

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 67919 / September 24, 2012**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3474 / September 24, 2012**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15044**

In the Matter of	)	<b>ORDER INSTITUTING ADMINISTRATIVE</b>
	)	<b>AND CEASE-AND-DESIST PROCEEDINGS</b>
JCSD Capital, LLC,	)	<b>PURSUANT TO SECTION 21C OF THE</b>
	)	<b>SECURITIES EXCHANGE ACT OF 1934</b>
Respondent.	)	<b>AND SECTION 203(e) OF THE</b>
	)	<b>INVESTMENT ADVISERS ACT OF 1940,</b>
	)	<b>MAKING FINDINGS, AND IMPOSING</b>
	)	<b>REMEDIAL SANCTIONS AND A</b>
	)	<b>CEASE-AND-DESIST ORDER</b>

**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 JCSD Capital, LLC (“JCSD Capital” 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 JCSD Capital, an investment adviser based in Walnut Creek, California. Rule 105 prohibits short selling of equity securities during a restricted period prior to a public offering and then purchasing the subject securities in the offering. JCSD Capital violated Rule 105 in March 2010 in connection with certain short sales it effected within the Rule 105 restricted period preceding its participation in a public offering by Bank of Commerce Holdings ("BOCH"), resulting in profits of \$59,522.

#### Respondent

2. JCSD Capital, LLC, is a limited liability company organized under Delaware law and headquartered in Walnut Creek, California. During the relevant time period, JCSD Capital was the investment adviser to a single fund: JCSD Partners, LP (the "JCSD Fund"), and the trading described in this Order was conducted by JCSD Capital on behalf of this fund. The JCSD Fund is a hedge fund that primarily invests in the securities of public companies. At the end of 2011, JCSD Capital had approximately \$50 million in assets under management. As such, JCSD Capital is not registered with the Commission as an investment adviser.

#### Background

3. As amended in 2007, Rule 105 of Regulation M provides in pertinent part:

In connection with an offering of equity securities for cash pursuant to a registration statement or a notification on Form 1-A . . . or Form 1-E . . . filed under the Securities Act of 1933 ("offered securities"), it shall be unlawful for any person to sell short . . . the security that is the subject of the 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 period ("Rule 105 restricted 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); Short Selling in Connection With a Public Offering, Exchange Act Release No. 56,206, 72 Fed. Reg. 45,094, 45,107 (Aug. 10, 2007).

4. The Commission adopted Rule 105 "to foster secondary and follow-on offering prices that are determined by independent market dynamics." Id. At 45,094. Rule 105 prohibits the conduct irrespective of the short seller's intent in effectuating the short sale. "The

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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.

prohibition on purchasing offered securities ... provides a bright line demarcation of prohibited conduct consistent with the prophylactic nature of Regulation M.” *Id.* at 45,096.

5. JCSD Capital sold short 3,600, 3,400 and 1,000 shares of BOCH on March 17, 18 and 19, 2010, respectively, for a total of 8,000 shares sold short, at prices ranging between \$5.10 and \$5.16 per share.

6. On Tuesday, March 23, 2010, following the close of the market, BOCH announced a public secondary offering of common stock (the “Offering”), which was priced after the close of the market on March 23, 2010 at \$4.25 per share.

7. On Wednesday, March 24, 2010, JCSD Capital purchased a total of 130,000 shares of BOCH common stock in the Offering at \$4.25 per share.

8. Because JCSD Capital sold short shares of BOCH for the JCSD Fund during the restricted period and then purchased shares in the Offering, JCSD Capital violated Rule 105. As a result of its violation of Rule 105, JCSD Capital made a profit for the JCSD Fund of \$7,062 on the shares sold short. In addition, JCSD Capital improperly obtained a benefit for the JCSD Fund of \$52,460 from the remaining 122,000 offering shares it received at a discount from BOCH’s market price. Accordingly, the total profit from participating in the Offering was \$59,522.

9. At the time of the violation, JCSD Capital had no policies, procedures or controls in place designed to detect or prevent Rule 105 violations.

10. As a result of the conduct described above, JCSD Capital willfully<sup>2</sup> violated Rule 105 of Regulation M of the Exchange Act.

#### **JCSD Capital’s Remedial Efforts**

11. After JCSD Capital learned of its Rule 105 violation, it developed and implemented policies and procedures relating to its Rule 105 compliance.

12. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent JCSD Capital and cooperation afforded 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 JCSD Capital’s Offer.

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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)).

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

- A. Respondent JCSD Capital 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 JCSD Capital is censured;
- C. Respondent JCSD Capital shall, within 14 days of the entry of this Order, pay disgorgement of \$59,522 and prejudgment interest of \$4,939 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment must be made in one of the following ways:
  - (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
  - (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
  - (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed via overnight delivery to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying JCSD Capital, LLC as a Respondent in these proceedings and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Scott W. Friestad, Associate Director, Division of Enforcement, U.S. Securities and Exchange Commission, 100 F St., N.E., Washington, D.C. 20549-5010.

- D. Respondent JCSD Capital shall, within 14 days of the entry of this Order, pay a civil monetary penalty in the amount of \$29,761 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 must be made in one of the following ways:
  - (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
  - (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed via overnight delivery to:

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By the Commission.

Elizabeth M. Murphy  
Secretary