

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 96953 / February 21, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21308

In the Matter of

**HITE HEDGE ASSET
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**

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 HITE Hedge Asset Management LLC (“HITE” 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 the violation of Rule 105 of Regulation M [17 C.F.R. § 242.105] ("Rule 105") by HITE.² On May 7, 2021, HITE sold short common stock of Pioneer Natural Resources Company ("Pioneer") in the accounts of the following private fund clients: HITE Hedge Energy LP, HITE Hedge LP, HITE Hedge Offshore Ltd., HITE Hedge QP LP, and HITE MLP LP (collectively, the "Funds"). On May 10, 2021, within Rule 105's restricted period, HITE purchased shares of Pioneer common stock for the Funds in a secondary offering from a participating underwriter, without qualifying for an exception from the prohibition in Rule 105. HITE's conduct resulted in ill-gotten gains to the Funds of \$111,629.52.

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. 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.

Respondent

4. HITE Hedge Asset Management LLC is a limited liability company organized under the laws of Delaware and located in Quincy, Massachusetts. HITE is registered with the Commission as an investment adviser, and advises HITE Hedge LP, HITE Hedge II LP and HITE

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 HITE has separately consented to an order to pay a \$103,591 penalty and certain of its private fund clients, as relief defendants, have separately consented to orders to pay a combined total of \$116,566.76 in disgorgement and prejudgment interest in the previously filed United States District Court case *SEC v. HITE Hedge Asset Management LLC et al.*, Civ. Action No. 1:23-cv-10351 (D. Mass. 2023), which concerns the same Rule 105 violation alleged in this Order.

Hedge Offshore Ltd., among other private fund clients. As of December 31, 2021, HITE had approximately \$1.55 billion in regulatory assets under management.

Facts

5. On Friday, May 7, 2021, HITE sold short a combined total of 17,428 shares of Pioneer common stock at an average price of \$167.83 per share in the Funds' accounts.

6. On Monday, May 10, 2021, Pioneer filed a preliminary prospectus supplement to a shelf registration statement previously filed on August 5, 2020 for a secondary offering of its common stock to be priced after the market closed on Monday, May 10, 2021 (the "Offering").

7. On the same day, HITE received several messages from a participating underwriter notifying HITE about the Offering and soliciting HITE to participate in the Offering. One message referred to the Offering as a "block trade." A second message described the Offering as a "100% secondary" offering, and stated that participants represented their eligibility to receive an allocation in accordance with Rule 105 by submitting an order for an allocation in the Offering.

8. After the market closed on Monday, May 10, 2021, Pioneer priced the Offering at \$161 per share.

9. The short sales that HITE effected for the Funds occurred within the Rule 105 restricted period, which ran from Tuesday, May 4, 2021 through Monday, May 10, 2021.

10. HITE did not have any formal written policies relating to Rule 105. However, HITE's former Chief Compliance Officer ("CCO") implemented a practice whereby traders were required to seek the CCO's written approval prior to participating in any public offering.

11. Consistent with that general practice, HITE's trader sought and obtained approval to participate in the Offering from the CCO.

12. The CCO approved HITE's participation in the Offering because he mistakenly believed that Rule 105 did not apply to the Offering.

13. HITE then submitted an indication of interest to a participating underwriter on behalf of the Funds to purchase 20,000 shares in the Offering after market close on Monday, May 10, 2021.

14. On Tuesday, May 11, 2021, HITE received an allocation of 20,000 shares in the Offering in the Funds' accounts.

15. The difference between the price at which the Funds sold short shares of Pioneer common stock during the restricted period and the price at which the Funds purchased an equal number of shares in the Offering was \$111,629.52.

16. Thus, the Funds received \$111,629.52 in total profits by participating in the Offering, of which \$33,767.52 was received by HITE Energy LP, \$14,650.35 was received by HITE Hedge LP, \$53,417.43 was received by HITE Hedge Offshore Ltd., \$6,208.47 was received by HITE Hedge QP LP, and \$3,585.75 was received by HITE MLP LP.

17. In June 2022, HITE consolidated the assets of (1) HITE Hedge QP LP into HITE Energy LP, which was subsequently renamed as HITE Hedge II LP; and (2) HITE MLP LP into HITE Hedge LP. As a result of the consolidation, HITE Hedge LP received an additional \$3,585.75 for a total of \$18,236.10 in ill-gotten gains, HITE Hedge II LP received an additional \$33,767.52 for a total of \$39,975.99 in total ill-gotten gains, and HITE Hedge Offshore Ltd received \$53,417.43 in ill-gotten gains.

18. On September 21, 2021, a participating underwriter notified HITE that HITE participated in the Offering after selling short shares of Pioneer during the restricted period in possible violation of Rule 105.

19. Upon being informed of its purchase within Rule 105's restricted period, HITE did not conduct a review of its prior trading history to identify other possible Rule 105 violations and did not implement a written Rule 105 policy or otherwise enhance its compliance measures related to Rule 105 at that time.

20. During the course of the Commission staff's investigation, HITE implemented a written Rule 105 policy and conducted a subsequent review of its trading history, which identified no other Rule 105 violations. HITE also replaced its CCO in November 2021 and hired an additional compliance staff member in June 2022.

21. As a result of the conduct described above, HITE 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 HITE's Offer.

Accordingly, it is hereby ORDERED that, pursuant to Section 21C of the Exchange Act, Respondent HITE 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