

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 86976 / September 16, 2019**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5348 / September 16, 2019**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-19457**

**In the Matter of**

**BMO Capital Markets Corp.**

**Respondent.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTIONS 15(b) AND 21C OF THE  
SECURITIES EXCHANGE ACT OF 1934  
AND SECTION 203(e) OF THE  
INVESTMENT ADVISERS 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”) and Section 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”) against BMO Capital Markets Corp. (“BMO CMC” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“Offer”) that the Commission has determined to accept. Respondent admits the facts set forth in Section III below, acknowledges that its conduct violated the federal securities laws, admits the Commission’s jurisdiction over it and the subject matter of these proceedings, and 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 and Section 203(e) of the Investment Advisers 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 finds that:

#### Summary

1. These proceedings arise out of BMO CMC's failure to submit to the Commission true and complete data in response to Commission staff electronic blue sheets ("EBS") requests, resulting in the reporting of EBS that was incomplete or deficient.

2. Commission staff routinely sends requests for securities trading records to market makers, brokers and/or clearing firms in order to identify buyers and sellers of securities, and firms provide the requested records in a universal electronic format known as the EBS format. It is a fundamental obligation of broker-dealers to provide complete and accurate EBS data when requested by representatives of the Commission to do so. The submission of complete and accurate blue sheet data is critical to many aspects of the Commission's operations and its ability to discharge its enforcement and regulatory mandates. The failure of a broker-dealer to provide complete and accurate EBS information in response to a Commission request can impact the Commission's ability to discharge its statutory obligations, undermine the integrity of its investigations and examinations, and ultimately interfere with the Commission's ability to protect investors.

3. From January 6, 2014 to August 13, 2018 (the "relevant period"), BMO CMC made 4,074 EBS submissions that contained trade data for 5,419,376 transactions, all of which were deficient in one or more ways. As a result, BMO CMC violated the recordkeeping and reporting requirements of Section 17(a)(1) of the Exchange Act and Rules 17a-4(j) and 17a-25 thereunder.

4. Section 17 of the Exchange Act imposes on broker-dealers recordkeeping and reporting requirements that are essential to the Commission's ability to enforce the federal securities laws and to protect investors. To ensure the continued effectiveness of the Commission's enforcement and regulatory programs, broker-dealers must comply with, among other things: Rule 17a-25, requiring that broker-dealers submit electronically securities transaction information upon request by the Commission; and Rule 17a-4(j), requiring broker-dealers to furnish promptly legible, true, complete, and current copies of required records upon request by a representative of the Commission. BMO CMC failed to comply with these requirements, as described below.

#### Respondent

5. **BMO Capital Markets Corp.** is a Delaware corporation with its principal place of business in New York, New York. BMO CMC is a part of BMO Financial Group, and has been registered with the Commission as a broker-dealer since 1985 and as an investment adviser since 2012.

## Facts

### **A. BMO CMC's Deficient EBS Submissions**

6. From January 6, 2014 to August 13, 2018, BMO CMC made 4,074 EBS submissions that contained trade data for 5,419,376 transactions, all of which were deficient in one or more ways.

7. BMO CMC's submissions contained inaccurate EBS fields related to information about the securities transactions reported, such as average price account data, solicited codes, contra-party identifiers, primary party identifiers, transaction type identifiers, exchange codes and buy/sell codes. For example, BMO CMC reported to the Commission incorrect average price account data (e.g., house accounts used to incrementally execute orders over time and then transfer the shares between the customer's account and the average price account in one transaction) for 5,120,053 securities transactions (94.5% of all reported transactions). Additionally, BMO CMC reported incorrect data in the buy/sell code field (i.e., reporting certain short sales as long sales) for 686,287 securities transactions (12.7% of all reported transactions). BMO CMC's failure to provide correct average price account data and buy/sell codes resulted from an undetected coding error relating to its process of transmitting data to a vendor for production to the Commission or resulted from undetected coding errors in the vendor's system.

