

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73032 / September 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16061

In the Matter of

**Ridgeback Capital
Management LP,**

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 Ridgeback Capital Management LP (“Ridgeback” 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 Respondent 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 finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws.
2. Section 13(d) of the Exchange Act and the rules promulgated thereunder require any person or group who directly or indirectly acquires beneficial ownership of more than 5% of a Section 12 registered equity security to file a statement with the Commission disclosing certain information relating to such beneficial ownership. Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings. See 113 Cong. Rec. 855 (1967). The duty to file is not dependent on any intention by the stockholder to gain control of the company, but on a mechanical 5% ownership test.
3. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR and posted on the company's website to facilitate rapid dissemination to the public.
4. While subject to these reporting requirements, Ridgeback violated Section 16(a) by failing to timely file multiple required Section 16(a) reports of transactions in the securities of Ironwood Pharmaceuticals, Inc. ("Ironwood") it executed on behalf of an affiliated fund it managed and violated Section 13(d) by failing to timely file an initial statement and required amendments with respect to its beneficial ownership. Ridgeback was also a cause of violations of such requirements by Ridgeback's affiliated fund, an affiliated entity serving as the fund's general partner, and Ridgeback's control person, which shared direct or indirect beneficial ownership of the relevant securities (the "Ridgeback Affiliates").

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.

Respondent

5. Ridgeback, a Delaware limited partnership headquartered in New York, provides investment management services to an affiliated private fund and had beneficial ownership of the securities held by the fund. Ridgeback and the Ridgeback Affiliates acquired beneficial ownership of more than 10% of Ironwood's Class A common stock on February 2, 2010 and were subject to Sections 13(d) and 16(a). Ridgeback and the Ridgeback Affiliates remained greater than 10% beneficial owners until February 2012 and remained greater than 5% beneficial owners until March 2012. Ridgeback took responsibility for making all beneficial ownership filings on behalf of the Ridgeback Affiliates.

Issuer

6. Ironwood is a Delaware corporation with its principal place of business in Massachusetts. At all relevant times, Ironwood's Class A common stock has been registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ stock market (ticker: IRWD).

Applicable Legal Framework

7. Under Section 13(d)(1) of the Exchange Act, any person who has acquired beneficial ownership of more than 5% of any equity security of a class registered under Section 12 of the Exchange Act must publicly file, within 10 days after the acquisition, a disclosure statement with the Commission. Rule 13d-1(a) requires the statement to contain the information specified by Schedule 13D, which includes, among other things, the identity of the beneficial owners, the amount of beneficial ownership, and plans or proposals regarding the issuer. However, as an alternative, certain statutory provisions and rules allow the use of short-form disclosure statements on Schedule 13G with differing timing requirements under certain conditions. Rule 13d-1(c) provides that, in lieu of filing a Schedule 13D, a person may file a short-form statement on Schedule 13G within 10 days after the triggering acquisition if the person "has not acquired the securities with any purpose, or with the effect of, changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect," and is not directly or indirectly the beneficial owner of 20% or more of the class of securities.

8. The term "beneficial owner" is defined broadly under Section 13(d) of the Exchange Act, through the application of Rule 13d-3, to include "any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise" has or shares voting or investment power with respect to a registered equity security. More than one person may be a beneficial owner of the same securities. Because this definition of beneficial ownership includes persons who have both direct and indirect, as well as shared, voting and investment power,

beneficial ownership by an entity is ordinarily also attributable to a control person of an entity and any parent company in a control relationship with such entity.²

9. Exchange Act Rule 13d-2(b) requires that a person filing a Schedule 13G pursuant to Rule 13d-1(c) must file an annual amendment within 45 days after the end of each calendar year if there are any changes in the information reported in the previous filing on that Schedule, unless certain limited exceptions apply. In addition to annual amendments, under Exchange Act Rule 13d-2(d), such person must also amend the Schedule 13G promptly upon acquiring beneficial ownership of greater than 10% of a registered class of equity securities and must thereafter promptly amend the Schedule 13G upon increasing or decreasing its beneficial ownership by more than 5% of the class. Any delay in filing beyond the date the filing reasonably can be made may not be prompt.³

10. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, “insiders”). For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term “beneficial owner,” the term means any person who is deemed a beneficial owner under Section 13(d) of the Exchange Act and the rules thereunder, subject to limited exceptions.

11. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer’s fiscal year-end to report any transactions or holdings that

² See Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538, 1998 WL 7449, at *7-8 (Jan. 12, 1998). If the organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are exercised independently, attribution may not be required for the purposes of determining the aggregate amount owned by the controlling persons if certain conditions concerning independence are met. Id.

³ Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538 (Jan. 12, 1998), at n. 14.

should have been, but were not, reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the insider has previously reported all such transactions).

12. There is no state of mind requirement for violations of Sections 16(a) and 13(d) and the rules thereunder.⁴ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁵

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

13. On February 2, 2010, Ridgeback and the Ridgeback Affiliates acquired beneficial ownership of greater than 10% of Ironwood's registered Class A common stock, resulting in Ridgeback and the Ridgeback Affiliates becoming subject to the reporting requirements of Section 16(a). Ridgeback filed a timely Form 3 on February 2, 2010 and a timely Form 4 on June 23, 2011 on behalf of itself and the Ridgeback Affiliates.

