

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73105 / September 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16109

In the Matter of

**RA 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 RA Capital Management, LLC (“RA 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 finds¹ that:

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by RA 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 17 occasions, from June 2009 through July 2013, RA 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 \$2,646,395.21.

Respondent

3. RA Capital Management, LLC is a Massachusetts limited liability company with its principal place of business in Boston, Massachusetts. RA Capital Management, LLC is a registered investment adviser that provides advisory services to one domestic fund, one offshore fund, and one separately managed account. As of March 31, 2014, RA Capital Management, LLC had total assets under management in excess of \$1.4 billion.

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 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.

¹ 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.

RA Capital's Violations of Rule 105 of Regulation M

6. On June 17, 2009, RA Capital sold short 100,000 shares of Halozyme Therapeutics, Inc. ("HALO") during the restricted period at a price of \$7.26 per share. On June 23, 2009, HALO announced the pricing of a follow-on offering of its common stock at \$6.50 per share. RA Capital received an allocation of 75,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of HALO shares and the price for the 75,000 shares received in the offering was \$56,741.93. Thus, RA Capital's participation in the HALO offering netted total profits of \$56,741.93.

7. On July 21, 2009, RA Capital sold short 625,000 shares of CTI Biopharma Corp. (formerly known as Cell Therapeutics) ("CTIC") during the restricted period at a price of \$1.50 per share. On July 22, 2009, RA Capital sold short 500,000 shares of CTIC during the restricted period at a price of \$1.64 per share. On July 23, 2009, CTIC announced the pricing of a follow-on offering of its common stock at \$1.30 per share. RA Capital received an allocation of 1,250,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of CTIC shares and the price for the 1,250,000 shares received in the offering was \$298,450.00. Respondent also improperly obtained a benefit of \$13,675.00 by purchasing the remaining 125,000 shares at a discount from CTIC's market price. Thus, RA Capital's participation in the HALO offering netted total profits of \$312,125.00.

8. On October 6, 2009, RA Capital sold short 17,000 shares of Sangamo Biosciences, Inc. ("SGMO") during the restricted period at a price of \$8.11 per share. On October 7, 2009, SGMO announced the pricing of a follow-on offering of its common stock at \$7.20 per share. RA Capital received an allocation of 217,905 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of SGMO shares and the price for the 217,905 shares received in the offering was \$15,445.30. Respondent also improperly obtained a benefit of \$7,754.93 by purchasing the remaining 200,905 shares at a discount from SGMO's market price. Thus, RA Capital's participation in the SGMO offering netted total profits of \$23,200.23.

9. On January 5, 2010, RA Capital sold short 74,138 shares of Synta Pharmaceuticals Corp. ("SNTA") during the restricted period at a price of \$5.76 per share. On January 6, 2010, RA Capital sold short 161,278 shares of SNTA during the restricted period at a price of \$5.70 per share. On January 8, 2010, SNTA announced the pricing of a follow-on offering of its common stock at \$4.50 per share. RA Capital received an allocation of 1,111,111 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of SNTA shares and the price for the 1,111,111 shares received in the offering was \$286,437.08. Respondent also improperly obtained a benefit of \$21,979.94 by purchasing the remaining 875,695 shares at a discount from SNTA's market price. Thus, RA Capital's participation in the SNTA offering netted total profits of \$308,417.02.

10. On January 14, 2010, RA Capital sold short 7,000 shares of Achillion Pharmaceuticals, Inc. ("ACHN") during the restricted period at a price of \$3.00 per share. On January 15, 2010, RA Capital sold short 100,000 shares of ACHN during the restricted period at a price of \$2.70 per share. On January 22, 2010, ACHN announced the pricing of a follow-on

offering of its common stock at \$2.08 per share. RA Capital received an allocation of 100,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of ACHN shares and the price for the 100,000 shares received in the offering was \$64,007.00. Thus, RA Capital's participation in the ACHN offering netted total profits of \$64,007.00.

