

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71240 / January 6, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15668

In the Matter of

Axius Holdings, LLC and
Henry Robertelli,

Respondents.

**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**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Axius Holdings, LLC (“Axius”) and Henry Robertelli (“Robertelli”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have 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 them and the subject matter of these proceedings, which are admitted, Respondents consent 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 (“Order”), as set forth below.

III.

Respondents

1. Henry Robertelli (“Robertelli”), age 42, resides in Atlanta, Georgia. Robertelli is the owner, sole employee, and managing member of Axius Holdings, LLC.

2. Axius Holdings, LLC (“Axius”) is a Delaware limited liability company with its principal place of business located in Atlanta, Georgia. Robertelli serves as the company’s owner, sole employee, and managing member. Robertelli operates Axius as a proprietary trading firm through which he invests his own capital. Robertelli (1) has discretionary trading authority over various brokerage accounts held in the name of, and for the benefit of, Axius, (2) makes all investment decisions for Axius, and (3) executes all trades for the company.

Background

3. Rule 105 of Regulation M (“Rule 105”) of the Exchange Act makes it unlawful for a person to purchase securities in a public offering (underwritten on a firm commitment basis) if that person sold short the security that is the subject of the offering during the restricted period defined in the rule. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Exchange Act Rel. No. 56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). Rule 105 defines the “restricted period” as 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 covered registration statement or notification on Form 1-A or Form 1-E and ending with the pricing.

4. Rule 105 applies irrespective of the short seller’s intent in effectuating the short sale. Id. at 45103. “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.

Respondents’ Violation of Rule 105 of Regulation M

5. Between June 2008 and March 2010, at the direction of Robertelli, Axius participated in 13 offerings covered by Rule 105 (hereinafter collectively referred to as “covered” offerings) by companies whose stock Axius shorted at the direction of Robertelli during the applicable restricted periods.

6. On June 18, 2008, at the direction of Robertelli, Axius sold short 7,000 shares of Atlas Pipeline Partners, LP (“APL”) at prices ranging between \$37.52 and \$37.90. On June 18, 2008, APL announced the pricing of a covered offering of 5 million shares of its common stock at \$37.52 per share. At the direction of Robertelli, Axius received an allocation of 1,500 shares in the offering. The associated profits were \$93.43.

7. On July 8 and July 9, 2008, at the direction of Robertelli, Axius sold short 7,800 shares of Chesapeake Energy Corp (“CHK”) at prices ranging between \$57.72 and \$60.50. On July 9, 2008, CHK announced the pricing of a covered offering of 25 million shares of its common stock at \$57.25 per share. At the direct of Robertelli, Axius received an allocation of 300 shares in the offering. The associated profits were \$374.27.

8. On November 5, 2008, at the direction of Robertelli, Axius sold short 12,100 shares of Pepco Holdings, Inc. (“POM”) at prices ranging between \$17.57 and \$18.30 per share. On November 6, 2008, POM announced the pricing of a covered offering of 14 million shares of its common stock at \$16.50 per share. At the direction of Robertelli, Axius received an allocation of 5,000 shares in the offering. The associated profits were \$6,978.51.

9. From October 31 through November 6, 2008, at the direction of Robertelli, Axius sold short 19,000 shares of Wells Fargo & Co. (“WFC”) at prices ranging between \$28.50 and \$31.07 per share. On November 6, 2008, WFC announced the pricing of a covered offering of 407.5 million shares of its common stock at \$27.00 per share. At the direction of Robertelli, Axius received an allocation of 10,500 shares in the offering. The associated profits were \$19,486.34.

10. On November 10, 2009, at the direction of Robertelli, Axius sold short 1,400 shares of Nustar Energy (“NS”) at prices ranging between \$52.10 and \$52.11 per share. On November 10, 2009, NS announced the pricing of a covered offering of 5 million shares of its common stock at \$52.45 per share. At the direction of Robertelli, Axius received an allocation of 1,000 shares in the offering. There were no associated profits.

11. On November 17, 2009, at the direction of Robertelli, Axius sold short 250 shares of American Water Works Co. Inc. (“AWK”) at prices ranging between \$20.25 and \$21.60 per share. On November 17, 2009, AWK announced the pricing of a covered offering of 37.4 million shares of its common stock at \$21.63 per share. At the direction of Robertelli, Axius received an allocation of 3,200 shares in the offering. There were no associated profits.

