

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 63460 / December 8, 2010

INVESTMENT ADVISERS ACT OF 1940
Release No. 3121 / December 8, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-14154

In the Matter of

**GARTMORE
INVESTMENT
LIMITED,**

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 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 Gartmore Investment Limited (“Gartmore” 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 Respondent’s Offer, the Commission finds that:

Summary

1. These proceedings arise out of a violation of Rule 105 of Regulation M of the Exchange Act by Gartmore, a registered investment adviser based in London, United Kingdom. Rule 105 prohibits short selling of equity securities during a restricted period prior to a public offering and then purchasing the same securities in the public offering. Gartmore violated Rule 105 in May 2009 in connection with certain short sales it effected within the Rule 105 restricted period preceding its participation in a public offering by BB&T Corp. (“BB&T”), resulting in profits of \$928,117.83.

Respondent

2. Gartmore is a registered investment adviser (registered with the Commission since 2006) and is also subject to regulation by the Financial Services Authority of the United Kingdom. Gartmore is a London-based subsidiary of Gartmore Group Limited, a London Stock Exchange-listed entity with in excess of \$30 billion under management as of June 30, 2010. During the relevant time period, Gartmore was the investment adviser to a number of investment funds, and the trading described in this Order was conducted by Gartmore on behalf of one of those funds, the AlphaGen RhoCas Fund Limited (“RhoCas”).

Background

3. As amended in 2007, Rule 105 of Regulation M 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. 56,206, 72 Fed. Reg. 45,094, 45,107 (Aug. 10, 2007).

4. The Commission adopted Rule 105 in an effort to prevent manipulative short selling prior to a public offering and, therefore, “to foster secondary and follow-on offering

prices that are determined by independent market dynamics.” *Id.* At 45,094. Rule 105 prohibits the conduct 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.

5. Between May 6 and May 12, 2009, Gartmore sold short a total of 172,405 shares of common stock of BB&T for RhoCas at prices ranging between \$25.22 and \$27.38 per share.

6. On May 11, 2009, following the close of the market, BB&T announced a public secondary offering of common stock (the “Offering”), which was priced on May 12, 2009.

7. On May 12, 2009, Gartmore purchased a total of 145,000 shares of BB&T common stock in the Offering for RhoCas at \$20.00 per share. Gartmore covered a portion of its short position in BB&T stock with shares bought in the Offering.

8. Because Gartmore sold short shares of BB&T during the restricted period and then purchased shares in the Offering, Gartmore violated Rule 105. The difference between Gartmore’s proceeds from the first 145,000 shares of short sales and the amount paid for the offering shares was \$928,117.83.

9. At the time of the violation, Gartmore had no policies, procedures or controls in place designed to detect or prevent Rule 105 violations.

10. As a result of the conduct described above, Gartmore willfully¹ violated Rule 105 of Regulation M of the Exchange Act.

11. After Gartmore learned of its Rule 105 violation, it developed and implemented policies, procedures and training programs relating to its Rule 105 compliance. In determining to accept the Offer, the Commission considered Gartmore’s remedial efforts.

IV.

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

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

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)).

A. Gartmore shall cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Gartmore is censured;

C. Gartmore shall, within 14 days of the entry of this Order, pay a civil money penalty of \$375,000, disgorgement of \$928,117.83, and prejudgment interest of \$44,134.68 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 wire transfer, 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 Gartmore 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 Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, D.C. 20549-5720A.

By the Commission.

Elizabeth M. Murphy
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Administrative 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 Sanctions and a Cease-and-Desist Order ("Order"), on the Respondent and their legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

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Securities and Exchange Commission
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