

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 88371 / March 12, 2020**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-19727**

**In the Matter of**

**BMA SECURITIES, 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 BMA Securities, LLC (“BMA” 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 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

These proceedings arise out of BMA's failure to comply with certain provisions of Regulation SHO which sets forth certain requirements concerning the short sale of securities. From at least January 2015 through August 2016, BMA, a registered broker-dealer, violated Rule 204 of Regulation SHO ("Rule 204") on hundreds of occasions by failing to close out allocated fail to deliver positions ("FTD").

#### Respondent

1. BMA, formerly known as Burt Martin Arnold Securities, Inc., is headquartered in El Segundo, Los Angeles, California. At all relevant times, BMA was registered with the Commission as a broker-dealer.

#### Background

#### Rule 204 of Regulation SHO

2. Regulation SHO was adopted, in part, to address problems associated with persistent FTDs of equity securities.<sup>1</sup> Rule 204 of Regulation SHO imposes close-out requirements for FTDs resulting from the sale of equity securities under the Continuous Net Settlement ("CNS") method of clearing and settling securities transactions.<sup>2</sup> Rule 204(a) provides that if a participant of a registered clearing agency ("participant") has a FTD at a registered clearing agency, the participant must close out the FTD by purchasing or borrowing securities of like kind and quantity. For short sales, the participant must do this by no later than the "beginning of regular trading hours on the settlement day following the settlement date." During the relevant period, the settlement date generally was the trade date plus three days (T+3).<sup>3</sup> Accordingly, the close-out deadline for FTDs resulting from short sales was the trade date plus four days (T+4).

3. In addition to the T+4 close-out requirement for short sales, the close-out requirement was T+6 for FTDs resulting from long sales and bona fide market making activity. Specifically, if the participant can demonstrate on its books and records that a FTD resulted from a long sale, as per Rule 204(a)(1), or was attributable to bona fide market making activities, as per Rule 204(a)(3), the participant shall by no later than the beginning of regular trading hours on the

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<sup>1</sup> "The rule is designed to help ensure that buyers of equity securities receive delivery of their shares, thereby helping to discourage persistent FTDs, which may have a negative effect on the securities markets and investors . . ." Exchange Act Release No. 34-60388, 74 FR 38266 at 38289 (Jul. 31, 2009) ("Rule 204 Adopting Release").

<sup>2</sup> See Rule 204 Adopting Release, 74 FR 38266 at n.35. CNS is a method of clearing and settling securities transactions through the National Securities Clearing Corporation that results in net receives or net deliveries of securities and funds. All references to FTDs in this Order refer to CNS FTDs equity securities.

<sup>3</sup> 17 C.F.R. 242.204(a). The relevant conduct pre-dates the Commission's adoption of the T+2 settlement cycle for securities transactions.

third consecutive settlement day following the settlement date (i.e., T+6) immediately close out the FTD by purchasing or borrowing securities of like kind and quantity.

4. Rule 204(b) provides that a participant that does not close out a FTD pursuant to Rule 204(a) may not accept a short sale order in the same equity security from another person or effect a short sale in the same equity security for its own account without first borrowing the security or entering into a bona fide arrangement to borrow the security, until it closes out the FTD by purchasing securities of like kind and quantity and that purchase has cleared and settled.<sup>4</sup> The requirements of Rule 204(b) are also referred to as the “penalty box.”

5. Under Rule 204(d), a participant may reasonably allocate a FTD to another registered broker or dealer for which it clears trades or from which it receives trades for settlement, based on such broker’s or dealer’s short position.<sup>5</sup> If the participant allocates a FTD under Rule 204(d), the provisions of Rule 204(a) and (b) related to the FTD apply to such registered broker or dealer that was allocated the FTD, and not to the participant. A broker or dealer that has been allocated a FTD that does not comply with the provisions of Rule 204(a) must immediately notify the participant that it has become subject to the “penalty box” provisions of Rule 204(b).<sup>6</sup>

6. Participants and brokers or dealers may not satisfy their Rule 204 close-out obligations by engaging in “reset” transactions that are used to re-establish or otherwise extend a FTD.<sup>7</sup> “Reset” transactions create the illusion of compliance but results in no change to the net short position.

### **BMA Fails to Close Out FTDs BMA’s Clearing Firm Properly Allocated to BMA**

7. From January 2015 through at least August 2016, BMA’s clearing firm (the “Clearing Firm”) reasonably allocated FTDs to BMA. BMA was responsible for closing out such FTDs, per Rule 204.

8. In many instances, BMA simply ignored the allocated FTDs, and took no steps whatsoever to close out those FTDs. In one such instance, at 9:17 a.m. on October 13, 2015,<sup>8</sup> the

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<sup>4</sup> 17 C.F.R. 242.204(b).

<sup>5</sup> 17 C.F.R. 242.204(d).

<sup>6</sup> *See id.*

<sup>7</sup> The requirements of Rule 204 are designed to address the Commission’s policy goal of reducing FTDs. As stated in the Rule 204 Adopting Release, “large persistent FTDs may deprive shareholders of the benefits of ownership, such as voting and lending.” Rule 204 Adopting Release at 38267. The Rule 204 Adopting Release also states that, “persistent FTDs in a security may also be perceived by potential investors negatively and may affect their investment decisions. Thus, providing greater assurance that securities will be delivered might help alleviate investor apprehension about investing in certain securities and increase investor confidence in the settlement process.” *Id.* at 38281. *See, e.g., In the Matter of optionsXpress*, 2016 SEC LEXIS 2900 \*79 (Aug. 18, 2016) (Commission Opinion) (noting that the Rule 204 Adopting Release makes clear that “participants cannot employ combined purchase-and-sale transactions to circumvent the requirements” of Rule 204); *Hazen Capital Mgmt., LLC*, Exchange Act Release No. 60441, 2009 WL 2392842 (Aug. 5, 2009); *TJM Proprietary Trading, LLC*, Exchange Act Release No. 60440, 2009 WL 2392840 (Aug. 5, 2009) (settled Commission enforcement actions involving stock option transactions used to evade regulatory requirements by improperly resetting aged fails).

