

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

Department of Market Regulation,

Complainant,

v.

James Stewart Meagher (CRD No.
2328325),

Respondent.

Disciplinary Proceeding

No. 20110305098-02

COMPLAINT

The Department of Market Regulation alleges:

Summary

1. This case involves two separate fraudulent schemes employed by Respondent James Stewart Meagher and Meagher's false and misleading testimony in connection with FINRA staff's investigation of this matter.

2. The first fraudulent scheme involved manipulative trading activity known as "marking the close," which is the practice of attempting to influence the closing price of a stock by executing purchase or sale orders at or near the close of the market. From November 2011 through February 2012, while he was registered with FINRA member firm Chardan Capital Markets LLC ("Chardan Capital"), Meagher marked the close by placing eleven orders to purchase Over-the-Counter ("OTC") securities for Chardan Capital's proprietary accounts shortly before market close on the final trading day of each month. Meagher's orders were

placed at prices that exceeded the inside offer at the time, and his executions resulted in higher closing prices for the securities. The higher closing prices were used by Chardan Capital to value the securities in the firm's proprietary account, which Meagher was responsible for trading, and which had a positive impact on his compensation. By engaging in the foregoing conduct, Meagher willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, and FINRA Rules 2010 and 2020.

3. After Meagher left Chardan Capital, he employed a second fraudulent scheme which was designed to defraud an individual, JA. The scheme commenced in or about mid-May 2012, when Meagher, who was not associated with a FINRA member at the time, solicited JA to invest in Facebook's Initial Public Offering ("IPO"). On May 18, 2012, JA wired \$25,080 to Meagher for the purpose of purchasing 660 shares of Facebook at \$38 per share. Instead, Meagher only purchased 579 Facebook shares for JA, misappropriating \$3,080 of JA's money for his personal use. Approximately one week later, without any disclosure to JA, Meagher sold all of JA's Facebook shares at \$30 per share and used the proceeds for his personal use, including paying for trips, a car rental, and gambling. In furtherance of his scheme and in response to a request by JA that Meagher sell the Facebook shares, Meagher, who became registered with a FINRA member on November 14, 2012, subsequently represented falsely to JA that he had sold the Facebook shares on November 14, 2012 at \$21 per share (totaling \$13,860) and that he would wire the proceeds to JA. In doing so, Meagher failed to disclose that he had sold the shares months earlier, May 2012, for \$30 per share and that the proceeds of the sale owed to JA, net of JA's share of the commissions charged, were \$17,155. In addition, Meagher only wired a total of \$7,000 to JA. By engaging in the foregoing conduct, Meagher willfully

violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, and FINRA Rules 2010 and 2020.

4. In addition, in connection with FINRA staff's investigation of this matter, Meagher provided false and misleading information, by repeatedly testifying that the funds he received from JA were for a personal loan, which he had fully repaid. By providing false and misleading information to FINRA staff, Meagher violated FINRA Rules 8210 and 2010.

Respondent and Jurisdiction

5. Meagher entered the securities industry in 1993, and has been associated with eleven FINRA member firms since that time. On October 22, 2009, Meagher became registered with Chardan Capital, where he worked as a wholesale market maker and a proprietary trader. Meagher remained registered with Chardan Capital until May 8, 2012, when the firm filed a Form U5 terminating his registration. After leaving Chardan Capital, Meagher registered with Firm XYZ, a FINRA member firm, from November 14, 2012 to December 12, 2014. Meagher was last registered with Firm ABC, a FINRA member firm, from February 10, 2015 through May 9, 2016, when that firm filed a Form U5 terminating his registration. Although Meagher is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the effective date of termination of Meagher's registration with FINRA member ABC, namely May 9, 2016, and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

Statement of the Facts

A. Meagher's Manipulative "Marking-the-Close" Scheme

6. From October 2009 through May 2012, Meagher was employed by Chardan Capital as a proprietary trader and made markets in OTC securities. Meagher's market making activities included trading the common stocks of Omega Navigation Enterprises, Inc. ("ONAVQ"), Virtual Medical Centre, Inc. ("VMCT"), Toron, Inc. ("TRON"), and Source Gold Corp. ("SRGL").

7. Chardan Capital compensated Meagher through periodic cash draws which were influenced by his month-end profit and loss ("P&L") determinations. One of the components of the P&L determinations was the change in month-end market values of long positions in proprietary accounts traded by Meagher.

8. During the first three months of 2011, Chardan Capital's P&L calculations for Meagher indicated that Meagher had a positive carryforward balance. Beginning in April 2011 and continuing through at least March 2012, however, Meagher's carryforward balances were negative because of trading losses.

9. Meagher's negative carryforward balance had an adverse impact on his compensation draws. For example, Meagher received no compensation draws in September 2011 through November 2011.

