

NASD OFFICE OF HEARING OFFICERS**DEPARTMENT OF ENFORCEMENT,****COMPLAINANT,****v.****LH ROSS & COMPANY, INC.,
CRD No. 37920****AND****FRANKLYN R. MICHELIN
CRD No. 2459180****RESPONDENTS.****DISCIPLINARY PROCEEDING
Nos. CAF030055 AND C05040054****HEARING OFFICERS: AWH AND DMF****ORDER ACCEPTING GLOBAL OFFER OF
SETTLEMENT OF LH ROSS & COMPANY, INC.
AND FRANKLYN R. MICHELIN OF PENDING
CASES IN LITIGATION****I. INTRODUCTION**

The following two disciplinary proceedings (hereinafter "the complaints") were filed against Respondents LH Ross & Company, Inc. ("LH Ross") and Franklyn R. Michelin ("Michelin") (collectively "Respondents"):

- *DOE v. LH Ross & Company, Inc.*, Disciplinary Proceeding No. CAF030055 (Complaint filed Oct. 24, 2003).
- *DOE v. LH Ross & Company, Inc.*, Disciplinary Proceeding No. C05040054 (Complaint filed July 7, 2004).

Respondents submitted an offer of settlement ("Global Offer") to NASD Department of Enforcement ("Department") on March 11, 2005. Pursuant to Code of Procedure Rule 9270(e), the Department and the National Adjudicatory Council ("NAC") Review Subcommittee or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Global Offer. Accordingly, this order now is issued pursuant to Code of Procedure Rule 9270(e)(3). The

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findings, conclusions, and sanctions set forth in this order are those stated in the Global Offer as accepted by the Department and approved by ODA.

Under the terms of the Global Offer, Respondents have consented, without admitting or denying the allegations of the complaints, and solely for the purposes of the identified proceedings and any other proceedings brought by or on behalf of NASD, or to which NASD is a party, to the entry of findings and violations consistent with the allegations of the complaints, and to the imposition of the sanctions set forth below, and fully understand that this order will become part of Respondents' permanent disciplinary record and may be considered in any future actions brought by NASD.

Pursuant to the terms of the Global Offer, Respondents have also consented and agreed to the following conditions:

A. Withdrawal of Appeals and Request for Hearing

Withdrawal *with prejudice* their appeals in the following proceedings:

- *DOE v. LH Ross & Company, Inc.*, Disciplinary Proceeding No. CAF040042 (OHO Dec. 15, 2004) (appeal filed Jan. 12, 2005).
- *DOE v. LH Ross & Company, Inc.*, Disciplinary Proceeding No. CAF040056 (OHO Jan. 14, 2005) (appeal filed Feb. 8, 2005).
- *DOE v. LH Ross & Company, Inc.*, Disciplinary Proceeding No. C07040074 (OHO January 25, 2005) (appeal filed Feb. 18, 2005).

Withdrawal *with prejudice* their request for a hearing in the following proceeding:

- *DOE v. LH Ross & Company, Inc.*, Expedited Proceeding No. FOD050001.

B. Accounting

Respondents will provide, within 60 calendar days of acceptance of the Global Offer, to the Department a complete and accurate sworn accounting of the use of proceeds raised in the

2003 and 2004 offerings of convertible preferred stock by LH Ross. The sworn accounting shall detail the precise amounts raised in the 2003 and 2004 offerings, the identity of each investor and contact information (including current addresses and telephone numbers), the amounts of their respective investments, and will provide sufficient detail of the use of proceeds with appropriate support documentation for every deposit, disbursement, and/or expense. If any investor funds were deposited into an account and then moved to one or more locations thereafter, Respondents' accounting shall trace those funds until such point as they finally came to rest. Again, Respondents shall also produce appropriate support documentation for every deposit, disbursement, and/or expense so as to permit NASD staff to trace the movement of those funds with precision.

