

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
DIVISION OF SECURITIES
JOHN O. PASTORE CENTER, BLDG. 68-1
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND 02920**

IN THE MATTER OF	:	
	:	
BARRETT & CO.	:	DBR No. 12SC036
	:	
RESPONDENT.	:	

CONSENT ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS

I. INTRODUCTION

The Director (“Director”) of the Rhode Island Department of Business Regulation (“Department”) enters into this Consent Order Making Findings and Imposing Remedial Sanctions (“Order”), pursuant to §§ 7-11-212 and 7-11-602 of the Rhode Island Uniform Securities Act (“RIUSA”), R.I. Gen. Laws § 7-11-101 *et. seq.*, and § 42-35-9 of the Rhode Island Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 *et. seq.* Barrett & Co. (“Respondent”) and the Department’s Division of Securities (“Division”) have agreed to resolve concerns that Respondent violated RIUSA, the *Securities Division Regulations* promulgated by the Department thereunder, and material rules of the Financial Industry Regulatory Authority (“FINRA”), through this Order, without instituting administrative proceedings. The Director has further determined to resolve this matter, without instituting administrative proceedings, and prior to any hearing or adjudication, by accepting Respondent’s Offer of Settlement, attached hereto as Exhibit A, which is made without admitting or denying any findings or violations (the “Offer”), and entering this Order, making the findings and imposing the remedial sanctions set forth below

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Director makes the following findings of fact and conclusions of law:

1. Respondent is a domestic full service broker-dealer firm with a principal place of business at 42 Weybosset Street, Providence, Rhode Island.
2. At all times relevant hereto, Respondent was a Level 3 NASDAQ market maker in 15 to 20 securities, including Zoom Technologies, Inc. (“Zoom”).
3. On December 22, 2010 at 12:45:34, Respondent executed a client Buy ticket by selling, as principal, 5,000 shares of Zoom to Client X at the price of \$ 4.28 per share.
4. The ticket contained the following “Special Instructions” on the Buy ticket: “ACT Print @ 5.37.”
5. Pursuant to the above written direction, Respondent’s Operations Manager reported the inaccurate \$ 5.37 figure to the Order Audit Trail System (“OATS”) mandated and maintained by FINRA.
6. This order was recorded on the Buy ticket as executed at 12:45:34, but reported to OATS as executed at 12:25:34.
7. On December 27, 2010 at 14:24:08, Respondent executed a client Sell ticket by buying 1,800 shares of Zoom from Client Y at the price of \$ 5.27 per share.
8. The ticket contained the following “Special Instructions”: “ACT Print @ 4.64.”
9. Pursuant to the above written direction, Respondent’s Operations Manager reported the \$ 4.64 figure to OATS.
10. Based on the findings of fact set forth in Paragraphs 3 through 9, above, the Director concludes, as a matter of law, that Respondent violated the following statutes, regulations, and rules:

- a. FINRA Rule 7450 (by failing to transmit all applicable order information to OATS, specifically failure to accurately report the execution price and the date and time the order is executed as required by FINRA Rule 7440 (d)(3)(I) and 7440 (d)(3)(H), respectively);
- b. FINRA Rule 2010 (by failing to observe the standards of commercial honor); FINRA Rule 7460 (failure to comply with any of the requirements of Rule 7410 through Rule 7460, the rules pertaining to the OATS, may be considered conduct that is inconsistent with high standards of commercial honor in violation of Rule 2010);
- c. FINRA Rule 2020 (by effecting any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance);
- d. *Securities Division Regulations*, Rule 212(a)-1(A)(17) (unethical or dishonest practice by virtue of violating any material rule of FINRA);
- e. RIUSA § 7-11-212(b)(8) (by engaging in unethical or dishonest practices in the securities business);
- f. RIUSA § 7-11-501 (1), (2), and (3) (by employing a device, scheme, or artifice to defraud in connection with the offer to sell, sale, offer to purchase a security; making or omitting a material fact; and by engaging in an act that operates or would operate as a fraud or deceit on a person).
- g. RIUSA § 7-11-212(b)(2) (by willfully violating RIUSA and the *Securities Division Regulations*);