8. BMO CMC also provided EBS data with missing or inaccurate fields related to firm or customer identifying information such as zip/country codes, state codes, tax identification numbers, large trader identifiers, branch office/registered representative numbers and broker/dealer codes. For example, BMO CMC reported 4,518,028 securities transactions in which certain zip/country code fields were left blank (83.4% of all reported transactions). BMO CMC also reported incorrect branch office and/or registered representative numbers for all 5,419,376 securities transactions (100% of transactions). These deficient securities transaction fields also resulted from an undetected coding error relating to its process of transmitting data to a vendor for production to the Commission or resulted from undetected coding errors in the vendor's system.

9. In addition to reporting inaccurate transactions within its submissions, BMO CMC omitted 143,190 securities transactions (2.6% of all reported transactions) during the relevant period because transactions between BMO CMC and a Canadian affiliate were netted and incorrectly reported as one trade.

10. BMO CMC did not detect the errors in its EBS submissions, at least in part, because it did not have a reasonable process to verify that all of the fields required to be populated in EBS submissions included accurate values and information. For example, BMO CMC did not have pre-submission controls to validate that the information in its EBS submissions was complete and accurate. The firm's pre-submission controls were limited to monitoring that EBS submissions were processed for the correct CUSIP and time period and submitted in a timely manner. Because BMO CMC lacked processes for validating the accuracy of the information reported in its EBS submissions, no one at the firm recognized the systemic issues that led to the firm's regular reporting of deficient EBS information.

## **B. BMO CMC's Remedial Efforts**

11. BMO CMC engaged in remedial efforts to address the causes for its deficient EBS submissions. Specifically, BMO CMC retained an expert regulatory and technology consultant to conduct a comprehensive review of its EBS reporting process and to assist BMO CMC in the identification and correction of the deficiencies in its EBS reporting. Further, BMO CMC instituted new controls over its EBS reporting process intended to ensure the completeness and accuracy of its EBS submissions – such as implementing the consultant's software to perform automated, pre-submission validations and a full reconciliation of EBS data with BMO CMC's trade blotters and customer settlement data. BMO CMC also adopted new policies and procedures for processing EBS requests and submitting EBS data and created a new, dedicated Regulatory Services team to oversee EBS. BMO CMC also implemented new risk-based EBS monitoring and testing procedures, including manual quarterly pre-submission validation and testing of trade data.

### **Violations of the Federal Securities Laws**

12. Section 17(a)(1) of the Exchange Act requires, among other things, that broker-dealers make and keep for prescribed periods such records, furnish such 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 securities laws. Exchange Act Rule 17a-4(j), promulgated thereunder, requires, in part, broker-dealers such as BMO CMC to furnish promptly legible, true, complete, and current copies of those records of the member, broker or dealer that are required to be preserved under Exchange Act Rule 17a-4 and any other (i.e., non-required) records of the member, broker or dealer subject to examination under Section 17(b) of the Exchange Act that are requested by a representative of the Commission. Likewise, Exchange Act Rule 17a-25 requires that broker-dealers such as BMO CMC shall, upon request, electronically submit to the Commission the securities transaction information as required in the rule.

13. As described above, BMO CMC failed to furnish complete and accurate records to the Commission staff that were requested by the Commission in its blue sheet requests. Therefore, BMO CMC willfully violated the recordkeeping and reporting requirements of Section 17(a)(1) of the Exchange Act and Rule 17a-4(j) thereunder by failing to furnish promptly true and complete trading information as requested by Commission staff over a period of more than four years. In addition, BMO CMC willfully violated Exchange Act Rule 17a-25 by failing to submit electronically certain securities transaction information to the Commission through the EBS system in response to requests made by the Commission.

### **BMO CMC's Remedial Efforts**

In determining whether to accept the Offer, the Commission considered remedial acts 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 BMO CMC's Offer.

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

A. Respondent BMO CMC cease and desist from committing or causing any violations and any future violations of Section 17(a)(1) of the Exchange Act and Rules 17a-4(j) and 17a-25 promulgated thereunder.

B. Respondent BMO CMC is censured.

C. Respondent BMO CMC shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$1,950,000.00 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 BMO CMC 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 Joseph G. Sansone, Chief, Market Abuse Unit, Division of Enforcement, Securities and Exchange Commission, Brookfield Place, 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.

Vanessa A. Countryman  
Secretary