

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 82292 / December 12, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18306

<p>In the Matter of</p> <p style="text-align:center">PROVECTUS BIOPHARMACEUTICALS, INC.</p> <p>Respondent.</p>
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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

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 Provectus Biopharmaceuticals, Inc. (“Provectus” 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 Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

A. SUMMARY

1. From at least 2011 to early 2016, Provectus paid its then-Chief Executive Officer ("CEO") H. Craig Dees approximately \$3.2 million in purported business travel advances and expense reimbursements that Dees fraudulently obtained and used for his personal benefit. Dees submitted false cash advance requests and expense reports that contained limited details of the claimed business trips and little, no, or fabricated supporting documentation. In addition, from at least 2013 to 2015, Provectus paid its then-Chief Financial Officer ("CFO") Peter Culpepper \$199,194 in perquisites and payments for business travel that Culpepper used for unauthorized, personal expenses.

2. Provectus' insufficient internal accounting controls contributed to and failed to detect these improper and unauthorized payments, which were not accurately recorded in the company's books and records. As a result, Provectus' annual reports and definitive proxy statements materially understated the compensation paid to Dees and Culpepper in the form of personal benefits and perquisites. In addition, Provectus' annual reports stated that Provectus' internal control over financial reporting was effective, when it was not.

B. RESPONDENT AND RELEVANT INDIVIDUALS

3. Respondent Provectus Biopharmaceuticals, Inc., incorporated in Delaware, is a development stage biotechnology company based in Knoxville, Tennessee. Provectus' common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act. Provectus' common stock and certain of its warrants traded on the NYSE MKT from May 2014 to October 2016, when they were suspended from trading. They were ultimately delisted by the NYSE MKT effective May 1, 2017. Provectus' common stock currently trades on the OTCQB Marketplace under the ticker symbol "PVCT." From 2011 to 2016, Provectus' only employees were its three founding executives and Culpepper.

4. H. Craig Dees was a co-founder of Provectus and served as its Chief Executive Officer and Chairman of the Board from 2002 until his resignation in February 2016.

5. Peter Culpepper was Provectus' Chief Financial Officer from February 2004 to April 2016, Chief Operating Officer from February 2008 to December 2016, and interim Chief Executive Officer from February 2016 until his termination in December 2016.

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.

C. FACTS

1. Background and Provectus' Deficient Internal Accounting Controls

6. During at least 2011 to early 2016, Provectus' Code of Business Conduct prohibited personal use of corporate assets and required all business expense accounts to be documented and recorded accurately and in a timely way. However, Provectus had limited policies or internal accounting controls regarding travel and entertainment expenses and reimbursements.

7. Provectus had insufficient internal accounting controls regarding cash advances for travel expenses. For example, there was no requirement to substantiate the business purpose of an advance, to submit receipts showing the use of advanced funds, or to reconcile actual expenses with advances. There was also no limit on the amount of funds that could be advanced.

8. Provectus' executives used their own credit cards or cash for company expenses and Provectus' general corporate expense reimbursement policy required employees to submit expense reports containing an itemized list of expenses together with support for each item. As noted below, Provectus failed to adhere to this policy when it reimbursed Dees and Culpepper without requiring support or itemization for claimed expenses. In addition, the policy was inadequate as applied to travel expenses. For example, the policy did not define "support" or require the submission of third-party receipts. The policy also did not require employees to demonstrate the business purpose of an expense or to submit expense reports or support within a designated amount of time.

9. Provectus also had insufficient controls, or controls that were not followed, for review and authorization of disbursements to employees made by check or wire, which included travel advances and expense reimbursements, as noted below.

10. In 2016 and 2017, after Provectus conducted an internal investigation of certain of Dees' and Culpepper's travel expenses, Provectus disclosed in its periodic reports that it had material weaknesses in its internal control over financial reporting related to travel advances and expense reimbursements and that its internal control over financial reporting was not effective.

2. Provectus' Payments to Dees

11. From 2011 until he resigned in February 2016, Provectus paid Dees approximately \$3.2 million for purported business-related travel advances and expense reimbursements. Dees fraudulently obtained these funds and used the majority to pay for unauthorized personal expenses, including personal travel, cosmetic surgery procedures for women, meals, tips and gratuities, and entertainment.

12. The majority of the \$3.2 million was paid in the form of cash advances. Provectus permitted Dees to obtain travel advances based on requests he made in emails that contained vague reasons for his travel and lacked details justifying the advance amounts.

