

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 93091 / September 21, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20587

<p>In the Matter of</p> <p>HELIKON INVESTMENTS LTD.</p> <p>Respondent.</p>

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

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 Helikon Investments Ltd. (“Helikon” 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 (“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 Helikon, a London-based exempt reporting adviser. In December 2020, Helikon sold short American depositary shares (“ADSs” or “shares”) and then, within the rule’s five-day restricted period, purchased ADSs of the same issuer in an offering, thereby violating Rule 105. Helikon’s fund profited by \$669,002 from the transaction.

Respondent

2. **Helikon** is a private limited company organized under the laws of the United Kingdom with its principal place of business in London. It has been registered with the Financial Conduct Authority since February 2020 and has been an exempt reporting adviser with the Commission since March 2020. Helikon manages a long/short equity fund named Helikon Long Short Equity Fund Master ICAV. Helikon has approximately \$1 billion in assets under management.

Rule 105

3. 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 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 Exchange Act Form 1-A or Form 1-E and ending with pricing.

4. 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.” Id. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller’s intent in effecting the short sale. Id.

Facts

5. On June 9, 2020, NIO, Inc. (“NIO”) filed a Form F-3 shelf registration statement and a prospectus supplement for an offering of 60 million ADSs (the “Offering”).

6. On December 11, 2020, Helikon sold short 83,500 NIO ADSs in three transactions at an average price of \$42.7477.

7. On December 14, 2020, the Offering priced at \$39.00 per share. On the same date, Helikon purchased 325,000 NIO ADSs in the Offering. Helikon’s total gain from these

transactions was \$669,002. Helikon did not qualify for an exception to Rule 105 when it purchased shares in the Offering.

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

Disgorgement and Civil Penalties

9. The disgorgement and prejudgment interest ordered in paragraph IV.B. is consistent with equitable principles, does not exceed Respondent's net profits from its violations, and returning the money to Respondent would be inconsistent with equitable principles. Therefore, in these circumstances, distributing disgorged funds to the U.S. Treasury is the most equitable alternative. The disgorgement and prejudgment interest ordered in paragraph IV.B. shall be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

Helikon's Remedial Efforts

10. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent upon discovering the violation and cooperation afforded the Commission staff. In particular, Helikon promptly self-reported the violation and simultaneously directed its fund administrator to segregate the profits from the violative trading.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Helikon's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Helikon 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 Helikon shall, within ten (10) days of the entry of this Order, pay disgorgement of \$669,002.00, prejudgment interest of \$11,719.59, and a civil money penalty of \$97,523.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment of the civil money penalty 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 Helikon Investments Ltd. 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 Sanjay Wadhwa, Senior Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, 4th Floor, New York, NY 10281-1022.

D. 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, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it 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 Respondent 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.

By the Commission.

Vanessa A. Countryman
Secretary