UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10867 / September 30, 2020

SECURITIES EXCHANGE ACT OF 1934
Release No. 90050 / September 30, 2020

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4181 / September 30, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20107

In the Matter of **BGC PARTNERS, INC.,** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO 8A OF THE SECURITIES ACT OF 1933, AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against BGC Partners, Inc. ("BGC" 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. 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 Cease-and-Desist

Proceedings, Pursuant to 8A of the Securities Act, and Section 21C of the Exchange Act, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

These proceedings arise out of BGC's false and misleading disclosures concerning how it calculated a key non-GAAP financial measure, which BGC reported in its quarterly and annual earnings releases and during earnings calls. BGC called this measure post-tax distributable earnings ("Post-Tax DE"). From its first quarter of 2015 through its first quarter of 2016 (the "Relevant Period"), BGC repeatedly emphasized Post-Tax DE as a key financial measure of its after-tax profitability. To arrive at this measure, BGC multiplied distributable earnings before taxes ("Pre-Tax DE") by a DE tax rate. BGC, however, excluded certain expenses from its calculation of Pre-Tax DE, while continuing to apply a tax deduction associated with these expenses when calculating the DE tax provision and ultimately, Post-Tax DE. As a result, when calculating Post-Tax DE, BGC took the benefit of a tax deduction without reducing Pre-Tax DE income by the amount of the expense that was the basis for the deduction.

BGC made materially false and misleading statements in its earnings releases during the Relevant Period about how it calculated Post-Tax DE. Specifically, it stated in substance that the provision for taxes on Pre-Tax DE took into account all of the adjustments that it made to Pre-Tax DE. In fact, BGC included tax deductions in its Post-Tax DE calculation associated with expenses not included in Pre-Tax DE. Because BGC included those deductions in its Post-Tax DE calculation, its Post-Tax DE figure was inflated by over 30% in its year-end earnings release for 2015 (the "2015 Earnings Release"), which was furnished to the Commission as an attachment to a Form 8-K dated February 10, 2016. BGC's calculation of Post-Tax DE for 2015 also resulted in an artificially low effective DE tax rate of 15%. A lower effective DE tax rate increased BGC's Post-Tax DE, the company's key non-GAAP measure of after-tax profitability.

Respondent

1. **BGC** is a global brokerage company servicing the financial and real estate markets. It is a Delaware corporation headquartered in New York, New York. BGC's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its shares trade on the NASDAQ under the ticker "BGCP." BGC files periodic reports, including Forms 10-K and 10-Q with the Commission, pursuant to Section 13(a) of the Exchange Act and related rules thereunder.

[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.

BGC's Use of a Non-GAAP Financial Measure

2. During the Relevant Period, BGC misleadingly described Post-Tax DE in its earnings releases as "pre-tax distributable earnings adjusted to assume that all pre-tax distributable earnings were taxed at the same effective rate." However, BGC's Post-Tax DE methodology did not calculate tax on all Pre-Tax DE. BGC increased Pre-Tax DE by excluding various expenses. Many of these increases were not taxed because BGC then included deductions associated with these expenses in calculations of its DE tax provision and ultimately, Post-Tax DE. Put simply, when BGC calculated Post-Tax DE, BGC left out expenses that would lower Pre-Tax DE, while at the same time, including those expenses as deductions when calculating its DE tax provision. As a result, when calculating Post-Tax DE, BGC took the benefit of a tax deduction without reducing Pre-Tax DE by the amount of the expense that was the basis for the deduction.

BGC Excluded Expenses in Calculating Post-Tax DE

3. As discussed below, BGC used a variety of practices to calculate Post-Tax DE, resulting in Post-Tax DE being inflated by over 30% in the annual 2015 Earnings Release and by approximately 25% in the quarterly earnings release for the first quarter of 2016, dated April 27, 2016 (the "2016-1Q Earnings Release").

a. $100 Million Settlement

4. On January 13, 2015, media reports stated that BGC had agreed to pay $100 million to settle a lawsuit brought by another brokerage firm. In its 2014 GAAP financial statements, filed in the 2014 Form 10-K, BGC recorded as an expense the approximately $100 million settlement. In 2015, BGC paid out the settlement to the brokerage firm in cash.

5. BGC did not reduce Pre-Tax DE for either 2014 or 2015 by any amount for that legal settlement expense, which BGC had appropriately recognized in its 2014 GAAP financial statements. However, BGC included a $100 million tax deduction associated with that legal settlement expense when it calculated the tax provision used to arrive at 2015 Post-Tax DE. As a result of this conduct, which BGC has never disclosed, BGC's Post-Tax DE was approximately 19% greater in the 2015 Earnings Release than it would have been had BGC's calculation not included a tax deduction for the excluded expense.

b. Partnership Unit Expenses

6. In the 2015 Earnings Release, BGC did not reduce Pre-Tax DE by any amount for partnership unit expenses, an expense related to equity-based employee compensation. However, when BGC calculated the DE tax provision, it included an approximately $79.9 million tax deduction for these expenses. As a result, BGC's Post-Tax DE was approximately 9% greater in the 2015 Earnings Release than it would have been had BGC's calculation not included a tax deduction for the excluded expense.

c. Charitable Contributions

7. During the Relevant Period, BGC also used expenses related to charitable contributions to misleadingly calculate Post-Tax DE. In its 2016-1Q Earnings Release, BGC did not reduce Pre-Tax DE by any amount for charitable contributions expenses. However, when BGC calculated its DE tax provision, it included an approximately $17 million tax deduction for charitable contributions paid in the first quarter of 2016. As a result of BGC taking this tax deduction, along with tax deductions associated with partnership unit expenses that it also excluded from Pre-Tax DE, BGC's Post-Tax DE was approximately 25% greater in the 2016-1Q Earnings Release than it would have been had BGC's calculation not included a tax deduction for the excluded expense.

8. On May 27, 2016, BGC offered and sold senior notes to investors in a private placement.

Violations

9. As a result of the conduct described above, BGC violated Sections 17(a)(2) and 17(a)(3) of the Securities Act. Section 17(a)(2) prohibits any person from obtaining money or property in the offer or sale of securities by means of an 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. Section 17(a)(3) of the Securities Act prohibits any person from engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser. Negligence is sufficient to establish violations of Sections 17(a)(2) and 17(a)(3). *Aaron v. SEC*, 446 U.S. 680, 697 (1980).

10. As a result of the conduct described above, BGC violated Section 13(a) of the Exchange Act and Rule 13a-11 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission, among other things, annual, quarterly, and current reports as the Commission may require, and mandate that periodic reports contain such further material information as may be necessary to make the required statements not misleading.

11. As a result of the conduct described above, BGC violated Rule 100(b) of Regulation G of the Exchange Act, which prohibits registrants from making public a non-GAAP financial measure that contains an untrue statement of material fact or omits to state a material fact necessary in order to make the presentation of the non-GAAP financial measure, in light of the circumstances under which it is presented, not misleading.

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 Section 8A of the Securities Act and Section 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 Sections 17(a)(2) and 17(a)(3) of the Securities Act, Section 13(a) of the Exchange Act and Rule 13a-11 thereunder, and Rule 100(b) of Regulation G.

B. BGC shall, within 7 days of the entry of this Order, pay a civil money penalty in the amount of $1.4 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;

(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 Partners, Inc. 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 Sandeep Satwalekar, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281.

C. 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