

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95099 / June 14, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20899

In the Matter of

**WEISS ASSET
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**

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 Weiss Asset Management LP (“WAM” 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 (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that:

Summary

1. These proceedings concern seven violations of Rule 105 of Regulation M of the Exchange Act by WAM, a Boston-based registered investment adviser. WAM sold stock short within Rule 105's restricted period, and then purchased shares of the same stock in a covered offering, without qualifying for an exemption, thereby violating Rule 105. WAM's conduct resulted in ill-gotten gains of \$6,508,792.81.

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

3. 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.* Rule 105 prohibits any person from purchasing in covered offerings where the person has shorted the same securities during the defined restricted period.

4. Between December 2020 and February 2021, WAM bought offering shares from an underwriter or broker-dealer participating in a follow-on or secondary public offering seven times, despite having sold short the same security during the restricted period. In each instance, the short sales occurred prior to the filing of a prospectus supplement to a previously filed shelf registration statement, but during the five business days that preceded the pricing. In offerings conducted pursuant to a prospectus supplement to a previously filed shelf registration statement, the "initial filing" referenced in Rule 105(a)(2) is the shelf registration statement, not the prospectus supplement to that registration statement. At the time of each violation, certain of WAM's policies, procedures and controls had correctly flagged the offerings as ones that may violate Rule 105 both before WAM participated in the offerings and afterwards. However, WAM legal personnel repeatedly miscalculated Rule 105's restricted period as commencing after the firm's short sales and therefore WAM's compliance personnel incorrectly dismissed red flags raised by the firm's Rule 105 controls. As a result, WAM violated Rule 105.

Respondent

5. Weiss Asset Management LP is a limited partnership organized under the laws of the state of Delaware with its principal office in Boston, Massachusetts. WAM is a registered investment adviser with approximately \$7.99 billion in assets under management.

WAM's Violations of Rule 105

6. On December 8, 2020, WAM sold short 20,700 American Depositary Shares ("ADS") of Sea Limited ("SE") during the restricted period at an average price of \$204.49 per ADS. After the market closed on December 9, 2020, SE filed a preliminary prospectus supplement to a shelf registration statement previously filed on March 1, 2019, for a follow-on offering of its ADS. On December 10, 2020, after the market closed, SE priced the offering at \$195 per ADS. Accordingly, WAM's short sales occurred during the Rule 105 restricted period, which ran from December 4, 2020, through December 10, 2020. WAM nevertheless received an allocation of 15,000 ADS in the SE offering. The difference between WAM's proceeds from the restricted period short sales of SE shares and the price it paid for the 15,000 offering shares was \$142,350. Thus, WAM's participation in the 2020 SE offering resulted in gains of \$142,350.

7. On January 25, 2021, and January 26, 2021, WAM sold short a total of 550,000 shares of Plug Power Inc. ("PLUG") during the restricted period at an average price of \$70.0834 per share. After the market closed on January 26, 2021, PLUG filed a preliminary prospectus supplement to a shelf registration statement previously filed on December 2, 2019, for a follow-on offering of its common stock, and priced the offering at \$65 per share. Accordingly, the short sales occurred during the Rule 105 restricted period, which ran from January 20, 2021, through January 26, 2021. WAM nevertheless received an allocation of one million shares in the PLUG offering. The difference between WAM's proceeds from the restricted period short sales of PLUG shares and the price it paid for 550,000 offering shares was \$2,795,853.80. WAM also improperly received a benefit of \$301,320 by purchasing the remaining 450,000 shares at a discount from PLUG's market price. Thus, WAM's participation in the 2021 PLUG offering resulted in gains of \$3,097,173.80.

8. On February 1, 2021, and February 2, 2021, WAM sold short a total of 977,845 shares of United States Steel Corporation ("X") during the restricted period at an average price of \$17.9393 per share. After the market closed on February 2, 2021, X filed a preliminary prospectus supplement to a shelf registration statement previously filed on February 15, 2019, for a follow-on offering of its common stock, and priced the offering. Accordingly, the short sales occurred during the Rule 105 restricted period, which ran from January 27, 2021, through February 2, 2021. WAM nevertheless received an allocation of two million shares priced at \$16.65 per share in the X offering. The difference between WAM's proceeds from the restricted period short sales of X shares and the price it paid for 977,845 offering shares was \$1,260,717. Thus, WAM's participation in the 2021 X offering resulted in gains of \$1,260,717.

9. From February 3, 2021, through February 5, 2021, WAM sold short a total of 374,676 shares of The Container Store Group, Inc. (“TCS”) during the restricted period at an average price of \$15.6690 per share. Before the market opened on February 8, 2021, TCS filed a preliminary prospectus supplement to a shelf registration statement previously filed on August 16, 2018, for a secondary offering of its common stock, and priced the offering. Accordingly, the short sales occurred during the Rule 105 restricted period, which ran from February 1, 2021, through February 5, 2021. WAM nevertheless received an allocation of 500,000 shares priced at \$15.30 per share in the TCS offering. The difference between WAM’s proceeds from the restricted period short sales of TCS shares and the price it paid for 374,676 offering shares was \$138,253.38. WAM also improperly received a benefit of \$4,912.70 by purchasing the remaining 125,324 shares at a discount from TCS’ market price. Thus, WAM’s participation in the 2021 TCS offering resulted in gains of \$143,166.08.

10. From February 4, 2021, through February 8, 2021, WAM sold short a total of 578,132 shares of Evoqua Water Technologies Corp. (“AQUA”) during the restricted period at an average price of \$26.4576 per share. After the market closed on February 8, 2021, AQUA filed a preliminary prospectus supplement to a shelf registration statement previously filed on March 4, 2020, for a secondary offering of its common stock. Before the market opened on February 9, 2021, AQUA priced the offering. Accordingly, the short sales occurred during the Rule 105 restricted period, which ran from February 2, 2021, through February 8, 2021. WAM nevertheless received an allocation of one million shares priced at \$24.85 per share in the AQUA offering. The difference between WAM’s proceeds from the restricted period short sales of AQUA shares and the price it paid for 578,132 offering shares was \$929,430.16. WAM also improperly received a benefit of \$504,722.88 by purchasing the remaining 421,868 shares at a discount from AQUA’s market price. Thus, WAM’s participation in the 2021 AQUA offering resulted in gains of \$1,434,153.03.

11. On February 5, 2021, and February 8, 2021, WAM sold short a total of 476,011 shares of Liberty Oilfield Services Inc. (“LBRT”) during the restricted period at an average price of \$12.3559 per share. After the market closed on February 8, 2021, LBRT filed a preliminary prospectus supplement to a shelf registration statement previously filed on July 8, 2019, for a secondary offering of its common stock. Before the market opened on February 9, 2021, LBRT priced the offering at \$11.45 per share. Accordingly, the short sales occurred during the Rule 105 restricted period, which ran from February 2, 2021, through February 8, 2021. WAM nevertheless received an allocation of 1,575,000 shares in the LBRT offering. The difference between WAM’s proceeds from the restricted period short sales of LBRT shares and the price it paid for 476,011 offering shares was \$431,232.90. Thus, WAM’s participation in the 2021 LBRT offering resulted in gains of \$431,232.90.

12. From February 22, 2021, through February 24, 2021, WAM sold short a total of 220,107 shares of Artisan Partners Asset Management (“APAM”) during the restricted period at an

average price of \$48.0104 per share. After the market closed on February 24, 2021, APAM filed a free writing prospectus for a combination follow-on and secondary offering of its common stock and priced the offering. On February 25, 2021, APAM filed the preliminary prospectus supplement to a shelf registration statement previously filed on February 18, 2020. Accordingly, the short sales occurred during the Rule 105 restricted period, which ran from February 18, 2021, through February 24, 2021. WAM nevertheless received an allocation of 250,000 shares priced at \$49.10 per share in the APAM offering. Because the offering price was greater than both the price at which WAM sold short during the restricted period and the market price on the day of the offering, WAM did not profit as a result of this violation.

13. In total, WAM's violations of Rule 105 resulted in ill-gotten gains of \$6,508,792.81.

WAM's Internal Controls

14. The seven Rule 105 violations occurred despite WAM's policies and procedures that were in place at the time and that detected the possible violations both before and after WAM participated in the offerings. For example, before participating in the SE offering in December 2020, WAM's traders used an automated tool to check for any short sales of SE by WAM in the previous five business days. Although the tool returned a "fail" result after identifying the short sales at issue, WAM nevertheless proceeded to participate in the offering after the firm's legal department miscalculated the restricted period to begin with the filing of SE's preliminary prospectus supplement, rather than five business days before the pricing of the offering. WAM participated in the X and TCS offerings following a similar miscalculation of the applicable restricted period, which resulted in the erroneous determination that the short sales had occurred outside of and before the restricted period began.

15. In addition, before WAM participated in at least four of the six offerings that took place between January 27, 2021, and February 25, 2021, WAM personnel used the automated tool to check for relevant short sales, received a "fail" result each time, but proceeded anyway because of their incorrect understanding and miscalculation of the applicable restricted period.

16. After participating in each of the seven offerings, WAM's compliance department also received a number of automatically generated daily and weekly exception reports that correctly identified the offerings at issue as ones that may violate Rule 105. Again, however, based on the miscalculation of the restricted period, the compliance department cleared the exceptions and WAM continued to improperly participate in offerings of securities it had sold short during the five-business-day period prior to pricing.

17. During the course of a review of its policies and procedures, WAM discovered that it had applied the Rule 105 restricted period in error. WAM then engaged in a number of remedial steps, including conducting a more than five-year review of its trading record, identifying all seven

violations at issue, segregating and booking a reserve of the profits, conducting Rule 105 training for its staff, updating and revising its Rule 105 policies and procedures to prevent future violations, hiring a compliance advisor, and hiring additional full-time compliance personnel. WAM also promptly self-reported the seven violations to Commission staff and provided summaries and chronologies of key issues and events that significantly advanced the efficiency of the staff's investigation and conserved Commission resources.

Violations

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

Disgorgement and Civil Penalties

19. The disgorgement and prejudgment interest ordered in paragraph IV.B below is consistent with equitable principles, does not exceed Respondent's net profits from its violations, and returning the money to Respondent would be inconsistent with equitable principles. Therefore, in these circumstances, distributing disgorged funds to the U.S. Treasury is the most equitable alternative. The disgorgement and prejudgment interest ordered in paragraph IV.B below shall be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

WAM's Cooperation and Remediation

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

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent WAM 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 WAM shall, within 10 days of the entry of this Order, pay disgorgement of \$6,508,792.81 and prejudgment interest of \$190,210.84, and a civil money penalty of \$200,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment of disgorgement and

prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment of the civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

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 Weiss Asset Management LP 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 Carolyn M. Welshhans, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5010.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

D. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of \$200,000 based upon its cooperation in a Commission investigation and related enforcement action. If at any time following the entry of the Order, the Division of Enforcement (“Division”) obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay an additional civil penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Vanessa A. Countryman
Secretary