

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 77150 / February 17, 2016

INVESTMENT ADVISERS ACT OF 1940
Release No. 4335 / February 17, 2016

INVESTMENT COMPANY ACT OF 1940
Release No. 31997 / February 17, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17119

In the Matter of

CHARLES P. GROM,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, 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”), Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Charles P. Grom (“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 him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V., 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, Section 203(f) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, 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

This matter concerns a violation of Regulation AC of the Exchange Act – the analyst certification requirement – by Charles Grom, a former managing director and senior equity research analyst at Deutsche Bank Securities, Inc. (“DBSI”). The Commission promulgated Regulation AC to ensure that the views that research analysts express in their reports accurately reflect their personal views, “in order to promote the integrity of research reports and investor confidence in those reports.”² In his research report on discount retailer Big Lots, Inc., issued on March 29, 2012, Grom rated the company’s stock a “BUY,” and certified that this recommendation reflected his personal views. In fact, that recommendation was inconsistent with Grom’s personal view that Big Lots should have been downgraded. Grom did not downgrade Big Lots on March 29 because he wanted to maintain his relationship with Big Lots’ management.

RESPONDENT

1. **Charles P. Grom**, age 41, worked at DBSI in New York City from June 2011 through February 2013. During his tenure at DBSI, Grom was a managing director and senior equity research analyst, providing research coverage on approximately twenty public companies. Grom covered two subsectors of the consumer retail sector: broadlines/department stores and supermarkets. DBSI terminated Grom in February 2013 for “conduct not consistent with firm standards.” Grom holds Series 7, 63, and 87 licenses from FINRA and currently is employed by another registered broker-dealer.

RELEVANT ENTITIES

2. **Big Lots, Inc.**, an Ohio corporation with its headquarters in Columbus, Ohio, is the largest “closeout” retailer in the United States. Big Lots’ common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the New York Stock Exchange.

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 Securities Exchange Act Release No. 47384 (Feb. 20, 2003), 68 Fed. Reg. 9482 (Feb. 27, 2003).

3. **Deutsche Bank Securities, Inc.**, a Delaware corporation with its principal offices in New York, New York, is a registered broker-dealer and investment adviser. DBSI is a subsidiary of Deutsche Bank AG, a foreign private issuer whose stock is registered under Section 12(b) of the Exchange Act and trades on the New York Stock Exchange.

FACTS

A. Background

4. Grom and other DBSI equity research analysts provided investment recommendations and analysis on public companies and their stocks through published research reports. The analysts published investment ratings based on their twelve-month view of a stock; a price target they expected the stock to reach in twelve months; and estimates of the company's upcoming quarterly and annual earnings per share. DBSI used a three-category investment rating system: BUY, HOLD, and SELL.

5. DBSI's performance evaluation system for equity research analysts, including Grom, assigned significant weight to an analyst's access to and relationships with the senior management of the companies they covered and the feedback that the firm received from its clients. Nearly ten percent of an analyst's internal performance rating was based on the frequency and level of contact that the analyst was able to arrange for firm clients with management from the companies they covered. An analyst earned additional credit for arranging contact with chief executive officers and chief financial officers. In his self-evaluation as part of his 2012 annual performance review, Grom stated: "[W]e remained very visible with our clients / sales force – both on the publication front and ratings adjustments, but also in terms of management access. On the latter, provided that [DBSI] does not have a retail / consumer conference, I was particularly pleased with our field trips, HQ visits, and NDRs [non-deal road shows] throughout the past 12 months."³

6. In evaluating its analysts' performance, DBSI assigned even more weight to their analysts' rankings in certain surveys of investors and other consumers of equity research, such as the *Institutional Investor* magazine's "All-America Research Team" and the Greenwich Associates "Greenwich Research Team Survey," as well as votes the analysts received directly from institutional investors through a process known as "broker votes." The rankings and broker votes comprised over forty percent of an analyst's internal performance rating. As Grom stated in an email to a firm client acknowledging the client's positive feedback on his work and the client's vote for Grom in the *Institutional Investor* poll, "it's how we get 'paid,' so thanks very much."

