

JUDGE KAPLAN

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

06 CV 12936

SECURITIES AND EXCHANGE COMMISSION

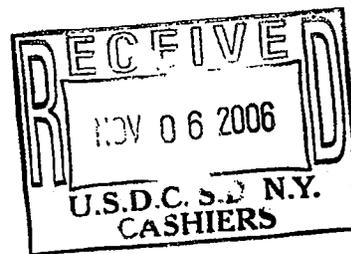
Plaintiff,

v.

**SOLAR GROUP S.A. and
JAMES J. TODD,**

Defendants.

COMPLAINT



Plaintiff Securities and Exchange Commission (the "Commission") alleges:

SUMMARY

1. This is a case about multiple violations of Rule 105 of Regulation M [17 C.F.R. § 242.105] ("Rule 105") by Solar Group S.A. ("Solar Group"), an offshore company, and its principal trader James J. Todd ("Todd"). Rule 105 prohibits covering a short sale with securities obtained in certain public offerings when the short sale occurs during a specific period (usually within five business days) before the pricing of the offering.

2. From January 2001 through July 2005, Solar Group and Todd violated Rule 105 in connection with approximately one hundred seventy-six (176) public offerings, by using shares purchased in those public offerings to cover short sales made during the five business days before the pricing of those offerings. Defendants' profits from this illegal trading totaled nearly \$1 million.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to Sections 21 and 27 of the Securities Exchange Act of 1934 [15 U.S.C. §§ 78u and 78aa] (the "Exchange Act.") Venue is proper in this district under Exchange Act Section 27 [15 U.S.C. § 78aa], as certain of the trading at issue in this case occurred on the New York Stock Exchange and through brokerage accounts located in New York City.

DEFENDANTS

4. Defendant James J. Todd is a United States citizen who resides in Bermuda. Todd directed on behalf of Solar Group the trading and transactions that are the subject of this complaint.

5. Defendant Solar Group S.A. is a Panamanian corporation that operates from Bermuda.

OVERVIEW OF RULE 105

6. Rule 105 of Regulation M, "Short Selling in Connection With a Public Offering," provides in relevant part:

"In connection with an offering of securities for cash pursuant to a registration statement . . . filed under the Securities Act [of 1933], it shall be unlawful for any person to cover a short sale with offered securities purchased from an underwriter or broker or dealer participating in the offering, if such short sale occurred during the shorter of:

- (1) The period beginning five business days before the pricing of the offered securities and ending with such pricing; or

(2) The period beginning with the initial filing of such registration statement . . . and ending with the pricing.”

17 C.F.R. § 242.105. This five business day or shorter period is referred to herein as the “Restricted Period.”

7. A short sale is “any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.” 17 C.F.R. § 242.200. The profit or loss on a short sale is determined by the price of the security purchased to cover the short sale, i.e., the price of the security purchased to repay to the lender the borrowed shares originally sold short. Accordingly, a short sale is profitable when the price of the security decreases after the short sale and is purchased by the seller for less than it was sold short.

FACTS

8. From January 2001 through July 2005, in connection with short sales in advance of approximately one hundred seventy-six (176) public offerings of securities for cash pursuant to a registration statement filed under the Securities Act of 1933 (the “Securities Act”), Solar Group covered short sales made during the Restricted Period with securities purchased from an underwriter or broker or dealer participating in the public offering.

9. In the offerings, the offering price was usually set at a discount to the last reported sale price of the stock prior to the pricing of the offering. By short selling within five business days before the pricing of an offering, Solar Group often sold shares short at prices higher than the price it would later pay for the shares in the offering, thereby

significantly reducing Solar Group's market risk of investing in public offerings. Profits from Defendants' violations of Rule 105 totaled nearly \$1 million.

10. Todd made all of the investment decisions for Solar Group and directed all of the trading at issue in this complaint.

11. The following are examples of Defendants' violations of Rule 105.

12. On November 10, 2004, Solar Group purchased 100,000 shares of Cabelas Inc. at \$22.50 per share in a public offering. During the five business days before the pricing of this offering, Solar Group sold short 50,000 shares of Cabelas at prices ranging from \$23.90 to \$25.22. In violation of Rule 105, Solar Group covered these short sales with shares subsequently obtained in the public offering. Solar Group's total profit from covering these short sales with shares it received in the public offering was \$69,507.

13. On July 24, 2003, Solar Group purchased 100,000 shares of Seagate Technology at \$18.75 per share in a public offering. During the five trading days before the pricing of this offering, Solar Group sold short 68,500 shares of Seagate at prices ranging from \$19.29 to \$20.50 per share. In violation of Rule 105, Solar Group covered these short sales a few days later with shares it purchased in the public offering, realizing a profit of \$45,452.

14. From January 2001 through July 2005, Defendants engaged in violations of Rule 105 in connection with one hundred seventy-six (176) public offerings.

CLAIM FOR RELIEF

(Short Selling in Connection With a Public Offering)

[Violations of Rule 105 of Regulation M [17 C.F.R. § 242.105]]

15. Paragraphs 1 through 14 are re-alleged and incorporated by reference.
16. As described above, from January 2001 through July 2005, in connection with offerings of securities for cash pursuant to a registration statement filed under the Securities Act, Defendants covered short sales made during the restricted period with offered securities purchased from underwriters or brokers or dealers participating in those public offerings. Each of these public offerings was conducted on a firm commitment basis.
17. By engaging in the foregoing, Defendants violated Rule 105 of Regulation M [17 C.F.R. § 242.105].
18. Unless restrained and enjoined, Defendants will continue to engage in the transactions, acts, practices, and courses of business alleged in this complaint, or in similar transactions, acts, practices and courses of business, in violation of Rule 105 of Regulation M [17 C.F.R. § 242.105].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court enter judgment:

- a. Permanently restraining and enjoining Defendants, and their agents, servants, employees, attorneys, and all persons in active concert or participation with them, from violating Rule 105 of Regulation M [17 C.F.R. § 242.105];
- b. Ordering Defendants to disgorge, with prejudgment interest, all illicit profits from the unlawful conduct described above;
- c. Ordering Defendants to pay civil monetary penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and
- d. Granting such other and further relief as is just and proper.

Respectfully submitted,



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