

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 70407 / September 16, 2013**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15491**

**In the Matter of**

**ONTARIO TEACHERS’  
PENSION PLAN BOARD,**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTION 21C OF THE SECURITIES  
EXCHANGE ACT OF 1934, MAKING  
FINDINGS, AND IMPOSING A CEASE-  
AND-DESIST ORDER AND CIVIL  
PENALTY**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Ontario Teachers’ Pension Plan Board (“OTPPB” 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 Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty (“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 violations of Rule 105 of Regulation M of the Exchange Act by OTPPB, a non-share corporation continued under the Teachers' Pension Act (Ontario). Rule 105 prohibits buying an equity security made available through a public offering, conducted on a firm commitment basis, from an underwriter or broker or dealer participating in the offering after having sold short the same security during the restricted period as defined therein.

2. On four occasions, from July 2010 through February 2011, OTPPB bought offered shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the restricted period. These violations collectively resulted in profits of \$144,898.

#### **Respondent**

3. OTPPB, established in 1990 and headquartered in Toronto, is an independent corporation with the purpose of administering the Ontario Teachers' Pension Plan (the "Plan") and managing its investments for the benefit of the Plan's beneficiaries. OTPPB pays pensions and invests plan assets on behalf of over 300,000 working and retired teachers in the Province of Ontario. The Plan is Canada's largest single-profession pension plan with Cdn. \$129.5 billion in net assets as of December 31, 2012.

#### **Legal Framework**

4. Rule 105 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. 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.

5. "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.

### **OTPPB's Violations of Rule 105 of Regulation M**

6. On July 12, 2010, OTPPB sold short 31,900 shares of BioMimetic Therapeutics Inc. ("BMTI") during the restricted period at a price of \$10.03 per share. On July 14, 2010, BMTI announced the pricing of a follow-on offering of its common stock at \$8.50 per share. OTPPB received an allocation of 25,000 shares in that offering. The difference between OTPPB's proceeds from the restricted period short sales of BMTI shares and the price paid for the 25,000 shares received in the offering was \$38,250.00. Thus, OTPPB's participation in the BMTI offering netted total profits of \$38,250.00.

7. On July 21, 2010, OTPPB sold short 50,000 shares of Pebblebrook Hotel Trust ("PEB") during the restricted period at a price of \$17.03 per share. On July 22, 2010, PEB announced the pricing of a follow-on offering of its common stock at \$17.00 per share. OTPPB received an allocation of 25,000 shares in that offering. The difference between OTPPB's proceeds from the restricted period short sales of PEB shares and the price paid for the 25,000 shares received in the offering was \$750. Thus, OTPPB's participation in the PEB offering netted total profits of \$750.00.

8. On November 3, 2010, OTPPB sold short 9,600 shares of BlackRock Inc. ("BLK") during the restricted period at an average price of \$167.9267 per share. On November 8, 2010, BLK announced the pricing of a follow-on offering of its common stock at \$163.00 per share. OTPPB received an allocation of 15,000 shares in that offering. The difference between OTPPB's proceeds received from the restricted period short sales of BLK shares and the price paid for the 9,600 shares received in the offering was \$47,296.32. Respondent also improperly obtained a benefit of \$14,536.80 by purchasing the remaining 5,400 shares at a discount from BLK's market price. Thus, OTPPB's participation in the BLK offering netted total profits of \$61,833.12.

9. On January 28, 2011, OTPPB sold short 40,192 shares of SS&C Technologies Holdings ("SSNC") during the restricted period at an average price of \$18.4434 per share. On February 3, 2011, SSNC announced the pricing of a follow-on offering of its common stock at \$17.60 per share. OTPPB received an allocation of 50,000 shares in that offering. The difference between OTPPB's proceeds from the restricted period short sales of SSNC shares and the price paid for the shares received in the offering was \$33,897.93. Respondent also improperly obtained a benefit of \$10,166.97 by purchasing the remaining 9,808 shares at a discount from SSNC's market price. Thus, OTPPB's participation in the SSNC offering netted total profits of \$44,064.90.

10. In total, OTPPB's violations of Rule 105 resulted in profits of \$144,898.

### **Violations**

11. As a result of the conduct described above, OTPPB violated Rule 105 of Regulation M under the Exchange Act.

## **OTPPB's Remedial Efforts**

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

### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent OTPPB's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent OTPPB cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. OTPPB shall within fourteen (14) days of the entry of the Order, pay disgorgement of \$144,898, prejudgment interest of \$11,642.90, and a civil money penalty in the amount of \$68,295 (for a total of \$224,835.90) to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payments 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;<sup>2</sup>
- (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

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<sup>2</sup> The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, respondents must make payments pursuant to options (2) or (3) above.

Payments by check or money order must be accompanied by a cover letter identifying OTPPB 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 Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.

Elizabeth M. Murphy  
Secretary