

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Received

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Office of Administrative
Law Judges

In the Matter of

THRASOS TOMMY
PETROU,

Respondent

ADMINISTRATIVE PROCEEDING
File No. 3-16217

**RESPONDENT'S OPPOSITION TO THE DIVISION OF ENFORCEMENT'S MOTION
FOR SUMMARY DISPOSITION**

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This memorandum in opposition is respectfully submitted on behalf of Respondent Thrastos Tommy Petrou (“Petrou” or “Respondent”) in opposition to the Division of Enforcement’s (the “Division”) motion for summary disposition (the “Division’s Motion”) and in further support of Respondent’s motion for summary disposition (“Respondent’s Motion”), as filed with the Securities and Exchange Commission (the “Commission”) on February 6, 2015.

INTRODUCTION

Respondent has extremely limited assets, a severely reduced income, and virtually no prospects of gainful employment as a result of these proceedings. Accordingly, the proposed pecuniary sanctions (i.e., disgorgement, penalties, and prejudgment interest) should be waived, or at the very least, drastically reduced, due to Respondent’s complete inability to pay. It would be unjust and against the public interest to levy such fines against the Respondent.

The Division, to no avail, spends an unreasonable amount of time discussing Respondent’s “scienter” (or lack thereof) regarding Rule 105 of Regulation M of the Securities Exchange Act of 1934 (“Rule 105”). Respondent already signed an offer of settlement with the Commission, dated October 6, 2014, admitting to making improper trades under Rule 105. While Rule 105 does not require manipulative intent or scienter, scienter is a factor in the tier of penalty that may be imposed in an administrative action. Due to Respondent’s complete lack of training and ignorance of prohibitions under Rule 105, the harsh sanctions that the Division is trying to impose are completely unwarranted given the facts of the case.

LEGAL ANALYSIS

1. The Cases Cited By The Division To Penalize Respondent Are Irrelevant And Distinguishable In The Case At Hand

The Division unsuccessfully argues that an individual’s financial inability to pay is no bar to disgorgement or prejudgment interest. The Division first cites S.E.C. v. McCaskey, No.

98CIV6153SWKAJP, 2002 WL 850001 (S.D.N.Y. Mar. 26, 2002), which involved an individual who committed an egregious fraudulent scheme to manipulate the market in violation of Rule 10b-5 of the Securities Exchange Act of 1934. The respondent in S.E.C. v. McCaskey intentionally committed fraud. Id. Additionally, the Commission did not believe that respondent did not have the requisite funds to pay the Commission because the respondent did not provide any evidence concerning his alleged inability to pay. In this case, Respondent attached his Statement of Financial Condition to Respondent's Motion and he testified as to what, if any, documents he retained. Id. The Court in S.E.C. v. McCaskey went on to state that "McCaskey has not made an adequate showing" concerning his inability to pay. Id. Unlike Respondent, who has made a clear and genuine showing of his inability to pay as demonstrated in his moving Affidavit and Statement of Financial Condition. Therefore, S.E.C. v. McCaskey is irrelevant and unpersuasive in the current case.

The Division next relies on from S.E.C. v. Grossman, No. 87 CIV. 1031 (SWK), 1997 WL 231167 (S.D.N.Y. May 6, 1997) aff'd in part, vacated in part sub nom. S.E.C. v. Hirshberg, 173 F.3d 846 (2d Cir. 1999), which involved an egregious violation of the securities law and the respondent was found guilty in a criminal trial for his intentional criminal conduct. Respondent Grossman was an attorney at a law firm and used confidential information he learned from a client to commit insider trading and also told other individuals insider information. Id. Respondent Grossman committed these acts with the highest possible scienter, which is opposite of the Respondent here, who was unaware that his trading was in violation of the federal securities laws, in particular Rule 105. Id. The S.E.C. v. Grossman is irrelevant to the current case and should be disregarded because respondent Grossman's act was so egregious that he was

found guilty in a criminal court, which is much different than the case at hand, in which criminal sanctions are not being brought and the level of culpability is dramatically lower.

The Division also relies on S.E.C. v. Inorganic Recycling Corp., No. 99 CIV. 10159 (GEL), 2002 WL 1968341 (S.D.N.Y. Aug. 23, 2002), which involved an egregious scheme to defraud investors. The respondent in the foregoing case offered “no evidence of extenuating circumstances” concerning her alleged inability to pay. Id. Additionally, because the respondent did not file a statement of financial condition to demonstrate an inability to pay and “in view of the seriousness of the fraud involved” the Commission levied penalties against her. Id.

The only cases relied on by the Division regarding its baseless proposition that inability to pay should not be applied in the current case are inapplicable and distinguishable from the case at hand. Here, Respondent has fully cooperated with the Commission and has submitted his statement of financial condition attached to Respondent’s Motion, and the Division has no basis to challenge Respondent’s inability to pay.

Contrary to the Division’s irrelevant cited cases and strained logic, it is well-settled that if an individual is unable to pay sanctions, even if correctly imposed by the Commission, then the Commission should nonetheless waive any said payments. It is virtually impossible to collect any monies from an individual who does not have the ability to pay. For example, your Honor followed the well-settled law of 17 C.F.R. § 201.630(a) (“Rule 630(a)”) in In the Matter of Angelica Aguilera, Release No. 501, 2013 WL 3936214 (July 31, 2013). This case involved a respondent’s (Angelica) violation of, *inter alia*, Section 10(b) of the Exchange Act, that amounted in a proposed disgorgement of \$1,243,761.76, prejudgment interest totaling \$161,311.99, and a third tier civil penalty of \$150,000. Your Honor, however, held that because of Rule 630(a), “Angelica will not be ordered to pay disgorgement, prejudgment interest, or civil

penalties in this proceeding” due to Angelica’s financial condition. Your Honor noted that the Commission should only assess fees to a respondent that it believes it can recover and not beyond that which a respondent does not have in their possession and went on to hold:

Pursuant to Rule 630(a) of the Commission’s Rules of Practice, the Commission also considers evidence of ability to pay as a factor in determining whether a respondent should be required to pay disgorgement and interest. 17 C.F.R. § 201.630(a). In First Sec. Transfer Syst., Inc., 52 S.E.C. 392, 397 (1995), the Commission stated that it is:

[C]ognizant of the inadvisability of assessing penalties so heavy that the persons against whom they are assessed are unable to pay them. Such a situation results in the expenditure of agency resources in unsuccessful attempts to collect the penalties. Moreover, the imposition of a sanction that cannot be enforced may ultimately render the deterrent message intended to be communicated by the sanction less meaningful.

In the Matter of Angelica Aguilera, Release No. 501, 2013 WL 3936214.

Similarly, in In the Matter of Thomas J. Dudchik & Rodney R. Schoemann, Release No. 363, 2008 WL 5134048 (Dec. 5, 2008), the ALJ reduced the respondent’s disgorgement and prejudgment interest from \$1,833,836.00 to merely \$50,000.00 under Rule 630(a), even though the respondent in that case was still likely to be able to earn an income. The decision stated that:

Only Dudchik [respondent] makes a claim of inability to pay, providing a sworn financial statement admitted under protective order. . . . Although he is forty-seven years of age, and the cease-and-desist order imposed in this Initial Decision is unlikely to have a significant adverse impact on his ability to earn an income, a review of Dudchik’s sworn financial statement supports his claim that the disgorgement and prejudgment interest requested by the Division are beyond his ability to pay now or in the reasonably foreseeable future.

Id.

These are only two of the many cases in which the respondent in a civil enforcement action had his or her sanctions substantially reduced as a result of an inability to pay. A number of other similar cases were cited in Respondent’s motion. See, e.g., In Re Taylor, Release No. 215 (Sept. 24, 2002) 2002 WL 3116127, In the Matter of Stephen J. Horning, Release No. 318,

2006 WL 2682464 (Sept. 19, 2006), In the Matter of Nob Hill Capital Mgmt., Inc., Release No. 73108, 2014 WL 4571396 (Sept. 16, 2014), In the Matter of Suttonbrook Capital Mgmt. LP, Release No. 73110, 2014 WL 4571399 (Sept. 16, 2014).

