

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 9996 / December 21, 2015**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 76705 / December 21, 2015**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17012**

**In the Matter of**

**KCG AMERICAS LLC**

**Respondent.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS, PURSUANT TO  
SECTION 8A OF THE SECURITIES ACT  
OF 1933 AND SECTION 15(b) 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 8A of the Securities Act of 1933 (“Securities Act”) and Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against KCG Americas 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 Section 8A of the Securities Act of 1933 and Section 15(b) 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:

#### Summary

These proceedings arise out of Respondent's failure to seek to obtain best execution of certain customer orders. As a result of such failures, Respondent's representations to its customers that their orders were being handled consistent with best execution requirements were inaccurate.

#### Respondent

1. Respondent KCG Americas LLC, headquartered in Jersey City, New Jersey, has been registered with the Commission as a broker-dealer since 2009. It is a subsidiary of Knight Capital Holdings LLC. Respondent acts as a market maker in various Over-the-Counter ("OTC") securities.

#### Background

2. From at least 2010 to July 2013 (the "relevant period"), Respondent acted as a market maker in OTC securities, including securities quoted on OTC Link LLC ("OTC Link"), an inter-dealer quotation system formerly referred to as the "Pink Sheets."<sup>1</sup>

3. While serving as market maker, Respondent regularly receives orders that have been routed to it by its broker-dealer customers, for execution by Respondent.

4. During the relevant period, Respondent represented to its broker-dealer customers that it "recognizes its regulatory obligations to execute its broker-dealer clients' orders in a manner consistent with the requirements of the Best Execution Rule." Similarly, Respondent represented that it "will use its best efforts in connection with the handling of each of its client's orders."

5. As a market maker that quotes on OTC Link, Respondent has access to, and regularly uses, an electronic messaging service, formerly known as "Pink Link." During the relevant period, this electronic messaging service enabled Respondent and other individual market makers to send each other messages indicating an interest to buy or sell a specific number of shares of a security at a particular price. Such messages would be visible only to the sending and receiving firms.

6. If, as an example, Respondent received an OTC Link electronic message from a market maker offering to sell 5,000 shares of an OTC security at \$.10 per share, and Respondent had an open customer limit order to purchase 5,000 shares at \$.11 per share, Respondent's systems were properly set up to pass the \$.10 price to the customer if Respondent accepted the offer from the other market maker and executed a trade opposite the market maker before filling the customer order. That is, if Respondent purchased 5,000 shares at \$.10 from the messaging

---

<sup>1</sup> OTC Link is also a registered broker-dealer and operates an alternative trading system.

market maker while the customer order was awaiting execution, and assuming no other orders in hand, the \$.10 price would be passed along to the customer, who would receive a fill at \$.10.

7. However, Respondent's systems inappropriately failed to protect certain customer orders in situations where both the OTC Link electronic message and a pending customer order were in hand simultaneously but Respondent filled the customer order first. Thus, in the prior example, assuming that Respondent had no other customer orders in hand, and assuming that the \$.11 buy limit price was the current inside asking price at time of execution, the following might occur if Respondent were to fill the customer order first: Respondent could fill the customer order by selling 5,000 shares short or out of inventory to the customer at the \$.11 limit price, followed by a purchase into inventory opposite the messaging market maker at the \$.10 price. In that way, Respondent would fail to provide price improvement equal to the difference between the customer's limit price and the offer readily available to it through the OTC Link electronic messaging service, and would instead keep and profit from such difference.

8. In fact, that situation happened on numerous occasions during the relevant period, as illustrated by the following examples.

9. At 10:27:52 a.m. on March 12, 2010, Respondent received a customer order to sell 10,000 shares of an OTC security at a limit price of \$0.17. Ten seconds later, at 10:28:02 a.m., Respondent received an electronic message through OTC Link indicating that another market maker was interested in buying at least 10,000 shares of the same security from Respondent at a price of \$0.18. Eight seconds later, at 10:28:10 a.m., Respondent filled the entire customer order by buying 10,000 shares from the customer at a price of \$0.17. Two seconds after that, at 10:28:12 a.m., Respondent sold 10,000 shares for itself to the messaging market maker at \$0.18. Respondent failed to pass the \$0.18 price to the customer for 10,000 shares, resulting in lost price improvement of \$100, which Respondent kept as trading gains at the expense of the customer.

10. At 10:54:00 a.m. on February 10, 2011, Respondent received a customer order to buy 1,500 shares of an OTC security at a limit price of \$3.80. Twenty-five seconds later, at 10:54:25 a.m., Respondent received an electronic message through OTC Link indicating that another market maker was interested in selling at least 500 shares of the same security to Respondent at a price of \$3.70. Two seconds later, at 10:54:27 a.m., Respondent filled the entire customer order by selling 1,500 shares to the customer at a price of \$3.73. Three seconds after that, at 10:54:30 a.m., Respondent purchased 500 shares for itself from the messaging market maker at \$3.70. Respondent failed to pass the \$3.70 price to the customer for 500 shares, resulting in lost price improvement of \$15, which Respondent kept as trading gains at the expense of the customer.

11. At 13:46:29 p.m. on December 18, 2012, Respondent received an electronic message through OTC Link indicating that another market maker was interested selling at least 50,000 shares of an OTC security at a price of \$0.025. At the time, Respondent was holding an open customer order to buy 19,600 shares of the same security at a limit price of \$0.0255. At 13:46:36 p.m., Respondent filled the entire customer order by selling 19,600 shares to the customer at a price of \$0.0255. Two seconds after that, at 13:46:38 p.m., Respondent purchased 50,000 shares for itself from the messaging market maker at \$0.025. Respondent failed to pass the \$0.025

price to the customer for the 19,600 shares, resulting in lost price improvement of \$9.80, which Respondent kept as trading gains at the expense of the customer.

12. At 15:53:03 p.m. on February 6, 2013, Respondent received an electronic message through OTC Link indicating that another market maker was interested in selling at least 9,300 shares of an OTC security at a price of \$2.11. Eight seconds later, at 15:53:11 p.m., Respondent received a customer order to buy 500 shares of the same security at a limit price of \$2.12. One second later, at 15:53:12, Respondent filled the entire customer order at a price of \$2.12. Two seconds after that, at 15:53:14, Respondent purchased 9,300 shares for itself from the messaging market maker at \$2.11. Respondent failed to pass the \$2.11 price to the customer for the 500 shares, resulting in lost price improvement of \$5, which Respondent kept as trading gains at the expense of the customer.

13. By failing to pass on to certain customer orders more favorable available prices, Respondent breached its duty to seek to obtain best execution of customer orders, and caused its representations regarding order handling to be inaccurate with respect to those orders.

14. Although during the relevant period Respondent had in place various policies and procedures aimed at protecting customer orders and preventing or detecting possible violations of the firm's duty of best execution with respect to those orders, Respondent failed to implement reasonable procedures to address whether price opportunities available through OTC Link would be passed on to customers in circumstances where such price opportunities represented best execution.

15. In July 2013, during the course of the Commission's investigation into this conduct, Respondent voluntarily implemented new procedures governing the above situations, including supervisory procedures aimed at detecting any instances in which customer fills with respect to orders for securities quoted on OTC Link are not at or better than prices available through OTC Link. Respondent's current procedures now require that customers be notified of any such occurrences and be given the opportunity to either obtain cash compensation for the price difference or adjust the trade.

### **Violations**

16. As a result of the conduct described above, Respondent willfully<sup>2</sup> violated Section 17(a)(2) of the Securities Act, which prohibits obtaining money or property in the offer or sale of securities by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

---

<sup>2</sup> 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)).

17. As result of the conduct described above, Respondent willfully violated Section 17(a)(3) of the Securities Act, which prohibits, in the offer or sale of securities, engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

#### **Respondent's Remedial Efforts**

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

#### **IV.**

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

Accordingly, pursuant to Section 8A of the Securities Act and Section 15(b) 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 Sections 17(a)(2) and 17(a)(3) of the Securities Act.
- B. Respondent is censured.
- C. Respondent shall, within fifteen (15) days of the entry of this Order, pay disgorgement of \$685,900, prejudgment interest of \$69,297.38, and a civil money penalty of \$300,000 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 of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600, and if timely payment of a civil money penalty 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 KCG Americas 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 Andrew M. Calamari, Division of Enforcement, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, New York 10281.

By the Commission.

Brent J. Fields  
Secretary