

DENISE VOIGT CRAWFORD  
SECURITIES COMMISSIONER

DON A. RASCHKE  
DEPUTY SECURITIES COMMISSIONER

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## Texas State Securities Board

208 E. 10th Street, 5th Floor  
Austin, Texas 78701-2407  
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IN THE MATTER OF  
THE INVESTMENT ADVISER  
REGISTRATION OF TAMBORELLO  
CAPITAL MANAGEMENT, LLC AND  
THE INVESTMENT ADVISER  
REPRESENTATIVE REGISTRATION  
OF SAMMY CARY TAMBORELLO

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**Order No. IC05-REV-28**

TO: Sammy Cary Tamborello, President  
Tamborello Capital Management, LLC (IARD No. 116994)  
4637 Southern Avenue  
Highland Park, TX 75209

Sammy Cary Tamborello (CRD No. 1686842)  
Tamborello Capital Management, LLC  
4637 Southern Avenue  
Highland Park, TX 75209

### DISCIPLINARY ORDER

Be it remembered that Tamborello Capital Management LLC, by and through Sammy Cary Tamborello, its President, ("Respondent TCM"), and Sammy Cary Tamborello, individually, ("Respondent Tamborello") (collectively "Respondents"), appeared before the Securities Commissioner of the State of Texas ("Securities Commissioner") and consented to the entry of this order ("Order") and Undertaking and the Findings of Fact and Conclusions of Law contained herein.

### FINDINGS OF FACT

1. Respondents have waived (a) Respondents' right to notice and hearing in this matter; (b) Respondents' right to appear and present evidence in this matter; (c) Respondents' right to appeal this Order; and (d) all other procedural rights granted to the Respondents by The Securities Act, TEX. REV. CIV. STAT. ANN. art. 581-1 et seq. (Vernon 1964 & Supp. 2004-2005)("Texas Securities Act"), and the Administrative Procedure Act, TEX. GOV'T CODE ANN. § 2001.001 et seq. (Vernon 2000 & Supp. 2004-2005)("Administrative Procedure Act").
2. On or about February 11, 2003, Respondent TCM registered with the Securities Commissioner as an investment adviser, which is currently effective.

3. On or about February 11, 2003, Respondent Tamborello registered with the Securities Commissioner as an investment adviser representative of Respondent TCM, which is currently effective.
4. From on or about July 30, 1993 to on or about February 11, 2003, Respondent Tamborello d/b/a Tamborello Capital Management and/or Tamborello & Company was registered with the Securities Commissioner as an investment adviser.
5. Respondent TCM is the successor-in-interest to Respondent Tamborello d/b/a Tamborello Capital Mangement and/or Tamborello & Company.
6. From in or about January 2001 through in or about June 2002, Respondent Tamborello's clients (the "Former Clients") maintained securities accounts at TD Waterhouse Investor Services, Inc. ("TD Waterhouse")
7. The amount of fees due from each Former Client to Respondent Tamborello was determined pursuant to the terms of the Investment Management Agreement between each of the Former Clients and Respondent Tamborello.
8. From in or about January 2001 through in or about June 2002, Respondent Tamborello misrepresented, to TD Waterhouse, the amount and nature of fees due from each of the Former Clients and thereby received fees in excess of the fees actually due from each of the Former Clients pursuant to the terms of each Investment Management Agreement.
9. From in or about January 2001 through in or about June 2002, Respondent Tamborello charged the Former Clients management fees in excess of three percent (3.0%) of the assets placed under management by each Former Client.
10. Pursuant to § 116.13(a) of the Board Rules, any registered investment adviser who wishes to charge three percent (3.0%) or greater of the assets under management must disclose to its clients that such fee is in excess of the industry norm and that similar advisory services can be obtained for less.
11. Respondent Tamborello did not disclose to the Former Clients, who were charged a fee in excess of three percent (3.0%) of their assets under management, that the fee charged was in excess of the industry norm and that similar advisory services could be obtained for less.
12. Respondent Tamborello engaged in a pattern of charging the Former Clients fees in gross excess of those actually due from each of the Former Clients pursuant to the terms of the relevant Investment Management Agreement.
13. On or about January 10, 2003, Respondent TCM filed a Uniform Application for Investment Adviser Registration ("Form ADV") with the Securities Commissioner as part of Respondent TCM's application to become registered as an investment adviser with the Securities Commissioner.

