

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9959 / October 8, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 76104 / October 8, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16889

In the Matter of

BRIARGATE TRADING, LLC

and

ERIC OSCHER,

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 Briargate Trading, LLC (“Briargate”) and Eric Oscher (“Oscher,” 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, and except as provided herein in Section V., 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 finds¹ that:

Summary

1. Briargate, an unregistered proprietary trading firm based in New York, New York, and Oscher, one of its principals, utilized a market manipulation strategy known as “spoofing” as one of its trading strategies. In a spoofing scheme, a trader places non-bona fide orders — spoofs — that the trader does not intend to have executed, on one side of the market. The non-bona fide buy or sell orders create a false appearance of buy or sell interest in the security, which often results in a price change. The trader who placed the non-bona fide orders then places bona fide orders on the opposite side of the market for the same stock, in an attempt to take advantage of any price change resulting from the false appearance of buy or sell interest. Immediately after the bona fide orders are executed, the trader cancels the open, non-bona fide orders.

2. Respondents’ spoofing scheme focused on trading in securities that were listed on the New York Stock Exchange (“NYSE”). From October 2011 through September 2012 (the “Relevant Period”), Oscher used his Briargate account to place a series of large, non-bona fide orders on the NYSE prior to the opening of trading on the NYSE. Once news of Briargate’s non-bona fide orders was disseminated to the market, this information impacted the market’s perception of the demand for the stock and often the price of the stock. Next, Briargate also sent orders in the same security — but on the opposite side of the market — to other exchanges that opened before the NYSE. Then prior to the NYSE opening, Oscher cancelled the non-bona fide NYSE orders and Briargate profitably unwound the positions it had acquired on other exchanges. Through this conduct, Respondents derived approximately \$525,000 in profits during the Relevant Period.

3. Through this conduct, Briargate and Oscher violated Section 17(a)(1) and 17(a)(3) of the Securities Act and Sections 9(a)(2) and 10(b) of the Exchange Act and Rule 10b-5 thereunder.

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.

Respondents

4. Briargate is a Delaware limited liability company located in New York, New York. Since its founding in 2009, it has utilized various market arbitrage trading strategies, including strategies related to the NYSE opening auction. Briargate had approximately five employees during the Relevant Period.

5. Oscher, age 47, is a resident of New York, New York. From 1999 to 2007, Oscher worked as a specialist on the NYSE. In early 2009, Oscher co-founded Briargate. During the Relevant Period, Oscher was a 50 percent owner of Briargate.

Facts

6. Oscher used his Briargate account to place non bona-fide orders on the NYSE prior to the open of trading, which occurs at approximately 9:30 a.m. ET (the “open”). Before the open, based on the existing orders for each stock, an opening imbalance of buy or sell orders could occur (or disappear) as market participants placed buy or sell orders.

7. Approximately one hour before the open, the NYSE released the first of a series of messages called the Order Imbalance Message (“Imbalance Message”) to paying subscribers to the NYSE’s Order Imbalance data feed. At specified intervals before the open and throughout the trading day, the NYSE’s Order Imbalance data feed disseminated real-time information concerning buy and sell imbalances in NYSE listed securities based on the anticipated opening price of the securities. The Imbalance Message included the side of the imbalance (buy or sell), the imbalance quantity (indicative of interest for which there was currently no contra at the reference price, which was the previous day’s closing price), and beginning at 9:28 a.m., an indicative opening price (the price at which all the interest eligible to trade in the open of that security could be executed in full). Sophisticated market participants used this information to estimate the likelihood of an imbalance at a certain opening price. The NYSE updated the Imbalance Message based on all electronic interest eligible to trade in the open of that security. The NYSE relayed this information every five minutes between 8:30 a.m. and 9 a.m., every minute from 9 a.m. to 9:20 a.m., and every 15 seconds from 9:20 a.m. until the open or until 9:35 a.m. (whichever came first).

8. Certain traders monitored the Imbalance Message to identify the demand for a stock, not only on the NYSE, but also as the stock traded on other exchanges before the NYSE open. For example, when an Imbalance Message showed a buy imbalance for a stock, meaning traders were seeking to buy more shares than were offered for sale at the open, traders often expected that the stock’s opening price on the NYSE will rise (relative to the reference price) to reflect the excess buyer demand, and that the stock’s price will rise on other exchanges. Conversely, when there was a sell imbalance, meaning there were more shares for sale than sought by buyers at the open, traders often expected a lower opening price on the NYSE, and a decrease in the stock’s trading price on other exchanges. The Imbalance Message thus impacted the perceived demand for the stock on the NYSE and the price of the stock on other exchanges.

9. Beginning in 2009, Briargate employed an inter-market arbitrage trading strategy related to the NYSE open as one of its principal trading strategies. Briargate personnel sought to predict the opening price for NYSE-listed securities. Briargate identified trading opportunities due to differences between the price of a security in pre-market trading in markets away from the NYSE and the price at which Briargate estimated the same security would open on the NYSE.

10. Briargate's inter-market arbitrage trading strategy depended in part on its ability to predict the opening price of a security on the NYSE. Beginning in 2009, Briargate believed there were instances where other market participants placed what Briargate believed were non-bona fide orders that were then canceled during pre-market trading. As a result, Briargate began to doubt the integrity of the information in the Imbalance Message.

11. After identifying these concerns about other market participants' conduct, Briargate complained to the NYSE that other market participants were engaging in manipulative conduct involving large cancelled orders. For example, in the spring of 2011, Briargate complained to the NYSE that the data feeds provided by the NYSE were "susceptible to manipulation where parties look to gain advantage by entering non bona fide orders to entice others to trade." As detailed below, subsequent to making these complaints, Oscher used his Briargate account to place large, non-bona fide orders.

Briargate's Spoof Orders

12. Starting in October 2011, Oscher began using his Briargate account to place non-bona fide orders for 10,000 shares or more on the NYSE prior to the open. Oscher's non-bona fide orders impacted the Imbalance Messages by either increasing or decreasing the buy or sell imbalance. Because Oscher placed the non-bona fide orders on the NYSE and then cancelled them prior to the open in that stock, they were not subject to market risk. Briargate also acquired positions in the same stocks by trading on other exchanges, where the price had changed following Oscher's non-bona fide orders. Once Oscher cancelled the non-bona fide orders, Briargate consistently unwound the position it had acquired on other exchanges.

13. During the Relevant Period, Respondents took a series of steps each time they used non-bona fide orders to carry out their spoofing scheme. The following description illustrates the steps Briargate and Oscher took:

- **The Imbalance Messages Begin:** At 8:30 a.m., the NYSE sent the first Imbalance Message for stocks expected to open with an imbalance (buy or sell). The NYSE continued to send Imbalance Messages with increasing frequency until the open of each stock; by 9:20 a.m., Imbalance Messages were sent every 15 seconds.
- **The Entry of the Non-Bona Fide Orders:** Between 8:30 a.m. and the NYSE open, Oscher typically placed non-bona fide orders on the NYSE in securities that the Imbalance Messages identified as having large order imbalances. Oscher's non-bona fide orders were reflected in the next Imbalance Message

for that stock. Oscher's non-bona fide orders often impacted the price of the stock on other exchanges. For example, for a NYSE-listed stock with a sell imbalance, Oscher's non-bona fide buy orders reduced the sell imbalance and increased the price of that stock on other exchanges.

- **Briargate Obtains Positions on Other Exchanges:** After Oscher placed spoof orders for a stock on the NYSE (but before cancelling them); Briargate also traded the same stock on the opposite side of the market on other exchanges. For example, if Oscher placed a non-bona fide buy order, Briargate generally sold the same stock short on other exchanges. Doing so often allowed Briargate and Oscher to take advantage of any price change on other exchanges following Oscher's non-bona fide orders on the NYSE.
- **The Cancellation of the Non-Bona Fide Orders:** Next, Oscher cancelled the non-bona fide orders on the NYSE prior to the open. This had the effect of changing the imbalance minutes before the stock opened on the NYSE and typically reversed the effect the non-bona fide orders had on the stock's price.
- **Briargate Unwinds its Position on Other Exchanges:** To complete the spoofing scheme, Briargate's last step was to liquidate its position in that same stock on other exchanges. Briargate was typically flat by the end of the stock's opening auction on the NYSE.

14. During the Relevant Period, Respondents engaged in manipulative trading by following this trading pattern. For example, on March 20, 2012, Respondents traded in the NYSE listed security, "Security A." That day, the NYSE sent an Imbalance Message showing a persistent sell imbalance in Security A. Between 9:22 a.m. and 9:26 a.m., the Security A Imbalance Message reflected a sell imbalance of over 370,000 shares. The best bid for Security A's stock on other exchanges during that time was between \$21.02 and \$21.06. Starting at approximately 9:26 a.m., Oscher placed 10 large, non-bona fide buy orders in Security A on the NYSE for a total of 400,000 shares. Oscher's 400,000 Security A orders weakened the sell imbalance, after which the best bid and offer available for Security A on other exchanges increased. Starting at 9:27 a.m., Respondents began accumulating a short position in Security A of 43,400 shares at an average price of \$21.16 on other exchanges. At 9:29 a.m., Oscher cancelled all his non-bona fide Security A buy orders on the NYSE. Once Oscher cancelled the non-bona fide orders to buy 400,000 shares, the Security A sell imbalance increased and the best bid and offer available for Security A on other exchanges dropped. Just five seconds after cancelling the non-bona fide orders of 400,000 shares, Briargate began purchasing Security A shares to cover its short position in Security A on other exchanges, and at the NYSE open, with an average buy price of \$20.99. In total, Respondents obtained a profit of \$7,233 from trading 43,400 Security A shares.

15. During the Relevant Period, Oscher placed and cancelled non-bona fide orders in 242 instances with an average aggregate size of approximately 200,000 shares. These orders impacted the Imbalance Message that other traders received through their NYSE data feeds. Unlike other traders that viewed the Imbalance Message, Respondents knew that the changes in the

Imbalance Message resulting from their non-bona fide orders were artificial. In nearly every instance that Oscher placed non-bona fide orders in the NYSE pre-market, Respondents placed profitable trades in the same stocks, but on the opposite side of the market, from their non-bona fide orders. In total, Respondents derived approximately \$525,000 in profits from trading stocks in which they placed non-bona fide orders during the Relevant Period.

Respondents' Trading Was Manipulative

16. Respondents benefited from non-bona fide orders that brought about an artificial change in the NYSE Imbalance Messages, and in the prices of the same securities on other exchanges. Respondents profited from this manipulative trading by sending orders on the opposite side of the market, which were executed on the other exchanges or the NYSE. Respondents traded in these stocks across multiple Briargate accounts.

17. Oscher did not intend to execute the non-bona fide orders he placed during the NYSE pre-market trading. Respondents had no legitimate economic purpose to engage in trading involving non-bona fide orders.

18. Respondents knew that these orders affected the Imbalance Message and impacted the same stock's best bid and best offer on other exchanges. Despite this knowledge, Respondents took advantage of the artificial change in the Imbalance Message to trade the same securities at artificial prices on the opposite side of the market on other exchanges and on the NYSE.

Violations

19. As a result of the conduct described above, Briargate and Oscher violated Section 9(a)(2) of the Exchange Act, which makes it unlawful "to effect, alone or with one or more other persons, a series of transactions in any security . . . creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others."

20. As a result of the conduct described above, Briargate and Oscher violated Section 17(a)(1) and 17(a)(3) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder which make it unlawful, in the offer or sale of securities and in connection with a purchase or sale of securities, to: (1) employ any device, scheme or artifice to defraud; (2) make material misstatements of fact or omit to state material facts; or (3) engage in any act or practice that operates as a fraud or deceit.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Briargate and Respondent Oscher cease and desist from committing or causing any violations and any future violations of Section 17(a)(1) and 17(a)(3) of the Securities Act, Sections 9(a)(2) and 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondents shall, jointly and severally, within 10 days of the entry of this Order, pay disgorgement, which represents profits gained as a result of the conduct described herein of \$525,000 and prejudgment interest of \$37,842.32 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. 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 Briargate and Oscher 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 Charles D. Riely, Division of Enforcement, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281.

C. Respondent Briargate shall pay a civil money penalty in the amount of \$350,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment shall be made in the following four installments: \$87,500 due within 90 days of the entry of this Order, \$87,500 due within 180 days of the entry of this Order, \$87,500 due within 270 days of the entry of this Order, and \$87,500 due 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 pursuant to

31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondent Briargate may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent Briargate 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 Briargate 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 Briargate 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 Charles D. Riely, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY, 10281.

D. Respondent Oscher shall pay a civil money penalty in the amount of \$150,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment shall be made in the following four installments: \$37,500 due within 90 days of the entry of this Order, \$37,500 due within 180 days of the entry of this Order, \$37,500 due within 270 days of the entry of this Order, and \$37,500 due 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 pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondent Oscher may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent Oscher 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 Oscher 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 Oscher 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 Charles D. Riely, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY, 10281.

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 Oscher, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Oscher 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 Oscher 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.

Brent J. Fields
Secretary