

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 76140 / October 14, 2015**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 4227 / October 14, 2015**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16894**

**In the Matter of**

**WAR CHEST CAPITAL  
PARTNERS 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 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, prior to a hearing pursuant to the Commission’s Rules of Practice, 17 C.F.R. § 201.100 *et seq.*, 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, 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<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 selling short an equity security that is the subject of certain public offerings and purchasing the offered security from an underwriter or broker or dealer participating in the offering, if such short sale was effected during the restricted period as defined therein.

2. On seven occasions, from January 2011 through September 2011, War Chest bought offering 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 \$179,516.

#### **Respondent**

3. War Chest Capital Partners LLC is a Delaware limited liability company which, at all relevant times, had its principal place of business in New York, New York. During the period of violation, the company provided advisory services to one domestic fund with total assets under management of approximately \$8,000,000. At no time was it a registered investment adviser. On September 16, 2013, a prior settled Commission order was instituted, finding that War Chest violated Rule 105 in connection with seven offerings.<sup>2</sup>

#### **Legal Framework**

4. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker, or dealer participating in the 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 Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

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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.

<sup>2</sup> War Chest Capital Partners LLC, Exchange Act Release No. 70411 (September 16, 2013).

5. The Commission adopted Rule 105 “to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity.” 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller’s intent in effecting the short sale. Id.

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

6. On January 13, 2011, War Chest sold short 13,100 shares of American Capital Agency Corp. (“AGNC”) during the restricted period at an average price of \$28.7879 per share. On January 13, 2011, after the market close, AGNC priced a follow-on offering of its common stock at \$28 per share. War Chest received an allocation of 53,900 shares in that offering. The difference between War Chest’s proceeds received from the restricted period short sales of AGNC shares and the price paid for 13,100 shares received in the offering was \$10,321.49. Respondent also improperly received a benefit of \$31,611.84 by purchasing the remaining 40,800 shares at a discount from AGNC’s market price. Thus, War Chest’s participation in the 2011 AGNC offering resulted in total profits of \$41,933.33.

7. On March 28, 2011, War Chest sold short 33,000 shares of Energy Transfer Partners, LP (“ETP”) during the restricted period at an average price of \$50.6689 per share. On March 29, 2011, ETP priced a follow-on offering of its common stock at \$50.52 per share. War Chest received an allocation of 63,020 shares in that offering. The difference between War Chest’s proceeds received from the restricted period short sales of ETP shares and the price paid for 33,000 shares received in the offering was \$4,913.70. Respondent also improperly received a benefit of \$4,704.13 by purchasing the remaining 30,020 shares at a discount from ETP’s market price. Thus, War Chest’s participation in the 2011 ETP offering resulted in total profits of \$9,617.83.

8. On May 24, 2011, War Chest sold short 48,500 shares of American International Group, Inc. (“AIG”) during the restricted period at an average price of \$29.4593 per share. On May 24, 2012, after the market close, AIG priced a follow-on offering of its common stock at \$29 per share. War Chest received an allocation of 134,375 shares in that offering. The difference between War Chest’s proceeds received from the restricted period short sales of AIG shares and the price paid for 48,500 shares received in the offering was \$22,276.05. Thus, War Chest’s participation in the 2011 AIG offering resulted in total profits of \$22,276.05.

9. On June 2, 2011, War Chest sold short a total of 237,250 shares of Arch Coal Inc. (“ACI”) during the restricted period at an average price of \$27.4716 per share. On June 3, 2011, ACI priced a follow-on offering of its common stock at \$27 per share. War Chest received an allocation of 231,600 shares in that offering. Thus, War Chest’s participation in the 2011 ACI offering resulted in total profits of \$109,222.56.

10. On June 15, 2011, War Chest sold short a total of 13,500 shares of Five Star Quality Care Inc. (“FVE”) during the restricted period at an average price of \$5.3508. On June 15, 2011, after the market close, FVE priced a follow-on offering of its common stock at \$5 per share. War Chest received an allocation of 55,400 shares in that offering. The difference between War Chest’s proceeds received from the restricted period short sales of FVE shares and the price paid

for 13,500 shares received in the offering was \$4,735.80. Respondent also improperly received a benefit of \$2,710.93 by purchasing the remaining 41,900 shares at a discount from FVE's market price. Thus, War Chest's participation in the 2011 FVE offering resulted in total profits of \$7,446.73.

11. On June 23, 2011, War Chest sold short a total of 16,500 shares of the Excel Trust, Inc. ("EXL") during the restricted period at an average price of \$10.9391 per share. On June 23, 2011, after the market close, EXL priced a follow-on offering of its common stock at \$10.94 per share. War Chest received an allocation of 16,000 shares in that offering.

12. On September 8, 2011, War Chest sold short a total of 4,500 shares of Calumet Specialty Products Partners, LP ("CLMT") during the restricted period at an average price of \$18.1073 per share. On September 8, 2011, after the market close, CLMT priced a follow-on offering of its common stock at \$18 per share. War Chest received an allocation of 22,550 shares in that offering. The difference between War Chest's proceeds received from the restricted period short sales of CLMT shares and the price paid for 4,500 shares received in the offering was \$483.05. Thus, War Chest's participation in the 2011 CLMT offering resulted in total profits of \$483.05.

13. War Chest's violations of Rule 105 resulted in illicit profits to War Chest of \$179,516.

### **Violations**

14. As a result of the conduct described above, War Chest willfully<sup>3</sup> violated Rule 105 of Regulation M under the Exchange Act.

### **Undertakings**

War Chest has undertaken to:

15. Limit its activities, functions, and operations as an investment adviser for one year, commencing the second Monday following the entry of this Order, by refraining from participating directly or indirectly in any secondary or follow-on offering.

16. Certify, in writing, compliance with the undertaking set forth above. The certification shall identify the undertaking, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be

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<sup>3</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)).

submitted to Anita B. Bandy, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertaking.

#### 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 and Section 203(e) of the Advisers Act, Respondent War Chest shall cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Respondent is censured;

C. Respondent shall pay disgorgement of \$179,516, prejudgment interest of \$22,302.02 and a civil penalty of \$150,000 (for a total of \$351,818.02), to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3).

Payment shall be made in the following installments:

1. \$51,818.02 within 30 days of entry of this Order;
2. \$30,000 within 60 days of entry of this Order;
3. \$30,000 within 90 days of entry of this Order;
4. \$30,000 within 120 days of entry of this Order;
5. \$30,000 within 150 days of entry of this Order;
6. \$30,000 within 180 days of entry of this Order;
7. \$30,000 within 210 days of entry of this Order;
8. \$30,000 within 240 days of entry of this Order;
9. \$30,000 within 270 days of entry of this Order;
10. \$30,000 within 300 days of entry of this Order; and
11. \$30,000, plus post-judgment interest on the payments described in Section IV.C.1-11 pursuant to SEC Rule of Practice 600, within 330 days of entry of this Order.

If any payment is not made by the date the payment is required by 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.

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;<sup>4</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.

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 in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount 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 Securities and Exchange Commission. 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 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.

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<sup>4</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.

E. Respondent shall comply with the undertakings enumerated in Paragraphs 15 and 16 above.

By the Commission.

Brent J. Fields  
Secretary