2. **Any Discrepancy In Respondent's Testimony Regarding When Exactly He Learned The Details Of Rule 105 Was A Mere Harmless Error**

The Division cited a discrepancy in Respondent's testimony regarding the when he learned about the prohibition on short selling under Rule 105. Division's Motion, p. 10, n .7. The Division was merely seeking to discredit and attack the credibility of Respondent and further obfuscate the truth. Any such discrepancy, however, was an honest mistake by Respondent because it is difficult to recall, with certainty, the exact timing concerning a conversation that occurred several years earlier. Given the passage of several years, Respondent was confused about the exact month and year a certain conversation took place. Under no circumstances, however, was Respondent trying to be evasive in his testimony.

Respondent repeatedly states in the Securities and Exchange Commission Deposition Transcript, dated October 8, 2013 (the "2013 Deposition Transcript"), that he did not remember when he first heard of Rule 105. See the 2013 Deposition Transcript, which is annexed to the Affidavit of Elliot H. Lutzker, dated March 6, 2015 (the "Lutzker A."), at Exhibit "A" at p. 95. Respondent identified a particular conversation with Howard Bloom, his boss at Worldwide, when he learned that such short selling was improper and first learned about Rule 105. See Lutzker Aff., Exhibit "A" at p. 106-07; see the Securities and Exchange Commission Deposition Transcript, dated September 18, 2014 (the "2014 Deposition Transcript"), which is annexed to the Lutzker Aff. as Exhibit "B" at p. 28.

However, Respondent did not know exactly when this conversation occurred. See Lutzker Aff., Exhibit "A" at p. 108. Though Respondent said in his 2013 testimony before the

Commission it was “in 2011, I think,” he immediately retracted this statement by saying “I don’t remember. I’m sorry.” Id.

Respondent discussed this conversation again in his 2014 testimony before the Commission. See Lutzker Aff., Exhibit “B” at pp. 27-32. Respondent initially agreed with the Division’s question that this conversation took place sometime between him starting at War Chest in September 2010 and February 2011. See id. at p. 29. However, when further asked about these dates, the following testimony transpired:

Q. And then your conversation with Mr. Bloom was at some point from then until February of 2011, correct?

A. Yes.

Q. That's what you testified to previously?

A. Yes.

Q. And you remained at Worldwide Capital until December 2011, correct?

A. Correct.

Q. So you continued to work at Worldwide Capital for a period of time after you started at Warchest and after that conversation with Mr. Bloom, correct?

A. No. I left. So the conversation must have happened in January, or December.

Q. I don't understand.

A. I left Worldwide Capital after that conversation with Mr. Bloom. So that means I must have had that conversation with him in January or February. Or maybe December.

Q. Of what year?

A. December it must have been December 2011

See Lutzker Aff., Exhibit “B” at pp. 29-30.

While there is a discrepancy as to when exactly this conversation with Mr. Bloom took place, Respondent's subsequent statement that the conversation took place in approximately December 2012 or January 2013 was not a "self-serving and inherently incredible attempts to walk back his admissions" as alleged by the Division. Division's Motion, p. 17, n. 13. It was, in fact, a mistake that the Division is grossly mischaracterizing, for which Respondent should not be unfairly penalized.

Respondent stated multiple times that the conversation with Mr. Bloom occurred right before he left Worldwide. See Lutzker Aff., Exhibit "B" at pp. 28-29. For example, when Respondent was asked if this conversation with Mr. Bloom "change in any way the manner in which you continued to trade at Worldwide Capital?," Respondent answered that "I left Worldwide Capital after that conversation." See id. at p. 28. This exchange actually took place *before* Respondent assented to the Division's question the exchange above about whether "your conversation with Mr. Bloom was at some point from [starting at War Chest in September 2010] until February of 2011." This further discredits the Division's assertion that Respondent was making "attempts to walk back his admissions." Division's Motion, p. 17, n. 13.

3. Petrou Was Not Willfully Ignorant

War Chest told Respondent that they did not want him shorting deals and covering them, and Respondent was aware of this policy from around the time he began working there in September 2010. See Lutzker Aff., Exhibit "A" at p. 34. While he knew that War Chest did not want him making these trades, he was not necessarily aware of the explicit prohibition under Rule 105 during this entire period. Respondent was not willfully ignorant of Rule 105 and he did not have a reckless disregard of the rules.

Respondent acknowledged that the policies of Worldwide and War Chest were different with respect to short selling in connection with public offering stocks. See id. at p. 109. Respondent, however, did not know if this was because of a legal requirement or just a company policy. Respondent did have some reservations about this difference in policy and whether Worldwide's policy was correct. See id. at p. 110. As a result of such reservations, Respondent made several inquiries with Lynn about this policy. Respondent was told by Lynn on more than one occasion that Worldwide's attorney, Ira Sorkin, stated the trading was legal. See Respondent's Motion, Petrou Aff., ¶ 9; see Lutzker Aff., Exhibit "B" at p. 21.

As Lynn was Respondent's boss, and had extensive experience in the securities industry, Respondent reasonably relied upon him. Lynn even told Respondent that Lynn's attorney had specifically approved such trading. See Respondent's Motion, Petrou Aff., ¶ 9. Respondent had no reason to believe that this was either a lie or incorrect legal advice.

4. The Sanctions Sought By The Division Are Grossly Inequitable

The Division argues that the Court should impose maximum second-tier penalties of \$75,000 for Petrou's sixteen trades that occurred before March 29, 2011, as it claims that there was a "high degree of scienter" for such trades. Division's Motion, pp. 16-17. The Division is clinging to the February 2011 date that Respondent mistakenly assented to in his testimony regarding his conversation with Mr. Bloom as the line in the sand when Respondent's supposed scienter was triggered. As there is doubt as to when exactly this conversation occurred, it would be inequitable and improper to impose the second-tier penalties on Respondent sought by the Division, as such penalties are reserved for when there is a "deliberate or reckless disregard of regulatory requirement." 15 U.S.C. § 78u-2(b)(2). Despite how the Division is attempting to

depict the situation, Respondent was an uninformed trader who neither deliberately nor recklessly disregarded the provisions of Rule 105.

The Division is asking that the maximum second-tier penalty be imposed on Respondent for each of his sixteen trades prior to March 29, 2011, and then the maximum first tier penalty of \$7,500 for the remaining twelve trades, for a total civil penalty of \$1,290,000. Division's Motion, p. 16. Such a penalty would amount to approximately five (5) times Respondent's ill-gotten gains of just over \$250,000.

To put the penalties that the Division is seeking in perspective, Jeffrey Lynn, the principal of Worldwide ("Lynn"), was ordered to pay civil penalties of just over \$2.5 million for over \$4.2 million in ill-gotten gains, for a penalty constituting approximately 60% of his ill-gotten gain. See the Commission's Order Instituting Cease-And-Desist Proceeding Pursuant To Section 21C Of The Securities Exchange Act Of 1934, Making Findings, And Imposing A Cease-And-Desist Order against Worldwide Caporaw dated March 5, 2014, which is annexed to the Lutzker Aff. as Exhibit "C".

When the Commission determines administrative sanctions, it considers the following factors:

- (1) the egregiousness of the respondent's actions;
- (2) the isolated or recurrent nature of the infraction;
- (3) the degree of scienter involved;
- (4) the sincerity of the respondent's assurances against future violations;
- (5) the respondent's recognition of the wrongful nature of his conduct and
- (6) the likelihood that the respondent's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting SEC v. Blatt, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)), aff'd on other grounds, 450 U.S. 91 (1981). Lynn is certainly more culpable under factors of the Steadman test above, so his administrative sanctions should be substantially more severe than those against Respondent.

Lynn was the man behind Worldwide Capital who actively encouraged Respondent and other naïve traders to make trades in violation of Rule 105 and incorrectly told them that it was legal on multiple occasions. See id. Lynn admitted to sixty different violative trades over the course of over four years. Lynn oversaw a team of traders whom he instructed to make such violative trades, from which he profited handsomely. He was likely fully aware of the illegality of the trades and incorrectly told Respondent and other naïve traders that the activity was permissible. It would be outrageous and inequitable for Mr. Lynn, the mastermind behind this scheme to receive a substantially smaller penalty in proportion to his ill-gotten gains than Respondent. Furthermore, it is not in the public interest to have such grossly disproportionate punishment.

5. **Respondent Is Unable To Pay Any Sanctions Attempting To Be Imposed Upon Him Due To His Undisputed Inadequate Financial Condition**

As discussed at length in Respondent's Motion, Respondent has a complete inability to his financial condition. Respondent has previously provided his Summary of Financial Condition (the "Financial Disclosure") to the Commission, a copy of which is included as an exhibit to Respondent's Affidavit. The Division has not offered any evidence to question or contradict the Financial Disclosure. As such, these documents are the only evidence in the record of Respondent's financial condition.

