

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98234 / August 29, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21587

In the Matter of

**ARCHIPELAGO TRADING
SERVICES, INC.**

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 Archipelago Trading Services, Inc. (“ATSI” 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. This proceeding concerns ATSI's failure to file Suspicious Activity Reports ("SARs") between August 2012 and September 2020 related to suspicious transactions that were executed on its Alternative Trading System ("ATS"), Global OTC, which exclusively trades in Over-the-Counter ("OTC") securities, many of which are considered microcap or penny stock securities, on behalf of its Subscribers, all of whom were U.S. registered broker-dealers.² As a registered broker-dealer, ATSI was required to comply with the Bank Secrecy Act ("BSA") and its implementing regulations, and to file SARs relating to suspicious transactions executed through Global OTC that ATSI knew, suspected, or had reason to suspect involved the use of the trading platform to facilitate fraudulent activity or that had no business or apparent lawful purpose. However, until September 2020, ATSI failed to have or implement reasonably designed anti-money laundering ("AML") policies and procedures to surveil transactions executed on Global OTC for possible red flags regarding suspicious trading activity. Due to these deficiencies, ATSI failed to surveil for, investigate, or file SARs on numerous transactions that it had reason to suspect involved possible fraudulent activity or for which there was no business or apparent lawful purpose. In particular, between October 2017 and September 2020, ATSI failed to surveil for, recognize, and investigate numerous red flags of potentially unlawful manipulative trading, including possible spoofing, layering, wash trading, and pre-arranged trading, related to approximately 15,000 transactions executed on Global OTC, most of which involved microcap or penny stock securities. As a result, ATSI failed to file at least 461 SARs and, accordingly, willfully violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

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.

² OTC securities are securities that are not listed on a national securities exchange. The securities at issue here are primarily microcap and penny stock securities. The term "microcap stock" generally refers to securities issued by companies with a market capitalization of less than \$250 to \$300 million. *See, e.g.*, U.S. Securities and Exchange Commission, Microcap Stock: A Guide for Investors (Sept. 18, 2013) at <https://www.sec.gov/reportspubs/investor-publications/investorpubsmicrocapstock> and U.S. Securities and Exchange Commission, Investor Bulletin, Microcap Stock Basics (Sept. 30, 2016) at <https://www.sec.gov/resources-investors/investor-alerts-bulletins/microcap-stock-basics>. The term "penny stock" generally refers to a security issued by a very small company that trades at less than \$5 per share. *See* <https://www.investor.gov/introduction-investing/investing-basics/glossary/microcap-stock>; Section 3(a)(51) of the Exchange Act and Rule 3a51-1 thereunder.

Respondent and Relevant Entity

2. **Archipelago Trading Services, Inc.** is a Florida corporation with its principal place of business in Chicago, Illinois. ATSI has been registered with the Commission as a broker-dealer since 1985. ATSI's sole line of business is to operate and provide trading access for other broker-dealers to its OTC equity securities platform known as Global OTC. ATSI generates revenue from the fees charged for its services. ATSI is an indirect, wholly-owned subsidiary of Intercontinental Exchange, Inc.

3. **Global OTC** is an ATS operated by ATSI for OTC securities, which are securities not listed on any national stock exchanges in the United States. Global OTC is one of three inter-dealer quotation systems for OTC securities in the United States. ATSI permitted its Subscribers, all of whom were U.S. registered broker-dealers, to trade securities through Global OTC. Global OTC is not a stock exchange or self-regulatory organization.

Background

4. The BSA and implementing regulations promulgated by the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") require broker-dealers such as ATSI to file SARs with FinCEN to report, among other things, a transaction (or a pattern of transactions of which the transaction is a part) conducted or attempted by, at, or through the broker-dealer involving or aggregating funds or other assets of at least \$5,000 that the broker-dealer knows, suspects, or has reason to suspect: (1) involves funds derived from illegal activities or were conducted to disguise or hide funds or assets derived from illegal activities; (2) is designed to evade any requirement of the BSA; (3) has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts; or (4) involves the use of the broker-dealer to facilitate criminal activity. 31 C.F.R. § 1023.320(a)(2) (the "SAR Rule").

