

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71239 / January 6, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3750 / January 6, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15667

In the Matter of

John Durrett,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 21C
OF THE SECURITIES
EXCHANGE ACT OF 1934 AND
SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT
OF 1940, MAKING FINDINGS,
AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against John Durrett (“Durrett” 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 him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

Respondent

1. John Durrett (“Durrett”), 45, currently resides in Kansas City, Missouri. From approximately 2003 to 2010, Durrett was the owner and principal of Pembroke Partners, LLC, a sole proprietorship (and unregistered investment adviser) through which Durrett managed brokerage accounts for Pembroke Capital Partners Fund I, L.P., an affiliated investment fund, as well as two separate trusts of his family. Prior to forming Pembroke Partners, LLC in 2003, Durrett worked over time as a registered representative of three different registered broker-dealers. Durrett held Series 7, 24, 27, 53 and 63 securities licenses.

Other Related Entities

2. Pembroke Partners, LLC (“Pembroke Partners”) was an unregistered investment adviser firm operated by Durrett as a Georgia sole proprietorship with its principal place of business located in Atlanta, Georgia. Pembroke Partners was dissolved in early 2011.

3. Pembroke Capital Partners Fund I, L.P. (“Pembroke Capital”) was an unregistered investment fund structured as a Georgia limited partnership for which Pembroke Partners served as the general partner and investment adviser. Pembroke Capital dissolved in late 2010.

Background

4. Rule 105 of Regulation M (“Rule 105”) of the Exchange Act was amended in 2007 in order to address the proliferation of trading strategies designed to conceal violations of the prior rule. See Short Selling in Connection with a Public Offering, Exchange Act Rel. No. 56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007).

As amended, Rule 105 makes it unlawful for a person to purchase securities 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. 17 C.F.R. § 242.105; Rule 105 defines the “restricted period” as 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 covered registration statement or notification on Form 1-A or Form 1-E and ending with the pricing.

5. Rule 105 applies irrespective of the short seller’s intent in effectuating the short sale. *Id.* at 45103. “The prohibition on purchasing offered securities . . . provides a bright line demarcation of prohibited conduct consistent with the prophylactic nature of Regulation M.” *Id.* at 45096.

Structure and Operation of Pembroke Partners, LLC

6. Durrett formed Pembroke Partners, an unregistered investment adviser firm, as a Georgia sole proprietorship in 2003. As the founder, owner, and sole principal of Pembroke Partners, Durrett had discretionary trading authority, made all investment decisions, and executed trades in individual securities for the three managed accounts (the “managed accounts”), including a brokerage account for Pembroke Capital Partners Fund I, L.P. (“Pembroke Capital”), an investment fund for which Pembroke Partners served as the general partner, as well as two brokerage accounts held in the name of, and for the benefit of, separate trusts of his family. Through Pembroke Partners, Durrett received advisory fees for managing the three accounts. At all times during its operation, Pembroke Partners maintained less than \$5 million in assets under management across its three managed accounts.

7. Durrett employed the same “long-short” trading strategy for each of Pembroke Partners’ managed accounts. In order to take advantage of anticipated downward pricing pressure, Durrett would short the stock of companies filing amendments to shelf registration statements, initial Well-Known Seasoned Issuer registration statements, or related documents indicating upcoming follow-on or secondary offerings (hereinafter collectively referred to as “covered offerings”). In certain instances, at Durrett’s direction, the managed accounts also received allocations in same companies’ covered offerings.

8. Durrett typically coordinated the trading activity for the managed accounts by shorting the same companies’ stock and participating in the same related covered offerings. As the only person making investment decisions and executing trades for Pembroke Partners’ managed accounts, Durrett was fully aware of all securities positions, investment decisions, and related trading matters for each of the accounts. In some instances, at Durrett’s direction, each of the managed accounts would sell short the same companies’ stock and also receive allocations in the related covered offerings. In other instances, at Durrett’s direction, the shorting activity and offering participation took place in different managed accounts.

Respondent's Violation of Rule 105 of Regulation M

9. In connection with 15 covered offerings that took place between May 2008 and September 2010, Durrett violated Rule 105 by shorting the issuing companies' shares in one or more of the managed accounts during the applicable restricted periods and also participating in the covered offerings through one or more of the managed accounts.

10. On May 6, 2008, Durrett sold short a total of 6,600 shares of Federal National Mortgage Association ("Fannie Mae" or "FNMA") in one or more of the managed accounts at prices ranging between \$25.50 and \$30.76 per share. On May 8, 2008, FNMA announced the pricing of a covered offering of 82 million shares of its common stock at \$27.50 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 2,600 shares in the offering.

11. On September 9, 2008, Durrett sold short a total of 5,000 shares of Kimco Realty ("KIM") in one or more of the managed accounts at a price of \$38.35 per share. On September 9, 2008, KIM announced the pricing of a covered offering of 10 million shares of its common stock at \$37.10 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 13,500 shares in the offering.

12. On November 17, 2009, Durrett sold short a total of 7,500 shares of Longtop Financial Technologies, Ltd. ("LFT") in one or more of the managed accounts at prices ranging between \$30.25 and \$32.18 per share. On November 17, 2009, LFT announced the pricing of a covered offering of 3.7 million shares of its common stock at \$31.25 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 200 shares in the offering.

