

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 73063 / September 10, 2014**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16092**

**In the Matter of**

**Security Capital Research &  
Management Incorporated,**

**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 Security Capital Research & Management Incorporated (“SCRM” 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 Respondent 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 the beneficial ownership reporting requirements of the federal securities laws. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR and posted on the company's website to facilitate rapid dissemination to the public.

2. SCRM failed to file on a timely basis multiple required Section 16(a) reports of transactions in the securities of Ashford Hospitality Trust, Inc. ("Ashford") it executed on behalf of an affiliated private fund it managed that held beneficial ownership of greater than 10% of Ashford's registered class of common stock.

#### **Respondent**

3. SCRM, a Delaware corporation headquartered in Illinois, has been registered with the Commission as an investment adviser since 1997 and provides investment management services focused exclusively on investments in real estate securities. SCRM serves as the investment adviser to an affiliated private fund, Security Capital Preferred Growth LLC, and its subsidiary, Security Capital Preferred Growth Incorporated (collectively "SCPG"). SCRM took responsibility for making all beneficial ownership filings on behalf of SCPG.

#### **Issuer**

4. Ashford is a Maryland corporation with its principal place of business in Texas. Ashford's common stock has been at all relevant times registered with the Commission under Section 12 and traded on the New York Stock Exchange (ticker: AHT).

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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.

## Applicable Legal Framework

5. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, “insiders”). For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term “beneficial owner” is defined by reference to Section 13(d) of the Exchange Act and the rules thereunder.<sup>2</sup> Under Section 13(d) of the Exchange Act, through the application of Rule 13d-3, “beneficial owner” is defined broadly to include “any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise” has or shares voting or investment power with respect to a registered equity security. More than one person may be a beneficial owner of the same securities. Because this definition of beneficial ownership includes persons who have both direct and indirect, as well as shared, voting and investment power, beneficial ownership by an entity is ordinarily also attributable to a control person of an entity and any parent company in a control relationship with such entity.<sup>3</sup>

6. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of

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<sup>2</sup> A limited exception under Rule 16a-1(a)(1) applies for certain qualified institutional investors, such as registered investment advisers and broker-dealers, to exclude any shares beneficially owned that are “held for the benefit of third parties or in customer or fiduciary accounts in the ordinary course of business” and “such shares are acquired ... without the purpose or effect of changing or influencing control of the issuer” (a “Qualified Institution”). A parent holding company or control person of a Qualified Institution may also exclude such shares if the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries and affiliates that are not Qualified Institutions, does not exceed 1% of the class of securities (a “Qualified Control Person”).

<sup>3</sup> See Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538, 1998 WL 7449, at \*7-8 (Jan. 12, 1998). If the organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are exercised independently, attribution may not be required for the purposes of determining the aggregate amount owned by the controlling persons if certain conditions concerning independence are met. Id.

transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer’s fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer’s most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions). There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.<sup>4</sup>

**Respondent Was a Cause of Violations of Section 16(a) by SCPG**

7. As of December 31, 2008, SCPG had beneficial ownership of approximately 7.4% of the registered class of common stock of Ashford, as reported on an amendment to Schedule 13G filed on behalf of SCPG.<sup>5</sup> SCPG became a greater 10% beneficial owner as of November 2009 solely due to share repurchases by Ashford that resulted in a decrease in the number of outstanding shares of common stock, as reported in Ashford’s Form 10-Q filed on November 6, 2009.

8. SCRM did not file until April 18, 2011 any of the required Section 16(a) reports on behalf of SCPG with respect to holdings and transactions executed beginning October 2010. The late reports include transactions executed on behalf of SCPG on the following dates that were required to be reported on Form 4 within two business days and primarily involved open-market sales and short sales of Ashford common stock having an aggregate market value of more than \$21 million:

<b><u>Form Type</u></b>	<b><u>Date of Trans.</u></b>	<b><u>Due Date</u></b>	<b><u>Date Filed</u></b>
4	10/19/2010	10/21/2010	4/18/2011

<sup>4</sup> See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at \*17–18 (June 5, 2009) (“A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]”); cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at \*1–2 (May 19, 1980) (“We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation”). Negligence is sufficient to establish liability for causing such violations. See KPMG Peat Marwick LLP, 74 SEC Docket 357, 2001 WL 47245, at \*19-20 (Jan. 19, 2001) (“[N]egligence is sufficient to establish ‘causing’ liability under Exchange Act Section 21C(a) ... in cases in which a person is alleged to ‘cause’ a primary violation that does not require scienter.”).

<sup>5</sup> The Schedule 13G amendment was filed pursuant to Section 13(d) of the Exchange Act and the rules promulgated thereunder, which require any person or group who directly or indirectly acquires beneficial ownership of more than 5% of a registered equity security to file a statement with the Commission disclosing certain information relating to such beneficial ownership.

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	11/4/2010	11/8/2010	4/18/2011
4	11/5/2010	11/9/2010	4/18/2011
4	11/8/2010	11/10/2010	4/18/2011
4	12/2/2010	12/6/2010	4/18/2011
4	12/3/2010	12/7/2010	4/18/2011
4	12/8/2010	12/10/2010	4/18/2011
4	12/9/2010	12/13/2010	4/18/2011
4	12/10/2010	12/14/2010	4/18/2011
4	12/13/2010	12/15/2010	4/18/2011
4	12/14/2010	12/16/2010	4/18/2011
4	2/2/2011	2/4/2011	4/18/2011
4	2/3/2011	2/7/2011	4/18/2011
4	2/4/2011	2/8/2011	4/18/2011
4	2/7/2011	2/9/2011	4/18/2011
4	2/8/2011	2/10/2011	4/18/2011
4	2/9/2011	2/11/2011	4/18/2011
4	2/10/2011	2/14/2011	4/18/2011
4	2/11/2011	2/15/2011	4/18/2011
4	2/14/2011	2/16/2011	4/18/2011
4	2/15/2011	2/17/2011	4/18/2011
4	2/16/2011	2/18/2011	4/18/2011
4	2/17/2011	2/22/2011	4/18/2011
4	2/18/2011	2/23/2011	4/18/2011
4	2/25/2011	3/1/2011	4/18/2011
4	2/28/2011	3/2/2011	4/18/2011
4	3/7/2011	3/9/2011	4/18/2011
4	3/8/2011	3/10/2011	4/18/2011
4	3/22/2011	3/24/2011	4/18/2011

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	3/23/2011	3/25/2011	4/18/2011
4	3/24/2011	3/28/2011	4/18/2011
4	3/25/2011	3/29/2011	4/18/2011
4	4/11/2011	4/13/2011	4/18/2011

9. The late-filed Section 16(a) reports were not made for more than two months after SCRM filed a Schedule 13G amendment on behalf of SCPG on February 11, 2011, stating that SCPG had beneficial ownership of 11.0% of the registered class of common stock of Ashford. SCRM also did not file on behalf of SCPG by February 14, 2011 a required Form 5 to report SCPG's transactions that should have been reported on Form 4 during Ashford's fiscal year 2010 but were not.

10. As a result of the conduct described above, Respondent SCRM was a cause of violations of Section 16(a) of the Exchange Act and Rule 16a-3 thereunder by SCPG.

#### **Respondent's Remedial Efforts**

11. In determining to accept Respondent's Offer, the Commission considered certain remedial acts 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 SCRM's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 16(a) of the Exchange Act and Rule 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$88,000 to the Securities and Exchange Commission, for transmission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. 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;
- (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 Security Capital Research & Management Incorporated 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 Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.

Jill M. Peterson  
Assistant Secretary