

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 83650 / July 17, 2018**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18598**

**In the Matter of**

**BGC FINANCIAL, L.P.,**

**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 BGC Financial, L.P. (“Respondent” or “BGC”).

**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 Sections 15(b) and 21C of the Exchange Act, 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<sup>1</sup> that:

#### **Summary**

These proceedings arise out of BGC's violations of the books and records provisions of the Exchange Act. First, in June of 2014, BGC deleted audio files for the recorded lines of eight registered representatives that were responsive to requests from the Commission staff for these records. As detailed below, the deletion of these audio files occurred because BGC's audio system personnel were not made aware of the existence of the Commission staff's requests. Second, in the instances detailed below, BGC failed to maintain books and records that accurately recorded certain transactions concerning compensation, travel, entertainment, and other expenses.

#### **Respondent**

1. BGC is a Delaware limited partnership located in New York, New York. BGC is a member of FINRA and has been registered with the Commission since 2008. It is an inter-dealer broker that facilitates transactions in securities and other financial instruments between broker-dealers, dealer banks, and other financial institutions. BGC employed approximately 500 registered representatives during the relevant period.

#### **BGC Failed to Preserve Records Requested by the Commission Staff**

2. In March 2014, the staff issued two requests for, among other things, communications of eight BGC registered representatives, including recorded telephone conversations (the "March 2014 Requests"). Upon receiving the March 2014 Requests, BGC sought additional time to produce these documents and agreed to preserve all responsive recordings.

3. Prior to receiving the March 2014 Requests, BGC had changed its records retention policy to retain digital audio recordings for a period of one year. In accordance with this new policy, which was instituted in 2013, BGC had started to delete all audio files that were more than a year old. But no audio files responsive to the March 2014 Requests were initially deleted because they were subject to an unrelated litigation hold. As such, at the time it received the March 2014 Requests, BGC had audio files of the eight recorded lines.

4. After BGC lifted the unrelated litigation hold in May 2014, its personnel deleted some of these audio files in accordance with the firm's new policy. The deletions occurred over a period of twenty days between June 12 and July 1, 2014, and included some of the audio files

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<sup>1</sup> 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.

responsive to the March 2014 Requests that had been created more than a year earlier (*i.e.*, prior to mid-2013). While BGC had issued a litigation hold notice after receiving the March 2014 Requests, it did not ensure that this litigation hold notice was distributed to the technicians in the department responsible for maintaining voice recordings. The personnel that carried out the deletions were therefore unaware of BGC's litigation hold notice related to the March 2014 Requests.

5. BGC discovered that responsive files had been deleted approximately eight weeks after the deletions occurred. Its external counsel then informed the Commission staff of the deletions, and BGC directed its external counsel to investigate how the deletions had occurred and reported its findings to the Commission staff.

### **BGC's Inaccurate Books and Records**

6. Section 17(a)(1) of the Exchange Act and Rule 17a-3 thereunder require every registered broker-dealer to make and keep current accurate books and records, including ledgers reflecting, among other things, all expenses. During the relevant period, BGC failed to maintain books and records, which accurately recorded transactions concerning compensation, travel, entertainment, and other expenses. BGC had policies that applied to all travel and entertainment expenses and called for compliance with all relevant rules and regulations. At all relevant times, BGC maintained policies that stated: (a) all travel and entertainment must have a business purpose in order to be reimbursed and all use of broker-dealer funds for personal spending was prohibited; (b) if an employee was not present for business entertainment events such as a meal or a sports event, the expenses associated with that event must be considered a gift, and all gifts were subject to pre-approval and reporting requirements; and (c) all records kept relating to entertainment must be accurate. BGC's policies specifically noted that records related to entertainment are "often requested by the regulators" and "must be accurate, or we will have 'books and records' violations." BGC also typically charged expenses to the relevant registered representative or desk and thus the expenses at issue would generally have been deducted from the compensation of the registered representative who incurred the expenses.

7. However, as detailed below, BGC failed to accurately record certain expenses and thus rendered BGC's ledgers of its expense accounts inaccurate in violation of Section 17(a)(1) of the Exchange Act and Rule 17a-3 thereunder.

#### *Inaccurate Entries Relating to High Performing Registered Representative's Compensation*

8. From approximately 2014 to 2016, BGC inaccurately recorded certain payments to a high performing registered representative ("Broker A") and failed to maintain accurate books and records of these expenses.