<sup>8</sup> In response to BMA’s representation that the sale of Issuer A qualified for the bona-fide market making exception, the Clearing Firm informed BMA that the potential close-out date was T+6, or October 13, 2015. At 8:08 a.m. on

Clearing Firm reasonably allocated a 10,500 share FTD in Issuer A to BMA by emailing BMA the following statement: “Please be advised that pursuant to Rule 204(d) of Regulation SHO, [Clearing Firm] is allocating to you responsibility for closing out the failure to deliver (FTD) in the security/securities below [i.e., 10,500 shares of Issuer A].” The email stated “[i]f you are unable to comply with the close-out, you must immediately notify [Clearing Firm] that you have become subject to the pre-borrow penalty on any security you did not close-out or borrow.”

9. BMA did not fulfill Rule 204(a)’s requirement to purchase or borrow shares of Issuer A by the beginning of regular trading hours on October 13, 2015 in order to close out the allocated FTD. Indeed, the only transaction BMA effected in Issuer A on October 13, 2015 was a sale of 170,000 shares at 2:55 p.m.

10. BMA also did not fulfill its Rule 204(d) obligation to notify the Clearing Firm of BMA’s failure to close out the allocated FTD in Issuer A. To the contrary, BMA affirmatively misled the Clearing Firm. At 9:48 a.m. on October 13, 2015, BMA responded to the Clearing Firm’s allocation email by falsely claiming it had booked a purchase of 10,500 shares of Issuer A.

11. Additionally, despite not closing out the allocated FTD in Issuer A, BMA did not place itself in the “penalty box” for Issuer A, as required by Rule 204(b). Instead, BMA continued to effect short sales of Issuer A without complying with the “penalty box’s” borrowing requirements as discussed above.

12. In many other instances, BMA took steps to close out only a portion — but not the full amount — of the allocated FTD. And in still other instances, BMA took steps to close out the allocated FTD, but did not do so in a timely manner (i.e., BMA took steps to close out the allocated FTD after the beginning of regular trading hours on the applicable close-out date).

13. In addition, there were other instances where BMA closed out the allocated FTD by purchasing shares of the security, but then quickly reset its short position in that security by selling shares in the same exact amount. Since there was no apparent purpose for this activity by BMA, other than to attempt to evade closing out allocated FTDs by quickly reestablishing an equivalent short position in the same security, these reset transactions resulted in additional violations of Rule 204(a). Each of the reset transactions share the following characteristics: the Clearing Firm reasonably allocated the FTD to BMA; BMA’s paired purchase/sale transactions were the only transactions by BMA in security on the applicable close-out date; and the purchases and sales in each security were specifically designated in BMA’s blotter as being part of the same proprietary selling strategy that had caused the initial FTD.

14. In the Issuer A example described above, as well as in multiple other instances, BMA did not notify the Clearing Firm of BMA’s failure to close out the allocated FTDs as required by Rule 204(d). Instead, BMA repeatedly notified the Clearing Firm that BMA had closed out the allocated FTDs when it had not done so. Further, BMA failed to place itself in the

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October 13, 2015, Clearing Firm personnel informed BMA that the Clearing Firm still had a FTD in Issuer A and that BMA faced a potential allocation of the close-out obligation later that morning. At 9:05 a.m., BMA responded “[Issuer A] We will buy in today.”

“penalty box” for the securities, as required by Rule 204(b), and continued to effect short sales of the securities without regard to the “penalty box’s” borrowing requirements as discussed above.

15. Certain traders associated with BMA benefitted from the firm’s failure to comply with the provisions of Rule 204 as noted above, as these lapses sometimes allowed traders to maintain short positions that generated trading profits or avoided losses. As a result of a fee sharing arrangement that BMA had with these traders, BMA obtained at least \$48,489.23 as a result of its Regulation SHO Rule 204 violations.

16. As a result of the conduct described above, BMA willfully violated Rule 204(a), Rule 204(b), and Rule 204(d) of Regulation SHO.

#### IV.

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

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

A. Respondent BMA cease and desist from committing or causing any violations and any future violations of Rule 204 of Exchange Act Regulation SHO.

B. Respondent BMA is censured.

C. Respondent shall pay disgorgement of \$48,489.23, prejudgment interest of \$10,048.55 and a civil penalty in the amount of \$275,000.00, 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 of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and if timely payment of a civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment shall be made in the following installments:

- (1) \$100,000.00 within 10 days of the entry of the Order;
- (2) \$30,000.00 within 90 days of the entry of the Order;
- (3) \$30,000.00 within 180 days of the entry of the Order;
- (4) \$30,000.00 within 270 days of the entry of the Order;
- (5) \$30,000.00 within 360 days of the entry of the Order;
- (6) \$30,000.00 within 450 days of the entry of the Order;
- (7) \$30,000.00 within 540 days of the entry of the Order;
- (8) \$30,000.00 within 630 days of the entry of the Order; and
- (9) \$23,537.78 within 720 days of the entry of the Order.

Payments shall be applied first to post order interest, which accrues pursuant to SEC Rule of Practice 600 and/or pursuant to 31 U.S.C. 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent

fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

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 BMA 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, Unit 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