Respondent is not currently employed nor does he have any prospects of gainful employment. Respondent's Motion, Petrou Aff., ¶ 4. As a result of the cease and desist and the

censure, he has lost his income, his career, and his livelihood, and it has inflicted severe emotional distress upon his marriage. Respondent's Motion, Petrou Aff., ¶ 12. Respondent has had no permanent employment since February 2013 and his adjusted gross income on his 2013 tax return was \$ [REDACTED] Respondent's Motion, Petrou Aff., ¶¶ 4, 12. The uncontroverted evidence demonstrates that Respondent's total net worth amounts to a total of approximately \$ [REDACTED], with liquid asset of only approximately \$ [REDACTED]. Respondent's Motion, Petrou Aff., ¶ 4, 17.

Accordingly, Respondent has little to no ability to pay sanctions (including disgorgement, penalties, and prejudgment interest). Furthermore, Respondent has limited earning potential and job prospects, and has largely been barred from employment in the securities industry due to the Commission's enforcement action. Therefore, the prospects of Respondent having the ability to pay any monetary sanction is limited, if non-existent.

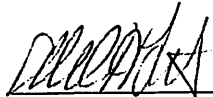
CONCLUSION

For the reasons set forth above, when Respondent's lack of financial ability to pay potential sanctions is combined with the Steadman factors, the public interest factors, his history of cooperation, and the previously imposed cease and desist order and censure, it is apparent that the Commission's request for monetary sanctions is unjust and unreasonable in light of the circumstances, and should therefore be denied. Respondent respectfully requests that the Court order that the sanctions set forth in the OIP (i.e., cease and desist and censure) are sufficient for Respondent's unintentional violations of Rule 105. At the very least, the total monetary sanctions imposed upon Respondent should be substantially reduced to an amount that he has the ability to pay.

Dated: New York, New York
March 6, 2015

Respectfully submitted,

DAVIDOFF HUTCHER & CITRON LLP

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

THRASOS TOMMY PETROU,

Respondent.

ADMINISTRATIVE PROCEEDING
File No. 3-16217

AFFIDAVIT OF
ELLIOT H. LUTZKER, ESQ.

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

ELLIOT K. LUTZKER, ESQ., being duly sworn, hereby deposes and says:

1. I am a member of the law firm Davidoff Hutcher & Citron, LLP, attorneys for Respondent Thrasos Tommy Petrou, I have personal knowledge of the facts set forth in this Affidavit, except as to those matters alleged to be on information and belief and, as to those matters, I believe them to be true.

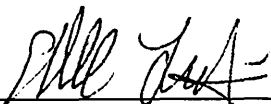
2. I respectfully submit this Affidavit in further support of Respondent's Motion For Summary Disposition, and in Opposition to the Division Of Enforcement's Motion For Summary Disposition Pursuant To Commission Rule Of Practice 250 And Supporting Memorandum Of Law.

3. A true and correct copy of the Securities and Exchange Commission's Deposition Transcript, dated October 8, 2013, is annexed hereto as Exhibit "A".

4. A true and correct copy of the Securities and Exchange Commission's Deposition Transcript, dated September 18, 2014, is annexed hereto as Exhibit "B".

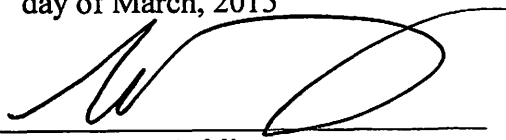
5. A true and correct copy of the Securities and Exchange Commission's Order Instituting Cease and Desist Proceedings Pursuant to Section 21C Of The Securities Exchange Act of 1934, Making Findings, And Imposing A Cease-And-Desist Order, against Worldwide Capital, Inc., and Jeffrey W. Lynn, dated March 5, 2014, is annexed hereto as Exhibit "C".

WHEREFORE, I respectfully request that this Court grant Respondent's Motion For Summary Disposition, and bar any civil penalties, disgorgement, or prejudgment interest from being imposed on Respondent because these pecuniary fines are not warranted, the Securities and Exchange Commission's censure and cease and desist order against Respondent is sufficient, and because Respondent does not have the financial ability to pay the excessive and outrageous fines the Securities and Exchange Commission is seeking to impose in this action.



Elliot Lutzker, Esq.

Sworn to before me this
6th day of March, 2015



Notary Public

MADONNA FLEMING
Notary Public - State of New York
No. 01FL6304135
Qualified in New York County
My Commission Expires May 27, 2018

<p style="text-align: right;">Page 1</p> <p>UNITED STATES SECURITIES AND EXCHANGE COMMISSION</p> <p>In the Matter of:)) File No. NY-8649 WORLDWIDE CAPITAL, INC.)</p> <p>WITNESS: THRASOS PETROU</p> <p>PAGES: 1-115</p> <p>PLACE: Securities and Exchange Commission Three World Financial Center - Suite 4300 New York, New York 10281</p> <p>DATE: October 8, 2013</p> <p>The above-entitled matter came on for hearing at 10:15 o'clock a.m.</p>	<p style="text-align: right;">Page 3</p> <p>1 PROCEEDINGS 2 (Subpoena, dated 8/22/13, marked Worldwide 3 Exhibit 51 for identification.) 4 (Background questionnaire marked Worldwide 5 Exhibit 52 for identification.) 6 MS. LEE: We are on the record at 10:15 on 7 Tuesday, October 8, 2013. 8 Mr. Petrou, please raise your right hand. I 9 am going to swear you in: 10 Do you swear to tell the truth, the whole 11 truth and nothing but the truth? 12 THE WITNESS: I do. 13 Whereupon, 14 THRASOS PETROU, 15 appeared as a witness herein and, having been first duly 16 sworn, was examined and testified as follows: 17 EXAMINATION BY 18 MS. LEE: 19 Q. Could you please state and spell your full 20 name for the record. 21 A. Thrasos Tom Petrou. T-H-R-A-S-O-S, Tommy, 22 last name is Petrou, P-E-T-R-O-U. 23 Q. Are you known by any other names? 24 A. No. 25 Q. Mr. Petrou, could you please provide your</p>
<p style="text-align: right;">Page 2</p> <p>1 2 APPEARANCES: 3 4 On behalf of the Securities and Exchange 5 Commission: 6 KAREN M. LEE, ESQ. 7 LESLIE KAZON, ESQ. 8 Enforcement Division 9 Securities and Exchange Commission 10 3 World Financial Center - Suite 4300 11 New York, New York 10281 12 13 On behalf of the Witness: 14 15 DAVIDOFF HUTCHER & CITRON LLP 16 605 Third Avenue 17 New York, New York 10158 18 BY: ELLIOT LUTZKER, ESQ. 19 20 *** 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 home address and telephone number for the record? 2 A. [REDACTED] 3 Q. And your telephone number? 4 A. [REDACTED] 5 Q. Name is Karen Lee and with me is Leslie 6 Kazon. We are attorneys with the Enforcement Division of 7 the United States Securities and Exchange Commission and 8 we are officers of the Commission for the purposes of this 9 proceeding. 10 This is an investigation by the United States 11 Securities and Exchange Commission entitled "In the Matter 12 of Worldwide Capital, Inc., [REDACTED] The purpose of this 13 investigation is to determine whether there have been 14 violations of certain provisions of the Federal Securities 15 Laws. However, facts developed in this investigation 16 might constitute violations of other federal or state, 17 civil or criminal laws. 18 Prior to going on the record, you were 19 provided with a copy of the Formal Order of Investigation 20 and subsequent amendments made in this matter. They are 21 attached to the top document. The Formal Order will be 22 available for your review during the course of this 23 proceeding. 24 Mr. Petrou, have you had an opportunity to 25 review the Formal Order?</p>

