

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 87074 / September 24, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19501

In the Matter of

TMC BONDS LLC,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against TMC Bonds LLC (“TMC” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. TMC is a registered broker-dealer that operates an alternative trading system ("ATS") for trading fixed income securities. TMC markets itself as an anonymous secondary trading platform, meaning that subscribers transacting on the ATS do not know with whom they are trading. TMC serves as the counterparty to each side of a trade executed on the ATS in a riskless principal capacity. During the relevant period, TMC informed ATS subscribers that their identities would be kept confidential and their names would not be disclosed either pre- or post-trade.

2. Despite TMC's representations regarding ATS subscriber anonymity, between at least January 2016 and June 2018 (the "relevant period"), personnel on TMC's corporate bond desk, which facilitated corporate bond trading on the platform, disclosed to other ATS subscribers the identities of certain firms attempting to trade on the ATS, in hundreds of Bloomberg messages and chats. The subscribers whose identities were at times revealed were large brokerage firms that primarily engaged in corporate bond trading on behalf of retail customers and were, therefore, considered to provide retail order flow. In most instances, TMC failed to seek or obtain the retail brokerage firms' consent before identifying the firms' names to the other ATS subscriber.

3. TMC violated Rule 301(b)(10) of Regulation ATS by failing to establish adequate safeguards and procedures to protect subscribers' confidential trading information and to implement adequate oversight procedures to ensure that these safeguards and procedures were followed. Although TMC had written policies requiring generally that subscriber-identifying information be kept confidential, TMC failed to provide adequate training to its employees on these policies and failed to implement adequate procedures or controls to ensure that such confidential information was actually being safeguarded.

4. TMC also violated Rule 301(b)(2) of Regulation ATS by failing to timely file an amendment on Form ATS to disclose to the Commission that the ATS was not operating as an anonymous trading platform, as it previously disclosed on its Form ATS filed with the Commission, but was at times identifying subscribers in connection with trading activities on the ATS.

IV.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondent

5. TMC is a Delaware company with its principal place of business in New York, New York. TMC is, and at all relevant times was, a registered broker-dealer (CRD Number 104507), and since 2001, has operated an ATS for trading fixed income products.² During the relevant period, TMC was the counterparty for several million trades with its subscribers (including both buy and sell orders). In July 2018, TMC was acquired by Intercontinental Exchange, Inc. (“ICE”).

Facts

A. TMC’s Public Statements and Operating Procedures Provide That Its Subscribers’ Identities Will Be Kept Confidential

6. TMC operates an ATS on which subscribers can anonymously buy and sell a variety of taxable and non-taxable fixed income securities, including municipal bonds, corporate bonds, and U.S. treasuries. TMC’s platform operates similar to a central order book, where subscribers can post bid and offer quotations anonymously, with which other subscribers can seek to interact by submitting trade requests. Subscribers can also request “bids wanted in competition” (“BWICs”) on the platform, whereupon TMC conducts a timed auction for bids in the securities that are the subject of the BWIC. TMC does not trade or maintain positions for its own account or make discretionary trades for its subscribers. Rather, TMC stands in the middle of each trade and serves as the counterparty to both the buying and selling subscribers in a riskless principal capacity. By doing so, TMC should be able to ensure that its subscribers remain anonymous even after a trade is executed on the ATS.

7. TMC distinguishes itself from many competing fixed income ATSs by highlighting that it is an anonymous trading platform. TMC’s marketing materials during the relevant period

² Rule 300(a) of Regulation ATS promulgated under the Exchange Act provides that an ATS is “any organization, association, person, group of persons, or system: (1) [t]hat constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of [Exchange Act Rule 3b-16]; and (2) [t]hat does not: (i) [s]et rules governing the conduct of subscribers other than the conduct of subscribers’ trading on such [ATS]; or (ii) [d]iscipline subscribers other than by exclusion from trading.” Regulation ATS, Rule 300(a), 17 C.F.R. § 242.300(a). Rule 301(a) of Regulation ATS provides that an ATS must comply with Rule 301(b) of Regulation ATS, unless the ATS is registered as a national securities exchange or qualifies for another enumerated exclusion. During the relevant period, TMC was not registered as a national securities exchange and did not qualify for an enumerated exclusion. Therefore, it was required to comply with the provisions of Regulation ATS, including Rule 301(b), to benefit from the exemption from the definition of “exchange” set forth in Rule 3a1-1(a)(2) under the Exchange Act.

touted its “anonymous counterparty model” and represented to at least one subscriber that “[y]our name will not be disclosed either pre or post trade. TMC Bonds is your counterparty on all trades.”

