

NASD
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

MAGELLAN SECURITIES INC.
(CRD No. 15986)

and

TERRY M. LAYMON
Registered Principal
(CRD No. 304342)

Respondents.

Disciplinary Proceeding
No. C8A030081

Hearing Officer Alan W. Heifetz

ORDER ACCEPTING OFFER OF
SETTLEMENT

Date: February 23, 2005

INTRODUCTION

Disciplinary Proceeding No. C8A030081 was filed on October 31, 2003, by the Department of Enforcement of NASD ("Complainant"). Respondents Magellan Securities Inc. and Terry M. Laymon submitted an Offer of Settlement ("Offer") to Complainant on January 13, 2005. Pursuant to Code of Procedure Rule 9270(c), the Complainant and the National Adjudicatory Council ("NAC") Review Subcommittee or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to Code of Procedure Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

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Under the terms of the Offer, Respondents have consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding 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 Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondents' permanent disciplinary record and may be considered in any future actions brought by NASD.

BACKGROUND

Magellan Securities Inc. ("Member") became a member of the NASD on February 2, 1985, and became registered with the Securities and Exchange Commission ("SEC") on December 17, 1984. The Member's membership with NASD was cancelled on February 10, 2005 for the failure to pay fees, and it has requested the termination of its registration with the SEC. The Member engaged in a general securities business on a fully disclosed basis.

Terry M. Laymon ("Laymon") entered the securities industry as a General Securities Representative of a member of NASD in April 1973. On December 11, 1985, Laymon became registered as a General Securities Principal with a member of NASD. On September 6, 1988, Laymon became registered in such capacities with the Member. As of March 20, 2003, Laymon was subject to a "disqualification" as defined in Article III, Section 4 of NASD By-Laws, because he was suspended from acting in any principal capacity, but he remained registered with the Member until all of his registrations with the Member were terminated on April 22, 2004. Laymon is not currently registered with any member of NASD.

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On December 30, 2002, the Member and Laymon were found to have violated NASD Rules 2110 and 3010 in Disciplinary Proceeding No. C3B010016, for failing to adequately and properly supervise a registered representative to assure compliance with applicable rules and regulations. Under the Hearing Panel's decision, the Member and Laymon were fined \$20,000 jointly and severally, and Laymon was: barred from acting as a supervisor; suspended for two years from acting in any principal capacity; and, required to requalify by examination as a General Securities Principal prior to again becoming affiliated with the Member in such capacity.

On February 20, 2001, the NASD accepted an Offer of Settlement submitted by the Member and Laymon in Disciplinary Proceeding No. C8A000060, which: found that the Member and Laymon violated NASD Rules 2110 2330(a) and 3110(a) and the Member violated SEC Rules 17a-3(a)(1), (2) and (11), 17A-5 and 15c3-3; assessed a fine against the Member and Laymon of \$40,500 jointly and severally; and, suspended Laymon from association with any member of NASD in any capacity for thirty days.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

1. From on or about March 3, 2003 to the present, Laymon was subject to a "disqualification" with respect to association with a member as defined in Article III, Section 4 of NASD By-Laws, because he was suspended for two years from associating with any member of NASD in any principal capacity, and was barred from acting as a supervisor for any member of NASD.

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2. From on or about March 3, 2003 to the present, the Member has permitted and is permitting Laymon to remain associated with the Member as its President and sole-owner, which requires that he act in a principal capacity, while he is subject to a "disqualification," under NASD By-Laws.

3. From on or about March 3, 2003 to the present, Laymon has associated and is associating with the Member in a principal capacity by remaining the President and sole-owner of the Member, while he is subject to a "disqualification," under NASD By-Laws.

4. On or about February 20, 2001, July 25, 2001 and September 5, 2001, Laymon created, or caused to be created, account statements entitled "Portfolio Updates" concerning customer Cyril Gerard's ("C.G.") investments in direct participation plans ("DPP") and issued, or caused to be issued, the account statements to C.G.

5. These statements contained false valuations in that the "current value" reflected on the statements were incorrect. In particular, many of the valuations were inflated to reflect a greater portfolio value than the true value of the accounts and many of the valuations were assigned by Laymon although there was no secondary market for the investments and Laymon could not provide the source for his valuations.

6. Laymon intentionally, recklessly or negligently created these false account statements with incorrect or inflated valuations to induce C.G. to continue to maintain accounts with the Member.

