

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 74539 / March 19, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16449

In the Matter of

**KEYPOINT CAPITAL
MANAGEMENT, 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 Keypoint Capital Management, LLC (“KCM” 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 that:

Summary

1. These proceedings arise out of a violation of Rule 105 of Regulation M of the Exchange Act by KCM, a Dallas-based registered investment adviser. Rule 105 prohibits buying an equity security made available through a secondary or follow-on 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. In March 2013, KCM 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. This violation resulted in profits of \$11,654.62.

Respondent

3. KeyPoint Capital Management, LLC is a limited liability company incorporated in Texas and based in Dallas, Texas. KCM has been registered with the Commission as an investment adviser since April 17, 2012 and has over \$244 million in assets under management.

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 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. at 45103.

KCM's Violation of Rule 105 of Regulation M

6. During the period from March 6, 2013 through March 7, 2013, KCM, on behalf of its advisory clients, sold short 24,400 shares of Ramco-Gershenson Properties Trust ("Ramco") at prices ranging between \$15.90 and \$15.94. After the market close on March 12, 2013, Ramco announced the pricing of a follow-on offering of seven million shares of its common stock at

\$15.55 per share. The Rule 105 restricted period relating to this follow-on offering was March 5 through March 11, 2013, the period beginning five business days before the pricing of Ramco's offered securities and ending with the pricing of the offering shares. In March 2013, KCM participated in Ramco's follow-on offering and purchased 34,272 Ramco shares for several of its clients after having sold short 24,400 shares of the same security during the restricted period.

7. The profits consisted of the following:

A. First, the Respondent profited from the difference between the proceeds from their restricted period short sales, and the amounts they paid on an equivalent number of shares received in the offering of the same issuer. These unlawful profits totaled approximately \$5,379.58.

B. Second, in those instances where the number of shares they received in the offering exceeded the number of shares they sold short during the restricted period ("overage"), the Respondent improperly obtained an additional benefit in that they obtained the offering shares at a discount to the market price of the issuer's shares. Unlawful profits in the form of market discounts totaled approximately \$6,275.04.

C. In total, KCM's violations of Rule 105 resulted in profits of \$11,654.62.

Violation

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

KCM's Remedial Efforts

9. 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 KCM's Offer.

Accordingly, it is hereby ORDERED that:

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

B. Respondent shall, within 30 days of the entry of this Order, pay disgorgement of \$11,654.62, which represents profits gained as a result of the conduct described herein, prejudgment interest of \$596.00, and a civil money penalty in the amount of \$65,000 (for a total

of \$77,250.62) to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. § 3717. Payment 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;¹
- (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

Payments by check or money order must be accompanied by a cover letter identifying KCM 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 David L. Peavler, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 801 Cherry Street, Suite 1900, Unit 18, Fort Worth, Texas 76102.

By the Commission.

Brent J. Fields
Secretary

¹ 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.