

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70392 / September 16, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15473

In the Matter of

**Blackthorn Investment
Group, LLC,**

Respondent.

**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 AND CIVIL
PENALTY**

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 Blackthorn Investment Group, LLC. (“Blackthorn” 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 Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty (“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 violations of Rule 105 of Regulation M of the Exchange Act by Blackthorn, a Kansas-based registered investment adviser with the Commission. Rule 105 prohibits buying an equity security made available through a public offering, conducted on a firm commitment basis, from an underwriter or broker or dealer participating in the offering after having sold short the same security during the restricted period as defined therein.

2. On sixteen occasions, from June 2009 through May 2011, Blackthorn bought offered shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the restricted period. These violations collectively resulted in profits of \$270,729.

Respondent

3. Blackthorn Investment Group, LLC is a Kansas limited liability company with its principal place of business in Overland Park, Kansas. Blackthorn, a registered investment adviser, manages one domestic fund and one offshore fund and has over \$826 million in regulatory assets under management.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities from an underwriter, broker, or dealer participating 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, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). The Rule 105 restricted period 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 a registration statement or notification on Exchange Act Form 1-A or Form 1-E and ending with pricing.

5. "The goal of Rule 105 is to promote offering prices that are based upon open market prices determined by supply and demand rather than artificial forces." Final Rule: Short Sales, Exchange Act Release No. 50103. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale.

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.

Blackthorn's Violations of Rule 105 of Regulation M

6. On October 21, 2009 and October 22, 2009, Blackthorn sold short 15,000 shares of American Capital Agency Corp. ("AGNC") during the restricted period at an average price of \$28.6435 per share. On October 26, 2009, AGNC announced the pricing of a follow-on offering of its common stock at \$26.60 per share. Blackthorn received an allocation of 50,000 shares in that offering. The difference between Blackthorn's proceeds from the restricted period short sales of AGNC shares and the price paid for the 15,000 shares received in the offering was \$30,652.50. Thus, Blackthorn's participation in the AGNC offering netted total profits of \$30,652.50.

7. On September 21, 2010, Blackthorn sold short 5,000 shares of American Capital Agency Corp. ("AGNC") during the restricted period at an average price of \$29.7002 per share. On September 28, 2010, AGNC announced the pricing of a follow-on offering of its common stock at \$26.00 per share. Blackthorn received an allocation of 25,000 shares in that offering. The difference between Blackthorn's proceeds received from the restricted period short sales of AGNC shares and the price paid for the 5,000 shares received in the offering was \$18,501.00. Respondent also improperly obtained a benefit of \$6,170.00 by purchasing the remaining 20,000 shares at a discount from AGNC's market price. Thus, Blackthorn's participation in the AGNC offering netted total profits of \$24,671.00.

8. On May 3, 2011 and May 4, 2011, Blackthorn sold short 12,640 shares of BRE Properties Inc. CL A ("BRE") during the restricted period at an average price of \$50.0663 per share. On May 6, 2011, BRE announced the pricing of a follow-on offering of its common stock at \$48.00 per share. Blackthorn received an allocation of 15,000 shares in that offering. The difference between Blackthorn's proceeds received from the restricted period short sales of BRE shares and the price paid for the 12,640 shares received in the offering was \$26,118.03. Respondent also improperly obtained a benefit of \$35.16 by purchasing the remaining 2,360 shares at a discount from BRE's market price. Thus, Blackthorn's participation in the BRE offering netted total profits of \$26,153.19.

9. On November 1, 2010 and November 2, 2010, Blackthorn sold short 12,350 shares of Chimera Investment Corp. ("CIM") during the restricted period at an average price of \$4.0671 per share. On November 3, 2010, CIM announced the pricing of a follow-on offering of its common stock at \$3.85 per share. Blackthorn received an allocation of 100,000 shares in that offering. The difference between Blackthorn's proceeds from the restricted period short sales of CIM shares and the price paid for the 12,350 shares received in the offering was \$2,681.19. Respondent also improperly obtained a benefit of \$2,200.02 by purchasing the remaining 87,650 shares at a discount from CIM's market price. Thus, Blackthorn's participation in the CIM offering netted total profits of \$4,881.21.