14. Item 2.E(1) of Part 1B of the Form ADV required Respondent TCM to represent "Yes" or "No" as to whether Respondent TCM was, or had been, the subject of an arbitration claim alleging damages in excess of Two Thousand Five Hundred Dollars (\$2,500.00) and involving any investment or investment-related business or activity.
15. On or about August 27, 2002, one of the Former Clients filed an arbitration claim alleging damages in the amount of Twenty Five Thousand Dollars (\$25,000.00) and named Respondent TCM as a respondent alleging that Respondent TCM fraudulently overcharged fees in the Former Client's account.
16. On Item 2.E(1) of Part 1B of the Form ADV filed on or about January 10, 2003, Respondent TCM answered "No", and thereby represented to the Securities Commissioner that Respondent TCM was not, nor had been, the subject of an arbitration claim alleging damages in excess of Two Thousand Five Hundred Dollars (\$2,500.00) and involving any investment or investment-related business activity.
17. The information required by the Form ADV is information deemed necessary by the Securities Commissioner to determine the business repute or qualifications of an investment adviser.
18. On or about January 24, 2003, and in connection with Respondent Tamborello's application to become registered with the Securities Commissioner as an investment adviser representative of Respondent TCM, Respondent Tamborello submitted a Uniform Application For Securities Industry Registration or Transfer ("Form U-4").
19. Item 14.J(1) of the Form U-4 required Respondent Tamborello to answer "Yes" or "No" in response to whether Respondent Tamborello had ever voluntarily resigned, been discharged or permitted to resign after allegations were made that accused Respondent Tamborello of violating investment-related statutes, regulations, rules, or industry standards of conduct.
20. On or about April 7, 1995, Respondent Tamborello was discharged by a former employer due to customer complaints that included allegations of unauthorized trading, failure to deliver prospectuses, misrepresentation as to fees, and harassment related to investment advisor fees.
21. On Item 14.J(1) of the Form U-4 filed on or about January 24, 2003, Respondent Tamborello responded "No", and thereby represented to the Securities Commissioner that Respondent Tamborello had never voluntarily resigned, been discharged or permitted to resign after allegations were made that accused Respondent Tamborello of violating investment-related statutes, regulations, rules, or industry standards of conduct.
22. The information required by the Form U-4 is information deemed necessary by the Securities Commissioner to determine the business repute or qualifications of an investment adviser representative.

## CONCLUSIONS OF LAW

1. Respondent Tamborello's misrepresentations regarding the amount and nature of fees due constitute misrepresentations of a relevant fact and/or a scheme to obtain a fee so gross or exorbitant as to be unconscionable, and therefore constitute fraudulent business practices.
2. Respondent Tamborello's failure to disclose to the Former Clients, who were charged a fee in excess of three percent (3.0%) of their assets under management, that the fee charged was in excess of the industry norm and that similar advisory services could be obtained for less, constitutes a violation of § 116.13(a) of the Board Rules.
3. Respondent Tamborello's pattern of charging fees in gross excess of those due pursuant to the terms of the relevant Investment Management Agreement constitutes a scheme or device to obtain a fee so gross or exorbitant as to be unconscionable, and therefore constitutes a fraudulent business practice.
4. Respondent TCM's representation of "No" on Item 2.E(1) of Part 1B of the Form ADV filed on or about January 10, 2003 with the Securities Commissioner constitutes a material misrepresentation in connection with information deemed necessary by the Securities Commissioner to determine the business repute or qualifications of an investment adviser.
5. Respondent Tamborello's representation of "No" on Item 14.J(1) of the Form U-4 filed on or about January 24, 2003 with the Securities Commissioner constitutes a material misrepresentation in connection with information deemed necessary by the Securities Commissioner to determine the business repute or qualifications of an investment adviser representative.
6. Pursuant to Sections 14.A(3), 14.A(6), and 14.A(7) of the Texas Securities Act, the foregoing fraudulent business practices, violations of the Board Rules, and material misrepresentations to the Securities Commissioner constitute bases for the issuance of an order revoking the registrations of a registered investment adviser and investment adviser representative.

