

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Brian Colin Doherty (CRD No. 2647950),

Respondent.

DISCIPLINARY PROCEEDING
No. 20150470058-01

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Brian Colin Doherty, a Government Securities Limited Representative and Corporate Securities Representative with BGC Financial, L.P. (BGC, or the Firm), violated Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act), Exchange Act Rule 10b-5 thereunder, and FINRA Rules 2010 and 2020 in May and June 2015, by engaging in nineteen prearranged transactions involving various securities, causing SUI, another FINRA-regulated broker-dealer, to suffer approximately \$55,773 in losses. Doherty engaged in the prearranged transactions to obtain compensation, and to enable another individual, TS, to deceive his employer SUI into believing that TS was complying with its internal policies and procedures relating to aged inventory so that TS would receive additional compensation. Doherty undertook the prearranged trades when TS used a code word, "Melissa," which was Doherty's wife's name.

Moreover, Doherty deceived BGC about the nature of the transactions so that he could proceed with them despite their being expressly prohibited by BGC's internal policies.

2. In the alternative, Doherty negligently made material omissions and engaged in a transaction, practice, or course of business that operated as a fraud or deceit on SUI in violation of FINRA Rule 2010 by violating Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 (Securities Act).

3. In the further alternative, Doherty's conduct violated FINRA Rule 2010 by aiding and abetting a violation of FINRA Rule 2020.

RESPONDENT AND JURISDICTION

4. Doherty entered the securities industry in October 1993. Doherty received his Series 7 license on January 30, 1997; his Series 72 license on September 6, 2004; his Series 62 license on November 19, 2004; and his Series 63 license on May 24, 2007. Since 1993, Doherty has been employed both inside and outside the securities industry, and has been associated with several FINRA regulated broker-dealers.

5. On September 6, 2004, Doherty became registered with BGC as a Government Securities Limited Representative. On November 19, 2004, Doherty became registered with BGC as a Corporate Securities Representative. On September 17, 2015, BGC filed a Form U5 stating that Doherty had been discharged effective August 17, 2015 because he "participated in likely improperly prearranged intra-day transactions."

6. In June 2017, Doherty became registered with Firm 1, a FINRA-registered broker-dealer. On September 6, 2017, Firm 1 filed a Form U-5 stating that Doherty had voluntarily left Firm 1.

7. In September 2017, Doherty became registered with Firm 2, a FINRA-registered broker-dealer. Doherty remains registered with Firm 2 and, accordingly, is subject to FINRA's jurisdiction.

FIRST CAUSE OF ACTION

(Use of a Fraudulent Scheme in Connection with the Purchase or Sale of a Security)
(Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and
FINRA Rules 2010 and 2020)

8. The Department realleges and incorporates by reference paragraphs 1-7, above.

9. Section 10(b) of the Exchange Act provides that "it shall be unlawful for any person, directly or indirectly, by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange ... [t]o use or employ, in connection with the purchase or sale of any security ... any manipulative or deceptive device or contrivance in contravention of such rules or regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors."

10. Rule 10b-5, promulgated under the Exchange Act and entitled "Employment of Manipulative and Deceptive Practices," provides, in relevant part:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange, (a) To employ any device, scheme, or artifice to defraud, ... or (c) [t]o engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

11. FINRA Rule 2020 provides that "[n]o member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive, or other fraudulent device or contrivance."

12. FINRA Rule 2010 provides that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."

13. A violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and/or FINRA Rule 2020, constitutes a violation of FINRA Rule 2010.

14. From April through June 2015, TS was a trader on SUI's corporate credit trading desk and managed a proprietary trading book. During that time period, SUI maintained written procedures applicable to TS's trading activities on its behalf, titled "Valuation Reserve Summary," stating that it would require a capital reserve for any position in corporate or government bonds not issued by the Governments of Canada or the USA aged more than 180 days (the Aged Inventory Policy). Maintaining aged positions would therefore adversely affect the profit and loss statement (P&L) for TS's book, and by extension, would adversely affect his personal compensation, which was partially dependent on that P&L.

