

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

**SECURITIES ACT OF 1933**  
**Release No. 10795 / June 30, 2020**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 89190 / June 30, 2020**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 33915 / June 30, 2020**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-19844**

**In the Matter of**

**POTAMUS TRADING LLC**  
**and ERIC J. PRITCHETT**

**Respondents.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS, PURSUANT TO  
SECTION 8A OF THE SECURITIES ACT  
OF 1933, SECTIONS 15(b) AND 21C OF  
THE SECURITIES EXCHANGE ACT OF  
1934, AND SECTION 9(b) OF THE  
INVESTMENT COMPANY 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 Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Potamus Trading, LLC (“Potamus”) and Eric J. Pritchett (“Pritchett”) (collectively, “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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 them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Section 9(b) of the Investment Company 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 Respondents' Offers, the Commission finds<sup>1</sup> that:

#### Summary

These proceedings arise from representations that a registered broker-dealer, Potamus Trading LLC ("Potamus"), made to its broker-dealer clients about how it would handle and fill their orders to trade equity securities. Between September 2013 and March 2017, Potamus and its CEO Eric Pritchett portrayed the firm as filling its clients' orders on a principal basis by trading from its own inventory of securities or risking its capital in the market (e.g., short-selling to fill a client's order and then buying in the market to cover). In truth, Potamus rarely traded from inventory or risked its capital, and instead filled the vast majority of its clients' orders by engaging in net trading.<sup>2</sup> Often when Potamus received client orders, it did not fill them until it searched for and obtained executions for its own account within the National Best Bid and Offer ("NBBO"), and often at the midpoint of the NBBO. If Potamus succeeded in obtaining an execution for its own account, only then did it fill the client's order at the National Best Bid ("NBB") or the National Best Offer ("NBO"), as applicable, and provide the client a rebate. If Potamus failed to obtain an execution for itself, it canceled the client's order. Prior to March 2017, Potamus did not disclose its net trading to clients. By virtue of this conduct, Potamus and Pritchett violated Sections 17(a)(2) and 17(a)(3) of the Securities Act.

#### Respondents

1. **Potamus Trading LLC** is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. Founded in 2012, Potamus is a broker-dealer registered with the Commission.

2. **Eric J. Pritchett**, age 45, was the CEO and a registered representative of Potamus from January 2012 until August 2017 and held the following licenses for most of that period:

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<sup>1</sup> The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> A net trade takes place when a broker-dealer, while holding a customer/client order to buy (sell), executes a buy (sell) as principal at one price (from the street or another customer/client) and then executes an offsetting sell to (buy from) the customer/client at a different price.

Series 4, 7, 24, 27, 55, and 63. Pritchett currently resides in Pleasanton, California and formerly resided in Natick, Massachusetts.

### **Background**

3. Potamus was founded in early 2012 as a joint venture between an affiliate of a hedge fund and the parent company of another broker-dealer. According to the business plan filed with FINRA, the joint venture was designed to combine the hedge fund affiliate's technological and high-speed trading expertise with the parent's broker-dealer operations.

4. The business plan also detailed the services that Potamus planned to offer. It said that Potamus would provide order execution services such as direct market access routes and high-speed, algorithmic execution strategies to broker-dealer clients; it also discussed Potamus becoming a registered market maker on an exchange and providing liquidity as a dealer.

5. Potamus started net trading in mid-2013 in response to certain order flow being sent by its only active client at the time. Potamus decided it would not be profitable to fill this order flow from its own inventory or by risking its capital in the market, and Potamus began utilizing net trading as a means to try to profit from this order flow.

### **Potamus's Representations to Clients**

6. Potamus's sales force was small; it primarily consisted of Pritchett and another individual who used his industry connections to contact prospective clients. After initial introductions were made, Pritchett described Potamus's services to many of these clients. During these discussions, Pritchett portrayed Potamus as a high-speed, algorithmic trading firm that focused on filling client orders as principal, either by trading from inventory or risking its capital in the market.

7. For instance, in a series of October 2013 e-mails to a broker-dealer that later became one of Potamus's largest clients, Pritchett stated that Potamus offered a "basic IOC dark pool" route, which he characterized in a subsequent e-mail as being "designed for the internalization component." The client understood this to mean that Potamus was offering a route to which immediate-or-cancel ("IOC") orders could be sent and Potamus would either immediately (a) fill the client's orders as principal from inventory or by taking market risk, or (b) cancel them.

