

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 63358 / November 22, 2010**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3114 / November 22, 2010**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14135**

<p><b>In the Matter of</b></p> <p><b>NEW CASTLE FUNDS LLC,</b></p> <p><b>Respondent.</b></p>
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**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 to 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 New Castle Funds LLC (“New Castle” 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<sup>1</sup>:

#### **Summary**

1. These proceedings arise out of two violations of Rule 105 of Regulation M of the Exchange Act by New Castle, a registered investment adviser at the time of the misconduct, based in White Plains, New York. Rule 105 prohibits short selling securities during a restricted period (generally defined as five business days before the pricing of a follow-on or secondary offering) and then purchasing the same securities in a public follow-on or secondary offering. New Castle, trading for the benefit of its advisory clients, violated Rule 105 in connection with short sales made in advance of public offerings by Anadarko Petroleum Corp. ("Anadarko") and Wells Fargo & Company ("Wells Fargo"), resulting in profits of \$183,084.

#### **Respondent**

2. New Castle Funds LLC is a Delaware limited liability company based in White Plains, New York. New Castle was an investment adviser registered with the Commission during the time of the Rule 105 violations at issue. During the relevant time period, New Castle was an investment adviser to a number of clients, including proprietary pooled investment vehicles, third-party pooled investment vehicles and separately-managed accounts. New Castle effected the trades that are the subject matter of these proceedings for the benefit of several of its advisory clients.

#### **Background**

3. At all relevant times, pursuant to amendments in 2007, Rule 105 prohibits 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. 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.

### **New Castle's Violation in Connection with the Anadarko Trades**

4. During the relevant period, New Castle violated Rule 105 by selling short Anadarko stock during the restricted period and subsequently participating in a follow-on offering by Anadarko. The Rule 105 restricted period relating to this follow-on offering was May 5, 2009 through May 11, 2009, the period beginning five business days before the pricing of Anadarko's offered securities and ending with the pricing of the offering shares.

5. On May 7, 2009, during the Rule 105 restricted period, New Castle sold short a total of 20,000 shares of Anadarko. Of those shares sold short, 18,600 shares were sold at \$49.11 per share and the remaining 1,400 shares were sold at \$48.17 per share.

6. On May 11, 2009, after the close of the market, Anadarko announced the pricing of a follow-on offering of 30 million shares of its common stock at \$45.50 per share. New Castle subsequently participated in the follow-on offering and purchased 100,000 shares of Anadarko stock at a price of \$45.50 per share.

7. In comparing the proceeds of the May 7, 2009 short sales to the cost of 20,000 of the 100,000 shares obtained in the May 12, 2009 follow-on offering, New Castle reaped profits of \$70,884. New Castle did not obtain profits with respect to the additional 80,000 shares it purchased in the offering.

### **New Castle's Violation in Connection with the Wells Fargo Trades**

8. On May 7, 2009, after the close of the market, Wells Fargo announced the pricing of a follow-on offering of 341 million shares of its common stock at \$22.00 per share.

9. The Rule 105 restricted period relating to this follow-on offering was May 1, 2009 through May 7, 2009, the period beginning five business days before the pricing of Wells Fargo's offered securities and ending with the pricing of the offering shares.

10. On May 7, 2009, during the Rule 105 restricted period, New Castle sold short a total of 40,000 shares of Wells Fargo at a price of \$27.61 per share.

11. On May 8, 2009, New Castle participated in the follow-on offering and purchased 20,000 shares of Wells Fargo stock at a price of \$22.00.

12. In comparing the proceeds of the May 7, 2009 short sales to the cost of the 20,000 shares obtained in the follow-on offering, New Castle reaped profits of \$112,200.

13. As a result of the conduct described above, New Castle 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 . . . .”

#### **New Castle’s Remedial Efforts**

14. 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 New Castle’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 New Castle cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M.
- B. Respondent New Castle is censured.
- C. Respondent New Castle shall, within 15 days of the entry of this Order, pay disgorgement of \$183,084, prejudgment interest in the amount of \$9,980, and a civil money penalty of \$100,000 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.
- D. Such payment by Respondent New Castle 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 New Castle 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 Conway T. Dodge, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

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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)).

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

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 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") against New Castle Funds LLC (New Castle) 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  
100 F Street, N.E.  
Washington, DC 20549-2557

Conway T. Dodge, Esq.  
Division of Enforcement  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-6010

New Castle Funds, LLC  
c/o Greg Bruch, Esq.  
Willkie Farr & Gallagher LLP  
1875 K Street, N.W.  
Washington, DC 20006

Greg Bruch, Esq.  
Willkie Farr & Gallagher LLP  
1875 K Street, N.W.  
Washington, DC 20006  
(Counsel for New Castle Funds LLC)