

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95673 / September 6, 2022

INVESTMENT ADVISERS ACT OF 1940
Release No. 6106 / September 6, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21031

In the Matter of

**PERCEPTIVE ADVISORS
LLC,**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTIONS 203(e) AND 203(k) 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 Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Perceptive Advisors LLC (“Respondent” or “Perceptive”).

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 21 C of the Securities Exchange Act of 1934 and Sections 203(e) and 203(k) 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 involve violations of the Advisers Act and the Exchange Act by Perceptive Advisors LLC, a registered investment adviser, arising out of the firm's activities concerning certain special purpose acquisition companies ("SPACs"). First, Perceptive failed to disclose conflicts of interest, made material misstatements and omissions, and failed to adopt reasonably designed written policies and procedures regarding Perceptive personnel's ownership interests in SPAC sponsors and Perceptive's practice of investing client assets in affiliated SPACs. Second, although Perceptive had lost its status as a passive investor while negotiating a potential transaction involving a SPAC and a public company of which it was a greater-than-five-percent beneficial owner, Perceptive failed to timely file a required report on Schedule 13D and improperly acquired the beneficial ownership of additional common stock of the public company during the period prior to filing a Schedule 13D. As a result, Perceptive violated Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder, and Section 13(d) of the Exchange Act and Rule 13d-1 thereunder.

Respondent

2. **Perceptive Advisors LLC**, a Delaware limited liability company with its principal place of business in New York, New York, has been registered with the Commission as an investment adviser since October 2010. Perceptive provides investment advisory services to pooled investment vehicles, including Perceptive Life Sciences Master Fund, Ltd. In its Form ADV dated March 31, 2022, Perceptive reported that it had approximately \$10.36 billion in regulatory assets under management.

Other Relevant Entities

3. Perceptive Life Sciences Master Fund, Ltd. (the "PLSM Fund") is a private fund organized under the laws of the Cayman Islands and a pooled investment vehicle as defined in Advisers Act Rule 206(4)-8(b).

4. ARYA Sciences Acquisition Corp II ("ARYA II") was a Cayman Islands exempted company incorporated on February 20, 2020 that consummated an initial public offering as a SPAC on June 9, 2020. ARYA II's sponsor was 80% owned by the PLSM Fund, and the remaining 20% ownership ultimately was allocated among five Perceptive supervised persons. ARYA II entered into a business combination agreement that closed on October 27, 2020.

¹ 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. ARYA Sciences Acquisition Corp III (“ARYA III”) was a Cayman Islands exempted company incorporated on March 27, 2020 that consummated an initial public offering as a SPAC on August 11, 2020. ARYA III’s sponsor was 80% owned by the PLSM Fund, and the remaining 20% ownership ultimately was allocated among five Perceptive supervised persons. ARYA III entered into a business combination agreement that closed on June 9, 2021.

6. ARYA Sciences Acquisition Corp IV (“ARYA IV”), a Cayman Islands exempted company incorporated on August 24, 2020, is a SPAC that consummated an initial public offering on March 2, 2021 and has common stock that trades on the Nasdaq under the ticker symbol “ARYD.” The company’s sponsor is 70% owned by the PLSM Fund, and the remaining 30% ownership ultimately is allocated among five Perceptive supervised persons. ARYA IV entered into an agreement to acquire the gene therapy business of Amicus on September 29, 2021, but the agreement was terminated on February 23, 2022.

7. Amicus Therapeutics, Inc. (“Amicus”) is a Delaware corporation based in Philadelphia, Pennsylvania with common stock registered pursuant to Section 12(b) of the Exchange Act that trades on the Nasdaq under the ticker symbol “FOLD.”

Facts

Failure to Accurately Disclose SPAC Conflicts

8. A SPAC generally is a shell company that is organized for the purpose of merging with or acquiring one or more unidentified private operating companies within a certain time frame (often two years) and that conducts a firm commitment underwritten initial public offering of \$5 million or more in redeemable shares and, at times, warrants. A SPAC sponsor is the entity and/or persons primarily responsible for organizing, directing, or managing the business and affairs of a SPAC. The sponsor typically is compensated through an amount equal to a percentage (often 20% to 25%) of the SPAC’s initial public offering proceeds (in the form of discounted shares and, at times, warrants). This sponsor compensation is often referred to as the sponsor’s “promote” or “founder shares,” and it is received upon completion of a SPAC’s business combination.

9. In 2018, Perceptive formed a SPAC, the sponsor of which was 100% owned by the PLSM Fund. That SPAC consummated a business combination that closed on July 1, 2020. From February through August 2020, Perceptive formed three additional SPACs: ARYA II, ARYA III, and ARYA IV. Unlike the sponsor of the SPAC that Perceptive formed in 2018, ownership of the sponsors of ARYA II, ARYA III, and ARYA IV was shared by five Perceptive supervised persons and the PLSM Fund.