11. The following events occurred on December 22, 2010:

- a. At 10:59:36, Client Z placed an unsolicited Buy order with Respondent to buy 2,000 shares of Zoom Technologies.
- b. Thereafter, Respondent solicited Client X to place an order to buy 5,000 shares of Zoom. As stated in paragraph 8, above, this order solicitation was recorded on the Buy ticket as executed at 12:45:34, but reported to OATS as executed at 12:25:34.
- c. At 12:45:34, Respondent executed Client X's Buy order at the Respondent market-maker account inventory price of \$ 4.28 per share, before executing the earlier received buy order of Client Z (misreported to OATS as \$ 5.37).
- d. Five minutes later, at 12:50:39, Respondent simultaneously executed the following two transactions:
 - (i) Respondent buys back the 5,000 Zoom shares sold to Client X five minutes earlier at the price of \$ 5.42 per share.
 - (ii) Respondent sells 2,000 Zoom shares to Client Z at the market (street) price of \$ 5.42 per share, a share price \$1.14 greater than that executed on behalf of Client X five minutes earlier.

12. The Buy ticket documenting the order described in Paragraph 13(c), above, evidences one account number, crossed out and replaced with Client X's account number.

13. Based on the findings of fact set forth in Paragraphs 11-12, above, the Director concludes, as a matter of law, that the Respondent violated the following statutes, regulations, and rules:

- a. FINRA Rule 5310(a) (by failing to use reasonable diligence to ascertain the best market for the subject security and buy or sell in such market so that the resultant

price to the customer is as favorable as possible under prevailing market conditions; *i.e.* breach of duty of “best execution”);

- b. FINRA (NASD) Rule 2440 (by failure to buy or sell at a price which is fair when a member buys for his own account from his customer, or sells for his own account to his customer);
 - c. FINRA Rule 2020 (by effecting any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance);
 - d. FINRA Rule 2010 (Commercial Honor);
 - e. *Securities Division Regulations* 212(a)-1(A)(17) (by violating any material FINRA Rule);
 - f. *Securities Division Regulations* 212(a)-1(A)(14)(by entering into a transaction with or for a customer at a price not reasonable related to the current market price);
 - g. RIUSA § 7-11-212 (b)(8) (unethical or dishonest practices);
 - h. RIUSA § 7-11-502(a)(5) (by employing any deceptive or fraudulent device, scheme, or artifice to manipulate the market in a security);
 - i. RIUSA § 7-11-501 (1), (2), and (3) (fraudulent or deceitful practices);
 - j. RIUSA § 7-11-212 (b)(2) (willful violation of RIUSA or *Securities Division Regulations*);
14. On December 23, 2010, Respondent sold 1,800 shares of Zoom to an IRA account belonging to the son of one of Respondent's principals (hereinafter Account A) at a price of \$ 4.65 per share.

15. On December 27, 2010 at 14:22:58, the next trade day based on the 2010 holiday calendar, Respondent, as agent, bought back 1800 shares of Zoom from Account A at a price of \$ 5.27 per share (misreported to OATS as \$ 4.65). This resulted in a profit to Account A of \$ 0.62 per share at the expense of Respondent's market-maker inventory account.
16. Based on the findings of facts set forth in Paragraphs 14-15, above, the Director concludes, as a matter of law, that Respondent violated the following status, rules, and regulations:
 - a. *Securities Division Regulations* 212(a)-1(A)(14)(price reasonably related to the current market price);
 - b. RIUSA § 7-11-212 (b)(8) (unethical or dishonest practices);
 - c. RIUSA § 7-11-212 (b)(2) (willful violation of RIUSA or *Securities Division Regulations*);
 - d. FINRA Rule 2010 (Commercial Honor);
17. Based on the all the described actions, the Director concludes, as a matter of law, that Respondent failed to adequately supervise in violation of the following provisions:
 - a. RIUSA 7-11-212(b)(11) (by failing to reasonably to supervise a sales representative, investment adviser representative, or an employee);
 - b. FINRA Rule 3010(b)(1)(by failing to enforce written procedures to supervise the types of business in which it engages);
 - c. *Securities Division Regulations* 212(a)-1(A)(17) (violating any material FINRA Rule);

d. RIUSA § 7-11-212 (b)(2) (willful violation of RIUSA or the *Securities Division Regulations*).

e. b.

