

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 70409 / September 16, 2013**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15492**

**In the Matter of**

**PAN CAPITAL AB,**

**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 Pan Capital AB (“Pan 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 and Civil Penalty (“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 Pan Capital, a Swedish-based investment firm. 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 four occasions, in May 2009, Pan 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 \$424,593.

#### **Respondent**

3. Pan Capital AB is an international investment firm headquartered in Stockholm, Sweden. The firm trades in foreign exchange markets, bonds, other interest-bearing instruments, and derivatives. The firm was founded in 1998 and has additional offices in Hong Kong and Fort Lauderdale, Florida.

#### **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.

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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.

## **Pan Capital's Violations of Rule 105 of Regulation M**

6. On May 13, 2009, Pan Capital sold short 50,369 shares of MGM Resorts International ("MGM") during the restricted period at an average price of \$10.3436 per share. On May 13, 2009, MGM announced the pricing of a follow-on offering of its common stock at \$7.00 per share. Pan Capital received an allocation of 50,000 shares in that offering. The difference between Pan Capital's proceeds from the restricted period short sales of MGM shares and the price paid for the 50,000 shares received in the offering was \$167,180. Thus, Pan Capital's participation in the MGM offering netted total profits of \$167,180.

7. On May 11, 2009, Pan Capital sold short 50,954 shares of U.S. Bancorp ("USB") during the restricted period at a price of \$19.4649 per share. On May 12, 2009, USB announced the pricing of a follow-on offering of its common stock at \$18.00 per share. Pan Capital received an allocation of 10,000 shares in that offering. The difference between Pan Capital's proceeds from the restricted period short sales of USB shares and the price paid for the 10,000 shares received in the offering was \$14,649. Thus, Pan Capital's participation in the USB offering netted total profits of \$14,649.

8. On May 11, 2009, Pan Capital sold short 39,985 shares of BB&T Corp. ("BBT") during the restricted period at a price of \$25.1326 per share. On May 12, 2009, BBT announced the pricing of a follow-on offering of its common stock at \$20.00 per share. Pan Capital received an allocation of 25,000 shares in that offering. The difference between Pan Capital's proceeds from the restricted period short sales of BBT shares and the price paid for the 25,000 shares received in the offering was \$128,315. Thus, Pan Capital's participation in the BBT offering netted total profits of \$128,315.

9. On May 12, 2009, Pan Capital sold short 170,981 shares of Ford Motor Co. ("F") during the restricted period at an average price of \$5.3744 per share. On May 12, 2009, F announced the pricing of a follow-on offering of its common stock at \$4.75 per share. Pan Capital received an allocation of 250,000 shares in that offering. The difference between Pan Capital's proceeds from the restricted period short sales of F shares and the price paid for the 170,981 shares received in the offering was \$106,760.54. Respondent also improperly obtained a benefit of \$7,688.55 by purchasing the remaining 79,019 shares at a discount from F's market price. Thus, Pan Capital's participation in the F offering netted total profits of \$114,449.09.

10. In total, Pan Capital's violations of Rule 105 resulted in profits of \$424,593.

### **Violations**

11. As a result of the conduct described above, Pan Capital violated Rule 105 of Regulation M under the Exchange Act.

## **Pan Capital Remedial Efforts**

12. 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 Pan Capital's Offer.

Accordingly, it is hereby ORDERED that:

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

B. Pan Capital shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$424,593, prejudgment interest of \$17,249.80, and a civil money penalty in the amount of \$220,655 (for a total of \$662,497.80) 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;<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

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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 options (2) or (3) above.

Payments by check or money order must be accompanied by a cover letter identifying Pan 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 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