

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 62073 / May 11, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13886

<p>In the Matter of</p> <p>PETER G. GRABLER,</p> <p>Respondent.</p>	<p>ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER</p>
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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 Peter G. Grabler ("Grabler" 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 Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing 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. These proceedings arise out of numerous violations of Rule 105 of Regulation M, a rule designed to protect the independent pricing mechanism of the securities market shortly before follow-on and secondary offerings, by Peter G. Grabler.¹ Grabler violated Rule 105 in connection with offerings from at least February 2006 through November 2008 (the "relevant period"). Grabler engaged in a strategy of participating in numerous secondary offerings of stock in public companies in order to improve his access to initial public offerings ("IPOs") underwritten by the same broker-dealers through which he participated in the secondary offerings. At all relevant times through October 9, 2007, Rule 105 prohibited covering a short sale with securities obtained in a public offering when the short sale occurred during a restricted period, generally five business days before the pricing of the offering. Since October 9, 2007, Rule 105 prohibits any person effecting a short sale during the restricted period from purchasing shares offered in a secondary offering. Grabler violated Rule 105 in connection with at least 119 offerings between February 2006 and November 2008, resulting in gains of \$636,123.

Respondent

2. **Peter G. Grabler**, age 55, is a resident of Boca Raton, Florida. Grabler is a licensed attorney in Massachusetts and Florida, but he has not engaged in the practice of law since the 1980's. Grabler is retired and has been a full-time investor since the 1990's.

Background

Rule 105

3. Prior to October 2007, Rule 105 of Regulation M, "Short Selling in Connection with a Public Offering," 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 a short sale occurred during the ... period beginning five business days before the pricing of the offered securities and ending with such pricing ...

¹ "The first time an issuer conducts a public offering of its securities, the offering is referred to as an initial public offering ("IPO"). Subsequent offerings by the issuer are referred to as follow-on offerings or repeat offerings. A secondary offering is an offering of securities held by security holders, for which there already exist trading markets for the same class of securities as those being offered." Short Selling in Connection With a Public Offering; Proposed Rule, 71 Fed. Reg. 75002, 75003 n.12 (Dec. 13, 2006) ("Proposing Release on Rule 105").

17 C.F.R. § 242.105(a)(1).

4. The Commission amended Rule 105 effective October 9, 2007, to provide, in pertinent part:

In connection with an offering of equity securities for cash pursuant to a registration statement ... 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") that is the shorter of the period:

(1) Beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) Beginning with the initial filing of such registration statement ... and ending with the pricing.

17 C.F.R. § 242.105(a)(1) (effective October 9, 2007).

5. The Commission amended Rule 105 to eliminate the covering component to "reduce[] a potential investor's incentive to aggressively sell short prior to pricing solely due to the anticipation of this discount." *Id.* Both the pre- and post-amendment versions of Rule 105 are prophylactic and prohibit the conduct irrespective of the short seller's intent in effecting the short sale. *See id.* at 45094 ("Rule 105 is prophylactic. Thus, its provisions apply irrespective of a seller's intent"); Proposing Release on Rule 105, 71 Fed. Reg. at 75002 ("The proposal, like the current rule, provides a bright line test for Rule 105 compliance consistent with the prophylactic nature of Regulation M").

Grabler's Trading

6. During the relevant period, Grabler participated in secondary offerings in order to improve his access to IPOs. Grabler opened or controlled at least 52 brokerage accounts at more than a dozen broker-dealers. These accounts gave Grabler potential access to IPOs underwritten by those broker-dealers. With respect to customers such as Grabler, these broker-dealers generally allocated IPOs based upon the amount of commissions and sales credits those customers generated. Because the commissions and sales credits generated by purchases of shares in secondary offerings were substantially greater than commissions generated by open market transactions, Grabler agreed to participate in numerous secondary offerings. And to hedge those transactions, he frequently sold short the stock of the issuing companies.

