

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

**IN THE MATTER OF: JANINA A. DITTMAR  
a/k/a JANINA A. CASEY**

**FILE NO. 0400441**

**CONSENT ORDER OF WITHDRAWAL**

TO THE RESPONDENT: Janina A. Dittmar a/k/a Janina A. Casey  
(CRD#: 2040225)  
525 E. 72<sup>nd</sup> Street,  
Apartment 27G  
New York, New York 10021

c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated  
4 World Financial Center  
New York, New York 10281

c/o David Spears  
Attorney At Law  
Richards Spears Kibbe & Orbe LLP  
One World Financial Center  
New York, New York 10281

WHEREAS, Respondent on the 10th day of May 2005 executed a certain Stipulation to Enter Consent Order of Withdrawal (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 and service of the Notice of Hearing of the Secretary of State, Securities Department, dated March 15, 2005 in this proceeding (the "Notice") and Respondent has consented to the entry of this Consent Order of Withdrawal ("Consent Order").

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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 May 18, 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. 04-73 which imposed the following sanctions:
  - a. censure;
  - b. suspension of one month from employment or association in any capacity with a member or member organization; and
  - c. fine of \$150,000.
3. That the Decision listed the following background and jurisdictional information:
  - a. The Respondent was born on March 13, 1960. She entered the securities industry in approximately 1984 as a junior analyst at Firm A, a non-member firm. In or about 1987, she began working as a junior salesperson at Firm B. She passed her Series 63 in April 1990 and her Series 7 examination in May 1990. She left Firm B in or about 1994 to join Firm C (a non-member firm) as a salesperson. In or about 1996, she became a salesperson at Firm D. She left Firm D in or about 2000 to become an institutional sales person at ("the Firm").
  - b. She is currently employed at the Firm as a Director in Equity Institutional Sales.
  - c. At all times set forth below, she was employed as an institutional salesperson at the Firm, whose responsibilities included making recommendations to institutional customers regarding investments and arranging for Firm analysts to make presentations regarding various industries to institutional customers.
  - d. During the time period set forth below, she was compensated with a base salary and a bonus. She received no commissions for

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recommending investments to her clients and did not directly generate stock trades by her clients. Her bonus was determined based on a number of factors including the percentage of total institutional equities executed by all firms that were directed to the Firm's institutional trading desk.

- e. On October 29, 2003, Enforcement issued a Charge Memorandum in this matter. The respondent submitted an Answer to the Charge Memorandum on November 24, 2003.

#### 4. That the Decision found:

- a. On July 11, 2002, after receiving approval for a ratings change, but prior to the public release of the report by the Firm, X, an analyst at the Firm disclosed information to clients of the Firm leading some or all of the clients to believe that he was going to downgrade his rating on the common stock of XYZ. X made this disclosure at a lunch meeting on July 11, 2002, which was arranged and attended by the Respondent. That same day, based on comments that X made during the course of the meeting, she informed four institutional clients in substance that she believed X planned to downgrade his rating on XYZ. These institutional clients sold XYZ stock prior to the release of the ratings change. X's research report was published after midnight on July 12, 2002.
- b. As set forth in detail below, the Respondent engaged in conduct inconsistent with just and equitable principles of trade by disclosing information to third parties, that an analyst planned to downgrade his rating on a stock, prior to the public dissemination of that information.
- c. At all relevant times, the Firm had the following policies to prevent the misuse of market-sensitive information relating to research reports by any person associated with it:

"Knowledge of a pending recommendation or change in opinion or estimates is considered to be 'market-sensitive information.' Pending initial opinions, estimate or opinion changes, and decisions to issue research reports or comments may not be disclosed by any means to anyone, either inside or outside of the Firm, until the information is disseminated in the appropriately prescribed manner ... This prohibition is intended to avoid the misuse of market sensitive information and the appearance of impropriety." (Merrill Lynch Research Policy and Procedures Manual, Section III, paragraph C)

"If a Research Analyst's change in views or opinions were revealed to a salesperson prior to the public dissemination, the salesperson should not communicate the change to anyone other than his or her

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manager for the purpose of contacting Research management or Compliance to ensure the change is publicly disseminated by the Research Analyst per established policies and procedures." (Merrill Lynch Memorandum to all Global Research Sales Personnel dated March 1, 2002, Attachment 1, Section II)