10. On November 15, 2010 and November 16, 2010, Blackthorn sold short 25,000 shares of CVR Energy Inc. ("CVI") during the restricted period at an average price of \$11.0838 per share. On November 18, 2010, CVI announced the pricing of a follow-on offering of its common stock at \$10.75 per share. Blackthorn received an allocation of 5,000 shares in that offering. The difference between Blackthorn's proceeds from the restricted period short sales of

CVI shares and the price paid for the 5,000 shares received in the offering was \$1,669.00. Thus, Blackthorn's participation in the CVI offering netted total profits of \$1,669.00.

11. On February 2, 2011, Blackthorn sold short 600 shares of CVR Energy Inc. ("CVI") during the restricted period at a price of \$17.5467 per share. On February 2, 2011, CVI announced the pricing of a follow-on offering of its common stock at \$16.75 per share. Blackthorn received an allocation of 150,000 shares in that offering. The difference between Blackthorn's proceeds received from the restricted period short sales of CVI shares and the price paid for the 600 shares received in the offering was \$478.02. Respondent also improperly obtained a benefit of \$27,205.74 by purchasing the remaining 149,400 shares at a discount from CVI's market price. Thus, Blackthorn's participation in the CVI offering netted total profits of \$27,683.76.

12. On January 5, 2010, Blackthorn sold short 13,400 shares of Energy Transfer Partners LP ("ETP") during the restricted period at a price of \$46.3803 per share. On January 6, 2010, ETP announced the pricing of a follow-on offering of its common stock at \$44.72 per share. Blackthorn received an allocation of 11,000 shares in that offering. The difference between Blackthorn's proceeds from the restricted period short sales of ETP shares and the price paid for the 11,000 shares received in the offering was \$18,263.30. Thus, Blackthorn's participation in the ETP offering netted total profits of \$18,263.30.

13. On January 26, 2011, Blackthorn sold short 15,000 shares of Fifth Street Finance Corp. ("FSC") during the restricted period at an average price of \$13.2037 per share. On February 1, 2011, FSC announced the pricing of a follow-on offering of its common stock at \$12.65 per share. Blackthorn received an allocation of 4,500 shares in that offering. The difference between Blackthorn's proceeds from the restricted period short sales of FSC shares and the price paid for the 4,500 shares received in the offering was \$2,491.65. Thus, Blackthorn's participation in the FSC offering netted total profits of \$2,491.65.

14. On March 17, 2010, Blackthorn sold short 10,000 shares of Genpact Ltd. ("G") during the restricted period at an average price of \$15.4358 per share. On March 18, 2010, G announced the pricing of a follow-on offering of its common stock at \$15.00 per share. Blackthorn received an allocation of 10,000 shares in that offering. The difference between Blackthorn's proceeds from the restricted period short sales of G shares and the price paid for the 10,000 shares received in the offering was \$4,358.00. Thus, Blackthorn's participation in the G offering netted total profits of \$4,358.00.

15. On March 21, 2011, Blackthorn sold short 30,000 shares of Gulfport Energy Corp. ("GPOR") during the restricted period at an average price of \$33.4194 per share. On March 25, 2011, GPOR announced the pricing of a follow-on offering of its common stock at \$32.00 per share. Blackthorn received an allocation of 17,000 shares in that offering. The difference between Blackthorn's proceeds from the restricted period short sales of GPOR shares and the price paid for the 17,000 shares received in the offering was \$24,129.80. Thus, Blackthorn's participation in the GPOR offering netted total profits of \$24,129.80.

16. From March 11, 2011 through March 16, 2011, Blackthorn sold short 20,000 shares of Hatteras Financial Corp. (“HTS”) during the restricted period at an average price of \$30.1960 per share. On March 18, 2011, HTS announced the pricing of a follow-on offering of its common stock at \$28.50 per share. Blackthorn received an allocation of 5,000 shares in that offering. The difference between Blackthorn’s proceeds from the restricted period short sales of HTS shares and the price paid for the 5,000 shares received in the offering was \$8,480.00. Thus, Blackthorn’s participation in the HTS offering netted total profits of \$8,480.00.

