

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 60842 / October 20, 2009**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13656**

**In the Matter of**

**FIRST NEW YORK**  
**SECURITIES L.L.C.,**

**Respondent.**

**ORDER INSTITUTING**  
**ADMINISTRATIVE AND CEASE-**  
**AND-DESIST PROCEEDINGS**  
**PURSUANT TO SECTIONS 15(b) AND**  
**21C OF THE SECURITIES**  
**EXCHANGE ACT OF 1934, 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 Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against First New York Securities L.L.C. (“First New York” 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 Sections 15(b) and 21C of the Securities Exchange Act of 1934, 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. First New York is a limited liability company organized under the laws of New York and headquartered in New York, New York. It has been registered with the Commission as a broker-dealer since April 23, 1985.

#### **Summary**

2. In September 2005 and January 2007, First New York violated Rule 105 of Regulation M with respect to two repeat securities offerings. On both occasions, in connection with the offering, First New York sold securities short within five business days before the pricing of the offering, and then covered the short position, in whole or in part, with shares purchased in the offering. As a result, First New York obtained unlawful profits of \$39,544.35.

#### **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 provided:

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.

#### **First New York's Trades**

4. On September 26 and 27, 2005, First New York sold short a total of 25,000 shares of Cemex, S.A. de C.V. in two proprietary accounts, at prices ranging from \$50.3229 to \$51.3019. After the market closed on September 27, 2005, a repeat offering of Cemex shares was priced at \$49.50. On September 28, 2005, these two First New York accounts received a total of 20,000 shares in the offering and used those shares to partially

cover the restricted period short position. As a result of these transactions, First New York realized a profit of \$25,044.

5. On January 19 and 22, 2007, First New York sold short a total of 15,000 shares of AMR Corp. in a proprietary account, at prices of \$39.28 and \$39.86, respectively. On January 23, 2007, a repeat offering of AMR shares was priced at \$38.70. On the same day, First New York received in this account an allocation of 20,000 shares in the offering, and used 15,000 of those shares to cover its restricted period short position. As a result of these transactions, First New York realized a profit of \$14,500.

### **Violations**

6. As a result of the conduct described above, First New York willfully<sup>1</sup> violated Rule 105 of Regulation M.

### **Remedial Efforts**

7. In determining to accept the Offer, the Commission considered remedial acts undertaken by First New York 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 Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. First New York shall cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M.

B. First New York is censured.

C. IT IS FURTHER ORDERED THAT First New York shall, within thirty (30) days of the entry of this Order, pay disgorgement of \$39,544.35 and prejudgment interest of \$9,464.37, for a total of \$49,008.72, 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

---

<sup>1</sup> For purposes of jurisdiction and assessing the sanctions enumerated herein, 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)).

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 First New York 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, Suite 400, New York, NY 10281.

D. IT IS FURTHER ORDERED THAT First New York shall, within thirty (30) days of the entry of this Order, pay a civil money penalty in the amount of \$20,000.00 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 First New York 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, Suite 400, New York, NY 10281.

By the Commission.

Elizabeth M. Murphy  
Secretary