8. TMC’s operating procedures similarly noted the confidentiality of subscribers’ identities when transacting on the ATS. The operating procedures described TMC as “an all-to-all electronic trading platform for qualified institutional firms to trade with each other anonymously” and informed ATS subscribers that, should they seek to block specified counterparties from seeing their orders, “[a]s the site is anonymous, TMC will neither confirm nor deny if the selected blocked firm is a client, but only implement the blocking if possible.”

B. TMC Failed to Establish Adequate Safeguards and Procedures to Protect Its Subscribers’ Confidential Trading Information and to Implement Adequate Oversight Procedures

9. Although TMC’s safeguards and procedures provided generally that subscribers’ identities would remain anonymous when trading on the ATS, TMC failed to establish adequate procedures designed to protect subscriber-identifying information or to ensure that subscriber-identifying information was not being improperly disclosed. During the relevant period, TMC failed to establish adequate procedures informing its employees (i) what it meant to operate an anonymous ATS, (ii) under what circumstances, if any, subscriber-identifying information could be disclosed, or (iii) how TMC was going to ensure that subscriber-identifying information was protected.

10. TMC’s written supervisory procedures (“WSPs”) addressed anonymity and subscriber confidentiality only in the most general terms. In the section addressing compliance with Regulation ATS, the WSPs provided that “[i]nformation such as the identity of subscribers and their orders will only be made available to those Firm employees who operate the system or are responsible for its compliance with Regulation ATS” and “[TMC] employees may not use any confidential information for proprietary or subscriber trading unless the subscriber so agrees.” TMC failed to adopt or implement any oversight procedures to ensure that these procedures were being followed. Notably, the WSPs did not specify that subscribers could be identified with their consent, when and how that consent should be confirmed, and did not require any documentation evidencing that consent.

11. TMC’s employee training was also deficient. While TMC provided annual compliance training to its employees, that training did not address how employees should safeguard subscribers’ identities or how TMC was going to ensure that subscriber-identifying information was not being disclosed to others transacting on the ATS. Internal written training materials stated only that “TMC is the leading ‘anonymous’ platform” and that “[c]rucial to the success of this business model is adherence to this tenet.” TMC’s corporate bond trading desk employees did not receive any specific training on TMC’s anonymity policy.

C. TMC’s Corporate Bond Desk Disclosed Subscribers’ Confidential Trading Information

12. TMC's corporate bond trading desk employees disclosed to ATS subscribers the identity of other subscribers attempting to trade on the ATS. Specifically, between January 2016 and June 2018, TMC employees on the corporate bond trading desk disclosed the identity of certain firms attempting to trade on the ATS approximately 2600 times. The subscribers whose identities were disclosed were large broker-dealers that typically traded corporate bonds on the ATS on behalf of retail customers.

13. In most instances, TMC disclosed the name of the retail brokerage firm in situations where the firm had previously attempted to transact with an order posted on the ATS by another subscriber, but the posting subscriber failed to confirm the transaction in a timely manner. TMC attempted to facilitate an execution by disclosing the retail brokerage firm's name to the subscriber that had not confirmed the trade request in order to encourage that subscriber to proceed with the trade. Other situations in which TMC disclosed retail brokerage firms' identities included requests from those firms to cancel trades and for assistance in completing a trade, and gratuitous disclosures designed to encourage proprietary firms to trade with retail brokerage firms.

