

STATE OF ILLINOIS  
SECRETARY OF STATE  
SECURITIES DEPARTMENT

IN THE MATTER OF: TONY GANNAcone III

FILE NO. 0500409

AMENDED NOTICE OF HEARING

**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

You are hereby notified that pursuant to Section 11.F of the Illinois Securities Law of 1953 [815 ILCS 5] (the "Act") and 14 Ill. Adm. Code 130, Subpart K, a public hearing will be held at 69 West Washington Street, Suite 1220, Chicago, Illinois 60602, on the 1<sup>st</sup> day of February, 2006, at hour of 10:00 a.m., or as soon as possible thereafter before George Berbas, Esq. or such other designated Hearing Officer of the Secretary of State.

Said hearing will be held to determine whether an Order shall be entered which would deny Tony Gannacone III's (the "Respondent"), registration as a salesperson in the State of Illinois and/or granting such other relief as may be authorized under the Act including but not limited to the imposition of a monetary fine in the maximum amount pursuant to Section 11.E of the Act, payable within ten (10) business days of the entry of the Order.

The grounds for such proposed action are as follows:

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 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.

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

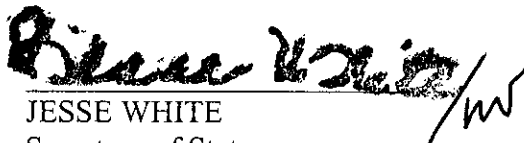
You are further notified that you are required pursuant to Section 130.1104 of the Rules and Regulations (14 Ill. Adm. Code 130) (the "Rules"), to file an answer to the allegations outlined above within thirty (30) days of the receipt of this notice. A failure to file an answer within the prescribed time shall be construed as an admission of the allegations contained in the Notice of Hearing.

Furthermore, you may be represented by legal counsel; may present evidence; may cross-examine witnesses and otherwise participate. A failure to so appear shall constitute default, unless any Respondent has upon due notice moved for and obtained a continuance.

A copy of the Rules, promulgated under the Act and pertaining to Hearings held by the Office of the Secretary of State, Securities Department, is included with this Notice.

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

DATED: This 5<sup>th</sup> day of January 2006.

  
JESSE WHITE  
Secretary of State  
State of Illinois

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