

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9174 / January 14, 2011

SECURITIES EXCHANGE ACT OF 1934
Release No. 63725 / January 14, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14192

In the Matter of

MARK SHAW,

Respondent.

**CORRECTED ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, PURSUANT TO
SECTION 8A OF THE SECURITIES ACT OF
1933, AND 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 Section 8A of the Securities Act of 1933 (“Securities Act”), and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Mark Shaw (“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 him 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 Section 8A of the Securities Act of

1933, and 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 finds¹ that:

Summary

1. These proceedings arise out of Respondent’s more than eight-year best execution fraud in his capacity as institutional order desk manager for BNY Mellon Securities LLC (“Mellon Securities”). From November 1999 through March 31, 2008, Shaw manipulated time delays in systems for executing and reporting agency cross trades on a regional exchange to advantage a handful of accounts held by individuals or hedge funds (together, the “hedge fund(s)”), at the expense of accounts belonging to various employee stock purchase plans, employee stock option plans, direct purchase and sale plans, and similar plans (collectively, the “Plan Customer(s)”). Throughout the relevant period, Shaw repeatedly deprived certain Plan Customers of best execution of their orders by using the ability to capture and freeze prices to chase better prices for the hedge funds and to execute trades at stale prices more favorable to the hedge funds than the prices prevailing in the market at the time of execution. Shaw directed traders under his supervision to do the same.

2. The cross trades were all executed and reported on a regional exchange that permitted a Member Firm to capture and freeze the National Best Bid and Offer² (“NBBO”) market data for a security for up to three minutes. Generally, Shaw and traders under his supervision would call the Member Firm to capture the NBBO for a particular security while simultaneously viewing quotations for the security to determine whether and, if so, at what price to execute the cross trade. For Plan Customer sales, Shaw and traders under his supervision in many instances sought and obtained lower prices to benefit the hedge funds and, conversely, for Plan Customer purchases, they sought and obtained higher prices again, to benefit the hedge funds. In many instances the cross trades were executed outside of the NBBO.

3. Shaw’s compensation depended in part upon the commissions generated by the order desk. The order desk was paid commissions for both sides of each cross trade, with the hedge funds sometimes paying as much as six cents per share.

Respondent

4. Mark Shaw, age 53, of Brooklyn, New York, was a registered representative with Mellon Securities and its institutional order desk manager from March 1999 through May 2, 2008,

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.

² The National best bid and national best offer means, with respect to quotations for an NMS Security, the best bid and best offer for such security that are calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan. 17 C.F.R. § 600(b)(42).

when he was terminated for the conduct that is the subject of this proceeding. Currently, Shaw is not associated with any broker or dealer registered with the Commission. He holds Series 4, 6, 7, 24, 55, and 63 licenses.

Other Relevant Entities

5. Mellon Securities, a Delaware corporation with its principal place of business in Jersey City, New Jersey is a broker-dealer registered with the Commission.

6. Mellon Investor Services LLC (“MIS”), a New Jersey corporation with its principal place of business in Jersey City, New Jersey is a registered transfer agent and administrator for the Plan Customers.

Background

7. From November 1999 through March 31, 2008, Respondent supervised Mellon Securities’ institutional order desk, which provided trade execution services to more than seven hundred issuers whose stock plans were administered by MIS. Shaw had authorization from MIS to handle all Plan Customer orders as market not-held orders, consistent with his best execution obligations to the Plan Customers. (A market not-held order gives a trader discretion as to the time of execution but the order must be executed within prevailing market prices.) Generally, Mellon Securities routed Plan Customer orders for the purchase or sale of 2,000 or more shares of a security to Shaw and traders on the order desk for special handling. As Plan Customer orders arrived at the order desk, Shaw and order desk traders solicited orders from the hedge funds for the purpose of crossing the orders. Shaw directed traders under his supervision to cross as much of the Plan Customer orders as possible, and that is what they did.

The Validated Cross Window

8. In December 2006, the regional exchange through which Mellon Securities’ cross trades were executed and reported added a functionality to its electronic order management system called the validated cross window. The intended purpose of the validated cross window was to support timely reporting of cross trades while simultaneously ensuring the transaction did not trade through the NBBO for compliance with Rule 611 of Regulation NMS, the Order Protection Rule, and certain regional exchange rules. (A trade through occurs when a security is traded at a price outside of the NBBO prevailing at the time of execution.) The validated cross window remained in use until the end of the relevant period.

9. The validated cross window validated a market, meaning the NBBO, by capturing and freezing a snapshot of the NBBO market data for a security (“Snapshot NBBO”) at the moment a Member Firm broker typed the security’s symbol into the system. At the same moment, a window expiration timer was initiated. The timer gave the Member Firm broker up to three minutes to fill in required fields, including quantity and price, and to submit the trade for execution and reporting.

10. Once submitted for execution and reporting, the system would ensure that the proposed cross trade did not trade through the Snapshot NBBO.³ If the cross trade satisfied all requirements, the trade was accepted by the system and reported to the consolidated tape; if not, the trade was rejected.

11. Instead of submitting a trade for execution and reporting, the Member Firm broker could refresh the window, meaning he could capture another, subsequent Snapshot NBBO, and initiate a new window expiration timer. (The system did not limit the number of times a window could be refreshed.) The Member Firm broker also could allow a window to expire at the end of the timer.

