



**ADMINISTRATIVE PROCEEDING  
FILE NO. 3-15271**

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

**In the Matter of**

**TOBY G. SCAMMELL,**

**Respondent.**

**RESPONDENT'S AMENDED  
ANSWER TO SECURITIES AND  
EXCHANGE COMMISSION'S  
ORDER INSTITUTING  
ADMINISTRATIVE  
PROCEEDINGS**

**TOBY G. SCAMMELL'S AMENDED ANSWER TO ORDER INSTITUTING  
PROCEEDINGS**

Respondent Toby G. Scammell answers each numbered paragraph of the April 10, 2013 Order Instituting Proceedings on personal knowledge as to his own activities and on information and belief as to the activities of others, as follows:

**I.**

Mr. Scammell denies that administrative proceedings may be instituted against him pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") because Mr. Scammell lacked sufficient connections to any entity regulated by the Advisers Act so as to render Section 203(f) applicable to him.

**II.**

**A.**

1. Mr. Scammell admits the allegations of Paragraph 1.

2. Mr. Scammell lacks, and is unable to obtain, sufficient information to admit or deny the allegations of Paragraph 2 and on that basis denies them.

3. Mr. Scammell lacks, and is unable to obtain, sufficient information to admit or deny the allegations of Paragraph 3 and on that basis denies them.

4. Mr. Scammell lacks, and is unable to obtain, sufficient information to admit or deny the allegations of Paragraph 4 and on that basis denies them.

5. Mr. Scammell lacks, and is unable to obtain, sufficient information to admit or deny the allegations of Paragraph 5 and on that basis denies them.

6. Mr. Scammell lacks, and is unable to obtain, sufficient information to admit or deny the allegations of Paragraph 6 and on that basis denies them.

7. Mr. Scammell lacks, and is unable to obtain, sufficient information to admit or deny the allegations of Paragraph 7 and on that basis denies them.

8. Mr. Scammell denies the allegations of Paragraph 8.

9. Mr. Scammell denies the allegations of Paragraph 9.

10. Mr. Scammell lacks, and is unable to obtain, sufficient information to admit or deny the allegations of Paragraph 10 and on that basis denies them.

11. Mr. Scammell lacks, and is unable to obtain, sufficient information to admit or deny the allegations of Paragraph 11 and on that basis denies them.

12. Mr. Scammell admits that throughout the Relevant Period his duties for Madrone Advisors, LLC, and Madrone Capital Partners, LLC (collectively and individually, "Madrone"), included researching companies. Mr. Scammell lacks, and is unable to obtain, sufficient information to admit or deny the remaining allegations of Paragraph 12 and on that basis denies them.

13. Mr. Scammell admits that his research included, among other things, talking to industry analysts, reading research reports, reading industry analyses, and reviewing documents and records relating to companies. Mr. Scammell lacks, and is unable to obtain, sufficient information to admit or deny the remaining allegations of Paragraph 13 and on that basis denies them.

14. Mr. Scammell admits that during the Relevant Period his duties for Madrone included performing financial analyses of companies. Mr. Scammell lacks, and is unable to obtain, sufficient information to admit or deny the remaining allegations of Paragraph 14 and on that basis denies them.

15. Mr. Scammell lacks, and is unable to obtain, sufficient information to admit or deny the allegations of Paragraph 15 and on that basis denies them.

16. Mr. Scammell admits that he was employed by Madrone Advisors, LLC and that his work was for the benefit of both Madrone Advisors, LLC and Madrone Capital Partners, LLC.

17. Mr. Scammell admits the allegations of Paragraph 17.

B.

18. Mr. Scammell admits that he consented to the entry of a judgment without admitting or denying the allegations of the Complaint. Mr. Scammell admits that the Judgment was entered on June 15, 2012. Mr. Scammell admits that the judgment permanently enjoined him from violating Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. Mr. Scammell admits that the civil action is 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. Without admitting or denying the truthfulness of the allegations made in the Securities and Exchange Commission's Complaint, Mr. Scammell admits that the Complaint contained the allegations listed in Paragraph 19, notes that they do not purport to describe all of the circumstances surrounding the trades, and notes that he is limited by the Consent in the civil action as to what he can say about the allegations.

III.

AFFIRMATIVE DEFENSES

In addition to those set forth below, Mr. Scammell reserves the right to allege additional defenses as they become known, or as they evolve during the litigation, and to amend his Answer accordingly. In identifying issues under the foregoing heading, Mr. Scammell is not agreeing that the burden of proof or persuasion on such issues is his; such burdens would be the Division of Enforcement's.

1. The Division of Enforcement has failed to allege facts sufficient to show the Advisers Act applies, and it does not. Madrone is and has always been a family office not an investment adviser subject to the Investment Advisers Act.

2. The Division of Enforcement has failed to sufficiently allege that any remedial action would be in the public interest, and no remedial action would be in the public interest.

Dated: May 8, 2013



LEO P. CUNNINGHAM  
California State Bar No. 121605  
WILSON SONSINI GOODRICH & ROSATI  
650 Page Mill Road  
Palo Alto, CA 94304-1050  
Telephone: (650) 493-9300  
Facsimile: (650) 565-5100  
Email: lcunningham@wsgr.com