

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4550 / October 13, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17624

In the Matter of

**ARTIS CAPITAL MANAGEMENT,
L.P. and MICHAEL W. HARDEN,**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTIONS 203(e) AND
203(f) OF THE INVESTMENT
ADVISERS ACT OF 1940, MAKING
FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Artis Capital Management, L.P. (“Artis”) and Michael W. Harden (“Harden,” and collectively with Artis, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative Proceedings Pursuant to Sections 203(e) and 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

A. SUMMARY

1. Artis, a San Francisco-based investment adviser that advised multiple hedge funds, and its senior research analyst, Harden, failed reasonably to supervise Matthew Teeple ("Teeple"), an Artis employee who procured material nonpublic information from an insider at a public company. Artis also failed to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information consistent with the nature of its business.

2. In 2007, Artis hired Teeple as a research analyst to evaluate potential investments in software, semiconductor, networking, and other technology companies. Teeple, who had previously worked at a networking technology company himself, made securities trading recommendations based on information that he learned from contacts who worked at various technology companies. Unlike a typical research analyst at a hedge fund advisory firm, Teeple did not construct analytical models regarding the financial performance of the companies he covered, did not provide written reports supporting his recommendations to buy or sell the securities of such companies, and did not maintain research files available for review by his supervisor, Harden, or others at Artis.

3. On at least two occasions in 2008, Teeple obtained material nonpublic information about the publicly traded company Foundry Networks, Inc. ("Foundry") from an employee of Foundry. On both occasions, Teeple provided information regarding Foundry to Artis, which executed timely and profitable trades in advance of public announcements by Foundry.

4. On both occasions, Teeple shared information with Harden that should have caused a reasonable supervisor to question whether Teeple had improperly obtained material nonpublic information from a corporate insider. Notwithstanding the information provided by Teeple, Harden did not question Teeple about the source of his information or ask the Chief Compliance Officer ("CCO") or any other colleagues at Artis to look into the matter.

5. At the end of 2008, Artis rewarded Teeple with a discretionary bonus of \$1 million.

6. By failing to respond appropriately to red flags that should have alerted them to risks of potential insider trading by Teeple, Artis and Harden failed to reasonably supervise Teeple with a view to detecting and preventing his violations of the federal securities laws.

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

7. Section 204A of the Advisers Act requires investment advisers subject to Section 204 to establish, maintain and enforce written policies and procedures, reasonably designed, taking into consideration the nature of their business, to prevent the misuse of material nonpublic information. Teeple's interactions with his technology industry sources created a substantial risk that material nonpublic information would be obtained and misused, and necessitated the establishment of reasonable procedures to prevent such misuse.

8. Although Artis had written policies and procedures that prohibited the receipt and use of material, nonpublic information, the firm failed to adopt policies or procedures to address the particular risk presented by Teeple's frequent interaction with contacts at public companies in whose securities Artis traded.

9. In addition, Artis failed to appropriately enforce its policies and procedures concerning the receipt and use of material nonpublic information. During the relevant period, Artis had a written policy that required employees to bring to the attention of the firm's CCO any potential material nonpublic information received from any source. During 2008, despite at least two instances in which Teeple provided Artis with information regarding Foundry just prior to material announcements by the company, these events were not brought to the attention of the CCO.

B. RESPONDENTS

10. **Artis** is an investment adviser based in San Francisco, California that was formed in 2001. It was registered with the Commission from January 18, 2006 until it withdrew its registration on April 27, 2016. At the time of the conduct relevant to these proceedings, Artis advised several hedge funds with assets worth approximately \$1.8 billion and invested mainly in public technology companies. As of March 2016, Artis had approximately \$13 million in assets under management and is in the process of winding down its hedge funds.

11. **Harden**, age 40, resides in San Francisco, California. Beginning in 2002, he was associated with Artis and in 2008, he was employed as a senior analyst at Artis. From 2000 to 2002, Harden worked as a research analyst at a major financial institution in San Francisco. While employed there, Harden held Series 7 and Series 63 licenses.