15. From April through June 2015, Doherty was an inter-dealer broker at BGC, and handled trading for the SUI account that TS managed. During that time, BGC maintained written policies and procedures applicable to Doherty's activities on its behalf, titled "WSP Manual," stating that: "An offer to sell coupled with an offer to buy back at the same or a higher price, or the reverse, is a prearranged trade and is prohibited."

16. The WSP Manual further stated: "No employee shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance."

17. Under the WSP Manual, Firm employees, including Doherty, were also expressly prohibited from:

- a. "[W]arrant[ing] or guarantee[ing] the present or future value or price of any security[;]"

- b. “[A]ccept[ing] any transaction which [they] have reason to believe may have been structured or timed to create an appearance of activity or liquidity[;]”
- c. “[E]nter[ing] into a transaction with or for a customer at a price not reasonably related to the current market price[;]” and
- d. “[A]gree[ing] to hold securities for another party in order to conceal ownership or agree[ing] to ‘purchase’ securities from a customer and then ‘resell’ them to the customer under arrangements which pose no economic risk to the customer.”

18. At all relevant times, Doherty had access to BGC’s policies and procedures and, on at least one occasion in or about October 2014, he acknowledged that he was “required to read, understand and comply with” them.

19. In mid-April 2015, TS met Doherty, whom he had known for several years, and informed him of at least the following: That

- a. his compensation was being reduced because SUI had a policy of taking a reserve that adversely affected the P&L of his trading book when he held inventory aged over six months;
- b. to evade these penalties, he wanted to sell and repurchase the aged positions in his book on the same day;
- c. he would sell and repurchase each aged position for the same price, except that he (i.e., SUI) would pay a commission to BGC on each transaction; and
- d. he would use the code word “Melissa” to signal each time he wanted Doherty to engage in a prearranged trade. (“Melissa” was Doherty’s wife’s name.)

20. Doherty therefore knew that TS's employer, SUI, would suffer losses on the proposed trades, even though it was continuing to hold the same securities positions. Doherty further knew that, to participate in the scheme TS proposed, BGC would likely have to take positions in securities contrary to its policies and/or practices as an inter-dealer broker.

21. Shortly after speaking with TS, Doherty approached his supervisor, JE, and two compliance personnel at BGC, SD and MS, and deceived them about the nature of the trading activity that he had discussed with TS, to conceal its true purpose. Specifically, in or about mid-April 2015, in one conversation with JE and a separate conversation with JE, SD and MS, Doherty, among other things:

- a. Failed to disclose that the transactions would require BGC to take positions in securities, contrary to its business model as an inter-dealer broker;
- b. Failed to disclose that he knew TS was engaging in the transactions solely to circumvent SUI's Aged Inventory Policy and enhance his own compensation;
- c. Failed to disclose that he and TS planned to execute both sides of the transactions at pre-agreed prices; and
- d. Failed to disclose that TS would be using a code word, "Melissa," to trigger the transactions.

22. Following his conversations with JE, SD and MS, Doherty proceeded to participate in TS's proposed scheme, as further described below.

23. In accordance with the scheme Doherty agreed with TS, on May 14, 2015 at 11:12 a.m., TS sold 287m of CBS 5.5% to Doherty at 106.487, for a total of \$305,617.67. (The "m" notation indicates each bond had a face value of \$1,000 and the price figure is expressed as a percentage of each bond's face value.) The same day at 2:28 p.m., TS re-purchased 287m of

CBS 5 ½ from Doherty at 106.612, for a total of \$305,976.44. SUI suffered a net loss of \$358.75 on this transaction.

24. TS and Doherty then entered into at least eighteen additional same-day transactions with offsetting sales and purchases of different bonds, as set forth in detail in the attached Appendix 1 (the Prearranged Transactions). Because Doherty executed the Prearranged Transactions pursuant to a prior agreement with TS on the prices of each component trade, none of the Prearranged Transactions was subject to market risk. Each of the trades was unlawful and violated federal securities law, FINRA rules, and multiple provisions of BGC's WSP Manual.