12. On December 7, 2009, at the direction of Robertelli, Axius sold short 12,500 shares of New York Community Bancorp, Inc. (“NYB”) at prices ranging between \$13.10 and \$14.00 per share. On December 7, 2009, NYB announced the pricing of a covered offering of 60 million shares of its common stock at \$13.00 per share. At the direction of Robertelli, Axius received an allocation of 5,000 shares in the offering. The associated profits were \$1,844.00.

13. On December 7, 2009, at the direction of Robertelli, Axius sold short 500 shares of Medidata Solutions, Inc. (“MDSO”) at prices ranging between \$16.00 and \$16.02 per share. On December 9, 2009, MDSO announced the pricing of a covered offering of 5.5 million shares of its common stock at \$15.00 per share. At the direction of Robertelli,

Axius received an allocation of 2,500 shares in the offering. The associated profits were \$501.60.

14. On December 9, 2009, at the direction of Robertelli, Axius sold short 2,800 shares of Apollo Investment Corp (“AINV”) at prices ranging between \$9.80 and \$9.85 per share. On December 9, 2009, AINV announced the pricing of a covered offering of 10 million shares of its common stock at \$9.82 per share. At the direction of Robertelli, Axius received an allocation of 3,000 shares in the offering. The associated profits were \$89.00.

15. On January 12, 2010, at the direction of Robertelli, Axius sold short 3,000 shares of Orient-Express Hotel, Ltd. (“OEH”) at prices ranging between \$10.05 and \$10.37 per share. On January 12, 2010, OEH announced the pricing of a covered offering of 12 million shares of its common stock at \$10.00 per share. At the direction of Robertelli, Axius received an allocation of 300 shares in the offering. The associated profits were \$31.00.

16. On January 12, 2010, at the direction of Robertelli, Axius sold short 8,100 shares of Government Properties Income Trust (“GOV”) at prices ranging between \$22.35 and \$22.90 per share. On January 14, 2010, GOV announced the pricing of a covered offering of 8.5 million shares of its common stock at \$21.50 per share. At the direction of Robertelli, Axius received an allocation of 1,600 shares in the offering. The associated profits were \$1,513.09.

17. On January 20, 2010, at the direction of Robertelli, Axius sold short 2,900 shares of Charles Schwab Corp (“SCHW”) at a price of \$19.00 per share. On January 20, 2010, SCHW announced the pricing of a covered offering of 26.3 million shares of its common stock at \$19.00 per share. At the direction of Robertelli, Axius received an allocation of 2,400 shares in the offering. There were no associated profits.

18. On March 1, 2010, at the direction of Robertelli, Axius sold short 4,000 shares of LTX-Credence Corp (“LTXC”) at prices ranging between \$2.83 and \$2.95 per share. On March 2, 2010, LTXC announced the pricing of a covered offering of 15.5 million shares of its common stock at \$2.85 per share. At the direction of Robertelli, Axius received an allocation of 3,500 shares in the offering. The associated profits were \$192.50.

19. Through the trading described in paragraphs 6 through 18, Axius and Robertelli realized profits and obtained related benefits totaling approximately \$31,103.74.

20. As a result of this conduct, Respondents violated Rule 105 of Regulation M under the Exchange Act.

IV.

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

Accordingly, it is hereby ORDERED that:

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

B. Respondents shall, jointly and severally, within 30 days of the entry of this Order, pay disgorgement of \$31,103.74, prejudgment interest of \$3,778.07, and a civil money penalty in the amount of \$26,000 to the Securities and Exchange Commission. 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) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;¹
- (2) Respondents 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) Respondents 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

¹ The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, Respondents must make payments pursuant to option (2) or (3) above.

Payments by check or money order must be accompanied by a cover letter identifying Axius and Robertelli as Respondents 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 William P. Hicks, Division of Enforcement, Securities and Exchange Commission, 950 East Paces Ferry Rd., Suite 900, Atlanta, GA, 30326.

By the Commission.

Elizabeth M. Murphy
Secretary