7. From on or about September 17, 1999 to on or about October 28, 2002, the Member, acting through Laymon, failed to qualify and register as a person associated with the Member, a Financial and Operations Principal or an Introducing Broker/Dealer Financial and Operations Principal. During this time, the person employed by the Member, who was

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responsible for: the accuracy of financial reports submitted to NASD and other regulatory bodies; and other duties related to the financial and operational management of the Member, was not qualified and registered as a Financial and Operations Principal or an Introducing Broker/Dealer Financial and Operations Principal.

8. From on or about June 22, 2002 to on or about September 23, 2002, the Member permitted Laymon to perform duties as a General Securities Principal, including but not limited to opening and approving two accounts and effecting securities transactions, while his registration status with the NASD was inactive due to his failure to timely complete the Regulatory Element of NASD's Continuing Education Rule.

9. From on or about June 22, 2002 to on or about September 23, 2002, Laymon performed duties as a General Securities Principal, including but not limited to opening and approving two accounts and effecting securities transactions, while his registration status with the NASD was inactive due to his failure to timely complete the Regulatory Element of NASD's Continuing Education Rule.

10. On or about January 8, 2002, the State of Oregon Department of Consumer and Business Services, Division of Finance and Corporate Securities, Securities Section issued a Final Order of Default against the Member and Laymon, which: found that the Member and Laymon violated Oregon Securities Laws; assessed a civil penalty in the amount of \$20,000, jointly and severally against the Member and Laymon; and, revoked the broker-dealer license of the Member and the salesperson license of Laymon. The Member and Laymon learned of this Order on or about January 12, 2002, but failed to report the matter as required by Rule 3070 until November 20, 2002 for Laymon and January 6, 2003 for the Member, which was 295 and 342 days after the Order should have been reported under NASD Conduct Rule 3070(a)(1).

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11. On or about February 20, 2001, an Offer of Settlement submitted by the Member and Laymon was accepted by NASD resolving a disciplinary proceeding which: found that the Member violated SEC and NASD Rules and Laymon violated NASD Rules; assessed a fine against the Member and Laymon of \$40,500 jointly and severally; and, suspended Laymon from association with any member of NASD in any capacity for thirty days. The Member and Laymon learned of this Order on or about February 26, 2001, but failed to report the matter as required by Rule 3070 until November 20, 2002 for Laymon and January 6, 2003 for the Member, which was 617 and 664 days after the Order Accepting the Offer of Settlement should have been reported under NASD Conduct Rule 3070(a)(1).

12. On or about October 24, 2001, NASD issued a Complaint naming the Member and Laymon as respondents in a disciplinary proceeding, alleging that the Member and Laymon violated NASD Rules. The Member and Laymon learned of this Complaint on or about October 27, 2001, when the Member received the certified mailing, but failed to report the matter as required by Rule 3070 until November 20, 2002 for Laymon and January 6, 2003 for the Member, which was 373 and 420 days after the Complaint should have been reported under NASD Conduct Rule 3070(a)(3).

13. On or about January 8, 2002, the State of Oregon Department of Consumer and Business Services, Division of Finance and Corporate Securities, Securities Section issued a Final Order of Default against the Member and Laymon, which: found that the Member and Laymon violated Oregon Securities Laws; assessed a civil penalty in the amount of \$20,000, jointly and severally against the Member and Laymon; and, revoked the broker-dealer license of the Member and the salesperson license of Laymon. The Member, acting through Laymon, learned of this Order on or about January 12, 2002, but: failed to report the matter as an

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amendment to the Member's Form BD – Uniform Application for Broker-Dealer Registration Form ("Form BD") until September 16, 2002, which was 216 days after the amendment should have been filed; and, failed to report the matter as an amendment to Laymon's Form U-4 Uniform Application for Securities Industry Registration or Transfer ("Form U-4") until September 16, 2002, which was 216 days after the amendment should have been filed.

14. On or about February 20, 2001, an Offer of Settlement submitted by the Member and Laymon was accepted by NASD resolving a disciplinary proceeding which: found that the Member violated SEC and NASD Rules and Laymon violated NASD Rules; assessed a fine against the Member and Laymon of \$40,500 jointly and severally; and, suspended Laymon from association with any member of NASD in any capacity for thirty days. The Member, acting through Laymon, learned of the acceptance of the Offer of Settlement on or about February 26, 2001, but: failed to report the matter as an amendment to The Member's Form BD until February 3, 2003, which was 676 days after the amendment should have been filed; and, failed to report the matter as an amendment to Laymon's Form U-4 until April 18, 2001, which was 20 days after the amendment should have been filed.