10. As a result of their ownership interests in the sponsors of ARYA II, ARYA III, and ARYA IV, Perceptive personnel were entitled to receive a portion of the SPAC sponsor compensation. Accordingly, the Perceptive personnel had material conflicts of interest that could affect the advisory relationship between Perceptive and its advisory clients, and could cause Perceptive to render advice that was not disinterested.

11. For instance, because the sponsor compensation was contingent upon the SPAC’s completion of a business combination, the Perceptive personnel had financial incentives to

recommend that ARYA II, ARYA III, and ARYA IV engage in business combination transactions, even if the transactions or their terms were not necessarily in the best interests of one or more of their advisory clients.

12. Moreover, the Perceptive personnel who acquired ownership interests in the SPAC sponsors, who also made investment decisions for the PLSM Fund and other advisory clients, had incentives to cause the PLSM Fund and/or other advisory clients to make SPAC-related investments that would help ensure ARYA II, ARYA III, and ARYA IV completed business combinations, such as by purchasing securities in related private investment in public equity (“PIPE”) transactions to assist with financing the business combinations. In connection with the business combinations consummated by ARYA II and ARYA III, Perceptive caused the PLSM Fund to participate in PIPE transactions in the amount of \$30 million and \$55 million, respectively. In addition, Perceptive caused the PLSM Fund to purchase, on the open market, common stock of ARYA II and ARYA III prior to the closing of their respective business combinations.

13. Thus, Perceptive personnel had conflicts of interest that, among other things, could affect both whether or not Perceptive selected certain investments on behalf of its advisory clients as well as the size and scope of any such investments.

14. Nevertheless, Perceptive failed to make timely disclosure of its SPAC-related conflicts of interest to the board of directors of the PLSM Fund. Although the board of directors routinely held quarterly meetings that Perceptive attended, Perceptive did not discuss the shared ownership of the sponsors to ARYA II, ARYA III, and ARYA IV with the board of directors of the PLSM Fund until March 24, 2021. By this time: (i) ARYA II had been formed, consummated an initial public offering, and completed a business combination, and the PLSM Fund had participated in a related PIPE transaction and purchased shares of ARYA II on the open market; (ii) ARYA III had been formed, consummated an initial public offering, and announced a business combination agreement, and the PLSM Fund had subscribed to a related PIPE transaction; and (iii) ARYA IV had been formed and consummated an initial public offering. In addition, prior to March 24, 2021, neither Perceptive’s Form ADV Part 2A brochure nor the offering memoranda for the PLSM Fund fully and fairly disclosed the conflicts of interest related to ARYA II, ARYA III, or ARYA IV.

15. Furthermore, Perceptive made certain material misstatements and omissions concerning ARYA II, ARYA III, and ARYA IV to investors and prospective investors in the PLSM Fund. For instance, in letters to investors that touted the success of the ARYA SPACs and suggested the SPACs were fund-sponsored, Perceptive omitted to disclose that Perceptive personnel shared ownership of the SPAC sponsors. By way of further example, in a July 28, 2020 email communication, Perceptive stated that the PLSM Fund does not participate in the SPAC outside of the sponsor shares. By this time: (i) Perceptive personnel shared with the PLSM Fund ownership of the sponsors to ARYA II and ARYA III; and (ii) Perceptive had indicated to counterparties that PLSM Fund would provide \$30 million in PIPE financing for the ARYA II business combination. In later email communications, Perceptive disclosed that Perceptive personnel owned 20% of the sponsors of ARYA II and/or ARYA III, without disclosing that, by the time of the communications, such personnel owned 30% of the sponsor of ARYA IV.

Compliance Deficiencies

16. Since at least February 2020, Perceptive failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder concerning Perceptive personnel co-ownership of SPAC sponsors alongside advisory clients and investments in affiliated SPACs on behalf of Perceptive advisory clients. Perceptive launched multiple affiliated SPACs for which certain of its supervised persons co-owned the sponsoring entities along with the PLSM Fund, but Perceptive lacked policies and procedures reasonably designed to provide appropriate disclosure about this change in business practices and the associated conflicts of interest to advisory clients and investors in Perceptive-managed funds, or to appropriately disclose or eliminate the conflicts related to Perceptive's investments on behalf of advisory clients in such affiliated SPACs.

Beneficial Ownership Reporting Failure

17. Section 13(d)(1) of the Exchange Act and Rule 13d-1(a) together require any person, including a group, that has acquired, directly or indirectly, beneficial ownership of more than five percent of a class of a registered equity security to file a statement with the Commission disclosing the identity of its members and the purpose of its acquisition. *See generally GAF Corp. v. Milstein*, 453 F.2d 709, 717 (2d Cir. 1971), *cert. denied*, 406 U.S. 910 (1972). Individuals or entities comply with this requirement by filing a Schedule 13D with the Commission no later than ten days after they acquire the requisite beneficial ownership.

