

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 73104 / September 16, 2014**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16108**

**In the Matter of**

**MIDWOOD CAPITAL  
MANAGEMENT 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 Midwood Capital Management LLC (“Midwood 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 Midwood Capital, a Massachusetts-based registered investment adviser. Rule 105 prohibits selling short an equity security that is the subject of certain public offerings and purchasing the offered security from an underwriter or broker or dealer participating in the offering, if such short sale was effected during the restricted period as defined therein.

2. On two occasions, from February 2010 through February 2012, Midwood Capital bought offering shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the Rule 105 restricted period. These violations collectively resulted in profits of \$72,699.

#### **Respondent**

3. Midwood Capital Management LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. Midwood Capital has been registered with the Commission since October 2013. At the time of the violations, Midwood Capital was exempt from registration, and it provided advisory services to two domestic funds, Midwood Capital Partners L.P. and Midwood Capital Partners Q.P. (which closed in 2011). As of December 31, 2013, Midwood Capital had total assets under management in excess of \$145 million.

#### **Legal Framework**

4. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker, or dealer participating in the 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 Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

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

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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.

activity.” 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller’s intent in effecting the short sale. Id.

### **Midwood Capital’s Violations of Rule 105 of Regulation M**

6. On February 19, 2010, Midwood Capital sold short 390 shares of PMFG Inc. (“PMFG”) during the restricted period at a price of \$14.33 per share. On February 26, 2010, PMFG priced a follow-on offering of its common stock at \$11.50 per share. Midwood Capital received an allocation of 10,000 shares in that offering. The difference between Midwood Capital’s proceeds received from the restricted period short sales of PMFG shares and the price paid for the 390 shares received in the offering was \$1,103.70. Respondent also improperly obtained a benefit of \$9,463.93 by purchasing the remaining 9,610 shares at a discount from PMFG’s market price. Thus, Midwood Capital’s participation in the 2010 PMFG offering resulted in total profits of \$10,568.

7. From February 9, 2012 through February 13, 2012, Midwood Capital sold short 7,100 shares of PMFG Inc. (“PMFG”) during the restricted period at an average price of \$23.99 per share. On February 16, 2012, PMFG priced a follow-on offering of its common stock at \$16.00 per share. Midwood Capital received an allocation of 10,000 shares in that offering. The difference between Midwood Capital’s proceeds received from the restricted period short sales of PMFG shares and the price paid for the 7,100 shares received in the offering was \$58,709.04. Respondent also improperly obtained a benefit of \$3,422 by purchasing the remaining 2,900 shares at a discount from PMFG’s market price. Thus, Midwood Capital’s participation in the 2012 PMFG offering resulted in total profits of \$62,131.

8. In total, Midwood Capital’s violations of Rule 105 resulted in profits of \$72,699.

### **Violations**

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

### **Midwood Capital’s Remedial Efforts & Cooperation**

10. 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 Midwood Capital’s Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Midwood 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. Midwood Capital shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$72,699, prejudgment interest of \$5,248.19, and a civil money penalty in the amount of \$65,000 (for a total of \$142,947.19) to the United States Treasury. If timely payment is not made on the disgorgement amount, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. 3717. 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

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

Jill M. Peterson  
Assistant 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.