8. Similarly, in an April 2014 e-mail to another large client, Pritchett trumpeted Potamus's "internalization rate," adding that Potamus "trade[s] for spread capture and our latency has to do with various trading opportunity checks that we have to go through before we can commit our capital." The client understood this to mean that Potamus was a market maker that filled orders by trading from its own inventory of securities or risking its capital in the market.

9. In the spring of 2014, Potamus also prepared, with Pritchett's assistance, a marketing brochure to be distributed to potential clients. The brochure stated:

“Potamus Trading offers access to a world-class market center that provides broker-dealers access to our proprietary liquidity pool.”

“Potamus Trading manages a dark pool that provides competitive rebates for client order flow through a simple IOC interface.”

“Potamus Trading is a registered market maker and is the only liquidity provider in our dark pool. When you send orders to Potamus Trading, you gain access to a unique pool of liquidity and know who you are trading with.” (Underline emphasis supplied.)

10. A few months later, Pritchett assisted in drafting a shorter, one-page marketing brochure which advertised Potamus as providing a “Differentiated source of liquidity.”

11. Consistent with these marketing brochures, Pritchett told clients with whom he spoke that Potamus looked at their orders as opportunities to trade from its inventory.

### **How Potamus Actually Filled Client Orders**

12. Contrary to its representations, Potamus did not operate a dark pool or proprietary liquidity pool. Nor did Potamus internalize any significant portion of its clients’ orders by filling them from its own inventory of securities or risking its capital in the market.

13. Between September 30, 2013 and March 31, 2017, Potamus only internalized approximately 3.5% of the client orders that it filled.

14. Instead of filling client orders from inventory or by risking its capital in the market, Potamus filled the vast majority of the client orders that it received by net trading.

15. In general, Potamus’s clients were not aware that Potamus was filling their orders by engaging in net trading. According to Pritchett, prior to March 2017, Potamus never told clients that it was filling their orders in this manner.

### **Violations**

16. As a result of the conduct described above, Respondents willfully<sup>3</sup> violated Section 17(a)(2) of the Securities Act, which prohibits obtaining money or property in the offer or sale of

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<sup>3</sup> “Willfully,” for purposes of imposing relief under Section 15(b) of the Exchange Act and Section 9(b) of the Investment Company 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 person has “willfully omit[ted]” material information from a required disclosure in violation of Section 207 of the Advisers Act).

securities 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 under which they were made, not misleading.

17. As result of the conduct described above, Respondents 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.

### **Potamus's Inability to Pay**

18. Respondent Potamus has submitted a sworn Statement of Financial Condition dated February 25, 2020 and other evidence and has asserted its inability to pay a greater civil penalty amount. The Commission considered Respondent Potamus's sworn Statement of Financial Condition and other evidence in setting the amount of Respondent Potamus's civil penalty.

### **Undertakings**

19. Respondent Pritchett undertakes to provide to the Commission, within 30 days after the end of the twelve month suspension period described below, an affidavit that he has complied fully with the sanctions described in Section IV below.

## **IV.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, and Section 9(b) of the Investment Company Act it is hereby ORDERED that:

A. Respondents shall cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and (3) of the Securities Act.

B. Respondent Potamus is censured.

C. Respondent Pritchett be, and hereby is, suspended for a period of twelve (12) months, effective on the second Monday following entry of this Order, from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer

or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

D. Based upon Potamus's sworn representations in its Statement of Financial Condition dated February 25, 2020 and other documents submitted to the Commission, Respondent Potamus shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$50,000 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.

E. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent Potamus provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent Potamus was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent Potamus may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of a penalty should not be ordered; (3) contest the imposition of the maximum penalty allowable under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

F. Respondent Pritchett shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$50,000 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 Potamus or Pritchett 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, New York Regional Office, 200 Vesey Street, Suite 400, New York, NY 10281.

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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 either 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.

G. Respondent Pritchett comply with the undertakings enumerated in Paragraph 19 above.

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 Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents 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 Respondents 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.

Vanessa A. Countryman  
Secretary