

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70398 / September 16, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15477

In the Matter of

**DEERFIELD
MANAGEMENT
COMPANY, L.P.,**

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 Deerfield Management Company, L.P. (“Deerfield” 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 finds that:

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by Deerfield, a New York-based hedge fund adviser. 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 six occasions, from December 2010 through January 2013, Deerfield 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 \$1,273,707.

Respondent

3. Deerfield, a Delaware limited partnership located in New York, New York, is a registered investment adviser that provides advisory services exclusively to its associated private funds, which have over \$3 billion 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.

Deerfield's Violations of Rule 105 of Regulation M

6. On December 2, 2010, Deerfield sold short 25,000 shares of Geron Corporation ("GERN") during the restricted period at an average price of \$5.97 per share. On December 7, 2010, GERN announced the pricing of a follow-on offering of its common stock at \$5.00 per share.

Deerfield received an allocation of 2,900,000 shares in that offering. The difference between Deerfield's proceeds received from the restricted period short sales of GERN shares and the price for the 25,000 shares received in the offering was \$24,313. Respondent also improperly obtained a benefit of \$336,088 by purchasing the remaining 2,875,000 shares at a discount from GERN's market price. Thus, Deerfield's participation in the GERN offering netted total profits of \$360,401.

7. On April 1, 2011, Deerfield sold short 12,363 shares of Sangamo BioSciences, Inc. ("SGMO") during the restricted period at an average price of \$8.26 per share. On April 8, 2011, SGMO announced the pricing of a follow-on offering of its common stock at \$7.70 per share. Deerfield received an allocation of 250,000 shares in that offering. The difference between Deerfield's proceeds received from the restricted period short sales of SGMO shares and the price for the 12,363 shares received in the offering was \$6,921. Respondent also improperly obtained a benefit of \$8,032 by purchasing the remaining 237,637 shares at a discount from SGMO's market price. Thus, Deerfield's participation in the SGMO offering netted total profits of \$14,953.

8. During the period from February 2, 2012, through February 8, 2012, Deerfield sold short 1,417,818 shares of Array BioPharma, Inc. ("ARRY") during the restricted period at an average price of \$3.10 per share. On February 9, 2012, ARRY announced the pricing of a follow-on offering of its common stock at \$2.60 per share. Deerfield received an allocation of 1,000,000 shares in that offering. The difference between Deerfield's proceeds received from the restricted period short sales of ARRY shares and the price for the 1,000,000 shares received in the offering was \$502,576. Thus, Deerfield's participation in the ARRY offering netted total profits of \$502,576.

9. On March 26, 2012, Deerfield sold short 233,212 shares of Derma Sciences, Inc. ("DSCI") during the restricted period at an average price of \$9.28 per share. On April 2, 2012, DSCI announced the pricing of a follow-on offering of its common stock at \$9.25 per share. Deerfield received an allocation of 500,000 shares in that offering. The difference between Deerfield's proceeds received from the restricted period short sales of DSCI shares and the price for the 233,212 shares received in the offering was \$7,198. Respondent also improperly obtained a benefit of \$133,554 by purchasing the remaining 266,788 shares at a discount from DSCI's market price. Thus, Deerfield's participation in the DSCI offering netted total profits of \$140,752.

10. During the period from April 4, 2012, through April 5, 2012, Deerfield sold short 64,900 shares of TearLab Corporation ("TEAR") during the restricted period at an average price of \$3.89 per share. On April 11, 2012, TEAR announced the pricing of a follow-on offering of its common stock at \$3.60 per share. Deerfield received an allocation of 100,000 shares in that offering. The difference between Deerfield's proceeds received from the restricted period short sales of TEAR shares and the price for the 64,900 shares received in the offering was \$18,704. Respondent also improperly obtained a benefit of \$13,770 by purchasing the remaining 35,100 shares at a discount from TEAR's market price. Thus, Deerfield's participation in the TEAR offering netted total profits of \$32,474.

11. During the period from December 31, 2012, through January 3, 2013, Deerfield sold short 268,900 shares of Insulet Corporation (“PODD”) during the restricted period at an average price of \$21.56 per share. On January 4, 2013, PODD announced the pricing of a follow-on offering of its common stock at \$20.75 per share. Deerfield received an allocation of 275,000 shares in that offering. The difference between Deerfield’s proceeds received from the restricted period short sales of PODD shares and the price for the 268,900 shares received in the offering was \$217,237. Respondent also improperly obtained a benefit of \$5,314 by purchasing the remaining 6,100 shares at a discount from PODD’s market price. Thus, Deerfield’s participation in the PODD offering netted total profits of \$222,551.

12. In total, Deerfield’s violations of Rule 105 resulted in profits of \$1,273,707.

Violations

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

Deerfield’s Remedial Efforts

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

IV.

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

Accordingly, it is hereby ORDERED that:

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

B. Deerfield shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$1,273,707, prejudgment interest of \$19,035, and a civil money penalty in the amount of \$609,482 (for a total of \$1,902,224) 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;¹
- (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

¹ 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.

- (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:

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 Deerfield 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 Ian S. Karpel, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, Denver Regional Office, 1801 California Street, Suite 1500, Denver, CO 80202.

By the Commission.

Elizabeth M. Murphy
Secretary