UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98605 / September 29, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21749

In the Matter of **MAXIM GROUP, LLC,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO 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 Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Maxim Group, LLC ("Respondent" or "Maxim").

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 it 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 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 finds that:

Summary

1. This matter concerns Maxim's failure to file suspicious activity reports ("SARs") as required by Section 17(a) of the Exchange Act and Rule 17a-8 thereunder, as well as Maxim's violation of Rule 203(b)(1) of Regulation SHO under the Exchange Act.

2. From at least January 2018 through January 2019 (the "relevant period"), Maxim, a registered broker-dealer, maintained customer accounts that sold microcap securities, and also served as a market maker active in the trading of microcap securities.[1] During the relevant period, Maxim facilitated order flow from other broker-dealers engaged in the sale of large volumes of shares of low-priced over-the-counter ("OTC") microcap securities ("low-priced securities"). Maxim's commission revenue derived from transactions in low-priced securities trading was over $7 million in 2018, which amounted to 14.1% of its total commission revenue for the year. While engaging in these transactions, Maxim repeatedly violated the above-referenced federal securities laws in the following ways.

3. First, although Maxim was engaged in facilitating high volume sales of low-priced OTC stocks, Maxim did not reasonably design or adequately implement its anti-money laundering ("AML") policies and procedures ("AML Policies") so as to reasonably address the risks associated with this business. During the relevant period, Maxim failed to identify numerous red flags, and failed to sufficiently investigate certain conduct as required by its AML Policies. As detailed below, due to the deficiencies in Maxim's design and implementation of its AML Policies and its failure to identify and sufficiently investigate red flags, Maxim failed to file SARs for numerous transactions that it should have had reason to suspect involved possible fraudulent activity or had no business or apparent lawful purpose. In instances where Maxim personnel identified red flags concerning U.S. low-priced securities trading activity during the relevant period, Maxim failed to file a SAR on suspicious activity. As a result, Maxim violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

4. Second, Maxim violated Regulation SHO during the relevant period. Maxim would receive from certain broker-dealers "not held" long sale orders to sell low-priced microcap securities, which Maxim would execute in a series of principal short sales throughout the day. Maxim did not, however, "locate" shares prior to effecting its short sales as required by Rule 203(b)(1) of Regulation SHO.

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[1] The term microcap securities applies to companies with low or "micro" capitalizations, meaning the total value of the company's stock. The securities at issue here are those microcap securities that trade for under five dollars per share. *See* Microcap Stock: A Guide For Investors (Sept. 18, 2013), https://www.sec.gov/reportspubs/investor-publications/investorpubsmicrocapstockhtm.html; Exchange Act Section 3(a)(51) and Rule 3a51-1 thereunder.

Respondent

5. **Maxim** is a mid-size full service broker-dealer, founded in 2002, with its principal place of business in New York, New York. It has been registered with the Commission as a broker-dealer since 2002. Maxim executes trades for retail and institutional investors and engages in market making, investment banking, and research into small and mid-size companies. The firm employed approximately 250 registered representatives in 11 branch offices during the relevant period.

Facts

A. AML Violations

6. The Bank Secrecy Act ("BSA") and implementing regulations promulgated by the Financial Crimes Enforcement Network ("FinCEN") require that broker-dealers file SARs with FinCEN to report a transaction (or pattern of transactions of which the transaction is a part) conducted or attempted by, at, or through the broker-dealer involving or aggregating to at least $5,000 that the broker-dealer knows, suspects, or has reason to suspect: (1) involves funds derived from illegal activity or is conducted to disguise funds derived from illegal activities as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement; (2) is designed to evade any requirement of the BSA; (3) has no business or apparent lawful purpose and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts; or (4) involves use of the broker-dealer to facilitate criminal activity. 31 C.F.R. § 1023.320(a)(2) ("SAR Rule").

