

STATE OF ILLINOIS  
SECRETARY OF STATE  
SECURITIES DEPARTMENT

IN THE MATTER OF: TONY GANNAcone III

FILE NO. 0500409

CONSENT ORDER OF WITHDRAWAL OF APPLICATION

**TO THE RESPONDENT:** Tony Gannacone III  
(CRD#: 2743859)  
6531 Amberwoods Drive  
Boca Raton, Florida 33433

C/o Calyon Financial, Inc.  
555 W. Jackson Boulevard  
Suite 500  
Chicago, Illinois 60661-5716

WHEREAS, Respondent on the 16th day of May 2006 executed a certain Stipulation to Enter Consent Order of Withdrawal of Application (the "Stipulation"), which hereby is incorporated by reference herein.

WHEREAS, by means of the Stipulation, Respondent has admitted to the jurisdiction of the Secretary of State, Securities Department, dated December 16, 2005 and January 5, 2006 respectively in this proceeding (the "Notice" and "Amended Notice") and Respondent has consented to the entry of this Consent Order of Withdrawal of Application ("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 Amended Notice of Hearing shall be adopted as the Secretary of State's Findings of Fact:

1. That on August 8, 2005, Calyon Financial, Inc., a registered dealer, filed a Form U-4 application for registration of the Respondent as a salesperson in the State of Illinois.
2. That on November 16, 2005, a Summary Order of Denial (the "Order") was issued by the Secretary of State denying this application. Pursuant to

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the terms of the Order, the Respondent requested a hearing on December 12, 2005.

3. That on June 12, 2003 and Exchange Hearing Panel of the New York Stock Exchange Inc. (NYSE) entered Decision, after a contested hearing, in File No. 03-82 which imposed the following sanctions upon the Respondent:
  - a. Censure; and
  - b. Barred from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization, for a period of three months.
4. That the Decision found:
  - a. The Respondent was born on October 1, 1968 and entered the securities industry in March 1995. He was employed by Legg Mason from March 1997 to November 1999.
  - b. In December 1999 the Exchange received a Form U-5 from Legg Mason stating that the Respondent had been terminated from his position as a trader on the Firm's Fixed Income Securities Desk in November 1999 for executing trades of certificates of deposit (CDs) at prices away from the prevailing market prices.
  - c. The CDs were issued by nationally chartered banks and sold to customers by Legg Mason. They were "callable" in that the issuer had the right to buy them back from the purchaser prior to their maturity.
  - d. The CDs also had a "step down" provision by which an initially high interest rate would be reduced or "step down" to a lower rate after a period of time, usually a year or two.
  - e. The CDs were generally long term, 15 to 20 years. Prior to the "step down" the CDs were not callable. After the "Step Down" the CDs could be called by the issuer.
  - f. If called, the face value of the CD would be returned to the holder of the CD, plus any accrued interest. If the CD was not called, the holder of the CD had to wait until maturity to receive back the full face value unless a "flower provision" was triggered.

- g. Under the “flower provision,” the CD could be redeemed prior to maturity for full face value if the holder died or became incapacitated.
- h. There was a limited secondary market for the CDs. If the holder of the CD wanted to liquidate the CD at any time prior to maturity, the only means to do so was to sell it in the secondary market at the prevailing market price. The issues were thinly traded in the secondary market.
- i. In October 1999, the Respondent was employed as a trader at Legg Mason’s Fixed Income Desk at its headquarters in Baltimore, Maryland. In this position, he was responsible for executing trades of CDs submitted to the Fixed Income Desk.
- j. At the request of a registered representative, Thomas Monahan (See EHPD 03-81), the Respondent executed 45 cross trades at par (\$100). He knew that the in-house cross trades were executed at a price that was more than the actual secondary market prices of the CDs.
- k. The CDs at issue had initial interest rates of between 7 and 9%, with step down rates of between 6 and 7%. The maturity dates varied from 2018 to 2019. Despite the variations all the cross trades took place at the same price, par.
- l. The Firm calculated corrected trade prices, based on the prevailing market prices and current interest rates, of between \$82 and \$96 per \$100 and reimbursed the purchasers accordingly.
- m. At various times the Respondent offered conflicting explanations for effecting the crosses at par.
- n. In his examination before the Exchange’s Division of Enforcement in December 2000 the Respondent testified that he provided Mr. Monahan with bids for the CDs ranging from 81-99 and that Mr. Monahan persuaded him to cross the CDs at par as part of a tax strategy. This testimony was consistent with the Respondent’s statement to the Firm and testimony before the Maryland State Unemployment Board.
- o. The Respondent testified at the hearing that the cross trades of the CDs at par were in accordance with Firm policy.

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- p. That by virtue of the foregoing, the Respondent Engaged in conduct inconsistent with just and equitable principles of trade by, on one or more occasions, effecting trades in certificates of deposit for customers of his member firm employer at prices away from the market.
5. That Section 8.E(1)(j) of the Act provides, *inter alia*, that the registration of a salesperson may be denied 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.
6. That the NASD 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:

That by virtue of the foregoing, the Respondent's application for registration as a salesperson in the State of Illinois is subject to denial pursuant to Section 8.E(1)(j) of the Act.

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that his sponsoring dealer withdrew the August 8, 2005 U-4 application on November 25, 2005. The Respondent additionally acknowledged and agreed that the Secretary of State will accept this withdrawal of application upon entry of this Consent Order; and that he shall not re-apply for registration as a salesperson in the State of Illinois for period of three (3) years from the entry of this Consent Order.

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 Five Hundred dollars (\$1,500.00). Said was paid by certified or cashier's check, made payable to the Office of the Secretary of State, Investors Education 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 Five Hundred dollars (\$1,500.00) to cover costs incurred during the investigation of this matter. Said check has been made payable to the Office of the Secretary of State, Investors Education Fund.

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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 Secretary of State accepts the November 25, 2005 withdrawal of the Respondent's August 8, 2005 U-4 application. The Respondent shall not re-apply for registration as a salesperson in the State of Illinois for a period of three (3) years from the entry of this Consent Order.
2. The Respondent is levied costs of investigation in this matter in the amount of One Thousand Five Hundred dollars (\$1,500.00), payable to the Office of the Secretary of State, Investors Education Fund, and on May 9, 2006 has submitted One Thousand Five Hundred dollars (\$1,500.00) in payment thereof.
3. The formal hearing scheduled on this matter is hereby dismissed without further proceedings.

Delivery of notice to the designated representative of any Respondent constitutes service upon such Respondent.

DATED: This 16th day of May 2006.

  
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JESSE WHITE  
Secretary of State  
State of Illinois