

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58670 / September 29, 2008

INVESTMENT ADVISERS ACT OF 1940
Release No. 2790 / September 29, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13247

In the Matter of

**VICTOIRE FINANCE CAPITAL
LLC,**

Respondent.

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

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that 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 Victoire Finance Capital LLC (“VFC” 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 Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and Section 203(e) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and the Respondent’s Offer, the Commission finds that:

Respondent

1. VFC is a limited liability company organized under the laws of Delaware with headquarters in New York, NY. VFC was founded in 2003 and registered with the Commission as an investment adviser on January 23, 2006. VFC is the investment adviser to Victoire Finance et Gestion, B.V. (“VFG”), a Netherlands Antilles private offshore hedge fund, and one separately-managed account. During the relevant time period, VFC had full investment discretion for its clients.

Summary

2. From February 2004 until August 2005, VFC willfully violated Rule 105 of Regulation M on eighteen occasions. On each occasion, in connection with a follow-on offering, VFC sold securities short within five business days before the pricing of the offering, and covered the short sale, in whole or in part, with shares purchased in the offering. As a result of covering the restricted period short sales with the offered securities, VFC generated profits of \$168,139.50 for its client, VFG.

Legal Framework

3. Rule 105 of Regulation M, “Short Selling in Connection with a Public Offering,” at the time of the conduct described in this Order, prohibited covering a short sale with securities obtained in a public offering if the short sale occurred within the shorter of the period five business days before pricing and ending with pricing, or the period beginning with the initial filing of the registration statement or notification on Form 1-A and ending with pricing. In pertinent part, Rule 105 provides:

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 . . . period beginning five business days before the pricing of the offered securities and ending with such pricing.

17 C.F.R. § 242.105.

VFC's Trades

4. From February 2004 until August 2005, VFC engaged in short sales and covering transactions prohibited by Rule 105 in securities of eighteen issuers: Avaya, Inc., Arrow Electronics, Inc., The Advisory Board Co., Axis Capital Holdings, Ltd., Premcor, Inc., Weyerhaeuser Co., Intrabiotics Pharmaceuticals, Inc., Corporate Executive Board Co., SS&C Technologies, Inc. ("SS&C"), Brigham Exploration Co., Equity Inns, Inc., Wynn Resorts, Ltd., Audible, Inc., Wesco International, Inc., RR Donnelley & Sons Co., Dex Media Inc., Global Santa Fe Corp., and Hexcel Corp. As a result of the transactions VFC directed, VFC incurred a loss on five of the transactions, no loss or gain (broke even) on one transaction, and realized profits totaling \$168,139.50 on the other twelve transactions.

5. Most of the transactions followed the same general pattern. VFC sold securities short either the day of, or the day before, the pricing of the public offering. The firm then covered all or part of the short position with shares that it purchased in the offering.

6. VFC's transactions in shares of SS&C are illustrative. On June 3, 2004, VFC sold short 25,000 shares of SS&C at \$21.7777 per share. Later that day, the underwriters priced the SS&C offering at \$19.50 per share. On June 4, 2004, VFC received an allocation of 50,000 shares in the offering and used 25,000 of those shares to cover its restricted period short position. As a result of the transactions VFC directed, VFC realized a profit of \$56,942.50.

7. During the relevant period, VFC did not have procedures in place designed to prevent or detect Rule 105 violations and provided no training to its traders and employees concerning Rule 105.

Violations

8. As a result of the conduct described above, VFC willfully¹ violated Rule 105 of Regulation M.

¹ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

Remedial Efforts

9. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by VFC and cooperation it afforded the Commission staff.

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 and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

- A. VFC cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M.
- B. VFC is censured.

C. IT IS FURTHER ORDERED that VFC shall, within thirty (30) days of the entry of this Order, pay disgorgement of \$168,139.50 and prejudgment interest of \$47,491.53, for a total of \$215,631.03, to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. 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 VFC as a 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 Andrew M. Calamari, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, New York, NY 10281.

D. IT IS FURTHER ORDERED that VFC shall, within thirty (30) days of the entry of this Order, pay a civil money penalty in the amount of \$85,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 VFC as a 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 Andrew M. Calamari, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, New York, NY 10281.

By the Commission.

Florence E. Harmon
Acting Secretary