18. Under Exchange Act Rule 13d-1(c), certain persons required to file under Section 13(d) of the Exchange Act may instead file with the Commission a short-form Schedule 13G, which allows disclosure of much more limited information, if they own less than 20% of the class of securities and are able to certify that the securities were not acquired or held with the “purpose, or with the effect, of changing or influencing the control of the issuer [*i.e.*, a ‘control purpose’], or in connection with or as a participant in any transaction having that purpose or effect.” *Amendments to Beneficial Ownership Reporting Requirements*, Exchange Act Release No. 34-39538 (Jan. 12, 1998) (adopting release).

19. Pursuant to Exchange Act Rule 13d-1(e)(1), any person who has filed a Schedule 13G pursuant to Rule 13d-1(c) becomes immediately subject to Rule 13d-1(a) and must, within ten days, file a Schedule 13D if the investor now holds the securities with a disqualifying control purpose or effect. Under Exchange Act Rule 13d-1(e)(2), from the time the person has acquired or holds the securities with a control purpose or effect until the tenth day from the date of the filing of the Schedule 13D pursuant to Rule 13d-1(e)(1), that person shall not, among other things, acquire an additional beneficial ownership interest in any equity securities of the issuer of the securities, nor of any person controlling the issuer.

20. On February 16, 2021, Perceptive filed an amendment to Schedule 13G, reporting beneficial ownership of over 9% of the outstanding common stock of Amicus. Perceptive indicated that the Schedule 13G was filed pursuant to Rule 13d-1(c), and certified that the securities “were not acquired and are not held for the purpose of or with the effect of changing or

influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect.”

21. On March 2, 2021, ARYA IV, a SPAC, consummated an initial public offering of Class A ordinary shares. Perceptive personnel, together with the PLSM Fund, owned the sponsor of ARYA IV. Perceptive personnel also served as directors, Chief Executive Officer, Chief Financial Officer, and Chief Business Officer of ARYA IV.

22. In April 2021, Perceptive personnel began discussions with representatives of Amicus that they may be interested in a potential transaction. As these communications progressed, Perceptive personnel confirmed their interest in exploring a transaction involving ARYA IV and Amicus’s gene therapy business. On July 2, 2021, ARYA IV and Amicus reached a non-binding agreement on the principal terms of a potential business combination between Amicus’s gene therapy business and ARYA IV, and determined to further negotiate a potential transaction. As part of the contemplated transaction, numerous employees of Amicus, including its then Chief Executive Officer and Chairman, were to separate from or change their roles at Amicus and work at a new independent public company that would be formed as a result of a SPAC business combination.

23. By no later than July 2, 2021, Perceptive could no longer accurately certify that the securities of Amicus it beneficially owned were held without a control purpose or effect, and, therefore, within ten days, it was obligated to file a Schedule 13D superseding its previously filed Schedule 13G.

24. On September 29, 2021, although Perceptive had not filed the required superseding Schedule 13D, Perceptive caused the PLSM Fund to purchase 3,438,114 shares of Amicus common stock. Under Exchange Act Rule 13d-3, Perceptive was a beneficial owner of such securities.

25. On February 22, 2022, over seven months after incurring a filing obligation, Perceptive filed a Schedule 13D concerning its beneficial ownership of Amicus common stock.

Violations

26. As a result of the conduct described above, Respondent willfully² violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or

² “Willfully,” for purposes of imposing relief under Section 203(e) of the Advisers Act, “means no more than 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.” *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term “willfully” for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has “willfully omit[ted]” material information from a required disclosure in violation of Section 207 of the Advisers Act).

indirectly, to “engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.” Scierter is not required to establish a violation of Section 206(2), but rather a violation may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194-95 (1963)).

27. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require a registered investment adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

28. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which make it unlawful for any investment adviser to a pooled investment vehicle to “make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle; or [o]therwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.” A showing of negligence is sufficient to establish a violation of Section 206(4) of the Advisers Act or Rule 206(4)-8 thereunder; proof of scierter is not required. *Steadman*, 967 F.2d at 647.

29. As a result of the conduct described above, Respondent violated Section 13(d) of the Exchange Act and Rule 13d-1 thereunder, which, among other things: (i) require investors who previously filed a Schedule 13G with the Commission to instead file a Schedule 13D within ten calendar days once the investor holds securities of the issuer with a control purpose or effect; and (ii) prohibit, until the tenth day from the date of the filing of the required Schedule 13D, such investors from acquiring an additional beneficial ownership interest in any equity securities of the issuer of the securities, or of any person controlling the issuer.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Perceptive’s Offer.

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

A. Respondent Perceptive cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) and of the Advisers Act and Rules 206(4)-7 and 206(4)-8 promulgated thereunder, and Section 13(d) of the Exchange Act and Rule 13d-1 promulgated thereunder.

B. Respondent Perceptive is censured.

C. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$1.5 million 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.

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 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 Perceptive Advisors LLC 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 Brendan P. McGlynn, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 1617 JFK Blvd., Suite 520, Philadelphia, PA 19103.

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.

By the Commission.

Vanessa A. Countryman
Secretary