

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 69680 / June 3, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3615 / June 3, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15347

In the Matter of

UBS O'CONNOR, LLC

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
SECTIONS 203(e) AND 203 (k) 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 Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against UBS O'Connor, LLC ("UBS O'Connor" 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 Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, 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

1. These proceedings arise out of violations of Rule 105 of Regulation M ("Rule 105") by UBS O'Connor, a Chicago, Illinois based registered investment adviser and manager of nine funds. UBS O'Connor violated Rule 105 sixteen times between January 2009 and March 2011 in connection with certain short sales it effected within the Rule 105 restricted period and subsequent purchases of the securities in firm commitment public offerings.

Respondent

2. UBS O'Connor, a Delaware Limited Liability Company located in Chicago, Illinois, has been registered with the Commission as an investment adviser since May 19, 2000. UBS O'Connor is a wholly owned subsidiary of UBS AG, a Swiss banking corporation headquartered in Zurich, Switzerland. UBS O'Connor is an investment adviser to nine funds, each organized in the Cayman Islands. As of March 2012, UBS O'Connor had over \$6 billion in assets under management.

Background

3. Rule 105 of Regulation M makes it unlawful for a person to purchase equity securities from an underwriter, broker, or dealer participating 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, absent an exception. 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 CFR §242.105.1.

1. Specifically, Rule 105 states:

(a) Unlawful Activity. In connection with an offering of equity securities for cash pursuant to a registration statement or a notification on Form 1-A (§ 239.90 of this chapter) or Form 1-E (§ 239.200 of this chapter) filed under the Securities Act of 1933 ("offered securities"), it shall be unlawful for any person to sell short (as defined in § 242.200(a)) the security that is the subject of the offering and purchase the offered securities from an underwriter or broker or dealer purchasing equity securities in the offering if such short sale was effected during the period ("Rule 105 restricted period") that 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 such registration statement or notification on Form 1-A or Form 1-E and ending with the pricing.

4. The Commission adopted Rule 105 “to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity.” Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). “Rule 105 is prophylactic. Thus, its provisions apply irrespective of the short seller’s intent.” Id.

UBS O’CONNOR’S STRUCTURE AND OPERATIONS

5. At the time the violations occurred, UBS O’Connor managed its funds through different portfolio management teams, called “Aggregation Units.” Each Aggregation Unit specialized in a different investment area or trading strategy. A particular Aggregation Unit team made investment decisions for a specified portion of any given fund’s total assets. Multiple Aggregation Units could purchase and sell securities on behalf of the same fund.

6. In addition, several of the Aggregation Units made investment decisions for more than one fund at a time.

7. During the period in which the sixteen Rule 105 violations occurred, UBS O’Connor’s Rule 105 Policies and Procedures permitted an Aggregation Unit to direct a fund to purchase equity securities in firm commitment public offerings even though a different Aggregation Unit had directed the same fund to short the security during the Rule 105 restricted period. UBS O’Connor’s Policies and Procedures were based on the mistaken belief that each Aggregation Unit qualified for the Rule 105 “separate accounts” exception.

UBS O’CONNOR’S VIOLATIONS OF RULE 105 OF REGULATION M

8. With respect to the sixteen firm commitment public offerings, funds managed by UBS O’Connor shorted securities within five days of the pricing of a firm commitment public offering and subsequently purchased equity securities in the offering. For each of the sixteen violations, one Aggregation Unit gave the direction to short while another Aggregation Unit gave the direction to purchase equity securities in the firm commitment public offering. The sixteen firm commitment public offerings were:

- a. Newmont Mining Corporation’s January 2009 public offering;
- b. Micron Technology, Inc.’s April 2009 public offering;
- c. Kimco Realty Corporation’s April 2009 public offering;
- d. Regency Centers Corporation’s April 2009 public offering;
- e. CommScope Inc.’s May 2009 public offering;
- f. Terex Corporation’s May 2009 public offering;
- g. Steel Dynamic Inc.’s June 2009 public offering;
- h. JetBlue Airways Corp’s June 2009 public offering;
- i. Bemis Co. Inc.’s July 2009 public offering;
- j. Phototronics Inc.’s September 2009 public offering;
- k. GMX Resources, Inc.’s October 2009 public offering;
- l. Synovus Financial Corporation’s April 2010 public offering;
- m. PPL Corporation’s June 2010 public offering;

- n. Molina Healthcare, Inc.'s August 2010 public offering;
- o. Stillwater Mining Co.'s December 2010 public offering; and
- p. MetLife, Inc.'s March 2011 public offering.

9. With respect to these sixteen firm commitment public offerings, certain UBS O'Connor Aggregation Units directed funds to sell short the respective securities during the Rule 105 restricted period while other Aggregation Units directed the funds to purchase the equity securities in the public offering.

