

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72211 / May 21, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15880

In the Matter of

IRONBIRD CAPITAL 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

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 Ironbird Capital LLC (“Ironbird” 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 finds¹ that:

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Securities Exchange Act of 1934 (“Rule 105”) as a result of trading by Ironbird and other entities. Rule 105 prohibits buying an equity security in a secondary or follow-on firm commitment public offering (hereinafter collectively referred to as “covered offering”) from an underwriter, broker, or dealer participating in the offering after having sold short the same security during a defined restricted period (typically five business days before the pricing of the offering).

2. On 25 occasions, from June 2008 through July 2010, Ironbird and other entities, as part of a trading strategy, bought offering 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. Ironbird’s participation in these violations resulted in profits and losses avoided of \$279,925.03.

Respondent

3. Ironbird, a trading entity, is incorporated in and maintains a principal place of business in Maryland. For the period January 2008 through July 2010, Bruce J. Fixelle had trading authority for Ironbird and directed trading by Ironbird. Fixelle was never an owner, officer, partner, or employee of Ironbird.

Other Relevant Entities

4. Genesis is incorporated in Delaware with a principal place of business in New Jersey. Genesis is solely owned and operated by Fixelle and has one administrative employee. Genesis is the investment adviser to the fund Genesis Group LP (“Genesis Fund”). Fixelle directed all trading decisions for Genesis.

5. ABJ is organized under the laws of the British Virgin Islands and has a principal place of business in New Jersey. ABJ is solely owned and operated by Fixelle, and it shares an administrative employee with Genesis. ABJ is an unregistered investment adviser to the fund ABJ Societe Anonyme L.P. (“ABJ Fund”). Fixelle directed all trading decisions for ABJ.

6. Fixelle, age 54, a resident of New Jersey, is the owner, principal, and an associated person, of Genesis and ABJ. Fixelle, through Genesis and ABJ, provides investment advice to the Genesis Fund and the ABJ Fund. Fixelle also directed trading in Ironbird for the period January 2008 through July 2010. Fixelle directed all the trading associated with the Rule 105 violations discussed herein.

Background

7. From the early 1990s to about 2012, Fixelle managed between \$2 and \$6 million in the Genesis Fund and ABJ Fund, which was comprised of Fixelle’s personal funds and funds raised from family and friends. Fixelle traded these funds primarily through trading in the accounts of Genesis, ABJ, and from January 2008 through July 2010, Ironbird.

8. By mid-2008, Fixelle had devised a strategy of seeking allocations in numerous covered offerings, including offerings that Fixelle believed might not be profitable. Fixelle believed that his entities were more likely to receive desirable allocations of initial public offerings and covered offerings from brokers if the entities also participated in less desirable covered offerings. If Fixelle believed that a covered offering would not be profitable, he sometimes shorted those same securities both during the restricted period and after the allocation as a hedge against any securities from the covered offering allocated to his entities.

9. At all relevant times, Fixelle had full responsibility for this trading strategy, and he directed trades executing this strategy. From June 2008 through June 2009, profits, losses, and expenses associated with this strategy were split two-thirds to Fixelle/Genesis/ABJ and one-third to Ironbird. From July 2009 through July 2010, Fixelle/Genesis/ABJ and Ironbird split profits, losses, and expenses 50-50.

Legal Framework

10. Rule 105 makes it unlawful for a person to purchase equity securities in a covered public offering 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 as 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.

11. Rule 105 applies irrespective of the short seller's intent in effecting the short sale. "The prohibition on purchasing offered securities . . . provides a bright line demarcation of prohibited conduct consistent with the prophylactic nature of Regulation M." Short Selling in Connection with a Public Offering, 72 Fed. Reg. at 45096. The Commission adopted Rule 105 in an effort to prevent manipulative short selling prior to a public offering and, therefore, "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." Id. at 45094.

Respondent's Violation of Rule 105 of Regulation M

12. From June 2008 through July 2010, Ironbird and other entities engaged in trading that violated Rule 105 in connection with 25 separate secondary and follow-on offerings, in each case by selling short shares of the issuers' stock during the restricted period, and then purchasing offering shares. These violations resulted in profits and losses avoided attributable to Ironbird of \$279,925.03.

