

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 73583 / November 12, 2014**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16271**

**In the Matter of**

**Pennington Capital Management LLC**  
**Robert J. Evans**

**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  
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 Pennington Capital Management LLC and Robert J. Evans (“Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (“Offers”) 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 and Civil Penalty (“Order”), as set forth below.

**III.**

On the basis of this Order and Respondents’ Offers, the Commission finds that:

**Summary**

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by Pennington Capital Management LLC and Robert J. Evans, who managed a hedge fund

located in Minneapolis, MN – Pennington Capital LLC. 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 a restricted period, as defined in the Rule.

2. During April 2012 and May 2012, Pennington Capital Management LLC and Robert J. Evans purchased equity securities in two offerings from an underwriter or broker or dealer participating in follow-on public offerings for the fund’s investment portfolio after having sold short the same securities in the fund’s investment portfolio during the restricted period. These violations collectively resulted in profits of \$95,204.55.

### **Respondents**

3. Pennington Capital Management LLC, a Minnesota limited liability company located in Minneapolis, MN, is an unregistered investment adviser that managed the fund’s investment portfolio for compensation.
4. Robert J. Evans, a resident of Saint Paul, MN, founded and solely owns and manages both Pennington Capital Management LLC and Pennington Capital LLC.

### **Legal Framework**

5. 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 public offering during the restricted period defined in the rule, absent an exception. 17 C.F.R Section 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.
6. “The goal of Rule 105 is to promote offering prices that are based upon market prices determined by supply and demand rather than artificial forces.” *Id.* Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller’s intent in effecting the short sale. *Id.*

### **Violations of Rule 105 of Regulation M**

7. Acting through Pennington Capital Management LLC, Robert J. Evans purchased 100,000 shares of the common stock of TearLab Corporation on April 11, 2012 for the fund’s investment portfolio in a follow-on offering after selling short 23,500 shares of the stock in the fund’s account on April 9, 2012, a day before the pricing of the follow-on offering. The fund profited by \$38,626.05 from this trading.

8. Acting through Pennington Capital Management LLC, Robert J. Evans received an allotment of 45,000 shares of the common stock of Gordmans Stores, Inc. in the fund's investment portfolio during a follow-on offering on May 25, 2012, after selling short 50,700 shares of the stock between May 21, 2012 and May 24, 2012, less than five days before the pricing of the follow-on offering on May 24, 2012. The fund profited by \$56,578.50 from these trades.

#### **Violations**

9. As a result of the conduct described above, Pennington Capital Management LLC and Robert J. Evans 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' Offers.

Accordingly, it is hereby ORDERED that:

- A. Pursuant to Section 21C of the Exchange Act, Respondents Pennington Capital Management LLC and Robert J. Evans 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, within (14) days of the entry of this Order, pay disgorgement of \$95,204.55, prejudgment interest of \$5,604.69, and a civil money penalty in the amount of \$65,000 (for a total of \$165,809.24) to the Securities and Exchange Commission for transfer to the U.S. Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. Section 3717. 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;<sup>1</sup>
  - (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

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<sup>1</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.

6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Pennington Capital Management LLC and Robert J. Evans 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 Timothy Warren, Associate Director, Division of Enforcement, Securities and Exchange Commission, Chicago Regional Office, 175 West Jackson Boulevard, Suite 900, Chicago, Illinois 60604.

- C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.
- D. It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields  
Secretary