

STATE OF ILLINOIS  
SECRETARY OF STATE  
SECURITIES DEPARTMENT

IN THE MATTER OF: JACK D. STONE

FILE NO. 0300682

CONSENT ORDER OF DISMISSAL

TO THE RESPONDENT:

Jack D. Stone  
(CRD#: 437327)  
100 E. Bellevue #15A  
Chicago, Illinois 60611

c/o Birkelbach Investment Securities, Inc.  
208 S. LaSalle Street #1700  
Chicago, Illinois 60604

C/o James D. Adducci  
Attorney at Law  
Adducci, Dorf, Lehner, Mitchell & Blankenship, P.C.  
150 North Michigan Avenue  
Suite 2130  
Chicago, Illinois 60601

WHEREAS, Respondent on the 10<sup>th</sup> day of September 2003 executed a certain Stipulation to Enter Consent Order of Dismissal ("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 and service of the Notice of Hearing of the Secretary of State, Securities Department, dated August 27, 2003, in this proceeding (the "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, while neither admitting nor 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:

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1. That on June 27, 2003 Birkelbach Investment Securities, 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 August 20, 2003, 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 August 22, 2003.
3. That on April 20, 2000, 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. 00-66 which imposed the following sanctions:
  - a. Censure;
  - b. Barred for three years from membership, allied membership, approved person status, and from employment or association in the capacity of registered representative, trader, proprietary trader, or supervisor with a member or member organization; and
  - c. Fined \$25,000.
4. That the aforementioned Decision, by unanimous vote of the Hearing Panel, found:
  - a. The Respondent was born on July 1, 1930. His employment in the securities industry has been as follows:

08/69-06/70	Firm A
06/70-07/72	Firm B
07/72-01/74	Firm C
02/74-03/75	Firm D
03/75-02/78	Firm E
02/78-12/87	Firm F
01/88-04/91	Firm G
04/91-01/97	the Firm
01/97-Date	Firm H
  - b. The Respondent's current position is director of correspondent services, marketing Firm H's services to other broker-dealers. He does not currently service retail or institutional customer accounts.
  - c. On or about December 4, 1996, the Firm, filed with the Exchange a Form RE-3 reporting that in August 1996, the Firm delivered a letter of admonition to the Respondent, which he acknowledged on November 12, 1996, concerning the opening of personal accounts at another

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broker-dealer and the sharing of a trade with his customer, the XYZ Group. The Form RE-3 further reported that the Firm fined him the sum of \$4,000.

- d. By letter dated April 30, 1997, which he received, the Exchange informed the Respondent of its investigation.
- e. At all relevant times, the Respondent was employed in the Firm's Chicago branch office. He was the supervisor of what was formally called Firm Execution Services, and what was informally known as the Stone Group, a distinct institutional trading desk, with two or three traders in addition to the Respondent. His customers were solely institutional and professional. Other than his personal and related accounts, he did not service retail customer accounts.
- f. As set forth below, the Respondent, among other things, improperly shared in the profits of a trade with a customer, and improperly allocated profitable trades from a proprietary account of the Firm to the account of his wife, by altering and falsifying order tickets. In addition, he made false statements to the Exchange regarding his conduct.
- g. On or about April 18, 1996 at approximately 11:47 AM (CST), the Respondent effected a purchase of 3,000 units of ABC Corporation of America ("ABC") for the account of the XYZ Group, a hedge fund, at a price of  $6 \frac{7}{8}$ .
- h. On the same day, after the price of the units had risen sharply from  $6 \frac{7}{8}$ , the Respondent obtained the permission of the XYZ Group to transfer to his personal account 500 units of the 3,000 units originally purchased on its behalf. A purchase order ticket for the account of the XYZ Group was marked 3,000 shares, then crossed out and reentered as 2,500 shares at  $6 \frac{7}{8}$ .
- i. At approximately 1:46PM on the same day, when the units were trading at approximately  $8 \frac{3}{4}$ , the Respondent prepared a purchase order ticket for the 500 units at a price of  $6 \frac{7}{8}$  for an account entitled DEF & Co., BILT3, an account that he had opened in his wife's name, and over which he had the power to direct investments, at DEF Equities, Inc., a non-member broker-dealer client whose accounts he serviced. This order ticket had the written statement "Part of 3,000."
- j. At approximately 1:52PM on the same day, the Respondent sold the 500 units in his wife's account at a price of  $8 \frac{3}{4}$  per unit, yielding a net profit of approximately \$938.