7. Exchange Act Rule 17a-8 requires broker-dealers registered with the Commission to comply with the reporting, record-keeping, and record retention requirements of the BSA. The failure to file a SAR as required by the SAR Rule is a violation of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

8. Maxim adopted AML Policies to address its AML risks that were in effect during the relevant period. Maxim's AML Policies contained a section entitled "Suspicious Activity Monitoring" that listed examples of "red flags" indicating the possibility of money laundering, terrorist financing, or suspicious activity which may be subject to SAR reporting requirements. These AML Policies also identified, among other things, low-priced securities as a type of security that has been utilized in the past in connection with fraudulent activity and money laundering schemes.

9. Maxim's AML Policies did provide for the monitoring of high volume sales in low-priced securities and required customers to provide additional information when depositing low-priced securities at Maxim. However, Maxim's AML Policies were not reasonably designed to monitor for, detect, and report all suspicious activity. For example, Maxim's AML Policies did not include any reference to large deposits and sales of securities, and subsequent withdrawal of funds within a short time period ("DSW activity"). In addition, Maxim did not maintain a reasonably

designed system for recording the review and disposition of suspicious activity issues. Intelligence gained regarding investigations into red flag activity that pertained to particular accounts and/or securities was not aggregated. Thus, despite having identified singular transactions as suspicious, Maxim often did not incorporate those singular transactions into a larger analysis to identify patterns of suspicious activity.

10. Maxim's implementation of its AML Policies during the relevant period was also deficient. Maxim did not have sufficient resources in its compliance function to adequately review and/or address the issues identified by its surveillance systems. As a result, Maxim failed to conduct the requisite review of numerous transactions and patterns of activity that, when taken together, raised red flags as to the issuers, the trading patterns and volume, and/or the customers engaged in the trading. In numerous instances, these failures led Maxim to fail to file SARs on suspicious activity.

11. Maxim generated a "HiVol" exception report ("HiVol Report"), which was an internal monitoring report for suspicious activity for low-priced securities during the relevant period. This daily report lists any account that traded more than 100,000 shares of a particular security during the day, and includes a calculation of the percentage of the total daily trading volume represented by those trades. Despite at least 3,000 entries on the report during the relevant period, Maxim largely did not investigate these instances as involving suspicious activity.

12. During the relevant period, Maxim failed to identify or investigate red flags of potentially suspicious conduct, including DSW activity and high-volume trading, and ultimately failed to file SARs on these suspicious transactions.

13. For example, Maxim failed to detect DSW activity in connection with certain U.S. microcap securities transactions. DSW activity may be indicative of potentially unregistered offerings, pumps and dumps, or other manipulative activity. On at least 90 occasions during the relevant period, Maxim failed to investigate, and as a result failed to file a SAR, in connection with transactions involving suspicious DSW activity. In each of these 90 instances, Maxim customers deposited shares of U.S. microcap securities into their Maxim accounts, sold the shares and the proceeds of the sales totaled approximately $100,000 or more, and the same account wired out approximately $100,000 or more, all within 30 calendar days. Despite this, Maxim did not investigate the DSW fact pattern.

14. Maxim also ignored or failed to investigate numerous other red flags indicative of potentially unregistered offerings, pumps and dumps, or other manipulative activity in low-priced securities, and as a result failed to file SARs on this activity.

15. For example, Maxim failed to investigate customer accounts whose trading represented a substantial percentage of the daily trading volume in a particular security. In connection with Maxim's HiVol Report, there were 390 instances in which customer account sales represented at least 20% of the daily trading volume. Included within these 390 instances were also 42 instances in which customer account sales represented at least 80% of the daily trading volume; 93 instances in which customer account sales represented at least 60% of the daily trading volume; and 212 instances in which customer account sales represented at least 40% of the daily

trading volume. Of the 390 instances where customer account sales represented at least 20% of the daily trading volume, only one instance had been added to Maxim's AML case log, and none had resulted in a SAR filing.

