

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 55148 / January 23, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12543

In the Matter of

**Pacific Growth Equities, LLC,
Stephen J. Massocca, and
Robert Katz,**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, MAKING
FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER
PURSUANT TO SECTIONS 15(b) AND
21C OF THE SECURITIES
EXCHANGE ACT OF 1934**

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 Pacific Growth Equities, LLC (“PGE”), Stephen J. Massocca (“Massocca”) and Robert Katz (“Katz”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have 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 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, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offer, the Commission finds that:

Summary

1. Since at least April 2002, securities broker-dealer and Nasdaq market maker PGE has engaged in a practice of secretly double-charging certain customers for securities transactions. PGE has historically received compensation for handling customer trades by adding a markup or markdown to the price at which the firm bought (or sold) shares in the market, plus a spread. By early 2002, however, consistent with industry trends, certain PGE institutional customers requested that they be charged commissions for their trades instead of compensating PGE with a markup, markdown or spread. PGE accommodated these requests, but, unbeknownst to certain customers, continued to receive markups or markdowns ("trading profits") in addition to commissions for certain trades. These dual charges were not adequately disclosed to customers, and were inconsistent with the understandings between PGE and its customers.

2. PGE's practice of failing to disclose trading profits was in part facilitated by the use of inaccurate time stamps on certain customer order tickets. Rather than time stamping the ticket at the time the order had originally been received from its customer, PGE time stamped order tickets only after the firm had acquired (or sold) shares in the market to satisfy certain customers' orders. This practice created the appearance that PGE was instantaneously filling customer orders, and thus that the firm was engaged in typical market making transactions in return for a markup or markdown.

3. PGE's Co-Chief Executive Officer, Stephen J. Massocca, authorized PGE's conduct. PGE's head trader, Robert Katz, was responsible for some of the inaccurate time stamps.

4. By virtue of these activities, PGE willfully violated Sections 15(c)(1) and 17(a) of the Exchange Act and Rule 17a-3 thereunder, Massocca willfully aided and abetted and caused PGE's violations of Sections 15(c)(1) and 17(a) of the Exchange Act and Rule 17a-3, and Katz willfully aided and abetted and caused PGE's violation of Exchange Act Section 17(a) and Rule 17a-3.

Respondents

5. Pacific Growth Equities, LLC, is a Delaware limited liability company with its principal place of business in San Francisco, California. Since 1989, PGE or its predecessor corporation has been a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act.

6. Stephen J. Massocca, age 47, is a resident of San Francisco, California. Massocca is currently PGE's Co-Chief Executive Officer. From 1991-2004, Massocca served as PGE's Head of Trading. From 2000-2002, Massocca was also PGE's co-compliance officer.

7. Robert Katz, age 43, is a resident of San Francisco, California. Katz currently serves as PGE's Head of Trading. From 1991-2004, Katz was a trader on PGE's trading desk.

Facts

PGE Added Undisclosed Trading Profits On Trades With Certain Customers

8. PGE is a registered broker-dealer that processes securities trades on behalf of an institutional customer base consisting of hedge funds, corporations and other investors. PGE is a Nasdaq market maker in that it is a dealer who, with respect to securities, holds itself out as being willing to buy and sell such securities for its own account on a regular or continuous basis.

9. Historically, Nasdaq market makers acting in a "principal" capacity (buying and selling securities into or out of their own accounts) transacted orders for their customers on a "net" basis. In such "net" transactions, market makers receive compensation for their services through the difference between the price at which the market maker originally purchased the security for its own account and the price at which it sold the security to the customer, rather than from a commission. In contrast, brokers transacting "agency" trades on behalf of their customers – trades where the securities would not pass through the broker's proprietary account – traditionally received compensation for their services by charging per share or basis point (percentage of total transaction price) commissions.

10. Beginning in late 2001, the brokerage industry experienced a shift whereby many market makers no longer executed trades on a "net" basis and instead began to be compensated for their services by charging per share or basis point commissions to customers.

11. Consistent with this change in industry practice, by April 2002, certain PGE customers began requesting that their orders no longer be handled on a "net" basis and that instead they be charged only commissions on their securities trades. PGE agreed to these requests, and the customers understood that they would be charged only commissions for their trades.

12. PGE failed to disclose that PGE would sometimes continue to add a trading profit onto the transaction price in addition to the commission it charged to the customer. In particular, electronic trade confirmations sent by PGE to its institutional customers reported the commission that was being charged for the trade but did not disclose that PGE, at least in some instances, was continuing to add trading profits. PGE's customers were not informed of the additional trading profits, and the charges were contrary to the understanding of the affected PGE customers that they would pay only commissions. A review of selected trading data by the Commission staff identified several hundred thousand dollars in undisclosed charges passed along to PGE's customers during the 2003-2004 time period.

