

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

**SECURITIES EXCHANGE ACT OF 1934**

**Release No. 55728 / May 9, 2007**

**INVESTMENT ADVISERS ACT OF 1940**

**Release No. 2601 / May 9, 2007**

**ADMINISTRATIVE PROCEEDING**

**File No. 3-12632**

**In the Matter of**

**AMARANTH ADVISORS L.L.C.,**

**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 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 Amaranth Advisors L.L.C. (“Amaranth” 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, 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 (“Advisers Act”) (“Order”), as set forth below.

### **III.**

On the basis of this Order and Respondent’s Offer, the Commission finds that:

#### **Respondent**

1. Amaranth Advisors L.L.C., a Delaware limited liability company which has its headquarters and principal place of business in Greenwich, Connecticut, is an unregistered investment adviser to five hedge funds. At all times, Amaranth has had full discretion to make investment decisions for the funds it advises.

#### **Summary**

2. In connection with five follow-on offerings conducted between November 2004 and February 2005, Amaranth sold securities short during the five business days before the pricing of those offerings and then covered the short positions with securities purchased in the offerings (“offering shares”). These transactions violated Rule 105 of Regulation M, and resulted in funds advised by Amaranth making profits of \$507,627.

#### **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 the Rule 105 restricted period, which is the shorter of (1) the period five business days before pricing and ending with pricing or (2) the period beginning with the initial filing of the registration statement or notification on Form 1-A and ending with pricing (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 persons 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. Interpretative guidance by the Commission provides that “where the transaction is structured such that there is no legitimate economic purpose or substance to the contemporaneous purchase and sale, no genuine change in beneficial ownership, and/or little or no market risk, that transaction may be a sham transaction that violates Rule 105.” *Short Sales*, Exchange Act Release

No. 50103 (September 7, 2004). In an example of such a transaction, “a trader effects pre-pricing short sales during the Rule 105 restricted period, receives offering shares, sells the offering shares in to the open market, and then contemporaneously or nearly contemporaneously purchases an equivalent number of the same class of shares as the offering shares, which are then used to cover the short sales.” *Id.*

### **Amaranth’s Trades**

4. Coeur D’Alene Mines Corp. (NYSE: CDE) announced a follow-on offering on November 12, 2004, and priced the offering on November 18, 2004. During the Rule 105 restricted period, funds advised by Amaranth sold short 1,269,900 Coeur D’Alene shares and purchased 2,500,000 shares in the offering. Those funds used 1,269,900 of the offering shares to cover short positions created during the Rule 105 restricted period and made profits of \$449,481.

5. Catapult Communications Corp. (NASDAQ: CATT) announced and priced a follow-on offering on November 10, 2004, pursuant to a shelf registration. During the Rule 105 restricted period, and before the offering was priced and announced, funds advised by Amaranth had sold short 10,000 shares and purchased 8,582 shares of Catapult stock. These transactions resulted in a net short position of 1,418 shares created during the Rule 105 restricted period. Funds advised by Amaranth purchased 10,000 shares in the offering, and used 1,418 of those shares to cover the short position resulting from its trading during the Rule 105 restricted period. Funds advised by Amaranth made profits of \$2,113 in covering short positions with shares received in the offering.

6. Cleco Corp. (NYSE: CNL) announced and priced a follow-on offering on November 9, 2004, pursuant to a shelf registration. During the Rule 105 restricted period, and before the offering was priced and announced, funds advised by Amaranth had sold short 6,000 shares and purchased 5,000 shares of Cleco stock. These transactions resulted in a net short position of 1,000 shares. Funds advised by Amaranth purchased 80,000 shares in the offering, and used 1,000 of those shares to cover the short position resulting from its trading during the Rule 105 restricted period. Funds advised by Amaranth made profits of \$290 in covering short positions with shares received in the offering.

7. MEMC Electronic Materials, Inc. (NYSE: WFR) announced a follow-on offering on February 3, 2005, and priced the offering on February 16, 2005. During the Rule 105 restricted period, funds advised by Amaranth created a net short position of 101,300 shares. Funds advised by Amaranth purchased 250,000 shares in the offering. On February 17 and 18, 2005, after purchasing the offering shares, Amaranth engaged in a series of open market purchases and sales of MEMC stock. These open market purchases and sales were contemporaneous or nearly contemporaneous and resulted in Amaranth no longer holding any offering shares and covering the short position of 101,300 shares created during the Rule 105 restricted period. Funds advised by Amaranth made profits of \$36,859 from these trades.

8. American Superconductor Corporation (NASDAQ: AMSC) announced a follow-on offering on January 11, 2005, and priced the offering on February 23, 2005. During the Rule 105 restricted period, funds advised by Amaranth sold short 32,600 shares of American Superconductor stock. Funds advised by Amaranth purchased 150,000 shares in the offering. On February 28, 2005, after purchasing the offering shares, Amaranth engaged in a series of open market purchases and sales of American Superconductor stock. These open market purchases and sales were contemporaneous or nearly contemporaneous and resulted in Amaranth no longer holding any offering shares and covering the short position of 32,600 shares created during the Rule 105 restricted period. With respect to the open market transactions, Amaranth began selling shares of American Superconductor on February 28, 2005 at 10:34 a.m. and completed the sale of its shares that day by 10:47 a.m. While it was selling these shares, Amaranth began purchasing shares of American Superconductor at 10:39 a.m. and finished buying American Superconductor shares at 10:56 a.m. Funds advised by Amaranth made profits of \$18,883 from these trades.

### **Amaranth's Violations**

9. As a result of the conduct described above, Amaranth willfully<sup>1</sup> violated Rule 105 of Regulation M, 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 an 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.”

### **Amaranth's Remedial Efforts**

10. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

## **IV.**

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

Accordingly, it is hereby ORDERED that:

A. Respondent Amaranth cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M.

B. Respondent Amaranth be, and hereby is, censured.

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<sup>1</sup> “Willfully” as used in this Order means intentionally committing the act which constitutes the violations, Cf. Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000). There is no requirement that the actor also be aware that he is violating one of the Rules or Acts.

C. IT IS FURTHERED ORDERED that Respondent shall, within 30 days of the entry of this Order, pay disgorgement of \$507,627, prejudgment interest in the amount of \$59,192, and a civil money penalty of \$150,000 to the United States Treasury. Such payment 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, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies Amaranth as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Kenneth Lench, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street N.E., Washington, D.C. 20549.

D. 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 it shall not, after offset or reduction in any Related Investor Action based upon Respondent's payment of disgorgement in this action, argue that it is entitled to, nor shall it further benefit by offset or reduction 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 United States Treasury or to a Fair Fund, as the Commission directs. 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 the 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.

Nancy M. Morris  
Secretary