13. On December 7, 2009, Durrett sold short a total of 11,800 shares of Triangle Capital Corporation ("TCAP") in one or more of the managed accounts at prices ranging between \$12.50 and \$12.90 per share. On December 8, 2009, TCAP announced the pricing of a covered offering of 1.5 million shares of its common stock at \$12.00 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 25,000 shares in the offering.

14. On December 10, 2009, Durrett sold short a total of 5,000 shares of Dendreon Corporation ("DNDN") in one or more of the managed accounts at prices ranging between \$26.10 and \$26.15 per share. On December 10, 2009, DNDN announced the pricing of a covered offering of 15 million shares of its common stock at \$24.75 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 1,300 shares in the offering.

15. On January 11, 2010, Durrett sold short a total of 8,000 shares of Invesco Mortgage Capital, Inc. ("IVR") in one or more of the managed accounts at prices ranging between \$21.91 and \$22.20 per share. On January 11, 2010, IVR announced the pricing of a covered offering of 7 million shares of its common stock at \$21.25 per share. At

Durrett's direction, one or more of the managed accounts received a total allocation of 3,200 shares in the offering.

16. On January 12, 2010, Durrett sold short a total of 3,800 shares of Main Street Capital Corporation ("MAIN") in one or more of the managed accounts at prices ranging between \$15.55 and \$15.92 per share. On January 13, 2010, MAIN announced the pricing of a covered offering of 2.5 million shares of its common stock at \$14.75 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 26,150 shares in the offering.

17. On January 12, 2010, Durrett sold short a total of 8,000 shares of Government Properties Income Trust ("GOV") in one or more of the managed accounts at prices ranging between \$22.36 and \$22.51 per share. On January 14, 2010, GOV announced the pricing of a covered offering of 8.5 million shares of its common stock at \$21.50 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 300 shares in the offering.

18. On January 19 and 21, 2010, Durrett sold short a total of 25,100 shares of Centene Corporation ("CNC") in one or more of the managed accounts at prices ranging between \$19.30 and \$20.90 per share. On January 21, 2010, CNC announced the pricing of a covered offering of 5 million shares of its common stock at \$19.25 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 1,500 shares in the offering.

19. On January 25 and 26, 2010, Durrett sold short a total of 14,600 shares of Ares Capital Corporation ("ARCC") in one or more of the managed accounts at prices ranging between \$12.92 and \$13.165 per share. On January 26, 2010, ARCC announced the pricing of a covered offering of 21 million shares of its common stock at \$12.75 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 15,800 shares in the offering.

20. On March 17, 2010, Durrett sold short a total of 4,000 shares of Hartford Financial Services Group ("HIG") in one or more of the managed accounts at a price of \$28.50 per share. On March 17, 2010, HIG announced the pricing of a covered offering of 52.25 million shares of its common stock at \$27.75 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 1,900 shares in the offering.

21. On April 12, 2010, Durrett sold short a total of 10,000 shares of Compass Diversified ("CODI") in one or more of the managed accounts at prices ranging between \$16.00 and \$16.05 per share. On April 13, 2010, CODI announced the pricing of a covered offering of 6.4 million shares of its common stock at \$15.10 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 22,300 shares in the offering.

22. On May 5, 2010, Durrett sold short a total of 17,100 shares of Radian Group, Inc. ("RDN") in one or more of the managed accounts at prices ranging between

\$11.74 and \$12.50 per share. On May 5, 2010, RDN announced the pricing of a covered offering of 50 million shares of its common stock at \$11.00 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 900 shares in the offering.

23. On August 16, 2010, Durrett sold short a total of 5,800 shares of Main Street Capital Corporation ("MAIN") in one or more of the managed accounts at an average price of \$15.73 per share. On August 17, 2010, MAIN announced the pricing of a covered offering of 2.8 million shares of its common stock at \$15.00 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 15,000 shares in the offering.

24. On September 16, 2010, Durrett sold short a total of 10,000 shares of Apollo Commercial Real Estate Finance, Inc. ("ARI") in one or more of the managed accounts at prices ranging between \$16.50 and \$16.53 per share. On September 16, 2010, ARI announced the pricing of a covered offering of 6 million shares of its common stock at \$16.00 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 700 shares in the offering.

25. Through the trading described in paragraphs 10 to 24, the managed accounts realized profits and obtained related benefits totaling \$44,729.02.

26. As a result of this conduct, Respondent willfully¹ 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 Respondent's Offer.

Accordingly, it is hereby ORDERED that:

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

B. Durrett is censured.

C. Durrett shall, within 30 days of the entry of this Order, pay disgorgement of \$44,729.02, prejudgment interest of \$4,442.04, and a civil money penalty in the amount of

¹ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." Id. (quoting Gearhart & Otis, Inc. v. SEC, 348 F.2d 798, 803 (D.C. Cir. 1965)).

\$26,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. 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
- (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 Durrett 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 William P. Hicks, Division of Enforcement, Securities and Exchange Commission, 950 East Paces Ferry Rd., Suite 900, Atlanta, GA, 30326.

By the Commission.

Elizabeth M. Murphy
Secretary

² The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, Respondent must make payments pursuant to option (2) or (3) above.