

MEMO# 28235

July 2, 2014

New York Attorney General Files Civil Complaint Against Dark Pool Operator Alleging Fraud and Deceit

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TO: EQUITY MARKETS ADVISORY COMMITTEE No. 10-14 RE: NEW YORK ATTORNEY GENERAL FILES CIVIL COMPLAINT AGAINST DARK POOL OPERATOR ALLEGING FRAUD AND DECEIT

On June 25, 2014, New York's Attorney General filed a civil complaint against the operator of a private securities trading venue (i.e., a "dark pool") alleging violations of New York's General Business Law (the "Martin Act") and Executive Law. [\[1\]](#) The Complaint alleges that the Defendants "embarked on a business strategy to dramatically increase the market share of its dark pool, with the goal of making it the largest dark pool in the United States." [\[2\]](#) The Complaint alleges that the Defendants accomplished their strategy by engaging in unlawful fraud and deceit including:

- (1) Falsifying marketing materials purporting to show the extent and type of high frequency trading ("HFT") in the Defendants' dark pool;
- (2) Falsely marketing the percentage of aggressive HFT activity in the Defendants' dark pool;
- (3) Making a series of false representations to clients about the Defendants' "Liquidity Profiling" service, which service was to protect clients from predatory trading;
- (4) Falsely representing that the Defendants routed client orders for securities to trading venues in a manner that did not favor its own dark pool; and
- (5) Secretly giving HFT firms informational and other advantages over other clients trading in the Defendants' dark pool while marketing its dark pool to institutional investors as offering protection from high frequency traders.

Each of these allegations is discussed in detail in the Complaint along with the Attorney General's evidence in support of them.

The Complaint demands judgment that would require the Defendants to:

- Provide an accounting of all fees, revenues, or other compensation received directly or indirectly from the Defendants' operation of its Equities Electronic Trading division (which is alleged to have operated the dark pool), and the various business units thereof;
- Pay damages caused, directly or indirectly, by their "fraudulent and deceptive acts and repeated fraudulent acts and persistent illegality complained of" in the Complaint plus applicable pre-judgment interest; [3]
- Disgorge all amounts obtained in connection with or as a result of the violations alleged in the Complaint, all moneys obtained in connection with or as a result of the alleged fraud, and all amounts by which Defendants have been unjustly enriched as a result of the acts, practices, and omissions alleged in the Complaint; and
- Make restitution of all funds obtained from investors in connection with the fraudulent and deceptive acts alleged in the Complaint.

The Complaint also requests that the court: enjoin the Defendants from engaging in any ongoing or future violations of New York law; provide such other equitable relief as may be necessary to redress the alleged violations of New York law; direct the Defendants to pay the Plaintiff's (i.e., the State's) costs, including attorneys' fees; and grant such other and further relief as may be just and proper.

Tamara K. Salmon
Senior Associate Counsel

[Attachment](#)

endnotes

[1] See The People of the State of New York, by Eric T. Schneiderman, Attorney General of the State of New York v. Barclays Capital, Inc. and Barclays PLC, (June 25, 2014)(the "Complaint"). A copy of the Complaint is attached. The press release issued by the Attorney General upon filing the Complaint is available at: <http://www.ag.ny.gov/press-release/ag-schneiderman-announces-fraud-charges-against-barclays-connection-marketing-and>.

[2] Complaint at p. 1.

[3] Complaint at p. 29.