<p>Page 33</p> <p>1 is you hadn't intended to sell it short? 2 A. I did not know I could not do that. I asked 3 Howard Bloom if we could, and he did his, I guess, due 4 diligence, and he called us back and he said, "You could 5 do it." 6 Q. So you did know it was a short sale. You 7 just didn't think there was anything improper about it? 8 A. Correct. 9 Q. And roughly when did this occur? 10 A. I want to say at some point in 2012. I don't 11 know exactly. 12 Q. And I may have misinterpreted, but you 13 started to say that there was a difference between the 14 trading you did for War Chest and the trading you did for 15 Worldwide? 16 A. Yeah. 17 Q. Can you expand on that? 18 A. At Worldwide, we were told that as long as -- 19 you can short a stock as long as you do not cover that 20 stock with syndicate, meaning stock that you get from 21 brokers. As long as you short a stock and buy it back 22 yourself, that there is nothing wrong with that. 23 Q. And what was the difference with War Chest? 24 A. War Chest did not want shorting, shorting a 25 deal and covering it. They didn't deem it proper.</p>	<p>Page 35</p> <p>1 I know what I did. There wasn't just me working for War 2 Chest, you know. 3 Q. What I am trying to get at is: Did War 4 Chest -- let me back up. 5 Other than the difference with respect to 6 shorting in connection with follow-ons and secondary 7 offerings, was there a difference in the kind of trading 8 that you did for Worldwide and the kind of trading that 9 you did for War Chest? 10 A. No, I would say it was very similar, it was 11 just getting stocks from brokers, holding it or selling 12 it, very similar. 13 Q. And you said that at Worldwide, your 14 understanding was that you could short before an offering, 15 you just couldn't cover with the allocation shares; is 16 that correct? 17 A. Correct; yes. 18 Q. How did you come to that understanding? 19 A. That's what -- that's what Jeff explained to 20 us. 21 Q. And when you -- when did Jeff explain this to 22 you? 23 A. When I first started there. 24 BY MS. LEE: 25 Q. So in April 2008?</p>
<p>Page 34</p> <p>1 Q. I still don't understand the difference 2 between the policy at War Chest and the policy at 3 Worldwide. 4 A. I couldn't -- I could not short anything at 5 War Chest. 6 Q. Okay. 7 MR. LUTZKER: Can I ask a question? 8 MS. KAZON: Sure. 9 MR. LUTZKER: During what period of time? 10 THE WITNESS: During what period of time? 11 MR. LUTZKER: Could you not short. 12 THE WITNESS: As soon as I started working 13 for War Chest. 14 BY MS. LEE: 15 Q. And that was September 2010? 16 A. Yeah. 17 BY MS. KAZON: 18 Q. And just for clarification, when you say at 19 War Chest you could not short, do you mean you could not 20 short in connection with follow-ons or secondary 21 offerings? 22 A. Correct. 23 Q. So it wasn't -- do you know whether at War 24 Chest you couldn't short at all? 25 A. I mean, I don't know what other people did.</p>	<p>Page 36</p> <p>1 A. Yeah. 2 BY MS. KAZON: 3 Q. Was this a one-on-one conversation between 4 you and Jeff, or were there other people around? 5 A. I don't remember. It's a long time ago. 6 Q. Do you know whether the other traders who 7 worked in the office, for example, were under the same 8 impression? 9 A. I would think so. If I was -- if -- they 10 were there before me, so if he told me that I could do 11 that, I am assuming that he had told them the same. 12 Q. I don't want to know what you're assuming, I 13 want to know, did you have any discussions, did you 14 overhear anything that leads you to believe that your 15 assumption is correct? 16 A. I must have heard somebody say that they 17 shorted a stock. I can't -- I don't remember 18 specifically. 19 BY MS. LEE: 20 Q. So prior to your -- prior to you starting 21 your work at Worldwide in April 2008, had you had any 22 experience trading stocks? 23 A. No. 24 Q. So when you first got hired at Worldwide -- I 25 guess let me step back a minute.</p>

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1 Q. But would you ever receive them without --

2 A. Randomly? Yes, even though I wasn't short

3 something, yes.

4 BY MS. KAZON:

5 Q. You testified earlier about a conversation

6 you had with Mr. Lynn in which he told you that you could

7 short in advance of an offering, you just had to make sure

8 that you didn't use the offering shares to cover the

9 short?

10 A. Correct.

11 Q. Did Mr. Lynn say anything to you about how he

12 learned that?

13 A. No, not that I remember.

14 Q. Did Mr. Lynn say anything to you about

15 whether there was -- whether that was a legal requirement?

16 A. He had told me that it's illegal to cover a

17 short with deal stock, so as long as you're buying back

18 the short and then selling your deal stock separately,

19 that it was legal.

20 Q. And did he tell you which law made it

21 illegal?

22 A. I don't remember if he told me exactly.

23 BY MS. LEE:

24 Q. Did you ever discuss, you know, this

25 conversation you had where he said that you -- it's

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1 illegal to cover a short with deal stock, did you ever

2 discuss that amongst the other Worldwide Capital traders

3 or --

4 A. I mean, I probably -- I probably discussed it

5 with whoever was in the office; Carmela, Victor and Rene

6 Q. And what did you talk to them --

7 BY MS. KAZON:

8 Q. Do you recall whether you actually had such

9 discussions?

10 A. I remember I had a discussion with all of

11 them at least once about, you know, I'm going to cover --

12 you know, if I'm going to cover deal stock, we made sure

13 that we never covered deal stock with a short. So I know

14 I definitely talked about it with them. I can't tell you

15 specific conversations, but I definitely did speak to them

16 about it.

17 Q. And when you say "them," are you talking

18 about the other traders in the office?

19 A. The traders in the office.

20 Q. Okay.

21 A. The back office would know as well because

22 they are putting my trades in.

23 Q. Right. But I'm asking you about the

24 conversations that you --

25 A. The traders. The traders were definitely

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1 aware of that, that I had shorted and covered stock.

2 Q. Were you aware that they were doing the same

3 thing and complying with the rule as Mr. Lynn explained it

4 to you?

5 A. I don't know. I don't know what everybody

6 else was doing. I didn't -- I don't remember that

7 definitively. I don't remember.

8 BY MS. LEE:

9 Q. So other than that conversation that you had

10 with Mr. Lynn around the summer of 2008 where he said it's

11 illegal to cover short sales with deal stock, did you have

12 any other discussions with Mr. Lynn about restrictions on

13 selling short?

14 A. No, not that I remember.

15 Q. So when was the first time you heard of

16 Regulation M, Rule 105?

17 BY MS. KAZON:

18 Q. Or either regulation M or rule 105?

19 A. I can't put a date on it. I don't know.

20 Q. Do you remember a context?

21 A. I mean, I think it was probably that summer

22 that I talked about it with Jeff.

23 MR. LUTZKER: Don't guess.

24 A. I can't put a date on it. I don't remember.

25 BY MS. LEE:

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1 Q. But it was during your employment at

2 Worldwide Capital?

3 A. Yes.

4 Q. We know that just a minute ago you had

5 testified that the conversation that you had had during

6 that summer of 2008 was the only one about selling short.

7 Did you have any other discussions with Jeffrey Lynn about

8 Rule 105 or Regulation M?

9 A. I don't -- I don't remember having another

10 conversation about it. That's just what I was told to do.

11 Q. I am showing you what has previously been

12 marked as Worldwide Exhibit 33. It's a two-page document,

13 dated March 24, 2011. It appears to be an e-mail from

14 Jeffrey Lynn, trader J. [REDACTED]@GMail.com, to trader

15 [REDACTED]@aol.com. If you could just take a look at that.

16 A. Okay.

17 Q. Have you ever seen -- withdrawn.

18 Did you receive this e-mail from Jeffrey

19 Lynn?

20 A. I mean, I don't remember if I did or didn't.

21 BY MS. KAZON:

22 Q. Did Mr. Lynn sometimes circulate things by

23 e-mailing them to himself and BCC'g you?

24 A. Yes. Yes, definitely. He would e-mail most

25 e-mail blasts. That's what he did.

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1 (Recess taken.)
 2 MS. LEE: So we are back on the record at
 3 12:58.
 4 MS. KAZON: While we were off the record,
 5 there were no conversations between the staff and counsel
 6 or the witness other than discussing the timing of the end
 7 of the testimony.
 8 MR. LUTZKER: Correct.
 9 THE WITNESS: Yes.
 10 BY MS. KAZON:
 11 Q. Mr. Petrou, I believe you testified that at
 12 War Chest, there was an instance when, as I understood
 13 your testimony, you had inadvertently shorted in advance
 14 of an offering and you had a conversation with a Mr. Bloom
 15 about that; is that correct?
 16 A. Yes.
 17 Q. Who is Mr. Bloom?
 18 A. He was the owner of War Chest.
 19 Q. And I believe you also testified that at War
 20 Chest the policy was not to short at all in deal stock; is
 21 that correct?
 22 A. Yes, yes.
 23 Q. And I see that -- is it correct that there
 24 was a period when you were trading for both Worldwide and
 25 War Chest?