7. During his tenure at DBSI, Grom was one of the most prominent and influential research analysts covering the consumer sector. In 2012, he was ranked by *Institutional Investor* magazine as the number one "broadlines / department stores" analyst on its "All-America Research Team" and by Greenwich Associates as the number two "broadlines / retail analyst" on its "Greenwich Research Team Survey." DBSI clients, as well as sales and trading personnel at

³ A non-deal road show is a series of meetings, typically hosted by a broker-dealer, where management of a company meets with investors to discuss the company, but where no securities are offered for sale.

the firm, closely followed his research and sought his views on the companies that he covered, including Big Lots.

8. Grom initiated his research coverage of Big Lots at DBSI on September 14, 2011, when he rated Big Lots a BUY. Between September 14, 2011 and March 2, 2012, Grom published several additional research reports on Big Lots, each reiterating his BUY rating. Grom sought and was given significant access to Big Lots senior management, and was the first research analyst that Big Lots' management called following an early March 2012 Big Lots earnings conference call. Big Lots also chose Grom to host a non-deal road show in late March 2012.

B. Grom's Bullish March 2, 2012 Research Report on Big Lots

9. On Friday, March 2, 2012, Grom issued a research report on Big Lots shortly after the company publicly announced its results for the fourth quarter of 2011 and forecasted its results for the first quarter and full year 2012. In the report, Grom noted the company's guidance that it expected comparable store sales to increase by two to four percent in the first quarter and by two to three percent in the fiscal year.⁴ Grom stated in the report, "[W]e believe it's plausible that QTD trends are ahead of this pace" and concluded, "[a]ll told, we think the momentum will continue with BIG and reiterate our BUY rating."

10. That day, the price of Big Lots stock fell by nearly four percent. Several DBSI clients, including Hedge Fund A, Hedge Fund B, Hedge Fund C, and Hedge Fund D, contacted Grom about Big Lots. Grom knew that these four hedge funds were particularly valuable clients to the firm. Hedge Fund A, Hedge Fund B, and Hedge Fund D were all designated as top priority "Global Research Service Level 1" accounts that received the highest level of service from the firm's research and sales personnel. In its annual evaluations of equity research analysts, DBSI accorded extra weight to feedback from Global Research Service Level 1 clients. Grom knew that Hedge Fund C was an account personally handled by the head of the firm's Institutional Client Group for North America.

11. Grom told the hedge funds, along with other firm clients, that Big Lots' management "sounded great" and expressed positive views about the company's stock.

12. The price of Big Lots stock rebounded over the following two trading days. By Tuesday, March 7, 2012, the price of Big Lots stock had reached a fifty-two week high of \$44.90.

C. Grom's Changing View on Big Lots

13. On March 27, 2012, Big Lots' Chief Executive Officer and its Senior Vice President of Finance appeared at a conference in New York City that was hosted by another brokerage firm.

⁴ Big Lots' "comparable store sales figures" – a comparison of the total sales of its stores on a quarterly and annual basis to the total sales of its stores for the same time period the previous year – were a key metric that influenced Big Lots' stock price and was closely followed by analysts and investors.

14. Big Lots' management made a presentation at the conference that was live-streamed and subsequently posted on the brokerage firm's website. After the presentation, Big Lots' management held several private meetings with smaller groups of investors. Big Lots' management had a positive tone during both their presentation and the private meetings that followed. The price of Big Lots' stock closed that day at a fifty-two week high of \$46.81.

15. Analyst A, an analyst at Hedge Fund A, attended this conference and met with Big Lots' management during one of the private meetings. At 11:57 a.m., shortly after his meeting ended, Analyst A sent an email to a portfolio manager at Hedge Fund A, recommending that they buy Big Lots' stock: "Believe we should add some Big Lots. They sound good and Chuck Grom is taking them for dinner tonight so I suspect he will be on the horn tomorrow. Q1 comp will be strong and then the street has modeled [gross margins] down in Q2 while they are saying up." Within a minute of receiving Analyst A's email, the portfolio manager placed an order to buy almost 100,000 shares of Big Lots' stock, increasing the portfolio's existing position in the stock. Later that day, Analyst A spoke by phone with Grom. While that call was in progress, the same portfolio manager placed an order to purchase an additional 110,583 shares of Big Lots' stock.