C. OTHER INDIVIDUALS AND ENTITIES

12. Teeple, age 45, formerly resided in San Clemente, California. From 2007 to 2013, Teeple worked as an analyst at Artis, focusing primarily on the software, semiconductor, networking equipment, and internet sectors. Prior to joining Artis, Teeple had worked at a consulting firm that purported to provide market research and investment-related information to mutual funds and hedge funds and at Riverstone Networks, Inc. ("Riverstone"), a now-defunct network switching company that was based in Santa Clara, California. Throughout his tenure at Artis, Teeple was supervised by Harden. On March 26, 2013, the Commission sued Teeple for insider trading in *SEC v. Teeple, et al.*, 13-cv-2010 (S.D.N.Y.) (VEC) ("*SEC v. Teeple*"). On that

same date, the U.S. Attorney's Office for the Southern District of New York unsealed a criminal complaint charging Teeple with conspiracy to commit securities fraud and securities fraud, based on largely the same conduct alleged in the Commission's complaint. On May 28, 2014, Teeple pleaded guilty to one count of conspiracy to commit securities fraud in *U.S. v. Teeple*, 13-cr-339 (S.D.N.Y.) (VEC). (The remaining counts of the indictment were dismissed.) On October 16, 2014, Teeple was sentenced to 5 years' imprisonment and ordered to forfeit \$553,890 and to pay a fine of \$100,000. On June 12, 2015, the Commission obtained a final judgment on consent against Teeple, pursuant to which he consented to a permanent antifraud injunction, disgorgement and prejudgment interest totaling \$166,532.82, a civil penalty in the amount of \$133,000, and a bar from association with any investment adviser, broker, dealer, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization.

13. Foundry was a California-based networking hardware company that designed, manufactured and sold electronic switches and routers for use in electronic communications equipment. Foundry's securities were registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act"), and its common stock traded on the NASDAQ National Market under the symbol "FDRY" until the company was acquired by Brocade Communications Systems, Inc. ("Brocade") on December 18, 2008.

14. David Riley ("Riley"), age 49, formerly resided in San Jose, California. From 2005 until December 2008, when Brocade's acquisition of Foundry was completed, he was Foundry's chief information officer and vice president of information systems. Prior to joining Foundry, Riley worked at Riverstone, where he met and became friends with Teeple. Riley was a defendant in *SEC v. Teeple* and was charged in a parallel criminal case, *U.S. v. Riley*, 13-cr-339 (S.D.N.Y.) (VEC). In October 2014, a jury found Riley guilty of one count of conspiracy to commit securities fraud and two counts of securities fraud. On April 27, 2015, Riley was sentenced to 78 months' imprisonment and fined \$50,000. On June 12, 2015, the Commission obtained final judgment on consent against Riley, pursuant to which he consented to a permanent antifraud injunction; disgorgement and prejudgment interest totaling \$5,056; a civil penalty in the amount of \$4,016; and an officer and director bar.

D. FACTS

a. Teeple's Employment and Supervision

15. In 2007, Harden participated in recruiting Teeple to join Artis. Teeple had previously worked at a consulting firm that provided Artis with information about publicly traded technology companies.

16. During his employment at Artis, Teeple generally did not construct analytical models regarding the companies he covered, did not provide written research reports, and did not maintain research files available for review by Harden or others at Artis. Instead, Teeple based his recommendations primarily on information from his industry sources and communicated this information and his trading recommendations to Harden or others at Artis by telephone.

17. Also, unlike most of the other analysts, Teeple did not work in Artis's San Francisco office. He worked out of his Southern California home and spent much of his time communicating with industry sources about the technology companies that he covered. He traveled frequently to Northern California for in person meetings with his sources.

18. As Artis's senior research analyst, Harden supervised Teeple.

b. Artis's Policies and Procedures Prohibiting Insider Trading

19. In 2007 and 2008, Artis had policies and procedures on insider trading.

20. Artis's policies "forbid[] any of its Employees from (i) trading either personally or on behalf of others, including Client Accounts, on material, nonpublic information; (ii) communicating material, nonpublic information to others in violation of the law; or (iii) knowingly assisting someone engaged in these activities."

21. Further, if an employee "receive[s] material, nonpublic information regarding a company that comes directly or indirectly from any insider . . . do not discuss the information with any other person without first consulting the CCO."

