

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73117 / September 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16121

In the Matter of

**EAST SIDE
HOLDINGS II,
INC.**

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 East Side Holdings II, Inc. (“East Side” 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:

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by East Side, a New Jersey-based privately held proprietary trading 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 four occasions, from November 2013 through December 2013, East Side 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 collectively resulted in profits of \$26,613.

Respondent

3. East Side Holdings II, Inc. is a privately held proprietary trading firm located in Clifton, New Jersey. East Side is incorporated under the laws of the state of Delaware. It is not a registered investment adviser.

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.

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.

East Side's Violations of Rule 105 of Regulation M

6. On November 13, 2013 and November 14, 2013, East Side sold short 4,000 shares of T-Mobile US, Inc. ("TMUS") during the restricted period at an average price of \$25.7650 per share. On November 14, 2013, TMUS announced the pricing of a follow-on offering of its common stock at \$25.00 per share. East Side received an allocation of 60,150 shares in that offering. The difference between East Side's proceeds from the restricted period short sales of TMUS shares and the price paid for the 4,000 shares received in the offering was \$2,490. Respondent also improperly obtained a benefit of \$19,478.44 by purchasing the remaining 56,150 shares at a discount from TMUS's market price. Thus, East Side's participation in the TMUS offering resulted in total profits of \$21,968.

7. On December 3, 2013, East Side sold short 3,000 shares of Seadrill Ltd. ("SDLP") during the restricted period at a price of \$29.5000 per share. On December 4, 2013, SDLP priced a follow-on offering of its common stock at \$29.50 per share. East Side received an allocation of 5,000 shares in that offering. Although the offering price was the same as the price at which Respondent sold short during the restricted period, Respondent improperly obtained a benefit of \$826 by purchasing the remaining 2,000 shares at a discount from SDLP's market price. Thus, East Side's participation in the SDLP offering resulted in total profits of \$826.

8. On December 4, 2013, East Side sold short 5,000 shares of GT Advanced Technologies Inc. ("GTAT") during the restricted period at a price of \$9.0400 per share. On December 5, 2013, GTAT announced the pricing of a follow-on offering of its common stock at \$8.65 per share. East Side received an allocation of 8,950 shares in that offering. The difference between East Side's proceeds from the restricted period short sales of GTAT shares and the price paid for the 5,000 shares received in the offering was \$1,950. Respondent also improperly obtained a benefit of \$1,098.50 by purchasing the remaining 3,950 shares at a discount from GTAT's market price. Thus, East Side's participation in the GTAT offering resulted in total profits of \$3,049.

9. On December 5, 2013, East Side sold short 1,000 shares of Bitauto Holdings Ltd. ("BITA") during the restricted period at a price of \$30.7700 per share. On December 6, 2013, BITA priced a follow-on offering of its common stock at \$30.00 per share. East Side received an allocation of 2,085 shares in that offering. The difference between East Side's proceeds received from the restricted period short sales of BITA shares and the price paid for the 1,000 shares received in the offering was \$770. Thus, East Side's participation in the BITA offering resulted in total profits of \$770.

10. In total, East Side's violations of Rule 105 resulted in profits of \$26,613.

Violations

11. As a result of the conduct described above, East Side 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 Respondent East Side's Offer.

Accordingly, it is hereby ORDERED that:

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

B. East Side shall pay disgorgement of \$26,613, prejudgment interest of \$397.38, and a civil money penalty in the amount of \$130,000 (for a total of \$157,010.38) to the United States Treasury. Payments shall be made in the following installments:

1. \$31,402.08 on the day of entry of this Order;
2. \$31,402 within 90 days of entry of this Order;
3. \$31,402 within 180 days of entry of this Order;
4. \$31,402 within 270 days of entry of this Order
5. \$31,402.30, plus post-judgment interest on the payments described in Section IV.B.1-4 pursuant to SEC Rule of Practice 600, within 360 days of entry of this Order.

Prior to making the payment described in Section IV.B.5, Respondent shall contact the Commission staff to ensure the inclusion of post-judgment interest. If any payment is not made by the date the payment is required by Section IV.B.1-5 of 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. 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 East Side 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