

# **Exhibit 40**

STATE OF ILLINOIS  
SECRETARY OF STATE  
SECURITIES DEPARTMENT

IN THE MATTER OF: MARILYN R. O'LEARY

FILE NO. C0600148

CONSENT ORDER OF REVOCATION

**TO THE RESPONDENTS:**

MARILYN R. O'LEARY  
(CRD#: 1112613)  
701 St. Giles Court  
Palm Beach Gardens, FL 33418

C/O Marilyn R. O'Leary  
DELANEY EQUITY GROUP LLC  
5090 PGA Blvd Suite 316  
Palm Beach Gardens, FL 33418

C/O David C. Delaney, CEO  
DELANEY EQUITY GROUP LLC  
5090 PGA Blvd Suite 316  
Palm Beach Gardens, FL 33418

WHEREAS, Respondent Marilyn R. O'Leary, on the 22nd day of May 2008 executed a certain Stipulation to Enter Consent Order of Revocation (the "Stipulation"), which hereby is incorporated by reference herein.

WHEREAS, by means of the Stipulation, the Respondent has admitted to the jurisdiction of the Secretary of State and service of the Notice of Hearing of the Secretary of State, Securities Department, dated April 1, 2008 in this proceeding ("Notice") and Respondents have consented to the entry of this Consent Order ("Consent Order").

WHEREAS, by means of the Stipulation, the Respondent acknowledged, without admitting or denying the truth thereof, that the following allegations contained in the Notice of Hearing shall be adopted as the Secretary of State's Findings of Fact:

1. That at all relevant times, the Respondent was registered with the Secretary of State as a salesperson in the State of Illinois pursuant to Section 8 of the Act until May 4, 2007.

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2. That on February 8, 2006, NASD entered a Letter of Acceptance, Waiver And Consent (AWC) submitted by the Respondent regarding FILE NO. EAF0300770003, which imposed the following sanctions upon the Respondent:
  - a. A fine of \$3,500; and
  - b. A suspension from association with any NASD member in any capacity for 90 calendar days.
3. That the AWC found (in pertinent part):
  - a. Respondent O'Leary has been a director, Vice President and the Chief Financial Officer of Intercoastal, a small broker-dealer in Palm Beach County, Florida, since December 1998. She was also the President, Secretary, and Treasurer of Intercoastal's holding company, Intercoastal Holdings. During most of O'Leary's tenure Intercoastal was market maker in over-the counter ("OTC") stocks. The firm employed between three and six registered representatives.
  - b. Intercoastal Holdings and Euro Dutch Trust Company (Bahamas) Limited ("Euro Dutch"), a Bahamas-based company affiliated with Intercoastal's founder, Anthony L.M. Inder Rieden, entered into an information Services Agreement ("Services Agreement"), dated March 1, 2000, which remained in effect through December 31, 2002. Respondent O'Leary signed the Services Agreement as President of Intercoastal Holdings and Inder Rieden countersigned as Managing Director of Euro Dutch.
  - c. According to the Services Agreement, Intercoastal Holdings retained Euro Dutch "to furnish research, informational and other consulting services to Intercoastal [Holdings]...." The services that Euro Dutch was to provide included "industry analyses, reports on market trends, research and due diligence, reports on public companies whose securities trade or are listed on Nasdaq National Market, Nasdaq Small Cap Market and the OTC Bulletin Board." Pursuant to the agreement, Euro Dutch was to receive "a fixed monthly fee of \$50,000 in arrears, unless otherwise agreed...."

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- d. During the thirty-four months that the Services Agreement was in effect, Intercoastal Holdings paid Euro Dutch approximately \$1.5 million. But Euro Dutch never provided any services pursuant to the Services Agreement. In her capacity as President of Intercoastal Holdings, as well as her positions with Intercoastal, Respondent O'Leary should have been aware that Euro Dutch provided no services. Respondent O'Leary's responsibilities included (1) making payments owed to vendors, through wire transfer of funds or otherwise, on behalf of Intercoastal and its holding company, and (2) maintaining Intercoastal's books and records related to those payments.
- e. Intercoastal provided the money that Intercoastal Holdings paid to Euro Dutch. Pursuant to a Management Agreement dated August 7, 1998, Intercoastal was obliged to pay Intercoastal Holdings \$5,000 per month to cover Intercoastal's general and administrative expenses, as well as a separate payment to cover commissions paid by Intercoastal Holdings. During the 34 months that the Services Agreement was in effect, however, Intercoastal paid Intercoastal Holdings a total of approximately \$3,554,494.40. This amount well exceeded Intercoastal's operating expenses and commissions, all which were paid at the holding company level.
- f. To fund the payments to Euro Dutch, Respondent O'Leary wired money from Intercoastal to Intercoastal Holdings. Then, usually within a short period of time, Respondent O'Leary wired money from Intercoastal Holdings offshore to Euro Dutch for "research services." For example, on May 3, 2002, Respondent O'Leary wired approximately \$165,000 from Intercoastal to Intercoastal Holdings as a management fee. The same day, Respondent O'Leary wired approximately \$164,250 from Intercoastal Holdings to Euro Dutch.

