

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10524 / July 24, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18613

In the Matter of

Melanie Ryan,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND 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”), against Melanie Ryan (“Ryan” or “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 her 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 Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

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.

Summary

1. These proceedings arise out of Respondent's role as a cause of the violations by Banca IMI Securities Corp. ("BISC") of Section 17(a)(3) of the Securities Act of 1933 ("Securities Act").²

2. From at least 2011 through August 2015, BISC's securities lending desk engaged in improper practices involving the pre-release of American Depositary Receipts ("ADRs"). In particular, BISC's securities lending desk had an ongoing practice of obtaining, and then lending, pre-released ADRs from depositary banks ("Depositaries") without taking reasonable steps to determine whether the requisite number of ordinary shares was owned and custodied by the person on whose behalf the pre-released ADRs were being obtained. The result of this conduct was the issuance of ADRs that in many instances were not backed by ordinary shares. This conduct violated Section 17(a)(3) of the Securities Act.

3. Ryan, BISC's Chief Compliance Officer during the relevant period, participated in, along with others from the firm, the firm's development of procedures for obtaining and lending pre-released ADRs. However, despite her understanding of BISC's actual lending practices, Ryan made statements to Depositaries concerning BISC's pre-release practices that were inconsistent with those procedures. As Ryan should have known, her actions with respect to her representations to Depositaries and her assistance in developing BISC's procedures relating to pre-released ADRs contributed to BISC's violations of Section 17(a)(3) of the Securities Act by enabling BISC to obtain newly issued pre-released ADRs without reasonable assurance that the ADRs were backed by ordinary shares.

Respondent

4. Melanie Ryan, age 53, resides in Nutley, New Jersey. Ryan was the Chief Compliance Officer of BISC from April 2001 to July 2014. She held Series 2, 4, 7, 8, 14, 24, 53 and 63 licenses. She has no disciplinary history.

Other Relevant Entity

5. BISC, a Delaware corporation, is registered with the Commission as a broker-dealer, and its principal executive offices are in New York, New York. BISC is a wholly-owned subsidiary of IMI Capital Markets USA Corporation, which in turn is a wholly-owned subsidiary of Intesa Sanpaolo SpA, an Italian bank. On August 18, 2017, the Commission filed a settled Order Instituting Administrative and Cease-and-Desist Proceedings against BISC ("BISC Order"). In the BISC Order, the Commission found that BISC violated Section 17(a)(3) of the Securities Act in connection with its pre-release practices described below.

² See settled order in *Matter of Banca IMI Securities Corp.*, Sec. Act Rel. No. 10401 (Aug. 18, 2017). The Commission had previously issued a settled order for similar conduct in *Matter of ITG Inc.*, Sec. Act Rel. No. 10279 (Jan. 12, 2017).

Background

BISC's Pre-Release Transactions

6. From at least 2011 through August 2015, BISC's securities lending desk had a matched book securities lending operation, whereby BISC obtained securities from a bank or broker-dealer and in turn lent them to another broker-dealer. BISC primarily obtained the ADRs in connection with its matched book lending from one of four Depositories in "pre-release" transactions.

7. In pre-release transactions, a market participant obtains newly issued ADRs from a Depository (as opposed to purchasing existing ADRs on the market) without simultaneously delivering the corresponding foreign shares to the Depository's custodian. Pre-release transactions are provided for in deposit agreements ("Deposit Agreements"), which establish and govern ADR facilities, and in pre-release agreements ("Pre-Release Agreements") entered into by Depositories and third parties, typically broker-dealers. The Pre-Release Agreements, consistent with the Deposit Agreements, typically require the broker-dealer receiving the pre-released ADRs (or its customer on whose behalf the broker-dealer is acting) to own the ordinary shares that evidence the ADRs, and to assign all beneficial right, title, and interest in those ordinary shares to the Depository while the pre-release transaction is outstanding (the "Pre-Release Obligations").

8. Subsequent to the initial signing of the Pre-Release Agreements, three Depositories occasionally required BISC to sign certifications ("Certifications") stating that it was complying with the terms of the Pre-Release Agreements.