13. In addition, Provectus permitted Dees to obtain travel advances even though he submitted limited, fabricated, or no expense documentation reconciling his advances to his actual expenses. For his 2011 and 2012 travel advances, Dees submitted expense reports for the majority of the advances he received. These reports often lacked documentation and were deficient in numerous respects. For example, Dees failed to apply approximately half of the advances he received to the expenses he ultimately reported. Instead, he sought reimbursement of the full amount of those expenses without regard to the advances he had previously received. The expense reports frequently contained no or limited itemization of expenses and often failed to include third-party receipts. When Dees included receipts, they were often not authentic, either because the receipt was entirely fabricated or altered in some way, such as with Dees' handwritten notations adding large dollar charges. The questionable nature of the receipts was frequently apparent on their face. Finally, certain of Dees' 2011 and 2012 expense reports sought reimbursement of travel charges for Dees' personal travel companions but did not identify those charges as personal.

14. For his 2013, 2014, and 2015 travel advances, Dees submitted no expense reports at all. In early 2016, after concerns were raised within Provectus about the lack of support for Dees' travel advances, Dees submitted receipts for some of his 2015 travel advances. Most of those receipts were not authentic and concealed Dees' use of the funds for personal expenses. Dees failed to substantiate other expenses at all.

15. Dees' travel advance requests and expense reports were submitted to Culpepper, as CFO, for processing, and were paid by wire transfer. Under Provectus' general policy for payments by wire, only the CFO "determined the need" for the wire and submitted a wire transfer form to two other executives for approval. Provectus' payment policy did not require the approving executives to review the underlying support justifying the wire. Culpepper also signed some of Dees' travel advance and expense requests, if another approving executive was unavailable. In addition, at least for 2011 and 2012, it appears that Dees' reimbursement expense reports were not submitted to the company's provider of bookkeeping services to be reviewed for accuracy, completeness, and support, as required by Provectus' general expense reimbursement policy.

16. In total, Dees received at least the following amounts of travel advances and reimbursements that he used for his personal benefit: \$238,423 in 2011; \$486,974 in 2012; \$734,452 in 2013; \$819,000 in 2014; \$885,808 in 2015; and \$67,261 in 2016. Provectus failed to record the true nature of these expenses in its books and records.

3. Provectus' Payments to Culpepper

17. From 2013 through 2015, Provectus paid Culpepper \$199,194 in personal benefits and perquisites through travel advances and reimbursements. Due in part to the company's deficient internal accounting controls, Provectus did not authorize these personal benefits or perquisites.

18. From 2013 through 2015, Provectus paid Culpepper foreign currency cash advances for approximately 130 days of overseas business travel. Culpepper used \$103,649 of

those cash advances for his personal benefit. Culpepper sought reimbursement for the advances in expense reports that included documentation showing the exchange of dollars for foreign currency. However, the expense reports did not include any documentation showing Culpepper's use of the travel advances, such as third-party receipts, which Culpepper did not maintain and Provectus did not require Culpepper to provide.

19. Provectus paid Culpepper \$82,443 in airfare charges in 2014 and 2015 for trips that were ultimately canceled. Culpepper failed to repay those amounts in the years he received them. Provectus' insufficient controls failed to detect that Culpepper did not repay these funds in the years he received them. Instead, he used the funds for his personal benefit.²

20. In addition, Provectus paid Culpepper at least \$13,103 in perquisites through travel expense reimbursements in 2013 through 2015. These perquisites included hotel stays, spa services, and products for Culpepper and his wife, and meals for his family. Culpepper provided certain documentation for these expenses in his expense reports. But Provectus did not require, and Culpepper generally did not submit, third-party receipts or other detailed documentation detailing the nature of the claimed expenses. Nor did Provectus require Culpepper to identify the business nature of the expenses on the supporting documentation he did submit. As a result, the personal nature of these charges was not identified in the expenses Culpepper submitted for reimbursement.

21. Culpepper's travel advance requests and expense reports were submitted to the company's provider of bookkeeping services for review and paid by check. Provectus' policy for payments by check required that two executives (other than Culpepper) approve checks and that the approving executives review the payments for "proper back up" and to sign the checks. In practice, however, the two approving executives authorized the payments based only on a list of checks to be paid, with the amounts and payee included; they generally were not provided and did not review supporting documents for the payments, such as expense reports or third-party receipts.