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1 A. Yes.
 2 Q. Did you ever have any discussions with anyone
 3 associated with Worldwide about the fact that -- first of
 4 all, did you ever -- did people -- did anyone at Worldwide
 5 know that you were also trading for War Chest?
 6 A. No.
 7 Q. Did you have an understanding as to whether
 8 you were under an obligation not to trade for anyone other
 9 than Worldwide?
 10 A. No.
 11 Q. Did you have any discussions with anyone at
 12 War Chest about why you were not allowed to short deal
 13 stock?
 14 A. Howard Bloom told us that it's not -- it's
 15 not part of their practice shorting any deals. Even if
 16 you're not involved in syndicate, you just did not -- they
 17 were more of like -- they don't want to be involved in
 18 shorts of stocks.
 19 Q. But was -- withdrawn.
 20 But am I correct in remembering that at least
 21 in terms of the trading you did, the only stocks that you
 22 were buying were deal stocks?
 23 A. Yes.
 24 Q. And do you know whether the policy at War
 25 Chest was not to do any shorting in any stock at all

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1 versus not to do any shorting in deal stocks?
 2 A. As far as I know, there was no shorting in
 3 deal stocks. I didn't really deal with stocks outside of
 4 the deal stocks.
 5 Q. And did you ever have any discussion with
 6 anybody at War Chest about why -- since obviously the
 7 policy at War Chest was different from the policy at
 8 Worldwide, did you ever have any discussions with anyone
 9 at War Chest about why the policy was no shorting in
 10 advance of -- in connection with deals at all?
 11 A. He told me it was something that they frowned
 12 upon, Howard Bloom. When I had asked him about the one
 13 short, I didn't even know the shorting. I thought I could
 14 sell it. He said it's just -- the interpretation of that
 15 law, it wasn't clear on whether or not I could sell it,
 16 and he thought I could sell it. And he was wrong.
 17 Q. Oh, so you discussed the sale with Mr. Bloom
 18 before you placed the order?
 19 A. Yes, because of the no shorting policy, I
 20 asked him, "Is it a short if I sell this?" I got -- it
 21 was 2:00 p.m., and it was deal stock. But the deal hadn't
 22 priced yet. And he called me back and he said, "Yeah, I
 23 can't see why you can't sell it. It's yours."
 24 Q. Do you remember the name of the stock?
 25 A. No, no.

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1 Q. Did it ever occur to you that Worldwide's
 2 policy might not comply with the law in light of the more
 3 conservative War Chest policy?
 4 A. When I moved over to War Chest and I did that
 5 with that stock, that's when I realized that it was -- but
 6 I had already moved from Worldwide at that time, I think.
 7 Q. So this incident occurred after you had
 8 stopped trading for Worldwide?
 9 A. Yeah, yeah. I think it was in -- no, you
 10 know what? It was in 2011. It was in 2011, I think. I
 11 don't remember. I'm sorry.
 12 MR. LUTZKER: You don't remember?
 13 THE WITNESS: I don't remember.
 14 Q. And also, I believe you -- well, am I correct
 15 in understanding that from the time you started at War
 16 Chest, you understood that it was War Chest's policy that
 17 you should not short deal stock?
 18 A. Yeah. They didn't want us shorting anything,
 19 deal stock or not. They didn't want to be involved in
 20 shorts.
 21 Q. So I thought you testified that you're not
 22 really sure about --
 23 A. I said what I did is I didn't short other
 24 stocks anyway, so for me it was just the deal stock. I
 25 don't know what other people did, but...

27 (Pages 105 to 108)

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1 Q. Let me make sure I understand this.
 2 Was it -- do you know whether War Chest had a
 3 policy against shorting, in general, or is your knowledge
 4 that it had a policy against shorting deal stock?
 5 A. Definitely had a policy against shorting deal
 6 stock. So as far as shorting in general, I didn't short
 7 anything else but deal stock, so I'm not certain. I don't
 8 remember.
 9 Q. But, in any event, am I right in
 10 understanding that you learned about their policy about
 11 not shorting deal stock as soon as you started trading for
 12 them?
 13 A. Yes.
 14 Q. And according to your questionnaire, you
 15 started trading for War Chest in September of 2010, and
 16 you continued to trade for Worldwide until about December
 17 of 2011?
 18 A. Yeah.
 19 Q. And so when you learned about War Chest's
 20 policy, did that lead you to wonder whether Worldwide's
 21 policy complied with the law?
 22 A. Well, I started in September, I started
 23 opening accounts, so I hadn't really started making any
 24 money or trading anything really, probably till like
 25 November or December.

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1 But as of September, I did start working with
 2 them on trying to open accounts.
 3 Q. So when do you think you first learned about
 4 War Chest's policy?
 5 A. Probably like -- I would say like November,
 6 when I actually got an account or two open.
 7 Q. And when you learned of that policy, did
 8 that -- did you continue to short in connection with
 9 offerings for Worldwide?
 10 A. I don't remember.
 11 Q. Did the fact that War Chest had a more
 12 conservative policy give you any concern about whether
 13 Worldwide's policy was correct?
 14 A. Yes.
 15 Q. And did you discuss that concern with anyone?
 16 A. No. Usually my business, I just keep to
 17 myself. It's my business.
 18 Q. Did you do anything as a result of your
 19 concern?
 20 A. Well, that's why when I spoke to Jeff, I
 21 didn't really fight to stay there, because I believe that
 22 if I did tell him that I really do want to try and make
 23 this money back that I was down, I think it was \$170,000
 24 I think he would have given me the opportunity to. But I
 25 really didn't want to be there anymore. He didn't have

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1 enough -- he didn't have enough capital and, you know, he
 2 was still shorting stuff, and I just moved on from it.
 3 Q. Did you have -- other than what you've just
 4 testified to, did you ever have any concerns that
 5 Worldwide was not operating in compliance with the law?
 6 A. At the time I did not.
 7 BY MS. LEE:
 8 Q. So Mr. Petrou, we have no further questions
 9 for you at this time.
 10 A. Okay.
 11 Q. But we may however call you again' to testify
 12 in this investigation. If that's necessary, we will reach
 13 out to Mr. Lutzker.
 14 A. Okay.
 15 Q. Do you wish to clarify anything or add
 16 anything to the statements you've made today?
 17 A. No.
 18 MR. LUTZKER: No.
 19 MS, LEE: Mr. Lutzker, do you wish to ask any
 20 clarifying questions?
 21 MR. LUTZKER: No, I don't.
 22 MS. LEE: We are off the record at 1:09.
 23 (Time noted: 1:09 o'clock p.m.)
 24
 25

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<p>UNITED STATES SECURITIES AND EXCHANGE COMMISSION</p> <p>In the Matter of: WORLDWIDE CAPITAL, INC. File No. NY-8649</p> <p>WITNESS: THRASOS TOMMY PETROU</p> <p>PAGES: 1-54</p> <p>PLACE: Securities and Exchange Commission Brookfield Place 200 Vesey Street New York, New York 10281</p> <p>DATE: September 18, 2014</p> <p>The above-entitled matter came on for hearing at 10:10 a.m.</p>	<p>1 (Exhibit 58, Form 1662, marked for 2 identification, as of this date.) 3 MR. PRIMOFF: We are on the record at 4 10:10 a.m. 5 Mr. Petrou, would you please raise your 6 right hand? 7 Do you swear to tell the truth, the 8 whole truth and nothing but the truth? 9 THE WITNESS: Yes, I do. 10 Whereupon, 11 THRASOS TOMMY PETROU, 12 after having been first duly sworn, was examined and 13 testified as follows: 14 EXAMINATION BY 15 MR. PRIMOFF: 16 Q. Would you state, please, your full name 17 for the record? 18 A. Thrasos Tommy Petrou. 19 Q. Is Tommy your nickname or is that 20 actually your middle name? 21 A. It's on my license and passport. 22 Q. So the legal name is Thrasos Tommy 23 Petrou? 24 A. Yes. 25 Q. My name is Richard Primoff. With me is</p>
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<p>1 APPEARANCES: 2 3 On behalf of the Securities and Exchange Commission: 4 RICHARD G. PRIMOFF, ESQ. 5 KAREN LEE, ESQ. 6 ELZBIETA WRAGE, Investigator 7 Enforcement Division 8 Brookfield Place 9 200 Vesey Street 10 New York, New York 10281 11 12 On behalf of the Witness: 13 ELLIOT LUTZKER, ESQ. 14 DAVIDOFF HUTCHER & CITRON LLP 15 605 Third Avenue 16 New York, New York 10158 17 18 19 20 21 22 23 24 25</p>	<p>1 Karen Lee and Ella Wraga. 2 Ms. Lee and I are attorneys with the 3 Enforcement Division of the SEC and we're officers of 4 the Commission for purposes of this proceeding, as is 5 Ms. Wraga, who is not an attorney but an 6 investigator. 7 This is an investigation by the United 8 States Securities and Exchange Commission entitled, 9 "In the Matter of Worldwide Capital." 10 The purpose of the proceeding is to 11 determine whether there have been violations of 12 certain provisions of the federal securities laws. 13 However, facts developed in the 14 investigation might constitute violations of other 15 federal or state, civil or criminal laws. 16 Before we went on the record, you were 17 provided with a copy of the Formal Order of 18 Investigation and subsequent amendments. The Formal 19 Order will be available for your review during the 20 course of the proceeding. 21 Have you had an opportunity to review 22 it? 23 A. Yes. 24 Q. You were also provided with what has 25 been previously marked as Exhibit 58, which is the</p>