16. On March 28, 2012, Grom and DBSI hosted Big Lots' Chief Executive Officer and Senior Vice President of Finance at a non-deal roadshow ("NDR") at DBSI's Boston office. Beginning at about 7:30 a.m. and continuing until about 3:15 p.m., the Big Lots executives held private meetings with DBSI clients. Grom attended all of these meetings.

17. Before the NDR, Grom was bullish on Big Lots: he believed the company's first quarter financial performance, particularly its first quarter comparable store sales, would be strong, with comparable store sales "up four or five, maybe six percent." At some point early during the NDR, Grom's view changed and he ultimately concluded that Big Lots' first quarter comparable store sales would increase by only two to three percent, a significant shift in Grom's view. Grom believed, and his financial models reflected, that even a one percent change in Big Lots' comparable store sales could significantly impact its earnings per share. Grom became particularly concerned during the NDR when Big Lots' executives made what Grom believed to be cautious comments about Big Lots' consumables business, which comprised approximately twenty-five to thirty percent of Big Lots' total sales at the time.

18. At 8:51 a.m. on March 28, 2012, shortly after the first NDR meeting had ended, Grom called the DBSI trader responsible for trading Big Lots' stock. At 9:31 a.m., within a minute of the market opening, the trader placed an order to sell 25,000 shares of Big Lots' stock, which he had purchased the day before in a firm proprietary account.

19. In the early afternoon on the day of the NDR, Big Lots' Chief Executive Officer abruptly asked Grom whether he was going to downgrade Big Lots stock. At 1:23 p.m., Grom emailed one of his junior analysts back in New York, simply stating, "this is gonna be hard." Three minutes later, the junior analyst responded, "uh oh." At 1:26 p.m., Grom sent the junior analyst another email, stating, "[p]retty clear that biz is just ok."

20. Beginning within minutes after the NDR had ended, Grom communicated with several DBSI clients, including Hedge Fund A, Hedge Fund B, Hedge Fund C, and Hedge Fund D.

After talking to Grom, all four of these DBSI clients subsequently sold their entire positions in Big Lots stock.

a. Hedge Fund A – At 3:18 p.m., Grom phoned Analyst A to discuss Big Lots. Within a minute after their phone call ended, the Hedge Fund A portfolio manager for whom Analyst A worked ordered the sale of all 567,804 shares of Big Lots stock held in his fund, including shares that he had purchased the day before, which were then worth approximately \$22 million.

b. Hedge Fund B – At approximately 4:00 p.m., Grom met with Portfolio Manager B, a portfolio manager at Hedge Fund B, and Analyst B, an analyst at Hedge Fund B who worked for Portfolio Manager B, to discuss several stocks covered by Grom, including Big Lots. Shortly after the meeting ended, Analyst B entered an order to sell all 125,000 shares of Big Lots stock held in the fund managed by Portfolio Manager B, which were then worth approximately \$5.7 million.

c. Hedge Fund C – At 5:30 p.m., Portfolio Manager C, a portfolio manager at Hedge Fund C, phoned Grom to discuss Big Lots. The next morning, Portfolio Manager C placed an order to sell all 93,091 shares of Big Lots stock held in his fund, which was then worth approximately \$4.2 million.

d. Hedge Fund D – At 7:26 p.m., Grom spoke with Portfolio Manager D and Analyst D at Hedge Fund D. The following morning, starting at approximately 9:00 a.m., Portfolio Manager D began selling all 174,690 shares of Big Lots stock held in his fund, which were then worth approximately \$8 million.

