

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 93154 / September 28, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20606

In the Matter of

**TRADITION SECURITIES AND
DERIVATIVES, 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 Section 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Tradition Securities and Derivatives, LLC (“Respondent” or “Tradition”).

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

These proceedings concern Tradition's violations of Regulation SHO ("Reg SHO") of the Exchange Act, in connection with its customer and principal merger arbitrage trading practices. Merger arbitrage involves identifying announced mergers and acquisitions of publicly traded companies, and then selling short shares of the acquiring company, while at the same time purchasing shares in the target company. As described below, from October 2016 through May 2019 (the "Relevant Period"), Tradition repeatedly failed to satisfy Reg SHO's order marking and locate requirements for more than 1,000 short sale trades in its customers' accounts and approximately 50 short sale trades in its principal accounts in furtherance of its merger arbitrage trading strategy. As a result of this conduct, Tradition generated \$841,627 in revenues comprised of commissions and trading profits.

Respondent

1. Tradition, headquartered in New York, New York, is a registered broker-dealer. It is a wholly owned subsidiary of Compagnie Financière Tradition. During the Relevant Period, Tradition provided brokerage services to institutional customers, and as of December 31, 2020 had net assets of approximately \$46,723,944.

Background

A. Reg SHO

2. Reg SHO of the Exchange Act governs short sales. Under Rule 200(g) of Reg SHO, a broker or dealer must mark all sell orders of any equity security as long, short, or short exempt. Under Rule 200(g)(1), an order to sell shall be marked "long" only if the seller is deemed to own the security being sold pursuant to Rule 200(a) through (f), and either the security to be delivered is in the physical possession or control of the broker or dealer, or it is reasonably expected that the security will be in the physical possession or control of the broker or dealer no later than the settlement of the transaction. Rule 200(c) provides that a person shall be deemed to own securities only to the extent that he has a net long position in such securities.

3. Rule 203(b)(1) of Reg SHO prohibits a broker or dealer from accepting a short sale order in an equity security from another person or effecting a short sale in an equity security for its own account unless the broker or dealer has borrowed the security, entered into a bona-fide arrangement to borrow the security, or has "reasonable grounds" to believe that the security can be borrowed so that it can be delivered on the delivery date (the "locate requirement"). Additionally,

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.

Rule 203(b)(1)(iii) of Reg SHO requires the broker or dealer to document its compliance with Rule 203(b)(1).

B. Tradition's Merger Arbitrage Strategy

4. During the Relevant Period, Tradition's Risk Arbitrage Desk began executing a merger arbitrage strategy for itself and as agent on behalf of several customers. This strategy speculates on the successful completion of mergers and acquisitions. It involves: (a) identifying announced public company mergers involving stock or cash and stock terms; and (b) then, selling short shares of the acquiring company's stock and purchasing shares in the target company's stock ahead of the date that stock of the target company is exchanged for stock of the acquiring company (the "Merger Completion Date"). The goal of a merger arbitrage strategy is generally to capture the spread between the price at which the target company's stock trades before the Merger Completion Date and the terms by which the target company's stock will be exchanged for the acquiring company's stock on the Merger Completion Date.

C. Tradition's Reg SHO Violations

Order-Marking Violations

5. During the Relevant Period, in violation of Rule 200(g)(1) of Reg SHO, Tradition mismarked (a) more than 1,000 short sales as long sales in its customers' accounts, and (b) approximately 50 short sales as long sales in its principal accounts.

6. In each of these sales, Tradition improperly treated shares of the target company that were purchased as part of the merger arbitrage strategy as exchangeable with shares of the acquiring company that were sold as part of the merger arbitrage strategy. Most of these trades occurred considerably prior to the Merger Completion Date. In many instances, the trades occurred weeks, or months, prior to the Merger Completion Date.

7. Tradition, or as agent for a customer, improperly claimed ownership of shares of the acquiring company before the date that stock of the target company was exchanged for stock of the acquiring company. Rule 200(b)(3) of Reg SHO provides that a person shall be deemed to own a security if the person owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange. Tradition was ineligible for this provision because, among other things, it did not, and could not, tender securities for conversion or exchange prior to the sale transactions in question because the merger had not occurred. Additionally, Tradition could not have reasonably expected that it would have the security in its physical possession or control by settlement, which, during the Relevant Period, occurred either two or three days after Tradition executed a trade. During the Relevant Period, the mergers in question routinely were not completed until weeks, or months, after Tradition entered the mismarked short sale orders in question. As a result, Tradition should have marked such sales as short sales pursuant to Rule 200(g)(1) of Reg SHO.

Locate Violations

8. For each of the more than 1,050 short sales that Tradition mismarked as long sales in both its customers' accounts and its principal accounts, Tradition should have obtained and documented a locate as required under Rule 203(b)(1) of Reg SHO, but failed to do so.

9. For example, after one public company ("Company A") announced that it was acquiring another public company, ("Company B") for cash and stock, Tradition brokered a short sale of 3,360 shares of Company A's stock for a customer, which Tradition mismarked as long on February 28, 2018, almost seven months before the completion of the merger. Tradition failed to borrow, arrange to borrow, or have reasonable grounds to believe that Company A's stock could be borrowed so that it could be delivered on the date delivery was due.

Tradition's Commissions and Profits

10. Tradition's commissions resulting from its customers' merger arbitrage trading that involved mismarking of sell orders and failures to obtain locates totaled approximately \$429,000.

11. Tradition's profits resulting from its merger arbitrage trading activity that involved mismarking of sell orders and failures to obtain locates totaled approximately \$412,627.

Violations

12. As a result of the conduct described above, Tradition willfully² violated Rule 200(g)(1) of Reg SHO promulgated under the Exchange Act more than 1,000 times by mismarking short sales as long sales.

13. As a result of the conduct described above, Tradition willfully violated Rule 203(b)(1) Reg SHO promulgated under the Exchange Act, by failing to obtain a locate prior to effecting a short sale for its customers, or effecting a short sale in an equity security for its principal account. Furthermore, because Tradition did not obtain locates, it also failed to document its compliance with the locate requirements of Rule 203(b)(1).

Disgorgement and Civil Penalties

14. The disgorgement and prejudgment interest ordered in paragraph IV(C) is consistent with equitable principles, does not exceed Respondent's net profits from its violations, and returning the money to Respondent would be inconsistent with equitable principles. Therefore, in these circumstances, distributing disgorged funds to the U.S. Treasury is the most equitable alternative. The disgorgement and prejudgment interest ordered in paragraph IV(C) shall

² A willful violation of the securities laws means merely "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." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

IV.

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

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

A. Tradition shall cease and desist from committing or causing any violations and any future violations of Rules 200(g)(1) and 203(b)(1) of Reg SHO promulgated under the Exchange Act.

B. Respondent Tradition is censured.

C. Tradition shall, within 14 days of the entry of this Order, pay disgorgement of \$841,627 and prejudgment interest of \$104,205 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 SEC Rule of Practice 600.

D. Tradition shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$841,627 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.

Payments 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

Payment by check or money order must be accompanied by a cover letter identifying Tradition Securities and Derivatives, LLC, as 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 Lara Shalov Mehraban, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 200 Vesey Street, Suite 400, New York, NY 10281-1022.

E. 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