

SEC Enforcement Case Summary Atlas Financial Marketing Rule Violations

On December 19, 2024, the SEC charged Hong Kong investment adviser Snow Lake Capital (HK) Limited) with violations of Rule 105 of Regulation M under the Securities Exchange Act. Snow Lake agreed to pay disgorgement of more than \$2 million with interest and a \$525,000 penalty in the settled action.

According to the SEC order, between December 2020 and April 2021, Snow Lake purchased, on behalf of private fund and other advisory clients' accounts, American Depository Shares ("**ADSs**") in five offerings by public companies, after effecting short sales in the ADSs of the same issuers on behalf of one or more of its advisory client accounts during the applicable Rule 105 restricted periods, without meeting the conditions of an exception. As a result, the SEC claimed that Snow Lake's advisory clients gained approximately \$14 million, and Snow Lake received \$1,693,582 in ill-gotten performance fees.

Rule 105 makes it unlawful for any 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 Rule 105, typically five business days before the pricing of the offered securities, absent meeting the conditions of an exception. While Rule 105 is intended to ensure that secondary and follow-on offering prices are determined by independent market dynamics and not by potentially manipulative activity. However, it is enforced on a strict liability basis, irrespective of the short seller's intent.

The SEC noted in its release that the funds that received the ill-gotten gains from such transactions had distributed the gains to investors. The owner of Snow Lake was an investor in the two private funds and received approximately \$150,000 in ill-gotten gains from the trades were returned to Snow Lake. The SEC recognized Snow Lake's cooperation in self-reporting three of the five violative trades after the SEC began its investigation.

This case appears to have involved straightforward violations. However, it serves as a reminder for private funds managers and other investment advisers to ensure that their policies and procedures include effective controls to prevent both clear and inadvertent Rule 105 violations, particularly where more than one investment team is engaged in activities and may not have visibility into prior shorting activity before pursuing a secondary or follow-on offering in an issuer.

See Summary - <https://www.sec.gov/files/litigation/admin/2024/34-102001.pdf>