- d. At all relevant times, the Respondent was subject to and required to abide by these policies.
- e. Pursuant to the Firm's policy, the Respondent had a duty to maintain in confidence information about a pending change in an analyst's rating or earnings estimate until it was disseminated in the appropriately prescribed manner. Pursuant to the Firm's policy, she was allowed to communicate the change to her manager, for the purpose of contacting Research management, or Compliance, but was prohibited from communicating the change to anyone else.
- f. X was a Senior Analyst at the Firm until the Firm terminated his employment on August 20, 2002. (X is the subject of a separate Exchange disciplinary action. In addition, the Firm is the subject of a separate Exchange disciplinary action. See Hearing Panel Decision 04-30.)
- g. As a Senior Analyst for the Firm, X covered Hard-Line Retail stocks such as XYZ and UVM. X was, at all relevant times, an influential analyst with a well-known reputation in the stocks that he covered. Institutional Investor magazine had rated X the number one analyst in the retailing/hard-goods category for a period of six years.
- h. Prior to July 11, 2002 and as far back as September 1997, X's rating on XYZ had been a "Strong Buy" for the Intermediate and Long-Term. The Intermediate-Term investment rating at the Firm is an indicator of expected total return within the 12 month period from the date of the initial rating. The Long-Term investment rating is an indicator of fundamental company factors demonstrating potential total return during the three-year period from the date of the initial rating. The range of investment ratings for both were: "Strong Buy", "Buy", "Neutral" and "Reduce/Sell".
- i. "Strong Buy" was the Firm's highest rating. A "Strong Buy" rating for the Intermediate-Term denoted the opinion that the total return (price appreciation plus yield) within the 12-month period from the date of the initial rating would be a minimum of 20%.
- j. On the morning of July 11, 2002, after speaking with representatives from XYZ and UVM and discussions with his colleagues, X began the process of causing the Firm to downgrade its Intermediate-Term

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rating of XYZ by two levels, from a "Strong Buy" (by-passing "Buy") to "Neutral."

- k. A rating of "Neutral" for the Intermediate-Term denoted the opinion that total return (price appreciation plus yield) within the 12-month period from the date of the initial rating would be 0 to 10%.
- l. As well as lowering his Intermediate-Term rating on XYZ from a "Strong Buy" to a "Neutral", X also reduced his estimates on XYZ's earnings per share for 2002 from \$1.60 to \$1.57 and for 2003 from \$2.00 to \$1.90.
- m. Between 10:30 and 11:00 a.m. that same morning, X received approval for the downgrade. Pursuant to Firm policy, X's downgrade and reduced earnings estimate would be released until after midnight, July 11-12, 2002.
- n. At approximately 12:30 p.m. on July 11, X arrived at the offices of ABC Bank in New York City to participate in a lunch meeting arranged by the Respondent.
- o. The Respondent had arranged the meeting at ABC Bank approximately four weeks in advance. The meeting was attended by her, two ABC Bank portfolio managers and two research analysts from ABC Bank.
- p. The purpose of this lunch meeting was for X to provide an update regarding the various stocks he covered in the hard-line retail industry, including XYZ. The meeting lasted approximately one hour.
- q. During the lunch meeting, X disclosed information leading some or all of the attendees to believe that he was going to downgrade his rating on XYZ.
- r. At the time of the meeting, the information that the Firm was going to downgrade its rating on XYZ's stock was material, non-public information.
- s. At the time of the lunch meeting, the Firm had not released the downgrade.
- t. Promptly after this meeting, the Respondent went to an empty cubicle at ABC Bank and called four institutional clients.

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- u. The Respondent informed each person she called, among other things, that she had just come from a meeting with the Firm's hard-lines analyst, X, and she believed that X "very well could" downgrade his rating on XYZ.
  - v. At various times on the afternoon of July 11, after being in touch with the Respondent, Firm clients sold several million shares of XYZ stock prior to release of the research report at 12:04 a.m. on July 12. The sales on July 11 were at approximately two dollars per share more than the prices at which the stock traded on July 12.
  - w. The trading volume in XYZ on July 11, 2002 was approximately 23 million shares. This was more than twice the average daily volume on a composite basis of approximately 8.5 million shares in 2002. On July 12, 2002 (after the report was released) the volume of shares traded was approximately 46 million shares.
  - x. XYZ shares closed at \$31.40 on July 11 --- down \$1.85 or 5.6%, from the day before. On July 12, XYZ stock opened at \$29.36 and closed at \$29.09, down \$2.31, or 7.4% from the July 11 close.
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.

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 revocation pursuant to Section 8.E(1)(j) of the Act.

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that:

- 1. She shall cause to have her registration as a salesperson in the State of Illinois withdrawn within three (3) days from the entry of this Consent

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Order and will not re-apply for registration for a period of two (2) years from the entry of this Consent Order; and


2. She has submitted with the Stipulation a certified or cashier's check in the Amount of One Thousand Five Hundred Dollars (\$1,500.00). Said check has been made payable to the Office of the Secretary of State, Investors Education Fund and represents reimbursement to cover the cost incurred during the investigation of this matter.

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. Janina A. Dittmar a/k/a Janina A. Casey shall cause to have her registration as a salesperson in the State of Illinois withdrawn within three (3) days from the entry of this Consent Order and will not re-apply for registration for a period of two (2) years from the entry of this Consent Order.
2. Janina A. Dittmar a/k/a Janina A. Casey has submitted with the Stipulation a certified or cashier's check in the Amount of One Thousand Five Hundred Dollars (\$1,500.00). Said check has been made payable to the Office of the Secretary of State, Investors Education Fund and represents reimbursement to cover the cost incurred during the investigation of this matter.
3. The formal hearing scheduled on this matter is hereby dismissed without further proceedings.

ENTERED: This 17<sup>th</sup> day of June 2005.

  
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JESSE WHITE

Secretary of State  
State of Illinois