22. If an employee believes that he or she is in possession of material, nonpublic information, he is to "immediately cease recommending any transaction in any of the securities of the company in question to anyone"

23. Despite knowledge of Teeple's role as an analyst making recommendations primarily based on information gathered from industry sources, and Teeple's relationships with industry insiders, Artis did not take steps to ensure that (i) its policies relating to insider trading were adequately enforced, and (ii) it had systems in place to ensure that Artis was not trading on the basis of material nonpublic information. For example, Artis did not require Teeple (who worked outside of Artis's offices) to report his interactions with employees of public companies, and it did not have policies to track or monitor these interactions.

c. Teeple Provided Material Nonpublic Information to Artis About Foundry in Violation of the Securities Laws and Artis's Policies and Procedures

24. On at least two occasions in 2008, Teeple obtained material nonpublic information from Riley about Foundry. Artis subsequently made timely trades just before Foundry's public announcements concerning such information.

25. First, on July 16, 2008, Riley met with Teeple and told him that Foundry had agreed to be acquired by Brocade for approximately \$3 billion and that such acquisition would be announced on July 21, 2008. Minutes after leaving his meeting with Riley, Teeple telephoned Harden and the two men spoke for eight minutes. Teeple has testified under oath that that he

received information from Riley about the “approximate day on which [the Foundry/Brocade] acquisition would be announced and the approximate purchase price,” and provided that same information to Artis.² While Harden and Teeple were on the telephone, Artis—which had previously established a short position in Foundry stock—began buying Foundry stock and call options, and selling short Foundry put options, trades that reflected a positive view of the stock’s future price movement.

26. Five days later, on July 21, 2018, Brocade announced an agreement to acquire Foundry, causing a significant increase in Foundry’s stock price and generating profits and avoiding losses of over \$21 million for Artis’s hedge funds.

27. Despite the close temporal proximity between Teeple’s communications with Artis regarding Foundry and Brocade’s announcement of its acquisition of Foundry—and despite the fact that Harden knew that Teeple conducted research by developing relationships with industry sources—including employees of public companies—Harden did not inquire whether Teeple had received material nonpublic information about the merger or whether his views about Foundry securities were based on such information.

28. Three months later, Teeple obtained material nonpublic information concerning Foundry’s ability to close the previously announced acquisition. On October 15, 2008, Brocade announced that it had entered into a \$1.225 billion secured credit facility to finance a portion of the Foundry acquisition and would be raising up to \$400 million in additional financing to fund the acquisition. Foundry’s shareholders were scheduled to vote on October 24, 2008, to approve their company’s acquisition by Brocade, but unbeknownst to the public, Foundry had learned that Brocade was having trouble securing the additional \$400 million of financing required to complete the acquisition.

29. On the morning of October 16, 2008, Riley met with Teeple and informed him that there were problems concerning the completion of the acquisition deal. Following this meeting, Teeple called Harden. Approximately six minutes later, Artis decreased its hedge funds’ bullish position in Foundry stock (which had a market value of over \$18 million). By the end of that trading day, Artis had sold off all of the Artis hedge funds’ equity position in Foundry.

30. On October 24, 2008, Foundry announced that the shareholder vote to approve its acquisition by Brocade, which had been scheduled for later that day, would be delayed until October 29, “given recent developments related to the transaction.” Following that announcement, Foundry’s stock price dropped by more than 25 percent. By selling their Foundry equity positions on October 16 based on Teeple’s recommendation, Artis’s hedge funds avoided trading losses of approximately \$4.3 million.

² Teeple provided this testimony on May 28, 2014, when he entered a guilty plea in the criminal district court action, United States v. Teeple, 13 Cr. 339 (S.D.N.Y.).

31. As in July 2008, Harden failed to ask questions about the information provided by Teeple and also failed to inform the CCO of the possibility that Teeple had obtained material nonpublic information regarding Foundry's October 24, 2008 announcement—despite the brief time period between Teeple's recommendation to sell Foundry securities and the October 24 announcement by Foundry and despite the fact that this was the second time in less than four months in which Teeple had recommended that Artis trade Foundry securities in a directionally correct manner before an unscheduled announcement by Foundry.