16. In another example, during the relevant period, customers of the firm had sold the shares of at least two issuers, which were the subject of promotional activity, and whose trading was subsequently suspended by the Commission in 2018. Trading activity by Maxim customers in one of those issuers, on at least one day in September 2018, represented a significant percentage of the daily trading volume in that issuer. However, Maxim did not conduct any reviews of the trading activity in the shares of those suspended issuers. Additionally, following the suspension of one of the issuers, Maxim's clearing broker inquired about the customer trading in the issuer. When taken together, these red flags should have alerted Maxim to the likelihood the transactions were suspicious. Maxim did not file any SARs in these circumstances.

17. Finally, Maxim's clearing broker had closed certain of Maxim's accounts due to its having observed high risk activity, resulting in AML concerns, and the clearing broker had also requested that Maxim close certain accounts. Additionally, Maxim had independently closed various accounts due to AML concerns. However, despite being alerted to the existence of the suspicious activity that had resulted in those account closures, Maxim largely did not investigate or file SARs concerning the account closures.

18. For example, of the 80 accounts closed by Maxim during the relevant period, 18 were closed due to low-priced securities activity and 14 were closed due to learning of negative news associated with the account holder, but only one of the closed accounts resulted in the filing of a SAR.

B. Rule 203(b)(1) Violations

19. Regulation SHO governs the execution of short sales. Rule 203(b)(1) of Regulation SHO prohibits a broker or 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 or dealer has borrowed the security, entered into a bona-fide arrangement to borrow the security, or has reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due (the "locate requirement"). Rule 203(b)(1) also requires the broker or dealer to document its compliance with the locate requirement.

20. During the relevant period, when Maxim received orders for the sale of stock from its broker-dealer customers, Maxim typically facilitated the execution of these orders, and the sale of the shares into the public trading market, in the following manner. After Maxim received a long sale order in a stock from its broker-dealer customer giving Maxim discretion over when and at what price to execute the sale above a certain minimum price, Maxim sold short shares of the same stock on a principal basis for its own account, building a short position and covering at the end day or with intermittent buys, also on a principal basis, of the same number of shares from its broker-dealer customer pursuant to the customer's original "not held" sell order. The price at which

Maxim bought the shares from its customer was a negotiated price, but was always lower than the average price at which Maxim had executed its short sales. Maxim profited on these transactions in the amount of the difference between the prices at which it sold the shares short into the market on a principal basis, and the price at which it then bought the shares from its broker-dealer customers to cover its short position.

21. When engaging in short sales as principal in connection with the transactions described above, Maxim did not comply with the locate requirement. Maxim entered these short sales without borrowing the securities, arranging to borrow the securities, or having reasonable grounds to believe that the securities could be borrowed in time for delivery on the date delivery was due. Although Regulation SHO includes certain exceptions to the locate requirement, none of those exceptions applied to the transactions at issue, which include at least 10,000 short sales executed by Maxim as principal under these circumstances during the relevant period. Accordingly, Maxim repeatedly violated Rule 203(b)(1) of Regulation SHO during the relevant period.

Violations

22. As a result of the conduct described above, Maxim willfully[2] violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

23. As a result of the conduct described above, Maxim willfully violated Rule 203(b)(1) of Regulation SHO promulgated under the Exchange Act.

Remedial Efforts

24. In determining to accept the Offer, the Commission considered remedial acts undertaken by Maxim. For example, since the relevant period, Maxim increased its staffing responsible for AML compliance. Maxim also revised its policies and procedures in an effort to prevent the use of its platform for potentially violative conduct. Maxim also added additional automated monitoring systems for low-priced securities, and has implemented a variety of measures to minimize trading in microcap securities. Finally, Maxim is in the process of engaging an outside consultant to review its Regulation SHO policies and procedures.

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[2] "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act, "'means no more than that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

IV.

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

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

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder, and Rule 203(b)(1) of Regulation SHO promulgated under the Exchange Act.

B. Respondent is censured.

C. Respondent shall, within twenty (20) days of the entry of this Order, pay a civil money penalty in the amount of $800,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent 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) Respondent 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, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Maxim 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 Sheldon L. Pollock, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, NY 10004.

D. 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 in any Related Investor

Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount 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 it 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 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.

Vanessa A. Countryman
Secretary