

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 70408 / September 16, 2013**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15485**

**In the Matter of**

**VOLLERO BEACH**  
**CAPITAL PARTNERS 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 Vollero Beach Capital Partners LLC (“Vollero Beach Capital” 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 (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### **Summary**

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by Vollero Beach Capital, a registered investment adviser and hedge fund manager located in New York, New York. Rule 105 prohibits buying an equity security that is the subject of an 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 two occasions, in October 2009 and October 2010, Vollero Beach Capital 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 approximately \$594,292.

#### **Respondent**

3. Vollero Beach Capital is a limited liability company organized under Delaware law and located in New York, New York. During the relevant period, Vollero Beach Capital managed two hedge funds: Vollero Beach Capital Fund LP and Vollero Beach Capital Offshore Fund Ltd., as well as five separately managed accounts.

#### **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 Commission adopted Rule 105 "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." Id. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale. Id.

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<sup>1</sup> 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.

### **Vollero Beach Capital's Violations of Rule 105 of Regulation M**

6. On October 27, 2009, Vollero Beach Capital sold short 26,353 shares of Superior Well Services, Inc. ("SWSI") at prices ranging between \$12.16 and \$12.53. On October 28, 2009, SWSI announced the pricing of a follow-on offering of 6 million shares of its common stock at \$10.50 per share. Vollero Beach Capital received an allocation of 25,000 shares in that offering. The difference between Vollero Beach Capital's proceeds from the restricted period short sales of SWSI shares and the price for 25,000 shares purchased in the offering was \$46,414. Thus, Vollero Beach Capital's participation in the SWSI offering resulted in profits of \$46,414.

7. During the period from October 26, 2010 through October 27, 2010, Vollero Beach Capital sold short a total of 480,100 shares of Energy XXI (Bermuda) Ltd. ("EXXI") at prices ranging between \$22.76 and \$23.49. On October 28, 2010, EXXI announced the pricing of a follow-on offering of 12 million shares of its common stock at \$20.75 per share. Vollero Beach Capital received an allocation of 254,000 shares in that offering. The difference between Vollero Beach Capital's proceeds from the restricted period short sales of EXXI shares and the price for the 254,000 shares purchased in the offering was \$547,878. Thus, Vollero Beach Capital's participation in the EXXI offering resulted in profits of \$547,878.

8. In total, Vollero Beach Capital's violations of Rule 105 resulted in profits of \$594,292.

9. In determining to accept the Offer, the Commission considered Vollero Beach Capital's reliance on counsel for its participation in the EXXI offering. Prior to its violation in connection with that offering, Vollero Beach Capital consulted its then-outside counsel and received erroneous advice that Rule 105 did not apply to the type of registration form on which the offering was filed with the Commission.

### **Violations**

10. As a result of the conduct described above, Vollero Beach Capital violated Rule 105 of Regulation M under the Exchange Act.

### **Vollero Beach Capital's Remedial Efforts**

11. 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 Vollero Beach Capital's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent 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 fourteen (14) days of the entry of this Order, pay disgorgement of \$594,292, a civil penalty of \$214,964 and prejudgment interest of \$55,171 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717. Payment 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;<sup>2</sup>
- (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:

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 Vollero Beach Capital 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 Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

By the Commission.

Elizabeth M. Murphy  
Secretary

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