

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 64374 / May 2, 2011**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3191 / May 2, 2011**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14360**

**In the Matter of**

**Aristeia Capital, LLC,**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS  
PURSUANT TO SECTION 21C OF THE  
SECURITIES EXCHANGE ACT OF 1934  
AND SECTION 203(e) OF THE  
INVESTMENT ADVISERS ACT OF 1940,  
MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND A CEASE-  
AND-DESIST ORDER**

**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 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 Aristeia Capital, LLC (“Aristeia” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Aristeia 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 Administrative and

Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and Section 203(e) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

### III.

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

#### **Summary**

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by Aristeia, a registered investment adviser and hedge fund manager located in New York, New York. 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 a restricted period (generally defined as five business days before the pricing of the offering).

2. On four occasions, from January through June 2008, Aristeia 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 approximately \$1.2 million.

#### **Respondent**

3. Aristeia is a Delaware limited liability company located in New York, New York. The firm has been registered voluntarily with the Commission as an investment adviser since 2005 and currently manages approximately \$2.3 billion in investor assets.

4. During the relevant period, Aristeia managed two groups of hedge funds: onshore and offshore funds that followed convertible arbitrage, distressed debt and special situations investing strategies, and onshore and offshore funds that followed distressed debt and special situations strategies. Aristeia effected the trades that are the subject of these proceedings on behalf of funds that it managed. Although Aristeia managed multiple funds and employed several strategies, the trading at issue did not qualify for the “separate accounts” exception to Rule 105.

#### **Legal Framework**

5. As amended in 2007, Rule 105 of Regulation M provides in pertinent part:

In connection with an offering of equity securities for cash pursuant to a registration statement or a notification on Form 1-A . . . or Form 1-E . . . filed under the Securities Act of 1933 (“offered securities”), it shall be unlawful for any person to sell short . . . the security that is the subject of the offering and purchase the offered securities from an underwriter or broker or dealer participating in the offering if such short sale was effected during the period (“Rule 105 restricted period”) . . .

[b]eginning five business days before the pricing of the offered securities and ending with such pricing . . . .

17 C.F.R. § 242.105(a); Short Selling in Connection with a Public Offering, Exchange Act Release No. 56206, 72 Fed. Reg. 45,094, 45,107 (Aug. 10, 2007)(“Adopting Release”).

6. Rule 105 applies irrespective of the short seller’s intent in effectuating the short sale. “The prohibition on purchasing offered securities . . . provides a bright line demarcation of prohibited conduct consistent with the prophylactic nature of Regulation M.” Adopting Release at 45,096. The Commission adopted Rule 105 in an effort to prevent manipulative short selling prior to a public offering and, therefore, “to foster secondary and follow-on offering prices that are determined by independent market dynamics . . .” Id. at 45,094.

### **Aristeia’s Violations of Rule 105 of Regulation M**

7. On January 14, 2008, Aristeia sold short 35,200 shares of convertible preferred stock of Thornburg Mortgage Inc. (“TMA”). Later that day, after the market closed, a follow-on offering of TMA convertible preferred stock was priced at \$19.50 per share. Aristeia received an allocation of 750,000 shares in that offering. The difference between Aristeia’s proceeds from the restricted period short sales of TMA convertible preferred shares and the price for 35,200 TMA convertible preferred shares purchased in the offering was \$44,468. Aristeia also improperly obtained a benefit of \$220,158 by purchasing the remaining 714,800 offering shares at a discount from TMA convertible preferred shares’ market price.

8. On April 24, 28, and 29, 2008, Aristeia sold short a total of 60,300 shares of Citigroup Inc. On April 29, after the close of the market, Citigroup announced a follow-on stock offering. On April 30, 2008, before the market opened, the follow-on offering was priced at \$25.27 per share. Aristeia received an allocation of 250,000 shares in that offering. The difference between Aristeia’s proceeds from the restricted period short sales of Citigroup shares and the price for 60,300 Citigroup shares purchased in the offering was \$65,664. Aristeia also improperly obtained a benefit of \$32,249 by purchasing the remaining 189,700 offering shares at a discount from Citigroup shares’ market price.

9. On June 17 and 18, 2008, Aristeia sold short 45,000 shares of Energy Conversion Devices Inc. After the market closed on June 18, 2008, a follow-on offering of Energy Conversion shares was priced at \$72. The offering had two components: one component involved the issuer’s loan of shares to the underwriters to facilitate the creation of hedging short stock positions for participants in a concurrent convertible debt offering. The other component was a capital raising offering, which was conducted on a firm commitment basis. Aristeia participated in both components; its purchase of 75,000 shares in the capital raising component violated Rule 105. The difference between Aristeia’s proceeds from the restricted period short sales of Energy Conversion stock and the price for the 45,000 Energy Conversion shares purchased in the capital raising offering was \$115,350. Aristeia also improperly obtained a benefit of \$62,400 by purchasing the remaining 30,000 shares in the capital raising offering at a discount from Energy Conversion shares’ market price.

10. On June 20 and June 23, 2008, Aristeia sold short a total of 203,000 shares of CapitalSource Inc. After the market closed on June 23, 2008, a follow-on offering of CapitalSource shares was priced at \$11.00. Aristeia received an allocation of 1.2 million shares in that offering. The difference between Aristeia's proceeds from the restricted period short sales of CapitalSource stock and the price for 203,000 CapitalSource shares purchased in the offering was \$396,140. Aristeia also improperly obtained a benefit of \$285,142 by purchasing the remaining 997,000 offering shares at a discount from CapitalSource shares' market price.

11. In total, Aristeia's violations of Rule 105 resulted in profits of \$1,221,571.

### **Violations**

12. As a result of the conduct described above, Aristeia willfully<sup>1</sup> violated Rule 105 of Regulation M under the Exchange Act.

### **Aristeia's Remedial Efforts**

13. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Aristeia and cooperation it afforded the Commission staff.

## **IV.**

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

Accordingly, pursuant to Section 21C of the Exchange Act and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M under the Exchange Act.

B. Respondent is censured.

C. Respondent shall, within thirty (30) days of the entry of this Order, pay a civil penalty of \$400,000, disgorgement of \$1,221,571, and prejudgment interest of \$141,205 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. § 3717. Payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order;

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<sup>1</sup> A willful violation of the securities laws means merely “that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

(B) made payable to the Securities and Exchange Commission; (C) hand-delivered, wired, or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F Street, N.E., Mail Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Aristeia as a Respondent in these proceedings and the file number of these proceedings, a copy of which cover letter and money order, wire transfer, or check shall be sent to Andrew M. Calamari, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, New York, N.Y. 10281.

By the Commission.

Elizabeth M. Murphy  
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and Section 203(e) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), on the Respondent and its legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray  
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