

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 92237 / June 23, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20370

In the Matter of

**GUGGENHEIM
SECURITIES, 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 Guggenheim Securities, LLC (“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 finds that:

Respondent

1. Guggenheim Securities, LLC (“GS”), a Delaware limited liability company with its principal place of business in New York, New York, has been registered as a broker-dealer since 1997. GS has more than 600 registered representatives and 16 branches. Its majority indirect owner is Guggenheim Capital, LLC (“GC”), a Delaware limited liability company.

Facts

A. Statutory and Regulatory Framework Protecting Whistleblowers

2. The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), enacted on July 21, 2010, amended the Exchange Act by adding Section 21F, “Whistleblower Incentives and Protection.” The purpose of these provisions was to encourage whistleblowers to report possible securities law violations by providing, among other things, financial incentives and various confidentiality protections.

3. To fulfill this Congressional purpose, the Commission adopted Rule 21F-17, which provides in relevant part:

(a) No person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement . . . with respect to such communications.

Rule 21F-17 became effective on August 12, 2011.

B. The Relevant GS and GC Policies

4. GS and GC maintain various compliance policies and procedures. Whereas GS’s policies and procedures apply to GS employees, GC’s policies and procedures apply to all employees in entities directly and indirectly owned by GC, including GS.

5. From at least April 15, 2016 to July 2020 (the “Relevant Period”), GS employees received the GS Core Compliance Manual (the “GS Manual”), and signed an acknowledgement, upon hire and on an annual basis, that they had received, read, and would adhere to the GS Manual. GS reviewed and updated the GS Manual at least yearly. During the Relevant Period, the GS Manual contained a “Communications with Regulators” section that stated, in relevant part:

Employees are also strictly prohibited from initiating contact with any Regulator without prior approval from the Legal or Compliance Department. This prohibition applies to any subject matter that might be discussed with a Regulator, including an individual’s registration status with FINRA. Any employee that violates this policy may be subject to disciplinary action by the Firm.

Before this language was added to the GS Manual, the “Communications with Regulators” section was intended to address employee communications with regulators regarding inbound regulatory inquiries. Further, the GS Manual defined “Regulator” as “including but not limited to a representative from the SEC, FINRA, the respective State Securities Commissions, etc.”

6. In 2018 and 2019, GS also provided annual compliance training to its employees that included similar language. Specifically, the GS annual compliance training materials in those years contained a slide with a section titled “Communication with Regulators” and a sub-bullet point that stated:

Employees are prohibited from initiating contact with any regulator without prior approval from Legal or Compliance, including conversation[s] regarding an individual’s registration status with FINRA.

7. GS employees are also required to comply with the Code of Conduct maintained by its indirect parent, GC (the “GC Code”). When hired, and then on a periodic basis, employees, including GS employees, were required to acknowledge that they read, understood, and would comply with the GC Code. The GC Code stated that employees from GC’s regulated entities, including GS, were subject to additional policies.

8. Throughout the Relevant Period, the GC Code, under the “Public Statements” section, provided that the GC Code “should not be interpreted to restrict or interfere with any employee’s rights, free speech, or any whistleblower protections under applicable laws, regulations and requirements.” In July 2016, as part of a review of applicable whistleblower and confidentiality provisions, GC added language to the GC Code in a section titled “Prompt and Confidential Reporting of Illegal or Unethical Conduct,” that provided:

Nothing in this policy or any other Company policy or agreement is intended to prohibit you (with or without prior notice to the Company) from reporting to or participating in an investigation with a government agency or authority about a possible violation of law, or from making other disclosures protected by applicable whistleblower statutes.

9. The GS Manual provides that, in addition to the contents of the GS Manual, employees are responsible for being aware of and complying with the requirements imposed by all other applicable GS and GC policies and/or procedures. The “Introduction” section to the GS Manual further provides, in relevant part:

There may be circumstances in which a GS policy or procedure may be more (or less) restrictive than a GC policy or procedure. In all such circumstances, GS personnel should follow the more restrictive of the policies or procedures, absent explicit direction to the contrary.

10. The Commission is unaware of any specific instances in which (i) a GS employee was prevented from communicating with Commission staff about potential securities laws

violations or (ii) GS took action to enforce the GS Manual's restriction or otherwise prevent such communications. However, the language found in the Communications with Regulators section of the GS Manual and the GS annual compliance training materials, by prohibiting employees from initiating contact with any regulator without prior approval from the legal or compliance department, undermines the purpose of Section 21F and Rule 21F-17(a) to "encourage[e] individuals to report to the Commission." Adopting Release at p. 201.

Violation

11. As a result of the conduct described above, GS willfully¹ violated Rule 21F-17 of the Exchange Act, which prohibits any person from taking any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation.

Respondent's Remedial Efforts

12. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

13. After it was contacted by the Commission staff in this matter, GS revised the GS Manual by removing the language described in paragraph 5 above and adding the following language affirmatively advising employees of their right to contact regulators with concerns about potential legal or regulatory violations:

nothing in [the GS Manual] prohibits or restricts any person in any way from reporting possible violations of law or regulation to any governmental agency or entity, or otherwise prevent anyone from participating, assisting, or testifying in any proceeding or investigation by any such agency or entity or from making other disclosures that are protected and/or permitted under law or regulation.

14. The revised GS Manual further notes that:

[n]othing in this Manual, any agreement between GS and its employees, or any GS policy or program requires a person to obtain prior authorization from GS to make any such reports or disclosures to any governmental agency or entity or to notify GS that an individual intends to make or has made such reports or disclosures.

GS communicated the revisions to its employees through a compliance alert, which linked to the revised GS Manual.

¹ "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." *Tagerv. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

IV.

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

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

A. Respondent cease and desist from committing or causing any violations and any future violations of Rule 21F-17 under the Exchange Act.

B. Respondent is censured.

C. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$208,912 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 Guggenheim Securities, LLC 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 Kimberly Frederick, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294.

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