

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73113 / September 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16117

In the Matter of

**WHITEBOX ADVISORS
LLC**

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 Whitebox Advisors LLC (“Whitebox” 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 finds¹ that:

¹ 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.

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by Whitebox, a Minnesota-based investment firm. Rule 105 prohibits selling short an equity security that is the subject of certain public offerings and purchasing the offered security from an underwriter or broker or dealer participating in the offering, if such short sale was effected during the restricted period as defined therein.

2. On five occasions, from January 2011 through June 2012, Whitebox bought offering shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the Rule 105 restricted period. These violations resulted in profits of \$788,779.

Respondent

3. Whitebox Advisors LLC is a limited liability company incorporated in Delaware with its principal place of business in Minneapolis, MN. Whitebox Advisors LLC has been registered with the SEC since January 2006 and provides advisory services to eleven foreign private funds and seven domestic private funds. Whitebox Advisors LLC has total assets under management in excess of \$8.4 billion.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker, or dealer participating in the 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 Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

5. 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.” 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller’s intent in effecting the short sale. Id.

Whitebox’s Violations of Rule 105 of Regulation M

6. From March 2, 2012 through March 7, 2012, Whitebox sold short 35,000 shares of American Capital Agency Co. (“AGNC”) during the restricted period at an average price of \$30.5485 per share. On March 7, 2012, AGNC announced the pricing of a follow-on offering of its common stock at \$29.35 per share. Whitebox received an allocation of 50,000 shares in that

offering. The difference between Whitebox's proceeds received from the restricted period short sales of AGNC shares and the price paid for the 35,000 shares received in the offering was \$39,320.50. Respondent also improperly obtained a benefit of \$1,674 by purchasing the remaining 15,000 shares at a discount from AGNC's market price. Thus, Whitebox's participation in the AGNC offering resulted in total profits of \$40,994.50.

7. On June 7, 2012, Whitebox sold short 60,000 shares of Endeavour International Corporation ("END") during the restricted period at a price of \$9.9464 per share. On June 13, 2012, END announced the pricing of a follow-on offering of its common stock at \$7.50 per share. Whitebox received an allocation of 200,000 shares in that offering. The difference between Whitebox's proceeds received from the restricted period short sales of END shares and the price paid for the 60,000 shares received in the offering was \$146,784. Respondent also improperly obtained a benefit of \$66,066 by purchasing the remaining 140,000 shares at a discount from END's market price. Thus, Whitebox's participation in the END offering resulted in total profits of \$212,850.

8. On January 3, 2011, Whitebox sold short 20,000 shares of Annaly Capital Management ("NLY") during the restricted period at a price of \$17.9401 per share. On January 4, 2011, NLY announced the pricing of a follow-on offering of its common stock at \$17.20 per share. Whitebox received an allocation of 350,000 shares in that offering. The difference between Whitebox's proceeds received from the restricted period short sales of NLY shares and the price paid for the 20,000 shares received in the offering was \$14,802. Respondent also improperly obtained a benefit of \$62,139 by purchasing the remaining 330,000 shares at a discount from NLY's market price. Thus, Whitebox's participation in the NLY offering resulted in total profits of \$76,941.

9. From February 10, 2011 through February 14, 2011, Whitebox sold short 190,000 shares of Annaly Capital Management ("NLY") during the restricted period at an average price of \$17.9431 per share. On February 15, 2011, NLY announced the pricing of a follow-on offering of its common stock at \$17.30 per share. Whitebox received an allocation of 500,000 shares in that offering. The difference between Whitebox's proceeds received from the restricted period short sales of NLY shares and the price paid for the 190,000 shares received in the offering was \$128,209. Respondent also improperly obtained a benefit of \$37,324 by purchasing the remaining 310,000 shares at a discount from NLY's market price. Thus, Whitebox's participation in the NLY offering resulted in total profits of \$165,533.

10. From July 8, 2011 through July 11, 2011, Whitebox sold short 838,200 shares of Annaly Capital Management ("NLY") during the restricted period at an average price of \$18.5107. On July 11, 2011, NLY announced the pricing of a follow-on offering of its common stock at \$17.70 per share. Whitebox received an allocation of 350,000 shares in that offering. The difference between Whitebox's proceeds from the restricted period short sales of NLY shares and the price paid for the 350,000 shares received in the offering was \$292,460. Thus, Whitebox's participation in the NLY offering resulted in total profits of \$292,460.

11. In total, Whitebox's violations of Rule 105 resulted in profits of \$788,779.

Violation

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

Whitebox's Remedial Efforts & Cooperation

13. 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 Whitebox's Offer.

Accordingly, it is hereby ORDERED that:

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

B. Whitebox shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$788,779, prejudgment interest of \$48,553.49, and a civil money penalty in the amount of \$365,592.83 (for a total of \$1,202,925.30) to the United States Treasury. If timely payment is not made on the disgorgement amount, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. 3717. 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;²
- (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

² 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 Whitebox 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.

Jill M. Peterson
Assistant Secretary