

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 81989 / October 31, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18272

In the Matter of

**MILLENNIUM
MANAGEMENT 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 Millennium Management LLC (“Millennium” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“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 violations of Rule 105 of Regulation M of the Exchange Act (“Rule 105”) by Millennium, a New York-based registered investment adviser. On four occasions between February and November 2012, Millennium sold stock short within Rule 105’s restricted period, and then purchased shares of the same stock in a covered offering, without qualifying for an exception, thereby violating Rule 105. Millennium’s conduct resulted in unlawful profits of more than \$286,000 for its advised client.

Respondent

2. Millennium is a limited liability company organized under the laws of Delaware with a principal place of business in New York, New York. Millennium has been registered with the Commission as an investment adviser since March 30, 2012. Millennium has approximately \$200 billion in regulatory assets under management. Millennium is the general partner of Millennium Partners, L.P. (“Master Fund”), a multi-strategy hedge fund organized in the Cayman Islands. The Master Fund is not registered with the Commission.

Legal Framework

3. As amended in 2007, Rule 105 provides in pertinent part:

In connection with an offering of equity securities for cash pursuant to a registration statement or a notification on Form 1-A . . . or Form 1-E . . . filed under the Securities Act of 1933 (“offered securities”), it shall be unlawful for any person to sell short . . . the security that is the subject of the offering and purchase the offered securities from an underwriter or broker or dealer participating in the offering if such short sale was effected during the period (“Rule 105 restricted period”) . . . [b]eginning five business days before the pricing of the offered securities and ending with such pricing . . .

17 C.F.R. § 242.105(a); *Short Selling in Connection with a Public Offering*, Exchange Act Release No. 56206, 72 Fed. Reg. 45,094, 45,107 (Aug. 10, 2007) (“2007 Adopting Release”).

4. Rule 105 prohibits any person from purchasing in covered offerings where the person has shorted the same securities during the defined restricted period. As described below, on four occasions, Millennium shorted securities during the restricted period and then purchased the same security in covered offerings. Rule 105 has several exceptions, but these four transactions did not meet the requirements of any of the exceptions, including the separate accounts exception, which “allows a person to purchase the offered securities in an account where there was a short sale in another account if decisions regarding securities transactions for each account are made separately and without any coordination of trading or cooperation among or between the accounts.”

2007 Adopting Release at 45,096. For the separate accounts exception to apply, “there can be no communication of securities positions, investment decisions or other trading matters between accounts.” *Id.* at 45,099.¹ The 2007 Adopting Release notes that the term “account” is used as a general term that may encompass different types of “separate accounts” such as “portions of a particular fund,” a “unit,” “departments,” and “identifiable divisions.” *Id.* at 45,098 n. 64.

5. Rule 105 applies irrespective of the short seller’s intent in effectuating 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.” *Id.* at 45,096. Rule 105 is intended “to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity.” *Id.* at 45,094.

Millennium’s Structure and Operations

6. During the relevant period of time, Millennium employed a large number of portfolio managers (“PMs”) to manage the Master Fund’s investments. Many PMs regularly participated in secondary stock offerings.

7. Millennium also established and maintained several accounts for trading activity, including risk management and hedging in relation to the Master Fund portfolio (“Firm Accounts”). The Firm Accounts were managed by Millennium employees under the oversight of management.

8. Each PM had his or her own agreement with Millennium, and a single trading group was established for each PM and any additional personnel working for such PM (“PM Group”). No personnel were assigned to more than one PM Group. Each PM Group was given access to information concerning the positions and activity in that PM Group’s individual book, and was not given access to information concerning the positions and activity of other PM Groups. Also, Millennium maintained a separate profit and loss calculation for each PM Group, and compensation for each PM Group was based upon the performance of that PM Group, with no consideration given to the overall performance of the Master Fund.