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- g. Respondent O'Leary Signed the Services Agreement on behalf of Intercoastal Holdings, and was the person principally responsible for wiring the money from Intercoastal to Intercoastal Holdings and then from Intercoastal Holdings to Euro Dutch. Respondent O'Leary should have been aware that the Services Agreement served merely to direct funds from Intercoastal to Euro Dutch and that Intercoastal Holdings served merely as a conduit for payments to Euro Dutch. Respondent O'Leary should have been aware that the books and records of Intercoastal inaccurately reflected payment to Intercoastal Holdings for management fees, and further, failed to reflect that Euro Dutch was the intended recipient of the funds.
- h. By virtue of these actions, from March 1, 2000 until December 31, 2002, Respondent O'Leary caused Intercoastal to maintain inaccurate books and records in violation of Section 17 of the Securities Exchange Act of 1934 and Rule 17a-3 thereunder, and thereby violated NASD Rules 3110 and 2110.
- i. In May 2002, two officers of eSynch set up an account at Intercoastal in the name of Jan A. Kusy, who was a contractor with a glass and widow installation company. Respondent O'Leary was aware of the eSynch officers' role through her involvement on behalf of Intercoastal, in setting up the account, as well as her positions as "supervisory principal" on the account. Further, she eventually became aware that one of the eSynch officers, T. Richard Hutt, who was a Director, Vice President and Secretary/Treasurer of eSynch, was Kusy's brother-in-law.
- j. On May 22, 2002, Kusy received approximately 3,390,000 shares of eSynch, purportedly issued pursuant to Form S-8 of the Securities Act of 1933 and pursuant to a Consulting Agreement he entered into with eSynch. On or about May 31, 2002, Kusy deposited those shares into his newly opened account at Intercoastal. As Respondent O'Leary was aware, between June 2002 and April 2003, all of those shares were either sold into the public market or transferred to other persons or entities. Kusy's account activity was mainly limited to liquidating his eSynch shares.

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- k. Kusy alone had authority to trade in his account. Nevertheless, as Respondent O'Leary was aware, Hutt forwarded letters of authorization from Kusy to Intercoastal and participated in administrative decisions concerning Kusy's account. Respondent O'Leary often contacted Hutt whenever she had a question about the account.
- l. On June 27, 2002, Kusy faxed a letter to Respondent O'Leary asking her to wire-transfer \$930.00 from his account at Intercoastal to a bank account for Kiss Software Corp. ("Kiss"), which was a subsidiary of eSynch. In accordance with these instructions, Respondent O'Leary transferred \$930.00 from Kusy's account at Intercoastal to the bank account for Kiss. Respondent O'Leary knew or should have known at the time that she transferred the money that the bank account belonged to Kiss, and that the funds were proceeds of the sale of stock registered pursuant to Form S-8.
- m. On July 23, 2002, Kusy faxed Respondent O'Leary a letter authorizing Intercoastal to sell 200,000 shares of eSynch "per the verbal instructions from Tom Hemingway [Chairman and CEO of eSynch] to Jack Delaney on July 19, 2002." The letter also directed Respondent O'Leary to wire-transfer 90 percent of the sales proceeds to a checking account owned by Kiss which was the same subsidiary that received the transfer of funds on June 27, 2002. In accordance with these instructions, Respondent O'Leary wire-transferred \$7,193.47, which represented 90 percent of the sales proceeds, to the checking account owned by Kiss. At the time that she transferred the sales proceeds, Respondent O'Leary knew or should have known that the account belonged to Kiss, and that the funds were proceeds of the sale of stock registered pursuant to Form S-8.
- n. On July 25, 2002, Kusy faxed Respondent O'Leary a letter authorizing Intercoastal to transfer 1,350,000 Shares of eSynch from his account to Thomas Hemingway's account at Intercoastal. In accordance with these instructions, Respondent O'Leary transferred 1,350,000 shares of eSynch from Kusy's account to the account of Hemingway. At the time that she transferred the shares, Respondent O'Leary knew that Hemingway was the Chairman and CEO of eSynch.



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WHEREAS, the Secretary of State, by and through his duly authorized representative, has determined that the matter related to the aforesaid formal hearing may be dismissed without further proceedings.

NOW THEREFORE IT SHALL BE AND IS HEREBY ORDERED THAT:

1. Marilyn R. O'Leary registration as a salesperson in the State of Illinois shall be and is **REVOKED**.
2. The formal hearing scheduled on this matter is hereby dismissed without further proceedings.

Dated: This 27th day of May 2008.



JESSE WHITE  
Secretary of State  
State of Illinois

NOTICE: Failure to comply with the terms of this Order shall be a violation of Section 12.D of the Act. Any person or entity who fails to comply with the terms of this Order shall be a violation of Section 12.D of the Act. Any person or entity who fails to comply with the terms of this Order of the Secretary of State, having knowledge of the existence of this Order, shall be guilty of Class 4 felony.

This is a final order subject to administrative review pursuant to the Administrative Review Law [735 ILCS 5/3-101 et seq.] and the Rules and Regulations of the Act (14 Ill. Admin. Code, Ch. 1 Sec. 130.1123). Any action for judicial review must be commenced within thirty-five (35) days from the date a copy of this Order is served upon the party seeking review.

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