32. As a result of trades made by Artis shortly after Teeple spoke to his employer, the Artis hedge funds had profits and avoided losses totaling approximately \$25.3 million from its trading in Foundry securities during the July through October 2008 time period. Through its management agreements with the hedge funds and through its majority owner's investment in the hedge funds, Artis obtained profits of approximately \$5,165,862 attributable to this trading in Foundry securities.

d. Artis and Harden Failed Reasonably to Supervise Teeple

33. Artis and Harden failed to respond appropriately to information that should have alerted them to risks that Teeple may have been recommending trades based on material nonpublic information obtained from Foundry insiders. The knowledge of Teeple's technology industry connections and his communication of timely information about Foundry should have caused a reasonable supervisor to investigate whether Teeple had access to inside information to support his recommendations. Artis and Harden failed to take steps that reasonable supervisors would have taken to learn more about the information and its sources.

34. Neither the July 2008 nor the October 2008 incident involving Teeple's trading recommendations on Foundry caused Harden or Artis to increase their oversight of Teeple's information-gathering activities. Indeed, at year-end, Artis awarded Teeple a discretionary bonus of over \$1 million.

e. Artis's Policies Were Not Reasonably Designed to Address the Risks Created by Its Business and Were Not Enforced

35. As noted above, Artis had a general policy that prohibited the acquisition and misuse of material nonpublic information. Artis's policies provided that employees who acquired material nonpublic information were required to bring it to the attention of the CCO and to refrain from trading on it.

36. Teeple's employment created unique risks because one of his primary job functions was to cultivate industry sources, some of whom had access to material nonpublic information. Despite the significant risk that Teeple's use of these sources could result in Artis receiving material nonpublic information, Artis had no written policy or procedure that reasonably ensured that the information that Teeple obtained from his contacts did not include material nonpublic information or that such information would not be used for trading or tipping others.

37. The Commission has previously noted that if the nature of a particular broker-dealer's or investment adviser's business exposes employees to persons in possession of material nonpublic information on a regular basis, a general policy that those employees self-evaluate information they receive is insufficient to comply with Section 15(g) of the Exchange Act and Section 204A of the Advisers Act.

38. Further, Artis's policies and procedures relating to insider trading were not followed and Artis's CCO was never consulted.

Violations

39. As a result of the conduct described above, Artis failed reasonably to supervise Teeple, within the meaning of Section 203(e)(6) of the Advisers Act, with a view to preventing and detecting violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by Teeple.

40. As a result of the conduct described above, Harden failed reasonably to supervise Teeple, within the meaning of Section 203(e)(6) of the Advisers Act, with a view to preventing and detecting violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by Teeple.

41. As a result of the conduct described above, Artis willfully violated³ Section 204A of the Advisers Act, which requires investment advisers subject to Advisers Act Section 204, such as Artis, to "establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such investment adviser's business, to prevent the misuse in violation of this Act, or the Securities Exchange Act of 1934, or the rules or regulations thereunder, of material, nonpublic information by such investment adviser or any person associated with such investment adviser."

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that, pursuant to Sections 203(e) and 203(f) of the Advisers Act:

³ 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)).

A. Pursuant to Section 203(e) of the Advisers Act, Artis is hereby censured.

B. Artis shall, in accordance with the terms of the payment schedule set forth in paragraph D below, pay disgorgement of \$5,165,862 and prejudgment interest of \$1,129,222 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, additional interest shall accrue pursuant to SEC Rule of Practice 600.

C. Artis shall, in accordance with the payment schedule terms set forth in paragraph D below, pay a civil money penalty in the amount of \$2,582,991 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, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

D. Artis shall pay the total disgorgement, prejudgment interest, and penalty due of \$8,878,075 in three installments to the Commission according to the following schedule: (1) \$2,959,358 within 30 days after entry of this Order; (2) \$2,959,358 within 180 days after entry of this Order; and (3) \$2,959,358 within 360 days after entry of this Order.

If Artis fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-Order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

E. Harden be, and hereby is, suspended from association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent for a period of 12 months, effective on the second Monday following the entry of this Order. In connection with this suspension, Harden has agreed to provide to the Commission, within 30 days after the end of the 12 month suspension period, an affidavit that he has complied fully with the terms of the suspension.

F. Harden shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$130,000 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, additional interest shall accrue pursuant to 31 U.S.C. §3717.

G. Respondents' payments of the above disgorgement, prejudgment interest and/or civil penalty amounts must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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 Artis and/or Harden 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 Sanjay Wadhwa, Senior Associate Director, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, New York 10281.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent Harden, and further, any debt for civil penalty or other amounts due by Respondent Harden under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent Harden of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary