

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

**SECURITIES ACT OF 1933**  
**Release No. 10985 / September 20, 2021**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 93071 / September 20, 2021**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20576**

**In the Matter of**

**CODA MARKETS, INC. and**  
**EDWARD G. O'MALLEY**

**Respondents.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTION 8A OF THE  
SECURITIES ACT OF 1933 AND SECTION  
15(b) 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 Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Coda Markets, Inc. (“Coda”) and that public cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act against Edward G. O’Malley (“O’Malley”).

**II.**

In anticipation of the institution of these proceedings, Coda and O’Malley (collectively, “Respondents”) have submitted Offers of Settlement (the “Offers”) 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) 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 Respondents' Offers, the Commission finds that:

#### Summary

These proceedings arise from omissions of material fact and misleading statements made by Coda, a registered broker-dealer, to its broker-dealer subscribers about how it handled and routed orders for execution. From December 2016 to July 2019 (the "relevant period"), Coda failed to disclose its use of a circular routing arrangement when handling subscriber orders. Coda said it created individually customized routing tables for its subscribers, with venues ranked in the routing tables depending on the subscriber's trading priorities. Typically, when Coda had discretion over the routing table, Coda inserted one of two broker-dealers as the first external destination because, among other reasons, Coda had an agreement with these broker-dealers to share the net trading profits on order executions. Coda derived a material portion of its annual profits from this undisclosed routing arrangement during the relevant period. O'Malley, Coda's President, was the most senior person at Coda who knew the details of Coda's circular routing arrangement, and reviewed and approved Coda's disclosure documents containing material omissions and misleading statements.

#### Respondents

1. **Coda** is a Connecticut corporation with its principal place of business in Glenview, Illinois. Founded in 1993, Coda is a broker-dealer registered with the Commission and is wholly owned by PDQ Enterprises, LLC. Coda operates an alternative trading system (the "Coda ATS") and was formerly known as PDQ ATS, Inc.

2. **O'Malley**, age 61, is the President and a registered representative of Coda. O'Malley holds Series 7, 24, and 63 licenses.

#### Background

3. During the relevant period, a small amount of the order flow handled by Coda was executed in the Coda ATS. Coda routed the remaining order flow, which accounted for the vast majority of Coda's order flow, to external trading venues for execution.

4. During the relevant period, Coda had agreements with two other broker-dealers to execute orders received from Coda by trading on a net basis<sup>1</sup> (the "Net Trading Firms"), wherein Coda prescribed how the Net Trading Firms would handle the majority of the orders they received

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<sup>1</sup> A "net" trade occurs when, in the example of a buy order, a broker-dealer, after having received an order to buy an equity security, purchases the equity security in the market at one price and then sells to the customer at a higher price.

from Coda. When Coda routed a subscriber order to one of the Net Trading Firms, the Net Trading Firm would hold the subscriber order in reserve and then, in most cases, send a principal order back to Coda. Coda would then route the Net Trading Firm's principal order to one or more external markets to seek non-displayed liquidity. If the Net Trading Firm's principal order executed, Coda would communicate the execution(s) back to the Net Trading Firm, which would then effect an offsetting trade with the subscriber at a net price which was different than the price of the trade obtained by Coda on the external market for the principal order.

5. The Net Trading Firms and Coda agreed that they would price the offsetting leg (between the Net Trading Firm and the subscriber) such that the Net Trading Firm would provide 5% of the price improvement<sup>2</sup> to Coda's subscriber order, and retain the remaining 95% of the price improvement.

6. During the relevant period, Coda had a profit sharing agreement with the Net Trading Firms. When a Net Trading Firm executed an order routed from Coda, the Net Trading Firm paid Coda approximately 70% of the net trading profit derived from the net trade.

7. Coda inserted one of the Net Trading Firms as the first external destination in most of Coda's routing tables. Coda did not inform its subscribers when one of the Net Trading Firms was the first external destination on the routing tables, and Coda's subscribers did not see the routing tables.

8. The revenue Coda retained from orders executed by the Net Trading Firms accounted for over 30% of Coda's revenue during the relevant period.

9. Coda did not always provide its subscribers with information indicating where their orders had been routed or executed. Coda utilized the Financial Information eXchange ("FIX") protocol to transmit trade information to, and receive order information from, its subscribers. The FIX protocol uses a system of digital fields called "tags" that are populated during the trading process and relayed via FIX messages.

10. One tag, called Tag 30, or "Last Market," is intended to identify the trading venue at which an order was executed. Until January 2019, Coda sent its subscribers FIX messages which listed Coda as the execution venue in Tag 30 for all executed orders (except for certain directed orders), including orders executed at the Net Trading Firms. Coda provided subscribers with a FIX specification document that reflected the values it would use in Tag 30.

11. In January 2019, Coda changed this practice and started to leave Tag 30 blank for all trades other than those executed in the Coda ATS. While subscribers could ask for Tag 30 to be

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<sup>2</sup> Price improvement occurs when a customer order receives an execution at a price that is better than the best available quotation then appearing on the public quotation feed, that is, by executing a "buy" order at a price lower than the lowest prevailing offer, or executing a "sell" order at a price higher than the highest prevailing bid.

populated differently, by default, the FIX messages sent to Coda's subscribers did not contain any information about the execution venue for trades executed outside the Coda ATS (except for certain directed orders), including orders executed by the Net Trading Firms. Coda updated the FIX specification document provided to new subscribers reflecting this change.

### **Coda's Misleading Disclosures and Material Omissions**

12. During the relevant period, Coda emailed its subscribers, and posted on its website, a disclosure document, which Coda updated periodically. In December 2016, Coda emailed its subscribers a disclosure document that included the following representation:

Coda Markets, Inc. acts solely in an agency capacity for all executions. In the course of handling your orders we may route to venues including exchanges, market makers and alternative trading systems. Some of these destinations may handle your order on a riskless principle, principal, and/or net trading basis.

13. Coda's representations to subscribers that it "may route to venues including exchanges, market makers and alternative trading systems" and that "[s]ome of these destinations may handle your order on a . . . net trading basis" were misleading because neither of the Net Trading Firms were exchanges, market makers or alternative trading systems, and Coda's practice on the vast majority of occasions was to route eligible subscriber orders to the Net Trading Firms to be executed on a net basis.

14. In July 2017, May 2018, and January 2019, Coda emailed its subscribers a disclosure document that included the following additional representations:

As defined in FINRA rule 2441, a "net" transaction is a principal transaction in which a market maker after having received an order to buy (sell) an equity security, purchases (sells) the equity security at one price (from (to) another broker-dealer or another customer) and then sells to (buys from) the customer at a different price. The price difference represents the compensation the market maker receives for facilitating the order. Coda does not trade on a "net" basis. Coda is an independent broker that solely acts in an agency capacity. Coda does not make markets or trade proprietarily. Coda may, in the course of routing your order seeking liquidity and a favorable execution price in the marketplace, route your order to one or more venues including those which may execute the order on a net basis. In some instances, Coda maintains profit sharing arrangements with certain executing venues. The execution price you receive is the price received by Coda from the executing venue. Broker-Dealer subscribers who route orders to Coda should understand their disclosure obligations to their end customers. If

you do not wish to have your orders handled on a net basis, please contact us . . .

15. In each of its disclosure documents, Coda failed to disclose that it had a practice of routing almost all eligible orders to the Net Trading Firms before routing to any external destinations, and that Coda shared in the net trading profits of those executions. Due to this omission, statements in Coda's disclosure document were misleading under the circumstances that they were made.

16. Coda's representation to subscribers that "Coda may, in the course of routing your order seeking liquidity and a favorable execution price in the marketplace, route your order to one or more venues including those which may execute the order on a net basis" was misleading in light of Coda's failure to disclose the circular routing arrangement because:

- (i) Coda routed most orders to one of the Net Trading Firms before routing to other external trading destinations;
- (ii) Coda was not "seeking liquidity" from the Net Trading Firms because the Net Trading Firms usually took no steps to obtain liquidity for the subscriber order, and pursuant to the arrangement with Coda, usually would route a principal order directly back to Coda so that Coda could route it to an away market for execution; and
- (iii) Coda did not route orders to the Net Trading Firms only to seek a favorable execution price because Coda routed to the Net Trading Firms as part of the arrangement to capture profits from net trading.

17. O'Malley was Coda's President and the most senior person at Coda during the relevant period who reviewed Coda's routing tables and understood the structure of Coda's circular routing arrangement and profit sharing agreements with the Net Trading Firms. O'Malley also knew that these profit sharing agreements accounted for over 30% of Coda's revenue during the relevant time period. O'Malley reviewed and approved the misleading disclosures described above prior to their distribution to Coda's subscribers in December 2016, July 2017, May 2018, and January 2019.

18. In July 2019, Coda added the following representations to its disclosure document concerning the profit sharing agreements:

These arrangements give Coda Markets a financial incentive to route orders to venues that provide Coda Markets with payments, credits, or profit sharing for such order flow. Subject to your particular routing instructions and Coda Markets' best execution obligations, Coda Markets may take these incentives into account when considering where to route your orders.

19. By December 2019, Coda stopped the circular routing arrangement described above. Coda also ended its profit sharing agreements with the Net Trading Firms. Since December 2019, Coda has had an agreement with a market maker to pay Coda fixed payments for order flow as agreed by the parties.

### **Violations**

20. As a result of the conduct described above, Coda willfully violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit any person, in the offer or sale of securities, from obtaining money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and from engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser, respectively. Claims under Sections 17(a)(2) and 17(a)(3) of the Securities Act do not require a showing of scienter; instead, a showing of negligence is sufficient.

21. As a result of the conduct described above, O'Malley caused Coda's violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.

### **Respondents' Remedial Efforts**

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondents and cooperation afforded the Commission staff, including data analyses provided to the staff.

## **IV.**

In view of the foregoing, the Commission deems it appropriate, in the public interest, to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 8A of the Securities Act and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

- A. Coda cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.
- B. Coda is censured.
- C. Coda shall within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$1.2 million 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.

Accordingly, pursuant to Section 8A of the Securities Act, it is hereby ORDERED that:

- A. O'Malley cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.
- B. O'Malley shall within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$35,000 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) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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 Coda and O'Malley as Respondents 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 Sanjay Wadhwa, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281-1022.

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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payments of civil penalties in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 Respondents 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.

**V.**

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent O’Malley, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent O’Malley under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent O’Malley of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman  
Secretary