25. TS and Doherty discussed and agreed to at least seventeen of the nineteen Prearranged Transactions on the telephone. In at least fifteen of those telephone conversations, TS invoked the code word "Melissa" to signal to Doherty his desire to engage in a prearranged trade.

26. The Prearranged Transactions enabled TS to maintain his positions in the subject securities—all of which were aged more than 180 days—while updating the date on which they entered SUI's inventory, thus avoiding any adverse consequences to his book's profit and loss statement due to the Aged Inventory Policy.

27. The Prearranged Transactions caused SUI to suffer aggregate losses of approximately \$55,773. Pursuant to a formula in Doherty's Employment Agreement dated February 28, 2009, he was entitled to receive a percentage of the total revenue he personally generated through voice brokerage transactions, less certain enumerated deductions, on a quarterly basis. Consistent with that formula, BGC paid Doherty a bonus for the second quarter of 2015 that was attributable in part to the revenue he generated through the Prearranged Transactions.

28. Doherty participated in the fraudulent trading scheme involving the Prearranged Transactions to earn compensation for himself and revenue for BGC, even though he knew, or was reckless in not knowing, that among other things its purpose was to deceive SUI into believing certain positions in TS's book did not require reserves under the Aged Inventory Policy and, by so doing, to help TS obtain compensation to which he was not entitled.

29. Doherty also knew, or was reckless in not knowing, that among other things SUI would suffer losses, and in fact did suffer losses, as a result of the Prearranged Transactions, which had no legitimate business purpose.

30. Doherty also engaged in other conduct demonstrating that he knew, or was reckless in not knowing, that he was participating in a fraudulent scheme:

- a. Doherty colluded in TS's use of coded language to effect the Prearranged Transactions, specifically the use of the word "Melissa," to avoid detection by SUI or BGC.
- b. In eleven Prearranged Transactions, TS and Doherty "split the ticket" and broke the sale(s) and/or purchase(s) into multiple trades to conceal their true purpose in the event of a trading review by SUI or BGC.
- c. In six Prearranged Transactions, TS and Doherty sought to conceal the pattern of their misconduct by switching the order of the trades and having TS purchase securities from Doherty first, only to sell his aged position in the same securities to Doherty shortly thereafter, causing a loss to SUI. (*See Appendix 1.*)
- d. Doherty also made multiple omissions of material fact when discussing the Prearranged Transactions with other Firm personnel.

31. In effecting the fraudulent scheme, Doherty used at least one instrumentality of interstate commerce—i.e., the telephone.

32. Doherty acted with scienter when he defrauded SUI by deceiving it into believing that it was no longer holding at least nineteen aged securities positions, thus causing it both to violate the reserve requirements in its own Aged Inventory Policy, and to lose approximately \$55,773.

33. As a result of the foregoing conduct, Doherty willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and FINRA Rules 2010 and 2020.

SECOND CAUSE OF ACTION
(Alternative to First Cause of Action)
(Violation of FINRA Rule 2010 by Violating §§ 17(a)(2) and 17(a)(3)
of the Securities Act)

34. The Department realleges and incorporates by reference paragraphs 1-33, above.

35. Section 17(a) of the Securities Act, titled “Use of Interstate Commerce for Purpose of Fraud or Deceit,” provides that “[i]t shall be unlawful for any person in the offer or sale of any securities ... by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly— ... (2) to obtain money or property by means of any 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; [and/or] (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.” A violation of § 17(a) constitutes a violation of FINRA Rule 2010.

36. In May and June 2015, Doherty engaged in a series of transactions, and a course of business, that operated as a fraud and deceit upon SUI. Specifically, Doherty and TS engaged

in the nineteen Prearranged Transactions, whereby they made offsetting purchases and sales of identical quantities of various securities at pre-agreed prices, on the same day, without taking market risk, for no legitimate business purpose. As a result, among other things, (i) SUI violated the reserve requirements in its own Aged Inventory Policy; and (ii) SUI lost approximately \$55,773.

