

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 64764 / June 28, 2011

INVESTMENT ADVISERS ACT OF 1940
Release No. 3226 / June 28, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14444

In the Matter of)	ORDER INSTITUTING ADMINISTRATIVE
)	AND CEASE-AND-DESIST PROCEEDINGS
Brookside Capital, LLC,)	PURSUANT TO SECTION 21C OF THE
)	SECURITIES EXCHANGE ACT OF 1934
Respondent.)	AND SECTION 203(e) OF THE
)	INVESTMENT ADVISERS ACT OF 1940,
)	MAKING FINDINGS, AND IMPOSING A
)	CEASE-AND-DESIST ORDER AND
)	REMEDIAL SANCTIONS

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 Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Section 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”) against Brookside Capital, LLC (“Brookside” or “Respondent”).

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 Section 21C of the Securities Exchange Act of 1934 and Section 203(e) of the Investment Advisers Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order and Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of a violation of Rule 105 of Regulation M of the Exchange Act by Brookside, a registered investment adviser based in Boston, Massachusetts. Rule 105 prohibits short selling of equity securities during a restricted period prior to a public offering and then purchasing the subject securities in the offering. Brookside violated Rule 105 in June 2009 in connection with certain short sales it effected within the Rule 105 restricted period preceding its participation in a public offering by Lincoln National Corporation Co. ("LNC"), resulting in profits of \$1,658,660.

Respondent

2. Brookside Capital, LLC, is a limited liability company organized under Delaware law and headquartered in Boston, Massachusetts. During the relevant time period, Brookside was the investment adviser to Brookside Capital Trading Fund, L.P. ("Brookside Fund"), and the trading described in this Order was conducted by Brookside on behalf of this fund. Brookside Fund is a hedge fund that primarily invests in the securities of public companies. At the end of 2009, Brookside had approximately \$11.2 billion in assets under management. Brookside is an investment adviser registered with the Commission, and has been since 2008.

Background

3. As amended in 2007, Rule 105 of Regulation M provides in pertinent part:

In connection with an offering of equity securities for cash pursuant to a registration statement or a notification on Form 1-A . . . or Form 1-E . . . filed under the Securities Act of 1933 ("offered securities"), it shall be unlawful for any person to sell short . . . the security that is the subject of the offering and purchase the offered securities from an underwriter or broker or dealer participating in the offering if such short sale was effected during the period ("Rule 105 restricted period") . . . [b]eginning five business days before the pricing of the offered securities and ending with such pricing.

17 C.F.R. § 242.105(a); Short Selling in Connection With a Public Offering, Exchange Act Release No. 56,206, 72 Fed. Reg. 45,094, 45,107 (Aug. 10, 2007).

4. The Commission adopted Rule 105 "to foster secondary and follow-on offering prices that are determined by independent market dynamics." Id. At 45,094. Rule 105 prohibits

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.

the conduct irrespective of the short seller's intent in effectuating the short sale. "The prohibition on purchasing offered securities ... provides a bright line demarcation of prohibited conduct consistent with the prophylactic nature of Regulation M." *Id.* at 45,096.

5. On Friday, June 12, 2009, Brookside sold short 600,000 shares of LNC at prices ranging between \$17.70 and \$17.75 per share.

6. On Monday, June 15, 2009, following the close of the market, LNC announced a public secondary offering of common stock (the "Offering"), which was priced after the close of the market on June 16, 2009 at \$15 per share.

7. As a result of LNC's offering announcement, Brookside's investment plan concerning LNC changed, and Brookside decided to pursue a long strategy regarding LNC stock.

8. On June 16, 2009, Brookside purchased a total of one million shares of LNC common stock in the Offering at \$15.00 per share.

9. Because Brookside sold short shares of LNC for the Brookside Fund during the restricted period and then purchased shares in the Offering, Brookside violated Rule 105. As a result of its violation of Rule 105, Brookside made a profit for the Brookside Fund of \$1,633,740 on the shares sold short. In addition, Brookside improperly obtained a benefit for the Brookside Fund of \$24,920 from the remaining 400,000 offering shares it received at a discount from LNC's market price. Accordingly, the total profit from participating in the Offering was \$1,658,660.

10. At the time of the violation, Brookside had no policies, procedures or controls in place designed to detect or prevent Rule 105 violations.

11. As a result of the conduct described above, Brookside willfully¹ violated Rule 105 of Regulation M of the Exchange Act.

Brookside's Remedial Efforts

12. After Brookside learned of its Rule 105 violation, it developed and implemented policies, procedures and training programs relating to its Rule 105 compliance.

13. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent Brookside and cooperation afforded the Commission staff.

¹ A willful violation of the securities laws means merely "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." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

IV.

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

Accordingly, pursuant to Section 21C of the Exchange Act and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

- A. Respondent Brookside cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;
- B. Brookside is censured;
- C. Brookside shall within 14 days of the entry of this Order pay disgorgement in the amount of \$1,658,660, prejudgment interest in the amount of \$90,419, and a civil monetary penalty in the amount of \$375,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. § 3717. Payment shall be: (A) made by wire transfer, 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 sent via overnight mail to the Office of Financial Management, U.S. Securities and Exchange Commission, 100 F St., NE, Mail Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Brookside Capital, LLC as a Respondent in these proceedings and includes the file number of these proceedings; a copy of that cover letter and money order, check, or wire transfer shall be simultaneously mailed to Linda Berrafati Moran, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, D.C. 20549-5010A.

By the Commission.

Elizabeth M. Murphy
Secretary