



Notice of Disciplinary Action against Seth Gordon Rosen, former Chief Compliance Officer and associated person of Quad Capital, LLC, a former Member Organization

To: Members, Member Organizations, Participants and Participant Organizations

From: John C. Pickford, Enforcement Counsel, NASDAQ OMX PHLXSM

DATE: November 23, 2015

Enforcement No. 2015-11 FINRA Matter No. 20100221850-02 (incl. 20110284443)¹

On November 20, 2015, the Business Conduct Committee (the "Committee") issued a disciplinary decision against Seth Gordon Rosen ("Rosen") in his capacity as the former Chief Compliance Officer ("CCO") and as a former associated person of Quad Capital, LLC ("Quad Capital" or the "Firm"), a former member organization of the NASDAQ OMX PHLX LLC ("PHLX" or the "Exchange"). In connection with a Statement of Charges issued in this action, Rosen submitted an Offer of Settlement, Stipulation of Facts and Consent to Sanctions ("Offer"). Solely to settle these proceedings, and without admitting or denying the charges, Rosen consented to findings that during the period from December 1, 2009 through August 31, 2011 (the "Relevant Period"), Rosen violated Exchange Rules 748 and 707 by failing to ensure the Firm had adequate supervisory controls reasonably designed to ensure compliance with Rule 105 of Regulation M of the Securities Exchange Act of 1934 ("Rule 105"). During the Relevant Period, Rosen was delegated responsibilities and authority for providing appropriate supervisory control at the Firm as its CCO, pursuant to Exchange Rule 748.

The decision found, among other things, that during the Relevant Period, Rosen took the mistaken position for Rule 105 purposes that the Firm's traders could seek to make a bona fide purchase on the business day of pricing where an offering was priced after regular trading hours, rather than by the business day prior to the day of pricing. In addition, Rosen failed to reasonably supervise the Firm's trading to ensure it complied with other bona fide purchase qualifying criteria, including that any such bona fide purchase(s) must be effected after the final restricted period short sale and be at least equivalent in quantity to the entire amount of restricted period short selling in the stock, and that the Firm did not engage in restricted period short selling within 30 minutes of the close of regular trading on the business day prior to pricing or thereafter during the restricted period. Moreover, Rosen failed to provide reasonable supervision to ensure that, when the Firm sought to move to a separate account structure on or about May 20, 2010, that the Firm properly complied with Rule 105's separate accounts provisions, including reasonable measures to prevent the Firm's proprietary traders from sharing information about each other's trading strategies and positions. Further, Rosen failed to reasonably supervise the Firm's trading to ensure,

¹ Concurrent Notices of Disciplinary Action in this Matter also separately have been posted concerning: (i) the Firm's former CEO, and (ii) Quad Capital, as well as three other former co-founding owners, control persons and associated persons of the Firm.

both before and after the Firm sought to move to a separate account structure, that the Firm did not sell short stock during the restricted period and obtain related offering stock, without otherwise qualifying for a Rule 105 exception. Rosen failed to ensure that the Firm's applicable versions of its written supervisory procedures were reasonably designed to ensure compliance with Rule 105. Specifically, the Firm's applicable written supervisory procedures lacked any express supervisory reviews for ensuring the Firm's compliance with Rule 105. Further, Rosen failed to provide reasonable supervision to ensure the Firm conducted adequate supervisory reviews for compliance with Rule 105 and adequately documented such supervisory reviews. Neither the Firm nor Rosen could provide any documentary evidence of supervisory reviews for Rule 105 compliance, beyond the provision of sporadically maintained offering sheets that generally only evidenced certain traders' specified participation interest levels in particular offerings.

The Offer submitted by Rosen was accepted by the Committee and was the basis of its Decision. The Committee concurred in the sanctions consented to by Rosen, and ordered the imposition of the following sanctions: Rosen is censured, suspended from serving in a supervisory capacity with any member organization for a period of eighteen months (and upon completing such supervisory suspension, shall be required to pass or re-take (as applicable) a Series 24 supervisory exam in order to serve in a supervisory capacity with a member organization in the future), and fined \$30,000 (with the fine due and payable either immediately upon reassociation with a member firm following the eighteen month supervisory suspension, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier).

For more information, contact:

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