

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 55483 / March 15, 2007

INVESTMENT ADVISERS ACT OF 1940
Release No. 2597 / March 15, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12593

In the Matter of

IMPERIUM ADVISORS, LLC,

Respondent.

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

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(e) of the Investment Advisers Act of 1940 (“Advisers Act”), against Imperium Advisors, LLC (the “Respondent” or “Imperium Advisors”).

II.

In anticipation of the institution of these proceedings, the 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 Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 and Section 203(e) of the Investment Advisers Act of 1940 ("Order"), as set forth below.

III.

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

Summary

On three occasions from August 2004 through November 2004, the Respondent willfully violated Rule 105 of Regulation M by selling securities short within five business days before the pricing of public offerings and then covering the short positions with securities purchased in the offerings. The Respondent's clients' profits on these transactions totaled \$75,192.

Respondent

1. **Imperium Advisors, LLC** is a limited liability company organized under Delaware law and is the investment adviser to Imperium Master Fund, LP (the "Master Fund"), a Cayman Islands hedge fund, and the Master Fund's three feeder funds, Imperium Market Neutral Fund, LP, Imperium Market Neutral Fund (QP), LP, and Imperium Market Neutral Offshore Fund, Ltd. Imperium Advisors was a registered investment adviser, but it withdrew its registration in early 2006 because it is ceasing operation. During the relevant time period, Imperium Advisors had full investment discretion for the Master Fund, which, in turn, holds all or substantially all of the feeder funds' assets in a single prime brokerage account.

Background

2. Rule 105 of Regulation M, "Short Selling in Connection with a Public Offering," ("Rule 105") prohibits covering a short sale with securities obtained in a public offering if the short sale occurred within the shorter of the period beginning five business days before the pricing and ending with the pricing of the offering or the period beginning with the initial filing of the registration statement or notification on Form 1-A and ending with pricing (the "restricted period").

In pertinent part, Rule 105 provides:

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.

In connection with an offering of securities for cash pursuant to a registration statement ... filed under the Securities Act, 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(a)(1). Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale.

3. During the relevant period, Imperium Advisors engaged in short selling and covering transactions prohibited under Rule 105 in connection with purchases of securities in public offerings made by Pioneer Drilling Company ("Pioneer"), Premcor, Inc. ("Premcor"), and The Houston Exploration Company ("Houston Exploration").

4. After the close of the market on August 5, 2004, Pioneer and certain selling shareholders priced a follow-on offering of 9,582,018 shares of common stock at \$6.90 per share. The offering was offered to the public through an underwriter on a firm commitment basis. Accordingly, the Rule 105 restricted period was July 30, 2004 through August 5, 2004.

5. Imperium Advisors sold short a total of 114,100 Pioneer shares on three consecutive days during the Rule 105 restricted period and covered this restricted-period short position using Pioneer shares received in the follow-on offering. The Master Fund's profit on the restricted-period short sales was \$41,328.

6. After the close of market on September 14, 2004, selling shareholders of Premcor priced a follow-on offering of 10,000,000 shares of common stock. The selling shareholders offered the shares to the public through an underwriter on a firm commitment basis. Accordingly, the Rule 105 restricted period was September 8, 2004 through September 14, 2004.

7. Imperium Advisors sold short a total of 30,000 Premcor shares on two days during the Rule 105 restricted period and covered this restricted-period short position using Premcor shares received in the follow-on offering. The Master Fund's profit on the restricted-period short sales was \$33,864.

8. After the close of the market on November 18, 2004, a selling shareholder of Houston Exploration priced a follow-on offering of 6,580,392 shares of common stock at \$56.25 per share. The selling shareholder offered the shares to the public through an underwriter on a firm commitment basis. Accordingly, the Rule 105 restricted period for Houston Exploration shares was November 12, 2004 through November 18, 2004.

9. Imperium Advisors sold short 3,000 Houston Exploration shares during the Rule 105 restricted period. Imperium Advisors purchased 275,000 shares of Houston Exploration in the

follow-on offering and covered the restricted-period short sale using Houston Exploration shares received in the follow-on offering at a loss to the Master Fund.

10. As a result of the conduct described above, the Respondent willfully² violated Rule 105 of Regulation M, which makes it “unlawful for any person to cover a short sale with offered securities purchased from an underwriter or broker or dealer participant in the offering, if such short sale occurred during the ... period beginning five business days before the pricing of the offered securities and ending with the pricing.”

Imperium Advisors’ Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Imperium Advisors and cooperation afforded the Commission’s staff.

IV.

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

Accordingly, pursuant to Section 21C of the Exchange Act and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

- A. Respondent is censured.
- B. Respondent cease and desist from committing or causing any violations and any future violations of Regulation M, Rule 105.
- B. IT IS FURTHER ORDERED that Respondent shall, within thirty (30) days of the entry of this Order, pay disgorgement and prejudgment interest in the total amount of \$82,368 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier’s check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies Imperium Advisors, LLC as Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Helene Glotzer, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Northeast Regional Office, 3 World Financial Center, New York, NY 10281.

² “Willfully” as used in this Order means intentionally committing the act which constitutes the violation, Cf. Wonsover v. S.E.C., 205 F.3d 408, 414 (D.C. Cir. 2000); Tager v. S.E.C., 344 F.2d 5, 8 (2d Cir. 1965). There is no requirement that the actor also be aware that he is violating one of the Rules or Acts.

C. IT IS FURTHER ORDERED that Respondent shall, within thirty (30) days of the entry of this Order, pay a civil money penalty in the amount of \$37,596 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Imperium Advisors, LLC as Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Helene Glotzer, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Northeast Regional Office, 3 World Financial Center, New York, NY 10281.

By the Commission.

Nancy M. Morris
Secretary