14. Subsequently, Ridgeback did not file until February 2012 any required reports on Forms 4 with respect to reportable transactions executed beginning August 2011. The late reports consist of transactions executed on behalf of Ridgeback's affiliated private fund on the following dates that were required to be reported on Form 4 within two business days and primarily involved open-market sales of Ironwood stock:

⁴ See Lexington Resources Inc., et al., 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]."); Robert G. Weeks, et al., 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 2, 2002) ("No showing of scienter is required to prove violations of these reporting provisions."); see also SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) ("Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.").

⁵ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation."); see generally SEC Release No. 34-47809 (noting that an issuer's eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders "does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)") (emphasis added); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) ("evidence of both motive for non-disclosure and actual market impact ... is irrelevant" to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred).

<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
8/2/2011	8/4/2011	2/9/2012
8/3/2011	8/5/2011	2/9/2012
8/4/2011	8/8/2011	2/9/2012
8/5/2011	8/9/2011	2/9/2012
8/8/2011	8/10/2011	2/9/2012
8/9/2011	8/11/2011	2/9/2012
8/11/2011	8/15/2011	2/9/2012
8/15/2011	8/17/2011	2/9/2012
8/17/2011	8/19/2011	2/9/2012
8/18/2011	8/22/2011	2/9/2012
8/19/2011	8/23/2011	2/9/2012
8/22/2011	8/24/2011	2/9/2012
8/23/2011	8/25/2011	2/9/2012
8/25/2011	8/29/2011	2/9/2012
8/26/2011	8/30/2011	2/9/2012
8/30/2011	9/1/2011	2/9/2012
9/22/2011	9/26/2011	2/9/2012
9/23/2011	9/27/2011	2/9/2012
9/26/2011	9/28/2011	2/9/2012
9/27/2011	9/29/2011	2/9/2012
10/5/2011	10/7/2011	2/9/2012
10/6/2011	10/11/2011	2/9/2012
10/7/2011	10/12/2011	2/9/2012
10/10/2011	10/12/2011	2/9/2012
10/12/2011	10/14/2011	2/9/2012
10/13/2011	10/17/2011	2/9/2012
10/14/2011	10/18/2011	2/9/2012
10/17/2011	10/19/2011	2/9/2012

<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
10/21/2011	10/25/2011	2/9/2012
10/24/2011	10/26/2011	2/9/2012
10/25/2011	10/27/2011	2/9/2012
10/26/2011	10/28/2011	2/9/2012
10/27/2011	10/31/2011	2/9/2012
10/28/2011	11/1/2011	2/9/2012
10/31/2011	11/2/2011	2/9/2012
11/2/2011	11/4/2011	2/9/2012
11/3/2011	11/7/2011	2/9/2012
11/4/2011	11/8/2011	2/9/2012
2/2/2012	2/6/2012	2/9/2012
2/3/2012	2/7/2012	2/9/2012

15. The late-reported open-market sales had an aggregate market value of approximately \$40 million and Ridgeback did not file any of the required reports until after Ridgeback and the Ridgeback Affiliates were no longer greater than 10% beneficial owners.

16. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder and was a cause of violations by the Ridgeback Affiliates of such provisions.

Respondent Failed to Timely File Schedule 13G Statements and Amendments

17. Ridgeback and the Ridgeback Affiliates have been subject to the reporting requirements of Exchange Act Section 13(d) since acquiring beneficial ownership of more than 5% of Ironwood's Class A common stock on February 2, 2010, and remained a greater than 5% beneficial owner until March 2012. The initial Schedule 13G statement that Ridgeback filed on February 15, 2011 pursuant to Exchange Act Rule 13d-1(c) on behalf of itself and the Ridgeback Affiliates did not comply with the 10-day filing deadline.

18. Subsequently, Ridgeback also failed to timely file required amendments, including to reflect:

- As of October 27, 2011, Ridgeback's and the Ridgeback Affiliates' beneficial ownership had decreased by more than 5% of the class of securities from the

amount set forth previously, which was not reflected in an amendment until February 14, 2012, in violation of Rule 13d-2(d); and

- By March 31, 2012, Ridgeback's and the Ridgeback Affiliates' beneficial ownership had decreased by more than 5% of the class of securities from the amount set forth in the February 14, 2012 amendment, which was not reflected in an amendment until February 14, 2013, in violation of Rule 13d-2(d).

19. As a result of the conduct described above, Respondent violated Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder and was a cause of violations by the Ridgeback Affiliates of such provisions.

Respondent's Remedial Efforts

20. In determining to accept Respondent's Offer, the Commission considered certain remedial acts 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 Ridgeback's Offer.

Accordingly, pursuant to Sections 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-1, 13d-2, and 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$104,500 to the Securities and Exchange Commission, for transmission to the United States Treasury. 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 Ridgeback Capital Management LP 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 Timothy Casey, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

By the Commission.

Jill M. Peterson
Assistant Secretary