1 (Pages 1 to 4)

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1 He said: Yes.
 2 To reassure me, he told me he had spoken
 3 to his lawyer, Ira Sorkin, about it, and that it was
 4 fine.
 5 Q. Are you saying that the reason you asked
 6 him the second time is because you looked at the rule
 7 yourself and had a question about it? I'm not
 8 trying to put words in your mouth, but you did say
 9 you asked him twice. I'm trying to understand why
 10 it was you went back to him.
 11 A. I was working there for years. It
 12 wasn't like I asked him once and then I asked him
 13 again tomorrow.
 14 I asked him -- I can't recall when I
 15 asked him exactly. But I know that I had asked him
 16 initially and he said it was fine.
 17 And I remember the second time that I
 18 asked him, he reassured me that he had spoken to his
 19 lawyer, Ira Sorkin, and that it was legal.
 20 Now, when I asked him, I don't remember.
 21 Q. My question is: What was it that led
 22 you to seek reassurance from him?
 23 A. I don't remember. It might have been
 24 an article I read or something. I can't recall.
 25 Q. And then, when you started working for

Page 22

1 Warchest in September of 2010, did you understand
 2 what Warchest's position was on that?
 3 A. Yes.
 4 Q. What was their position?
 5 A. They didn't want us shorting any deals.
 6 On certain occasions -- I don't remember
 7 what he said -- if there was a deal that was already
 8 priced, he told us that we could sell it if you have
 9 the shares.
 10 Q. You mean if you actually got the shares
 11 already in your account?
 12 A. Yes.
 13 Q. I'm sorry, if the deal was priced, then
 14 what? I didn't hear the last part?
 15 A. If the deal was priced, sometimes there
 16 are overnights, and if the deal was priced, we were
 17 allowed to sell if we already had the shares.
 18 Q. Who told you this?
 19 A. Howard Bloom.
 20 Q. And this was in September 2010?
 21 A. I don't recall when it was.
 22 Q. Was it at some point around the time you
 23 started working for Warchest?
 24 A. I believe it had to be after. I didn't
 25 really do much business with Warchest until the new

Page 23

1 year. So I can't be sure when he told me that.
 2 Q. It could have been at the beginning of
 3 the new year?
 4 A. It could have been at the beginning of
 5 the new year. But again, I don't remember exactly
 6 when.
 7 Q. But would it have been later than the
 8 beginning of the new year when you started working
 9 for them?
 10 A. No. It would have been between
 11 September and February of 2011.
 12 Q. So how would you go about to determine
 13 that the shares that hit your account allowed you to
 14 sell short according to Mr. Bloom?
 15 A. Repeat that.
 16 Q. If I understood you correctly, you said
 17 that Mr. Bloom told you that you could be allowed to
 18 sell if the shares had already hit your account, is
 19 that correct?
 20 A. Yes.
 21 Q. Did you ever engage in that? In other
 22 words, participate in an offering, see that the
 23 shares hit your account, and then sell short?
 24 A. I probably did it two or three times.
 25 I don't remember how many times. But if he told me

Page 24

1 yes, I could do it.
 2 Because they were against shorting, so
 3 for him to tell me that it's okay, I thought it would
 4 be okay. He said as long as the deal is priced and
 5 you have the shares, then you can sell them.
 6 Q. And do you recall doing anything to
 7 verify that you had shares at any point where you did
 8 that?
 9 A. Your broker would call you and tell you
 10 if you had shares or not.
 11 Q. Who else, to your knowledge, traded for
 12 Warchest during the time that you were trading for
 13 them?
 14 A. All I would know is Billy Vowell,
 15 Carmella and me. I went to a Christmas party but I
 16 didn't really know anybody.
 17 Q. When you were just describing your
 18 conversation with Mr. Bloom about what you could sell
 19 and what you could not sell. You said something
 20 about sometime there are overnights.
 21 What did you mean by that?
 22 A. Overnight secondary offerings.
 23 Q. I know, but what does that mean? What
 24 do you mean by overnight?
 25 A. There will be a deal announced that will

6 (Pages 21 to 24)

Page 25

1 either price initially or price the next morning.
 2 Q. So an overnight is one that prices the
 3 following morning, or it's one that prices --
 4 A. Regardless, we call them overnights. I
 5 don't know, maybe it's a slang word for it or it's a
 6 secondary offering. But an overnight we call a deal
 7 that's either priced initially.
 8 Like they'll tell you this is the deal,
 9 6 million shares at \$50. Or they'll tell you: This
 10 deal is for tomorrow, 6 million shares at a range of
 11 \$50 to \$52.
 12 Q. And that's the pricing, that's your
 13 understanding that that is the pricing? Or the
 14 actual pricing is after that announcement, where they
 15 give the actual specific price?
 16 A. I'm sorry, I didn't understand your
 17 question.
 18 Q. You say that it's either the case where
 19 they'll tell you: Here's the deal, it's this many
 20 shares at this price or this many shares at this
 21 range of prices?
 22 A. Yes.
 23 Q. So which of those two is an overnight?
 24 A. Both.
 25 Q. Your understanding was that you would

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1 have the shares, if the announcement was it's going
 2 to be priced tomorrow, the time that you would have
 3 the shares is after the time of pricing on the
 4 following day?
 5 A. Yes.
 6 You never get shares before the deal is
 7 priced.
 8 Q. And it would be only at that point that
 9 you would be permitted to short according to what Mr.
 10 Bloom told you?
 11 A. Yes -- no.
 12 If a deal was priced that day, that
 13 night, for example, if a deal was announced today at
 14 4 o'clock and they priced it at 4 o'clock and I got
 15 shares, then I was allowed to sell them.
 16 Q. On that same day?
 17 A. On that same day. Only if you got
 18 shares.
 19 Q. In fact, you did that on several
 20 occasions, you said, where you believed you got
 21 shares and then sold short on that same deal?
 22 A. Yes.
 23 Q. And what did you do before you sold
 24 short, if anything, to verify that you actually had
 25 shares in your account?

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1 A. I would ask my broker.
 2 Q. Did you look at any account statement on
 3 line or otherwise to confirm?
 4 A. No.
 5 MR. PRIMOFF: Can we take a short break.
 6 (Recess)
 7 MR. PRIMOFF: Back on the record.
 8 Mr. Petrou, during the break you and I
 9 did not have any substantive discussions about
 10 anything, is that correct?
 11 THE WITNESS: Correct.
 12 MR. PRIMOFF: Nor did you have any such
 13 discussions with Ms. Lee or Ms. Wraga?
 14 THE WITNESS: Correct.
 15 BY MR. PRIMOFF:
 16 Q. I wanted to revisit the conversation you
 17 spoke about with Mr. Bloom.
 18 You understood that you were allowed to
 19 sell the deal after you got the stock in the deal,
 20 correct?
 21 A. Yes.
 22 Q. So in other words, that sale wouldn't be
 23 a short sale at that point because you were selling a
 24 long position, is that right?
 25 A. Yes.

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1 Q. But did you understand from Mr. Bloom
 2 that Warchest did not want you to be selling short a
 3 deal in advance of getting the stock?
 4 A. Yes.
 5 Q. And did he explain why?
 6 A. Rule 105.
 7 Q. So he told you that it was Warchest's
 8 view that doing so, that selling a deal short before
 9 you got the stock in a deal --
 10 A. I would have gotten fired.
 11 Q. It was his view and Warchest's view that
 12 that would be a violation of Rule 105?
 13 A. From what I remember, yes.
 14 Q. And was that possibly one of the reasons
 15 you went back to Mr. Lynn and asked him the second
 16 time?
 17 A. No, no.
 18 Q. So you didn't go back to Mr. Lynn after
 19 that conversation and apprise him of what Warchest
 20 had told you?
 21 A. No.
 22 Q. Did it change in any way the manner in
 23 which you continued to trade at Worldwide Capital?
 24 A. I left Worldwide Capital after that
 25 conversation.