11. On March 25, 2010, RA Capital sold short 25,000 shares of Pernix Sleep, Inc. (formerly known as Somaxon Pharmaceuticals, Inc.) ("SOMX") during the restricted period at a price of \$9.36 per share. On March 25, 2010, SOMX announced the pricing of a follow-on offering of its common stock at \$8.25 per share. RA Capital received an allocation of 40,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of SOMX shares and the price for the 40,000 shares received in the offering was \$27,718.30. Respondent also improperly obtained a benefit of \$15,189.00 by purchasing the remaining 15,000 shares at a discount from SOMX's market price. Thus, RA Capital's participation in the SOMX offering netted total profits of \$42,907.30.

12. On May 3, 2010, RA Capital sold short 10,450 shares of ImmunoGen, Inc. ("IMGN") during the restricted period at a price of \$10.61 per share. On May 6, 2010, IMGN announced the pricing of a follow-on offering of its common stock at \$8.00 per share. RA Capital received an allocation of 150,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of IMGN shares and the price for the 150,000 shares received in the offering was \$27,293.50. Respondent also improperly obtained a benefit of \$9,908.05 by purchasing the remaining 139,550 shares at a discount from IMGN's market price. Thus, RA Capital's participation in the IMGN offering netted total profits of \$37,201.55.

13. On June 3, 2010, RA Capital sold short 84,732 shares of Clinical Data, Inc. ("CLDA") during the restricted period at a price of \$16.83 per share. On June 4, 2010, RA Capital sold short 14,700 shares of CLDA during the restricted period at a price of \$16.31 per share. On June 9, 2010, CLDA announced the pricing of a follow-on offering of its common stock at \$14.30 per share. RA Capital received an allocation of 15,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of CLDA shares and the price for the 15,000 shares received in the offering was \$37,941.72. Thus, RA Capital's participation in the CLDA offering netted total profits of \$37,941.72.

14. On June 25, 2010, RA Capital sold short 100,000 shares of MELA Sciences, Inc. ("MELA") during the restricted period at a price of \$9.08 per share. On June 30, 2010, MELA announced the pricing of a follow-on offering of its common stock at \$7.50 per share. RA Capital received an allocation of 400,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of MELA shares and the price for the 400,000 shares received in the offering was \$157,649.00. Thus, RA Capital's participation in the MELA offering netted total profits of \$157,649.00.

15. On October 12, 2010, RA Capital sold short 30,000 shares of OncoGenex Pharmaceuticals, Inc. ("OGXI") during the restricted period at a price of \$18.76 per share. On October 19, 2010, OGXI announced the pricing of a follow-on offering of its common stock at

\$15.75 per share. RA Capital received an allocation of 410,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of OGXI shares and the price for the 410,000 shares received in the offering was \$90,195.75. Respondent also improperly obtained a benefit of \$165,490.00 by purchasing the remaining 380,000 shares at a discount from OGXI's market price. Thus, RA Capital's participation in the OGXI offering netted total profits of \$255,685.75.

16. On October 29, 2010, RA Capital sold short 75,000 shares of Exact Sciences Corp. ("EXAS") during the restricted period at a price of \$7.35 per share. On November 4, 2010, EXAS announced the pricing of a follow-on offering of its common stock at \$6.00 per share. RA Capital received an allocation of 600,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of EXAS shares and the price for the 600,000 shares received in the offering was \$101,385.00. Respondent also improperly obtained a benefit of \$141,382.50 by purchasing the remaining 525,000 shares at a discount from EXAS's market price. Thus, RA Capital's participation in the EXAS offering netted total profits of \$242,767.50.

17. On June 20, 2011, RA Capital sold short 22,000 shares of GTx Inc. ("GTXI") during the restricted period at a price of \$5.91 per share. On June 23, 2011, GTXI announced the pricing of a follow-on offering of its common stock at \$4.75 per share. RA Capital received an allocation of 725,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of GTXI shares and the price for the 725,000 shares received in the offering was \$25,549.90. Respondent also improperly obtained a benefit of \$11,037.10 by purchasing the remaining 703,000 shares at a discount from GTXI's market price. Thus, RA Capital's participation in the GTXI offering netted total profits of \$36,587.00.

