



## Notice of Disciplinary Action against Quad Capital, LLC, a former Member Organization, and Keith Robert Bolognese, Guerino Ciampi and John Vincent Guarino, former co-founding owners, control persons and associated persons of Quad Capital, LLC

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**To:** Members, Member Organizations, Participants and Participant Organizations

**From:** John C. Pickford, Enforcement Counsel, NASDAQ OMX PHLX<sup>SM</sup>

**DATE:** November 23, 2015

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### **Enforcement No. 2015-11; FINRA Matter No. 20100221850-03 (incl. 20110284443)<sup>1</sup>**

On November 20, 2015, the Business Conduct Committee (the "Committee") issued a disciplinary decision against Quad Capital, LLC ("Quad Capital" or the "Firm"), a former member organization of the NASDAQ OMX PHLX LLC ("PHLX" or the "Exchange"), and Keith Robert Bolognese, Guerino Ciampi and John Vincent Guarino, former co-founding owners, control persons and associated persons of Quad Capital (the "Individual Respondents") (collectively, "Respondents"). In connection with a Statement of Charges issued in this action, Respondents 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, Respondents consented to findings that:

(1) during the period from December 1, 2009 through August 31, 2011 (the "Rule 105 Review Period"), Quad Capital violated Rule 105 of Regulation M of the Securities Exchange Act of 1934 ("Rule 105") in connection with 44 offerings, and Quad Capital, and Messrs. Bolognese, Ciampi and Guarino violated Exchange Rules 748 and 707 by failing to ensure the Firm had an adequate supervisory system with respect to Rule 105;

(2) the Firm violated Rule 200(f) of Regulation SHO by failing to institute a written plan of organization upon seeking to apply an aggregation unit structure under the Rule beginning on or about May 20, 2010 (which continued through 2013);

(3) the Firm violated Rule 203(b)(1) of Regulation SHO and Exchange Rule 760 from July 12, 2010 to July 16, 2010, by effecting eight short sales without first borrowing or arranging to borrow the shares, or having reasonable grounds to believe that it could have borrowed the shares, and by failing in 937 instances to document the quantities of shares it had allegedly borrowed or arranged to borrow to effect the short sales and failing to document the identities of the lenders that had allegedly lent the stock to the Firm, and

(4) the Firm violated Exchange Rules 748 and 707 by having inadequate written supervisory procedures between at least May 2010 and May 2012 with respect to: (i) order marking; (ii) borrowing and delivery requirements when effecting short sales; (iii) obligations of Members and Member Organizations; (iv) position limits; (v) exercise limits; (vi) liquidating positions;

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<sup>1</sup> Concurrent Notices of Disciplinary Action in this Matter also separately have been posted concerning: (i) the Firm's former Chief Compliance Officer, and (ii) the Firm's former Chief Executive Officer (who also was a co-founding owner and control person of the Firm).

(vii) limits on uncovered short positions; (viii) various restrictions on exchange options transactions and exercises; and (ix) Exchange Rule 1042(f) and (g), and Commentaries .05, .06, and .08.

The Decision found, among other things, that the Firm did not comply with various criteria to qualify for Rule 105's bona fide purchase exception during the Rule 105 Review Period, and also treated its individual proprietary traders' accounts as separate accounts for Rule 105 purposes beginning on or about May 20, 2010, without qualifying for the separate account exception. For example, Quad Capital's proprietary traders (including the Individual Respondents) routinely shared information about each other's trading strategies and positions, while purporting to respectively maintain separate accounts. It was not uncommon for one proprietary trader to monitor another trader's account, or to take trading actions on another trader's behalf, while the latter was away from the office or away from his trading desk. Additionally, the Individual Respondents, as owners, had master access to view, and did view other traders' accounts, including securities positions in real-time for risk-management purposes, even though they each maintained personal proprietary trading accounts under the Firm's purported "separate account" structure. They also had systems permission access to take actions in others' trading accounts at that time. As a consequence, the Firm was not eligible for the separate account exception. During the Rule 105 Review Period, however, some of the Rule 105 violations were not as a consequence of the Firm's misapplication of the bona fide purchase or separate account exceptions.

Bolognese, Ciampi and Guarino failed to provide for appropriate supervisory control at Quad Capital and to reasonably discharge those duties to prevent and detect, insofar as practicable, violations of Rule 105. Specifically, they failed to ensure the Firm's Chief Executive Officer (who had overall authority and responsibility for supervision at Quad Capital until his voluntary departure from the Firm in March 2011,) and the Firm's Chief Compliance Officer (who was delegated front-line supervisory responsibilities at the Firm throughout the Rule 105 Review Period) provided for appropriate supervisory controls in the performance of their designated/delegated supervisory functions. Further, the Individual Respondents failed to ensure the written supervisory procedures were reasonably designed to comply with Rule 105. None of the Firm's applicable versions of its written supervisory procedures contained any express supervisory reviews for Rule 105. Further, the Firm could not provide any documentary evidence during the Rule 105 Review Period to corroborate that Firm personnel performed any ongoing 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 Respondents was accepted by the Committee and was the basis of its Decision. The Committee concurred in the sanctions consented to by them, and ordered the imposition of the following sanctions: (i) Respondents each are censured; (ii) Quad Capital shall be liable to pay a fine of \$2.5 million (consisting of \$2,350,000 for the Rule 105 and associated supervisory violations and \$150,000 for the Regulation SHO and remaining supervisory and recordkeeping violations); and (iii) Bolognese, Ciampi and Guarino each shall be suspended from serving in a supervisory capacity with any member organization for a period of one month (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, in the event that Quad Capital fails to pay the above full amount of \$2.5 million, Bolognese, Ciampi and Guarino shall each be liable to the Exchange for one third of any such unpaid amount.

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For more information, contact:

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