

STATE OF ILLINOIS  
SECRETARY OF STATE  
SECURITIES DEPARTMENT

IN THE MATTER OF: CHUCK A. ROBERTS

FILE NO. 1000087

**CONSENT ORDER OF DISMISSAL**

TO THE RESPONDENT:

Chuck A. Roberts  
(CRD #: 2064602)  
120 East 90<sup>th</sup> Apt. 7DE  
New York, New York 10128

Chuck A. Roberts  
C/o Christine A. Bruenn  
Attorney At Law  
Bingham McCutchen LLP  
Suite 300  
85 Exchange Street  
Portland, Maine 04101-5045

Chuck A. Roberts  
(CRD #: 2064602)  
C/o Morgan Stanley Smith Barney LLC.  
901 S. Bond Street 3rd Floor  
Baltimore, Maryland 21231

WHEREAS, Respondent on the 28<sup>th</sup> day of July 2010 executed a certain Stipulation to Enter Consent Order of Dismissal (the "Stipulation"), which hereby is in corporate by reference herein.

WHEREAS, by means of the Stipulation, Respondent has admitted to the jurisdiction of the Secretary of State and service of the Amended Notice of Hearing of the Secretary of State, Securities Department, dated April 28, 2010, in this proceeding (the " Amended Notice") and Respondent has consented to the entry of this Consent Order of Dismissal "Consent Order").

WHEREAS, by means of the Stipulation, the Respondent acknowledged, without admitting or denying the truth thereof, that the following allegations contained in the Notice of Hearing shall be adopted as the Secretary of State's Findings of Fact:

1. That at all relevant times, the Respondent was registered with the Secretary of State as a salesperson in the State of Illinois pursuant to Section 8 of the Act.
2. That on February 4, 2010 FINRA entered a Letter of Acceptance, Waiver and Consent (AWC) submitted by the Respondent regarding File No. 20070103988. Which sanctioned the Respondent as follows:
  - a. censured;
  - b. four week suspension from association with any FINRA member in any capacity; and
  - c. fined \$40,000.
3. That the AWC found:

### **OVERVIEW**

While employed at the Firm, the Respondent (along with another individual) headed a partnership. (This partnership is referred to herein as the "Group"). In the spring of 2005, a Sales Assistant who worked in the Group (the "Sales Assistant"), either alone or with another subordinate member of the Group, altered customer records by inserting his Firm e-mail address in place of certain customers' e-mail addresses in the customers' online account profiles and in Firm paperwork, thus preventing trade confirmations from being sent to certain of such customers. The Respondent had actual knowledge of this misconduct, which was undertaken in the misguided belief that such actions benefited the customers by, among other things, preventing the occurrence of excessive communications from the Firm.

Additionally, from mid-2005 to September of 2006, the Respondent's mother-in-law participated through the Firm in 45 initial public offerings ("IPOs") in violation of NASD Conduct Rule 2790 as well as the Firm's policies. The Respondent, who serviced his mother-in-law's accounts, knew or should have known that as an "immediate family member," she was prohibited from participating in these transactions.

As a result of the aforementioned alteration of documents, the Respondent violated NASD Conduct Rule 2110 by causing a violation of NASD Conduct Rule 3110 and SEC Rule 17a-3. In addition, the Respondent violated NASD Rules 2790 and 2110 in connection with the violative IPO trading described above.

### **FACTS AND VIOLATIVE CONDUCT**

Altering Customer E-Mail Addresses NASD Conduct Rule 3110(a) provides, in pertinent part, that "[each member shall make and preserve books, accounts,

records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations, and statements of policy promulgated there under and with the Rules of this Association and as prescribed by SEC Rule 17a-3." SEC Rule 17a-3 requires that registered broker-dealers shall make and keep accurate books and records relating to certain enumerated aspects of their business.

In or about March of 2005, the Group moved to the Firm from another member firm employer. Immediately thereafter, and through approximately July of that year, the Sales Assistant and possibly one or more other subordinate members of the Group, replaced a total of 51 customer email addresses with the Sales Assistant's Firm e-mail address. The period of time that accounts subsequently bore the Sales Assistant's Firm e-mail address ranged from a day or less (at least three customers) to approximately two years (at least two customers). The changes were made in order to facilitate the opening of the online accounts and also to lessen the amount of communications that were received by customers as a result of the move. The Respondent had knowledge of this conduct at the time that it occurred.

As a result of the foregoing conduct, the electronic delivery for approximately three customers of 35 trade confirmations were sent to the Sales Assistant's e-mail account rather than that of the appropriate customers. These customers continued to receive their monthly account statements, prospectuses and 1099 federal tax forms via U.S. mail.

Based upon the foregoing, the Respondent violated NASD Conduct Rule 2110 by causing a violation by the Firm of NASD Conduct Rule 31 10 and SEC Rule 17a-3.