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- k. In addition to an account in his wife's name, the Respondent opened an individual account in his own name at DEF (together, the "DEF Accounts"). He did not obtain the prior written consent of the Firm to open the DEF Accounts and he did not arrange for duplicate confirmations; and monthly statements for the DEF Accounts to be sent to the Firm.
- l. From approximately March 1995 through March 1996 (the "relevant period"), the Respondent, on one or more occasions, altered and/or falsified, or caused to be altered and/or falsified, order tickets to realize profitable day trades of equities in the account of his wife, (the SW Account), held at the Firm. The conduct involved, among other things, allocating to his wife's account profitable trades from a Firm trading account which he controlled as detailed below.
- m. Through the Respondent's control of the Stone Group's principal trading account (the "Trading Account"), he engaged in distinct patterns of violative trading activity. One pattern of activity involved his completing a profitable trade (often, a short sale) for the Trading Account. He would then cross out the number of shares on the Trading Account order tickets, and allocate a portion of the profitable trade to the SW Account, creating fictitious order tickets with inaccurate time stamps for the SW Account.
- n. The other major pattern of activity involved the Respondent using the Trading Account to sell to, or buy from, the SW Account at better-than-market prices, resulting in riskless profits for the SW Account at the expense of a proprietary account of the Firm. Often, he pursued this course to cover at a profit a short position taken by the SW Account earlier in the day, which would have resulted in a loss, or substantially lower profit, if he had covered at the market price.
- o. On one or more occasions, transactions at the time and prices reflected on the order tickets for such trading were not reported to the respective exchanges on which the traded securities were listed, including, on one or more occasions, the Exchange.
- p. The following examples are illustrative of the two most common patterns of violative trading by the Respondent:

UVW Corp. (UVW) 4/10/95

Time	B/S	Shares	Price	Account
10:06	B	1,500	19.25	Trading Account
10:09	Buy executed			
10:09	S	1,500	19.75	Trading Account
12:07	Sell Executed			

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1:16	B	1,500	19.25	SW Account
1:16	S	1,500	19.75	SW Account

Profit for SW Account: \$750

q. The information in paragraph p reflects the information set forth on the respective order tickets. The tickets show that 1,500 shares were taken from the Trading Account and allocated to the SW Account after the profitable trade was completed. The original Trading Account buy and sell tickets were for 3,000 shares, which number was crossed off on both tickets, and for which the number 1,500 was substituted. The prices on the tickets for the SW buy and sell are the same as the purportedly earlier Trading Account buy and sell.

r. RST Inc. (RST) 6/20/95

Time	B/S	Shares	Prices	Account
1:44	S	500	28.375	SW Account
2:41	S	500	27	Trading Account
2:42	B	500	27	SW Account

Profit for SW Account: \$687.50

s. In the example in paragraph r above, Stone bought 500 shares from the Trading Account at a below-market price to make a profit on a short sale for the SW Account. The market price for RST did not fall below 27.875, and was most often at 28 or above, at the time the Respondent sold 500 shares from the Trading Account and purchased 500 shares for the SW Account at a price of 27. His conduct resulted in a substantially higher profit on the short sale than what he could have obtained had he covered at the market price.

t. On one or more occasions, the Respondent failed to mark short sale order tickets short, and, on one or more occasions, marked a short sale as long.

u. On one or more occasions, the Respondent fabricated or altered order tickets to effectuate the allocation of a portion of a profitable trade from one of his personal accounts to another.

v. On one or more occasions, the Respondent positioned the SW and Trading Account on opposite sides of the market at the same time, creating an inherent conflict of interest.

w. The violative conduct described above involved approximately 19 transactions, and resulted in profits of approximately \$15,187.50.

