

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 73108 / September 16, 2014**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16112**

**In the Matter of**

**NOB HILL CAPITAL  
MANAGEMENT, INC.**

**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 Nob Hill Capital Management, Inc. (“Nob Hill” 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 Nob Hill, which, at the time of the violations, was a San Francisco-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 three occasions, from December 2010 through March 2012, Nob Hill 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 restricted period. These violations collectively resulted in profits of \$95,902.

#### **Respondent**

3. Nob Hill Capital Management, Inc. is a corporation organized under the laws of California with its principal place of business in San Francisco. Nob Hill, which is currently in liquidation, was a registered investment adviser at the time of the violations and had \$24.8 million in assets under management when it filed its most recent Form ADV with the Commission on September 26, 2011.

#### **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.

### **Nob Hill’s Violations of Rule 105 of Regulation M**

6. On December 9, 2010, Nob Hill sold short 75,000 shares of Cypress Sharpridge Investments, Inc. (“CYS”) during the restricted period at prices ranging from \$12.64 to \$13.24 per share. On December 10, 2010, CYS priced a follow-on offering of its common stock at \$12.46 per share. Nob Hill received an allocation of 225,000 shares in that offering. The difference between Nob Hill’s proceeds received from the restricted period short sales of CYS shares and the price paid for 75,000 shares received in the offering was \$36,791. Respondent also improperly received a benefit of \$45,870 by purchasing the remaining 150,000 shares at a discount from CYS’ market price. Thus, Nob Hill’s participation in the 2010 CYS offering resulted in total profits of \$82,661.

7. From April 28, 2011 through May 4, 2011, Nob Hill sold short 18,500 shares of Whitestone REIT, Inc. (“WSR”) during the restricted period at prices ranging from \$12.80 to \$14.10 per share. On May 5, 2011, WSR priced a follow-on offering of its common stock at \$12 per share. Nob Hill received an allocation of 25,000 shares in that offering. The difference between Nob Hill’s proceeds received from the restricted period short sales of WSR shares and the price paid for 18,500 shares received in the offering was \$9,566. Respondent also improperly received a benefit of \$395 by purchasing the remaining 6,500 shares at a discount from WSR’s market price. Thus, Nob Hill’s participation in the 2011 WSR offering resulted in total profits of \$9,961.

8. From February 27, 2012 through March 1, 2012, Nob Hill sold short 97,500 shares of NetSol Technologies, Inc. (“NTWK”) during the restricted period at prices ranging from \$0.47 to \$0.56 per share. On March 1, 2012, NTWK priced a follow-on offering of its common stock at \$0.40 per share. Nob Hill received an allocation of 44,500 shares in that offering. The difference between Nob Hill’s proceeds received from the restricted period short sales of NTWK shares and the price paid for 44,500 shares received in the offering was \$3,280. Thus, Nob Hill’s participation in the 2012 NTWK offering resulted in total profits of \$3,280.

9. In total, Nob Hill’s violations of Rule 105 resulted in profits of \$95,902.

### **Violations**

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

### **Nob Hill’s Remedial Efforts & Cooperation**

11. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded to Commission staff.

## **Disgorgement and Civil Penalties**

12. Respondent has submitted a sworn Statement of Financial Condition dated July 7, 2014 and other evidence and has asserted its inability to pay disgorgement plus prejudgment interest or a civil penalty.

### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Nob Hill's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Nob Hill 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 pay disgorgement of \$95,902 and prejudgment interest of \$6,662.62, but that payment of such amount is waived based upon Respondent's sworn representations in its Statement of Financial Condition dated July 7, 2014 and other documents provided to the Commission. Based upon Respondent's sworn representations in its Statement of Financial Condition dated July 7, 2014 and other documents submitted to the Commission, the Commission is not imposing a penalty against Respondent.

C. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement, pre-judgment interest and the maximum penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement and interest should not be ordered; (3) contest the amount of disgorgement and interest to be ordered; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Jill M. Peterson  
Assistant Secretary