

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 70411 / September 16, 2013**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15486**

**In the Matter of**

**WAR CHEST CAPITAL  
PARTNERS LLC,**

**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 War Chest Capital Partners LLC (“War Chest” 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 finds<sup>1</sup> that:

#### **Summary**

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by War Chest, a New York-based private equity firm. 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. On seven occasions, from November 2010 through September 2011, War Chest 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. These violations collectively resulted in profits of \$187,036.

#### **Respondent**

3. War Chest Capital Partners LLC is a Delaware limited liability company, which was incorporated on March 30, 2009, with its principal place of business in New York, New York. The company provides advisory services to one domestic fund with total assets under management of approximately \$8,000,000. It is not a registered investment adviser.

#### **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.

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<sup>1</sup> 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.

## **War Chest's Violations of Rule 105 of Regulation M**

6. On November 8, 2010, War Chest sold short 11,000 shares of BlackRock Inc. ("BLK") during the restricted period at a price of \$169.2811 per share. On November 8, 2010, BLK announced the pricing of a follow-on offering of its common stock at \$163.00 per share. War Chest received an allocation of 31,375 shares in that offering. The difference between War Chest's proceeds received from the restricted period short sales of BLK shares and the price paid for the 11,000 shares received in the offering was \$69,092.11. Respondent also improperly obtained a benefit of \$54,849.50 by purchasing the remaining 20,375 shares at a discount from BLK's market price. Thus, War Chest's participation in the BLK offering netted total profits of \$123,941.60.

7. On December 14, 2010, War Chest sold short 15,000 shares of HCP Inc. ("HCP") during the restricted period at an average price of \$33.32 per share. On December 14, 2010, HCP announced the pricing of a follow-on offering of its common stock at \$32 per share. War Chest received an allocation of 18,600 shares in that offering. The difference between War Chest's proceeds received from the restricted period short sales of HCP shares and the price paid for the 15,000 shares received in the offering was \$19,800.00. Respondent also improperly obtained a benefit of \$6,388.92 by purchasing the remaining 3,600 shares at a discount from HCP's market price. Thus, War Chest's participation in the HCP offering netted total profits of \$26,188.92.

8. On December 15, 2010, War Chest sold short 12,500 shares of Cloud Peak Energy Inc. ("CLD") during the restricted period at an average price of \$20.0180 per share. On December 15, 2010, CLD announced the pricing of a follow-on offering of its common stock at \$19.50 per share. War Chest received an allocation of 16,100 shares in that offering. The difference between War Chest's proceeds received from the restricted period short sales of CLD shares and the price paid for the 12,500 shares received in the offering was \$6,475.00. Respondent also improperly obtained a benefit of \$1,033.56 by purchasing the remaining 3,600 shares at a discount from CLD's market price. Thus, War Chest's participation in the CLD offering netted total profits of \$7,508.56.

9. On April 11, 2011, War Chest sold short 5,000 shares of Cobalt International Energy Inc. ("CIE") during the restricted period at a price of \$15.04 per share. On April 11, 2011, CIE announced the pricing of a follow-on offering of its common stock at \$14 per share. War Chest received an allocation of 20,630 shares in that offering. The difference between War Chest's proceeds received from the restricted period short sales of CIE shares and the price paid for the 5,000 shares received in the offering was \$5,200.00. Respondent also improperly obtained a benefit of \$1,178.50 by purchasing the remaining 15,630 shares at a discount from CIE's market price. Thus, War Chest's participation in the CIE offering netted total profits of \$6,378.50.

10. On May 11, 2011, War Chest sold short 7,500 shares of NorthStar Realty Finance Co. ("NRF") during the restricted period at a price of \$4.6654 per share. On May 11, 2011, NRF announced the pricing of a follow-on offering of its common stock at \$4.25 per share. War Chest received an allocation of 42,880 shares in that offering. The difference between War Chest's proceeds received from the restricted period short sales of NRF shares and the price paid for the 7,500 shares received in the offering was \$3,115.50. Respondent also improperly obtained a

benefit of \$4,355.28 by purchasing the remaining 35,380 shares at a discount from NRF's market price. Thus, War Chest's participation in the NRF offering netted total profits of \$7,470.78.

11. On July 14, 2011, War Chest sold short 3,000 shares of Spectrum Brands Holdings Inc. ("SPB") during the restricted period at a price of \$28.5760 per share. On July 15, 2011, SPB announced the pricing of a follow-on offering of its common stock at \$28.00 per share. War Chest received an allocation of 15,600 shares in that offering. The difference between War Chest's proceeds from the restricted period short sales of SPB shares and the price paid for the 3,000 shares received in the offering was \$1,728.00. Thus, War Chest's participation in the SPB offering netted total profits of \$1,728.00.

12. On September 20, 2011 and September 21, 2011, War Chest sold short 84,370 shares of NewCastle Investment Corp. ("NCT") during the restricted period at an average price of \$4.7138 per share. On September 21, 2011, NCT announced the pricing of a follow-on offering of its common stock at \$4.55 per share. War Chest received an allocation of 176,935 shares in that offering. The difference between War Chest's proceeds from the restricted period short sales of NCT shares and the price paid for the 84,370 shares received in the offering was \$13,819.81. Thus, War Chest's participation in the NCT offering netted total profits of \$13,819.81.

13. In total, War Chest's violations of Rule 105 resulted in profits of \$187,036.17.

#### **Violations**

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

#### **War Chest's Remedial Efforts**

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

#### **IV.**

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

Accordingly, it is hereby ORDERED that:

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

B. War Chest shall pay disgorgement of \$187,036.17, prejudgment interest of \$10,533.18, and a civil money penalty in the amount of \$130,000 (for a total of \$327,569.35) to the United States Treasury. Payments shall be made in the following installments:

1. \$65,000.35 on the day of entry of this Order;
2. \$65,000 within 90 days of entry of this Order;
3. \$65,000 within 180 days of entry of this Order;
4. \$65,000 within 270 days of entry of this Order
5. \$67,569, plus post-judgment interest on the payments described in Section IV.B.1-4 pursuant to SEC Rule of Practice 600, within 360 days of entry of this Order.

Prior to making the payment described in Section IV.B.5., Respondent shall contact the Commission staff to ensure the inclusion of post-judgment interest. If any payment is not made by the date the payment is required by Section IV.B.1-5 of this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. 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;<sup>2</sup>
- (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 War Chest 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

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<sup>2</sup> 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.