37. Doherty's conduct was, at a minimum, negligent. TS told Doherty that he wanted to enhance his compensation by deceiving SUI about his compliance with its Aged Inventory Policy, so the unlawfulness of participation in the Prearranged Transactions should have been obvious to Doherty. Additionally, Doherty failed to disclose material facts when seeking internal approval from BGC to engage in the Prearranged Transactions. Those omissions were, at a minimum, negligent, because they involved the facts most necessary for Firm personnel to apprehend the illegality of the Prearranged Transactions.

38. Accordingly, Doherty failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010, by violating §§ 17(a)(2) and 17(a)(3) of the Securities Act.

THIRD CAUSE OF ACTION
(Alternative to First and Second Causes of Action)
(Aiding and Abetting Fraud)
(Violation of FINRA Rules 2010 and 2020)

39. The Department realleges and incorporates by reference paragraphs 1-38, above.

40. A person aids and abets another's violation of FINRA Rule 2020 when there has been: (1) a primary violation by another violator; (2) the respondent rendered substantial assistance in furtherance of the conduct constituting the violation; and (3) the respondent provided such assistance knowingly or recklessly. Aiding and abetting a violation of FINRA Rule 2020 constitutes a violation of FINRA Rule 2010.

41. TS perpetrated a fraudulent scheme against SUI by deceiving it into believing that it was no longer holding at least nineteen aged securities positions, thus causing it both to violate the reserve requirements in its own Aged Inventory Policy, and to lose approximately \$55,773 on transactions with no *bona fide* economic purpose. The goals of the fraudulent scheme were, in part, to obtain compensation to which TS was not entitled and to earn additional compensation for Doherty.

42. By his conduct, TS engaged in a “manipulative or deceptive device or contrivance” in violation of Exchange Act § 10(b); a “device, scheme or artifice to defraud” in violation of Rule 10b-5(a); and an “act, practice, or course of business which operate[d] or would operate as a fraud or deceit upon a[] person” in violation of Rule 10b-5(c). Consequently, TS’s conduct constituted a violation of FINRA Rule 2020.

43. Doherty rendered substantial assistance to TS in perpetrating the fraudulent scheme, by *inter alia*: (i) associating himself with the scheme; (ii) entering into the Prearranged Transactions; and (iii) helping TS to conceal the scheme and its improper purposes through “splitting the ticket,” use of a code word (“Melissa”), failure to disclose material facts to Firm personnel, and other measures.

44. In rendering substantial assistance to the fraudulent scheme, Doherty acted knowingly, or at a minimum, recklessly. Before Doherty executed the Prearranged Transactions, TS informed Doherty of all material facts surrounding the scheme, including its purpose and intended mode of operation. Further, at all relevant times, Doherty understood the scheme’s fraudulent purpose and mode of operation.

45. Doherty therefore aided and abetted TS in defrauding SUI by helping him deceive SUI into believing that it was no longer holding at least nineteen aged securities positions, thus

causing it both to violate the reserve requirements in its own Aged Inventory Policy, and to lose approximately \$55,773 on transactions with no *bona fide* economic purpose.

46. By his conduct, Doherty failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010, by aiding and abetting a violation of FINRA Rule 2020.

RELIEF REQUESTED

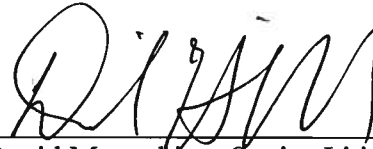
WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- C. order that Respondent(s) bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and

- D. make specific findings that Respondent Brian Colin Doherty willfully violated Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.

FINRA DEPARTMENT OF ENFORCEMENT

Date: August 2, 2018



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Appendix 1 – List of Long Prearranged Transactions

