

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3584 / April 10, 2013**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15271**

**In the Matter of**

**TOBY G. SCAMMELL,**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
PROCEEDINGS PURSUANT TO SECTION  
203(f) OF THE INVESTMENT ADVISERS  
ACT OF 1940 AND NOTICE OF HEARING**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), against Toby G. Scammell (“Respondent” or “Scammell”).

**II.**

After an investigation, the Division of Enforcement alleges that:

**A. RESPONDENT**

1. From August 3, 2009 to February 12, 2010 (the “Relevant Period”), Respondent was employed as an associate by Madrone Advisors, LLC (“Madrone Advisors”).

2. Throughout the Relevant Period, Madrone Capital Partners, LLC (“Madrone Capital,” and, together with Madrone Advisors, “Madrone”) served as the general partner of Madrone Partners, L.P. and Madrone Holdings, L.P. (collectively, the “Madrone Investment Funds”).

3. Madrone Partners is an investment fund that invests primarily in the securities of operating companies, and Madrone Holdings is an investment fund that invests primarily in the other investment funds that invest primarily in securities.

4. Throughout the Relevant Period, Madrone Advisors provided investment management services to Madrone Capital and to the Madrone Investment Funds.

5. Throughout the Relevant Period, Madrone Capital and Madrone Advisors engaged in the business of advising the Madrone Investment Funds concerning the advisability of investing in or purchasing securities, and the disposition of securities held by the Madrone Investment Funds.

6. Throughout the Relevant Period, Madrone Capital received compensation in the form of a percentage of the Madrone Investment Funds' returns in exchange for providing investment management services to the Madrone Investment Funds.

7. Throughout the Relevant Period, Madrone Advisors received compensation in the form of a service fee from Madrone Capital in exchange for providing investment management services to Madrone Capital and the Madrone Investment Funds.

8. Throughout the Relevant Period, Madrone Capital was an investment adviser.

9. Throughout the Relevant Period, Madrone Advisors was an investment adviser.

10. The Commission has never issued an order exempting Madrone Capital from the definition of "investment adviser" in Section 202(a)(11) of the Advisers Act.

11. The Commission has never issued an order exempting Madrone Advisors from the definition of "investment adviser" in Section 202(a)(11) of the Advisers Act.

12. Throughout the Relevant Period, Respondent's duties for Madrone included researching companies in which the Madrone Investment Funds were considering making an investment.

13. Respondent's research included, among other things, talking to industry analysts, reading research reports, reading industry analyses, and reviewing documents and records relating to companies in which the Madrone Investment Funds were considering making an investment.

14. Throughout the Relevant Period, Respondent's duties for Madrone included performing financial analyses of the companies in the Madrone Investment Funds' portfolios, as well as companies under consideration for investment by the Madrone Investment Funds.

15. Respondent's research and analysis were considered when Madrone Advisors provided investment advice to Madrone Capital.

16. Although Respondent was formally employed by Madrone Advisors, his work was done on behalf of and for the benefit of both Madrone Advisors and Madrone Capital.

17. Respondent, 28 years old, is a resident of California.

**B. ENTRY OF THE INJUNCTION**

18. On June 15, 2012, a judgment was entered against Scammell, permanently enjoining him from future violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, in the civil action entitled *Securities and Exchange Commission v. Toby G. Scammell*, Civil Action Number CV-11- 6597 DSF (MRWx), in the United States District Court for the Central District of California.

19. The Commission's complaint alleged that from August 13, 2009 through August 28, 2009, Scammell spent \$5,465 on highly speculative and risky purchases of options to buy stock ("call options") of Marvel Entertainment, Inc. ("Marvel") that expired within a few weeks. The complaint further alleged that after the announcement on Monday, August 31, 2009 that the Walt Disney Company ("Disney") planned to acquire Marvel, Marvel shares closed up more than 25% from their closing price the previous day. The complaint also alleged that between the announcement of the acquisition on August 31, 2009 and September 9, 2009, Scammell sold all of the Marvel call option contracts he had purchased, reaping a total of more than \$192,497 (or over 3,000%) in profits. The complaint further alleged that Scammell traded on the basis of material nonpublic information regarding Disney's intended acquisition of Marvel which he misappropriated from his girlfriend who worked at Disney on the Marvel acquisition.

**III.**

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

**IV.**

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

For the Commission, by its Secretary, pursuant to delegated authority.

Elizabeth M. Murphy  
Secretary