7 (Pages 25 to 28)

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1 Q. I'm sorry, I thought you began at
 2 Warchest in September 2010?
 3 A. Yes.
 4 Q. And then your conversation with Mr.
 5 Bloom was at some point from then until February of
 6 2011, correct?
 7 A. Yes.
 8 Q. That's what you testified to previously?
 9 A. Yes.
 10 Q. And you remained at Worldwide Capital
 11 until December 2011, correct?
 12 A. Correct.
 13 Q. So you continued to work at Worldwide
 14 Capital for a period of time after you started at
 15 Warchest and after that conversation with Mr. Bloom,
 16 correct?
 17 A. No. I left. So the conversation must
 18 have happened in January, or December.
 19 Q. I don't understand.
 20 A. I left Worldwide Capital after that
 21 conversation with Mr. Bloom. So that means I must
 22 have had that conversation with him in January or
 23 February. Or maybe December.
 24 Q. Of what year?
 25 A. December -- it must have been December

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1 2011.
 2 Q. So you were at Worldwide Capital in
 3 December of 2011?
 4 A. I don't think I was.
 5 Q. And your conversation with Mr. Bloom was
 6 between September 2010 and February 2011?
 7 A. Yes -- I don't remember. I'm trying to
 8 make sense of it, but I don't remember exactly.
 9 It's years ago.
 10 Q. Well, earlier you had remembered that it
 11 was between September 2010 and February 2011?
 12 A. I could have been wrong. I'm trying to
 13 make sense of the time. I can't remember exactly.
 14 Q. Doesn't it make sense that that
 15 conversation you described with Mr. Bloom would have
 16 happened earlier in your tenure at Warchest rather
 17 than later?
 18 A. Yes.
 19 Q. So there was a period of time in between
 20 Mr. Bloom telling you what he told you and the time
 21 that you left Worldwide Capital?
 22 A. Yes.
 23 Q. So there was a period of time when you
 24 were trading at Worldwide Capital in the manner that
 25 Mr. Lynn and Mr. Sorkin told you you could, in other

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1 words, shorting a deal so long as you didn't cover
 2 the short of the deal stock, after Mr. Bloom had told
 3 you that Warchest considered that to be a violation
 4 of Rule 105?
 5 A. But that had to be even earlier.
 6 Q. What had to be even earlier?
 7 A. That conversation with Jeff Lynn had to
 8 be even earlier. It didn't happen two and a half
 9 years later.
 10 Q. Let's put aside when that occurred.
 11 My point is, and my question to you is:
 12 It's true that there was a period of time when you
 13 were trading for Worldwide Capital after Mr. Bloom
 14 had told you that you couldn't short a deal before
 15 you got the stock?
 16 A. At Warchest, yes.
 17 Q. And what Mr. Bloom told you didn't cause
 18 you to change in any way the behavior in which you
 19 traded for Worldwide Capital, is that fair to say?
 20 A. I started doing less and less business
 21 there. I don't remember if I shorted after that
 22 conversation.
 23 Q. You don't have a recollection of
 24 stopping shorting a deal at Worldwide after Mr. Bloom
 25 told you what he told you?

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1 A. I can't remember when exactly I had the
 2 conversation with Mr. Bloom. It's just an
 3 assumption, so...
 4 Q. How were you compensated by Warchest?
 5 A. How was I compensated?
 6 Q. What was the nature of your pay for
 7 trading at Warchest?
 8 A. 50 percent of the profits.
 9 Q. Did Ms. Brocco take a cut?
 10 A. No.
 11 Q. Did Mr. Vowell or his company take a cut
 12 of your trading profit?
 13 A. No.
 14 Q. 50 percent of your profit, maybe you
 15 said it and I was too impatient, didn't listen,
 16 losses as well?
 17 A. You would not get paid unless you were
 18 -- you had a profit. If you had losses, you had to
 19 make up the losses. And then when you were
 20 positive, you can make money.
 21 Q. That's similar to the deal with
 22 Worldwide, then; is that correct?
 23 A. Correct.
 24 Q. I want to just go over some of the more
 25 granular mechanics of how you traded with both

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71653 / March 5, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15772

In the Matter of

**WORLDWIDE CAPITAL, INC.,
and JEFFREY W. LYNN,**

Respondents.

**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 against Worldwide Capital, Inc. ("Worldwide") and Jeffrey W. Lynn ("Lynn") (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have 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, Respondents consent 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 Respondents' Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by Lynn, operating through his alter ego, Worldwide. Rule 105 prohibits buying any equity security made available through a covered public offering from an underwriter or broker or dealer participating in the offering after having sold short the same security during the restricted period as defined therein.

2. On 60 occasions, from October 31, 2007 through February 23, 2012, Worldwide bought offered 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. These violations collectively resulted in profits to Lynn and Worldwide of \$4,212,797.

Respondents

3. Worldwide is a Delaware corporation with its principal office in Nassau County, New York. Worldwide is a proprietary trading firm that Lynn formed in 1993 for the purpose of investing and trading his own capital. Worldwide has never been registered with the Commission in any capacity.

4. Lynn, age 55, is the sole owner and president of Worldwide. From 1984 until 1987, Lynn was a registered representative of Merrill Lynch, Pierce, Fenner & Smith Inc., where he traded fixed income securities. Lynn resides in Boca Raton, Florida.

5. Lynn at all relevant times considered Worldwide to be nothing more than the formal name given to the deposit of his capital at his clearing firm. Lynn's and Worldwide's activities were intertwined, moreover, and their assets were commingled. Lynn routinely used Worldwide's back office staff to pay his personal expenses, for example, and those payments were made directly from Worldwide's bank account, with no distinction or segregation being made between personal and business expenses. Lynn exercised complete dominion and control over Worldwide, and he and the traders he engaged to trade his capital in Worldwide's accounts regarded the two as one and the same.

6. Most of Worldwide's trades were effected by individual traders engaged by Lynn. Under the terms of their arrangements, Lynn and his individual traders were to share equally in the profits and losses earned or sustained on the trades executed for Worldwide, which were funded entirely by Lynn. In addition to funding the trading, Lynn recruited the traders, hired and equipped the back office staff, and oversaw the trading and back office operations.

7. At all relevant times, Respondents' principal investment strategy was to obtain the maximum allocations possible for short-term trading in initial public offerings as well as follow-on and secondary offerings. Accordingly, the Worldwide traders purchased offering shares through numerous accounts at major broker-dealers. By contrast, most of their sales, including short sales, of equity securities, were executed through an account in Worldwide's name at one of several smaller broker-dealers that catered to small institutional customers and professional traders. All of

the Worldwide trades, regardless of the account in which the trade was executed, cleared and settled in a Worldwide master account at Worldwide's prime broker.

8. Lynn was in frequent contact with his traders, and was aware on at least a daily basis of the trades placed by his traders, and of Worldwide's securities positions. Lynn's awareness was based not only on his communications with individual traders and Worldwide's back office staff, but also his daily review of the individual traders' trading blotters, and Worldwide's trade management system.

Legal Framework

9. Rule 105 makes it unlawful for a person to purchase equity securities in a covered public offering 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 Exchange Act Form 1-A or Form 1-E and ending with pricing.

10. Rule 105 applies irrespective of the short seller's intent in effecting the short sale. "The prohibition on purchasing offered securities . . . provides a bright line demarcation of prohibited conduct consistent with the prophylactic nature of Regulation M." Short Selling in Connection with a Public Offering, 72 Fed. Reg. at 45096. The Commission adopted Rule 105 in an effort to prevent manipulative short selling prior to a public offering and, therefore, "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." Id. at 45094.

Respondents' Violations of Rule 105 of Regulation M

11. From October 31, 2007 to February 23, 2012, Lynn and his alter ego Worldwide violated Rule 105 in connection with 60 separate secondary and follow-on offerings, in each case by selling short shares of the issuers' stock during the restricted period, and then purchasing offering shares. As a result of these violations, Worldwide and Lynn received ill-gotten gains totaling approximately \$8,425,595. After they paid the individual traders who had effected the short sales and received the offering shares their share of the profits, in accordance with the standard compensation arrangements, Lynn and Worldwide retained ill-gotten gains in the amount of \$4,212,797.