C. Cooperation Agreement

Respondent Michelin will meet with the staff to answer questions, and appear, testify, and otherwise cooperate in any investigation or disciplinary proceeding that follows as to other respondents and/or relates to monies LH Ross raised through the 2003 and 2004 offerings of convertible preferred stock.

D. Consent Directive for Bank Accounts

Respondents consent to the terms and conditions of consent directives that will allow NASD staff access to the bank accounts of LH Ross & Company, Inc., its affiliates, and related accounts. Should the consent directives fail to achieve their intended purpose, Respondents understand and agree that they will execute additional consent directives upon request.

II. BACKGROUND

LH Ross & Company, Inc.

LH Ross is, and during all relevant times to the complaints was, a registered broker-dealer and member of the NASD with its principal place of business in Boca Raton, Florida. The firm has been a member of the NASD since September 15, 1995. During the relevant period, LH Ross Holding Corporation was the sole owner of LH Ross. During the same period, Michelin, in turn, wholly owned LH Ross Holding Corporation. LH Ross's disciplinary history is as follows:

On October 29, 1999, the Illinois Securities Department issued a consent order against LH Ross that included a fine of \$2,500, an additional payment of \$1,500 for costs of the investigation, and an order to make restitution to an investor in the amount of \$33,360 plus 10% interest. The case concerned the offer and sale of unregistered securities by an unregistered salesperson. (Docket No. 9800514.)

On January 3, 2000, the Illinois Securities Department issued an order temporarily suspending LH Ross's registration for failure to pay the \$2,500 fine and the \$1,500 for investigation costs imposed in a previous case, Docket No. 9800514. LH Ross eventually paid the fine and on January 10, 2000 the temporary suspension order was vacated. (Docket No. 9900622.)

On April 4, 2001, the Florida Division of Securities issued an order against LH Ross and Michelin fining the firm \$25,000 and approving its application for branch offices in Boca Raton and Deerfield Beach. Michelin was fined \$5,000. The Florida action concerned allegations of unregistered activities and failure to supervise. (Docket No. 3042-S-12/00.)

On January 3, 2002, NASD's National Adjudicatory Council issued a decision wherein the findings made by a hearing panel were affirmed and the sanctions modified. The NAC found that LH Ross violated NASD Rules 2110 and 3010 in that the firm failed to comply with the taping rule, and failed to establish, maintain, or enforce any special written supervisory procedures for supervising the telemarketing activities of its registered persons. LH Ross was censured and fined \$10,000. (*DOE v. LH Ross & Company, Inc.*, Disciplinary Proceeding No. C07000033, 2002 NASD Discip. LEXIS 1 (NAC 2002).)

On May 13, 2002, the North Dakota Securities Commissioner and LH Ross entered into a consent order, wherein LH Ross agreed to withdraw its application in North Dakota as a result of the firm's failure to provide documents to the State of Utah.

On June 7, 2002, the State of Connecticut and LH Ross entered into a consent order to settle allegations that LH Ross: (i) concealed material information from, and made false or misleading statements to, agency staff during an investigation and examination by destroying an index card; (ii) engaged in dishonest or unethical practices by employing two cold callers who were not registered; (iii) sold unregistered securities; and (iv) failed to enforce and maintain adequate written supervisory procedures. LH Ross was fined \$12,500, ordered to file reports with the State for two years, and required to reimburse the State for costs associated with a future examination. (Docket No. RF-2002-6467-S.)

On January 6, 2004, the Department of Commerce for the State of Utah issued an order that placed LH Ross on six-months probation and required the firm to consent to a surprise audit at the firm's expense not to exceed \$5,000. The case concerned LH Ross's alleged refusal to allow investigators from the State of Utah access to books and records and physically stopped Utah's auditors from entering the sales floor where the auditors observed books and records of the firm being discarded and hidden. (Docket No. SD-01-0005.)

On March 15, 2004, the North Dakota Securities Department issued a cease-and-desist order against LH Ross alleging that the firm and at least three of its representatives have offered and/or sold securities that were not registered with the Securities Department.

