



Notice, Pursuant to Exchange By-law 18-2, of Disciplinary Action Against McGowan Investors, LP, Member Organization

To: Members, Member Organizations, Participants and Participant Organizations

From: Mark Schepps, Chief Enforcement Counsel, NASDAQ OMX PHLXSM

DATE: November 20, 2009

NASDAQ OMX PHLX No. 09-25 Enforcement No. 2009-26

On November 19, 2009, the Business Conduct Committee (the "Committee") issued a disciplinary decision against McGowan Investors, LP ("McGowan"), a member organization of the Exchange. In response to a Statement of Charges issued in this action, McGowan submitted an Offer of Settlement, Stipulation of Facts and Consent to Sanctions ("Offer"). Solely to settle this proceeding, and without admitting or denying the charges, McGowan consented to findings that it violated Sections 15 and 17 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), Rules 15b3-1, 17a-3, 17a-5, 17f-2 and Rule 200(g) of Regulation SHO promulgated thereunder, and Exchange Rules 604(b), 623, 703, 748, 757, and 760 by failing to: (i) keep accurate books and records; (ii) mark properly 122 equity securities as "sell long" or "sell short"; (iii) amend its Form BD to reflect accurately the ownership interest of an affiliated entity; (iv) file a Form U-5 within 30 days of its termination of a registered representative; (v) perform a biennial independent testing of its AML Program by an employee or a qualified outside person; (vi) obtain and/or register with the Web Central Registration Depository database maintained by the Financial Industry Regulatory Authority the names and fingerprint records of four employees and/or associated persons; and (vii) establish, maintain and enforce adequate written supervisory procedures, and a system for applying such procedures, reasonably expected to prevent and detect, insofar as practicable, violations of the applicable securities laws and regulations, including the by-laws and rules of the Exchange. McGowan's Offer was accepted by the Committee and was the basis of its Decision.

The Committee found that McGowan violated Sections 15 and 17 of the Exchange Act, Rules 15b3-1, 17a-3, 17a-5, 17f-2 and Rule 200(g) of Regulation SHO promulgated thereunder, and Exchange Rules 604(b), 623, 703, 748, 757, and 760, concurred in the sanctions consented to by it, and ordered the imposition of the following sanctions: (i) a censure and (ii) a fine of \$12,500.

For more information, contact:

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