9. BGC purchased, under Broker A's name, over \$600,000 per year in season tickets to a New York area sports team. Broker A's employment contract with BGC stated that he was

entitled to these tickets and stated that the tickets were “the personal property of [Broker A] and [Broker A] shall determine the user of the tickets.” Broker A used, sold, or donated them to charities at his sole discretion. He did not provide any documentation to BGC concerning his use of the tickets and only occasionally used them to entertain BGC customers.

10. BGC failed to accurately record the payments for the tickets to Broker A by failing to record these payments as Broker A’s compensation in its general ledger. From 2014 through 2016, BGC’s general ledger incorrectly recorded the payments for the tickets as travel and entertainment, and failed to record them as Broker A’s compensation in its general ledger.

11. BGC also reimbursed Broker A for approximately \$100,000 of expenses associated with an international trip for his birthday in 2011. Prior to the trip, Broker A told his supervisors that he intended to take the trip with eight members of his team and three personal friends to celebrate. The expense reports that Broker A submitted for this trip did not indicate that any BGC customers were entertained.

12. From 2010 through April 2014, BGC also reimbursed Broker A for thousands of dollars of expenses associated with other international travel that lacked a sufficiently documented business purpose. BGC reimbursed Broker A based on expense reports that did not include adequate business purposes for the trips or the names of customers entertained.

13. BGC failed to appropriately account for the expenses associated with this international travel in its general ledger. Even though no customers accompanied Broker A on these trips, BGC recorded the expenses in its general ledger as selling and promotion.

14. BGC’s treatment of these expenses rendered BGC’s ledgers of its expense accounts inaccurate in violation of Section 17(a)(1) of the Exchange Act and Rule 17a-3 thereunder.

*Inaccurate Entries Relating to BGC’s Reimbursement of a Registered Representative for Personal Events*

15. BGC also inaccurately recorded certain reimbursement expenses relating to personal events hosted by a former BGC registered representative (“Broker B”).

16. BGC reimbursed Broker B and another registered representative for approximately \$12,600 of expenses associated with Broker B’s birthday party, with a group of at least eight friends, three of whom were also BGC customers. Broker B submitted an expense report and supporting documentation to BGC with his request for reimbursement. The supporting documentation clearly identified the event as “[Broker B] BIRTHDAY.” BGC reimbursed Broker B and recorded these expenses as travel and entertainment in its books and records.

17. BGC reimbursed Broker B for approximately \$11,000 of expenses associated with his bachelor party in New Orleans, which some customers and other personal friends attended. This included \$8,320.56 for charges associated with a two night stay in a suite at a luxury hotel,

where Broker B and at least five of Broker B's friends (none of whom were BGC customers) stayed. BGC reimbursed Broker B for these expenses and recorded the expenses as travel and entertainment in its books and records.

18. From 2010 to 2014, BGC reimbursed Broker B for food and beverage charges associated with his weekend trips to the Hamptons with friends, some of whom were also BGC's customers. In addition, on at least two occasions, BGC reimbursed Broker B for expenses associated with the bachelor parties of his friends, who were also BGC's customers. This included over \$25,000 of charges associated with two separate trips to Las Vegas. To obtain reimbursement for these expenses, Broker B submitted documentation that listed other customers who were not actually present. In each case, BGC reimbursed Broker B and recorded the expenses as travel and entertainment in its books and records.

19. BGC's recording of its reimbursements to Broker B for Broker B's personal events rendered BGC's ledgers of its expense accounts inaccurate in violation of Section 17(a)(1) of the Exchange Act and Rule 17a-3 thereunder.

*BGC Failed to Accurately Record Gifts to its Customers*

20. As referenced above, BGC's travel and entertainment policies required employees to report gifts to customers so that BGC's books and records, including its general ledger, would accurately account for all gifts to customers. If a BGC registered representative was not present for an event, under its own policies, BGC required any expenses incurred to be reported as gifts and not as entertainment. BGC's general ledger separately recorded gifts. However, as detailed below, BGC recorded certain expenses on its books and records as entertainment that should have been recorded as gifts.