On April 27, 2004, NASD accepted an AWC (Disciplinary Proceeding No. C07040046) that LH Ross submitted to settle allegations that the firm failed to file Rule 3070 reports in a timely manner and failed to promptly amend Forms U-4 and U-5. LH Ross was censured and fined \$10,000.

On May 25, 2004, the State of Connecticut issued a cease-and-desist order against LH Ross and filed a notice of intent to revoke and to fine LH Ross. The allegations of the order concerned LH Ross's alleged violation of the 2002 consent order. (Docket No. RCF-2004-6975-S.)

On August 30, 2004, NASD imposed a temporary-cease-and-desist order against LH Ross for violations of the SEC's and NASD's antifraud provisions in connection with the offer and sale of private placement interests issued by LH Ross. (*DOE v. LH Ross & Company, Inc.*, Disciplinary Proceeding No. CAF040056 (OHO August 30, 2004).)

On September 20, 2004, the North Dakota Securities Commissioner and LH Ross entered into a consent order to settle allegations that LH Ross, among other things, falsified documents and sold unregistered securities in the State. LH Ross was assessed a penalty of \$43,000 and ordered to make restitution to a North Dakota resident in the amount of \$71,085.35.

On December 15, 2004, in NASD Disciplinary Proceeding No. CAF040042, an NASD hearing panel found that LH Ross and Michelin failed to promptly pay an

arbitration award and filed a meritless pleading with the Office of Hearing Officers. It then fined LH Ross and Michelin \$50,000, jointly and severally, suspended Michelin for six months, and ordered LH Ross and Michelin to pay \$69,915.97, plus interest, in restitution to the arbitration claimant.

On January 14, 2005, in NASD Disciplinary Proceeding No. CAF040056, LH Ross was expelled from membership for violating (i) Section 5 of the Securities Act of 1933 ("Securities Act") and NASD Conduct Rule 2110 by participating in public offerings and sales of unregistered securities issued by it through a private placement offering in 2003; and (ii) Section 17(a) of the Securities Act, Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), SEC Rule 10b-5 promulgated thereunder, and NASD Conduct Rules 2120 and 2110 by making material misrepresentations and omissions of fact in connection with the offer, sale, or purchase of securities issued by LH Ross through private placement offerings in 2003 and 2004; and (iii) NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to respond to requests for documents and information related to public offerings and sales of unregistered securities issued by LH Ross through private placement offerings in 2002, 2003, and 2004. In addition, a permanent-cess-and-desist order was imposed against LH Ross. The firm was also fined \$500,000 and ordered to pay (i) restitution in the amount of \$11,011,008, (ii) prejudgment interest on that amount of at least \$450,113.87, and (iii) costs of \$18,253.74.

On January 17, 2005, the State of New Hampshire Bureau of Securities Regulation issued an order revoking LH Ross's license to do business in that State for the sale of unregistered securities within the State of New Hampshire. (Default Order INV04-92.)

On January 18, 2005, the State of Connecticut Department of Banking, Securities and Business Investments Division issued an order revoking LH Ross's license to do business in that State and fined it \$420,000 for violations of the Connecticut Uniform Securities Act including: (i) employing at least one individual as a cold caller who was not registered with NASD; (ii) employing at least one unregistered agent; (iii) utilizing sales scripts that had not been approved by a registered principal of LH Ross; (iv) failing to accurately record loans on its records and to keep payroll or bonus related records of its cold callers; (v) engaging in unauthorized trading by an agent of the firm; (vi) exercising discretionary authority in customer accounts without first obtaining written discretionary authority from the customers; and (vii) failing to establish, enforce, and maintain a system for supervising the activities of its agents reasonably designed to achieve compliance with applicable securities laws and regulations. (Docket No. RCF-2004-67975-S.)

On January 25, 2005, in NASD Disciplinary Proceeding No. C07040074, an NASD hearing panel expelled LH Ross from membership, and barred Michelin, for failing to provide information in violation of NASD Rules 8210 and 2110.

