UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 88744 / April 24, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19768

In the Matter of **Biltmore International Corporation** **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 Biltmore International Corporation ("Biltmore" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement ("Offer") which the Commission has determined to accept. Solely for purposes 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[1] that:

Summary

1. From at least November 2016 through October 2017 (the "relevant period"), Biltmore was a registered broker-dealer that primarily facilitated order flow from other broker-dealers engaged in the sale of large volumes of shares in thinly traded, low priced, over-the-counter ("OTC") stocks. Biltmore derived a substantial portion of its revenue during this period from the trading profits it generated by facilitating the sale of such shares by two broker-dealer customers, "Broker-Dealer A" and "Broker-Dealer B." While doing so, Biltmore repeatedly violated the federal securities laws in two different ways.

2. First, Biltmore violated Rule 203(b)(1) of Regulation SHO promulgated under the Exchange Act. To facilitate the long sale of shares by its broker-dealer customers, Biltmore routinely executed a series of short sales throughout the day for its own account in the stocks being sold by such customers. Biltmore then later covered its short positions by purchasing shares from such customers on a "net" basis, charging such customers an average price at a pre-negotiated markdown. For at least several thousand short sales executed by Biltmore in this manner during the relevant period, Biltmore did not locate shares of those stocks as required by Rule 203(b)(1) of Regulation SHO.

3. Second, although Biltmore was engaged in facilitating high volume liquidations of low priced, thinly traded, OTC stocks, Biltmore did not adequately implement its anti-money laundering ("AML") policies and procedures so as to reasonably address the risks associated with its business model. As detailed below, due to the deficiencies in Biltmore's implementation of its AML policies and procedures, Biltmore failed to file timely Suspicious Activity Reports ("SARs") for numerous transactions that it had reason to suspect involved possible fraudulent activity or had no business or apparent lawful purpose. As a result, Biltmore violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

Respondent

4. Biltmore was, during the relevant period, a registered broker-dealer headquartered in Edison, New Jersey. During the relevant period, Biltmore transitioned its business from engaging in proprietary trading to facilitating the sale of thinly traded, low priced, OTC stocks into the market for other broker-dealers, including Broker-Dealer A and Broker-Dealer B.

Other Relevant Entities

5. Broker-Dealer A was, during the relevant period, a registered broker-dealer headquartered in Utah. Broker-Dealer A's primary business activities focused on executing its customers' trades in thinly traded, low priced, OTC stocks.

[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.

6. Broker-Dealer B was, during the relevant period, a registered broker-dealer headquartered in New York. Broker-Dealer B's business activities included executing its customers' trades in thinly traded, low priced, OTC stocks.

Background

A. Regulation SHO Violations

7. Regulation SHO establishes locate and delivery requirements for short sales, among other things. Rule 203(b)(1) of Regulation SHO prohibits a broker or dealer from accepting a short sale order 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 delivery date (the "locate requirement"). Rule 203(b)(1) also requires the broker or dealer to document its compliance with the locate requirement.

8. When Biltmore received long sale orders for the sale of stock from its broker-dealer customers, including Broker-Dealers A and B, Biltmore typically facilitated the execution of these orders in the following manner: After Biltmore received a long sale order in a stock from its broker-dealer customer giving Biltmore discretion over when and at what price to execute the sale above a certain minimum price, Biltmore sold short shares of the same stock on a principal basis for its own account, building a short position over the course of the day. Biltmore then later covered its short position by purchasing shares from such customers on a "net" basis, charging such customers an average price at a pre-negotiated markdown.

9. During the relevant period, there were thousands of transactions where Biltmore failed to comply with the locate requirement of Regulation SHO while engaging in short sales of OTC stocks to facilitate long sale orders as described above. Biltmore entered these short sales to facilitate long sale orders received from other broker-dealers 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 these OTC transactions. Biltmore's transactions in OTC securities resulted in more than 6000 violations of Rule 203(b)(1) of Regulation SHO during the relevant period.

10. Additionally, Biltmore executed short sales of at least four NASDAQ listed securities 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. Biltmore claimed an exception to the locate requirement based on bona-fide market making activities when, in fact, it did not meet the requirements for that exception. Because Biltmore was not engaged in bona-fide market making activities, and was ineligible for any other exception to the locate requirement, Biltmore's transactions in these four securities resulted in more than 200 violations of Rule 203(b)(1) of Regulation SHO during the relevant period.

B. AML Violations

11. The Bank Secrecy Act ("BSA") and implementing regulations promulgated by 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; (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(a)(2) ("SAR Rule").

12. 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.

