

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68828 / February 5, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3545 / February 5, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15199

_____)	
In the Matter of)	ORDER INSTITUTING ADMINISTRATIVE
)	AND CEASE-AND-DESIST PROCEEDINGS
Ardley Advisory Partners,)	PURSUANT TO SECTION 21C OF THE
)	SECURITIES EXCHANGE ACT OF 1934
Respondent)	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 Ardsley Advisory Partners (“Ardsley”).

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 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 finds¹ that:

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by Ardsley, an investment adviser based in Stamford, Connecticut. Rule 105 prohibits short selling of equity securities during a restricted period prior to a public offering and then purchasing the subject securities in the offering. Ardsley violated Rule 105 in connection with certain short sales it effected within the Rule 105 restricted period preceding its purchase of securities in public offerings by Sunpower Corp. ("Sunpower") in April 2009, China Agritech, Inc. ("China Agritech") in April 2010 and Synutra International, Inc. ("Synutra") in June 2010, resulting in unlawful profits of \$506,671.50.

Respondent

2. Ardsley is an investment adviser founded in 1987 and has its principal place of business in Stamford, Connecticut. Ardsley was registered with the Commission as an investment adviser from December 28, 1993 until it withdrew its registration on September 25, 2009 when it qualified for the exemption from registration pursuant to former Section 203(b)(3) of the Advisers Act. Ardsley re-registered with the Commission on March 30, 2012. During the relevant period, April 2009 through April 2010, Ardsley advised six clients, including hedge funds, and the trading described in this Order was conducted by Ardsley on behalf of those clients.

Background

3. 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. 45094, 45107 (Aug. 10, 2007).

4. The Commission adopted Rule 105 "to foster secondary and follow-on offering prices that are determined by independent market dynamics." *Id.* at 45094. Rule 105 prohibits

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

the conduct 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." Id. at 45096.

Sunpower

5. Ardsley sold short a total of 45,000 shares of Sunpower at prices ranging from \$25.45 to \$27.37 per share on April 21, 22, and 23, 2009.

6. On Tuesday, April 28, 2009, before the trading markets opened, Sunpower announced a public secondary offering of common stock (the "Sunpower Offering"), which was priced at \$22 per share.

7. On Tuesday, April 28, 2009, Ardsley purchased 55,000 shares of Sunpower common stock in the Sunpower Offering at \$22 per share.

8. Because Ardsley sold short shares of Sunpower during the restricted period and then purchased shares in the Sunpower Offering, Ardsley violated Rule 105. The difference between the proceeds from the short sales of Sunpower's shares during the Rule 105 restricted period and the cost of acquiring the shares in the Sunpower Offering was \$216,095. In addition, the clients advised by Ardsley improperly obtained a benefit of \$6,130 from the remaining 10,000 shares they received in the Sunpower Offering at a market discount from Sunpower's market price. Accordingly, the total profit from purchasing securities in the Sunpower Offering was \$222,225.

China Agritech

9. Ardsley sold short a total of 45,000 shares of China Agritech at prices ranging from \$18.39 to \$19.04 per share on April 22 and 23, 2010.

10. On Thursday, April 29, 2010, before the trading markets opened, China Agritech announced a public secondary offering of common stock (the "China Agritech Offering"), which was priced at \$16.10 per share.

11. On Thursday, April 29, 2010, Ardsley purchased 120,000 shares of China Agritech common stock in the China Agritech Offering at \$16.10 per share.

12. Because Ardsley sold short shares of China Agritech during the restricted period and then purchased shares in the China Agritech Offering, Ardsley violated Rule 105. The difference between the proceeds from the short sales of China Agritech's shares during the Rule 105 restricted period and the cost of acquiring the shares in the China Agritech Offering was \$116,081.50. In addition, the clients advised by Ardsley improperly obtained a benefit of \$92,392.50 from the remaining 75,000 shares they received in the China Agritech Offering at a market discount from China Agritech's market price. Accordingly, the total profit from purchasing securities in the China Agritech Offering was \$208,474.

Synutra

13. Ardsley sold short a total of 25,000 shares of Synutra at a price of \$22.03 per share on June 18, 2010.

14. On Friday, June 25, 2010, before the trading markets opened, Synutra announced a public secondary offering of common stock (the “Synutra Offering”), which was priced at \$19 per share.

15. On Thursday, June 25, 2010, Ardsley purchased 75,000 shares of Synutra common stock in the Synutra Offering at \$16.10 per share.

16. Because Ardsley sold short shares of Synutra during the restricted period and then purchased shares in the Synutra Offering, Ardsley violated Rule 105. The difference between the proceeds from the short sales of Synutra’s shares during the Rule 105 restricted period and the cost of acquiring the shares in the Synutra Offering was \$75,972.50. The clients advised by Ardsley did not obtain profits with respect to the remaining 50,000 shares they received in the Synutra Offering. Accordingly, the total profit from purchasing securities in the Synutra Offering was \$75,972.50.

17. As a result of the conduct described above, Ardsley willfully² violated Rule 105 of Regulation M of the Exchange Act.

Ardsley’s Remedial Efforts

18. After the Synutra transactions and prior to the Commission staff contacting it, Ardsley developed and implemented policies and procedures relating to Rule 105 compliance and provided employees with Rule 105 compliance training.

19. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent and cooperation 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 Ardsley’s Offer.

² 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. 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)).

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

- A. Respondent Ardsley cease and desist from committing or causing any violation and any future violations of Rule 105 of Regulation M of the Exchange Act;
- B. Respondent Ardsley is censured;
- C. Respondent Ardsley shall, within 14 days of the entry of this Order, pay disgorgement of \$506,671.50 and prejudgment interest of \$55,065.39 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. 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 via overnight delivery 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 Ardsley Advisory Partners 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 John T. Dugan, Associate Regional Director, Division of Enforcement, U.S. Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

- D. Respondent Ardsley shall, within 14 days of the entry of this Order, pay a civil monetary penalty in the amount of \$253,335 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 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;
- 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 via overnight delivery to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
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Payments by check or money order must be accompanied by a cover letter identifying Ardsley Advisory Partners 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 John T. Dugan, Associate Regional Director, Division of Enforcement, U.S. Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

By the Commission.

Elizabeth M. Murphy
Secretary