## UNDERTAKING

1. Respondents undertake and agree to return Seventy Five Thousand Fifteen dollars and Thirty Six Cents (\$75,015.36) (the "Reimbursement Funds") to former clients within twenty (20) days of the date that this Order is signed by the Securities Commissioner. Respondents represent that in order to return the money to the former clients, the Reimbursement Funds have been placed in escrow with Respondents' attorney and will be distributed to the former clients in the amount each was overcharged by Respondents from January 2001 through June 2002.

2. Respondents further undertake and agree to provide a copy of this Order to the former clients within twenty (20) days of the date that this Order is signed by the Securities Commissioner.
3. Respondents further undertake and agree to not act as a dealer, agent, investment adviser, or investment adviser representative in the State of Texas as those terms are defined by Section 4 of the Texas Securities Act. Respondents further undertake and agree to not apply for registration with the Securities Commissioner as a dealer, agent, investment adviser, or investment adviser representative.

ORDER

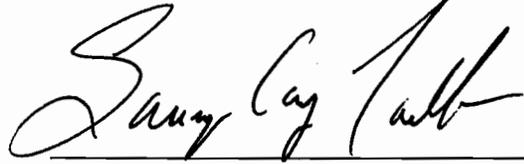
1. It is therefore ORDERED that the registrations of Tamborello Capital Management, LLC and Sammy Cary Tamborello with the Securities Commissioner are hereby REVOKED.
2. It is further ORDERED that Tamborello Capital Management, LLC and Sammy Cary Tamborello COMPLY with the terms of the Undertaking contained herein.

SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this 27<sup>th</sup>  
day of October, 2005.

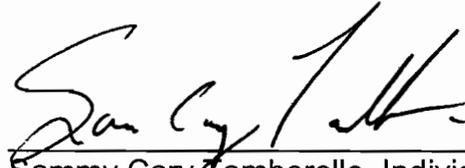
  
DENISE VOIGT CRAWFORD  
Securities Commissioner

Respondents:

Tamborello Capital Management, LLC



By: Sammy Cary Tamborello, President



Sammy Cary Tamborello, Individually

Approved as to Form:



Benette L. Zivley  
Director  
Inspections and Compliance Division



Patrick K. Craine  
Attorney for Respondents

**ACKNOWLEDGMENT**

On the 21<sup>st</sup> day of October, 2005, Tamborello Capital Management, LLC ("Respondent TCM"), by and through, Sammy Cary Tamborello, its President, personally appeared before me, executed the foregoing Order, and acknowledges that:

1. Sammy Cary Tamborello is duly authorized to enter into the foregoing Order and Undertaking on behalf of Respondent TCM;
2. Sammy Cary Tamborello has read the foregoing Order and Undertaking;
3. Respondent TCM has been fully advised of its rights under the Texas Securities Act and the Administrative Procedure Act;
4. Respondent TCM knowingly and voluntarily consents to the entry of the forgoing Order and Undertaking and the Findings of Fact and Conclusions of Law contained therein; and,
5. Respondent TCM, by consenting to the entry of the foregoing Order, has knowingly and voluntarily waived its rights as set forth therein.

  
Notary Public in and for  
the State of Texas

[affix notary seal here]

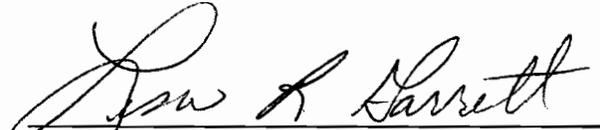
My commission expires on: \_\_\_\_\_



**ACKNOWLEDGMENT**

On the 21<sup>st</sup> day of October, 2005, Sammy Cary Tamborello ("Respondent Tamborello") personally appeared before me, executed the foregoing Order, and acknowledged that:

1. Respondent Tamborello has read the foregoing Order and Undertaking;
2. Respondent Tamborello has been fully advised of his rights under the Texas Securities Act and the Administrative Procedure Act;
3. Respondent Tamborello knowingly and voluntarily consents to the entry of the foregoing Order and Undertaking and the Findings of Fact and Conclusions of Law contained therein; and
4. Respondent Schroeder, by consenting to the entry of the foregoing Order, has knowingly and voluntarily waived his rights as set forth therein.



Notary Public in and for  
the State of Texas

[affix notary seal here]

My commission expires on: \_\_\_\_\_

