UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9522 / January 31, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 71461 / January 31, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15712

In the Matter of **Gonul Colak and** **Milen K. Kostov,** **Respondents.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Gonul Colak ("Colak") and Milen K. Kostov ("Kostov") (collectively "Respondents").

II.

In anticipation of the institution of these proceedings, 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, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-And-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

Summary

1. These proceedings concern Colak's and Kostov's perpetration of an abusive "naked" short selling scheme.[2] From at least July 2010 through February 2012, Respondents engaged in a complex options trading strategy, which they hedged by establishing short positions. Respondents' accounts were at brokerage firms that prohibited short selling in certain hard to borrow securities, and thus, the brokerage firms required Respondents to close any short position resulting from options activity and to deliver securities within the standard three-day settlement period. Rather than deliver the securities, Respondents executed sham transactions to create the illusion that they had delivered when in fact they maintained these uncovered "naked" short positions. Through this scheme, Colak and Kostov engaged in manipulative and deceptive conduct in violation of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rules 10b-5 and 10b-21 thereunder.

2. The uncovered "naked" short positions that Respondents established were a key component of their complex trading strategy. From at least July 2010 through February 2012, Respondents established uncovered "naked" short positions in the securities of over 20 companies without taking any steps to deliver the securities and thus avoiding the costs associated with these obligations.

3. Respondents sold approximately $800 million worth of call options and purchased at least $1.2 billion worth of common stock in over 20 issuers. Over the course of their scheme, Respondents reaped trading profits of approximately $420,000 on an initial investment of $100,000. Respondents agreed that Colak would receive 68% of the profits for providing the initial funds and Kostov would receive 32% of the profits for executing the trading strategy.

[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

[2] Abusive ''naked'' short selling refers generally to short selling securities without having the securities available for delivery and intentionally failing to deliver the securities within the standard three day settlement cycle. *See* Exchange Act Release No. 58774 (Oct. 14, 2008), 73 Fed. Reg. 61666¸61667 (Oct. 17, 2008).

Respondents

4. **Colak**, 39, of Tallahassee, FL, is an assistant professor of finance at a Florida university.

5. **Kostov**, 40, of Tallahassee, FL, was an assistant professor of engineering at a Florida university.

Facts

6. Respondents met in late 2009 at a social function. In approximately January 2010, Kostov came up with the trading scheme at issue here, and Kostov presented the idea to Colak. The two began testing the strategy in April 2010. In July 2010, Respondents opened accounts at two different brokerage firms, using $30,000 of Colak's capital plus approximately $70,000 in borrowed funds. Over time, Respondents opened additional accounts at other brokerage firms and agreed to split the profits across all accounts so that Kostov received 32% of the profits.

7. The trading scheme involved purchasing and writing two pairs of options for the same underlying stock to generate profits as detailed below. Through an account in Colak's name ("Colak Account"), Respondents would establish a synthetic long position (*i.e.*, writing puts and buying calls with the same strike price and expiration) and a synthetic short position (*i.e.*, writing calls and buying puts with the same strike price and expiration). When creating the synthetic short position, the Colak Account wrote deep-in-the-money call options. [3]

8. Through an account at a different brokerage firm held in Kostov's name (the "Kostov Account"), Respondents would purchase the deep in-the-money call options by placing and pricing the buy orders from the Kostov Account in such a way as to match the sell orders from the Colak Account. The Kostov Account would then exercise the deep-in-the-money call options immediately, and sell the resultant common stock in the market.

9. The Kostov Account's exercise of the deep-in-the-money call options almost always resulted in the assignment[4] of the call options to the Colak Account, as the Colak Account

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[3] An "in-the-money" call option is an option that entitles its holder to buy stock below the current market price for that stock. A "deep-in-the-money" call option has a strike price that is substantially below the market price of that stock. Deep-in-the-money call options have a high likelihood that the purchaser will immediately exercise the option in order to purchase the stock at below market prices. Writing deep-in-the-money call options is, in essence, the economic equivalent of selling shares short.

[4] An assignment of an option refers to the notice to the seller of the option that the option has been exercised by the purchaser of the option. When an option is exercised, a market participant that is short that option will be assigned and will have to make delivery on the assignment of the exercised calls. The assignment is done on a random basis by The Options Clearing Corporation. For a participant that is assigned on one short call, the short option position is replaced with a position of short 100 shares of the underlying equity; those shares must be delivered within the standard three-day settlement period. For a participant that is assigned on one short put, the position is replaced with a position of long 100

represented the majority, or all, of the open interest in those options.[5] The deep in-the-money call options written by the Colak Account were not assigned to the Colak Account until the end of the trading day. The assignment of the call options created a short position in the Colak Account at the end of the trading day. The Colak Accounts were opened at brokerage firms that prohibited short selling in the underlying securities, and those firms required the Colak Account to purchase the underlying shares and close the short position.