10. In an effort to reduce his negative carryforward balance and to increase his compensation, Meagher manipulated the month-end prices of four securities – ONAVQ, VMCT, TRON, and SRGL – for which he held long positions in the firm's proprietary account.

11. On the final trading day of each month from November 2011 through February 2012, in eleven instances, Meagher purchased certain securities, that is, ONAVQ, VMCT,

TRON, and/or SRGL, for which he held long positions in the firm's proprietary account. Each purchase was effected by Meagher shortly before the close of each trading day, with nine purchases being effected within the last five minutes before market close, one purchase being effected approximately seven minutes before market close, and one purchase being effected approximately twenty minutes before the market close. In each instance, Meagher's purchase was effected at a price higher than the previous trade. Further, nine of the eleven purchases were the last trade before the market closed; the remaining two purchases were effected shortly before the last trades.

12. In addition, in each of the eleven instances, Meagher knowingly and intentionally purchased the securities at prices that were above the inside offer, even though there was sufficient size, or shares available, at the inside offer to fill Meagher's entire order. Chardan Capital's electronic systems provided traders such as Meagher with a "quote montage," which displayed all bids and offers (including the quantity of shares available) by market makers in the securities. Accordingly, Meagher was able to see the depth of the market as well as the best bid and offer. In each of the eleven instances, rather than attempting to purchase shares at the inside offer price, Meagher sent OTC Link messages to purchase shares from firms which were displaying inferior prices. In doing so, Chardan Capital's electronic systems sent Meagher an "Outside Spread Warning." Meagher, however, manually overrode the warning and purchased the securities at prices that were above the available inside offer.

13. Meagher's end of day transactions resulted in the closing price for the securities, which were utilized by Chardan Capital to value the securities in the proprietary accounts Meagher managed. By marking up the closing prices of the securities, Meagher sought to reduce

the net carryforward loss balance in his P&L account and thereby increase his ability to take cash withdrawals.

14. The following sets forth the details regarding the eleven orders initiated by Meagher at excessive prices and for the purpose of marking the closing prices:

(a) On November 30, 2011 (15:59:08), Meagher bought 5,000 shares of VMCT at \$0.065 per share. At that time, another firm was offering 8,400 shares of VMCT for \$0.0149. Thus, Meagher paid \$0.0501 more per share than what was available at the inside offer. As a result, Meagher set the closing price of VMCT at \$0.065, which was 351.39 percent higher than the previous trade price of \$0.0144.

(b) On November 30, 2011 (15:59:25), Meagher bought 5,000 shares of TRON at \$0.135 per share. At the time, another firm was offering 5,000 shares of TRON for \$0.100. Thus, Meagher paid \$0.035 more per share than what was available at the inside offer. As a result, Meagher set the closing price of TRON at \$0.135, which was 38.46 percent higher than the previous trade price of \$0.0975.

(c) On November 30, 2011, Meagher effected the final two purchases in ONAVQ prior to the close of the market, both of which were at excessive prices and in furtherance of his scheme to mark the close. First, at 15:59:51, Meagher bought 500 shares of ONAVQ at \$0.26 per share. At that time, another firm was offering 5,000 shares of ONAVQ for \$0.230. Three seconds later, at 15:59:54, Meagher bought 5,000 shares of ONAVQ at \$0.312 per share, again at a time when the same other firm was offering 5,000 shares of ONAVQ for \$0.230. Thus, in his final two transactions before the market closed, Meagher paid \$0.03 and \$0.082 more per share than what was available at the inside offer. As a result, Meagher set the

closing price of ONAVQ at \$0.312, which was 35.65 percent higher than the previous trade price of \$0.230.

(d) On December 30, 2011 (15:57:32), Meagher bought 500 shares of ONAVQ at \$0.220 per share. At the time, another firm was offering 5,000 shares of ONAVQ for \$0.170. Thus, Meagher paid \$0.05 more per share than what was available at the inside offer. As a result, Meagher set the closing price of ONAVQ at \$0.220, which was 42.86 percent higher than the previous trade price of \$0.154.

(e) On December 30, 2011 (15:59:28), Meagher bought 500 shares of TRON at \$0.120 per share. At the time, another firm was offering 5,000 shares of TRON for \$0.100. Thus, Meagher paid \$0.02 more per share than what was available at the inside offer. As a result, Meagher set the closing price of TRON at \$0.120, which was 30.43 percent higher than the previous trade price of \$0.092.

(f) On January 31, 2012 (15:39:14), Meagher bought 1,000 shares of SRGL at \$0.170 per share. At the time, another firm was offering 5,000 shares of SRGL for \$0.160. Thus, Meagher paid \$0.01 more per share than what was available at the inside offer. As a result, Meagher set the closing price of SRGL at \$0.170, which was 13.33 percent higher than the previous trade price of \$0.150.