14. Disclosures of a retail brokerage firm's name usually resulted in the trade being completed at the quantity and price sought by the retail brokerage firm, largely because TMC knew that other ATS subscribers, such as proprietary trading firms, were generally more willing to trade with retail brokerage firms than other professional traders. Proprietary trading firms generally felt that retail brokerage firms were only seeking to execute their customers' orders in a timely fashion, whereas other professional traders might have been trading to gain an informational advantage that could be used on other trading venues. TMC's disclosure of the retail brokerage firms' names helped TMC to meet the high fill rates required by those firms, and thus, keep from potentially losing those firms as subscribers. Continued retail firm participation on TMC's platform was important to the business.

D. TMC Failed to Notify its Subscribers and the Commission That It Was Disclosing Subscribers' Confidential Trading Information

15. TMC failed to inform its subscribers and the Commission that it was deviating from its public and Form ATS statements that it operated as an anonymous trading platform. It was not until June 2018, after the SEC enforcement staff requested documents about TMC's anonymity practices, that TMC provided any notice to its subscribers or the Commission that such disclosures might be occurring. On June 13, 2018, TMC revised its operating procedures to state in a footnote that "[w]hile TMC predominantly operates on an anonymous basis, a participant may authorize TMC to disclose its identity under certain circumstances." And, two weeks later, on June 28, 2018, TMC revised that footnote again to read, "TMC's secondary markets are predominantly anonymous. Yet scenarios arise where a participant may choose to disclose its name. These scenarios include but are not necessarily limited to the following situations: 1) fully disclose its name, 2) selectively disclose its name to certain other participants, or 3) disclose its name in the event of an unresolved trading matter."

16. TMC failed to timely amend its Form ATS pursuant to Rule 301(b)(2) of Regulation ATS to notify the Commission that it was actually disclosing to ATS subscribers the

identities of certain other subscribers who were attempting to execute orders on the ATS. In its Form ATS, TMC disclosed that it was an “anonymous secondary trading platform,” meaning that it did not disclose the identities of subscribers on the ATS. This statement, however, was not entirely accurate given that TMC’s corporate bond desk employees, at times, disclosed the identity of certain subscribers attempting to trade on the ATS to other ATS subscribers.

V.

17. As a result of the conduct described above, TMC willfully³ violated:

a. Rule 301(b)(10) of Regulation ATS, which requires an ATS to establish adequate safeguards and procedures to protect subscribers’ confidential trading information and to adopt and implement adequate oversight procedures to ensure that the safeguards and procedures for protecting subscribers’ confidential trading information are followed; and

b. Rule 301(b)(2) of Regulation ATS, which requires an ATS to file an amendment on Form ATS at least 20 calendar days prior to implementing a material change to the operation of the ATS or within 30 days after the end of a quarter when information contained in an initial operation report filed on Form ATS becomes inaccurate (if it has not been previously reported as an amendment on Form ATS).

TMC’s Remedial Efforts and Cooperation

18. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff. TMC undertook substantial remedial efforts to address the deficiencies in enforcing and implementing their anonymity policy as a result of the Staff’s investigation. TMC provided compliance training to its trading desks, which addressed TMC’s anonymity policy. TMC also made substantial revisions to its procedures, adding safeguards protecting subscribers’ confidential trading information on the ATS by (i) clarifying the circumstances when customers’ identities can be disclosed, (ii) implementing new oversight and documentation requirements for when TMC customers do authorize the disclosure of their identities on the ATS, and (iii) providing templates for the newly required documentation.

³ “Willfully,” for purposes of imposing relief under Section 15(b) of the Exchange Act, “means no more than that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term “willfully” for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has “willfully omit[ted]” material information from a required disclosure in violation of Section 207 of the Advisers Act).

19. In addition to the remedial steps above, TMC also cooperated with the Staff's investigation.

VI.

In view of the foregoing, the Commission deems it appropriate, in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. TMC cease and desist from committing or causing any violations and any future violations of Rules 301(b)(2) and 301(b)(10) of Regulation ATS promulgated under the Exchange Act.

B. TMC is censured.

C. TMC shall, within 14 (fourteen) days of the entry of this Order, pay a civil money penalty in the amount of \$2,100,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying TMC as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Joseph Sansone, Chief, Market Abuse Unit, Division of Enforcement, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary