

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 96952 / February 21, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21307

In the Matter of

**CANDLESTICK 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**

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 Candlestick Capital Management LP (“Candlestick 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 (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings concern Candlestick Capital's violation of Rule 105 of Regulation M [17 C.F.R. § 242.105] ("Rule 105").² On June 16, 2020, Candlestick Capital sold short common stock of American Airlines Group Inc. ("American Airlines") within Rule 105's restricted period in the accounts of two of its private fund clients, Candlestick Master Fund LP and Candlestick US F&F Fund LP (together, the "Funds"). Candlestick Capital then purchased shares of American Airlines common stock for the Funds in a follow-on offering from a participating underwriter, without qualifying for an exception from the prohibition in Rule 105. As a result, Candlestick Capital violated Rule 105. Candlestick Capital's conduct resulted in ill-gotten gains to the Funds of \$1,620,398.50.

2. Rule 105 makes it unlawful for a person to purchase equity securities from an underwriter, broker or dealer participating in a covered public offering if that person sold short the security that is the subject of the offering during the restricted period as 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. Generally, the offering prices of secondary and follow-on offerings are set at a discount to the stock's closing price just prior to pricing.

4. 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.

² Candlestick Capital has separately consented to an order to pay a \$810,000 penalty and the Funds, as relief defendants, have separately consented to orders to pay a combined total of \$1,712,985.69 in disgorgement and prejudgment interest in the previously filed United States District Court case *SEC v. Candlestick Capital Management LP et al.*, Civ. Action No. 3:23-cv-00206 (D. Conn. 2023), which concerns the same Rule 105 violation alleged in this Order.

5. Rule 105 provides an exception for a “bona fide purchase,” which generally does not prohibit a person from purchasing securities in an offering even if they sold short during the Rule 105 restricted period as long as they purchase the same security in at least the same amount as they sold short during the restricted period before the offering is priced. The restricted period purchase must satisfy the following requirements in order to qualify as a “bona fide purchase” under Rule 105: (i) the purchase is at least equivalent in quantity to the entire amount of the Rule 105 restricted period short sale(s); (ii) the purchase is effected during regular trading hours; (iii) the purchase is reported to an effective transaction reporting plan (as defined in Rule 600(b)(22) of Regulation NMS); (iv) the purchase is effected after the last Rule 105 restricted period short sale, and no later than the business day prior to the day of pricing; and (v) the person did not effect a short sale that was reported to an effective transaction reporting plan within the 30 minutes prior to the close of regular trading hours (as defined in Rule 600(b)(64) of Regulation NMS) on the business day prior to the day of pricing. 17 C.F.R. § 242.105(b). The requirements of the bona fide purchase exception are designed to ensure transparency of the activity to the market so that the effects of the purchase can be reflected in the security’s market price prior to the pricing of the offering. See 72 Fed. Reg. 45094, 45097.

Respondent

6. Candlestick Capital Management LP is a limited partnership organized under the laws of Delaware and located in Greenwich, Connecticut. Candlestick Capital is registered with the Commission as an investment adviser and advises the Funds, among other private fund clients. Candlestick Capital has represented that, as of October 31, 2022, it had approximately \$3 billion in assets under management.

Facts

7. On Tuesday, June 16, 2020, Candlestick Capital sold short a combined total of 350,000 shares of American Airlines common stock at an average price of \$17.62891 per share in the Funds’ accounts.

8. On Sunday, June 21, 2020, American Airlines filed a preliminary prospectus supplement to a shelf registration statement previously filed on February 19, 2020, for a follow-on offering of its common stock to be priced after the market closed on Monday, June 22, 2020 (the “Offering”).

9. On Monday, June 22, 2020, the day the Offering was priced, Candlestick Capital recognized that the Funds’ June 16, 2020 short sale of American Airlines common stock fell within the restricted period and that the Funds could not participate in the Offering absent a valid exception. Candlestick Capital purchased a combined total of 350,000 shares of American Airlines common stock in the Funds’ accounts in the open market, during regular trading hours, in a failed attempt to fall within the terms of the bona fide purchase exception to Rule 105.

10. After the market closed on Monday, June 22, 2020, American Airlines priced the Offering at \$13.50 per share.

11. The short sales that Candlestick Capital effected for the Funds occurred within the Rule 105 restricted period, which ran from Tuesday, June 16, 2020 through Monday, June 22, 2020.

12. For the Funds to meet the requirements of the Rule 105 bona fide purchase exception, they would have had to purchase at least 350,000 shares of American Airlines common stock in the open market, during regular trading hours, by the market close on Friday, June 19, 2020.

13. Shortly after market close on Monday, June 22, 2020, Candlestick Capital submitted an indication of interest to a participating underwriter on behalf of the Funds to purchase 750,000 shares in the Offering. Later that evening, certain Candlestick Capital personnel raised concerns that Candlestick Capital may have failed to meet the conditions of the Rule 105 bona fide purchase exception.

14. On Tuesday, June 23, 2020, Candlestick Capital nevertheless received an allocation of 750,000 shares in the Offering. Later that day, Candlestick Capital determined that it had failed to meet the bona fide purchase exception and that it violated Rule 105 by purchasing shares in the Offering in the Funds' accounts.

15. The difference between the price at which the Funds sold short 350,000 shares of American Airlines common stock during the restricted period and the price at which the Funds purchased 350,000 shares in the Offering was \$1,445,118.50.

16. The Funds also improperly received a benefit of \$175,280 by purchasing the incremental 400,000 Offering shares at a discount from American Airlines' market price.

17. Thus, the Funds received total profits of \$1,620,398.50 by participating in the Offering.

18. Upon concluding that it had violated Rule 105, Candlestick Capital did not self-report the violation to the Commission. Candlestick Capital also did not conduct a formal review of its trading history to identify other possible Rule 105 violations, although at the time Candlestick Capital had participated in a limited number of offerings. A subsequent review conducted by Candlestick Capital in response to the Commission staff's investigation in 2022 identified no other Rule 105 violations.

19. In addition, Candlestick Capital did not accurately document the Rule 105 violation in its books and records and only acknowledged the Rule 105 violation after the Commission staff specifically asked about it during a routine examination of Candlestick Capital in 2021.

20. Candlestick Capital has since undertaken certain remedial steps, including updating and revising its Rule 105 policies and procedures to prevent future Rule 105 violations, including related to the bona fide purchase exception.

21. As a result of the conduct described above, Candlestick Capital violated Rule 105 of Regulation M under the Exchange Act [17 C.F.R. § 242.105].

IV.

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

Accordingly, it is hereby ORDERED that, pursuant to Section 21C of the Exchange Act, Respondent Candlestick Capital cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M under the Exchange Act.

By the Commission.

Vanessa A. Countryman
Secretary