

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 51707 / May 19, 2005**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 2384 / May 19, 2005**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-11927**

**In the Matter of**

**DB INVESTMENT MANAGERS,  
INC.,**

**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 DB Investment Managers, Inc. (“DBIM”), a subsidiary of Deutsche Bank AG.

**II.**

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

#### **Respondent**

1. DBIM is a Summit, New Jersey-based investment adviser that was founded in 1972. It is registered with the Commission as an investment adviser and manages the following hedge fund and bank commingled funds: BTOP Multi-Strategy Master Portfolio Ltd., Pyramid Diversified Cash Fund and Pyramid Equity Strategies Fund. At all relevant times, DBIM has had full discretion to make investment decisions for the assets of these funds which were allocated to DBIM for management.

#### **Summary**

2. On three occasions from January 1, 2001 to May 31, 2004, DBIM sold securities short within five business days before the pricing of three separate public offerings and then covered the short positions with securities purchased in the offerings. These transactions occurred in three of DBIM's funds. These three funds made profits on these transactions which totaled \$15,585.

#### **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.

#### **Findings**

4. During the relevant period, DBIM engaged in short selling and covering transactions prohibited under Rule 105 in connection with its purchase of securities in three follow-on offerings: Anteon International Corp. (NYSE: ANT), Polo Ralph Lauren Corp. (NYSE: RL) and Verint Systems, Inc. (NASDAQ: VRNT).

5. On the pricing date for each offering, but prior to any sale transactions in the relevant securities, DBIM submitted a tiered indication of interest to the lead underwriter demonstrating DBIM's willingness to purchase various amounts of offering stock depending on

the ultimate price of the offering. DBIM then sold short shares of the issuer, which represented a portion of its anticipated allocation in the deal.

6. An example of DBIM selling a portion of its anticipated allotment is as follows: DBIM participated in a follow-on offering of RL. On February 27, 2002, RL announced an offering of 12,650,000 shares of its common stock. After the close of trading on May 8, 2002, the shares were priced at \$26.50 per share.

7. On the morning of May 8, 2002, DBIM submitted an indication of interest to the lead underwriter to purchase shares of the offering. Later that day, DBIM sold short 25,500 shares at \$27.05 per share. With no open stock position in RL at the time of this transaction, however, the order was improperly marked as a long sale, but should have been marked short. Thus, DBIM's trade established a short position of 25,500 RL shares.

8. The following day, May 9, 2002, DBIM received its 175,000 share allocation of the RL offering. Later that day, DBIM used 25,500 of the offering shares to cover its short position established within the Rule 105 restricted period. The violation resulted in a profit of \$14,025.

9. As a result of the conduct described above, DBIM willfully<sup>1</sup> violated Regulation M, Rule 105 thereunder, 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 within five business days before the pricing of the offered securities and ending with the pricing."

### **Undertakings**

DBIM has undertaken to:

10. 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 DBIM and cooperation afforded the Commission staff.

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<sup>1</sup> "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 DBIM's Offer.

Accordingly, it is hereby ORDERED:

A. Pursuant to Section 21C of the Exchange Act, Respondent DBIM 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 Respondent DBIM shall, within 30 days of the entry of this Order, pay disgorgement and prejudgment interest in the total amount of \$17,574 and a civil money penalty in the amount of \$15,585 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 DB Investment Managers, Inc. 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. DBIM shall comply with the undertakings as enumerated in Section III above.

By the Commission.

Jonathan G. Katz  
Secretary