

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 4015 / February 4, 2015**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16369**

<p><b>In the Matter of</b></p> <p style="text-align:center"><b>Arete Ltd.,</b></p> <p><b>Respondent.</b></p>
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**ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS PURSUANT  
TO SECTIONS 203(e) AND 203(k) 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 Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Arete Ltd. (“Arete” or “Respondent”).

**II.**

After an investigation, the Division of Enforcement alleges that:

**A.     RESPONDENT**

1.       Arete d/b/a Sky Peak Capital Management, is a Wyoming limited liability company, and filed its initial Form ADV with the Commission in November 2012. Arete’s principal office and place of business is in Irvine, California.

**B.     IMPROPER REGISTRATION AND FALSE FORM ADV FILINGS**

1.       In 2011, the Advisers Act was amended to increase the threshold for an investment adviser’s assets under management required for registration with the Commission effective March 2012.<sup>1</sup> Registration with the Commission was still

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<sup>1</sup> Previously, Section 203A of the Advisers Act prohibited investment advisers from registering with the Commission unless they managed at least \$25 million in assets or met a designated exemption. Effective July 21, 2011, Section 203A increased the minimum amount of assets under management for most advisers to qualify for SEC registration from \$25 million to \$100 million. See Advisers Act Section 203A(a)(2) amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010); *Final Rule*;

required, however, for advisers not regulated by the states where they maintained their principal offices and places of business. Currently, Wyoming is the only state that does not regulate investment advisers. So any investment adviser with a principal office and place of business in Wyoming, regardless of its assets under management, is required to register with the Commission.

2. Rule 222-1(b) under the Advisers Act states that the principal office and place of business of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

3. In September 2012, the initial owner of Arete formed the company as a for profit corporation in Wyoming. On November 27, 2012, Arete made its initial filing with the Commission on Form ADV. In Part 1A, Items 1F and 2A of the Form ADV, Arete claimed its principal office and place of business was in Cheyenne, Wyoming, and based its registration with the Commission on its Wyoming location. Arete made the same representations about its principal office and place of business and basis for registration in its amendments to Form ADV filed on July 26, 2013, August 2, 2013, and October 2, 2013. Arete stopped conducting business in late 2013 and has not made any filings with the Commission since then.

4. No officer, partner, or manager of Arete directed, controlled, or coordinated the activities of Arete from Wyoming and Arete did not conduct any investment advisory business out of Wyoming. Arete's operations were conducted out of California. Because Arete did not have a principal office or place of business in Wyoming and had no other basis for Commission registration, it was prohibited from registering with the Commission as an investment adviser.

5. On February 28, 2013, the Securities Commissioner for the State of Colorado filed a complaint against the chief compliance officer ("CCO") of Arete, among others, for carrying out a scheme to defraud investors through the use of investments in a so-called "private equity fund." Arete's CCO was charged with violating Section 11-51-301, C.R.S, for the offer or sale of unregistered securities; Section 11-51-401, C.R.S., for acting as an unlicensed sales representative; and Section 11-51-501(1), C.R.S., for securities fraud. On December 9, 2013, Arete's CCO entered into a stipulation, on a neither admit nor deny basis, for an order of permanent injunction and other relief in connection with that case. On December 30, 2013, an order was entered granting the permanent injunction and other relief based on the alleged violations in the complaint.

6. Respondent did not amend its Form ADV to disclose in Part 1A, Item 11 the complaint filed against Arete's CCO, nor did it disclose in Part 2A, Item 9 the December 30, 2013 order entered against Arete's CCO.

### C. VIOLATIONS

1. As a result of the conduct described above, Arete willfully violated Section 203A of the Advisers Act by improperly registering with the Commission.

2. As a result of the conduct described above, Arete willfully violated Section 207 of the Advisers Act which makes it “unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein.” Respondent misstated Arete’s principal office and place of business.

3. As a result of the conduct described above, Arete willfully violated Section 204(a) of the Advisers Act and Rules 204-1(a)(1) and (2) thereunder, which require that investment advisers amend Forms ADV at least annually and more frequently if required by the instructions to Form ADV. The Form ADV instructions require that amendments to the Form ADV be filed promptly if information provided in response to Part 1A, Item 11 or Part 2A become materially inaccurate. Respondent failed to file any amendments to Arete’s Forms ADV Part 1A disclosing the complaint filed against Arete’s CCO by the Colorado Securities Commissioner, or any amendments to its Form ADV Part 2A disclosing the order entered against Arete’s CCO by the Colorado district court.

### III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(e) of the Advisers Act including, but not limited to, a civil penalty pursuant to Section 203 of the Advisers Act; and

C. Whether, pursuant to Section 203(k) of the Advisers Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 203A, 204(a), and 207 of the Advisers Act and Rules 204-1(a)(1) and (2) thereunder.

### IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an

Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields  
Secretary