

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 54710 / November 3, 2006

Admin. Proc. File No. 3-11812

In the Matter of
JAMES T. PATTEN

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING

CEASE-AND-DESIST PROCEEDING

Grounds for Remedial Action

Manipulation

Associated person of registered broker-dealer charged with manipulating, and aiding and abetting another's manipulation of, the price of securities sold to public investors. Held, proceeding is dismissed.

APPEARANCES:

Ira Lee Sorkin, of Dickstein Shapiro Morin & Oshinsky, LLP, for James T. Patten.

William Kuehnle, Donald Dowie, and Keshia West, for the Division of Enforcement.

Appeal filed: December 29, 2005

Last brief received: May 3, 2006

Oral argument: October 11, 2006

I.

James T. Patten, president and owner of Greater Metropolitan Investment Services, Inc. (“GMIS”), a broker-dealer formerly registered with the Commission, appeals from the decision of an administrative law judge finding that Patten violated antifraud provisions of the securities laws 1/ as a result of what the law judge found to be Patten’s manipulative trading activity in the stock of Initio, Inc., which was then listed on the Nasdaq Small Cap Market. The law judge barred Patten from association with any broker or dealer, ordered him to pay a \$60,000 civil penalty, and ordered him to cease and desist from committing, causing, or aiding and abetting violations of the provisions he was found to have violated. We base our decision upon an independent review of the record.

II.

This case concerns trading in Initio stock during the latter half of 2002 and early 2003. During this time, Initio’s president, Martin Fox, was negotiating a possible merger of Initio with a third party. It is undisputed that the potential merger was dependent on Initio remaining listed on Nasdaq, and that such listing was threatened when, in May 2002, Initio’s bid price began consistently to close below \$1 per share, the minimum price required for continued listing on Nasdaq. 2/

On July 25, 2002, Initio’s bid price had closed below \$1 for thirty consecutive trading days, and, as a result, Nasdaq notified Fox that Initio’s stock would be delisted unless, within the next 180 days, its bid price closed at or above \$1 for at least ten consecutive trading days. Thereafter, during the summer and early fall of 2002, Fox placed a series of orders to buy Initio shares at prices above \$1, both with GMIS and with another firm with which he had accounts. Patten apparently was unaware of the orders Fox placed with this other firm. Other market participants who were unaffiliated with Initio or Patten and not alleged by the Division to have

1/ Specifically, Patten was charged with violating and causing violations of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, and aiding and abetting and causing another’s violation of those same provisions, which prohibit the use of manipulative and deceptive devices in connection with the purchase or sale of a security.

2/ NASD Rule 4310(c)(4) requires that securities maintain a minimum closing inside bid price of at least \$1 for continued inclusion on Nasdaq’s Small Cap Market. The closing inside bid of a stock is set by the inside, or highest, bid reflected by a market maker at the close of the market. When a security’s closing bid price falls below \$1 for thirty consecutive trading days, “the issuer shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. Compliance can be achieved . . . by meeting the applicable standard for a minimum of 10 consecutive business days.” NASD Rule 4310(c)(8)(D).

been involved with the manipulation, including various firms making a market in Initio, also entered orders or raised their bids above \$1, with the result that, between July 26 and September 10 (a total of thirty-two consecutive trading days), Initio's bid price closed at or above \$1. Orders that Patten entered on behalf of Fox caused Initio's closing bid price to equal or exceed \$1 on five of those days. In late August, Nasdaq notified Initio that, because its stock price had returned to the requisite level for the required period, it would not be delisted.

Thereafter, during the fall of 2002, Initio's stock price again fell below \$1. Consequently, in late October, Nasdaq again notified Initio that it would be delisted unless its closing bid price reached or exceeded \$1 for ten consecutive days during the next 180-day period. Approximately one month later, and following further negotiations regarding Initio's possible merger, Fox and Patten, who had not traded in the stock during most of the fall, independently began placing orders to buy Initio shares at prices ranging from \$.89 to \$1.03. Although Patten's orders had the effect of causing Initio's closing bid price to exceed \$1 on several days during late November through early January, the company failed to achieve that price for the requisite ten-day period set by Nasdaq. Initio was delisted by Nasdaq later that spring, and failed to effect the merger that was being negotiated.

III.

Certain of the circumstantial evidence in this case could be consistent with Patten's involvement with the manipulation of Initio's stock price. The record, however, does not include sufficient circumstantial and direct evidence to impose liability on Patten. There is an apparent temporal link between Initio's merger negotiations and threatened delisting on the one hand and, on the other, Patten's entry of orders at Fox's direction and for himself to buy Initio shares at or above the \$1 level. But there is no evidence in the record that Patten was at any time aware of either the merger negotiations or of the threat to Initio's listing status. Nor is the evidence regarding the nature of Patten's relationship with Fox sufficient to support a finding that Patten was assisting Fox's efforts to manipulate the price of Initio.

Other circumstantial evidence is ambiguous, or supports the opposite inference. Patten's trading during the summer of 2002 affected the closing bid on only a small number of days; the closing bid price was set on the majority of trading days during that period by market participants unaffiliated with Initio or Patten. During the following winter, Patten's trading activity never produced the result he was allegedly seeking – causing the closing bid price to equal or exceed \$1 for at least ten consecutive days – although there did not appear to be any market impediment to doing so. In fact, on several days during the period at issue, Patten entered orders to sell Initio stock, placing downward pressure on its price and, presumably, acting counter to the alleged manipulation.

Under all the circumstances, and based on our de novo review of the record, we have concluded that the record before us does not establish by a preponderance of the evidence that Patten committed the offenses charged. 3/ We will accordingly dismiss this proceeding.

An appropriate order will issue. 4/

By the Commission (Chairman COX and Commissioners ATKINS, CAMPOS, NAZARETH, and CASEY).

Nancy M. Morris
Secretary

3/ On August 8, 2006, the Division submitted an unopposed motion to adduce additional evidence regarding Patten's recent disciplinary history. Under Commission Rule of Practice 452, 17 C.F.R. § 201.452, the evidence must be material, and there must be reasonable grounds for failure to adduce such evidence previously. We have determined to grant the Division's motion and have considered the additional evidence in our review of this matter.

4/ We have considered all of the contentions advanced by the parties. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

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ORDER DISMISSING PROCEEDINGS

On the basis of the Commission's opinion issued this day it is

ORDERED that the proceedings instituted on February 8, 2005 against James T. Patten
be, and they hereby are, dismissed.

By the Commission.

Nancy M. Morris
Secretary