18. On December 28, 2011, RA Capital sold short 14,803 shares of Synageva BioPharma Corp. ("GEVA") during the restricted period at a price of \$25.52 per share. On January 5, 2012, GEVA announced the pricing of a follow-on offering of its common stock at \$25.18 per share. RA Capital received an allocation of 60,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of GEVA shares and the price for the 60,000 shares received in the offering was \$4,979.05. Respondent also improperly obtained a benefit of \$123,374.25 by purchasing the remaining 45,197 shares at a discount from GEVA's market price. Thus, RA Capital's participation in the GEVA offering netted total profits of \$128,353.30.

19. On February 24, 2012, RA Capital sold short 70,000 shares of VIVUS, Inc. ("VVUS") during the restricted period at a price of \$21.44 per share. On February 27, 2012, RA Capital sold short 50,000 shares of VVUS during the restricted period at a price of \$23.10 per share. On February 29, 2012, VVUS announced the pricing of a follow-on offering of its common stock at \$22.50 per share. RA Capital received an allocation of 300,000 shares in that offering. The difference between RA Capital's proceeds received from the restricted period short sales of VVUS shares and the price for the 300,000 shares received in the offering was \$30,200. Respondent also improperly obtained a benefit of \$18,837.00 by purchasing the remaining 230,000 shares at a discount from HALO's market price. Thus, RA Capital's participation in the VVUS offering netted total profits of \$49,037.00.

20. On January 17, 2013, RA Capital sold short 60,238 shares of BG Medicine, Inc. (“BGMD”) during the restricted period at a price of \$2.23 per share. On January 25, 2013, BGMD announced the pricing of a follow-on offering of its common stock at \$2.00 per share. RA Capital received an allocation of 150,000 shares in that offering. The difference between RA Capital’s proceeds received from the restricted period short sales of BGMD shares and the price for the 150,000 shares received in the offering was \$13,884.56. Respondent also improperly obtained a benefit of \$6,480.82 by purchasing the remaining 89,762 shares at a discount from BGMD’s market price. Thus, RA Capital’s participation in the BGMD offering netted total profits of \$20,365.38.

21. On January 28, 2013, RA Capital sold short 100,000 shares of Keryx Biopharmaceuticals Inc. (“KERX”) during the restricted period at a price of \$5.00 per share. On January 30, 2013, RA Capital sold short 36,450 shares of KERX during the restricted period at a price of \$9.34 per share. On January 30, 2013, KERX announced the pricing of a follow-on offering of its common stock at \$8.49 per share. RA Capital received an allocation of 300,000 shares in that offering. The difference between RA Capital’s proceeds received from the restricted period short sales of KERX shares and the price for the 300,000 shares received in the offering was \$30,967.88. Respondent also improperly obtained a benefit of \$207,940.95 by purchasing the remaining 263,550 shares at a discount from KERX’s market price. Thus, RA Capital’s participation in the KERX offering netted total profits of \$238,908.83.

22. On July 11, 2013, RA Capital sold short 40,526 shares of Insmed Incorporated (“INSM”) during the restricted period at a price of \$11.07 per share. On July 15, 2013, RA Capital sold short 48,369 shares of INSM during the restricted period at a price of \$10.96 per share. On July 17, 2013, INSM announced the pricing of a follow-on offering of its common stock at \$10.40 per share. RA Capital received an allocation of 550,000 shares in that offering. The difference between RA Capital’s proceeds received from the restricted period short sales of INSM shares and the price for the 550,000 shares received in the offering was \$54,567.94. Respondent also improperly obtained a benefit of \$579,931.76 by purchasing the remaining 461,105 shares at a discount from INSM’s market price. Thus, RA Capital’s participation in the INSM offering netted total profits of \$634,499.70.

23. In total, RA Capital’s violations of Rule 105 resulted in profits of \$2,646,395.21.

Violations

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

RA Capital’s Remedial Efforts & Cooperation

25. 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 RA Capital's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent RA 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. RA Capital shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$2,646,395.21, prejudgment interest of \$73,394.16, and a civil money penalty in the amount of \$904,570.84 (for a total of \$3,624,360.21) 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;²
- (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 RA

² 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.

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 Paul Levenson, Director, Boston Regional Office, 33 Arch Street, 23rd Floor, Boston, MA 02110.

By the Commission.

Jill M. Peterson
Assistant Secretary