

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 101049 / September 19, 2024**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-22132**

**In the Matter of**

**GATES CAPITAL  
MANAGEMENT, INC.**

**Respondent.**

**CORRECTED 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 Gates Capital Management, Inc. (“Gates Capital” 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 Gates Capital’s violation of Rule 105 of Regulation M [17 C.F.R. § 242.105] under the Exchange Act (“Rule 105”). In late August and early September 2023, Gates Capital sold short for its fund clients shares of Rollins, Inc. (“Rollins”), an

issuer whose stock trades on the New York Stock Exchange under the symbol ROL, and then purchased shares of the same issuer in a covered public offering for fund clients within the Rule 105 restricted period. Gates Capital's violative conduct resulted in gains to its fund clients of \$432,564.

### **Respondent**

2. Gates Capital is a Delaware corporation with its principal place of business in New York City. Gates Capital has been registered with the Commission as an investment adviser since 2006. Gates Capital has approximately \$3.6 billion in regulatory assets under management as reported in its Form ADV filed on March 13, 2024.

### **Rule 105**

3. Rule 105 makes it unlawful for a person to purchase equity securities from an underwriter, broker, or dealer participating in a covered public 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 meeting the conditions of an exception. 17 C.F.R. § 242.105(a); *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 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

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." 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent. *Id.*

### **Facts**

5. On June 5, 2023, Rollins filed a Form S-3 shelf registration statement and prospectus for offerings of common stock and other securities. The prospectus stated that Rollins, and certain specified selling stockholders, may offer and sell Rollins securities in one or more offerings.

6. From August 30 through September 1, 2023, Gates Capital sold short a total of 90,000 ROL shares for fund clients, at an average price of \$39.76 per share.

7. On September 6, 2023 after market close, Rollins issued a press release announcing a secondary public offering of its common stock.

8. The offering was priced at \$35 per share on September 7, 2023 prior to market open. The five business day restricted period under Rule 105 began on August 30, 2023. Because Gates Capital, on behalf of its fund clients, sold short shares of ROL from August 30 through

September 1, 2023, during the Rule 105 restricted period, Gates Capital was prohibited under Rule 105 from purchasing shares in the offering, absent an applicable exception.

9. Gates Capital, on behalf of its fund clients, purchased 100,000 shares in the offering at a price of \$35 per share on September 7, 2023. Gates Capital did not qualify for an exception to Rule 105 when it purchased shares in the offering for its fund clients.

10. Gates Capital's violation of Rule 105 resulted in gains of \$432,564 to fund clients. Gates Capital has represented to the Commission staff that it is currently in possession of the amounts subject to disgorgement.

### **Violations**

11. As a result of the conduct described above, Gates Capital violated Rule 105 of Regulation M under the Exchange Act.

### **Disgorgement and Civil Penalties**

12. The disgorgement and prejudgment interest referenced in paragraph IV.B are consistent with equitable principles, do not exceed the net profits from Respondent's 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 referenced 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.

### **Gates Capital's Remedial Efforts**

13. In determining to accept the Offer, including with respect to the amount of the civil penalty and the calculation of prejudgment interest, the Commission considered remedial acts undertaken by Respondent and cooperation afforded the Commission staff. In particular, upon discovering the violation, Gates Capital promptly reported the violation to Commission staff and took other remedial acts, including revising its compliance policies with respect to Rule 105.

## **IV.**

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

Accordingly, it is hereby ORDERED that:

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

B. Gates Capital shall, within ten (10) days of the entry of this Order, pay disgorgement of \$432,564.00, prejudgment interest of \$5,445.00 representing the period from the date of Gates Capital's violation to the date of Gates Capital's self-report, and a civil money penalty in the amount of \$57,615.00, for a total of \$495,624, 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 monetary 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 Gates Capital Management, Inc. 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 Thomas P. Smith, Jr., Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004-2616.

C. 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