

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73114 / September 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16118

In the Matter of

**ADVENT 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 Advent Capital Management, LLC (“Advent 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 Advent Capital, a 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. On two occasions, from February 2012 through October 2012, Advent 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 \$75,292.

Respondent

3. **Advent Capital Management, LLC** ("Advent") is a Delaware limited liability company with its principal place of business in New York, New York. Advent Capital Management, LLC has been registered with the Commission since May 2001, and manages investment advisory accounts for individuals, pension and profit sharing plans, trusts, insurance companies, private funds and other businesses and institutions. Advent Capital Management, LLC has total assets under management in excess of \$8.3 billion as of June 30, 2014.

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.

Advent Capital's Violations of Rule 105 of Regulation M

6. On February 15, 2012, Advent Capital sold short 24,400 shares of Health Care REIT Inc. ("HCN") during the restricted period at a price of \$56.3700 per share. On February 21, HCN priced a follow-on offering of its common stock at \$53.50 per share. Advent Capital received an allocation of 35,000 shares in that offering. The difference between Advent Capital's proceeds received from the restricted period short sales of HCN shares and the price paid for the 24,400 shares received in the offering was \$70,028. Respondent also improperly obtained a benefit of \$517.28 by purchasing the remaining 10,600 shares at a discount from HCN's market price. Thus, Advent Capital's participation in the HCN offering resulted in total profits of \$70,545.

7. On October 10, 2012, Advent Capital sold short 700 shares of Royal Gold, Inc. ("RGLD") during the restricted period at a price of \$95.4300 per share. On October 11, 2012, RGLD priced a follow-on offering of its common stock at \$91.00 per share. Advent Capital received an allocation of 10,000 shares in that offering. The difference between Advent Capital's proceeds received from the restricted period short sales of RGLD shares and the price paid for the 700 shares received in the offering was \$3,101. Respondent also improperly obtained a benefit of \$1,646.10 by purchasing the remaining 9,300 shares at a discount from RGLD's market price. Thus, Advent Capital's participation in the RGLD offering resulted in total profits of \$4,747.

8. In total, Advent Capital's violations of Rule 105 resulted in profits of \$75,292.

Violations

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

Advent 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 Advent Capital's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Advent 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. Advent Capital shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$75,292, prejudgment interest of \$3,836.36, and a civil money penalty in the amount of \$65,000 (for a total of \$144,128.36) 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 Advent 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

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.