9. Despite the obligations provided for in the Pre-Release Agreements and Certifications, BISC was negligent in failing to take reasonable steps to determine whether BISC's securities lending desk personnel complied with the Pre-Release Obligations. BISC itself did not own ordinary shares in connection with any pre-release transaction with a Depository. Nor did BISC's securities lending desk personnel take reasonable steps to determine whether the broker-dealer counterparties to whom BISC lent the pre-released ADRs (or their customers) owned corresponding ordinary shares.

10. In effect, BISC's securities lending desk personnel treated the pre-released ADRs as if they were ordinary shares used in typical securities lending transactions. Accordingly, BISC's securities lending desk personnel routinely obtained pre-released ADRs without taking appropriate steps to comply with the Pre-Release Obligations. Moreover, given the circumstances in which BISC obtained and lent pre-released ADRs, BISC's securities lending desk personnel should have recognized the likelihood that BISC was acting as a conduit through which its counterparties were obtaining and the Depositories were issuing ADRs that were not evidenced by any ordinary shares held for the benefit of the Depository. For example, securities lending desk personnel routinely obtained pre-released ADRs through the Pre-Release Agreements and then lent them to counterparties pursuant to standard master securities loan agreements ("MSLAs"). The MSLAs did not address pre-released ADRs, and did not contain any provisions requiring compliance with any of the Pre-Release Obligations.

11. Although at various times BISC may have taken some action to inform certain of its counterparties that they should consider the Pre-Release Obligations to be incorporated into the MSLAs, BISC's conduct was not sufficient for BISC to operate on the assumption that its counterparties were indeed complying with those Pre-Release Obligations in each instance in which BISC lent them pre-released ADRs.

12. As result of the conduct described above, and as previously found by the Commission in the BISC Order, BISC 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.

Melanie Ryan's Conduct

13. Ryan, BISC's Chief Compliance Officer from April 2001 to July 2014, signed four Pre-Release Agreements and nine related Certifications on behalf of BISC. Ryan understood these Pre-Release Agreements and Certifications meant that each time BISC engaged in a pre-release transaction, BISC was representing that it and/or its customers owned and custodied the requisite number of ordinary shares that corresponded with any pre-released ADRs.

14. In addition, Ryan assisted BISC in devising procedures for acquiring and lending pre-released ADRs. However, based on Ryan's understanding of BISC's actual lending practices, Ryan should have been aware that those procedures failed to adequately address compliance with the Pre-Release Obligations. Nonetheless, Ryan certified to compliance with the Pre-Release Agreements to the Depositories.

15. While BISC engaged in pre-release transactions during the relevant period, Ryan understood that BISC did not own the ordinary shares and that BISC's counterparties routinely lent the pre-released ADRs on to other firms. Ryan further understood that it would have been difficult for BISC to require its counterparties to certify that they or other entities in the chain of borrowing transactions owned the ordinary shares, and that difficulty should have raised doubts that any entity was acting in compliance with the Pre-Release Obligations rather than acting as an ordinary borrower of ADRs. Ryan's signing of Certifications to Depositories enabled BISC to obtain pre-released ADRs, despite the likely lack of compliance with the Pre-Release Obligations.

16. Based on the circumstances above, Ryan should have understood that her Certifications and BISC's practices were resulting in BISC and its personnel obtaining and lending pre-released ADRs without anyone complying with the Pre-Release Obligations.

17. As Ryan should have known, her actions with respect to the Certifications and her assistance in developing BISC's procedures relating to pre-released ADRs contributed to the violations of Section 17(a)(3) of the Securities Act by BISC.

Causing 17(a)(3) Violations by BISC

18. As a result of the conduct described above, Ryan caused violations of Section 17(a)(3) of the Securities Act by BISC.

IV.

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

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

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(3) of the Securities Act.

B. Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$10,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934. If timely payment is not made, any additional interest shall accrue pursuant to 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 Melanie Ryan 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 Sanjay Wadhwa, Senior Associate Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

C. 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, 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 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 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 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.

D. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of \$10,000.00 based upon her cooperation and agreement to cooperate in a Commission investigation and related enforcement action. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay an additional civil penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

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