

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 73110 / September 16, 2014**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16114**

**In the Matter of**

**SUTTONBROOK CAPITAL  
MANAGEMENT LP**

**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 SuttonBrook Capital Management LP (“SuttonBrook” 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 a violation of Rule 105 of Regulation M of the Exchange Act by SuttonBrook, which, at the time of the violations, was a New York, New York-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. In May 2009, SuttonBrook 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. This violation resulted in profits of \$2,635,642.

#### Respondent

3. SuttonBrook Capital Management LP is a limited partnership organized under the laws of Delaware with its principal place of business in New York, New York. SuttonBrook, which is currently winding down, was a registered investment adviser at the time of the violations and had approximately \$46 million in assets under management when it filed its most recent Form ADV with the Commission on March 14, 2013.

#### 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.

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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.

### **SuttonBrook's Violation of Rule 105 of Regulation M**

6. From May 11, 2009 through May 13, 2009, SuttonBrook sold short 625,000 shares of MGM Mirage ("MGM") during the restricted period at prices ranging from \$10.02 to \$13.70 per share. On May 13, 2009, MGM priced a follow-on offering of its common stock at \$7 per share. SuttonBrook received an allocation of 615,000 shares in that offering. The difference between SuttonBrook's proceeds received from the restricted period short sales of MGM shares and the price paid for 615,000 shares received in the offering was \$2,635,642. Thus, SuttonBrook's participation in the 2009 MGM offering resulted in total profits of \$2,635,642.

### **Violations**

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

### **SuttonBrook's Remedial Efforts & Cooperation**

8. 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**

9. Respondent has submitted a sworn Statement of Financial Condition dated July 9, 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 SuttonBrook's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent SuttonBrook 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 \$2,635,642, which represents profits gained as a result of the conduct described herein, and prejudgment interest of \$496,539.35, but that payment of such amount except \$70,000 is waived based upon Respondent's sworn representations in its Statement of Financial Condition dated July 9, 2014 and other documents provided to the Commission. Based upon Respondent's sworn representations in its Statement of Financial Condition dated July 9, 2014 and other documents submitted to the Commission, the Commission is not imposing a penalty against Respondent. The payment required by this Order shall be made

to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. 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;
- (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 SuttonBrook 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 St., NE, Washington, DC 20549.

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