21. BGC reimbursed two registered representatives who provided their customers with reservations from a concierge service, for the customers' independent use, and failed to record these expenses as gifts. Specifically, Broker B and another BGC registered representative, ("Broker C") paid a concierge service for reservations at restaurants and occasionally nightclubs. Broker B and Broker C regularly offered these reservations to their customers by instant messaging a large group of customers from their BGC accounts, to let them know what reservations were available that week. BGC customers at times used the reservations without BGC employees present and often for personal events. For example, in one instant message, a customer asked Broker B about restaurant reservations and let him know that he is "about to ask for another, this one work related." When customers used reservations without the presence of a BGC registered representative, BGC failed to accurately record these entries in its general ledger as gifts, and instead, recorded them as entertainment.

22. BGC failed to properly record expenses for certain car services provided to its customers as gifts. A BGC registered representative, ("Broker D"), regularly provided BGC customers with access to car services. This included some occasions when the use of the car service had no relation to any BGC customer entertainment and no one from BGC was present. In

some instances, Broker D's customers called the car service directly when they wished to use the service. The expense reports submitted by Broker D did not disclose that some of the car services were unrelated to BGC customer entertainment. BGC failed to accurately record these entries in its general ledger as gifts, and, instead, recorded them as entertainment. BGC's Broker D submitted expense reports that did not accurately record that some of the car services were gifts to BGC's customers.

23. On occasion, BGC registered representatives also provided event tickets to customers and failed to properly record these expenses as gifts. As noted above, when a BGC registered representative does not attend a ticketed event with the customer, BGC's policies require that the tickets be characterized as a gift and treated as an expense. However, in multiple instances, from at least 2011 to 2014, three of BGC's registered representatives provided customers with tickets to concerts, Broadway shows and sporting events, and the registered representative did not attend the event. BGC's registered representatives submitted expense reports that did not accurately record that the tickets were gifts. BGC failed to accurately record these entries in its general ledger as gifts, and, instead, recorded them as entertainment.

24. BGC's failure to accurately record gifts to its customers rendered BGC's general ledger entries of its gift and entertainment expense inaccurate, in violation of Section 17(a)(1) of the Exchange Act and Rule 17a-3 thereunder.

#### *Inaccurate Entries Relating to BGC Funds Used for Personal Expenses*

25. From 2009 to 2013, a BGC expense administrator used a corporate credit card issued in another employee's name. The expense administrator entered expenses into BGC's expense tracking system, under her own name and the corporate credit card holder's name. In 2013, based on allegations concerning the expense administrator's expenses, BGC retained a forensic accountant to conduct an investigation. The forensic accountant issued a report stating that at least \$1.3 million of BGC's assets had been misappropriated and were likely attributable to the expense administrator's personal expenses. BGC had recorded some of these expenses as travel and entertainment in its books and records.

26. BGC's records relating to these expenses rendered BGC's general ledger entries of its expenses inaccurate in violation of Section 17(a)(1) of the Exchange Act and Rule 17a-3 thereunder.

#### **Violations**

27. Section 17(a)(1) of the Exchange Act provides that each member of a national securities exchange, broker, or dealer "shall make and keep for prescribed periods such records, furnish copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title." Pursuant to its authority under Section 17(a)(1) of the Exchange Act, the Commission promulgated Rule 17a-3 and 17a-4.

28. As a result of the conduct described above, BGC willfully<sup>2</sup> violated Section 17(a)(1) of the Exchange Act, and Rule 17a-4(j) thereunder, which requires broker-dealers to “furnish promptly to a representative of the Commission legible, true, complete and current copies of [records required by Rule 17a-3] or . . . any other [*i.e.*, non-required] records of the member, broker, or dealer subject to examination under section 17(b) of the Act . . . that are requested by the representative of the Commission.”

29. As a result of the conduct described above, BGC willfully violated Section 17(a)(1) of the Exchange Act and Rule 17a-3 thereunder by failing to make and keep current accurate books and records of its expenses.

#### IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent BGC’s Offer.

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

A. Respondent BGC cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Rules 17a-3(a)(2) and 17a-4(j) promulgated thereunder.

B. Respondent BGC is censured.

C. Respondent BGC shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$1.25 million 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;

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<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)).

- (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 BGC Financial, LLP 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, Securities and Exchange Commission, New York Regional Office, 200 Vesey Street, Suite 400, New York, NY 10281.

D. 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.

By the Commission.

Brent J. Fields  
Secretary