

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10783 / May 6, 2020

SECURITIES EXCHANGE ACT OF 1934
Release No. 88830 / May 6, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19785

In the Matter of

Bloomberg Tradebook LLC,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST
PROCEEDINGS, PURSUANT TO SECTION
8A OF THE SECURITIES ACT OF 1933
AND SECTION 15(b) 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 Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Bloomberg Tradebook LLC (“Tradebook” 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 Respondent 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 Section 8A of the Securities Act of 1933 and Section 15(b) 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 finds¹ that:

Summary

1. This matter involves omissions of material facts and material misstatements made by Tradebook, then an agency broker-dealer, in connection with its use of an undisclosed order routing arrangement called the Low Cost Router. Tradebook's marketing materials represented that Tradebook's "advanced" technology, including its Smart Order Router ("SOR"), would determine the market centers to which customer orders were routed based on factors such as best price and liquidity considerations. Tradebook did not disclose that, contrary to these representations, routing decisions for some of the customer orders affected by the Low Cost Router arrangement were made not by Tradebook itself, but by unaffiliated broker-dealers. In addition, Tradebook provided customers with information about the identity of the market centers where some of the orders placed through the Low Cost Router were executed that was unverified and, at times, without basis.²

2. Tradebook used the Low Cost Router arrangement from November 2010 until September 2018, except for a four-month period in 2016 (the "Relevant Period").

3. During the Relevant Period, one of the services Tradebook offered to customers was the routing of orders to buy or sell stock to various market centers, including registered securities exchanges and alternative trading systems ("ATs"), for execution.

4. Beginning in 2010, Tradebook sought to reduce the costs it incurred to execute customer orders at market centers, particularly with respect to customers who paid relatively low commission rates to Tradebook.

5. As part of this cost-reduction effort, Tradebook entered into partnerships with three unaffiliated broker-dealers: Broker A, Broker B, and Broker C (together, the "Routing Partners"). The Routing Partners were generally able to obtain more favorable pricing from market centers than Tradebook itself, as a result of their relatively large trade volume. In order to leverage the Routing Partners' favorable pricing at various market centers, Tradebook sent certain customer orders to the Routing Partners, and the Routing Partners in turn sent those orders to the market, using the Routing Partners' own connections to the market centers. In internal communications, Tradebook referred to this arrangement as the "Low Cost Router" or "LCR."

6. Some of the customer orders that Tradebook's Low Cost Router arrangement sent to the Routing Partners were immediate-or-cancel orders ("IOCs"), that is, orders that would be

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.

² Tradebook is no longer active as an agency broker.

automatically cancelled if they did not obtain an immediate execution. For such IOCs, Tradebook's routing technology did not determine the market centers to which the orders were sent. Instead, Tradebook allowed the Routing Partners to dictate the routing of these orders, including, if the Routing Partners so chose, by directing the orders for execution in the Routing Partners' own ATSS.

7. Tradebook did not disclose to the affected customers that routing decisions for some of their orders were being made by the Routing Partners, even though this practice was inconsistent with Tradebook's representations to customers.

8. In addition, for part of the Relevant Period, Tradebook provided unverified execution venue information to customers in connection with orders sent to one of the Routing Partners, Broker B. During three distinct periods between December 2011 and May 2018, lasting for approximately 15 months in total, Broker B did not provide Tradebook with execution venue information for a significant percentage of the Tradebook customer orders that Broker B sent to the market. As a result, Tradebook could not verify the execution venue for these orders. Nonetheless, Tradebook reported to customers that these orders had been executed in specific market centers, which Tradebook selected by identifying the market centers to which Tradebook's own SOR would have sent the orders. Tradebook did not disclose to the affected customers that the reported execution venue for certain of their orders was unverifiable and in fact may well have been inaccurate.

9. As a result of the materially misleading statements and omissions described above, Tradebook violated Section 17(a)(2) of the Securities Act.

Respondent

10. Tradebook is a Delaware limited liability company with its principal office located in New York, New York. Tradebook is registered with the Commission as a broker-dealer. Tradebook is a direct and indirect wholly-owned subsidiary of Bloomberg L.P., a Delaware limited partnership with its principal office located in New York, New York.

Facts

The Low Cost Router Arrangement

11. During the Relevant Period, Tradebook offered a range of electronic trading services to its customers, including trading algorithms, direct market access, and order routing. Tradebook's customers included both asset managers and institutional investors, generally referred to as "buy-side" customers, and broker-dealers, generally referred to as "sell-side" customers. Tradebook's sell-side customers typically paid a per-share commission rate for executions that was lower than the commission rate paid by its buy-side customers.