#### **Trading in IPO's**

NASD Rule 2790, subsequently renumbered as FINRA Rule 5130, prohibits a member, or a person associated with a member, from selling, or causing to be sold, a new issue to any account in which a restricted person has a beneficial interest. Under subsection (b)(1)(B)(ii) of this rule, a "restricted person" includes an "immediate family member" of a registered representative. "Immediate family member" is defined under subsection (i)(5) to include the representative's "parents, mother-in-law or father-in-law, spouse, brother or sister, brother-in-law or sister-in law, son-in-law or daughter-in-law, and children." Rule 2790 plays an important part in maintaining investor confidence in the capital raising and IPO processes. It protects the integrity of the initial public offering process by ensuring that firms and their associated persons do not take advantage of their insider positions to purchase new issues for their own financial benefit at the expense of public customers. See FINRA Notice to Members 08-57 (discussing Rule 5130).

NASD Conduct Rule 2110, subsequently renumbered as FINRA Rule 2010, obliges an associated person to "observe high standards of commercial honor and just and equitable principles of trade."

In March of 2005, the Respondent's mother-in-law opened several accounts at the Firm, each of which was serviced by the Respondent. At the time that the accounts were opened, the Respondent did not disclose to the Firm that the individual who owned the accounts was his mother-in-law. Had the Respondent made such disclosure, the account numbers assigned to the accounts would contain a prefix which would identify them as being employee related.

Nonetheless, beginning immediately after the Respondent's mother-in-law opened her accounts and ending in September of 2006, she was allocated shares with respect to 45 IPOs. Because the account in which these trades occurred was not properly coded with the correct prefix, they were not identified by the Firm as being wrongful and were allowed to occur. The net profits from this trading was approximately \$15,700.

In September of 2006, a Firm compliance officer was discussing customer accounts with a member of the Group. At such time, the officer learned that the aforementioned customer was the Respondent's mother-in-law. The Firm conducted an investigation and determined that she inappropriately participated in the aforementioned syndicate trading.

Based upon the foregoing, the Respondent violated NASD Conduct Rules 2790 and 2110.

**Discipline Imposed and Remedial Steps Taken by the Firm**

On July 17, 2007, the Respondent and the aforementioned Sales Assistants were sanctioned by the Firm and issued Letters of Caution as a result of the aforementioned conduct. The sanctions that were imposed included the withholding of syndicate sales commissions from the Respondent on five deals. Also, the Respondent was suspended for 30 days without pay. Additionally,

The Respondent was placed on special supervision for a period of 12 months. Further, he was not promoted and was not permitted to move to a new satellite office that the Firm had opened.

4. That Section 8.E(1)(j) of the Act provides, *inter alia*, that the registration of a salesperson may be revoked if the Secretary of State finds that such Salesperson has been suspended by any self-regulatory organization Registered under the Federal 1934 Act or the Federal 1974 Act arising from Any fraudulent or deceptive act or a practice in violation of any rule, regulation or standard duly promulgated by the self-regulatory Organization.

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5. That FINRA is a self-regulatory organization as specified in Section 8.E (1)(j) of the Act.

WHEREAS, by means of the Stipulation Respondent has acknowledged, without admitting or denying the averments, that the following shall be adopted as the Secretary of State's Conclusion of Law:

The Respondent's registration as a salesperson in the State of Illinois is subject to revocation pursuant to Section 8.E(1)(j) of the Act.

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that he shall be levied costs incurred during the investigation of this matter in the amount of One Thousand dollars (\$1,000.00). Said amount is to be paid by certified or cashier's check, made payable to the Office of the Secretary of State, Securities Audit and Enforcement Fund.

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that He has submitted with the Stipulation a certified or cashier's check in the Amount of One Thousand Dollars (\$1,000.00). Said check has been made payable to the Office of the Secretary of State, Securities Audit and Enforcement Fund and represents reimbursement to cover the cost incurred during the investigation of this matter.

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that his employing firm imposed a plan of special supervision upon him which ran from July 23, 2007 to August 13, 2008.

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that he will abide by and conform with all restrictions regarding trading in initial public offerings ("IPOs") as promulgated by his employing firm and the Financial Industry Regulatory Authority ("FINRA").

WHEREAS, the Secretary of State, by and through his duly authorized representative, has determined that the matter related to the aforesaid formal hearing may be dismissed without further proceedings.

NOW THEREFORE IT SHALL BE AND IS HEREBY ORDERED THAT:

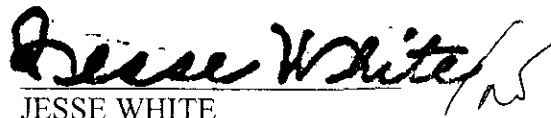
1. The Respondent is levied costs of investigation in this matter in the amount of One Thousand dollars (\$1,000.00); payable to the Office of the Secretary of State, Securities Audit and Enforcement Fund, and on August 4, 2010 has submitted One Thousand dollars (\$1,000.00) in payment thereof.

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2. The Respondent shall abide by and conform with all restrictions regarding trading in initial public offerings ("IPOs") as promulgated by his employing firm and the Financial Industry Regulatory Authority ("FINRA").
3. The Amended notice of Hearing dated April 28, 2010 is dismissed.
4. The formal hearing scheduled on this matter is hereby dismissed without further proceedings.

ENTERED- This 4<sup>th</sup> day of August 2010.

A handwritten signature in black ink that reads "Jesse White" with a stylized flourish at the end.

JESSE WHITE  
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State of Illinois

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