(g) On January 31, 2012 (15:55:49), Meagher bought 5,000 shares of ONAVQ at \$0.185 per share. At the time, another firm was offering 5,000 shares of ONAVQ for \$0.180. Thus, Meagher paid \$0.005 more per share than what was available at the inside offer. As a result, Meagher set the closing price for ONAVQ at \$0.185, which was 12.80 percent higher than the previous trade price of \$0.164.

(h) On February 29, 2012, Meagher effected the final two purchases in ONAVQ prior to the close of the market, both of which were at excessive prices and in furtherance of his scheme to mark the close. First, at 15:53:01, Meagher bought 500 shares of ONAVQ at \$0.18 per share. At that time, another firm was offering 5,000 shares of ONAVQ for \$0.1671. Slightly less than four minutes later, at 15:56:45, Meagher bought 1,000 shares of ONAVQ at \$0.19 per share, again at a time when the same other firm was offering 5,000 shares of ONAVQ for \$0.1671. Thus, in his final two transactions before the market closed, Meagher paid \$0.0129 and \$0.0229 more per share than what was available at the inside offer. As a result, Meagher set the closing price of ONAVQ at \$0.19, which was 13.70 percent higher than the previous trade price of \$0.1671.

(i) On February 29, 2012, (15:59:55), Meagher bought 500 shares of SRGL at \$0.090 per share. At the time, another firm was offering 5,000 shares of SRGL for \$0.089. Thus, Meagher paid \$0.001 more per share than what was available at the inside offer. As a result, Meagher set the closing price for SRGL at \$0.090, which was 12.50 percent higher than the previous trade price of \$0.080.

B. Meagher's Scheme to Defraud JA

15. On or about April 9, 2012 – prior to Meagher's leaving Chardan Capital – Meagher contacted JA, the President and CEO of FINRA member ASL, about the possibility of joining ASL as a proprietary trader. Meagher had been introduced to JA earlier that month.

16. Approximately five weeks later, on May 17, 2012 – after Meagher left Chardan Capital – Meagher solicited JA to purchase shares of Facebook, which were offered in Facebook's IPO. JA wired \$25,080 to Meagher, with the understanding that Meagher would use the funds to purchase 660 shares of Facebook for JA. Meagher told JA he would receive a profit

when Meagher sold the securities. Meagher purchased 1,750 shares of Facebook at \$38 per share that same day, using only \$22,000 of JA's funds and \$44,500 of Meagher's own funds. Thus, Meagher retained \$3,080 of JA's funds in his own account.

17. On May 25, 2012, Meagher sold 250 shares of Facebook at \$32.5303 per share, and four days later, on May 29, 2012, Meagher sold the remaining 1,500 Facebook shares at \$30 per share. Meagher did not disclose to JA that he had sold the shares.

18. On June 1, 2012, and June 4, 2012, following settlement of the sales of the Facebook shares, Meagher deposited all of the proceeds from the Facebook share sales (including JA's share of the proceeds) in Meagher's personal bank account.

19. Instead of returning the proceeds from the Facebook share sales to JA or the \$3,080 he failed to invest in Facebook shares for JA, Meagher improperly used the funds for personal reasons, including but not limited to, renting a car; paying for a stay at the Ritz Carlton in Fort Lauderdale, Florida; and paying for a trip to the Seminole Indian Casino in Coconut Creek, Florida.

20. Meagher did not disclose to JA that he had sold the Facebook shares, that he had not invested the remaining \$3,080 JA had wired to Meagher, or that he had used the Facebook sales proceeds and the remaining wired funds for his own personal use.

21. On November 7, 2012, JA contacted Meagher and advised him that he wanted Meagher to sell JA's Facebook shares and return the proceeds to him. Shortly thereafter, on November 14, 2012, Meagher became registered with a FINRA member firm.

22. In furtherance of his scheme, on November 15, 2012, Meagher falsely represented to JA via email that he had sold the Facebook shares at \$21 per share on November 14, 2012, a

day upon which Facebook traded in a range from \$19.93 to \$22.50, and that he would wire JA his proceeds. Meagher, however, did not wire any funds to JA at this time.

23. On December 12, 2012, JA contacted Meagher about not receiving his money from the Facebook sale. In response, Meagher falsely represented to JA via email that he was not aware JA had not been paid and suggested the cause could have been a delay caused by his broker switching firms.

24. Thirteen days later, on December 25, 2012, Meagher falsely represented to JA via email that the proceeds from his Facebook share sale was \$13,860. In fact, JA's share of the proceeds was approximately \$17,115 (that is, 579 shares at \$30 per share, less \$255 for commissions charged for the sale of JA's shares). On December 26, 2012, however, Meagher only wired \$7,000 to JA.

25. In the months that followed, JA continued to correspond with Meagher by e-mail, inquiring about the balance of the proceeds owed to JA. Meagher, however, did not remit any additional funds to JA.