On February 14, 2005, the Texas State Securities Board issued an order revoking LH Ross's license to do business in that State for violations of the Texas Securities Act including: (i) selling shares of LH Ross's convertible preferred stock that had not been registered in Texas by qualification, notification, or coordination; (ii) engaging in fraud, through its registered representatives, by making material misrepresentations and omissions of fact in connection with the sales of LH Ross convertible preferred stock that were not a suitable investment for investors; (iv) failing to provide an investor with the private placement memorandum for the convertible preferred stock until after the investor had already purchased the shares; and (v) failing to enforce its written supervisory procedures. (Order No. IC05-REV-04.)

On March 8, 2005, the State of Maine Office of Securities revoked the broker-dealer license of LH Ross and the sales representative license of Michelin as a result of the recent disciplinary actions taken against LH Ross and Michelin by NASD and the States of Connecticut and New Hampshire. (Order No. 05-054.)

B. Franklyn R. Michelin

Franklyn R. Michelin is, and during the relevant periods of the complaints was, the CEO, President, Financial and Operations Principal, and Chief Compliance Officer of LH Ross. Michelin was and is registered with the NASD as a General Securities Representative, General Securities Principal, Financial and Operations Principal, Registered Options Principal, and Registered Equities Trader. Michelin first registered with NASD as a General Securities Representative on March 14, 1994. Michelin has been the President of LH Ross since the firm was founded in late 1994. Michelin's disciplinary history consists of the Florida Division of Securities' February 2001 Order, the State of Maine Order of Revocation, and the Decisions issued in NASD Disciplinary Proceeding Nos. CAF040042 and C07040074, all of which are detailed above.

III. FINDINGS AND CONCLUSIONS

It has been determined that the Global Offer be accepted and that findings be made as follows. Attached as Exhibits 1 and 2 are copies of the complaints issued in NASD Disciplinary Proceeding Nos. CAF030055 and C05040054, and they are incorporated into this order by

reference. The allegations contained in those complaints are deemed admitted for purposes of this proceeding. The findings herein are binding on Respondents LH Ross and Michelin pursuant to the Global Offer submitted by LH Ross and Michelin and are not binding on any other person or entity named as a respondent in the complaints or any other proceeding.

Such acts, practices, and conduct outlined in the attached complaints constitute violations by Respondents of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and SEC Rule 10b-5 promulgated thereunder, Rule 101 of Regulation M, Section 5 of the Securities Act of 1933 ("Securities Act"), and SEC Rules 17a-3 and 17a-4, and NASD Rules 1031(a), 1032(a), 1032(f), 2110, 2120, 2320, 2440, 3010, 3110.

IV. SUMMARY

Based on these considerations, the sanctions hereby imposed by the acceptance of the Global Offer are in the public interest, are sufficiently remedial to deter Respondents from any future misconduct, and represent a proper discharge by NASD, of its regulatory responsibility under the Exchange Act.

V. SANCTIONS

It is ordered that:

LH Ross & Company, Inc.

Respondent LH Ross & Company, Inc. shall be expelled from NASD membership.¹

Franklyn R. Michelin

Respondent Michelin shall be barred from associating with any member in any capacity.²

¹ In light of the monetary sanctions (\$500,000 fine, \$11,461,121 in restitution and interest to customers, and \$18,254 in costs) imposed in Disciplinary Proceeding No. CAF040056, no additional monetary sanctions are assessed in this Global Offer.

Pursuant to IM-8310-2(f), the bar and expulsion shall become effective upon approval or acceptance of this Order by the NAC.

SO ORDERED.

NASD

By: 
On behalf of the Director of ODA, pursuant to
delegated authority

² No additional monetary sanctions are imposed on Michelin. He is the sole owner of LH Ross Holding Corporation, which is the sole owner of LH Ross & Company, Inc. As noted in footnote 5, LH Ross is liable for \$11.9 million in fines and restitution. In addition, Michelin is personally liable for a \$50,000 fine and restitution to a customer for \$69,915.97 in Disciplinary Proceeding No. CAF040042.