13. Biltmore had certain written policies and procedures to address its AML risks ("AML Policies") that included "an ongoing program to identify potential money laundering" and required the firm to file SARs "for transactions that may be indicative of money laundering activity." However, Biltmore's implementation of its AML Policies during the relevant period was deficient and, as a result, Biltmore failed to file SARs or conduct a review of numerous transactions and patterns of activity that raised red flags as to the issuers, their principals, the trading patterns and volume and/or the customers engaged in the trading. In numerous instances, these deficiencies led Biltmore to fail to file SARs where warranted, under both its own AML Policies and the foregoing legal provisions.

14. Biltmore's AML Policies stated that "[m]onitoring will be conducted using exception reports or review of a sufficient amount of account activity to permit identification of patterns of unusual size, volume, pattern or type of transactions." Biltmore's AML Policies expressly stated that "suspicious activities" include "a wide range of questionable activities," including, among other things, "trading that constitutes a substantial portion of all trading for the day in a particular security" and "heavy trading in low-priced securities." Biltmore's AML Policies also stated that "[t]rading in penny stocks (which may involve unregistered distributions) . . . will, in particular, be monitored when they occur."

15. Biltmore's AML Policies also set forth specific "risk indicators" or "red flags" related to "Penny Stock Company Related Transactions" that may suggest potential money laundering. These red flags focused on the issuers of the securities being traded and, in particular, on issuers that have:

- no business, no revenues and no product;"
- "[o]fficers or insiders … associated with multiple penny stock issuers;"
- "undergo[ne] frequent material changes in business strategy or its line of business;"
- "[o]fficers or insiders … [with] … a history of securities violations;"

- "not made disclosures in SEC or other regulatory filings;" or
- "been the subject of a prior trading suspension."

16. Although Biltmore's AML Policies indicated an awareness that its focus on facilitating high volume liquidations of thinly traded, low priced, OTC securities presented significant AML risks, Biltmore failed to adequately implement those policies so as to address the risks posed by its business model.

17. Biltmore failed to adequately review transactions that reflected potential suspicious activity and indicia of manipulative activity associated with high volume liquidation orders in low priced securities, including a failure to review certain red flags that Biltmore's AML Policies specifically required it to monitor. For instance, even when presented with unusually large sales of thinly traded, low-priced OTC or penny stocks, over the course of several weeks or months, Biltmore did not monitor to see whether that trading constituted a substantial portion of all trading for the day in a particular security. Moreover, Biltmore did not review the filings of the microcap or OTC issuers in whose securities its customers traded to evaluate whether those issuers were associated with other red flags that Biltmore had identified in its AML Policies. For example, Biltmore did not investigate whether these issuers' officers or insiders were associated with other penny stock issuers and/or had a history of securities violations or other illegal activity. Due to these deficiencies in Biltmore's implementation of its AML Policies, Biltmore did not conduct the necessary reviews of certain red flags to detect or identify suspicious activity that likely would have been readily apparent had an adequate review been performed.

18. Despite Biltmore's facilitation of thousands of large sale transactions in thinly traded, low priced OTC and microcap stocks for its broker-dealer customers, including Broker-Dealer A and Broker-Dealer B, Biltmore filed no SARs from November 1, 2016 through October 31, 2017 related to customers' suspicious, large volume liquidations of thinly traded, low priced stocks.

19. As illustrated by the examples described below, Biltmore was, or should have been, aware of multiple red flags indicating suspicious activity regarding the sale transactions in which it engaged for its broker-dealer customers. However, as a result of the above-described deficiencies in its implementation of its AML Policies, Biltmore failed to conduct any AML review of these red flags and report these and numerous other transactions or obtain a reasonable explanation after examining the available facts. Accordingly, Biltmore did not comply with the requirements of the BSA and violated Section 17(a) of the Exchange Act and Rule 17a-8.

*(a) **Suspicious Trading in Issuer A***

20. From April 13, 2017 through October 31, 2017, Biltmore facilitated sale orders by Broker-Dealer A's customers of *hundreds of millions* of shares of Issuer A, a penny stock issuer. During this period, Issuer A's stock price fluctuated from a low of $0.0145 to a high of $0.0319 per share on an average daily volume of approximately 22.5 million shares. As of March 31, 2017, Issuer A reported that there were more than 1.7 billion outstanding common shares.

21. For example, on 76 trading days during this period (April 13 through August 2, 2017), Biltmore facilitated sale orders of approximately 285 million shares of Issuer A's stock, almost entirely for customers of Broker-Dealer A which represented approximately 17% of the issuer's most recently reported total outstanding share amount. On five of these trading days, Biltmore's aggregate trading accounted for more than 50% of the day's trading volume in the stock; and on 24 of these days, Biltmore's aggregate trades accounted for more than 40% of the day's trading volume in the stock.

