

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 59428 / February 20, 2009

INVESTMENT ADVISERS ACT OF 1940
Release No. 2843 / February 20, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13376

In the Matter of

**Diamondback Capital Management,
LLC,**

Respondent.

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

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant Section 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Diamondback Capital Management, LLC (“Diamondback” 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, Pursuant to Section 203(e) of the Investment

Advisers Act of 1940 and Section 21C of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

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

Summary

These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by Diamondback, an investment adviser of two hedge funds. On four occasions from August 2005 to October 2005 (“the relevant period”), Respondent violated Rule 105 of Regulation M in connection with short sales made in advance of public offerings by Axis Capital Holdings Limited (“Axis”), Endurance Specialty Holdings Limited (“Endurance”), Everest Re Group Limited (“Everest”) and IPC Holdings Limited (“IPC Holdings”). Diamondback had sold securities short within five business days before the pricing of each offering, and covered the short sales with shares purchased in the offerings. The profits on these trades totaled \$94,014.

Respondent

1. Diamondback Capital Management, LLC, is a Delaware limited liability company that has its headquarters and principal place of business in Stamford, Connecticut. Diamondback has been registered with the Commission as an investment adviser since 2006 and serves as an investment adviser for two hedge fund clients that invest their assets through a single trading vehicle, Diamondback Master Fund Ltd., a Cayman Islands exempt limited company.

Other Relevant Entities

2. Axis is a holding company domiciled in Bermuda. Axis’ stock is registered pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange.

3. Endurance is a holding company domiciled in Bermuda. Endurance’s stock is registered pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange.

4. Everest is a holding company domiciled in Bermuda. Everest’s stock is registered pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange.

5. IPC Holdings is a holding company domiciled in Bermuda. IPC Holdings’ stock is registered pursuant to Section 12(b) of the Exchange Act and listed on the NASDAQ.

Background

6. At all relevant times, Rule 105 of Regulation M, “Short Selling in Connection with a Public Offering,” (“Rule 105”) provided, in pertinent part:

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 person 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(a)(1). This five business day or shorter period is referred to herein as the “restricted period.” Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller’s intent in effecting the short sale.

7. During the relevant period, Diamondback violated Rule 105 in connection with short sales made prior to public offerings by four companies, Axis, Endurance, Everest and IPC Holdings, resulting in profits of \$94,014.

8. On August 8, 2005, Diamondback sold short a total of 25,000 Axis shares.

9. After the close of the market on August 8, 2005, Axis priced a follow-on offering of 7,819,362 shares of its common stock at \$29.50 per share. Certain selling shareholders of Axis offered the shares to the public through an underwriter on a firm commitment basis. Accordingly, the Rule 105 restricted period was August 2, 2005 through August 8, 2005.

10. Diamondback covered the short position it established during the Rule 105 restricted period using Axis shares purchased in the follow-on offering. Diamondback’s profit on these transactions was \$12,578.

11. On September 26, 2005, Diamondback sold short a total of 60,000 Endurance shares.

12. Before the opening of the market on October 3, 2005, Endurance priced a follow-on offering of 6,079,000 shares of its common stock at \$33.15 per share. Endurance offered the shares to the public through an underwriter on a firm commitment basis. Accordingly, the Rule 105 restricted period was September 26, 2005 through September 30, 2005.

13. Diamondback covered the short position it established during the Rule 105 restricted period using Endurance shares purchased in the follow-on offering. Diamondback’s profit on these transactions was \$41,505.

14. On October 6, 2005, Diamondback sold short a total of 11,800 Everest shares.

15. After the close of the market on October 6, 2005, Everest priced a follow-on offering of 5.2 million shares of its common stock at \$92.50 per share. Everest offered the shares to the public through an underwriter on a firm commitment basis. Accordingly, the Rule 105 restricted period was September 30, 2005 through October 6, 2005.

16. Diamondback covered the short position it established during the Rule 105 restricted period using Everest shares purchased in the offering. Diamondback's profit on these transactions was \$14,901.

17. On October 25, 26 and 28, 2005, Diamondback sold short a total of 61,104 IPC Holdings shares.

18. After the close of the market on October 31, 2005, IPC Holdings priced a follow-on offering of 13,820,000 shares of its common stock at \$26.25 per share. IPC Holdings offered the shares to the public through an underwriter on a firm commitment basis. Accordingly, the Rule 105 restricted period was October 25, 2005 to October 31, 2005.

19. Diamondback covered a portion of the short position it established using 50,000 IPC Holdings shares purchased in the follow-on offering. Diamondback's profit on these transactions was \$25,030.

20. As a result of the conduct described above, Diamondback willfully¹ violated Rule 105 of Regulation M, which made 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 sales occurred during the . . . period beginning five business days before pricing of the offered securities and ending with such pricing."

Diamondback's Remedial Efforts

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

IV.

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

¹ 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)).

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

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

B. Respondent Diamondback is censured.

C. IT IS FURTHER ORDERED that Respondent Diamondback shall, within ten (10) days of the entry of this Order, pay disgorgement in the amount of \$94,014 and prejudgment interest in the amount of \$21,154 and a civil penalty of \$47,007 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. 3717. Payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, VA 22312, Stop 0-3; and (D) submitted under cover letter that identifies Diamondback Capital Management, LLC 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 John T. Dugan, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 23rd Floor, Boston, MA 02210.

By the Commission.

Elizabeth M. Murphy
Secretary