7. From at least February 2006 through November 2008, Grabler engaged in transactions prohibited by Rule 105 on at least 119 occasions involving secondary offerings by at least 102 issuers. These violations include at least 60 violations prior to October 9, 2007 ("pre-amendment violations") and at least 59 violations after that date ("post-amendment violations").

8. Grabler's pre-amendment violations involve two types of transactions: (1) direct covering of short positions with offering shares, either within the same account or through transfers of offering shares from one account to another; and (2) transactions in which, rather than directly covering a short position with offering shares, Grabler placed orders before the market opened to both buy shares in the market in one or more accounts and sell offering shares in one or more different accounts in what amounted to riskless transactions.

9. For example, on June 7, 2006, Grabler sold short 60,000 shares of Level 3 Communications, Inc. ("Level 3"), stock in one account within five days of the date the company priced its secondary offering (after the market closed on June 7, 2006) at a price of \$34.57 per share. Grabler then purchased 94,000 shares of Level 3 stock in the secondary offering through 11 different accounts at the offering price of \$32.75. He then transferred 60,000 offering shares to cover the short position.

10. As an example of what amounted to Grabler's riskless transactions, from November 30, 2006 through December 4, 2006, he sold short 24,000 shares of Odyssey Re Holdings Corp. ("Odyssey") stock within five days of the date the company priced its secondary offering (after the market closed on December 4, 2006) at a volume weighted average price of \$35.51 per share. Grabler then purchased 15,000 shares in the secondary offering at a price of \$34.60. On December 5, 2006, before the market opened, Grabler placed orders to purchase 13,000 shares of Odyssey stock in the market with one broker-dealer and to sell the 9,000 of the shares of Odyssey stock purchased in the secondary offering with another broker-dealer. Those transactions were executed within 45 seconds of each other at the same price of \$34.25.

11. An example of Grabler's post-amendment violations is his trading in the shares of American International Group, Inc. ("AIG") in May 2008. From May 9, 2008 through May 12, 2008, Grabler sold short 35,000 shares of AIG stock in three accounts at a weighted average price of \$38.99 per share. On May 12, 2008, after the markets closed, AIG priced its secondary offering. On May 13, 2008, Grabler purchased 71,400 AIG shares in four accounts at the offering price of \$38.00 per share in connection with that secondary offering. Grabler's short sales of AIG stock were within 5 days of the pricing of the offering and thus fell within the restricted period under Rule 105. As a result, Grabler violated Rule 105 when he purchased the AIG offering shares after having sold AIG stock short during the restricted period.

Violations

12. As a result of the conduct described above, from at least February 2006 through October 9, 2007, Grabler violated Rule 105 of Regulation M, which at the time made it "unlawful for any person to cover a short sale with offered securities purchased from an underwriter or broker or dealer participating in an offering, if such short sales occurred during the ... period beginning five business days before pricing of the offered securities and ending with such pricing."

13. As a result of the conduct described above, from October 9, 2007 through November 2008, Grabler violated Rule 105 of Regulation M of the Exchange Act, as amended effective October 9, 2007, which makes it "unlawful for any person to sell short ... the security that is the subject of the offering and purchase the offered securities from an underwriter, broker or dealer participating in the offering if such short sale was effected during the period: (1) Beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) Beginning with the initial filing of such registration statement ... and ending with such pricing."

IV.

In view of the foregoing, the Commission deems it appropriate to impose the cease-and-desist order agreed to in Respondent's Offer.

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

- A. Respondent shall cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act.
- B. Respondent shall, within 30 days of the entry of this Order, pay disgorgement of \$636,123 and prejudgment interest in the amount of \$35,232 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. 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, Alexandria, VA 22312-0003; and (D) submitted under cover letter that identifies Peter G. Grabler as a Respondent 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 Director, Division of Enforcement, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110.

By the Commission.

Elizabeth M. Murphy
Secretary