13. The profits and losses avoided consisted of the following:

A. First, the Respondent profited from the difference between the proceeds from the improper restricted period short sales, and the amounts paid on an

equivalent number of shares received in the offerings of the same issuer's shares. These unlawful profits totaled approximately \$227,550.61.

B. Second, in those offerings where the number of shares received in the offerings exceeded the number of shares sold short during the restricted period ("overage"), the Respondent improperly obtained an additional benefit in that it 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 \$51,915.42.

C. Third, the Respondent improperly benefitted in certain offerings where the offering price exceeded the price at which the stock was sold short during the restricted period. Because offering shares were purchased at a discount to the market price, Respondent avoided losses in connection with these offerings in an amount that totaled \$459.00.

14. For example, on July 9, 2008, ABJ sold short 26,200 shares of Chesapeake Energy Corp. (ticker: CHK) common stock at an average price of \$59.18. After the close of the market on July 9, 2008, a secondary offering of CHK common stock was priced at \$57.25. Genesis, ABJ, and Ironbird purchased 86,100 shares in the offering. The difference between the proceeds from the restricted period short sales of CHK shares and amount paid for the equivalent number of shares purchased in the offering was \$50,566. These entities obtained an additional improper benefit of \$135,703 by purchasing the remaining 59,900 offering shares at a discount to the market price of \$59.5155.

15. As another example, on June 26, 2008, ABJ sold short 21,000 shares of Sequenom, Inc. (ticker: SQNM) common stock, at an average price of \$14.56. Later that day, after the close of the market, a follow-on offering of SQNM common stock was priced at \$15.50. Genesis and Ironbird purchased a total of 15,300 shares in the offering. Although the offering price exceeded the price at which it had sold short the stock during the restricted period, there was an improper benefit in the amount of \$1,377 by obtaining a number of shares equal to the number it had sold short at a discount from the market price, which was \$15.586.

16. The 25 offerings in which Ironbird contributed to violations of Rule 105 are listed on Exhibit A to this Order.

IV.

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

Accordingly, pursuant to Section 21C of the Exchange Act it is hereby ORDERED that:

A. Ironbird cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Within 30 days of this order, Ironbird shall pay disgorgement of \$279,925.03, and prejudgment interest of \$55,510.84 (for a total of \$335,435.87) to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600, shall be due and payable immediately, without further application. 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 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 Ironbird as 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 Andrew M. Calamari, Regional Director, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281.

By the Commission.

Jill M. Peterson
Assistant 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 options (2) or (3) above.

Exhibit A

	ISSUER (TICKER)	PRICING DATE
1	Boardwalk Pipeline Partners, LP (BWP)	6/10/2008
2	KeyCorp (KEY)	6/12/2008
3	Atlas Pipeline Partners, LP (APL)	6/18/2008
4	Capital Source, Inc. (CSE)	6/23/2008
5	Sequenom, Inc. (SQNM)	6/26/2008
6	Chesapeake Energy Corp. (CHK)	7/9/2008
7	Energy Transfer Partners LP (ETP)	7/15/2008
8	Energy Solutions (ES)	7/24/2008
9	Incyte Corp. (INCY)	7/31/2008
10	Waste Connections, Inc. (WCN)	9/24/2008
11	Chimera Investment Corp. (CIM)	10/24/2008
12	Pepco Holdings, Inc. (POM)	11/5/2008
13	Ecolab Inc. (ECL)	11/12/2008
14	Kinder Morgan Energy Partners LP (KMP)	12/17/2008
15	DHT Holdings Inc. (DHT)	3/27/2009
16	Empresas ICA SA (ICA)	7/9/2009
17	STEC, Inc. (STEC)	8/5/2009
18	TRW Automotive Holdings Corp. (TRW)	8/11/2009
19	Ocwen Financial Corp. (OCN)	8/12/2009
20	Apollo Investment Corp. (AINV)	8/12/2009
21	Plains All American Pipeline, L.P. (PAA)	9/9/2009
22	Ramco-Gershenson Properties Trust (RPT)	9/10/2009
23	ReneSola Ltd. (SOL)	9/29/2009
24	Louisiana-Pacific Corp. (LPX)	9/23/2009
25	Hercules Offshore, Inc. (HERO)	9/24/2009