

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 51708 / May 19, 2005**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-11928**

**In the Matter of**

**GALLEON MANAGEMENT,  
L.P.,**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-  
DESIST PROCEEDINGS, MAKING  
FINDINGS, AND IMPOSING REMEDIAL  
SANCTIONS AND A CEASE-AND-DESIST  
ORDER PURSUANT TO SECTION 21C OF  
THE SECURITIES EXCHANGE ACT OF  
1934**

**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 Galleon Management, L.P. (“Galleon” 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, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

**III.**

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

## **Respondent**

1. Galleon, a Delaware limited partnership whose principal place of business is in New York, New York, is the investment adviser for a number of large hedge funds. Galleon is not currently registered with the Commission as an investment adviser. At all times, Galleon has had full discretion to make investment decisions for its funds. Galleon's Admiral's Offshore, Ltd. fund ("Admiral's") regularly participated in offerings by companies that were already public ("follow-on offerings").

## **Summary**

2. In connection with 17 follow-on offerings from 2000 through 2003, Galleon sold securities short during five business days before the pricing of public offerings and then covered the short positions with securities purchased in the offerings ("offering stock"). These transactions occurred in seven of Galleon's funds with the majority of violations occurring in the Admiral's fund. As a result of these transactions, Galleon realized profits of \$1,040,882.

## **Legal Discussion**

3. Rule 105 of Regulation M, "Short Selling in Connection With a Public Offering," prohibits covering a short sale with securities obtained in a public offering if the short sale occurred within five business days before the pricing of the offering (the "Rule 105 restricted period"). In pertinent part, Rule 105 provides: "In connection with an offering of securities for cash pursuant to a registration statement ... filed under the Securities Act, it shall be unlawful for any person to cover a short sale with offered securities purchased from an underwriter or broker or dealer participating in the offering, if such short sale occurred during the ... period beginning five business days before the pricing of the offered securities and ending with such pricing ...." 17 C.F.R. § 242.105(a)(1). Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale.<sup>1</sup>

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<sup>1</sup> Recent interpretive guidance by the Commission provides that "where the transaction is structured such that there is no legitimate economic purpose or substance to the contemporaneous purchase and sale, no genuine change in beneficial ownership, and/or little or no market risk, that transaction may be a sham transaction." In an example of a such a transaction, "a trader effects pre-pricing short sales during the Rule 105 restricted period, receives offering shares, sells the offering shares into the open market, and then contemporaneously or nearly contemporaneously purchases an equivalent number of the same class of shares as the offering shares, which are then used to cover the short sales." Short Sales, Exchange Act Release No. 50103 (Sept. 7, 2004).

## Findings

### A. *Prime Broker “Collapses”*

4. In connection with a number of offerings, Galleon created a boxed position by establishing a long position with shares purchased in a follow-on offering of an issuer while simultaneously maintaining a short position in the securities of the same issuer established during the Rule 105 restricted period. Galleon instructed the prime broker to make journal entries that canceled out the long and short positions, thereby covering the short position with the offering stock.

5. In connection with 11 offerings, Galleon instructed its prime broker to flatten follow-on offering boxed positions through the use of riskless, offsetting journal entries, a practice known as “collapsing the box.”

6. These violations occurred in the follow-on offerings of Aeropostale Inc. (NYSE: ARO), Forward Air Corporation (NASDAQ: FWRD), iNet Technologies, Inc. (NASDAQ: INTI), Pacer International, Inc. (NASDAQ: PACR), Safenet, Inc. (NASDAQ: SFNT), Strayer Education, Inc. (NASDAQ: STRA), Verint Systems, Inc. (NASDAQ: VRNT), BeFree, Inc. (NASDAQ: BFRE), Cache, Inc. (NASDAQ: CACH), Yellow Corporation (NASDAQ: YELL) and NuSkin Enterprises, Inc. (NYSE: NUS). These violations resulted in illegal profits of \$410,522.

7. An example of Galleon collapsing follow-on offering boxed positions is as follows: Galleon participated in a May 2003 follow-on offering of VRNT. The Registration Statement for an offering of 5,000,000 shares of VRNT common stock was filed with the Commission on May 19, 2003. The shares were priced after the close of trading on June 12, 2003 at \$23.00 per share.