¹ In the 2007 Adopting Release, the Commission listed the following non-exclusive indicia of separateness: “(1) The accounts have separate and distinct investment and trading strategies and objectives; (2) Personnel for each account do not coordinate trading among or between the accounts; (3) Information barriers separate the accounts, and information about securities positions or investment decisions is not shared between accounts; (4) Each account maintains a separate profit and loss statement; (5) There is no allocation of securities between or among accounts; and (6) Personnel with oversight or managerial responsibility over multiple accounts in a single entity or affiliated entities, and account owners of multiple accounts, do not have authority to execute trades in individual securities in the accounts and in fact, do not execute trades in the accounts, and do not have the authority to pre-approve trading decisions for the accounts and in fact, do not pre-approve trading decisions for the accounts.” 2007 Adopting Release at 45,098-99.

9. Compensation for the management personnel who established the Firm Accounts and oversaw the personnel who managed the Firm Accounts was based, in part, on the performance of PM Group accounts as well as the performance of the Firm Accounts. Such management personnel had the ability to review each PM Group's portfolio holdings and trading activity through Millennium's proprietary order entry and portfolio management system and also had the authority to set the trading strategies that were executed in the Firm Accounts.

10. As a result, the Firm Accounts did not qualify for the Rule 105 separate accounts exception. Therefore, if any of the Firm Accounts sold short a security during the Rule 105 restricted period, the rule prohibited any PM Group from purchasing in the secondary offering of that security.

Violative Conduct

February 15, 2012 Raymond James Financial Offering

11. From February 8 through February 14, 2012, a Firm Account sold short 8,902 shares of Raymond James Financial (RJF) at an average price of \$34.66 per share.

12. On February 14, 2012, RJF, through its underwriters, priced a secondary stock offering at a price of \$34.00 per share. Two Millennium PM Groups purchased a total of 200,000 shares in this secondary offering. By short selling during the restricted period and purchasing the offered shares, Millennium obtained \$126,498 in ill-gotten gains for the Master Fund from the RJF offering.

March 15, 2012 Capital One Financial Offering

13. From March 8 through March 14, 2012, a Firm Account sold short 2,060 shares of Capital One Financial (COF) at an average price of \$52.07 per share.

14. On March 15, 2012, COF, through its underwriters, priced a secondary stock offering at a price of \$51.65 per share. Four Millennium PM Groups purchased a total of 180,000 shares in this secondary offering. By short selling during the restricted period and purchasing the offered shares, Millennium obtained \$145,725 in ill-gotten gains for the Master Fund from the COF offering.

July 18, 2012 Susser Holdings Corporation Offering

15. On July 16, 2012, a Firm Account sold short 7,500 shares of Susser Holdings Corporation (SUSS) at an average price of \$36.01 per share.

16. On July 18, 2012, SUSS, through its underwriters, priced a secondary stock offering at a price of \$36.00 per share. Three Millennium PM Groups purchased a total of 80,000 shares in this secondary offering. Millennium did not obtain ill-gotten gains for the Master Fund from this offering.

November 21, 2012 Charter Communications Offering

17. On November 15, 2012, a Firm Account sold short 6,500 shares of Charter Communications (CHTR) at an average price of \$67.95 per share.

18. On November 21, 2012, CHTR, through its underwriters, priced a secondary stock offering at a price of \$68.90 per share. One Millennium PM Group purchased 25,000 shares in this secondary offering. By short selling during the restricted period and purchasing the offered shares, Millennium obtained \$14,666 in ill-gotten gains for the Master Fund from the CHTR offering.

19. With respect to each of the offerings of RJF, COF, SUSS, and CHTR described above, Millennium PM Groups “purchas[ed] the offered securities from an underwriter or broker or dealer . . . participating in the offering” after Millennium had sold short the same security in a Firm Account “during the period . . . [b]eginning five business days before the pricing of the offered securities and ending with such pricing.” 17 C.F.R. § 242.105(a). As a result of this conduct, Millennium 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 Millennium’s Offer.

Accordingly, it is hereby ORDERED that:

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

B. Respondent shall, within ten (10) days of the entry of this Order, pay disgorgement of \$286,889, prejudgment interest of \$51,820.11, and a civil money penalty of \$300,000 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 money 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 Millennium Management LLC 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 Sanjay Wadhwa, Senior Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, 4th Floor, New York, NY 10281-1022.

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 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.

Brent J. Fields
Secretary