22. In total, Culpepper received the following approximate annual amounts in personal benefits and perquisites: \$13,726 in 2013; \$81,596 in 2014; \$103,872 in 2015. Provectus failed to record the true nature of these expenses in its books and records.

4. Provectus' Failure to Disclose Compensation Paid to Dees and Culpepper

23. In its annual reports and definitive proxy statements filed from 2012 to 2015, Provectus failed to disclose as compensation the personal benefits and perquisites Dees received

² In 2016 and 2017, after concerns were raised within Provectus related to Culpepper's and Dees' travel expenses, Culpepper reduced certain of his 2016 travel expenses by \$59,079, claiming that he credited that amount from airfare reimbursements he had received in 2015 for canceled trips.

in 2011, 2012, 2013, and 2014.³ Those benefits were material components of Dees' compensation: Provectus disclosed no personal benefits or perquisites for Dees in these years, and the amounts exceeded his annual salary by 48% to 164% and his total compensation in 2013 and 2014.

24. The annual reports and definitive proxy statements Provectus filed from 2014 to 2016 failed to disclose as compensation the personal benefits and perquisites Culpepper received. Those benefits were material components of Culpepper's compensation: Provectus disclosed no personal benefits or perquisites for Culpepper in these years, and underreported Culpepper's non-performance-based compensation by between 2% and 17%, and his total compensation by between 2% and 11%.

D. VIOLATIONS

25. As a result of the conduct described above, Provectus violated the reporting and proxy solicitation provisions of the Exchange Act.

26. Section 13(a) of the Exchange Act and Rules 13a-1 and 12b-20 thereunder require every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission annual reports on Form 10-K, and mandate that the reports contain such further material information as may be necessary to make the required statements not misleading.

27. Section 14(a) of the Exchange Act and Rule 14a-3 thereunder prohibit issuers with securities registered pursuant to Section 12 of the Exchange Act from soliciting proxies without furnishing proxy statements containing the information specified in Schedule 14A. Rule 14a-9 prohibits the use of proxy statements containing materially false or misleading statements or materially misleading omissions.

28. In violation of these provisions, Provectus materially understated the compensation paid to Dees and Culpepper by failing to disclose the personal benefits and perquisites provided to them. Item 11 of Form 10-K requires that registrants furnish the information required by Item 402 of Regulation S-K. Similarly, Item 8 of Schedule 14A requires that registrants disclose in proxy statements the information required by Item 402 of Regulation S-K if action is to be taken with respect to, among other things, election of directors. Item 402 requires disclosure of all plan and non-plan compensation paid to named executive officers (including CEOs and CFOs). Item 402(b) requires disclosure of the total value of all perquisites and other personal benefits provided to named executive officers who receive \$10,000 or more in such perquisites or other benefits in a given year.

29. In addition, Provectus violated Section 13(a) of the Exchange Act and Rules 13a-1 and 12b-20 because the annual reports misrepresented that Provectus' internal control over financial reporting was effective.

³ Provectus disclosed the travel expense payments Dees received in 2015 in the annual report and definitive proxy statement it filed in 2016, which disclosed the findings of the company's investigation into Dees' travel expenses.

30. As a result of the conduct described above, Provectus violated Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets. Provectus violated this provision because it failed to record the true nature of the personal benefits and perquisites paid to Dees and Culpepper in the company's books, records and accounts.

31. Finally, as a result of the conduct described above, because Provectus failed to implement sufficient internal accounting controls concerning travel advances and expense reimbursements, Provectus violated Section 13(b)(2)(B) of the Exchange Act. Section 13(b)(2)(B) requires reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are executed in accordance with management's general or specific authorization and are recorded as necessary to maintain accountability for assets, and that access to assets is permitted only in accordance with management's general or specific authorization.

E. UNDERTAKINGS

32. Respondent undertakes to cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, Respondent undertakes:

a. To produce, without service of a notice or subpoena, any and all documents and other information reasonably requested by the Commission's staff, with a custodian declaration as to their authenticity, if requested;

b. To use its best efforts to cause Respondent's current and former employees, officers and directors to be interviewed by the Commission's staff at such times and places as the staff reasonably may direct;

c. To use its best efforts to cause Respondent's current and former employees, officers and directors to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be reasonably requested by the Commission's staff; and

d. In connection with any interviews of Respondent's current and former employees, officers and directors to be conducted pursuant to this undertaking, requests for such interviews may be provided by the Commission's staff by regular or electronic mail to: Lori Patterson, Esq., Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, 165 Madison Avenue, Suite 2000, Memphis, TN 38103, lpatterson@bakerdonelson.com, or such other counsel that may be substituted by Respondent

In determining whether to accept the Offer, the Commission has considered the above Undertakings.