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- x. On August 19, 1998, the Respondent testified under oath before the Exchange's Division of Enforcement. In that testimony, he denied that he had engaged in any activity which allowed him to profit personally from a trade without incurring the risk of the trade, other than the ABC trade with the XYZ Group discussed above. Specifically, he denied that he had ever mismarked, destroyed, altered, or falsified in any way order tickets to allow his personal or related accounts to profit from a trade prior to the ABC trade.
- y. The Respondent's testimony under oath to the Exchange as described in the preceding paragraph was false and misleading in material respects.
- z. That by virtue of the foregoing, the Respondent:
  - I. Engaged in conduct inconsistent with just and equitable principles of trade in that:
    - (a) On one or more occasions, he allocated trades, and/or portions of trades, from a proprietary account of his member organization employer to his wife's account, without the approval of his member organization employer; and
    - (b) On one or more occasions, he effected purchases and sales of securities for his wife's account from and to a proprietary account of his member organization employer at prices away from the market, to the benefit of his wife's account and to the detriment of his member organization employer.
  - II. Caused violations of Exchange Rules 410 and 440, and SEC Regulations 240.17a-3 and 240.17a-4 in that he caused the books and records of his member organization employer to be inaccurate, and he altered and/or fabricated, or caused to be altered and/or fabricated, information, including account designations, share quantity, and time stamps, on order tickets.
  - III. Caused violations of Exchange Rule 440B.13 in that, on one or more occasions, he failed to mark sell order tickets to indicate whether the sale was long or short.
  - IV. Caused violations of Exchange Rule 41 OB in that, on one more occasions, he failed to report to the Exchange transactions in securities listed for trading on the Exchange.

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- V. Violated Exchange Rule 352(c) in that he shared in the profit of a transaction in the account of a customer of his member firm employer.
  - VI. Violated Exchange Rule 407(b) in that he failed to obtain the prior written permission of his member organization employer to open securities accounts at a non-member broker-dealer, and did not arrange for duplicate confirmations and monthly statements for said accounts to be sent to his member organization employer.
  - VII. Violated Exchange Rule 476(a)(4) in that he made a material misstatement to the Exchange, and he is, therefore, subject to discipline pursuant to Exchange Rule 476(a).
- 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 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 denial pursuant to 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 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:

- 1. He shall be placed under increased and heightened supervision for a period commencing with the entry of this Consent Order and terminating on December 31, 2004; and
- 2. He shall pay the sum of Seven Hundred Fifty dollars (\$750.00) to the Office of the Secretary of State, Investors Education Fund, as reimbursement to cover the cost of investigation of this matter. Said sum shall be payable by means of certified or cashiers check and made to the order of the Office of the Secretary of State, Investors Education Fund and shall be due within thirty (30) days from the entry of this Consent Order.

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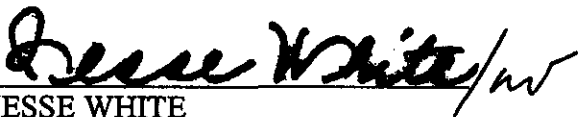
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WHEREAS, the Secretary of State, by and through his duly authorized representative, has determined that the matter related to the aforesaid formal hearing may be dismissed without further proceedings.

NOW THEREFORE IT SHALL BE AND IS HEREBY ORDERED:

1. That Jack D. Stone shall be and is placed under increased and heightened supervision for a period commencing with the entry of this Consent Order and terminating on December 31, 2004.
2. That Jack D. Stone shall pay the sum of Seven Hundred Fifty dollars (\$750.00) to the Office of the Secretary of State, Investors Education Fund as reimbursement to cover the cost of investigation of this matter. Said sum shall be payable by means of certified or cashiers check and made to the order of the Office of the Secretary of State, Investors Education Fund and shall be due within thirty (30) days from the entry of this Consent Order.
3. That the Summary Order of Denial entered on August 20, 2003 is vacated.
4. That the formal hearing scheduled on this matter is hereby dismissed without further proceedings.

DATED: This 15<sup>th</sup> day of September 2003.

  
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JESSE WHITE  
Secretary of State  
State of Illinois

NOTICE: Failure to comply with the terms of this Order shall be a violation of Section 12.D of the Illinois Securities Law of 1953 [815 ILCS 5] (the Act). Any person or entity who fails to comply with the terms of this Order of the Secretary of State, having knowledge of the existence of this Order, shall be guilty of a Class 4 felony.