12. The ill-gotten gains consisted of the following:

A. First, Worldwide and Lynn improperly profited from the difference between the proceeds from their improper restricted period short sales, and the amounts they paid on an equivalent number of shares received in the offerings of the same issuer's shares. These unlawful profits totaled approximately \$3,787,385. After paying the individual traders, Worldwide and Lynn retained ill-gotten gains in the amount of \$1,893,692.

B. Second, in those offerings where the number of shares they received in the offerings exceeded the number of shares they sold short during the restricted period (“overage”), Worldwide and Lynn and the individual traders improperly obtained an additional benefit in that they obtained the offering shares at a discount to the market price of the issuer’s shares. Worldwide and Lynn and the individual traders received benefits from their violative conduct in the form of market discounts totaling \$4,618,330, of which Lynn and Worldwide retained ill-gotten gains in the amount of \$2,309,165.

C. Third, Worldwide and Lynn and the individual traders improperly benefitted in certain offerings where the offering price exceeded the price at which they had sold the stock short during the restricted period. Because they purchased their offering shares at a discount to the market price, they avoided losses in connection with these offerings in an amount that totaled \$19,880, of which Worldwide’s and Lynn’s share totaled \$9,940.

13. For example, on December 15, 2009, Worldwide sold short 4,118,300 shares of Citigroup, Inc. common stock at an average price of \$3.6020. After the close of the market on December 16, 2009, a secondary offering of Citigroup common stock was priced at \$3.1500. Worldwide purchased 44,399,201 shares in the offering. The difference between Worldwide’s proceeds from the restricted period short sales of Citigroup shares and amount it paid for the equivalent number of shares purchased in the offering was \$1,861,472. Worldwide obtained an additional improper benefit of \$1,406,609 by purchasing the remaining 40,280,901 offering shares at a discount to the market price of \$3.1849.

14. As another example, on September 23, 2010, Worldwide sold short 1,373,400 shares of Petroleo Brasileiro common stock, at an average price of \$34.2057. Later that day, after the close of the market, a follow-on offering of Petroleo Brasilia common stock was priced at \$34.490. Worldwide purchased a total of 20,025 shares in the offering. Although the offering price exceeded the price at which it had sold short the stock during the restricted period, Worldwide received an improper benefit in the amount of \$18,041 by obtaining a number of shares equal to the number it had sold short at a discount from the market price, which was \$35.3909.

15. The 60 offerings in which Worldwide and Lynn violated Rule 105 are listed on Exhibit A to this Order.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents’ Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondents Worldwide and Lynn cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Worldwide and Lynn shall together, on a joint and several basis, pay disgorgement of \$4,212,797, prejudgment interest of \$526,358, and a civil monetary penalty in the amount of \$2,514,571 (for a total of \$7,253,726) to the to the Securities and Exchange Commission, for transmission to the United States Treasury. Payment shall be made in the following installments: (i) \$2,500,000 shall be paid within twenty-one (21) business days following the date on which this Order is entered; (ii) \$1,000,000 shall be paid within ninety (90) days following the date on which this Order is entered; (iii) \$1,000,000 shall be paid within one hundred and eighty (180) days following the date on which this Order is entered; and \$ 2,753,726 shall be paid within three hundred and sixty (360) days following the date on which this Order is entered. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;²
- (2) Respondents 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) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and 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 Worldwide and Lynn as Respondents in these proceedings, and the file number of these

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.

proceedings; a copy of the cover letter and check or money order must be sent to Andrew M. Calamari, Regional Director, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281.

By the Commission.

Elizabeth M. Murphy
Secretary

Exhibit A

	ISSUER	PRICING DATE & TIME
1	Melco PBL Entertainment (Macau) LTD (MPEL)	10/31/2007 After Close
2	Enernoc, Inc. (ENOC)	11/13/2007 After Close
3	Seattle Genetics, Inc. (SGEN)	1/18/2008 Before Open
4	Genoptix, Inc. (GXDX)	2/28/2008 After Close
5	BGC Partners, Inc. (BGCP)	6/4/2008 After Close
6	Health Care REIT Inc. (HCN)	9/4/2008 After Close
7	Mitsubishi UFJ Financial Group Inc. (MTU)	12/8/2008 Before Open
8	Medical Properties Trust, Inc. (MPW)	1/8/2009 After Close
9	Newmont Mining Corp (NEM)	1/28/2009 After Close
10	ProLogis Share of Beneficial (PLD)	4/8/2009 Before Open
11	Dow Chemical Company (DOW)	5/6/2009 After Close
12	U.S. Airways Group, Inc. (LCC)	5/7/2009 After Close
13	Wells Fargo & Co. (WFC)	5/8/2009 Before Open
14	Ford Motor Company (F)	5/12/2009 After Close
15	State Street Corp. (STT)	5/18/2009 After Close
16	Regions Financial Corporation (RF)	5/20/2009 After Close
17	Terex Corp. (TEX)	5/29/2009 Before Open
18	New M&I Corporation (MI)	6/11/2009 After Close
19	Duncan Energy Partners, LP (DEP)	6/15/2009 After Close
20	Hospitality Properties Trust (HPT)	6/18/2009 After Close
21	Prospect Capital Corporation (PSEC)	6/30/2009 After Close
22	VanceInfo Technologies Inc. (VIT)	7/9/2009 After Close
23	CapitalSource Inc. (CSE)	7/14/2009 After Close
24	Ocwen Financial Corporation (OCN)	8/12/2009 After Close
25	Penn Virginia GP Holdings, L.P. (PVG)	9/10/2009 After Close
26	New M&I Corporation (MI)	10/21/2009 After Close
27	Citigroup, Inc. (C)	12/16/2009 After Close
28	STR Holdings Inc. (STRI)	4/15/2010 After Close
29	Strategic Hotels & Resorts, Inc. (BEE)	5/13/2010 After Close
30	Resource Capital Corp. (RSO)	5/19/2010 After Close
31	Wabash National Corporation (WNC)	5/24/2010 After Close
32	Cypress Sharpridge Investments (CYS)	6/24/2010 After Close
33	Genco Shipping & Trading Ltd. (GNK)	7/21/2010 After Close

	ISSUER	PRICING DATE & TIME
34	Government Properties Income (GOV)	8/5/2010 After Close
35	Petroleo Brasileiro (PBR)	9/23/2010 After Close
36	Noranda Aluminum Holding Corp. (NOR)	12/6/2010 After Close
37	IntraLinks Holding, Inc. (IL)	12/6/2010 After Close
38	Stillwater Mining Company (SWC)	12/7/2010 After Close
39	Verint Systems Inc. (VRNT)	1/10/2011 After Close
40	MarkWest Energy Partners LP (MWE)	1/11/2011 Before Open
41	American Capital Agency Corp. (AGNC)	1/13/2011 After Close
42	LDK Solar Co., Ltd. (LDK)	1/27/2011 Before Open
43	StoneMor Parnters LP (STON)	2/3/2011 After Close
44	Quality Distribution Inc. (QLTY)	2/3/2011 After Close
45	Molycorp, Inc. (MCP)	2/11/2011 After Close
46	Gartner Inc. (IT)	2/17/2011 After Close
47	YPF Sociedad Anonima (YPF)	3/22/2011 After Close
48	Newcastle Investment Corporation (NCT)	3/23/2011 After Close
49	Energy Transfer Partners, L.P. (ETP)	3/29/2011 Before Open
50	Cobalt International Energy Inc. (CIE)	4/11/2011 After Close
51	American International Group, Inc. (AIG)	5/24/2011 After Close
52	Arch Coal, Inc. (ACI)	6/2/2011 After Close
53	Diana Containerships Inc. (DCIX)	6/9/2011 After Close
54	Five Star Quality Care, Inc. (FVE)	6/15/2011 After Close
55	Excel Trust, Inc. (EXL)	6/23/2011 After Close
56	Aegerion Pharmaceuticals, Inc. (AEGR)	6/23/2011 After Close
57	Calumet Specialty Products Partners, LP (CLMT)	9/8/2011 After Close
58	Newcastle Investment Corporation (NCT)	9/21/2011 After Close
59	Linn Energy, LLC (LINE)	1/12/2012 After Close
60	Cobalt International Energy Inc. (CIE)	2/23/2012 After Close