15. On or about October 24, 2001, NASD issued a Complaint naming the Member and Laymon as respondents in a disciplinary proceeding, alleging that the Member and Laymon violated NASD Rules. The Member, acting through Laymon, learned of the Complaint on or about October 27, 2001, but: failed to report the matter as an amendment to the Member's Form BD until September 16, 2002, which was 293 days after the amendment should have been filed; and, failed to report the matter as an amendment to Laymon's Form U-4 until January 7, 2003, which was 406 days after the amendment should have been filed.

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16. On or about October 29, 2001, NASD staff sent a request for information pursuant to NASD Procedural Rule 8210 to Laymon requesting, among other things, new account forms, subscription agreements, and a statement responding to customer allegations. The request was sent by first class mail and certified mail, return receipt requested to Laymon's business address as shown on CRD. The first class mailing was not returned and the certified mail receipt was returned on November 6, 2001, signed by "S. Nosseck" of the Member.

17. Although Laymon did provide a portion of the information requested, he failed to provide new account documents, new account forms or subscription agreements.

18. On or about May 8, 2002, NASD staff sent another request for information to Laymon pursuant to NASD Procedural Rule 8210 requesting new account forms and subscription agreements relating to the customer allegations. The request was sent by first class mail and by certified mail, return receipt requested, to Laymon's business address as shown on CRD. The certified mail receipt was returned on May 16, 2002, signed by "S. Nosseck" of the Member.

19. Although Laymon provided some additional documents, he still failed to provide new account forms as requested.

20. On or about August 21, 2002, NASD Staff again requested that Laymon provide certain documents, including new account forms as well as an explanation and the source for the representation of the current values as stated in the customer's Portfolio Updates of February 20, 2001, July 25, 2001 and September 5, 2001. The request was sent by first class mail and certified mail, return receipt requested, to Laymon's business address as shown on CRD. The certified mail receipt was returned September 3, 2002, signed by Laymon.

21. After receiving an extension of the response deadline, Laymon provided copies of Form K-1, a partnership tax form, for the direct participation programs in which customer C.G.

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was invested. Submission of the Form K-1 was not responsive, however, because it did not provide a current value for the investments. Additionally, Laymon did not provide new account documents.

22. On or about September 11, 2002, staff made another request for information pursuant to Rule 8210 for the source of the current values of customer C.G.'s investments as stated on his Portfolio Update account statements. The request was sent by first class mail and by certified mail, return receipt requested, to Laymon's business address. The certified mail receipt was returned on September 20, 2002, signed by Laymon.

23. In response to staff's request, Laymon again provided copies of Form K-1 and a copy of a stock certificate. These documents were not responsive, however, to the request for the source used in determining the current value of customer C.G.'s investments.

24. On October 16, 2002, staff requested that Laymon appear for on-the-record testimony and that he bring the previously requested documents with him. Although Laymon appeared for testimony at NASD's Chicago District Office on November 12, 2002, Laymon failed to provide the documents that were previously requested.

25. After Laymon's on-the-record testimony, on or about December 12, 2002, staff again requested the documentation it had previously requested, including new account forms first requested in October 2001, copies of all Portfolio Updates produced or approved by Laymon and provided to other customers, and the source for the current investment value as stated on the Portfolio Update.

26. Laymon eventually provided new account forms in January 2003, after the deadline for submitting the information had passed and after more than 5 requests were made for the information. Furthermore, Laymon has failed to provide documents responsive to staff's

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request for information relating to the source of the current value of customer C.G.'s investments, and copies of Portfolio Updates provided to other customers.

Based on the foregoing: Magellan Securities Inc. violated Article III, Section 3, Article IV, Section 1 and Article V, Section 2 of NASD By-Laws and NASD Membership and Registration Rules 1022 and 1120, and Conduct Rules 2110 and 3070; and, Terry M. Laymon violated Article III, Section 3, Article IV, Section 1 and Article V, Section 2 of NASD By-Laws and NASD Membership and Registration Rules 1022 and 1120, Conduct Rules 2110 and 3070 and Procedural Rule 8210.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by NASD, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that the Magellan Securities Inc. be expelled from membership with NASD, and Laymon be barred from associating with any member of NASD in any capacity.

The sanctions imposed herein shall be effective on a date set by NASD staff. Pursuant to IM-8310-2(f), a bar or expulsion shall become effective upon approval or acceptance of this Order by the NAC.

SO ORDERED.

NASD

By: Carlotta A. Romano EAC
Carlotta A. Romano
Senior Vice President and Regional Director
on behalf of the Director of ODA, pursuant to
delegated authority