

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70397 / September 16, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15481

In the Matter of

**POLO CAPITAL
INTERNATIONAL
GESTAO DE
RECURSOS LTDA.**

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 AND CIVIL
PENALTY**

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 Polo Capital International Gestão de Recursos Ltda. (“Polo Capital” 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 and Civil Penalty (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by Polo Capital, a Brazilian-based investment adviser. Rule 105 prohibits buying an equity security made available through a public offering, conducted on a firm commitment basis, from an underwriter or broker or dealer participating in the offering after having sold short the same security during the restricted period as defined therein.

2. In March 2011, Polo Capital bought offered shares from an underwriter or broker or dealer participating in a follow-on public offering after having sold short the same security during the restricted period. This violation resulted in profits of \$191,833.

Respondent

3. Polo Capital International Gestão de Recursos Ltda. a/k/a Polo Capital Management is a Brazilian company organized under the laws of Brazil as a Brazilian Sociedade Limitada with its principal place of business in Rio de Janeiro, Brazil. Since March 2012, Polo Capital has had exempt adviser reporting status with the Commission; it was not registered with the Commission at the time of the violations. Polo Capital is the investment adviser to two offshore funds and has over \$259 million in assets under management.

Legal Framework

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

5. "The goal of Rule 105 is to promote offering prices that are based upon open market prices determined by supply and demand rather than artificial forces." Final Rule: Short Sales, Exchange Act Release No. 50103. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale.

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.

Polo Capital's Violations of Rule 105 of Regulation M

6. From March 21, 2011 through March 22, 2011, Polo Capital sold short 91,628 shares of YPF S.A., Inc. ("YPF") during the restricted period at an average price of \$43.0241 per share. On March 23, 2011, YPF announced the pricing of a follow-on offering of its common stock at \$41.00 per share. Polo Capital received an allocation of 110,000 shares in that offering. The difference between Polo Capital's proceeds from the restricted period short sales of YPF shares and the price paid for the 91,628 shares received in the offering was \$185,463.90. Respondent also improperly obtained a benefit of \$6,369.57 by purchasing the remaining 18,372 shares at a discount from YPF's market price. Thus, Polo Capital's participation in the YPF offering netted total profits of \$191,833.47.

7. In total, Polo Capital's violation of Rule 105 resulted in profits of \$191,833.47.

Violations

8. As a result of the conduct described above, Polo Capital violated Rule 105 of Regulation M under the Exchange Act.

Polo Capital's Remedial Efforts

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

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Polo Capital cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Polo Capital shall within fourteen (14) days of the entry of this Order, cause to pay disgorgement of \$191,833, prejudgment interest of \$ 14,887.51, and a civil money penalty in the amount of \$76,000 (for a total of \$282,720.51) to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payments 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
- (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 Polo Capital 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 Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.

Elizabeth M. Murphy
Secretary

² The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, respondents must make payments pursuant to options (2) or (3) above.