trading in securities, including securities of companies held or to be acquired by the funds he worked for. From 2006 to 2010, he executed approximately 850 personal securities transactions. During this period, he also:

- Certified annually that he received, read, and understood the firm's Code of Ethics;
- Failed to comply with the firm's Code of Ethics by not pre-clearing or reporting approximately 640 of his trades, including at least 91 trades in securities held or to be acquired by the funds and 14 trades that did not comply with the Code of Ethics restrictions on trading in securities the funds were buying or selling;
- Submitted false quarterly and annual reports to conceal his trading activities and falsely certified his annual compliance with the Code of Ethics;

- Created several documents that falsely purported to be pre-clearance requests approved by the adviser's and funds' CCO;
- Altered trade confirmations submitted to the adviser by backdating the dates of trades to make it falsely appear that the pre-clearances were granted in advance of his transactions;
- Manually deleted securities holdings listed on his brokerage statements before submitting them to the adviser in order to avoid securities purchases that were not pre-cleared;
- Falsely told the CCO that certain of his brokerage accounts were closed when, in fact, they remained opened and reflected trades that were not pre-cleared as required by the Code of Ethics; and
- Accessed the hard copy file of his previously submitted brokerage statements and physically altered them to create the false impression that his trading was in compliance with the Code of Ethics.

When the firm discovered the Respondent's conduct, he was placed on administrative leave. Three days later he resigned.

Based on the above conduct, the SEC found the Respondent to have willfully violated Section 17(j) of the Act and Rules 17j-1(b) and (d) thereunder by:

- i. Failing to pre-clear or report hundreds of his transactions, including transactions in securities held or to be acquired by the funds and covered securities that did not comply with the Code of Ethics' restrictions on trading in securities that the funds were buying or selling;
- ii. Submitting false quarterly and annual reports;
- iii. Certifying falsely his annual compliance with the Code of Ethics; and
- iv. Concealing his improper trading by physically altering documents submitted to the adviser.

He was additionally found to have willfully violated Rule 38a-1(c) under the Act by misleading the adviser's and fund's CCO in the performance of her duties by misrepresenting the status of certain of his brokerage accounts and tampering with the fund's compliance files.

Based on these violations, he was sanctioned as indicated above.

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endnotes

*See In the Matter of Carl D. Johns, Respondent, SEC Release No. IC-30675; Admin. Proc. File No. 3-15440 (August 27, 2013) (the "Order"), which is available at: <http://www.sec.gov/litigation/admin/2013/ia-3655.pdf>.

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