33. Respondent undertakes the following:

a. Respondent will fully remediate the material weakness identified in Items 1 through 4 of its Form 10-Q for the quarter ended June 30, 2017 (the “Material Weaknesses”). Respondent will complete its remediation of the Material Weaknesses by the quarter ended March 31, 2018. By May 31, 2018, or within sixty (60) days of such earlier date that Respondent completes its remediation, Respondent will certify, in writing, compliance with this undertaking, as set forth below.

b. In the event Respondent fails to fully remediate the Material Weaknesses by the quarter ended March 31, 2018, Respondent will, within sixty (60) days, retain an independent consultant (“Independent Consultant”), not unacceptable to the staff of the Commission, to conduct a comprehensive review of the Material Weaknesses and of Provectus’ policies, procedures, controls, and training relating to payment of expenses; and to recommend, if and where appropriate, policies, procedures, controls, and training reasonably designed to ensure:

- (i) Provectus’ internal control over financial reporting is effective;
- (ii) Provectus has processes and internal controls in place to reasonably ensure that payments for travel and entertainment, and other expenses, are properly identified, accounted for in Provectus’ books and records, and evaluated for disclosure as personal benefits or perquisites; and
- (iii) Provectus compliance with Item 402 of Regulation S-K requiring, among other things, the disclosure of personal benefits and perquisites as executive compensation.

c. Provectus’ engagement of the Independent Consultant will require the Independent Consultant to complete its review and make its recommendations, if any, within four months of being retained. Provectus will cooperate fully with the Independent Consultant and will provide the Independent Consultant with access to its own files, books, records, and personnel as reasonably requested for its review. Provectus will promptly adopt all recommendations of the Independent Consultant; provided, however, that within sixty (60) days after receiving the Independent Consultant’s recommendations, Provectus may, in writing, advise the Independent Consultant and the Commission (addressed to the Assistant Director below) of any recommendations that it considers to be unnecessary, unduly burdensome, impractical, or costly. As to any such recommendations, Provectus shall within thirty (30) days propose in writing an alternative policy, procedure, or control designed to achieve the same objective or purpose. As to any recommendation on which Provectus and the Independent Consultant do not agree within forty-five (45) days after attempting in good faith to reach an agreement, Provectus will abide by the determination of the Independent Consultant.

d. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Provectus, or any of its present or

former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Washington D.C. Office of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Provectus or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

e. Certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Timothy N. England, Assistant Director, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

f. These undertakings shall be binding upon any acquirer or successor in interest to Provectus. For good cause shown, the Commission's staff may extend any of the procedural dates set forth above.

F. PROVECTUS' REMEDIAL EFFORTS AND COOPERATION

34. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff. Specifically, Provectus undertook remedial efforts, including (i) through its Audit Committee, retaining independent outside counsel and a forensic accounting firm to conduct an investigation; (ii) replacing its Chief Financial Officer and Interim Chief Executive Officer; (iii) instituting legal action or other steps to collect repayments from its Chief Executive Officer and Chief Financial Officer; (iv) hiring a Chief Operations Consultant and a Controller, both new positions; (v) replacing the firms that provided or assisted with bookkeeping and internal audit and controls testing; and (vi) implementing new internal control procedures and policies concerning travel and expense reimbursement. Further, following its investigation of Dees' travel expenses, a Special Committee of Provectus' Board, utilizing independent counsel and a forensic accounting firm, reviewed executive expenses in general, and then devoted several months to investigate Culpepper's travel expenses. Provectus voluntarily shared the results and details of the Audit Committee's and Special Committee's investigations, which reduced the time and resources necessary for the Commission staff to conclude the investigation.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Provectus cease and desist from committing or causing any violations and any future violations Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, 14a-3, and 14a-9 thereunder.

B. Respondent shall comply with the undertakings enumerated in paragraph 33, Section III, above.

By the Commission.

Brent J. Fields
Secretary