

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 31706 / July 7, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16676

In the Matter of

**Macquarie Capital Investment
Management LLC; Delaware
Management Company; Delaware
Investments Fund Advisers; Four
Corners Capital Management, LLC;
Macquarie Funds Management
Hong Kong Limited; and Delaware
Distributors, L.P.,**

Respondents.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 9(f) OF THE INVESTMENT
COMPANY ACT OF 1940, MAKING
FINDINGS AND IMPOSING A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 9(f) of the Investment Company Act of 1940 (“Investment Company Act”), against Macquarie Capital Investment Management LLC (“MCIM”), Delaware Management Company (“DMC”), Delaware Investments Fund Advisers (“DIFA”), Four Corners Capital Management, LLC (“FCCM”), Macquarie Funds Management Hong Kong Limited (“MFMHK”), and Delaware Distributors, L.P. (“Delaware Distributors”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, each of the Respondents has submitted an Offer of Settlement (collectively, “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 each of the Respondents and the subject matter of these proceedings, which are admitted, each of the Respondents consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant

to Section 9(f) of the Investment Company Act of 1940, Making Findings and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

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

Respondents

1. **MCIM**, a Delaware limited liability company, is an indirect, wholly-owned subsidiary of Macquarie Group Limited (“MGL”), a global financial services firm headquartered in Australia, and an investment adviser registered with the Commission under the Investment Advisers Act of 1940 (“Advisers Act”) that provides investment advisory services and sub-advisory services to certain investment companies registered under the Investment Company Act.
2. **DMC** is a series of the Delaware Management Business Trust (“DMBT”), which is a Delaware statutory trust. DMC provides investment advisory services and sub-advisory services to certain investment companies registered under the Investment Company Act. DMBT is an indirect, wholly-owned subsidiary of MGL and an investment adviser registered with the Commission under the Advisers Act.
3. **DIFA** is a series of DMBT and provides investment sub-advisory services to certain investment companies registered under the Investment Company Act.
4. **FCCM**, a Delaware limited liability company, is a wholly-owned subsidiary of a series of DMBT and an investment adviser registered with the Commission under the Advisers Act that provides investment sub-advisory services to an investment company registered under the Investment Company Act.
5. **MFMHK** is an indirect, wholly-owned subsidiary of MGL and an investment adviser registered with the Commission under the Advisers Act that provides investment sub-advisory services to an investment company registered under the Investment Company Act.
6. **Delaware Distributors**, a Delaware limited partnership, is an indirect, wholly-owned subsidiary of MGL and a broker-dealer registered with the Commission under the Securities Exchange Act of 1934 (“Exchange Act”) that serves as a principal underwriter to certain open-end investment companies registered under the Investment Company Act.

Other Relevant Entity

7. **Macquarie Capital (USA) Inc. (“MCUSA”)**, a Delaware corporation, has been registered with the Commission as a broker-dealer under the Exchange Act since 1994. MCUSA is an indirect, wholly-owned subsidiary of MGL.

Background

8. On March 27, 2015, the Commission filed a complaint in the United States District Court for the Southern District of New York against MCUSA and two former MCUSA bankers (“SEC Action”), alleging violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 (“Securities Act”) in connection with MCUSA’s role as the lead underwriter on a secondary public stock offering in December 2010 by Puda Coal, Inc. which traded on the New York Stock Exchange at the time and purported to own a coal company in the People’s Republic of China.

9. On April 1, 2015, the United States District Court for the Southern District of New York entered final consent judgments in the SEC Action that, in relevant part, permanently enjoined MCUSA and its two former bankers from violating Sections 17(a)(2) and 17(a)(3) of the Securities Act.

10. In advance of its consent to the judgment in the SEC Action, MCUSA received and relied on advice from its outside counsel regarding potential collateral consequences of the proposed injunction.

11. The Respondents served as an investment adviser, sub-adviser, or principal underwriter to registered investment companies after the entry of the permanent injunction against MCUSA on April 1, 2015 (“Injunction”). When the Injunction was entered, the Respondents did not have exemptive relief from Section 9(a) of the Investment Company Act.

12. After becoming aware of the Injunction, the Respondents contacted Commission staff on April 7, 2015 to commence the process for obtaining exemptive relief from Section 9(a) of the Investment Company Act.

13. On May 15, 2015, the Division of Investment Management, acting under delegated authority from the Commission, granted temporary exemptive relief from Section 9(a) of the Investment Company Act with respect to the Injunction.

Activities Prohibited By The Investment Company Act

14. Section 9(a)(2) of the Investment Company Act provides, in relevant part, that it shall be unlawful for a person to serve or act as, among other things, an investment adviser or depositor of any registered investment company, or as a principal underwriter for any registered open-end investment company, registered unit investment trust or registered face amount certificate company (collectively, “Fund Service Activities”), if such person is “by reason of any misconduct,” among other things, “permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction . . . from engaging in or continuing any conduct or practice in connection with . . . the purchase or sale of any security.”

15. Pursuant to Section 9(a)(2) of the Investment Company Act, the entry of the Injunction disqualified MCUSA from engaging in Fund Service Activities as of April 1, 2015.

16. Section 9(a)(3) of the Investment Company Act extends the prohibitions of Section 9(a)(2) to any company, any “affiliated person” of which is disqualified from performing Fund Service Activities under the provisions of Section 9(a)(2). The term “affiliated person” is defined in Section 2(a)(3) of the Investment Company Act to include, among others, “any person directly or indirectly controlling, controlled by, or under common control with, such other person.”

17. Although MCUSA did not and does not engage in Fund Service Activities, MCUSA is an affiliated person of each of the Respondents within the meaning of Section 2(a)(3) of the Investment Company Act. As a result of the entry of the Injunction against MCUSA, Sections 9(a)(2) and 9(a)(3) of the Investment Company Act together also prohibited the Respondents from engaging in Fund Service Activities as of April 1, 2015.

18. Each of the Respondents was engaged in one or more Fund Service Activities as of April 1, 2015 and, notwithstanding the entry of the Injunction on that date, continued to engage in one or more Fund Service Activities after April 1, 2015, and as noted above, the Respondents did not contact the Commission staff to begin the process of obtaining exemptive relief until April 7, 2015.

Violations

19. As a result of the conduct described above, each of the Respondents violated Section 9(a) of the Investment Company Act.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in each of the Respondents’ Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 9(f) of the Investment Company Act, each of the Respondents cease and desist from committing or causing any violations and any future violations of Section 9(a) of the Investment Company Act.

B. Each of the Respondents shall, within fourteen (14) days of the entry of this Order, pay a civil money penalty in the amount of \$20,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 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;
- (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 the payor as one of the 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 Sanjay Wadhwa, Senior Associate Regional Director, New York Regional Office, Securities and Exchange Commission, New York Regional Office, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281.

By the Commission.

Brent J. Fields
Secretary