10. For example, on May 28, 2009, consistent with UBS O'Connor's procedures at the time, the UBS O'Connor employee responsible for announcing firm commitment public offerings within the firm ("Firm Commitment Public Offering Manager"), notified all portfolio managers, traders, and compliance personnel that Terex Corporation's ("Terex") firm commitment public offering would price that evening. UBS O'Connor's Compliance Department thereafter sent an email that all Aggregation Units could direct the purchase of equity securities in the firm commitment public offering except for the Global Convertible Securities Aggregation Unit ("CONV Aggregation Unit"), which had directed UBS O'Connor's Global Multi Strategy Alpha Master Limited Fund ("GLEA") to sell short 125,000 shares of Terex stock that morning at an average price of \$13.66. All UBS O'Connor portfolio managers had access to the information that GLEA had a short position in Terex.

11. That afternoon, the head of the CONV Aggregation Unit ("Head of CONV") who at times also made trading decisions for the Tactical Trading Strategy Aggregation Unit ("TTS Aggregation Unit"), sent the Firm Commitment Public Offering Manager an email stating: "Please put in for 350,000 [Terex] shares under \$13 (your discretion to do better)." The Head of CONV requested this trade for the TTS Aggregation Unit. The CONV Aggregation Unit that he managed had previously directed GLEA to sell short Terex stock. Even though the Head of CONV had requested 350,000 shares in the public offering for the TTS Aggregation Unit, there was a shortage of shares offered in the firm commitment public offering, and the TTS Aggregation Unit only received 1,473 shares - which were allocated to GLEA. Two other Aggregation Units also directed the purchase of equity securities in the offering and allocated a total of 130,655 shares of Terex stock to GLEA. These Aggregation Unit portfolio managers had access to information that GLEA had sold short within five days of the pricing of the firm commitment public offering. GLEA received a total of 132,128 shares at \$13 a share through the firm commitment public offering. Thus, one Aggregation Unit directed GLEA to short Terex within five days of the pricing of a firm commitment public offering, while a different Aggregation Unit directed GLEA to purchase Terex shares in the Terex firm commitment public offering.

12. UBS O'Connor made a profit for GLEA of \$82,550.61 on its Terex short sales during the applicable restricted period. In addition, UBS O'Connor generated an impermissible benefit of \$4,156.22 for GLEA on the remaining 7,128 shares it purchased in the firm commitment public offering.

13. As another example, on the morning of July 22, 2009, the Firm Commitment Public Offering Manager notified all traders and portfolio managers that Bemis Company, Inc. ("Bemis")

planned a firm commitment public offering, which would price early the next morning. During the relevant restricted period, the Fundamental Market Neutral Long/Short Strategy Aggregation Unit (“FT Aggregation Unit”) had directed GLEA to short 210,902 Bemis shares at an average price of \$26.70 a share. Also during the restricted period the FT Aggregation Unit directed UBS O’Connor’s Global Fundamental Market Neutral Long/Short Master Limited Fund (“FRLS”) to short 341,198 shares of Bemis at an average price of \$26.70 a share. Later in the day on July 22nd, a compliance officer stated that the FT Aggregation Unit could not direct the purchase of equity securities in the Bemis firm commitment public offering.

14. The Fundamental Long/Short Equity and TTS Aggregation Units made the decision to direct the purchase of shares in the Bemis July 23, 2009 firm commitment public offering, which resulted in GLEA and FRLS being allocated 215,995 and 56,795 shares, respectively. These funds purchased the firm commitment public offering shares at \$26 a share. Thus, UBS O’Connor effected short sales for GLEA and FRLS in Bemis within five days of the pricing of Bemis’s firm commitment public offering and directed the purchase of Bemis shares in the firm commitment public offering for those same funds.

15. UBS O’Connor generated a profit for GLEA and FRLS of \$172,302.61 on the Bemis short sales during the applicable restricted period. In addition, UBS O’Connor generated an impermissible benefit of \$51,478.87 for the funds on the remaining 5,093 shares purchased in the firm commitment public offering.

THE SEPARATE ACCOUNTS EXCEPTION DID NOT APPLY

16. UBS O’Connor explained that its Rule 105 Policies and Procedures in place at the time of the firm commitment public offerings set forth in paragraph 8 above were based on the mistaken belief that the Aggregation Units qualified for the Rule 105 separate accounts exception. 17 C.F.R. §242.105(b)(2). UBS O’Connor’s incorrect assessment of the applicability of the separate accounts exception resulted in its violations of Rule 105.

17. Subsection (b)(2) of Rule 105 provides that the rule does “not prohibit the purchase of the offered security in an account of a person where such person sold short during the Rule 105 restricted period in a separate account, if decisions regarding securities transactions for each account are made separately and without coordination of trading or cooperation among or between the accounts.” 17 C.F.R. §242.105(b)(2).