8. Within five business days before the pricing of the offering, Galleon established a short position of 43,310 shares in VRNT with two transactions consisting of 23,510 shares at \$24.14 and 19,800 shares at \$23.52. On the morning of June 13, 2003, Galleon increased its short position by an additional 20,000 shares.

9. On the morning of June 13, 2003, Galleon received a 95,000 share allocation of the VRNT offering priced at \$23.00 per share. Galleon sold 31,690 shares of the offering stock in two separate transactions days later, leaving Galleon with a 63,310 share boxed position.

10. On July 3, 2003, Galleon instructed its prime broker to collapse the 63,310 share boxed position. The violation resulted in an illegal profit of \$37,097.

11. An additional example of Galleon’s practice of collapsing follow-on offering boxed positions is as follows: Galleon participated in a July 2003 follow-on offering of ARO. The Registration Statement for an offering of 7,150,000 shares of ARO common stock

was filed with the Commission on June 27, 2003. The shares were priced after the close of trading on July 28, 2003 at \$25.00 per share.

12. Within five business days before the pricing of the offering, Galleon established a short position of 24,200 shares in ARO at \$25.66 per share. On the morning of July 29, 2003, Galleon received a 75,000 share allocation of the ARO offering priced at \$25.00 per share.

13. On August 1, 2003, Galleon reduced its long position by selling 25,000 shares at \$26.02 per share, leaving Galleon with a 24,200 share boxed position and an additional 25,800 share long position.

14. On August 4, 2003, Galleon instructed its prime broker to collapse the 24,200 share boxed position. This violation resulted in an illegal profit of \$15,972.

*B. Contemporaneous Unwinding of Follow-on Offering Boxed Positions*

15. Galleon unwound follow-on offering boxed positions by contemporaneously entering a market order to sell the offering shares and another order to purchase an equivalent number of shares, which were then used to cover the short position that had been established during the Rule 105 restricted period. These unwinding transactions were entered through two different brokers and executed in the open market.

16. These violations occurred in the follow-on offerings of Artisan Components, Inc. (NASDAQ: ARTI), Endo Pharmaceuticals Inc. (NASDAQ: ENDP) and Centene Corp. (NYSE: CNC). These violations resulted in illegal profits of \$170,635.

17. An example of Galleon contemporaneously unwinding follow-on offering boxed positions is as follows: Galleon participated in an August 2003 follow-on offering of CNC. The Registration Statement for an offering of 3,000,000 shares of CNC common stock was filed with the Commission on July 22, 2003. The shares were priced after the close of trading on August 7, 2003 at \$25.00 per share.

18. Within five business days before the pricing of the offering, Galleon established a 70,000 share short position in CNC with three transactions consisting of 30,000 shares at \$26.11, 20,000 shares at \$25.82 and 20,000 shares at \$25.18.

19. On the morning of August 8, 2003, Galleon received a 100,000 share allocation of the CNC offering at \$25.00, resulting in a 70,000 share boxed position and an additional 30,000 share long position. This 30,000 share long position was subsequently sold a day after the offering.

20. On August 12, 2003, through two separate brokers, Galleon contemporaneously entered a market order to sell the 70,000 offering shares and a market order to cover the 70,000 share short position that was established during the Rule 105 restricted period.

The orders were ultimately filled at a price difference of less than one penny per share. This resulted in an illegal profit of \$52,600.

21. An additional example of Galleon contemporaneously unwinding follow-on offering boxed positions is as follows: Galleon participated in a July 2003 follow-on offering of ENDP. The Registration Statement for an offering of 17,250,000 shares of ENDP common stock was filed with the Commission on May 16, 2003. The shares were priced after the close of trading on July 1, 2003 at \$15.50 per share.

22. Within five business days before the pricing of the offering, Galleon established a 73,900 share short position in ENDP at \$16.15 per share.

23. On the morning of July 2, 2003, Galleon received a 100,000 share allocation of the ENDP offering at \$15.50 per share, resulting in a 73,900 share boxed position and an additional 26,100 share long position. Later that day, the 26,100 share long position was sold.