17. On March 16, 2011, Blackthorn sold short 25,000 shares of Invesco Mortgage Capital Inc. (“IVR”) during the restricted period at an average price of \$23.4785 per share. On March 22, 2011, IVR announced the pricing of a follow-on offering of its common stock at \$21.25 per share. Blackthorn received an allocation of 25,000 shares in that offering. The difference between Blackthorn’s proceeds from the restricted period short sales of IVR shares and the price paid for the 25,000 shares received in the offering was \$55,712.50. Thus, Blackthorn’s participation in the IVR offering netted total profits of \$55,712.50.

18. On July 12, 2010, Blackthorn sold short 20,000 shares of Annaly Capital Management Inc. (“NLY”) during the restricted period at an average price of \$18.16 per share. On July 14, 2010, NLY announced the pricing of a follow-on offering of its common stock. Blackthorn received an allocation of 20,000 shares in that offering at \$17.60 per share. The difference between Blackthorn’s proceeds from the restricted period short sales of NLY shares and the price paid for the 20,000 shares received in the offering was \$11,200.00. Thus, Blackthorn’s participation in the NLY offering netted total profits of \$11,200.00.

19. From June 4, 2009 through June 9, 2009, Blackthorn sold short 171,700 shares of Stone Energy Corp. (“SGY”) during the restricted period at an average price of \$8.6012 per share. On June 10, 2009, SGY announced the pricing of a follow-on offering of its common stock at \$8.00 per share. Blackthorn received an allocation of 26,000 shares in that offering. The difference between Blackthorn’s proceeds from the restricted period short sales of SGY shares and the price paid for the 26,000 shares received in the offering was \$15,631.20. Thus, Blackthorn’s participation in the SGY offering netted total profits of \$15,631.20.

20. On May 10, 2011, Blackthorn sold short 10,000 shares of Starwood Property Trust Inc. (“STWD”) during the restricted period at an average price of \$22.7394 per share. On May 11, 2011, STWD announced the pricing of a follow-on offering of its common stock at \$21.95 per share. Blackthorn received an allocation of 50,000 shares in that offering. The difference between Blackthorn’s proceeds received from the restricted period short sales of STWD shares and the price paid for the 10,000 shares received in the offering was \$7,894.00. Thus, Blackthorn’s participation in the STWD offering netted total profits of \$7,894.00.

21. On March 10, 2011, Blackthorn sold short 20,000 shares of Two Harbors Investment Corp. (“TWO”) during the restricted period at an average price of \$10.7972 per share. On March 10, 2011, TWO announced the pricing of a follow-on offering of its common stock at \$10.25 per share. Blackthorn received an allocation of 15,000 shares in that offering. The difference between Blackthorn’s proceeds from the restricted period short sales of TWO shares and

the price paid for the 15,000 shares received in the offering was \$6,858.00. Thus, Blackthorn's participation in the TWO offering netted total profits of \$6,858.00.

22. In total, Blackthorn's violations of Rule 105 resulted in profits of \$270,729².

Violations

23. As a result of the conduct described above, Blackthorn violated Rule 105 of Regulation M under the Exchange Act.

Blackthorn's Remedial Efforts

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

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Blackthorn cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Blackthorn shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$244,378.24, prejudgment interest of \$15,829.74, and a civil money penalty in the amount of \$260,000.00 (for a total of \$520,207.98) to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payments 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;³
- (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:

² Although Blackthorn's total profits were \$270,729, Blackthorn previously voluntarily disgorged profits in the amount of \$26,350.76, making Blackthorn's net ill-gotten gain \$244,378.24.

³ The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, respondents must make payments pursuant to options (2) or (3) above.

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 Blackthorn 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 Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.

Elizabeth M. Murphy
Secretary