

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 51709 / May 19, 2005

INVESTMENT ADVISERS ACT OF 1940
Release No. 2385 / May 19, 2005

ADMINISTRATIVE PROCEEDING
File No. 3-11929

In the Matter of

**OAKTREE CAPITAL
MANAGEMENT, 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 Oaktree Capital Management, LLC (“Oaktree”).

II.

In anticipation of the institution of these proceedings, Oaktree 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, Oaktree 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 Oaktree's Offer, the Commission finds that:

Respondent

1. Oaktree, a Los Angeles, California-based investment adviser founded in April of 1995, manages over \$27 billion in assets. Oaktree is a California limited liability company and is registered with the Commission and the State of California as an investment adviser. Oaktree serves as the investment manager for two hedge funds, OCM Emerging Markets Fund, L.P. and OCM High Yield Plus Fund, L.P. At all times, Oaktree has had full discretion to make investment decisions for these hedge funds.

Summary

2. On four occasions from September 2003 to March 2004, Oaktree's Emerging Markets Fund sold securities short within five business days before the pricing of public offerings and then covered the short positions with securities purchased in the offerings ("offering stock"). The Fund's profits on these transactions totaled \$169,773.

Legal Discussion

3. Rule 105 of Regulation M, "Short Selling in Connection With a Public Offering," prohibits covering a short sale with securities obtained in a public offering if the short sale occurred within five business days before the pricing of the offering (the "Rule 105 restricted period"). 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(a)(1). Rule 105 is prophylactic, and prohibits the conduct irrespective of the short seller's intent in effecting the short sale.¹

¹ Recent interpretive guidance by the Commission provides that "where the transaction is structured such that there is no legitimate economic purpose or substance to the contemporaneous purchase and sale, no genuine change in beneficial ownership, and/or little or no market risk, that transaction may be a sham transaction." In an example of a such a transaction, "a trader effects pre-pricing short sales during the Rule 105 restricted period, receives offering shares, sells the offering shares into the open market, and then contemporaneously or nearly contemporaneously purchases an equivalent number of the same class of shares as the offering shares, which are then used to cover the short sales." Short Sales, Exchange Act Release No. 50103 (Sept. 7, 2004).

Findings

4. On one occasion, Oaktree established a short position within the Rule 105 restricted period and covered the short position with shares it purchased in a follow-on offering of Research In Motion Ltd. (NASDAQ: RIMM).

5. On January 7, 2004, RIMM announced a follow-on offering of 10,500,000 shares of its common stock. Oaktree submitted an indication of interest to the lead underwriter to purchase shares in the RIMM offering. After the market closed on January 14, 2004, the shares were priced at \$78.25 per share.

6. Within five business days before the pricing of the offering, Oaktree increased its existing 35,000 share short position to 75,500 shares by selling short an additional 40,500 shares in two separate transactions consisting of 10,900 shares at \$75.32 and 29,600 at \$76.85.

7. On January 15, 2004, Oaktree received a 50,000 share allocation of the RIMM offering at \$78.25 per share. Oaktree used the offering shares to cover the short position established within the Rule 105 restricted period. Oaktree did not realize any illegal profits from this transaction.

8. On three occasions, Oaktree created a boxed position by establishing a long position with shares purchased in a follow-on offering of an issuer while simultaneously maintaining a pre-pricing short position in the securities of the same issuer established during the Rule 105 restricted period. Oaktree then crossed the long and short position against each other resulting in a flat position in the issuer's stock.

9. These violations occurred in the follow-on offerings of Ameritrade Holding Corp. (NASDAQ: AMTD), Anteon International Corp. (NYSE: ANT) and Telesystem International Wireless, Inc. (NASDAQ: TIWI). These violations resulted in illegal profits of \$169,773.

10. An example of Oaktree crossing a follow-on offering boxed position is as follows: Oaktree participated in a follow-on offering of AMTD. The Registration Statement for an offering of 43,091,338 shares of AMTD common stock was filed with the Commission on October 31, 2003. The shares were priced after the close on November 13, 2003 at \$12.60 per share.

11. Prior to the close of the market on November 13, 2003, Oaktree sold short 100,900 shares of AMTD at \$12.76 per share.

12. On November 14, 2003, Oaktree received a 65,000 share allocation in the AMTD offering at \$12.60 per share, which resulted in a 65,000 share boxed position and an additional 35,900 share short position, which Oaktree subsequently covered.

13. On the same day, but after receiving its allocation, Oaktree executed a cross trade at \$12.50 per share. As a result, 65,000 shares of the short position that was established during the Rule 105 restricted period were covered with 65,000 shares of offering stock.

14. The trade was later recorded to the consolidated tape by a broker-dealer as a sale of 65,000 shares at \$12.50 per share and a buy cover of 65,000 shares at \$12.50 per share. This cross trade served no legitimate economic purpose and had no real market risk. The Fund realized illegal profits of \$10,400.

15. As a result of the conduct described above, Oaktree 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 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.”

Undertakings

Oaktree has undertaken to:

16. Adopt and implement written compliance policies and procedures reasonably designed to prevent violations of Regulation M of the federal securities laws, review those policies and procedures annually, and require the chief compliance officer to administer these policies and procedures.

IV.

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

² “Willfully” as used in this Order means intentionally committing the act which constitutes the violation, see *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000); *Tager v. SEC*, 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.

V.

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

Accordingly, it is hereby ORDERED:

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

B. It is further ORDERED that Oaktree shall, within 30 days of the entry of this Order, pay disgorgement and prejudgment interest in the total amount of \$175,928 and a civil money penalty in the amount of \$169,773 to the United States Treasury. Such payments 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 Oaktree Capital Management, LLC as a Respondent in these proceedings, the file number of these proceedings, copies of which cover letter and money order or check shall be sent to Peter H. Bresnan, Division of Enforcement, Securities and Exchange Commission, 450 5th Street N.W., Washington, D.C. 20549-0801.

C. Oaktree shall comply with the undertakings as enumerated in Section III above.

By the Commission.

Jonathan G. Katz
Secretary