22. Notwithstanding the foregoing, Biltmore did not identify these red flags, did not conduct any follow-up inquiry into relevant facts regarding Issuer A and failed to file SARs concerning its customers' trading in Issuer A. Had Biltmore identified these red flags and reviewed the unusual activity as required by its AML Policies, it likely would have identified additional red flags, including that in June 2016, the SEC had filed a complaint against Issuer A's CEO, along with his friend and brother, alleging a fraudulent scheme that resulted in the sale of hundreds of millions of unregistered Issuer A shares.

(b) ***Suspicious Trading in Issuer B***

23. From November 10, 2016, through September 27, 2017, Biltmore facilitated sale orders by customers of Broker-Dealers A and B of *billions* of shares of Issuer B, a penny stock issuer. During this period, Issuer B's stock price fluctuated from a low of $0.0001 to a high of $0.025 per share on an average daily volume of more than 35 million shares. As of May 7, 2017, Issuer B reported that there were approximately 250 million outstanding common shares.

24. For example, on 92 trading days during this period (May 11 through September 20, 2017), Biltmore facilitated sale orders of more than 1.37 billion shares of Issuer B's stock, almost entirely for customers of Broker-Dealers A and B which represented approximately five times the amount of Issuer B's recently reported outstanding share amount. On seven of these trading days, Biltmore's aggregate trading accounted for more than 90% of the day's trading volume in the stock; on 24 of these days, Biltmore's trades accounted for more than 75% of the day's trading volume in the stock; and on 46 of these days, Biltmore's aggregate trades accounted for more than 50% of the day's trading volume in the stock.

25. Notwithstanding the foregoing, Biltmore did not identify these red flags, did not conduct any follow-up inquiry into relevant facts regarding Issuer B, and failed to file SARs concerning its customers' trading in Issuer B. Had Biltmore identified these red flags and reviewed the unusual activity as required by its AML Policies, it likely would have identified additional red flags, including that Issuer B had an operating deficit of more than $2.2 million for the six months ended June 30, 2017, with no revenue during this time.

(c) ***Suspicious Trading in Issuer C***

26. From January 4, 2017 through October 31, 2017, Biltmore facilitated sale orders by customers of Broker-Dealer A of *billions* of shares of Issuer C, a penny stock issuer. During this period, Issuer C's stock price fluctuated from a low of $0.0001 to a high of $0.0159 per share on an average daily volume of more than 56 million shares. As of December 16, 2015,

Issuer C reported that there were approximately 250 million outstanding common shares.

27. For example, on 153 trading days during this period (March 27 through October 31, 2017), Biltmore facilitated sale orders of more than 2.76 billion shares of Issuer C's stock, almost entirely for customers of Broker-Dealer A which represented approximately 11 times the amount of Issuer C's outstanding shares as last reported on December 16, 2015. On 12 of these trading days, Biltmore's aggregate trading accounted for more than 90% of the day's trading volume in the stock; on 24 of these days, Biltmore's trades accounted for more than 75% of the day's trading volume in the stock; and on 41 of these days, Biltmore's aggregate trades accounted for more than 50% of the day's trading volume in the stock.

28. Notwithstanding the foregoing, Biltmore did not identify these red flags, did not conduct any follow-up inquiry into relevant facts regarding Issuer C, and failed to file SARs concerning its customers' trading in Issuer B. Had Biltmore identified these red flags and reviewed the unusual activity as required by its AML Policies, it likely would have identified additional red flags, including that: on September 16, 2016, the SEC instituted Cease & Desist proceedings against Issuer C for the sale of unregistered securities and failure to file certain reports; in the past approximately 8 years, Issuer C had at least four different business strategies and/or lines of business; and Issuer C had not filed a Form 10-K since November 10, 2015 for the period ended June 30, 2015.

29. As a result of the conduct described in Section III.A above, Biltmore willfully[2] violated Rule 203(b)(1) of Regulation SHO promulgated under the Exchange Act.

30. As a result of the conduct described in Section III.B above, Biltmore willfully violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, to impose the sanctions agreed to in the 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 Rule 203(b)(1) of Regulation SHO promulgated under the Exchange Act, and Section 17(a) of the Exchange Act and Rule 17a-8 promulgated thereunder.

B. Respondent is censured.

C. Respondent shall, within twenty-one (21) days of the entry of this Order pay a civil monetary penalty in the amount of $125,000.00 to the Securities and Exchange Commission for

[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).

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 Biltmore 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 Joseph G. Sansone, Unit Chief, Market Abuse Unit, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281.

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 Countryman
Secretary