Date	Approx. Time	Security (Symbol) ¹	BGC Purchase Vol. (m) ²	Unit Price ³	Total Sale Amount	Approx. Time	BGC Sale Vol. (m)	Unit Price	Total Purchase Amount	Net loss to SUI
5/14/2015	11:12	CBS 5.5	287	106.487	\$305,617.69	14:26	287	106.612	\$305,976.44	\$358.75
5/15/2015	9:44	CSCO 2.9	2615	104.171	\$2,724,071.65	12:09	2615	104.226	\$2,725,509.90	\$1,438.25
5/15/2015	12:14	TWX 6 1/2	1040	123.575	\$1,285,180.00	13:39	1040	123.725	\$1,286,740	\$1,560
5/18/2015	10:50	TWX 6 1/4	3090	118.804	\$3,671,043.60	14:10	3,090	118.969	\$3,676,142.10	\$5,098.50
5/19/2015	11:00	TRICN 4.3	2700	105.923	\$2,859,921	12:52	1000	105.997	\$1,059,970	\$1,998
						13:57	1700	105.997	\$1,801,949	
5/19/2015	12:15	FIS 3 7/8	5650	101.287	\$5,722,715.50	14:23	5650	101.362	\$5,726,953	\$4,237.50
5/21/2015	9:30	TWX 5.35	1410	106.555	\$1,502,425.50	11:22	1000	106.715	\$1,067,150.00	\$2,256
						11:23	410	106.715	\$437,531.50	
5/26/2015	9:23	VIA 3.125	10000	97.085	\$9,708,500.00	13:36	1000	97.146	\$971,460.00	\$6,100
						13:36	6250	97.146	\$6,071,625.00	
						13:38	2750	97.146	\$2,671,515.00	
5/26/2015	10:54	CBS 5.75	3625	113.883	\$4,128,258.75	13:46	2000	113.932	\$2,278,640.00	\$1,776.25
						13:47	1625	113.932	\$1,851,395.00	
5/28/2015	14:21	INTC 3.3	3610	105.592	\$3,811,871.20	15:38	1610	105.652	\$1,700,997.20	\$2,166
						15:52	2000	105.652	\$2,113,040.00	
5/29/2015	9:59	WPPLN 4.75	10268	111.83	\$11,482,704.40	13:03	2268	111.893	\$2,537,733.24	\$6,468.84
						13:05	5000	111.893	\$5,594,650	
						13:08	3000	111.893	\$3,356,790	
6/25/2015	9:39	DTV 5.15	6371	93.991	\$5,988,166.61	13:56	6371	94.124	\$5,996,640.04	\$8,473.43
6/26/2015	11:25	MSI 3.50	4540	98.723	\$4,482,024.20	14:07	2000	98.778	\$1,975,560	\$2,497
						14:08	2540	98.778	\$2,508,961.20	

¹ This column indicates the symbol and coupon rate of the traded bonds.

² The “m” notation indicates each bond had a face value of \$1,000.

³ This figure indicates price expressed as a percentage of each bond’s face value.

Appendix 1 – List of Short Prearranged Transactions

Date	Approx. Time	Security (Symbol)⁴	BGC Purchase Vol. (m)⁵	Unit Price⁶	Total Purchase Amount	Approx. Time	BGC Sale Vol. (m)	Unit Price	Total Sale Amount	Net loss to SUI
5/27/2015	16:09	TWX 4.9	795	103.763	\$824,915.85	15:44	1795	103.917	\$1,865,310.15	\$2,764.30
	16:10		1000	103.763	\$1,037,630.00					
6/16/2015	14:08	CMCSA 4.50	898	97.986	\$879,914.28	10:00	898	98.136	\$881,261.28	\$1,347
6/18/2015	14:27	DIS 4.125	1000	98.55	\$985,500	10:01	1290	98.715	\$1,273,423.50	\$2,128.50
	14:30		290	98.55	\$285,795					
6/23/2015	14:20	COXENT 2.95	500	91.899	\$459,495	10:00	2200	91.963	\$2,023,186	\$1,088
	14:22		1700	91.899	\$1,562,283					
6/23/2015	15:05	WPPLN 3.625	980	100.361	\$983,537.80	10:13	1980	100.424	\$1,988,395.20	\$1,247.40
	15:06		1000	100.361	\$1,003,610					
6/30/2015	16:31	TWX 7.625	2114	129.869	\$2,745,430.66	15:34	2114	130	\$2,748,200	\$2,769.34

Total Net Loss to SUI: \$55,773.06

⁴ This column indicates the symbol and coupon rate of the traded bonds.

⁵ The “m” notation indicates each bond had a face value of \$1,000.

⁶ This figure indicates price expressed as a percentage of each bond’s face value.