5. To be liable for failing to file a SAR, a broker-dealer must know, suspect, or have reason to suspect that a transaction falls into one of the four categories of suspicious activity in 31 C.F.R. § 1023.320(a)(2). FINRA and FinCEN long have highlighted in regulatory guidance red flags specifically related to penny stock transactions and FINRA has cautioned firms that its examples of red flags are "merely illustrative" and that other situations may arise that require further investigation. *See* FinCEN's The SAR Activity Review Trends Tips & Issues, Issue 15, "In Focus: The Securities and Futures Industry;" FINRA's Updated Small Firm Template Anti-Money Laundering (AML) Program (updated January 2010); FINRA Regulatory Notice 09-05 (Jan. 2009). In May 2019, FINRA issued Regulatory Notice 19-18, which included a list of previously identified red flags and provided additional examples of red flags potentially indicative of suspicious activity, including examples of manipulative trading of microcap and penny stock securities. FINRA Regulatory Notice 19-18 (May 2019), at 3-11.

6. The BSA and FinCEN require the filing of a SAR within 30 calendar days after a broker-dealer determines the activity is “suspicious” within the meaning of the SAR Rule. If no suspect is identified on the date of such initial detection, a broker-dealer may delay filing a SAR for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. 31 CFR 1023.320(b).

7. Exchange Act Rule 17a-8 requires broker-dealers registered with the Commission to comply with the reporting, record-keeping, and record retention requirements of the BSA. The failure to file a SAR, including continuing activity SARs, as required by the SAR Rule is a violation of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder. *See SEC v. Alpine Sec. Corp.*, 308 F. Supp. 3d 775, 798–800 (S.D.N.Y. 2018), *aff’d*, 982 F.3d 68 (2d Cir. 2020), *cert. denied*, *Alpine Sec. Corp. v. SEC* (2021), No. 19-3272, 595 U.S. (2021).

Facts

8. Since at least 2003, ATSI has operated Global OTC, one of the largest ATSs for trading OTC securities in the United States. As an ATS for OTC securities, Global OTC plays a significant role in executing trades of microcap and penny stock securities. Microcap and penny stock securities tend to be high-risk securities because they typically lack public information, have no minimum listing standards, lack liquidity, and have high volatility. Global OTC matches buyers and sellers, with ATSI acting as the buyer for each seller, and the seller for each buyer, for each transaction on Global OTC. Between October 2017 and September 2020, Global OTC executed approximately 23,000 transactions per day in approximately 1,000 different OTC securities on behalf of its Subscribers, which accounted for approximately 13% of the average daily transactions in OTC securities. Despite thousands of higher risk microcap and penny stock securities transactions executed daily on the ATS, until September 2020, ATSI failed to establish an AML surveillance program for its transactions.

9. Until approximately September 2020, ATSI’s AML department consisted of its Compliance Director, who was also designated as the anti-money laundering compliance officer (the “AMLCO”), and a Compliance Manager. ATSI’s AML policies and procedures (“AML Policies”) specified that the AMLCO and Compliance Manager were responsible for investigating reports of suspicious trading activity and the AMLCO was responsible for filing SARs. Although ATSI’s AML Policies acknowledged that “suspicious activity could arise at any time during a Subscriber’s relationship with ATSI”, the AML Policies had no description, discussion, or any guidance concerning red flags specific to possible manipulative trading of OTC securities, including microcap and penny stock securities. During this time period, ATSI’s AML Policies also provided in relevant part that “[a]s the Firm does not carry customer accounts, does not maintain customer assets and does not engage in transactions involving cash or cash equivalents... it is not anticipated that any suspicious activity would occur on the ATS platform.”

10. While ATSI’s AML Policies stated that ATSI’s personnel were trained to monitor for and where appropriate, report, certain red flags indicative of money laundering to ATSI’s AMLCO, ATSI did not include any discussion of red flags specific to manipulative trading of OTC

securities, including microcap and penny stock securities, in its AML training or reasonably tailor its training to ATSI's business. Between August 2012 and September 2020, ATSI did not have any automated surveillance or other systems reasonably designed to identify potentially suspicious trades executed on Global OTC, nor did it reasonably conduct manual surveillance of the transactions executed on Global OTC for potentially suspicious activity.

11. Instead, until September 2020, ATSI's AML program relating to Global OTC was limited to: (1) "know your subscriber" due diligence conducted as part of its onboarding procedures for new Subscribers; and (2) ongoing sanctions screenings for any U.S. Department of the Treasury Office of Foreign Assets Control ("OFAC") economic or trade sanctions or significant regulatory enforcement matters, which included money laundering charges, links to terrorist financing, links to drug trafficking, the loss of ability to conduct securities business in the United States, or the loss of ability to properly clear transactions through Depository Trust and Clearing Corporation.