10. Rather than purchase shares the following trading day, Respondents created the appearance of doing so while in reality maintaining their uncovered short position. To accomplish this, the Colak Account entered into a "reset trade," *i.e.*, the Colak Account would simultaneously purchase stock and write deep-in-the-money call options for the equivalent number of shares. The purchase of stock created the illusion that the Colak Account had satisfied its obligation to cover its short position. However, the writing of deep-in-the-money call options continued the "naked" short position.

11. Similar to how Respondents initially created the synthetic short position, the reset trades were effectuated by the Colak Account writing deep-in-the-money call options to the Kostov Account. After the Kostov Account purchased the deep in-the-money call options, the Kostov Account again exercised the calls and sold the resultant stock in the market. As a result of the Kostov Account exercising the deep-in-the-money calls, the Colak Account would once again get assigned, thus continuing its "naked" short position. The Colak Account ended the trading day in the same short position as it had at the beginning of the day, continuing its failure to cover its short position. These reset trades, exercise and assignment, and delivery failures by the accounts continued on a daily basis until the written put options (*i.e.*, the leg of the paired options trades that generated profits) expired.

12. Respondents knew or were reckless in not knowing that the account that wrote the call options would get assigned to deliver the shares that Respondents agreed to sell pursuant to the call option contracts that Respondents wrote.

13. When establishing their options positions, Respondents selected options of hard-to-borrow securities in which the price of the put options was higher relative to the price of the call options. Normally, the price of the put and the call will be in parity; however, when the stock associated with the options is hard-to-borrow, the higher cost of borrowing the stock is incorporated into the price of the put. By writing pairs of options in which the price of the put options was higher relative to the price of the call options, Respondents generated trading proceeds in excess of the proceeds that they would have been able to earn writing put options that were not associated with hard-to-borrow securities. The excess proceeds, which were derived from the underlying securities being hard-to-borrow, should have been offset by the cost of instituting and maintaining the associated short position that resulted from writing deep-in-the-money calls, for example, by

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shares of the underlying equity. Each assignment is transacted at the strike price of the respective options.

[5] Open interest refers to the number of contracts in existence at the beginning of trading.

effecting bona fide transactions to purchase, or borrow, the shares for delivery by settlement date. As noted above, however, Respondents used reset trades to avoid incurring these costs while maintaining the associated short position, and their initial upfront trading proceeds were never properly offset by the costs of maintaining the short position.[6]

14. By not delivering shares sold, Respondents were extracting a profit at the expense of purchasers of shares. Failure to deliver can have a negative effect on shareholders, potentially depriving them of the benefits of ownership, such as voting and lending.[7] For example, when the Respondents failed to deliver shares, the purchasers of these shares lost the ability to lend the shares to others, and to profit from making such loans. The amount of such purchasers' foregone profit for lending such stock was roughly equivalent to the amount Respondents received for establishing the initial position. In other words, Respondents transferred part of the value of the stock (*e.g.*, the value derived from lending the stock) from such purchasers to themselves.

15. Respondents conducted the trading strategy described above in at least the following securities during the following time periods:

Security	**Ticker**	**First Reset Trade**	**Last Reset Trade**
Brookfield Infrastructure Partners, LP	BIP	12/6/2010	12/19/2010
China Biotics, Inc.	CHBT	1/21/2011	6/15/2011
China MediaExpress Holdings Inc.	CCME	3/1/2011	5/19/2011
Colfax Corp.	CFX	12/22/2011	1/18/2012
Deer Consumer Products, Inc.	DEER	4/4/2011	6/19/2011
Education Management Corp.	EDMC	1/21/2011	1/18/2012
First Solar, Inc.	FSLR	6/21/2011	7/18/2011
Fusion-IO, Inc.	FIO	11/4/2011	12/16/2011
Groupon Inc.	GRPN	11/15/2011	1/20/2012
Harbin Electric, Inc.	HRBN	6/20/2011	10/19/2011
LDK Solar Co., Ltd.	LDK	8/30/2011	9/18/2011
LinkedIn Corp.	LNKD	6/28/2011	12/16/2011
MannKind Corp.	MNKD	12/14/2010	1/21/2011
MELA Sciences, Inc.	MELA	1/4/2011	1/23/2011
Molycorp Inc.	MCP	1/4/2011	1/23/2011
Motricity, Inc.	MOTR	11/22/2010	1/23/2011
RINO International Corp.	RINO	10/15/2010	11/21/2010
Sears Holding Corp.	SHLD	8/24/2011	2/8/2012
Shanda Interactive Entertainment Ltd. ADR	SNDA	1/18/2011	2/4/2011
The St. Joe Company	JOE	2/25/2011	3/15/2011

[6] For example, Respondents could have borrowed shares of these hard-to-borrow securities, which would have been very costly (and equivalent to the increased price of the put options that reflected the borrowing cost). Alternatively, Respondents could have placed bona-fide purchases of the shares, but that would have been costly and eliminated the directional neutrality of their position.

