

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 92684 / August 17, 2021**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20463**

<p><b>In the Matter of</b></p> <p><b>MURCHINSON LTD., MARC</b> <b>BISTRICER, AND PAUL ZOGALA</b></p> <p><b>Respondents.</b></p>
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**ORDER INSTITUTING CEASE-  
AND-DESIST PROCEEDINGS  
PURSUANT TO SECTION 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 that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Murchinson Ltd., Marc Bistricer, and Paul Zogala (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, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 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 Respondents' Offers, the Commission finds<sup>1</sup> that:

#### Summary

1. These proceedings concern Respondents causing the executing brokers of a hedge fund (the "Hedge Fund") to violate the order-marking and locate requirements of Regulation SHO of the Exchange Act, and Respondents Murchinson and Bistricher (the "Murchinson Respondents") causing the Hedge Fund to act as a dealer without registering with the Commission, or being exempt from registration, in violation of Section 15(a)(1) of the Exchange Act.<sup>2</sup>

2. From January 2016 through October 2017 (the "relevant period"), Respondents caused the Hedge Fund to place "long" sale orders with its brokers. At the time hundreds of these orders were entered, the Hedge Fund was not "deemed to own" the stock being sold and did not have a net long position in the stock for the purposes of Regulation SHO. Respondents should have identified these orders as "short" sales. Because this order-marking information was erroneous, Respondents caused the Hedge Fund's executing brokers to mismark such sale orders as "long" in violation of Rule 200(g) of Regulation SHO.

3. In providing erroneous order-marking information, Respondents also caused the Hedge Fund's executing brokers to violate Rule 203(b)(1) of Regulation SHO, because the executing brokers neither borrowed nor located shares available for borrowing prior to effecting those sales.

4. Because certain of the Hedge Fund's sale orders were erroneously marked as "long," Respondents' executing brokers did not apply the correct requirements and restrictions for short sales set forth in Regulation SHO. For example, the Hedge Fund avoided any costs that might have been incurred in connection with borrowing the stock. In addition, Respondents' erroneous order-marking information for such sale orders effectively caused the Hedge Fund to receive two extra trading days to close out any failures to deliver before its brokers executed a "buy in."

5. During the relevant period, the Hedge Fund entered into securities purchase agreements with multiple issuers whose stock traded on the Nasdaq Stock Market. In connection with certain of these securities purchase agreements, the Murchinson Respondents caused the Hedge Fund to buy and sell securities for its own account in connection with an offering of such securities without registering as a dealer

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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> References to the "Hedge Fund" in this Order include the Hedge Fund, its subsidiary funds, and associated individuals and entities.

with the Commission, or being exempt from registration. In doing so, Respondents caused the Hedge Fund to violate Section 15(a)(1) of the Exchange Act.

### **Respondents**

6. Murchinson Ltd. (“Murchinson”) is a corporation organized under the laws of Ontario, Canada with its principal place of business in Toronto, Canada. Murchinson has not been and is not registered with the Commission in any capacity. Murchinson is controlled by Marc Bistricher. Murchinson serves as sub-adviser to the Hedge Fund and directs certain of the Hedge Fund’s trading strategies and investment decisions. As used in this Order, Murchinson refers to both Murchinson Ltd. and Murchinson LP, a predecessor entity that served as sub-adviser to the Hedge Fund until January 24, 2017.

7. Marc J. Bistricher, 38, is a citizen and resident of Canada who controls Murchinson. He has not been and is not registered with the Commission in any capacity.

8. Paul E. Zogala, 33, is a citizen and resident of Canada. During the relevant period, Zogala was the trader at Murchinson and was responsible for trading securities for the Hedge Fund. He has not been and is not registered with the Commission in any capacity.

### **Other Relevant Entity**

9. The Hedge Fund is a “company limited by shares,” organized under the laws of Bermuda. It has not been and is not registered with the Commission in any capacity. The Hedge Fund has several subsidiary and associated funds, which are collectively referred to as the “Hedge Fund” in this Order. During the relevant period, all of the Hedge Fund’s trading strategies and investment decisions were made by the Murchinson Respondents.

### **The Murchinson Respondents Caused the Hedge Fund to Enter into Securities Purchase Agreements with Multiple Issuers**

10. During the relevant period, Murchinson acted as sub-adviser to the Hedge Fund, and Bistricher controlled Murchinson. The Murchinson Respondents directed the Hedge Fund’s trading strategies and investment decisions. The Hedge Fund compensated Murchinson by paying advisory fees.

11. In 2016 and 2017, the Murchinson Respondents caused the Hedge Fund to enter into securities purchase agreements with multiple issuers, pursuant to which the Hedge Fund bought the issuers’ securities.

12. The Murchinson Respondents caused the Hedge Fund to enter into several convertible or exchange agreements with issuers, pursuant to which the Hedge Fund

purchased hundreds of millions of dollars of the issuers' securities that were convertible or exchangeable into common stock.

