

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 57804 / May 8, 2008**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13039**

<b>In the Matter of</b>	)	<b>ORDER INSTITUTING CEASE-</b>
	)	<b>AND-DESIST PROCEEDINGS,</b>
	)	<b>MAKING FINDINGS, AND</b>
<b>QUOGUE CAPITAL LLC</b>	)	<b>IMPOSING A CEASE-AND-DESIST</b>
<b>and WAYNE P. ROTHBAUM,</b>	)	<b>ORDER PURSUANT TO SECTION</b>
	)	<b>21C OF THE SECURITIES</b>
<b>Respondents.</b>	)	<b>EXCHANGE ACT OF 1934</b>

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Quogue Capital LLC and Wayne P. Rothbaum (collectively “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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 them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

**III.**

On the basis of this Order and Respondents’ Offers, the Commission finds that:

## Respondents

1. **Quogue Capital LLC (“Quogue”)** is a New York limited liability company with its principal place of business in New York City. Quogue is not registered with the Commission. During the relevant time period, Quogue only invested the funds of its owner.

2. **Wayne P. Rothbaum (“Rothbaum”)**, age 40, is a resident of New York, New York. Rothbaum is the managing member and sole owner of Quogue and he directed Quogue’s trading activities.

## Summary

3. On four occasions from February 2005 to November 2005, Respondents violated Rule 105 of Regulation M. With respect to each violation, Quogue, at Rothbaum’s direction, sold securities short within five business days before the pricing of public offerings and then covered the short positions with securities purchased in the offering. Quogue’s profits on these transactions totaled \$782,902.

## Background

4. At all relevant times, Rule 105 of Regulation M, “Short Selling in Connection with a Public Offering,” (“Rule 105”) provided, in pertinent part:

In connection with an offering of securities for cash pursuant to a registration statement ... filed under the Securities Act, it shall be unlawful for any person to cover a short sale with offered securities purchased from an underwriter or broker or dealer participating in the offering, if such short sale occurred during the ... period beginning five business days before the pricing of the offered securities and ending with such pricing. . .

17 C.F.R. § 242.105(a)(1). This five business day or shorter period is referred to herein as the “restricted period.” Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller’s intent in effecting the short sale.

5. During the relevant period, Quogue and Rothbaum engaged in short selling and covering transactions prohibited under Rule 105 in connection with purchases of securities in public offerings made by Bioenvision, Inc. (“Bioenvision”), Geron Corporation (“Geron”), Cotherix, Inc. (“Cotherix”) and Point Therapeutics, Inc. (“Point Therapeutics”).

6. After the close of the market on February 2, 2005, Bioenvision priced a follow-on offering of 7,500,000 shares of its common stock at \$8.00 per share. The offering was offered to the public through an underwriter on a firm commitment basis. Accordingly, the restricted period was January 27, 2005 through February 2, 2005.

7. At Rothbaum’s direction, Quogue sold short a total of 89,269 Bioenvision shares on one day during the restricted period and then covered the restricted period short

position using Bioenvision shares received in the follow-on offering. Quogue's profit on the restricted period short sales was \$15,732.

8. After the close of the market on September 15, 2005, Geron priced a follow-on offering of 8,000,000 shares of its common stock at \$9 per share. Geron offered the shares to the public through an underwriter on a firm commitment basis. Accordingly, the restricted period was September 9, 2005 through September 15, 2005.

9. At Rothbaum's direction, Quogue sold short a total of 519,661 Geron shares on three days during the restricted period and covered some of the restricted period short sales using Geron shares received in the follow-on offering. Quogue's profit on the restricted period short sales was \$614,280.

10. After the close of the Market on October 6, 2005, Cotherix and certain selling shareholders priced a follow-on offering of 4,500,000 shares of its common stock at \$13.00 per share. Cotherix offered the shares to the public through an underwriter on a firm commitment basis. Accordingly, the restricted period was September 30, 2005 through October 6, 2005.

11. At Rothbaum's direction, Quogue sold short a total of 92,300 Cotherix shares on two consecutive days during the restricted period and covered the restricted period short position using Cotherix shares received in the follow-on offering. Quogue's profit from the short sales during the restricted period was \$70,107.

12. After the close of the market on November 21, 2005, Point Therapeutics priced a follow-on offering of 8,050,000 shares of its common stock at \$3.00 per share. Point Therapeutics offered the shares to the public through an underwriter on a firm commitment basis. Accordingly, the restricted period was November 15, 2005 through November 21, 2005.

13. At Rothbaum's direction, Quogue sold short a total of 142,400 Point Therapeutics shares on five consecutive days during the restricted period and covered the restricted period short position using Point Therapeutics shares received in the follow-on offering. Quogue's profit on the restricted period short sales was \$82,783.

14. As a result of the conduct described above, Quogue and Rothbaum committed violations of Rule 105.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Quogue shall cease and desist from committing or causing any violations, and any future violations of Rule 105 of Regulation M under the Exchange Act; and

B. Respondent Rothbaum shall cease and desist from committing or causing any violations, and any future violations of Rule 105 of Regulation M under the Exchange Act.

C. IT IS FURTHER ORDERED that Respondents shall, jointly and severally, within thirty (30) days of the entry of this Order, pay disgorgement in the amount of \$782,902 and prejudgment interest in the amount of \$161,154 to the United States Treasury. Such payment shall be: (A) made by 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, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Quogue Capital LLC and Wayne P. Rothbaum as Respondents in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to John T. Dugan, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 23<sup>rd</sup> Floor, Boston, MA 02210.

By the Commission.

Nancy M. Morris  
Secretary