

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 58548 / September 15, 2008**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 2777 / September 15, 2008**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13197**

**In the Matter of**  
  
**Moon Capital Management, LP,**  
  
**Respondent.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND  
CEASE-AND-DESIST  
PROCEEDINGS, MAKING  
FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND A  
CEASE-AND-DESIST ORDER  
PURSUANT TO SECTION 21C  
OF THE SECURITIES  
EXCHANGE ACT OF 1934 AND  
SECTION 203(e) OF THE  
INVESTMENT ADVISERS ACT  
OF 1940**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”) against Moon Capital Management, LP (“Moon 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 Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 and Section 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”) (“Order”), as set forth below.

### III.

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

#### Summary

1. In connection with a follow-on offering conducted after the market close on May 10, 2005, Moon Capital, on behalf of one of the hedge funds it advises (the "Hedge Fund"), sold securities short during the five business days before the pricing of the offering and then covered the short positions with securities purchased in the offering ("offering shares"). These transactions violated Rule 105 of Regulation M, and resulted in the Hedge Fund earning a profit of \$88,100.

#### Respondent

2. Moon Capital Management, LP, a Delaware limited partnership which has its headquarters and principal place of business in New York, New York, is an unregistered investment adviser to two private investment funds.

#### Background

3. At the time of the conduct, Rule 105 of Regulation M, "Short Selling in Connection with a Public Offering," prohibited covering a short sale with securities obtained in a public offering if the short sale occurred within the Rule 105 restricted period, which is the shorter of (1) the period five business days before pricing and ending with pricing or (2) the period beginning with the initial filing of the registration statement or notification on Form 1-A and ending with pricing (the "Rule 105 restricted period"). In pertinent part, Rule 105 provided:

In connection with an offering of securities for cash pursuant to a registration statement... filed under the Securities Act, it shall be unlawful for any persons to cover a short sale with offered securities purchased from an underwriter or broker or dealer participating in the offering, if such short sale occurred during the... period beginning five business days before the pricing of the offered securities and ending with such pricing....

17 C.F.R. § 242.105. "The goal of Rule 105 is to promote offering prices that are based upon open market prices determined by supply and demand rather than artificial forces." Final Rule: Short Sales, Exchange Act Release No. 50103, 2004 WL 1697019, at \*19 (July 28, 2004). Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale. Interpretative guidance by the Commission provides that a transaction violates Rule 105 despite contemporaneous market purchases and sales of the offered security "where the transaction is structured such that there is no legitimate economic purpose or substance to the contemporaneous purchase and sale, no genuine change in beneficial ownership, and/or little or no market risk . . ." Short Sales, Exchange Act Release No. 50103 (September 7, 2004). In an

example of such a “sham” transaction, “a trader effects pre-pricing short sales during the Rule 105 restricted period, receives offering shares, sells the offering shares into the open market, and then contemporaneously or nearly contemporaneously purchases an equivalent number of the same class of shares as the offering shares, which are then used to cover the short sales.” *Id.*

4. Following the market close on May 10, 2005, shares of Satyam Computer Services Ltd. (NYSE: SAY) American Depository Shares (“ADSs”) were offered on a follow-on basis at \$21.50 per ADS. Prior to the market close on that day, Moon Capital, on behalf of the Hedge Fund, sold short 95,000 Satyam ADSs at \$22.20 and another 25,000 ADS at \$22.38 within the Rule 105 restricted period. Then, on May 11, 2005, Moon Capital, again on behalf of the Hedge Fund, purchased 150,000 ADSs at \$21.50 per ADS in the offering. After purchasing these offering ADSs, Moon Capital, on behalf of the Hedge Fund, entered orders to sell 150,000 Satyam ADSs into the market, while almost contemporaneously entering orders through two separate broker-dealers to purchase 120,000 ADSs. These purchases and sales of Satyam ADSs resulted in Moon Capital no longer holding any offering ADSs and covering the short position of 120,000 created during the Rule 105 restricted period. Moon Capital made a profit of \$88,100 for the Hedge Fund from these trades.

5. As a result of the conduct described above, Moon Capital willfully<sup>1</sup> violated Rule 105 of Regulation M, which makes it “unlawful for any person to cover a short sale with offered securities purchased from an underwriter or broker or dealer participating in an offering, if such short sale occurred during the . . . period beginning five business days before the pricing of the offered securities and ending with such pricing.”

### **Moon Capital’s Remedial Efforts**

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

## **IV.**

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

Accordingly, pursuant to Section 21C of the Exchange Act and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

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<sup>1</sup> A willful violation of the securities laws means merely “that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

A. Respondent Moon Capital cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M.

B. Respondent Moon Capital is censured.

C. Respondent shall, within 15 days of the entry of this Order, pay disgorgement of \$88,100, prejudgment interest in the amount of \$20,971.67, and a civil money penalty of \$30,000 to the United States Treasury. Such payment shall be: (1) made by United States postal money order, certified check, bank cashier's check or bank money order; (2) made payable to the Securities and Exchange Commission; (3) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (4) submitted under cover letter that identifies Moon Capital as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Stephen E. Donahue, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 3475 Lenox Road, Suite 500, Atlanta, GA 30326.

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

By the Commission.

Florence E. Harmon  
Acting Secretary