13. The Murchinson Respondents also caused the Hedge Fund to enter into equity line agreements with an issuer, pursuant to which the issuer could sell a specified dollar amount of stock (or "draw down" amount) to be purchased by the Hedge Fund in a specified period. These agreements permitted Murchinson and the issuer to agree to modify the terms of the purchases. Respondents caused the Hedge Fund to engage in dealer activity when Murchinson and the issuer ultimately agreed that after the Hedge Fund sold the issuer's stock during a specified period, the Hedge Fund could purchase an equivalent amount of stock from the issuer, rather than the initial draw down amount, at a specified percentage of the Hedge Fund's sales proceeds. In connection with another equity line agreement, Murchinson and a second issuer also agreed in certain transactions that after the Hedge Fund sold the issuer's stock during a specified period, the Hedge Fund could purchase an equivalent amount of stock from the issuer, rather than the initial draw down amount. In doing so, Respondents caused the Hedge Fund to sell the issuers' common stock before purchasing, or entering into unconditional contracts to purchase, the stock being sold.

**Respondents Provided Erroneous Order-Marking Information  
to the Hedge Fund's Brokers**

14. On behalf of the Hedge Fund, Respondents placed with the Hedge Fund's brokers multiple "long" sale orders of the issuers' common stock before the Hedge Fund was "deemed to own," because Respondents had not yet tendered the issuers' convertible or exchangeable securities for conversion or exchange and did not have a net long position in the stock.

15. Respondents erroneously identified to the Hedge Fund's brokers that these sale orders were "long" sales, which contributed to the Hedge Fund's executing brokers incorrectly marking these sale orders as "long" sales.

16. On behalf of the Hedge Fund, Respondents also placed with the Hedge Fund's brokers certain "long" sale orders of the common stock of two issuers under the equity line agreements, but before Respondents had purchased or entered into an unconditional contract to purchase the shares being sold. At the time of order entry, the Hedge Fund was not "deemed to own" the stock under Regulation SHO and did not have a net long position in the stock.

17. Respondents erroneously identified to the Hedge Fund's brokers that these sale orders were "long" sales, which contributed to the Hedge Fund's executing brokers incorrectly marking these sale orders as "long" sales.

**The Murchinson Respondents Caused the Hedge Fund to Engage in the Business of Buying and Selling Securities for the Hedge Fund's Own Account**

18. In connection with the equity line agreements, the Murchinson Respondents caused the Hedge Fund to engage in dealer activity, without registering with the Commission or being exempt from registration, by agreeing in certain instances: to purchase the number of shares the Hedge Fund sold during specified periods, and to calculate the Hedge Fund's purchase price as a fixed percentage of the Hedge Fund's sales proceeds during each specified period. The Murchinson Respondents caused the Hedge Fund to act as a dealer in those instances by placing sale orders then purchasing the stock from the issuers.

19. The issuers filed prospectus supplements with the Commission in connection with the equity line agreements that identified the Hedge Fund as a statutory underwriter within the meaning of Section 2(a)(11) of the Securities Act of 1933.

20. The Hedge Fund profited by keeping a percentage of its sales proceeds and remitting the remainder of the proceeds to the issuers. As such, the Hedge Fund profited primarily from the difference between its sales price and the price it paid the issuers for the securities, not from appreciation in the value of the securities.

21. The Murchinson Respondents caused the Hedge Fund to sell hundreds of millions of dollars of common stock into U.S. markets pursuant to the equity line agreements. In doing so, the Murchinson Respondents caused the Hedge Fund to engage in the regular business of buying and selling securities for its own account without registering with the Commission as a dealer, or being exempt from registration.

**Violations**

**Respondents Caused the Hedge Fund's Executing Brokers to Violate Rule 200(g) of Regulation SHO**

22. Rule 200(g) of Regulation SHO requires executing broker-dealers to mark all sell orders of any equity security as "long," "short," or "short exempt." 17 C.F.R. § 242.200(g).

23. An order to sell may be marked "long" only if two conditions are met. First, the seller must be "deemed to own" the security pursuant to Rule 200(a) through (f) of Regulation SHO. 17 C.F.R. §§ 242.200(a)-(f), 242.200(g)(1). A person is "deemed to own" a security only to the extent that he has a net long position in such security. 17 C.F.R. § 242.200(c). Second, an order may be marked "long" only if the broker-dealer either has possession or control of the security to be delivered or reasonably expects that the security will be in the broker-dealer's physical possession or control no later than the settlement of the transaction. 17 C.F.R. § 242.200(g)(1).

24. The Commission may order any person that “is, was, or would be” a cause of another person’s violation of the Exchange Act or the rules thereunder, “due to an act or omission the person knew or should have known would contribute to such violation,” to cease and desist from committing or causing such violation and future violation. 15 U.S.C. § 78u-3(a).

25. As a result of the conduct described above, Respondents caused the Hedge Fund’s executing brokers to violate Rule 200(g) of Regulation SHO. Respondents provided erroneous order-marking information to the Hedge Fund’s brokers by identifying certain of the Hedge Fund’s sale orders as “long” sales, which contributed to the Hedge Fund’s executing brokers mismarking such sale orders as “long” sales.

