

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 67279 / June 27, 2012

INVESTMENT ADVISERS ACT OF 1940
Release No. 3424 / June 27, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14928

In the Matter of

**HARBINGER CAPITAL
PARTNERS, 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 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 Harbinger Capital Partners, LLC (“Harbinger” 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 finds¹ that:

Summary

1. These proceedings arise out of three violations of Rule 105 of Regulation M of the Exchange Act by Harbinger, an investment adviser and hedge fund manager located in New York, New York. Rule 105 prohibits buying an equity security made available through a public offering, conducted on a firm commitment basis, from an underwriter or broker or dealer participating in the offering after having sold short the same security during the restricted period as defined therein.

2. Between April and June 2009, Harbinger purchased shares in three public offerings after having sold the same securities short during the restricted period. Harbinger's conduct resulted in unlawful profits of approximately \$857,950.

3. After an inquiry from the Commission, Harbinger self-reported two of the violative transactions.

4. During the relevant period, Harbinger provided no training to its employees concerning Rule 105, and it did not have any policies, procedures and controls in place sufficient to prevent or detect violations of Rule 105.

Respondent

5. Harbinger is a limited liability company organized in Delaware and based in New York, New York. Harbinger registered as an investment adviser with the Commission in March 2012. During the relevant time period, Harbinger managed a number of private investment funds, including Harbinger Capital Partners Master Fund I, Ltd. ("HCP Fund I"). Harbinger effected the trades that are the subject of these proceedings on behalf of HCP Fund I.

Legal Framework

6. Rule 105 prohibits short selling securities during a restricted period and then purchasing the same securities in a public offering. 17 C.F.R. § 242.105. *See Short Selling in Connection with a Public Offering*, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007)(effective Oct. 9, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Form 1-A or Form 1-E and ending with pricing. "The goal of Rule 105 is to promote offering prices that are based upon open market prices determined by supply and demand rather than artificial forces." *Final Rule: Short Sales*, Release No. 34-50103 (July 28, 2004; effective September 7, 2004). Because the Rule is prophylactic in nature, its prohibitions apply irrespective of a short seller's intent.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Harbinger's Transactions

7. On April 23, 2009, Harbinger sold a total of one million shares of U.S. Steel Corp. ("U.S. Steel") common stock short at prices ranging from \$27.1825 to \$27.71 per share. On April 27, 2009, Harbinger shorted another 500,000 shares of U.S. Steel at \$27.4693 per share. On April 28, 2009, U.S. Steel announced the pricing of a follow-on offering of 23.6 million shares of its common stock at \$25.50 per share. Harbinger received an allocation of 300,000 shares in this offering. Harbinger's profit on these transactions was \$570,150.

8. On June 4, 2009, Harbinger sold 200,000 shares of the common stock of Western Refining, Inc. ("Western Refining") short at a price of \$9.939 per share. Prior to the opening of the market on June 5, 2009, Western Refining announced the pricing of a follow-on offering of 20 million shares of its common stock at \$9.00 per share. Harbinger received an allocation of 1,510,000 shares in this offering. The difference between Harbinger's proceeds from the short sale of 200,000 shares of Western Refining stock and the cost of 200,000 shares acquired in the offering was \$187,800. Thus, Harbinger's profit on these transactions was \$187,800.

9. On June 11, 2009, Harbinger sold 100,000 shares of the common stock of Vulcan Materials, Inc. ("Vulcan Materials") short at a price of \$42.00 per share. After the close of business that day, Vulcan Materials announced the pricing of a follow-on offering of 11.5 million shares of its common stock at \$41.00 per share. Harbinger received an allocation of 100,000 shares in this offering. Harbinger's profit on the transactions was \$100,000.

Violations of Rule 105 of Regulation M

10. As a result of the conduct described above, Harbinger willfully violated Rule 105 of Regulation M under the Exchange Act on three separate occasions.²

11. In total, Harbinger's violations of Rule 105 resulted in profits of \$857,950.

Harbinger's Remedial Efforts

12. After Harbinger learned of its Rule 105 violations, it voluntarily provided training to its employees on Regulation M, and developed and implemented policies, procedures and controls to prevent or detect future Rule 105 violations. In determining to accept the Offer, the Commission considered Harbinger's remedial efforts and the cooperation it afforded the Commission staff in the investigation.

² 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)).

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Harbinger'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. Respondent Harbinger cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Harbinger is censured;

C. Harbinger shall within fourteen (14) days of the entry of this Order pay disgorgement in the amount of \$857,950, prejudgment interest in the amount of \$91,838, and a civil monetary penalty in the amount of \$428,975 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. § 3717. 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 Securities and Exchange Commission, Office of Financial Management, 100 F St., N.E., Stop 6042, Washington, D.C. 20549; and (D) submitted under cover letter that identifies Harbinger as a Respondent in these proceedings and the file number of these proceedings. A copy of that cover letter and proof of payment shall be sent to Conway T. Dodge, Jr., Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Mail Stop 6561A, Washington, D.C. 20549.

By the Commission.

Elizabeth M. Murphy
Secretary