

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 70415 / September 16, 2013**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15479**

**In the Matter of**

**JGP GLOBAL GESTAO DE  
RECURSOS LTDA.**

**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 JGP Global Gestão de Recursos Ltda. (“JGP” 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 Exchange Act, 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 ("Rule 105") by JGP, a Brazilian-based investment 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 three occasions from September 2009 through October 2011, JGP bought offered shares for its advised funds 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 \$2,537,114.

#### **Respondent**

3. JGP is a Brazilian company organized under the laws of Brazil as a Brazilian Sociedade Limitada with its principal place of business in Rio de Janeiro, Brazil. Since July 2012, JGP has had exempt adviser reporting status with the Commission under the Investment Advisers Act of 1940; it was not registered with the Commission at the time of the violations. JGP is the investment adviser to four offshore funds and has over \$1.2 billion in 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.

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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 person or entity in this or any other proceeding.

## **JGP's Violations of Rule 105 of Regulation M**

6. On September 18, 21, and 22, 2009, JGP sold short for its advised funds a total of 686,300 shares of Cemex, S.A.B. de C.V. Sponsore ("Cemex") at prices ranging from \$13.22 to \$14.15 per share. On September 22, 2009, after the market closed, Cemex announced a public offering of American depository shares priced at \$12.50 per share (the "Cemex Offering"). JGP received an allocation of 1,000,000 shares in that offering. The difference between the proceeds from the short sales of Cemex's shares during the Rule 105 restricted period and the cost of acquiring the shares in the Cemex Offering was \$786,521. In addition, the fund advised by JGP improperly obtained a benefit of \$187,248 from the remaining 313,700 shares it received in the Cemex Offering at a market discount from Cemex's market price. Accordingly, the total fund's profit from purchasing securities in the Cemex Offering was \$973,769.

7. On December 16, 2009, JGP sold short for its advised funds a total of 850,000 shares of Citigroup at a price of \$3.46 per share. On December 16, 2009, after the market closed, Citigroup announced a public offering of common stock priced at \$3.15 per share (the "Citigroup Offering"). JGP received an allocation of 22,500,000 shares in that offering. The difference between the proceeds from the short sales of Citigroup shares during the Rule 105 restricted period and the cost of acquiring the shares in the Citigroup Offering was \$263,500. In addition, the funds advised by JGP improperly obtained a benefit of \$161,265 from the remaining 21,650,000 shares they received in the Citigroup Offering at a market discount from Citigroup's market price. Accordingly, the total funds' profit from purchasing securities in the Citigroup Offering was \$424,765.

8. On October 17, 18, and 19, 2011, JGP sold short for its advised funds a total of 721,823 shares of Arcos Dorado Holdings Inc. ("Arcos") at prices ranging from \$22.74 to \$24.51 per share. On October 19, 2011, after the market closed, Arcos announced a public offering of Class A shares priced at \$22.00 per share (the "Arcos Offering"). JGP received an allocation of 1,000,000 shares in that offering. The difference between the proceeds from the short sales of Arcos' shares during the Rule 105 restricted period and the cost of acquiring the shares in the Arcos Offering was \$1,064,393. In addition, the funds advised by JGP improperly obtained a benefit of \$74,187 from the remaining 278,167 shares they received in the Arcos Offering at a market discount from Arcos' market price. Accordingly, the total funds' profit from purchasing securities in the Arcos Offering was \$1,138,580.

9. In total, JGP's violations of Rule 105 resulted in profits of \$2,537,114.

### **Violations**

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

### **JGP's Remedial Efforts**

11. In determining to accept the Offer, the Commission considered the remedial acts promptly undertaken by JGP 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 JGP's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent JGP 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 JGP shall cause to pay disgorgement of \$2,537,114, prejudgment interest of \$129,310, and a civil penalty of \$514,000 (for a total of \$3,180,424) to the Commission for transfer to the United States Treasury. Payment shall be made in the following installments:

1. Respondent JGP shall within ten days of the entry of this Order cause to pay a civil money penalty in the amount of \$514,000 to the Commission for transfer to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.
2. Respondent JGP shall cause to pay disgorgement of \$2,537,114 and prejudgment interest of \$129,310, for a total of \$2,666,424, to the Commission for transfer to the United States Treasury. Payments shall be made in the following installments:
  - a. \$500,000 within 40 days of the entry of this Order;
  - b. \$500,000 within 70 days of the entry of this Order;
  - c. \$500,000 within 100 days of the entry of this Order;
  - d. \$500,000 within 130 days of the entry of this Order;
  - e. \$500,000 within 160 days of the entry of this Order;
  - f. \$166,424, plus post-judgment interest on the payments described in Sections IV.B.2(a)-(f) pursuant to SEC Rule of Practice 600, within 190 days of the entry of this Order.

Prior to making the payment described in Section IV.B.2(f), Respondent JGP shall contact the Commission staff to ensure the inclusion of post-judgment interest. If any payment is not made by the date the payment is required by Section IV.B .2 of this Order, the entire outstanding balance of disgorgement, prejudgment interest, plus any additional interest accrued pursuant to SEC Rule of Practice 600, shall be due and payable immediately, without further application.

C. 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 JGP Global Gestão de Recursos Ltda. 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 Julie K. Lutz, Acting Regional Director, Division of Enforcement, Securities and Exchange Commission, Denver Regional Office, 1801 California St., Suite 1500, Denver, Colorado 80202.

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 options (2) or (3) above.