26. Thus, Meagher's fraudulent actions deprived JA of \$13,195, comprised of (1) the amount Meagher owed to JA as a result of the sale of the Facebook shares, i.e., \$17,115 less \$7,000, and (2) the \$3,080 balance from the funds wired by JA to Meagher in May 2012, which Meagher failed to invest in Facebook shares for JA.

C. Meagher Provided False and Misleading Testimony to FINRA Staff

27. On November 19, 2014, Meagher provided testimony in connection with FINRA staff's investigation of this matter, pursuant to FINRA Rule 8210.

28. Meagher provided false and misleading testimony to FINRA staff, in that, he repeatedly asserted that the money he received from JA in May 2012 was a personal loan, which

he had fully repaid, when in fact JA provided the money to Meagher for an investment by JA in Facebook shares and Meagher failed to return all JA's proceeds from that investment to JA.

FIRST CAUSE OF ACTION

Manipulative Trading (Marking the Close) (Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 Promulgated Thereunder, and FINRA Rules 2010 and 2020)

29. Market Regulation realleges and incorporates by reference paragraphs 1, 2, and 5 through 14.

30. From November 30, 2011, through February 29, 2012, Meagher, acting with scienter, manipulated the closing prices of ONAVQ, VMCT, TRON, and SRGL by making eleven purchases of the securities at prices in excess of the inside offer at or near the close, thereby artificially increasing the closing price of the stocks.

31. By engaging in the foregoing misconduct, Meagher, in connection with the purchase or sale of a security, directly or indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, knowingly or recklessly, employed a device, scheme or artifice to defraud; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading; and engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit upon any person in willful violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder.

32. By engaging in the foregoing misconduct, Meagher also effected a transaction in, or induced the purchase or sale of, a security by means of any manipulative, deceptive, or other fraudulent device or contrivance in violation of FINRA Rules 2010 and 2020.

SECOND CAUSE OF ACTION

Scheme to Defraud JA (Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 Promulgated Thereunder, and FINRA Rules 2010 and 2020)

33. Market Regulation realleges and incorporates by reference paragraphs 1, 3, 5, and 15 through 26.

34. Beginning in May 2012 and continuing into 2013, Meagher, acting with scienter, employed a fraudulent and deceptive scheme to defraud JA in connection with JA's investment in Facebook shares. In furtherance thereof, Meagher made false and misleading statements, and failed to disclose material information to JA about Meagher's purchase and sale of Facebook shares, including the timing of the sale, the prices at which Meagher sold the shares, the proceeds from the sale, and Meagher's misuse of the proceeds for his own personal use.

35. By engaging in the foregoing misconduct, Meagher, in connection with the purchase or sale of a security, directly or indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, knowingly or recklessly, employed a device, scheme or artifice to defraud; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading; and engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit upon any person in willful violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder.

36. By engaging in the foregoing misconduct, Meagher also effected a transaction in, or induced the purchase or sale of, a security by means of any manipulative, deceptive, or other fraudulent device or contrivance in violation of FINRA Rules 2010 and 2020.

THIRD CAUSE OF ACTION

False and Misleading Testimony (FINRA Rules 8210 and 2010)

37. Market Regulation realleges and incorporates by reference paragraphs 1, 4, 5, and 15 through 28.

38. On November 19, 2014, Meagher provided false and misleading testimony concerning his interactions with JA concerning the Facebook investment. Meagher falsely testified that the funds he received from JA were for a personal loan made to Meagher. Further, during the course of his testimony, Meagher repeatedly stated falsely that JA had been fully repaid the amounts owed to him by Meagher.

39. Meagher's false and misleading statements were made with the intent to mislead FINRA's staff in connection with its investigation.

40. By making false and misleading statements to FINRA's staff, Meagher violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

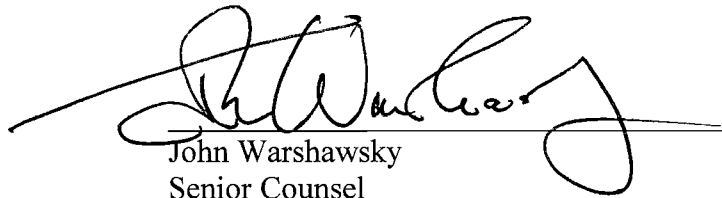
WHEREFORE, Market Regulation respectfully requests that the Panel:

- A. make findings of facts and conclusions of law that Respondent, James S. Meagher, committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Respondent be ordered to disgorge fully any and all ill-gotten gains and/or make full restitution, together with interest;
- C. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330;

- D. make specific findings that Meagher willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Securities Exchange Act Rule 10b-5; and
- E. grant all further relief, legal or equitable, that is warranted under the circumstances.

FINRA DEPARTMENT OF MARKET REGULATION

Date: September 1, 2017



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