

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 87155 / September 30, 2019**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-19563**

**In the Matter of**

**VIRTU AMERICAS LLC**  
**(f/k/a KCG Americas 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 Virtu Americas LLC (f/k/a KCG Americas LLC) (“VAL” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“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 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 Respondent’s Offer, the Commission finds that:

## **Summary**

1. These proceedings arise out of the failure of VAL's predecessor entity, KCG Americas LLC ("KCGA"), to comply with Regulation Systems Compliance and Integrity ("Regulation SCI"). VAL owns and operates Virtu MatchIt, formerly known as KCG MatchIt, an alternative trading system ("ATS") commonly referred to as a "dark pool." Under Regulation SCI, an ATS that exceeds certain trading volume thresholds is defined as an SCI ATS and, thus, is required to comply with the substantive provisions of Regulation SCI. KCGA attempted to keep KCG MatchIt's trading volume below those volume thresholds by implementing an automated system to monitor the trading activity on KCG MatchIt (the "Volume Monitoring System"). The Volume Monitoring System was intended to discontinue trading in particular securities before their trading volume exceeded the SCI ATS definitional volume thresholds. Due to an error in the reporting logic that calculated execution volumes for KCG MatchIt, however, the Volume Monitoring System did not function as intended and, as a result, KCG MatchIt exceeded the relevant volume thresholds and became an SCI ATS starting on February 3, 2015 and continuing for at least a year and a half. Accordingly, KCGA was required to be in compliance with Regulation SCI starting on November 3, 2015. Despite KCG MatchIt being subject to the requirements of Regulation SCI, KCGA did not comply with certain provisions of Regulation SCI.

## **Respondent**

2. VAL is a Delaware entity with principal executive offices in New York, New York. It is a broker-dealer registered with the Commission. VAL is a subsidiary of Virtu Financial, Inc., which is incorporated in Delaware and headquartered in New York, New York. Virtu Financial, Inc. acquired KCG Holdings, Inc. on July 20, 2017. Prior to that acquisition, VAL was known as KCG Americas LLC (formerly known as Knight Capital Americas LLC). VAL owns and operates an ATS named Virtu MatchIt, formerly known as KCG MatchIt, which is a private execution venue that accepts, matches, and executes orders to buy and sell securities that it receives from ATS subscribers including VAL's clients and Virtu MatchIt direct subscribers.

## **Facts**

3. Regulation SCI became effective on February 3, 2015 and applies to certain ATSs, self-regulatory organizations, plan processors, and exempt clearing agencies (collectively, "SCI entities").

4. The Commission enacted Regulation SCI to establish a formal regulatory structure to govern the automated systems of SCI entities and to mitigate certain concerns presented by technological developments in the securities markets. Specifically, Regulation SCI was intended to address the concern that "[g]iven the speed and interconnected nature of the U.S. securities markets, a seemingly minor systems problem at a single entity can quickly create losses and liability for market participants, and spread rapidly across the national market system, potentially creating widespread damage and harm to market participants, including investors."

*See Regulation Systems Compliance and Integrity, Final Rule, Exchange Act Release No. 73639, at p. 587 (Nov. 19, 2014).*

5. Under Rule 1000 of Regulation SCI, an ATS can meet the definition of an SCI ATS in two ways. As relevant here, an SCI ATS is defined as “an alternative trading system . . . which during at least four of the preceding six calendar months . . . [had] with respect to NMS stocks . . . [f]ive percent (5%) or more in any single NMS stock, and one-quarter percent (.25%) or more in all NMS stocks, of the average daily dollar volume reported by applicable transaction reporting plans.”

6. If an ATS meets the definition of an SCI ATS in Rule 1000, it must comply with the requirements of Regulation SCI, including the obligations to:

a. Establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its applicable systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets, and that they operate in a manner that complies with the Exchange Act and the rules and regulations thereunder and the entity’s rules and governing documents, as applicable.

b. Mandate participation by designated members or participants in scheduled testing of the operation of their business continuity and disaster recovery plans, including backup systems, and to coordinate such testing on an industry- or sector-wide basis with other SCI entities.

c. Take corrective action with respect to SCI events (defined to include systems disruptions, systems compliance issues, and systems intrusions), and notify the Commission of such events.

d. Disseminate information about certain SCI events to affected members or participants and, for certain major SCI events, to all members or participants of the SCI entity.

e. Conduct a review of their systems by objective, qualified personnel at least annually, submit quarterly reports regarding completed, ongoing, and planned material changes to their SCI systems to the Commission, and maintain certain books and records.

