

**STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT**

IN THE MATTER OF: DAVID J. MEMMOTT

FILE NO. 0400490

NOTICE OF HEARING

**TO THE RESPONDENT: David J. Memmott
(CRD#: 1214587)
11 Park Lane
New Canaan, Connecticut 06840**

**C/o Morgan Stanley & Co., Incorporated
1585 Broadway
New York, New York 10036-8293**

You are hereby notified that pursuant to Section 11.F of the Illinois Securities Law of 1953 [815 ILCS 5] (the "Act") and 14Ill. Adm. Code 130, Subpart K, a public hearing will be held at 69 West Washington Street, Suite 1220, Chicago, Illinois 60602, on the 16th day of March, 2005 at the hour of 10:00 a.m. or as soon as possible thereafter, before James G. Athas, Esq. or such other duly designated Hearing Officer of the Secretary of State.

Said hearing will be held to determine whether an Order shall be entered revoking David J. Memmott'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(4) 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 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.

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2. That on August 27, 2004 an Exchange Hearing Panel of the New York Stock Exchange Inc. (NYSE) accepted a Stipulation of Facts and Consent to Penalty entered into between the Exchange's Division of Enforcement and the Respondent (Decision) in File No. 04-63 which imposed the following sanctions:
 - a. censure;
 - b. six week suspension from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization;
 - c. fined \$100,000; and
 - d. an undertaking to cooperate with the Division of Enforcement and testify truthfully in connection with any disciplinary proceedings relating to matters set forth in the Stipulation and Consent.
3. That the Decision listed the following background information:
 - a. In 1996, the Respondent became employed with the Firm, where he remains employed. At all relevant times, he has functioned as Managing Director in charge of the Listed Block Trading Desk. His responsibilities include overseeing and monitoring the day-to-day- agency and proprietary trading effected by traders on the Listed Block Trading Desk. One of the traders on the desk subject to his supervision was X.
 - b. On or about April 10, 2002, the Firm reported to the New York Stock Exchange's Division of Market Surveillance that on April 4, 2002, X violated Exchange Rule 97(a)(iii) through the improper entering of a proprietary trade.
 - c. The Division of Market Surveillance subsequently referred the matter to the Division of Enforcement. The respondent, represented by counsel, appeared for on-the-record testimony regarding this matter.
 - d. On November 25, 2003, a Charge Memorandum was issued to the Respondent by the Division of Enforcement.
4. That the Decision found:

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- a. On April 4, 2002 the Respondent approved a customer facilitation for approximately 4.8 million shares of XYZ Corp. at \$9 per share. This price was at a premium to market as the stock at the time was trading at approximately \$8.95. Subsequent to the customer facilitation, he directed his trader to buy XYZ stock at the limit price of \$9 as the price of XYZ began to decline. The multiple \$9 limit orders, which were entered via SuperDOT, had the effect of artificially influencing the price of an Exchange-listed security.
- b. On April 4, 2002 the Listed Block Trading Desk facilitated a block transaction involving the sale of approximately 4.8 million shares of XYZ Corporation at the request of a customer.
- c. Prior to the facilitation, the Respondent and the Firm initially proposed to the customer that it sell its shares of XYZ at a price of \$8.75, a discount to the current market.
- d. At that time, XYZ was trading at approximately \$8.95.
- e. The customer rejected the proposal of selling the shares at \$8.75 and indicated that another firm had expressed a willingness to purchase the entire block of 4.8 million shares of XYZ at \$9 per share.
- f. In the face of losing the transaction, X sought the Respondent's advice and he agreed to go forward with the facilitation at \$9. At approximately 2:03 p.m. the customer gave X the order to sell 4.8 million shares of XYZ at \$9 per share.
- g. In agreeing to take part in the 4.8 million share facilitation, the Firm purchased approximately 2.8 million shares of XYZ as principal. Approximately 2 million shares were sold to Firm customers who had indicated a willingness to participate in the transaction previous to the facilitation. The Firm held the remaining approximately 2.8 million shares of XYZ in the Firm's proprietary account.
- h. Subsequent to the 4.8 million-share print at 2:09:54 p.m., the price of XYZ began to decline. For example, at approximately 2:12:15 p.m., a transaction took place at \$8.95, and at that time XYZ was being quoted as \$8.94 bid for 100 shares; 1100 shares were being offered at \$8.97.
- i. Subsequently, the Respondent instructed X to buy XYZ at \$9, although the market was initially below that level.

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- j. X purchased XYZ stock via SuperDOT since it lent a degree of anonymity to the identity of the buyer and would not reveal to the market that the Firm was long XYZ as a result of the earlier block transaction.
- k. For example, at 2:13:05 p.m., X placed an order via SuperDOT to purchase 6,000 shares of XYZ at the limit price of \$9. At that time, the market quote was an \$8.93 bid for 200 shares; 100 shares offered at \$8.94. This order was executed in two transactions, one at 2:13:17 p.m. at \$8.94 and the second at 2:13:21 p.m. at \$8.96. The two executions resulted in an aggregate uptick in the price of XYZ + .03 bringing the price of the stock to \$8.96.
- l. At 2:14:04 p.m., with the market quoting an \$8.95 bid for 2,600 shares and 9,800 shares offered at \$9. X placed an order to purchase XYZ shares at \$9, this time for 15,000 shares. The order was executed in two transactions, at 2:14:15 p.m. at \$8.99 and at 2:14:24 p.m. at \$9. The second execution resulted in a total uptick of +.01 in the price of XYZ, bringing the price of the stock to \$9.
- m. The Respondent had instructed X to continue to buy the stock at \$9 per share until he amassed 200,000 shares. He later increased that 200,000-share quantity to a quantity between 300,000 and 500,000 shares of XYZ.
- n. After receiving these instructions from the Respondent, X continued to enter orders to purchase XYZ with a \$9 limit price although the market quotes were, at times, below that level.
- o. As a result of the Respondent's instructions, X continued to enter \$9 limit orders for XYZ over the course of approximately the next two hours. Of the additional 16 orders entered, 14 had a limit price of \$9 and one had a limit price of \$8.95 but was cancelled within seconds after entry. During that time period, the price of XYZ rose to and remained at or above \$9.
- p. In total, after the facilitation, X entered orders through SuperDOT to purchase 300,000 shares of XYZ as principal, of which 223,200 shares were executed. On April 4, XYZ closed at \$9.06.
- q. The total volume of trading in XYZ on the Exchange on April 4, 2002 was approximately 6.5 million shares. The transactions effected by X through SuperDOT represent approximately 1/8 of

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the volume of trading in XYZ on the NYSE floor for the day, not including the 4.8 million share block transaction.

- r. That by virtue of the foregoing, the Respondent caused transactions to be effected that had the effect of artificially influencing the price of an Exchange-listed security and caused a violation of Exchange Rule 401 in that he caused a trader to effect transactions on behalf of the Firm which artificially influenced the price of an Exchange listed security.
5. 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.
6. That the NYSE 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 revocation 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 and 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 requested 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.

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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 31st day of January 2005.



JESSE WHITE
Secretary of State
State of Illinois

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