18. Subsequent to the activities described herein, Respondent chose to withdraw from market making.

III. ORDER

Based on findings of fact and conclusions of law set forth herein, and the consent of Respondent to the entry of this Consent Order, the Director finds that the following is in the public interest, appropriate for the protection of investors and consistent with the purposes intended by the policy and provisions of RIUSA.

Accordingly, IT IS HEREBY ORDERED THAT:

1. Respondent permanently waives any right to a hearing and appeal under the RIUSA or Sec. 42-35-1 *et seq.* of the Rhode Island General Laws;
2. Respondent shall immediately CEASE AND DESIST from any further violations of the RIUSA and the Rules promulgated thereunder;
3. Within ten (10) days of this Order, Respondent shall pay the sum of ten thousand dollars (\$10,000) to the General Treasurer, State of Rhode Island as a civil monetary penalty.
4. If Respondent fails to abide by any of the requirements of this Consent Order, the Department may initiate further administrative proceedings and impose penalties against Respondent including such additional administrative penalties as deemed appropriate by the Department such as revocation or suspension, or administrative penalties up to Ten Thousand Dollars (\$10,000) per violation. Respondent shall be provided with notice and opportunity for hearing should the Department take further action.

Respondent by:




Authorized Representative and/or Legal Counsel

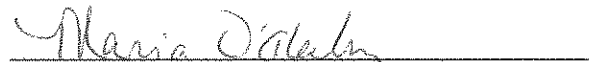
Peter Flynn, Esq.

Date: 3/20/15

RECOMMENDED BY:

Department by:


Jenna Algee, Esq.
Legal Counsel
Date: 4/1/15


Maria D'Alessandro, Esq.
Deputy Director, Securities
Date: 4/2/15

BY ORDER OF THE DIRECTOR,
DEPARTMENT OF BUSINESS REGULATION


Macky McCleary, Director

Date: 4/13/15

Order Number: 15-9

THIS CONSENT ORDER CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO RHODE ISLAND GENERAL LAWS TITLE 42, CHAPTER 35. AS SUCH, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MAY BE COMPLETED BY FILING A PETITION FOR REVIEW OF SAID COURT. HOWEVER, RESPONDENT UNDERSTANDS THAT BY WAIVING ITS RIGHT TO A COMPLETE HEARING AND AGREEING TO THIS CONSENT ORDER, THE ABOVE RIGHTS ARE WAIVED AND IF ANY TERMS OF THIS CONSENT ORDER ARE VIOLATED, RESPONDENT'S LICENSE SHALL BE SUBJECT TO SUSPENSION OR REVOCATION.

EXHIBIT A

IN THE MATTER OF :
: **OFFER OF SETTLEMENT**
BARRETT & CO. : **DBR No. 12SC036**
:
RESPONDENT. :

The above-named Respondent submits this Offer of Settlement ("Offer") consenting to entry of a Consent Order making certain findings and imposing remedial sanctions ("Order"), to the Director of the Rhode Island Department of Business Regulation ("Director") with respect to the matters set forth in the Order.

Respondent submits this Offer for purposes of settlement only with the express understanding that this does not constitute an admission of guilt or wrongdoing or an admission of the facts as alleged in said Order.

Respondent hereby waives all rights to a hearing, further administrative proceedings and/or judicial review with respect to entry of the Order.

Respondent understands that failure to comply with the terms of the Order is a violation of law and may cause the Director to take appropriate regulatory action.

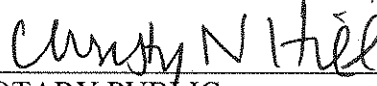
Respondent represents that the undersigned is duly authorized to enter into this Offer of Settlement on behalf of Respondent.

Respectfully submitted this 23 day of MARCH, 2015.

By: 
Its: PRESIDENT

County of PROVIDENCE
State of Rhode Island

On this 23rd day of March, 2015 appeared before me Wilson Saville II,
President who executed the foregoing Offer of Settlement and who
duly acknowledged to me that he was authorized to do so.


NOTARY PUBLIC
My Commission Expires on 12/1/2018