12. Between August 2012 and September 2020, ATSI failed to surveil any transactions executed on Global OTC for red flags of potentially suspicious conduct concerning the following types of potentially unlawful, manipulative transactions (*see* FINRA Regulatory Notice 19-18 (May 2018), FINRA Regulatory Notice 09-05 (Jan. 2009)):

- a. Trading activity involving a significant volume of non-marketable orders on one side of the market (which later all cancel or expire unexecuted), with the price of the security swinging significantly in that direction, followed by the same customer executing a transaction, or series of transactions, on the opposite side of the market that day to seemingly take advantage of the significantly increased/decreased stock price ("spoofing");
- b. Trading activity involving a frequent pattern of placing multiple limit orders on one side of the market at various price levels, followed by the customer entering orders on the opposite side of the market that are executed and the customer cancelling the original limit orders ("layering");
- c. Trading activity involving a significant proportion of the daily trading volume in a thinly traded or low-priced security;
- d. Trading activity involving a sudden spike in investor demand for, coupled with a rising/decreasing price in, a thinly-traded or low-priced security; or
- e. Trading activity involving pre-arranged or other non-competitive securities trading, including wash or cross trades, with no apparent business purpose ("pre-arranged or wash trading").

13. Between October 2017 and September 2020, ATSI failed to surveil for, investigate red flags, or file any SARs in connection with at least 99 separate instances of suspicious spoofing or layering activity on Global OTC.

14. Between October 2017 and September 2020, ATSI failed to surveil for, investigate red flags, or file any SARs in connection with at least 133 separate instances of suspicious manipulative trading activity on Global OTC involving large volumes of thinly traded, low-priced securities. This trading activity included aggregate purchases and sales of approximately 78 million shares totaling approximately \$19.5 million that accounted for over 50% of the overall daily market volume on particular trade dates in the same thinly traded, low-priced securities.

15. Between October 2017 and September 2020, ATSI failed to surveil for, investigate red flags, or file any SARs in connection with at least 197 separate instances of suspicious manipulative trading activity on Global OTC involving a sudden spike in investor demand for, coupled with a rising/decreasing price in, thinly traded, low-priced securities. This trading activity involved an aggregate of approximately 178 million shares totaling approximately \$4.3 million for which the consolidated daily volume exceeded 400% of the consolidated 30-day average daily volume.

16. Between October 2017 and September 2020, ATSI failed to surveil for, investigate red flags, or file any SARs in connection with at least 32 separate instances of suspicious manipulative pre-arranged or wash trading activity on Global OTC. This trading activity involved an aggregate of approximately 300,000 shares totaling approximately \$815,000 for which Subscribers acted in a principal capacity on both the buy and sell sides of the same trade with no apparent change in beneficial ownership.

17. If ATSI had had reasonably designed AML policies and procedures to surveil transactions executed on Global OTC for red flags regarding potential suspicious trading activity between October 2017 and September 2020, it would have identified the above-referenced suspicious transactions concerning potentially unlawful and manipulative trading (including possible spoofing, layering, wash trading, pre-arranged trading, and sudden spikes in volume coupled with significant volatility) that would have required the filing of at least 461 SARs.

18. In response to a deficiency letter sent to ATSI by the Commission's Division of Examinations in May 2020, ATSI updated its AML Policies in August 2020. ATSI's updated AML Policies tailored FINRA guidance to its Subscriber business to include procedures for conducting surveillance of trades executed on Global OTC for certain red flags indicative of potential money laundering or other criminal or unlawful activity, including red flags specific to manipulative trading in OTC securities, including microcap and penny stock securities. Starting in September 2020, ATSI began operating a post-trade monitoring system to surveil all transactions executed on Global OTC for potentially manipulative or suspicious trading activity and began filing SARs related to such activity, including potential wash trading, pre-arranged trading, spoofing, and sudden spikes in volume coupled with significant volatility.

Violations

19. As a result of the conduct described above, ATSI willfully³ violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder, which require broker-dealers to comply with the reporting, record keeping, and record retention requirements of the BSA, including filing SARs as required by the SAR Rule, 31 C.F.R. § 1023.320(a)(2).

Remedial Efforts

20. In determining to accept ATSI's Offer, the Commission considered remedial acts promptly undertaken by ATSI.

IV.

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

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

A. Respondent ATSI cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-8 promulgated thereunder.

B. Respondent ATSI is censured.

C. Respondent ATSI shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$1,500,000.00 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;

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).

- (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 ATSI 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 Anne C. McKinley, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604.

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