Using Trade Tickets to Validate Markets

12. Prior to the introduction of the validated cross window, the regional exchange used trade tickets to validate markets. Shaw and traders he supervised in many instances used this manual system in much the same way that they used the validated cross window to cross orders at prices favorable to the hedge funds and unfavorable to the Plan Customers. Once a Member Firm broker stamped a trade ticket, the broker had up to one minute to clear the post, that is, to make sure the cross trade would not trade through any outstanding orders held by the specialist on the exchange. If the cross trade cleared the post, the broker could execute it at the NBBO prevailing at the time of the stamp, or any other price that prevailed before the minute expired.

13. The regional exchange time stamp showed only the hour and minute, not seconds. Thus, the “minute” a broker had to clear the post could, in actuality, be up to nearly two minutes. If in these two minutes, Shaw or a trader under his supervision preferred a subsequent price in the market, he could direct the Member Firm broker to execute at that price or, by stamping a new ticket, to capture the new price. If the Member Firm broker stamped a new ticket to capture the new price, Shaw or the trader under his supervision would have another two minutes in which to decide whether, and at what price, to execute a trade.

Respondent’s Conduct

14. Shaw in many instances used the validated cross window to work the Plan Customers’ not-held orders in a manner designed to benefit the hedge funds and deprive Plan Customers of best execution, generally, in one of two ways. In the first scenario, Shaw used the ability to capture and freeze prices to chase better prices for the hedge funds. In the second scenario, Shaw executed trades at stale prices, more favorable to the hedge funds than prices prevailing in the market at the time the trade was executed. Moreover, Shaw directed traders under his supervision to do the same.

15. For example, when Shaw crossed a Plan Customer order to sell securities with a hedge fund order to buy those same securities, if the security *fell in price* after a Member Firm

³ To ensure compliance with the Order Protection Rule, the system should have ensured that the proposed cross trade did not trade through the NBBO prevailing in the market at the moment of execution, not the Snapshot NBBO. In practice, however, that is not how the regional exchange’s system functioned.

broker first captured a Snapshot NBBO for Shaw, the broker would in many instances refresh the validated cross window to capture the new, lower price, *i.e.*, a new Snapshot NBBO, and reset the window expiration timer. The Member Firm broker, working at Shaw's behest, would in many instances continue to lock in new, lower prices every time the price fell. This could be done within a second of capturing the previous Snapshot NBBO or at any point prior to the end of the window expiration timer. The NBBO for a security could be captured anywhere from a few times to a few dozen times to advantage the hedge fund before Shaw directed the Member Firm broker to execute and report the trade. On the other hand, if the security *rose in price* after a Member Firm broker captured a Snapshot NBBO for Shaw, Shaw would in many instances direct him to execute and report the trade at the stale, lower price, to advantage the hedge fund.

16. An analysis of more than 8,500 cross trades indicates that Shaw and traders under his supervision used the validated cross window to chase better prices and/or execute trades at stale prices that were more favorable to the hedge funds than prices prevailing in the market at the time of execution more than eighty percent of the time.

17. Shaw's practices and the directions he gave to traders under his supervision were the same prior to the introduction of the validated cross window, only the mechanics differed. Prior to the introduction of the validated cross window, Shaw routinely asked Mellon Securities' Member Firm brokers to capture more than one NBBO for a trade, and used the ability to capture prices to achieve better prices for the hedge funds.

18. Shaw also sat as a member of Mellon Securities' best execution committee, responsible for monitoring the execution quality of Plan Customer orders. Throughout the relevant period, when the best execution committee was confronted with anomalous execution statistics, Shaw failed to inform the other members of the committee of the likely reason, namely, his own conduct, and instead concealed it.

19. The order desk generated commissions from both sides of each cross trade. Typically, MIS paid Mellon Securities two cents per share for Plan Customer orders. The hedge funds paid Mellon Securities, generally, between two and six cents per share, with the hedge funds setting their own commission rates at the end of each trading day. Shaw's annual bonuses depended in part upon the commissions earned by the order desk.

20. As a result of the conduct described above, Shaw willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities, and in connection with the purchase, or sale of securities.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Shaw's Offer.

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

A. Respondent Shaw cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

B. Respondent shall Shaw be, and hereby is barred from association with any broker or dealer;

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent shall, within 14 days of the entry of this Order, pay disgorgement of \$195,300 and prejudgment interest of \$23,291, and a civil money penalty in the amount of \$150,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to Commission Rule of Practice 600 and/or 31 U.S.C. § 3717. Payment shall be: (A) made by wire transfer, 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, Alexandria, VA 22312-0003; and (D) submitted under cover letter that identifies Mark Shaw as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and wire transfer, money order, or check shall be sent to Andrew M. Calamari, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, New York, NY 10281-1022.

E. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, interest and penalties referenced in paragraph D above. Such disgorgement, interest, and penalties may be distributed by the Fair Fund established in *In the Matter of BNY Mellon Securities LLC*, AP File No. 3-14191, filed simultaneously herewith. Regardless of whether any such Fair Fund distribution is made, 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 he shall not, after offset or reduction in any Related Investor Action based on Respondent's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by offset or reduction 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 he 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 United States Treasury or to a Fair Fund, as the Commission directs. 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.

Elizabeth M. Murphy
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, and Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order as to Mark Shaw ("Order"), on the Respondent and his legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

The Honorable Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Philip Moustakis, Esq.
New York Regional Office
Securities and Exchange Commission
3 World Financial Center
New York, NY 10281-1022

Mark Shaw
c/o Paul Scott Hugel, Esq.
Clayman & Rosenberg LLP
305 Madison Avenue, Suite 1301
New York, NY 10165

Paul Scott Hugel, Esq.
Clayman & Rosenberg LLP
305 Madison Avenue, Suite 1301
New York, NY 10165