

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98775 / October 19, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21783

In the Matter of

ANSON ADVISORS INC.

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Anson Advisors Inc. (“AAI” 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 Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing 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:

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.

Summary

1. These proceedings concern AAI's violations of Rule 105 of Regulation M [17 C.F.R. § 242.105] ("Rule 105") through transactions on behalf of certain of its private fund clients (each, an "Anson Fund" and collectively, the "Anson Funds") occurring in December 2019, June 2020, and April 2021.¹ In total, AAI's conduct resulted in profits by the Anson Funds of \$2,469,109.11.

Respondent

2. AAI is a corporation organized under the laws of Ontario, Canada, located in Ontario, Canada, and registered with the Ontario Securities Commission. AAI is an investment adviser and co-advises the Anson Funds, among other private fund clients. AAI has reported to the Commission as an exempt reporting adviser since 2013.

Facts

3. Rule 105 makes it unlawful for a person to purchase equity securities from an underwriter, broker or dealer participating in a covered public offering if that person sold short the security that is the subject of the offering during the restricted period as defined in the rule, absent meeting the conditions of an exception. 17 C.F.R. § 242.105(a); 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 Exchange Act Form 1-A or 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

4. The Commission adopted Rule 105 "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent. Id.

5. Rule 105 provides an exception for a "bona fide purchase" so that persons can purchase offered securities even if they sell short during the Rule 105 restricted period if they make a purchase equivalent in quantity to the amount of the restricted period short sale(s) prior to pricing. See 72 Fed. Reg. 45094, 45097. The bona fide purchase exception ("BFP Exception") allows a person who has shorted the securities that are the subject of the offering during the Rule 105 restricted period to participate in the offering if the person makes a bona fide purchase(s) of the security that is the subject of the offering that is at least equivalent in quantity to the entire amount of the Rule 105 restricted period short sale(s), effected during regular trading hours, reported to an "effective transaction reporting plan" (as defined in Rule 600(b)(30) of Regulation NMS), and effected after the last Rule 105 restricted period short sale, and no later than the business day prior to the day of pricing. 17 C.F.R. § 242.105(b)(1)(i). In addition, to rely on the BFP Exception, such person must not have effected a short sale, that is reported to an effective transaction reporting plan, within the 30 minutes prior to the close of regular trading hours (as

defined in Rule 600(b)(77) of Regulation NMS) on the business day prior to the day of pricing. See 17 C.F.R. § 242.105(b)(1)(ii). As set forth in Rule 100 of Regulation M, 17 CFR § 242.100, the term “business day” refers to a 24-hour period determined with reference to the principal market for the securities to be distributed, and that includes a complete trading session for that market. The conditions of the BFP Exception—that (i) the person effect the bona fide purchase during regular trading hours and (ii) that the bona fide purchase be reported pursuant to an effective transaction reporting plan—are designed to ensure transparency of the activity to the market so that the effects of the purchase can be reflected in the security’s market price prior to the pricing of the offering. See 72 Fed. Reg. 45094, 45097.

6. On June 23, 2020, American Airlines Group Inc. (“American Airlines”) conducted a follow-on equity offering (“American Airlines Offering”). The restricted period in connection with the American Airlines Offering was from June 16–22, 2020 (“American Airlines Restricted Period”).

7. During the American Airlines Restricted Period, AAI directed short sales of 750,000 shares of American Airlines common stock for three of the Anson Funds, resulting in net proceeds of \$11,998,766.75, after brokerage fees and commissions, and at an average price per share of \$15.9984 (“American Airlines Short Sales”).

8. In the afternoon of Monday, June 22, 2020, after reviewing its trading history and based on an incorrect understanding of the BFP Exception, AAI directed the purchase of 750,000 shares of American Airlines common stock for the three Anson Funds. To meet the conditions of the BFP Exception for the American Airlines Short Sales and American Airlines Offering purchases, AAI would have had to purchase shares no later than Friday, June 19, 2020.

9. On June 23, 2020, based on the same incorrect understanding of the BFP Exception, AAI directed the purchase on behalf of four of the Anson Funds of 2,250,000 shares in the American Airlines Offering, at \$13.50 per share, and at a total cost of \$30,375,000. Because AAI had directed short sales in the same security during the American Airlines Restricted Period, the purchase of these shares violated Rule 105.

10. The difference between the price at which the Anson Funds sold short shares of American Airlines common stock during the restricted period and the price at which the Anson Funds purchased those shares in the American Airlines Offering was \$1,812,545.35. The Anson Funds also improperly received a benefit of \$596,356.63 by purchasing the incremental 1,551,000 American Airlines Offering shares at a discount from American Airlines’ market price. Thus, the Anson Funds received total profits of \$2,408,901.98 by participating in the American Airlines Offering.

11. In December 2019 and April 2021, AAI engaged in trading in two other securities on behalf of certain Anson Funds that violated Rule 105, based on the same misapplication of the BFP Exception. The Anson Funds profited by approximately \$60,207.13 from these two transactions.

12. AAI's violations of Rule 105 resulted in profits to the Anson Funds of \$2,469,109.11. AAI has represented to the Commission staff that it is currently in possession of the amounts subject to disgorgement.

13. AAI has since undertaken certain remedial steps, including updating and revising its Rule 105 policies and procedures to prevent future Rule 105 violations, including those related to the BFP Exception.

Violations

14. As a result of the conduct described above, AAI violated Rule 105 of Regulation M under the Exchange Act.

Disgorgement and Civil Penalties

15. The disgorgement and prejudgment interest ordered in paragraph IV.B is consistent with equitable principles, does not exceed the net profits from Respondent's violations, and returning the money to Respondent would be inconsistent with equitable principles. Therefore, in these circumstances, distributing disgorged funds to the U.S. Treasury is the most equitable alternative. The disgorgement and prejudgment interest ordered in paragraph IV.B shall be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

IV.

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

Accordingly, it is hereby ORDERED that:

- A. Pursuant to Section 21C of the Exchange Act, Respondent AAI cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M under the Exchange Act.
- B. Respondent AAI shall, within 10 days of the entry of this Order, pay disgorgement of \$2,469,109.11 and prejudgment interest of \$261,285.30 and a civil money penalty of \$600,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment of the civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Anson Advisors Inc. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Samantha Martin, Division of Enforcement, Securities and Exchange Commission, 801 Cherry St., 19th Floor Fort Worth, Texas 76102.

- C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary