

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 62447 / July 2, 2010

INVESTMENT ADVISERS ACT OF 1940
Release No. 3047 / July 2, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13956

In the Matter of

APPALOOSA
MANAGEMENT L.P.

Respondent.

**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 Appaloosa Management L.P. (“Appaloosa Management” 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 finds¹ that:

Summary

1. These proceedings arise out of a violation of Rule 105 of Regulation M of the Exchange Act by Appaloosa Management, an unregistered investment adviser based in Short Hills, New Jersey. Rule 105 prohibits short selling of equity securities during a restricted period and then purchasing the same securities in a public offering. Appaloosa Management violated Rule 105 in connection with short sales it effected within the Rule 105 restricted period preceding its participation in a public offering by Wells Fargo & Co. (“Wells Fargo”), resulting in profits of \$842,500.

Respondent

2. Appaloosa Management L.P. is a limited partnership organized under the laws of New Jersey with its principal place of business in Short Hills, NJ. During the relevant time period, Appaloosa Management was the investment adviser to four investment funds, two of which were involved in these proceedings, Appaloosa Investment Limited Partnership I (“Appaloosa Fund”) and Palomino Fund Ltd. (“Palomino Fund”) (collectively, the “Funds”), with total assets under management in 2008 of approximately \$7 billion. Appaloosa Management is not registered with the Commission in any capacity.

Background

3. Rule 105 of Regulation M of the Exchange Act makes it unlawful for a person to purchase securities in a public offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule. Rule 105 defines the restricted period as the period: (1) beginning five business days prior to the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of such registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. Ch. II §242.105. Pursuant to amendments that became effective in October 2007, it is not required that the shares purchased in the offering be used to “cover” the restricted period short sales. Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007).

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

4. Between October 31 and November 5, 2008 (i.e., during the October 31 to November 6, 2008 Rule 105 restricted period), Appaloosa Management sold short a total of 1,034,896 shares of common stock of Wells Fargo at prices ranging between \$33.74 and \$34.67 per share on behalf of Appaloosa Fund and Palomino Fund.

5. On November 5, 2008, following the close of the market, Wells Fargo announced a \$10 billion public follow-on offering of common stock, which was priced on November 6, 2008. Appaloosa Management first learned of the Wells Fargo overnight offering at this time.

6. On November 6, 2008, Appaloosa Management, on behalf of Appaloosa Fund and Palomino Fund, purchased a total of 125,000 shares of Wells Fargo stock in the public offering at \$27.00 per share. Appaloosa Management did not “cover” its short position in Wells Fargo stock with shares bought in the public offering. On November 13, 2008, Appaloosa Management sold the shares that it purchased in the offering for a profit of \$53,750.

7. By virtue of its violation of Rule 105, Appaloosa Management made disgorgeable profits of \$842,500 for the Funds.

8. As a result of the conduct described above, Appaloosa Management willfully² violated Rule 105 of Regulation M of the Exchange Act, 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”

Appaloosa Management’s Remedial Efforts

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

Undertakings

Respondent undertakes to:

10. Continue to take steps to effect compliance with Rule 105 of Regulation M of the Exchange Act, which includes:

² 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. adopting, implementing and maintaining written compliance policies and procedures reasonably designed to prevent violations of Rule 105 of Regulation M of the Exchange Act and commencing in 2011, reviewing those policies and procedures annually;
- b. providing training on Rule 105 of Regulation M to all new and existing employees and affiliates of Appaloosa Management who participate in or supervise trades or trading decisions;
- c. requiring individuals executing any trade in a public offering (either on behalf of Appaloosa Management or its funds or other affiliated entities) to identify the trade and cause further review to ensure compliance with Rule 105 of Regulation M;
- d. designating a senior level Appaloosa Management employee with responsibility for overseeing Appaloosa Management's compliance with Rule 105 of Regulation M and these undertakings; and
- e. certifying in writing to the Commission no later than 30 days after the entry of this Order that it has adopted the policies and procedures described in Paragraph 10.a. above.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Appaloosa Management'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 Appaloosa Management shall 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 Appaloosa Management is censured;

C. Respondent Appaloosa Management shall, within 14 days of the entry of this Order, pay (i) a civil money penalty of \$421,250 and (ii) disgorgement of \$842,500 and prejudgment interest of \$40,773.34 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 wire transfer, 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 22312-0003; and (D) submitted under cover letter that identifies Appaloosa Management 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 Christopher R. Conte, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, D.C. 20549-5561; and

D. Respondent Appaloosa Management shall comply with the undertakings enumerated in Paragraph 10 above.

By the Commission.

Elizabeth M. Murphy
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the 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”), on the Respondent and its legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
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