

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 61421 / January 26, 2010**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 2976 / January 26, 2010**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13763**

<p><b>In the Matter of</b></p> <p><b>PALMYRA</b> <b>CAPITAL ADVISORS LLC,</b></p> <p><b>Respondent.</b></p>
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**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(e) OF THE INVESTMENT ADVISERS ACT OF 1940, 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 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 Palmyra Capital Advisors LLC (“Palmyra” 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 21C of the Securities Exchange Act of 1934 and Section 203(e) of the Investment Advisers Act of 1940, 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<sup>1</sup> that:

#### **Summary**

1. These proceedings arise out of a violation of Rule 105 of Regulation M of the Exchange Act by Palmyra, a registered investment adviser based in Los Angeles, California. Rule 105 prohibits short selling securities during a restricted period (generally defined as five business days before the pricing of a secondary offering) and then purchasing the same securities in a public secondary offering. Palmyra, through three of its managed funds, violated Rule 105 in connection with short sales made in advance of a public offering by Capital One Financial Corp. ("Capital One"), resulting in profits of \$225,500.

#### **Respondent**

2. Palmyra Capital Advisors LLC is a Los Angeles, California-based hedge fund manager that serves as an advisor to three limited partnerships, Palmyra Capital Fund, LP ("Palmyra Capital"), Palmyra Capital Offshore Funds, LP ("Palmyra Offshore"), and Palmyra Capital Institutional Fund, LP ("Palmyra Institutional") (collectively the "hedge Funds"). Palmyra was a registered investment adviser with the Commission during the time of the Rule 105 violations at issue.

#### **Background**

3. At all relevant times, pursuant to amendments effective as of October 9, 2007, Rule 105 prohibited short selling securities during a restricted period and then purchasing the same securities in a public offering. 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. "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.

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

4. On September, 18, 2008, three hedge Funds Palmyra advises sold short a total 50,000 shares of Capital One at \$53.51 per share.

5. On September 24, 2008, after the close of the market, Capital One announced the pricing of a secondary offering of 14 million shares of its common stock at \$49 per share. Palmyra received 50,000 shares of Capital One stock in the secondary offering at a price of \$49 per share, which were posted to the accounts of the three hedge Funds on September 24, 2008.

6. Palmyra made a profit of \$225,500 for its three hedge Funds from these trades.

7. As a result of the conduct described above, Palmyra willfully<sup>2</sup> violated Rule 105 of Regulation M, which makes it “unlawful for any person to sell short . . . [a] security that is the subject of . . . [an] offering and purchase the offered securities from an underwriter or broker or dealer participating in the offering if such short sale was effected during the . . . Rule 105 restricted period . . . .”

#### **Palmyra’s Remedial Efforts**

8. 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 to impose the sanctions agreed to in Respondent Palmyra’s Offer.

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

A. Respondent Palmyra cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act.

B. Respondent Palmyra is censured.

C. Respondent Palmyra shall, within 15 days of the entry of this Order, pay disgorgement of \$225,500, prejudgment interest in the amount of \$10,901.58, and a civil money penalty of \$105,000 to the United States Treasury. If timely payment is not made,

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<sup>2</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)).

additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. § 3717.

D. Such payment by Respondent Palmyra 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 Palmyra 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 Gerald W. Hodgkins, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

E. 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.

Elizabeth M. Murphy  
Secretary