13. As the member of PGE's management team with supervisory responsibility for the trading desk, Massocca was aware that PGE's practice of adding a profit in addition to a commission for certain transactions was contrary to what customers understood to be PGE's compensation for order execution. Massocca was informed that certain customers had requested riskless principal trades and that they did not understand that they were paying both a

commission and a markup or markdown. Massocca nevertheless permitted PGE's practice of double-charging customers without adequate disclosure to continue.

PGE's Use of Inaccurate Time Stamps

14. PGE's practices were in part facilitated through improper time stamping procedures, which created a misleading record of when customer orders were received and the risk PGE ostensibly incurred in filling the orders.

15. Brokers typically time-stamp customer order tickets as soon as the order is placed by the customer and the broker's representative understands the terms of the order. In contrast, PGE's traders delayed time-stamping certain order tickets. Instead, the traders would first go into the interdealer market and buy or sell the stock needed to fill the customer's order. Only then would the trader time stamp the order ticket to show the time that the customer's order was received.

16. Because PGE went into the interdealer market to fill a customer order before stamping the customer's order ticket with the time of receipt, PGE's trading records appeared to show that PGE had instantly filled the customer order out of its own trading inventory. The delayed time-stamping tended to show that PGE had risked its capital as a market maker, when it actually had handled the trade as a "riskless principal," purchasing or selling shares only in response to a specific customer order and receiving a commission for its services.

17. By maintaining inaccurate records of the time at which orders were received, PGE could make it appear that it had already accumulated an inventory in the stock as a result of its market making transactions and then later filled customer orders from that inventory in return for a markup or markdown.

18. As both a trader and later Head of Trading for PGE, Katz time-stamped or authorized the stamping of some order tickets with inaccurate time stamps. As the member of PGE's management team with supervisory responsibility for the trading desk, Massocca was aware of and authorized the inaccurate time stamps.

Violations

19. As a result of the conduct described above, PGE willfully violated Section 15(c)(1) of the Exchange Act thereunder, in that it, while acting as a broker or dealer, effectuated securities transactions by means of a manipulative, deceptive or other fraudulent device or contrivance. Massocca willfully aided and abetted and caused PGE to violate Section 15(c)(1) of the Exchange Act.

20. As a result of the conduct described above, PGE willfully violated Section 17(a) and Rule 17a-3 of the Exchange Act, in that it, while acting as a broker or dealer, failed to make and keep current books and records relating to its business. Massocca and Katz willfully aided and abetted and caused PGE to violate Section 17(a) and Rule 17a-3 of the Exchange Act.

Undertakings

21. In determining whether to accept the Offer, the Commission considered the following remedial acts voluntarily undertaken by PGE:

A. In 2005, PGE purchased and implemented an automated order management system to process Nasdaq transactions and capture accurately the time stamps and other data required by Rule 17a-3.

B. PGE agrees to retain, at its own expense, the services of a qualified independent consultant (“Consultant”) not unacceptable to the staff to review PGE’s electronic order management system and order tickets on an annual basis for two years following the date of the Commission’s Order. PGE will require the Consultant to ensure: (i) that PGE has provided an adequate disclosure to its institutional customers about the capacity in which it executes trades and whether or not PGE may make a trading profit or loss in its own account in addition to charging a per share or basis point commission; and (ii) that PGE’s electronic order tickets contain all information required by Rules 17a-3(a)(6)-(7). PGE will require the Consultant to prepare a report of his or her findings and recommendations and forward the report to both PGE and to the Associate District Administrator for Enforcement (the “Associate Administrator”) in the Commission’s San Francisco District Office. PGE undertakes to be bound by the Consultant’s recommendations. PGE may suggest alternative procedures to achieve the goals of the recommendations, however, after notice to the Consultant and the Associate Administrator. PGE will require the Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with PGE, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Associate Administrator, enter into any employment, consultant, attorney-client, auditing or other professional relationship with PGE, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

IV.

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

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

A. Respondent PGE shall cease and desist from committing or causing any violations and any future violations of Section 15(c)(1) and 17(a) of the Exchange Act and Rule 17a-3 thereunder;

B. Respondent Massocca shall cease and desist from causing any violations and any future violations of Sections 15(c)(1) and 17(a) of the Exchange Act and Rule 17a-3 thereunder;

C. Respondent Katz shall cease and desist from causing any violations and any future violations of Section 17(a) and Rule 17a-3 of the Exchange Act;

D. Respondents PGE, Massocca and Katz are hereby censured;

E. PGE, Massocca and Katz shall, within 20 days of the entry of this Order, pay civil money penalties to the United States Treasury in the following amounts: PGE: \$425,000; Massocca: \$75,000; and Katz: \$20,000. Such payments shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under a cover letter that identifies Pacific Growth Equities, LLC, Stephen J. Massocca and Robert Katz as the Respondents in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Helene L. Morrison, District Administrator, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, CA 94104;

F. Respondent PGE shall comply with the undertakings enumerated in Section III.21.B. above.

By the Commission.

Nancy M. Morris
Secretary