

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 63757 / January 24, 2011

INVESTMENT ADVISERS ACT OF 1940
Release No. 3143 / January 24, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14202

In the Matter of

Horseman Capital 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 Horseman Capital Management, L.P. (“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 that:

Summary

In a follow-on offering on July 29, 2008, Horseman Capital Management, L.P. received 300,000 shares of Merrill Lynch & Co. (“Merrill Lynch”) common stock for \$22.50 per share. On July 23, 2008, during the five business days prior to the pricing of the offering, Horseman sold short 75,000 shares of Merrill Lynch common stock. By engaging in these transactions, Horseman violated Rule 105 of Regulation M and thereby realized profits of \$1,295,138.

Respondent

1. Horseman Capital Management, L.P., is a London-based limited partnership with over \$867 million in assets. Horseman currently manages four funds, including two funds incorporated in the United States, and its funds trade securities through United States markets. Horseman is not registered with the Commission, but is regulated by the Financial Services Authority in the United Kingdom.

Background

2. 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 shorter of 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. § 242.105.

3. As amended in 2007, Rule 105 does not require 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).

4. Rule 105 applies irrespective of the short seller’s intent in effectuating the short sale. “The prohibition on purchasing offered securities . . . provides a bright line demarcation of prohibited conduct consistent with the prophylactic nature of Regulation M.” Id. at 45096.

Respondent’s Violation of Rule 105 of Regulation M

5. From the middle of 2007 through the summer of 2008, Respondent maintained short positions in the stocks of numerous financial institutions, including Merrill

Lynch. On July 29, 2008, shares of Merrill Lynch common stock were offered on a follow-on basis at a price of \$22.50 per share. The restricted period therefore ran from July 22 through July 28. On July 23, during the restricted period, Respondent increased its existing short position to 748,500 shares by selling short 75,000 additional shares of Merrill Lynch common stock.

6. On July 29, Respondent participated in the follow-on offering, receiving 300,000 shares of Merrill Lynch common stock at \$22.50 per share, which it used to cover a portion of its outstanding short position. This is the only U.S.-originated follow-on offering in which Respondent has participated.

7. With respect to the offering of Merrill Lynch common stock on July 29, 2008, Respondent “purchas[ed] the offered securities from an underwriter or broker or dealer . . . participating in the offering” after having sold short the same security “during the period . . . [b]eginning five business days before the pricing of the offered securities and ending with such pricing.” 17 C.F.R. § 242.105(a). As a result of this conduct, Respondent willfully¹ violated Rule 105 of Regulation M under the Exchange Act.

8. The difference between Respondent’s proceeds from its restricted period short sale of 75,000 shares and the price for the shares purchased in the follow-on offering on July 29, 2008 was \$851,910. Respondent also improperly obtained a benefit of \$443,228 from the remaining 225,000 offering shares it received at a discount from Merrill Lynch’s market price. Accordingly, Respondent’s total profits from its participation in the follow-on offering of Merrill Lynch common stock on July 29, 2008 were \$1,295,138.

9. After Respondent learned of its Rule 105 violation, it developed and implemented policies, procedures, and training programs pertaining to Rule 105 compliance. In determining to accept the Offer, the Commission considered Respondent’s remedial efforts.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent’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 cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M.

B. Respondent is censured.

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)).

C. Respondent shall, within fourteen (14) days of the entry of this Order, pay disgorgement of \$1,295,138, and prejudgment interest of \$124,814, and a civil penalty of \$65,000, 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. 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 of a letter that identifies Horseman Capital Management, L.P. as a Respondent in these proceedings and includes the file number of these proceedings, a copy of which cover letter and money order, check, or wire transfer shall be sent to Yuri B. Zelinsky, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, DC 20549-5041.

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
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