

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 64763 / June 28, 2011

INVESTMENT ADVISERS ACT OF 1940
Release No. 3225 / June 28, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14443

)	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
In the Matter of)	
Level Global Investors, L.P.,)	
Respondent.)	
)	

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 Level Global Investors, L.P. (“Level Global” 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 two violations of Rule 105 of Regulation M of the Exchange Act by Level Global, a non-registered investment adviser based in New York, NY. 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. Level Global violated Rule 105 in April 2009 in connection with certain short sales it effected within the Rule 105 restricted period preceding its participation in a public offering by Goldman Sachs Group, Inc. ("GS"), resulting in profits of \$298,415. Next, Level Global violated Rule 105 again in May 2009 in connection with certain short sales it effected within the Rule 105 restricted period preceding its participation in a public offering by Regions Financial Corporation ("RF"), resulting in profits of \$2,381,100. Altogether, Level Global made a profit of \$2,679,515.

Respondent

2. Level Global Investors, L.P. is a limited partnership organized under Delaware law and headquartered in New York, NY, with an additional office in Greenwich, Connecticut. Level Global is the investment adviser to two hedge funds: 1) Level Global Overseas Master Fund, Ltd. and 2) Level Radar Master Fund, Ltd., with an aggregate value of approximately \$3.7 billion of assets under management as of December 31, 2010. On or about February 11, 2011, Level Global announced that it planned to wind down its operations, fully liquidate its funds' portfolios, and to distribute redemption proceeds to investors.

Background

3. Rule 105 of Regulation M of the Exchange Act makes it unlawful for a person to purchase securities in a public offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule. Rule 105 defines the restricted period as the period: (1) beginning five business days prior to the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of such registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. Ch. II §242.105. Pursuant to amendments that became effective in October 2007, it is not required that the shares purchased in the offering be used to "cover" the restricted period short sales. Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007).

4. The Commission adopted Rule 105 in an effort to prevent manipulative short selling prior to a public offering and, therefore, "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.

Level Global's Violation in Connection with the Goldman Sachs Trades

5. On Monday, April 13, 2009, Level Global sold short 50,000 shares of GS at \$128.7081 per share.

6. That same day, Monday, April 13, 2009, following the close of the market, GS announced a public secondary offering of common stock (the "GS Offering"). The GS Offering was priced that evening at \$123 per share.

7. On Tuesday, April 14, 2009, Level Global purchased 400,000 shares of GS common stock in the GS Offering at \$123.00 per share. Level Global made a profit of \$285,405 on its 50,000 share short position in GS stock. Level Global did not cover its restricted period short sales of GS stock with shares bought in the public offering.

8. On Tuesday, April 14, 2009 Level Global sold 100,000 of the GS Offering shares at \$123.1301 per share. Level Global made an additional profit of \$13,010 on this sale of 100,000 of the GS Offering shares.

9. Because Level Global sold short shares of GS during the restricted period and then purchased shares in the GS Offering, Level Global violated Rule 105. As a result of its violation of Rule 105, Level Global received a total profit of \$298,415 on the GS Offering shares.

Level Global's Violation in Connection with the Regions Financial Trades

10. Between Thursday, May 14, 2009 and Tuesday, May 19, 2009, Level Global sold short 1.5 million shares of RF at prices ranging between \$5.0506 and \$5.4878 per share.

11. On Wednesday morning, May 20, 2009, RF announced a public secondary offering of common stock (the "RF Offering"). The RF Offering was priced after the close of the market on May 20, 2009 at \$4 per share. Accordingly, the five-day restricted period began on Thursday, May 14, 2009.

12. On May 20, 2009, Level Global purchased a total of two million shares of RF common stock in the RF Offering at \$4.00 per share. Level Global made a profit of \$1,936,100 on its \$1.5 million share short position in RF stock. Level Global did not cover its restricted period short sales of RF stock with shares bought in the public offering.

13. In addition, Level Global obtained a benefit of \$445,000 on the remaining 500,000 RF Offering shares that it received at a discount from RF's market price. Accordingly, Level Global's total profit from its participation in the RF Offering was \$2,381,100.

14. At the time of both of the violations, Level Global had no written policies, procedures or controls in place designed to detect or prevent Rule 105 violations.

15. As a result of both of its violations of Rule 105, Level Global received a total profit of \$2,679,515 on the GS Offering shares and RF Offering shares.

16. As a result of the conduct described above, Level Global twice willfully¹ violated Rule 105 of Regulation M of the Exchange Act.

Level Global's Remedial Efforts

17. After Level Global learned of its Rule 105 violation in the RF Offering, and prior to the investigation by the staff of the Commission, Level Global made efforts to develop and formalize policies and procedures relating to Rule 105. These efforts included the prompt distribution of an educational memorandum to trading and investment staff. Level Global also instituted a policy whereby participation in any secondary offering required prior written approval from the compliance department. Further, Level Global updated and reissued its compliance manual and conducted mandatory formal training sessions, and the compliance department adopted the practice of distributing periodic e-mail reminders about Rule 105 to relevant employees.

18. In deciding to accept the Offer, the Commission considered the remedial acts promptly undertaken by Respondent Level Global and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Level Global'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 Level Global cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;
- B. Level Global is censured;
- C. Level Global shall within 14 days of the entry of this Order pay disgorgement in the amount of \$2,679,515, prejudgment interest in the amount of \$189,656, 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

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)).

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 Street, NE, Mail Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Level Global Investors, L.P. 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, DC 20549-5010A.

By the Commission.

Elizabeth M. Murphy
Secretary