[7] *See* Exchange Act Release No. 58774 (Oct. 14, 2008), 73 Fed. Reg. 61666¸61669 (Oct. 17, 2008).

Travelzoo Inc.	TZOO	9/16/2011	1/20/2012
Youku Tudou Inc. ADR	YOKU	3/25/2011	5/27/2011

Hiding the Scheme from the Brokerage Firms

16. Respondents took measures to avoid detection by the brokerage firms. The Colak Accounts were held at brokerage firms that prohibited short selling in hard-to-borrow stocks and that required traders to close any short position in such securities. The uncovered "naked" short positions that Respondents established were a key component of their trading strategy. Through their complex trading scheme and use of multiple accounts at different firms, Colak and Kostov circumvented the restrictions on short selling in hard-to-borrow stocks. They established multiple accounts at different brokerage firms and executed different parts of the trades through different accounts at different firms. At almost all times, the trades in the Kostov Account and the Colak Account were made by the same person and/or from the same computer. Because the trades were executed across multiple brokerage firms, no single brokerage firm had an understanding of the Respondents' trading strategy.

17. Further, Respondents made a number of misrepresentations to their brokerage firms in an effort to continue trading at the firms. Respondents frequently reassured their brokerage firms that the short position (*i.e.*, the position that resulted in the accounts' failures to deliver) was temporary and outside their control, when in fact Respondents were the cause of the assignment and resulting short position and the uncovered "naked" short position was a key component of their trading strategy. Respondents also claimed that they did not want to maintain a short position, when in fact they intended to maintain the short position until the put options expired. Finally, in response to questions about their trading strategy, Respondents falsely claimed to their brokerage firms that FINRA approved of their strategy. In fact, Respondents had not consulted with FINRA.

18. Respondents moved the short position from one brokerage firm to another every few days. This had the effect of spreading the accounts' failures to deliver across multiple brokerage firms, and helped Respondents to (at least temporarily) avoid detection. For example, in November 2011, Respondents moved a short position in one issuer between two brokerage firms every three days. Thus, by the time an account at the first brokerage firm would fail to deliver on the purchase of shares to close the short position, the position would appear to have been temporary and would have appeared to be closed. Respondents then continued the short position at the second brokerage firm, and after three days, Respondents moved the short position back to the first firm. By the time the account at the second brokerage firm would fail to deliver on the purchase of shares to close the short position, the position once again would have appeared to be closed. This continued until the options expired.

19. Between July 2010 and February 2012, Colak and Kostov reaped approximately $420,000 in profits as a result from their trading scheme, of which Colak received approximately $285,600 and Kostov received approximately $134,400.

Violations

20. As a result of the conduct described above, Respondents violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rules 10b-5 and 10b-21 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

IV.

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

Accordingly, it is hereby ORDERED that**:**

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act Respondents Colak and Kostov cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rules 10b-5 and 10b-21 thereunder.

B. Colak shall pay disgorgement of $285,600, prejudgment interest of $21,975, and civil penalties of $150,000 to the United States Treasury. Payment shall be made in the following installments:

1. $357,575 within 10 days of entry of this Order;
2. $25,000 within 90 days of the entry of this Order;
3. $25,000 within 180 days of the entry of this Order;
4. $25,000 within 270 days of the entry of this Order;
5. $25,000 within 360 days of the entry of this Order.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or 31 U.S.C. §3717 from the date of this Order through the date of payment, shall be due and payable immediately, without further application. Such 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

Payments by check or money order must be accompanied by a cover letter identifying Gonul Colak 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 Daniel M. Hawke, Division of Enforcement, Securities and Exchange Commission, Mellon Independence Center, 701 Market Street, Suite 2000, Philadelphia, PA 19106-1532.

C. Kostov shall pay disgorgement of $134,400, prejudgment interest of $10,340, and civil penalties of $70,000 to the United States Treasury. Payment shall be made in the following installments:

1. $100,000 within 10 days of entry of this Order;

2. $28,685 within 90 days of the entry of this Order;

3. $28,685 within 180 days of the entry of this Order;

4. $28,685 within 270 days of the entry of this Order;

5. $28,685 within 360 days of the entry of this Order.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or 31 U.S.C. §3717 from the date of this Order through the date of payment, shall be due and payable immediately, without further application. Such 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

Payments by check or money order must be accompanied by a cover letter identifying Milen Kostov 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 Daniel M. Hawke, Division of Enforcement, Securities and Exchange Commission, Mellon Independence Center, 701 Market Street, Suite 2000, Philadelphia, PA 19106-1532.

By the Commission.

Elizabeth M. Murphy
Secretary