

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70396 / September 16, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15476

In the Matter of

D. E. Shaw & Co., L.P.,

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 AND CIVIL
PENALTY**

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 D. E. Shaw & Co., L.P. (“D. E. Shaw” 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 and Civil Penalty (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by D. E. Shaw, a New York-based registered investment adviser. Rule 105 prohibits buying an equity security made available through a public offering, conducted on a firm commitment basis, from an underwriter or broker or dealer participating in the offering after having sold short the same security during the restricted period as defined therein.

2. On five occasions, from May 2010 through March 2012, D. E. Shaw bought offered 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. The violations resulted in profits of \$447,794.

Respondent

3. D. E. Shaw & Co., L.P. is a Delaware limited partnership with its principal place of business in New York, New York. D. E. Shaw & Co., L.P. has been registered with the Commission as an investment adviser since January 1999 and, together with its affiliated advisers, provides advisory services to various domestic and offshore funds, with total assets under management of approximately \$32 billion as of July 1, 2013. The trading described herein refers to trading on behalf of certain of those funds.

Legal Framework

4. 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.

5. "The goal of Rule 105 is to promote offering prices that are based upon open market prices determined by supply and demand rather than artificial forces." Final Rule: Short Sales, Exchange Act Release No. 50103. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale.

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.

D. E. Shaw's Violation of Rule 105 of Regulation M

6. From April 29 through May 4, 2010, D. E. Shaw sold short 103,560 shares of Radian Group Inc. ("RDN") during the restricted period at a weighted average price of \$14.4586 per share. On May 5, 2010, RDN announced the pricing of a follow-on offering of its common stock at \$11.00 per share. D. E. Shaw received an allocation of 1,250,000 shares in that offering. The difference between D. E. Shaw's proceeds from the restricted period short sales of RDN shares and the price paid for the 103,560 shares received in the offering was \$358,172.62. Thus, D. E. Shaw's participation in the RDN offering netted total profits of \$358,172.62.

7. On March 1, 2011, D. E. Shaw sold short 2,200 shares of DDR Corp. ("DDR") during the restricted period at a weighted average price of \$14.1005 per share. On March 1, 2011, DDR announced the pricing of a follow-on offering of its common stock at \$13.80 per share. D. E. Shaw received an allocation of 700,000 shares in that offering. The difference between D. E. Shaw's proceeds from the restricted period short sales of DDR shares and the price paid for the 2,200 shares received in the offering was \$661.10. Thus, D. E. Shaw's participation in the DDR offering netted total profits of \$661.10.

8. From March 30 through March 31, 2011, D. E. Shaw sold short 400 shares of Kraton Performance Polymers Inc. ("KRA") during the restricted period at a weighted average price of \$ 39.7775 per share. On March 31, 2011, KRA announced the pricing of a follow-on offering of its common stock at \$37.75 per share. D. E. Shaw received an allocation of 100,000 shares in that offering. The difference between D. E. Shaw's proceeds from the restricted period short sales of KRA shares and the price paid for the 400 shares received in the offering was \$811.00. Respondent also improperly obtained a benefit of \$3,555.72 by purchasing the remaining 99,600 shares at a discount from KRA's market price. Thus, D. E. Shaw's participation in the KRA offering netted total profits of \$4,366.72.

9. On January 3, 2012, D. E. Shaw sold short 4,878 shares of Vical Incorporated ("VICL") during the restricted period at a weighted average price of \$ 4.47 per share. On January 6, 2012, VICL announced the pricing of a follow-on offering of its common stock at \$3.75 per share. D. E. Shaw received an allocation of 50,000 shares in that offering. The difference between D. E. Shaw's proceeds from the restricted period short sales of VICL shares and the price paid for the 4,878 shares received in the offering was \$3,512.16. Respondent also improperly obtained a benefit of \$49.63 by purchasing the remaining 45,122 shares at a discount from VICL's market price. Thus, D. E. Shaw's participation in the VICL offering netted total profits of \$3,561.79.

10. On March 21, 2012, D. E. Shaw sold short 14,263 shares of Hercules Offshore, Inc. ("HERO") during the restricted period at a weighted average price of \$ 5.4110 per share. On March 22, 2012, HERO announced the pricing of a follow-on offering of its common stock at \$5.10 per share. D. E. Shaw received an allocation of 700,000 shares in that offering. The difference between D. E. Shaw's proceeds from the restricted period short sales of HERO shares and the price paid for the 14,263 shares received in the offering was \$4,435.79. Respondent also

improperly obtained a benefit of \$76,596.82 by purchasing the remaining 685,737 shares at a discount from HERO's market price. Thus, D. E. Shaw's participation in the HERO offering netted total profits of \$81,032.61.

11. In total, D. E. Shaw's violations of Rule 105 resulted in profits to certain funds advised by D.E. Shaw of \$447,794.

Violations

12. As a result of the conduct described above, D. E. Shaw violated Rule 105 of Regulation M under the Exchange Act.

D. E. Shaw's Remedial Efforts

13. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded to Commission staff.

IV.

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

Accordingly, it is hereby ORDERED that:

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

B. D. E. Shaw shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$447,794 prejudgment interest of \$18,192.37, and a civil money penalty in the amount of \$201,506.00 (for a total of \$667,492.37) to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payments 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:

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

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 D. E. Shaw 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 Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.

Elizabeth M. Murphy
Secretary