7. Under the rule, SCI ATSs are required to come into compliance with Regulation SCI within six months of meeting the definition of an SCI ATS, with the exception that no ATS had to be in compliance before November 3, 2015. Accordingly, any ATS that met the definition of an SCI ATS at the time Regulation SCI became effective on February 3, 2015 was required to be in compliance with Regulation SCI by November 3, 2015. Similarly, any ATS that met the definition between February 3, 2015 and May 3, 2015 was required to be in

compliance by November 3, 2015. An ATS that met the definition of an SCI ATS on or after May 4, 2015 had six months to come into compliance.

8. At all times relevant to this Order, KCG MatchIt exceeded the relevant volume threshold for all NMS stocks set forth by Regulation SCI. As discussed more fully below, KCG MatchIt also exceeded the Regulation SCI volume threshold for single NMS stocks at times during the relevant period, thereby qualifying as an SCI ATS.

9. When the Commission published the proposed rule for Regulation SCI, KCGA reviewed the requirements of the proposed rule and determined it did not want KCG MatchIt to meet the definition of an SCI ATS. Accordingly, KCGA attempted to keep KCG MatchIt volume below the Regulation SCI volume thresholds. To implement its decision, KCGA used the Volume Monitoring System, which was an automated system that monitored the trading activity on KCG MatchIt and was intended to discontinue trading in a particular security when the average daily dollar volume for trading in that security on KCG MatchIt exceeded the Regulation SCI volume thresholds for three of the last five months.

10. In the Final Rule for Regulation SCI, the Commission recognized that an ATS might limit “its trading so as not to reach the volume thresholds for SCI ATSs.” *See* Regulation Systems Compliance and Integrity, Final Rule, Exchange Act Release No. 73639, at p. 48 (Nov. 19, 2014). The Commission explained, however, that “only those ATSs that limit their trading so as to fall below both the single NMS stock threshold and the broad NMS stocks threshold will not be subject to the requirements of Regulation SCI.” *Id.*

11. Due to an error in the reporting logic that calculated execution volumes for KCG MatchIt, the Volume Monitoring System did not account for some trades on KCG MatchIt. As a result of that error, KCG MatchIt exceeded the Regulation SCI volume thresholds and was subject to Regulation SCI as of the effective date of February 3, 2015. Accordingly, KCG MatchIt met the definition of an SCI ATS as of the February 3, 2015 effective date and was required to comply with Regulation SCI by November 3, 2015.

12. KCG MatchIt continued to meet the definition of an SCI ATS after the February 3, 2015 effective date in additional securities during other periods between March 2015 and October 2016, when the SEC’s Office of Compliance Inspections and Examinations (“OCIE”) identified this issue during a routine exam. Each time KCG MatchIt crossed the Regulation SCI threshold, it met the definition of an SCI ATS and was required to comply with the substantive requirements of Regulation SCI.

13. Despite KCG MatchIt meeting the definition of an SCI ATS and thus being subject to the requirements of Regulation SCI, and as a result of the error described above, KCGA did not comply with certain provisions of Regulation SCI beginning on November 3, 2015. Specifically, KCGA did not: (a) establish the policies and procedures required by Regulation SCI; (b) file any quarterly or annual reports required by Regulation SCI; (c) conduct an annual Regulation SCI compliance review; (d) comply with various business continuity and

disaster recovery plan requirements of Regulation SCI; or (e) maintain the books and records required by Regulation SCI.

14. Although the Final Rule contemplated that firms may use automated processes to stay below the volume thresholds, KCGA's systems did not operate as intended. As described above, KCGA attempted to stay below the volume thresholds that would define it as an SCI ATS to avoid the application of Regulation SCI. It had the obligation to monitor whether it was staying below the volume thresholds or whether it was in fact exceeding the volume thresholds and therefore subject to the requirements of Regulation SCI. *See* Regulation Systems Compliance and Integrity, Final Rule, Exchange Act Release No. 73639, at p. 63, fn. 167 (Nov. 19, 2014) (noting that “[t]he Commission does not believe [the ‘four out of the preceding six months’] measurement period to be overly cumbersome to apply in practice, as it would require only that an ATS undertake an assessment once at the end of each month as to whether the ATSs had exceeded the volume thresholds set forth in the rule and then make a determination at the end of a six month period whether the ATS met this threshold for four out of the six preceding months.”).

15. KCGA established the Volume Monitoring System after reviewing the Proposed Rule and then relied upon the Volume Monitoring System for more than a year and half after the Regulation SCI effective date to keep it from crossing the Regulation SCI ATS volume thresholds. However, during that time, the firm did not identify the error that prevented the Volume Monitoring System from working as intended to keep the firm below the volume thresholds.

16. KCGA fixed the error in the reporting logic that calculated execution volumes for KCG MatchIt in October 2016, after OCIE brought this issue to KCGA's attention.

17. In August 2017, KCGA identified another operational issue with the timing of two batch processes used to pull data for the Volume Monitoring System (the “batching issue”). Because of the batching issue, KCG MatchIt exceeded the Regulation SCI volume thresholds for single NMS stocks on certain occasions after October 2016 through April 2017. KCGA fixed the batching issue upon identifying it.

### **Violations**

18. As a result of the conduct described above, VAL willfully<sup>1</sup> violated:

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<sup>1</sup> “Willfully,” for purposes of imposing relief under Section 15(b) of the Exchange Act “means no more than 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.” *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term “willfully” for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a

- a. Rule 1001(a)(1) of Regulation SCI, which requires each SCI entity to “establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems and, for purposes of security standards, indirect SCI systems, have levels of capacity, integrity, resiliency, availability, and security, adequate to maintain the SCI entity’s operational capability and promote the maintenance of fair and orderly markets”;
- b. Rule 1001(b)(1) of Regulation SCI, which requires each SCI entity to “establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems operate in a manner that complies with the Act and the rules and regulations thereunder and the entity’s rules and governing documents, as applicable”;
- c. Rule 1001(c) of Regulation SCI, which requires each SCI entity to “establish, maintain, and enforce reasonably designed written policies and procedures that include the criteria for identifying responsible SCI personnel, the designation and documentation of responsible SCI personnel, and escalation procedures to quickly inform responsible SCI personnel of potential SCI events”;
- d. Rule 1003(a)(1) of Regulation SCI, which requires each SCI entity to file a quarterly report with the Commission “describing completed, ongoing, and planned material changes to its SCI systems and the security of indirect systems, during the prior, current, and subsequent calendar quarters”;
- e. Rule 1003(b) of Regulation SCI, which requires each SCI entity to “[c]onduct an SCI review of the SCI entity’s compliance with Regulation SCI not less than once each calendar year,” “[s]ubmit a report of the SCI review...to senior management of the SCI entity for review no more than 30 calendar days after completion of such SCI review,” and “[s]ubmit to the Commission, and to the board of directors of the SCI entity or the equivalent of such board, a report of the SCI review...together with any response by senior management, within 60 calendar days after its submission to senior management of the SCI entity”;
- f. Rule 1004(a) of Regulation SCI, which requires each SCI entity to “[e]stablish standards for the designation of those members or participants that the SCI entity reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such [business continuity and disaster recovery] plans”;

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person has “willfully omit[ed]” material information from a required disclosure in violation of Section 207 of the Advisers Act).

- g. Rule 1004(b) of Regulation SCI, which requires each SCI entity to “[d]esignate members or participants...and require participation by such designated members or participants in scheduled functional and performance testing of the operation of such [business continuity and disaster recovery] plans, in the manner and frequency specified by the SCI entity, provided that such frequency shall not be less than once every 12 months”;
- h. Rule 1004(c) of Regulation SCI, which requires each SCI entity to “[c]oordinate the testing of such [business continuity and disaster recovery] plans on an industry- or sector-wide basis with other SCI entities”; and
- i. Rule 1005 (b) of Regulation SCI, which requires each SCI entity that is not an SCI SRO to “[m]ake, keep, and preserve at least one copy of all documents...relating to its compliance with Regulation SCI, including, but not limited to, records relating to any changes to its SCI systems and indirect systems” and “[k]eep all such documents for a period of not less than five years, the first two years in a place that is readily accessible to the Commission or its representatives.”

#### IV.

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

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

- A. Respondent VAL cease and desist from committing or causing any violations and any future violations of Rules 1001, 1003, 1004, and 1005 of Regulation SCI, promulgated under the Exchange Act.
- B. Respondent VAL is censured.
- C. Respondent VAL shall, within 14 (fourteen) days of the entry of this Order, pay a civil money penalty in the amount of \$1,500,000.00 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 Virtu Americas LLC 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 Sansone, Chief, Market Abuse Unit, Division of Enforcement, Securities and Exchange Commission, 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