18. In the Amended Rule 105 adopting release, the Commission listed the following indicia of separateness: (1) The accounts have separate and distinct investment and trading strategies and objectives; (2) Personnel for each account do not coordinate trading among or between the accounts; (3) Information barriers separate the accounts, and information about securities positions or investment decisions is not shared between accounts; (4) Each account maintains a separate profit and loss statement; (5) There is no allocation of securities between or among accounts; and (6) Personnel with oversight or managerial responsibility over multiple accounts in a single entity or affiliated entities, and account owners of multiple accounts, do not have authority to execute trades in individual securities in the accounts and in fact, do not execute

trades in the accounts, and do not have the authority to pre-approve trading decisions for the accounts and in fact, do not pre-approve trading decisions for the accounts. Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094, 45098-99.

19. UBS O'Connor incorrectly determined that the separate accounts exception applied to its structure and practices. Its structure and practices made the separate accounts exception inapplicable. For example, UBS O'Connor's Aggregation Units did not have their own trading accounts. The Aggregation Units did not hold any securities or other assets themselves. Rather, all the funds held assets and securities. UBS O'Connor investors did not invest in the Aggregation Units - they invested in the funds. Similarly, the funds did not invest in the Aggregation Units. The Aggregation Unit portfolio managers made the investment decisions regarding what securities a particular fund would buy or sell. Brokerage accounts were in the name of each fund, not the Aggregation Unit.

20. UBS O'Connor explained that it did not believe it had to maintain a policy that prohibited portfolio managers of separate Aggregation Units from communicating with each other in order to qualify for the separate accounts exception. UBS O'Connor had a "culture of information sharing." Each manager and trader could access trades and positions placed by other Aggregation Units and could also see positions at the fund level. Managers from different Aggregation Units frequently communicated with each other in weekly meetings, informally in the office and through email. Details about the firm commitment public offerings were often the subject of discussion at the weekly meetings in which portfolio managers from all Aggregation Units were in attendance.

21. UBS O'Connor placed no restrictions on what could be discussed among the various Aggregation Unit teams. With respect to the firm commitment public offerings, all portfolio managers, regardless of the trading directed or contemplated by their Aggregation Unit, could ascertain which Aggregation Units (and funds) had short positions and which Aggregation Units could - and planned to - direct the purchase of equity securities in the firm commitment public offering. Therefore, it was possible that a portfolio manager could direct a short sale for the benefit of a fund in a stock with knowledge that another Aggregation Unit, as part of that Unit's separate investment strategy, planned to direct the same fund to purchase shares in the firm commitment public offering. This conduct resulted in violations of Rule 105 when the short sales took place during the restricted period.

22. Finally, several Aggregation Unit traders and portfolio managers worked with more than one Aggregation Unit at a time. On occasion, some of these portfolio managers participated in the decision by one Aggregation Unit to direct a fund to sell short a security and also participated in another Aggregation Unit's decision to direct the fund's purchase of shares in the same security's firm commitment public offering, resulting in both positions being allocated to the same fund. This conduct resulted in violations of Rule 105 when the short sales took place during the restricted period.

23. The separate accounts exception was inapplicable and, therefore, UBS O'Connor violated Rule 105 by directing the funds it managed to short securities during the restricted period and allowing them to purchase shares in sixteen firm commitment public offerings.

24. With respect to each of the sixteen firm commitment public offerings identified above, UBS O'Connor "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, UBS O'Connor willfully violated Rule 105 of Regulation M under the Exchange Act.

25. As a result of its violations of Rule 105, UBS O'Connor generated a profit for certain of its funds of \$2,168,473 on the shares sold short. In addition, UBS O'Connor generated an impermissible benefit of \$1,619,116 for the funds from the remaining shares purchased in firm commitment public offerings.

Violations

26. As a result of the foregoing, UBS O'Connor willfully violated Rule 105 of Regulation M of the Exchange Act.²

UBS O'Connor's Remedial Efforts

27. During the course of investigation by the staff of the Commission and in response to questions raised by the staff regarding the applicability of the separate accounts exception, UBS O'Connor stated that it had revised its Rule 105 Policy and Procedures in order to comply with Rule 105. UBS O'Connor also stated that it had required every trader and portfolio manager to take an examination regarding the new Policy and Procedures.

28. In determining to accept this Offer, the Commission considered the remedial acts undertaken by Respondent UBS O'Connor 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 UBS O'Connor's Offer.

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

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. Respondent UBS O'Connor 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 UBS O'Connor is censured.
- C. Respondent shall, within 20 days of the entry of this Order, pay disgorgement of \$3,787,590, prejudgment interest of \$369,766, and a civil penalty of \$1,140,000 to the United States Treasury. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. 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 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 UBS O'Connor 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 Robert J. Burson, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, IL 60622.

By the Commission.

Elizabeth M. Murphy
Secretary