The Respondents Caused the Hedge Fund’s Executing Brokers to Violate Rule 203(b)(1) of Regulation SHO

26. Rule 203(b)(1) of Regulation SHO prohibits a broker-dealer from accepting a short sale order in an equity security from another person or effecting a short sale in an equity security for its own account, unless the broker-dealer has “(i) [b]orrowed the security, or entered into a bona-fide arrangement to borrow the security; or (ii) [r]easonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and (iii) [d]ocumented compliance with this [requirement].” 17 C.F.R. § 242.203(b)(1). This is generally referred to as the “locate” requirement.

27. Since the Hedge Fund’s executing brokers erroneously marked certain of the Hedge Fund’s sale orders as “long” when the Hedge Fund was not “deemed to own” the underlying shares, the executing brokers did not obtain a locate in connection with those sale orders. Consequently, the Hedge Fund’s executing brokers violated Rule 203(b)(1) of Regulation SHO for those sales.

28. As a result of the conduct described above, Respondents caused the Hedge Fund’s executing brokers to violate Rule 203(b)(1) of Regulation SHO. The Respondents provided erroneous order-marking information to the Hedge Fund’s brokers, which contributed to the Hedge Fund’s executing brokers failing to obtain a locate, as required under Rule 203(b)(1).

The Murchinson Respondents Caused the Hedge Fund to Violate Section 15(a)(1) of the Exchange Act

29. Section 15(a)(1) of the Exchange Act provides that it “shall be unlawful for any broker or dealer ... to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security ... unless such broker or dealer is registered” with the Commission. 15 U.S.C. § 78o(a)(1).

30. As a result of the conduct described above, in connection with the modified equity line agreements, the Murchinson Respondents caused the Hedge Fund to make use of the mails or other means or instrumentalities of interstate commerce to effect transactions in the purchase and sale of securities as part of a regular business while the Hedge Fund was not registered with the Commission as a dealer or otherwise exempt from registration.

### **Disgorgement and Civil Penalties**

31. The disgorgement and prejudgment interest ordered in paragraph D is consistent with equitable principles and does not exceed Respondents' net profits from their violations and will be distributed to harmed investors, if feasible. The Commission will hold funds paid pursuant to paragraph D in an account at the United States Treasury pending a decision whether the Commission in its discretion will seek to distribute funds. If a distribution is determined feasible and the Commission makes a distribution, upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

### **Undertakings**

32. The Murchinson Respondents have undertaken, for a period of two years, to provide to any broker with whom the Murchinson Respondents, or any person directly or indirectly controlled by them or under their common control, place any orders for the sale of securities, purchased directly from an issuer for execution on a U.S. market, a copy of this Order and a legal opinion that describes when, under the applicable agreement, the Hedge Fund would be "deemed to own" the securities being sold "long" or "short exempt," and what documentation would establish that the Hedge Fund is "deemed to own" the securities being sold "long" or "short exempt."

33. Respondent Murchinson has undertaken, within 90 days of the entry of this Order, to revise its compliance policies and procedures so that they are reasonably designed to ensure future compliance with Regulation SHO.

34. Respondent Murchinson has undertaken to conduct annual training, for a period of two years, on Regulation SHO and Murchinson's revised policies and procedures for Respondent Bistricher and all personnel at Murchinson involved in trading and settlement functions.

### **Findings**

35. Based on the foregoing, the Commission finds that Respondents caused the Hedge Fund's executing brokers to violate Rules 200(g) and 203(b)(1) of Regulation

SHO, and the Murchinson Respondents caused the Hedge Fund to violate Section 15(a)(1) of the Exchange Act.

#### IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondents cease and desist from committing or causing any violations and any future violations of Rules 200(g) and 203(b)(1) of Regulation SHO, and the Murchinson Respondents cease and desist from committing or causing any violations or future violations of Section 15(a)(1) of the Exchange Act.

B. The Murchinson Respondents shall comply with their undertakings as enumerated in paragraphs 32 to 34 above.

C. The Murchinson Respondents shall certify, in writing and on an annual basis, compliance with the undertakings set forth above in paragraphs 32 to 34. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondents agree to provide such evidence. The certification and supporting material shall be submitted to Kevin Guerrero, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

D. The Murchinson Respondents shall, within 14 days of the entry of this Order, pay, jointly and severally, disgorgement of \$7,000,000 and prejudgment interest of \$1,078,183 to the Securities and Exchange Commission. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, transfer them to the general fund of the United States Treasury, subject to Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

E. Respondent Murchinson shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$800,000 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to

distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

F. Respondent Bistricher shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$75,000 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

G. Respondent Zogala shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$25,000 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

H. Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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, AMK-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Murchinson Ltd., Marc Bistricher, and/or Paul Zogala 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 Jennifer S. Leete, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

I. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, 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 agrees 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.

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