21. Grom stated on multiple occasions that he told certain DBSI clients to sell Big Lots stock.

a. In an email to himself on April 24, 2012, Grom wrote an outline of his comments regarding Big Lots for the DBSI morning conference call that day, in which he noted that he had “told most to take profits @ \$46,” which was the price of Big Lots stock on March 28, 2012.

b. During the April 24, 2012 DBSI morning conference call, Grom stated that “we told many clients a few weeks back to sell the stock.”

c. In an email that Grom sent on April 24, 2012 to the DBSI salesperson responsible for the Hedge Fund D account, Grom wrote regarding his telephone conversation with Analyst D and Portfolio Manager D on the evening of March 28, 2012: “That night in Boston I tell [Analyst D] and [Portfolio Manager D] to get out of it. * * * I’m done with her. Way too many clients in the sea to help out – plenty that said to me ‘thanks for the help on BIG’ ... but not her Between me/u pls.”

D. Grom's March 29, 2012 Research Report

22. On March 29, 2012, Grom issued a research report on Big Lots entitled "Not All Is Good In Buckeye Land," in which he reiterated his BUY rating. As required by Regulation AC of the Exchange Act, Grom signed an Analyst Certification that was included at the end of the report, which stated: "The views expressed in this report accurately reflect the personal views of the undersigned lead analyst(s) about the subject issuer and the securities of the issuer."

23. On March 29, 2012, at 7:30 a.m., roughly two hours after his Big Lots research report had been publicly disseminated, Grom spoke about Big Lots on the DBSI morning conference call with firm research and sales personnel. Grom said that he had maintained a BUY rating on Big Lots because "obviously that we just had them in town so it's not kosher to downgrade on the heels of something like that." Grom also said, "[B]ut more importantly than that, I think there's obviously time left in the quarter" and that he and his team was "gonna do our homework on it" and "gonna be in front of 'em."

24. Less than a month later, Grom repeated his assertion that he had not downgraded Big Lots on March 29, 2012 because he wanted to maintain his relationship with Big Lots' management. On April 24, 2012, the morning after Big Lots had issued an unexpected press release forecasting negative first quarter comparable store sales, which resulted in the company's stock losing almost one-quarter of its value in one day, Grom spoke about Big Lots on another morning conference call with firm research and sales personnel. After discussing Big Lots' disappointing first quarter sales figures, Grom stated:

"[F]ortunately we told many clients a few weeks back to sell the stock. . . . I think the writing was on the wall [that] we were getting concerned about it, but I was trying to maintain, you know, my relationship with them. So, that's why we didn't downgrade it a couple of weeks back."

25. Later on April 24, 2012, Grom replied to an email from the DBSI salesperson responsible for the Hedge Fund A account, who complimented Grom for having "[n]ailed this thing," stating: "Y, I did. Wish I would have acted, but was hard to given that I wanted to keep relationship."

E. Grom Violated Regulation AC of the Exchange Act

26. Rule 501 of Regulation AC requires that brokers, dealers, and certain persons associated with a broker or dealer, including research analysts, include in their research reports a certification by the research analyst that the views expressed in the research report accurately reflect the research analyst's personal views about the subject securities and issuers. Grom signed the Regulation AC certification for his March 29, 2012, Big Lots research report in which he reiterated his BUY rating. However, as described above, Grom believed he should have downgraded Big Lots in his March 29, 2012, research report and repeatedly stated that he did not downgrade Big Lots at the time because he wanted to maintain his relationship with Big Lots'

management. Accordingly, Grom's March 29, 2012, research report did not accurately reflect his personally held view.

27. As a result of the conduct described above, Grom willfully violated Rule 501 of Regulation AC of the Exchange Act.

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 Respondent Grom's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, Section 203(f) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Grom shall cease and desist from committing or causing any violations and any future violations of Rule 501 of Regulation AC of the Exchange Act.

B. Respondent Grom is hereby censured.

C. Respondent Grom be, and hereby is:

1. suspended from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization for a period of twelve (12) months, effective on the date of entry of this Order;

2. prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter for a period of twelve (12) months, effective on the date of entry of this Order; and

3. suspended from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock for a period of twelve (12) months, effective on the date of entry of this Order.

D. Respondent Grom shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$100,000.00 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;
- (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 Charles P. Grom 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 Yuri B. Zelinsky, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, D.C. 20549.

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 he shall not argue that he is entitled to, nor shall he 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 he 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.

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