

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 80356 / March 31, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17896

In the Matter of

CYGS, LLC

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 CYGS, LLC (“CYGS” or the “Respondent”).

II.

In anticipation of the institution of these proceedings, the 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, the 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 the Respondent's Offer, the Commission finds that:

Summary

This matter involves violations of the broker-dealer registration requirements by CYGS, LLC ("CYGS"), a Los Angeles-based Delaware limited liability company established in 2009 to engage in proprietary trading and supervised day trading by its member-traders. For a one-time membership fee of \$5,000, CYGS provided its member-traders with access to the firm's market data chat room, both live and recorded ongoing training in securities day trading, training in and use of the firm's proprietary trading platform software, and ultimately the ability to engage in live supervised day trading. All of the securities trades by CYGS and its member-traders were executed through an account in the firm's name at Electronic Transaction Clearing, Inc. ("ETC"), a registered broker-dealer, and the associated fees were paid by CYGS. CYGS and its members traded a combined total of approximately 200,000 shares per month on average through CYGS's ETC account, representing approximately \$1.9 billion worth of trades annually.

CYGS acted as an unregistered broker-dealer because it was engaged in the business of effecting securities transactions for its member-traders without being registered pursuant to Section 15(b) of the Exchange Act.

Respondent

1. **CYGS, LLC** is a Delaware limited liability company formed in 2009 with its principal place of business in Los Angeles, California. CYGS, a self-described proprietary day trading firm, is not registered with the Commission in any capacity. CYGS voluntarily ceased accepting new member-traders in mid-2015, and no longer allows trading by members.

Facts

2. CYGS, a proprietary trading firm established in 2009, used a membership structure to provide training and facilitate day trading by its member-traders. CYGS obtained new members by word-of-mouth recommendations and through its website, which promoted the services and advantages it offered to day traders.

3. CYGS had written membership agreements with its member-traders, each of whom paid a \$5,000 membership fee that CYGS considered income upon receipt. During the period January 2012 through 2015, CYGS collected approximately \$4.5 million in membership fees from approximately 350 member-traders. In return, the member-traders were given access to CYGS's chat room (real-time commentary), proprietary software, educational materials, video tutorials, and training, ultimately culminating in the opportunity to apply what they learned and gain real-world trading experience using CYGS's capital.

4. Because the member-traders were using CYGS's capital to trade, CYGS used its discretion to determine the amount of "buying power" to afford each member-trader. Member-traders were provided up to \$50,000 of buying power, which was based on several factors including experience, performance, and risk tolerance. In addition, member-traders' buying power was monitored and adjusted frequently. At its height, CYGS and its member-traders traded a combined total of approximately 200,000 shares per month on average through CYGS's ETC brokerage account, representing approximately \$1.9 billion worth of trades annually. However, a significant portion of this trading consisted of trades made on CYGS's behalf by the firm's principals rather than by member-traders.

5. CYGS allowed the member-traders to keep their profits from successful trades but any trading losses were borne by CYGS and deducted from the membership fees CYGS collected. In addition, CYGS paid all of the associated trading fees and expenses. CYGS maintained an electronic spreadsheet that tracked each member-trader's individual profits and losses from their day-trading, along with associated expenses, and made that information available to its member-traders for education purposes.

6. CYGS earned its income from (1) the membership fees; and (2) trading by CYGS's principals, whose trades benefitted from access to better execution and trading routes afforded to larger accounts at ETC.

7. Because CYGS absorbed the trading losses from its member-traders' unsuccessful trades, it sought to manage risk and limit each member-trader's total losses to approximately \$4,000 in several ways in order not to exceed the member-trader's \$5,000 membership fee (although occasionally member-traders' losses exceeded the membership fee and CYGS absorbed the loss). First, member-traders were not allowed to carry shares overnight and all positions were closed out by the end of each day. Each member-trader's activity was monitored for cumulative losses, and CYGS typically closed out positions if a member-trader's cumulative losses reached approximately \$4,000. CYGS also approved most member-traders' trades in advance or reviewed the trades upon entry into the system. Upon such review, CYGS cancelled those trades it deemed too risky or inappropriate, prior to execution.

8. Additionally, CYGS used its proprietary "Autoclose" software which significantly helped to limit member-traders' trading losses. The Autoclose software helped to educate member-traders about risk management and the recommended goal of having pre-defined loss limits. Although the controls helped to limit member-traders' trading losses (and ultimately CYGS's), some member-traders did incur trading losses in excess of their membership fee, which losses were borne or absorbed by CYGS. In these instances, some member-traders were allowed to renew their membership for an additional fee and allowed to continue trading.

9. CYGS's membership structure was attractive to the member-traders because it allowed them to trade with far greater leverage than if they had established a brokerage account in the amount of their individual membership fees. As discussed above, CYGS's member-traders did not have their own brokerage or deposit accounts that they owned or controlled. Rather, CYGS's

principals, at their discretion, allowed member-traders to use firm capital in a limited way, and CYGS retained full control to limit or adjust member-traders' trading or buying power at any time.

Violations

10. As a result of engaging in the conduct described above, CYGS willfully¹ violated Section 15(a) of the Exchange Act, which prohibits a broker or dealer from using the mails or any means or instrumentality of interstate commerce to effect any transactions in, or induce or attempt to induce the purchase or sale of, securities without being registered as, or associated with, a registered broker-dealer.

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 CYGS's Offer.

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

- A. Respondent CYGS is censured.
- B. Respondent CYGS shall cease-and-desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act.
- C. Respondent CYGS shall, within 15 days of the entry of this Order, pay disgorgement of \$35,000 and prejudgment interest of \$879 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 SEC Rule of Practice 600.
- D. Respondent CYGS shall, within 15 days of the entry of this Order, pay a civil money penalty in the amount of \$25,000 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 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;

¹ 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)).

- (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 CYGS as a the 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 Alka N. Patel, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Los Angeles Regional Office, 444 S. Flower Street, Suite 900, Los Angeles, CA 90071.

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, the 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 the 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, the 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 the 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.

Brent J. Fields
Secretary