24. Galleon's position in ENDP remained unchanged for several days until July 11, 2003, when Galleon contemporaneously entered a market order to sell the remaining 73,900 offering shares and a market order to cover the 73,900 share short position that was established during the restricted period, through two separate brokers. The orders were ultimately filled at a price difference of about two cents per share. This resulted in an illegal profit of \$48,035.

### *C. Cross trade*

25. On one occasion, Galleon flattened a follow-on offering boxed position by executing a cross trade, in which Galleon crossed the long and short position against each other resulting a flat position in the issuer's stock. The trade was executed through one broker. Galleon realized illegal profits of \$28,950. This occurred in a follow-on offering of iNet Technologies, Inc. (NASDAQ: INTI).

26. Galleon flattened its follow-on offering boxed position in INTI in the following manner: Galleon participated in an October 2003 follow-on offering of INTI. The Registration Statement for an offering of 8,000,000 shares of INTI common stock was filed with the Commission on September 18, 2003. The shares were priced after the close of trading on October 7, 2003 at \$12.50 per share.

27. Within five business days before the pricing of the offering, Galleon established a 20,000 share short position in INTI with two transactions consisting of 15,000 shares at \$14.03 and 5,000 shares at \$13.70. On the morning of October 8, 2003, Galleon received a 75,000 share allocation of the INTI offering at \$12.50 per share, resulting in a 20,000 share boxed position and an additional long position of 55,000 shares.

28. On October 27, 2003, Galleon executed a cross trade at \$12.82 per share. As a result, the 20,000 share short position that was established during the Rule 105 restricted period was covered with 20,000 shares of the offering stock.

*D. Purchases Entered as Covering Transactions*

29. Galleon violated Rule 105 through purchases of offering stock that were entered into Galleon's trading system to cover short positions that were established during the Rule 105 restricted period. These violations occurred in the follow-on offerings of Aeropostale Inc. (NYSE: ARO), Kinder Morgan, Inc. (NYSE: KMR), Seagate Technology (NYSE: STX) and TTM Technologies, Inc. (NASDAQ: TTMI). These violations resulted in illegal profits of \$430,775.

30. An example of one such transaction by Galleon is as follows: Galleon participated in a July 2002 follow-on offering of KMR. The Registration Statement for an offering of 12,000,000 shares of KMR common stock was filed with the Commission on June 27, 2002. The shares were priced after the close of trading on July 31, 2002 at \$27.50 per share.

31. Within five business days before the pricing of the offering, Galleon established a short position of 200,000 shares in KMR consisting of four transactions that were executed at prices ranging from \$28.30 to \$29.78 per share.

32. On the morning of August 1, 2002, Galleon received a 200,000 share allocation in the KMR offering priced at \$27.50 per share. The shares were entered into Galleon's system as a purchase to cover Galleon's short position established during the Rule 105 restricted period. The violation resulted in an illegal profit of \$220,200.

33. As a result of the conduct described in Sections A, B, C and D above, Galleon violated Rule 105 of Regulation M, which makes it "unlawful for any person to cover a short sale with offered securities purchased from an underwriter or broker or dealer participating in the offering, if such short sale occurred during the... period beginning five business days before the pricing of the offered securities and ending with such pricing."

**Undertakings**

Galleon has undertaken to:

34. Adopt and implement written compliance policies and procedures reasonably designed to prevent violations of Regulation M of the federal securities laws, review those policies and procedures annually, and designate an employee as a chief compliance officer for these purposes.

#### IV.

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

Accordingly, it is hereby ORDERED:

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

B. It is further ORDERED that Galleon shall, within 30 days of the entry of this Order, pay disgorgement of \$1,040,882, plus prejudgment interest of \$109,321, to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Galleon Management, L.P. as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Peter H. Bresnan, Division of Enforcement, Securities and Exchange Commission, 450 5th Street N.W., Washington, D.C. 20549-0801.

C. Galleon shall comply with the undertakings as enumerated in Section III above.

By the Commission.

Jonathan G. Katz  
Secretary