12. When Tradebook received a stock order from a customer, it could execute the order in one of two ways: first, it could execute the order in its own ATS. Second, and relevant to this proceeding, it could send the order to a different market center for execution. In those

instances, Tradebook typically had to pay the market center a per-share fee for each execution (“venue fees”).³

13. In or around 2010, Tradebook employees became concerned that the company was earning little profit, and in some cases was losing money, executing trades for sell-side customers. Accordingly, Tradebook sought to reduce the venue fees it paid in connection with such executions.

14. One of the ways that Tradebook reduced the cost of executing trades for its sell-side customers was the Low Cost Router arrangement. In or around November 2010, Tradebook entered into an agreement with Broker A, a large broker-dealer that, among things, operated an equity ATS. Pursuant to this agreement, Tradebook sent certain orders entered by sell-side customers to Broker A. Broker A, in turn, sent those orders to various market centers using its own electronic connections to the market centers. Broker A charged Tradebook a set fee per share for each execution and, in turn, was responsible for paying any venue fees associated with the execution. Tradebook employees understood that, as a general matter, Broker A’s costs for executing Tradebook customer orders would be lower than Tradebook’s own costs for doing so, in part because Broker A had more order flow than Tradebook and so received volume discounts from some market centers, and in part because Broker A could execute some orders within its own ATS without paying a venue fee.

15. Tradebook continued sending customer orders to Broker A pursuant to this arrangement until approximately August 2014.

16. In or around September 2011, Tradebook entered into a similar Low Cost Router arrangement with Broker B, a large broker-dealer that operated an equity ATS. The Low Cost Router arrangement with Broker B was active during three periods: September 2011 through February 2012; February 2014 through June 2014; and June 2016 through September 2018.

17. In or around October 2012, Tradebook entered into a similar Low Cost Router arrangement with Broker C, a large broker-dealer that operated an equity ATS. The Low Cost Router arrangement with Broker C was active from October 2012 through February 2016.

18. During the Relevant Period, Tradebook categorized at least 40 customers, the vast majority of which were sell-side firms, as “LCR-eligible,” meaning that some of those customers’ orders could be, and were, sent to the Routing Partners as part of the Low Cost Router arrangement.

The Routing Partners’ Control of Routing for Certain Tradebook Customer Orders

19. Tradebook sent both IOC and non-IOC orders to each of the Routing Partners as part of the Low Cost Router arrangement. For non-IOC orders, Tradebook provided to the

³ In certain instances market centers paid Tradebook a rebate for executions. Typically, the venue fees that Tradebook paid exceeded any rebates it received.

Routing Partners routing instructions for each order, which specified, among other things, the market centers to which the order should be directed (the “intended venue”).

20. For IOC orders sent to Brokers B and C, however, Tradebook did not provide such routing instructions. Instead, Tradebook allowed Brokers B and C to make routing decisions for those orders. Among other things, Brokers B and C could execute the IOCs in their own ATSS, if a match was available.

21. During the Relevant Period, Broker B exercised routing discretion over approximately 1.3 million executed Tradebook customer orders. During the Relevant Period, Broker C exercised routing discretion over approximately 4.9 million executed Tradebook customer orders.

22. Tradebook provided routing instructions for both non-IOC and IOC orders sent to Broker A. Broker A followed Tradebook’s instructions with respect to non-IOCs. However, Broker A was not required to follow those instructions with respect to IOCs and could route IOCs according to its own routing logic, including by routing the orders to their own ATSS. The exception to this general practice was that Tradebook required Broker A to follow its routing instructions for IOC orders of two specific customers, which, Tradebook believed, were “sensitive” to changes in routing.

23. During the Relevant Period, Broker A exercised routing discretion over 254,000 executed Tradebook customer orders.

24. During the Relevant Period, Tradebook routed approximately 22 million LCR eligible orders, of which approximately 29% were executed, in whole or in part, based on routing instructions provided by the Routing Partners.

Tradebook’s Failure to Disclose the Routing Partners’ Control of Routing for Certain Tradebook Customer Orders

25. Tradebook’s practice of allowing the Routing Partners to make routing decisions for certain customer orders was inconsistent with its representations to customers. In certain customer-facing documents distributed during the Relevant Period, Tradebook represented that routing decisions for customer orders would be made by Tradebook itself, based on the outputs generated by Tradebook’s own SOR. Tradebook further represented that its SOR was “advanced” and “sophisticated.”

26. For example, one Tradebook marketing document, entitled “What Are the Components of ‘Smart’ in ‘Smart Order Routing’” described the purported benefits of Tradebook’s routing technology in detail, including Tradebook’s use of “statistical heat maps” to find liquidity, its “dynamic monitor[ing] of real-time trading” and its ability to minimize “potential information leakage.” Similarly, other Tradebook marketing materials indicated that “Tradebook’s SOAR [Smart Order Algorithmic Router] aggregates, seeks and extracts liquidity”

and that, as a result, “[o]rders are routed to venues based on best price and liquidity considerations.”

27. Tradebook did not disclose to LCR-eligible customers that, for a category of their orders, the Routing Partners would make the final routing decision, rather than the SOR described in these and other Tradebook marketing materials.

28. In July 2014, Tradebook made available to customers on its website a 48-page summary of its products and services, 11 pages of which focused on Tradebook’s SOR. This summary included a statement indicating that, for certain customers who paid low commission rates, “cost optimization” could be a factor in order routing decisions made by Tradebook. However, the summary did not provide the additional information necessary for customers to determine whether their orders were at the commission rate that would subject them to “cost-optimized” routing. Moreover, the summary did not disclose that, in some instances, unaffiliated broker-dealers could make routing decisions for Tradebook customer orders.

Tradebook’s Communication of Unverifiable Execution Venue Information to Customers in Connection with the Low Cost Router Arrangement

29. During at least 33 months, Tradebook provided execution venue information to customers in connection with the Low Cost Router arrangement with Broker B that was unverifiable and, at times, without basis.

30. Generally, when one of the Routing Partners received a Tradebook customer order as part of the Low Cost Router arrangement, it would report back to Tradebook information concerning the executions, if any, that the order received, including the execution venue for the order. Tradebook would then transmit this execution venue information to its customers.

31. However, for approximately 15 months during three distinct time periods (namely, between approximately December 2011 and February 2012, January 2014 and June 2014, and June 2016 and December 2016), Broker B did not provide any execution venue information to Tradebook. Accordingly, Tradebook did not know where the orders sent to Broker B during these periods had been executed.

32. Tradebook did not disclose to the affected customers that it lacked the information necessary to determine where certain of their orders had been executed. Instead, for each of these orders, Tradebook reported the intended venue generated by Tradebook’s own SOR as the actual execution venue. Tradebook could not verify whether, in fact, the orders sent to Broker B had been executed in the market center reported to the customers. Moreover, because, as noted above, Tradebook did not transmit any routing instructions to Broker B with respect to the IOC orders, Tradebook had no basis to assume that the intended venues selected by its SOR were in fact the venues to which Broker B had routed those IOC orders.

33. On or around December 28, 2016, Broker B began providing Tradebook with execution venue information for IOC orders. After that point, Tradebook reported accurate execution venue information to customers in connection with IOC orders sent to Broker B that were ultimately executed in Broker B's own ATS, certain other ATSS, or on a registered national securities exchange. However, when IOC orders sent to Broker B were executed in certain other ATSS, Tradebook continued to report the venue selected by Tradebook's SOR as the execution venue, even though, as in earlier periods, it did not provide any routing instructions to Broker B.

34. With respect to non-IOC orders, Broker B continued not to report execution venue information to Tradebook until approximately May 2018. During this period, Tradebook continued to provide Broker B with intended venues for non-IOC orders, and continued to provide its customers with execution venue information for such non-IOC orders that matched those intended venues. However, because Broker B did not provide execution venue information for non-IOC orders, Tradebook could not verify that the execution venues reported to its customers for these orders were accurate.

35. During the Relevant Period, Tradebook reported unverifiable execution venue information to customers in connection with approximately 1.5 million orders sent to Broker B.

Violations

36. As a result of the conduct described above, Tradebook willfully violated Section 17(a)(2) of the Securities Act, which makes it unlawful for "any person in the offer or sale of any securities ... directly or indirectly ... to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading."⁴

Tradebook's Cooperation

37. In determining to accept the Offer, the Commission considered the significant cooperation afforded to the Commission staff by Tradebook. Among other things, Tradebook voluntarily retained an outside expert to undertake a complex analysis of millions of rows of data related to customer orders and executions. Tradebook provided the results of this analysis to the staff.

⁴ "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).

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 Section 8A of the Securities Act and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Tradebook cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Tradebook is censured.

C. Tradebook shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$5,000,000 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;
- (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 Tradebook 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, 200 Vesey Street, Suite 400, New York, New York 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