

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 76145 / October 14, 2015**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16899**

**In the Matter of**

**AURIGA GLOBAL  
INVESTORS SOCIEDAD  
DE VALORES S.A.**

**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 Auriga Global Investors SV (“Auriga” 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 Auriga Global Investors, Sociedad de Valores, S.A., a securities company registered with the Comisión Nacional del Mercado de Valores (CNMV), the financial regulatory agency of Spain. 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 eight occasions between April 2014 and June 2015, Auriga 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 Rule 105 restricted period. These violations collectively resulted in profits of \$436,940.52.

#### **Respondent**

3. Auriga Global Investors, Sociedad de Valores, S.A., ("Auriga") is a securities company registered with the Comisión Nacional del Mercado de Valores (CNMV), the financial regulatory agency of Spain. Formed in 2007, Auriga is based in Madrid, Spain and has approximately \$440 million of assets under management.

#### **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.

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.

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

6. On January 21 and January 22, 2015, Auriga sold short a total of 75,000 shares of Horsehead Holding Corp. (“ZINC”) during the restricted period at a price of \$13.7795 per share. On January 22, 2015, after the market close, ZINC announced the pricing of a follow-on offering of its common stock at \$12.75 per share. Auriga received an allocation of 50,000 shares in that offering. Thus, Auriga’s participation in the ZINC offering resulted in total profits of \$51,475.

7. On April 9 and April 10, 2014, Auriga sold short a total of 75,000 shares of Regado Bioscience, Inc. (“RGDO”) during the restricted period at a price of \$7.7308 per share. On April 11, 2014, RGDO announced the pricing of a follow-on offering of its common stock at \$6.00 per share. Auriga received an allocation of 175,000 shares in that offering. The difference between Auriga’s proceeds from the restricted period short sales of RGDO shares and the price paid for 75,000 shares received in the offering was \$129,810. Thus, Auriga’s participation in the RGDO offering resulted in total profits of \$129,810.

8. On June 16, 2014, Auriga sold short a total of 25,000 shares of Revance Therapeutics, Inc. (“RVNC”) during the restricted period at a price of \$29.5863 per share. On June 18, 2014, RVNC announced the pricing of a follow-on offering of its common stock at \$30.50 per share. Auriga received an allocation of 60,000 RVNC shares in that offering. Although the offering price was greater than the price at which Auriga sold short during the restricted period, Auriga improperly received a benefit of \$33,596.50 by purchasing the remaining 35,000 shares in the offering at a discount from RVNC’s market price. Thus, Auriga’s participation in the RVNC offering resulted in total profits of \$33,596.50

9. On August 12, 2014, Auriga sold short a total of 10,000 shares of Celladon Corp. (“CLDN”) during the restricted period at a price of \$9.7970 per share. On August 12, 2014, after the market close, CLDN announced the pricing of a follow-on offering of its common stock at \$9.50 per share. Auriga received an allocation of 250,000 shares in that offering. The difference between Auriga’s proceeds from the restricted period short sales of CLDN shares and the price paid for 10,000 shares received in the offering was \$2,970.00. Respondent also improperly received a benefit of \$11,280.00 by purchasing the remaining 240,000 shares at a discount from CLDN’s market price. Thus, Auriga’s participation in the CLDN offering resulted in total profits of \$14,250.

10. On December 10, 2014, Auriga sold short a total of 20,000 shares of Flexion Therapeutics, Inc. (“FLXN”) during the restricted period at a price of \$18.3818 per share. On December 11, 2014, FLXN announced the pricing of a follow-on offering of its common stock at

\$17.00 per share. Auriga received an allocation of 60,000 shares in that offering. The difference between Auriga's proceeds from the restricted period short sales of FLXN shares and the price paid for 20,000 shares received in the offering was \$27,636. Respondent also improperly received a benefit of \$50,208.00 by purchasing the remaining 40,000 shares at a discount from FLXN's market price. Thus, Auriga's participation in the FLXN offering resulted in total profits of \$77,844.

11. On June 2, 2015, Auriga sold short a total of 40,000 shares of Catalent, Inc. ("CTLT") during the restricted period at a price of \$24.4965 per share. On June 2, 2015, after the market close, CTLT announced the pricing of a follow-on offering of its common stock at \$29 per share. Auriga received an allocation of 35,000 shares in that offering. Thus, Auriga's participation in the CTLT offering resulted in total profits of \$17,377.50.

12. On June 4, 2015, Auriga sold short a total of 20,200 shares of Ocular Therapeutix, Inc. ("OCUL") during the restricted period at a price of \$22.8776 per share. On June 4, 2015, after the market close, OCUL announced the pricing of a follow-on offering of its common stock at \$22 per share. Auriga received an allocation of 125,000 shares in that offering. The difference between Auriga's proceeds from the restricted period short sales of OCUL shares and the price paid for the 20,200 shares received in the offering was \$17,727.52. Thus, Auriga's participation in the OCUL offering resulted in total profits of \$17,727.52.

13. On October 28, 2014, Auriga sold short a total of 19,500 shares of Regulus Therapeutics, Inc. ("RGLS") during the restricted period at a price of \$17.7089 per share. On October 28, 2014, after the market close, RGLS announced the pricing of a follow-on offering of its common stock at \$17 per share. Auriga received an allocation of 60,000 shares in that offering. The difference between Auriga's proceeds from the restricted period short sales of RGLS shares and the price paid for the 19,500 shares received in the offering was \$13,823.55. Respondent also improperly received a benefit of \$81,036.45 by purchasing the remaining 40,500 shares at a discount from RGLS's market price. Thus, Auriga's participation in the RGLS offering resulted in total profits of \$94,860.

14. In total, Auriga's violation of Rule 105 resulted in profits of \$436,940.52.

### **Violations**

15. As a result of the conduct described above, Auriga violated Rule 105 of Regulation M under the Exchange Act.

### **Auriga's Remedial Efforts & Cooperation**

16. 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 Auriga's Offer.

Accordingly, it is hereby ORDERED that:

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

B. Auriga shall within fourteen (14) days of the entry of this Order, pay disgorgement of \$436,940.52, prejudgment interest of \$2,184.70 and a civil money penalty in the amount of \$179,277.28 (for a total of \$618,402.50) 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). If timely payment is not made on the disgorgement amount, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. §3717.

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>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 Auriga 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,

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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.

Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

C. 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.

By the Commission.

Brent J. Fields  
Secretary