

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4951 / June 29, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18564

In the Matter of

Aisling Capital LLC,

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940, 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 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Aisling Capital LLC (“Aisling” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“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 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing 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. This matter arises from the failure of venture capital fund adviser Aisling to offset consulting fees against the management fees paid by certain funds it advised, resulting in the funds paying \$759,870 more in management fees than they should have paid. Respondent provides investment advisory services to the Perseus-Soros BioPharmaceutical Fund, L.P. ("Fund I") and Aisling Capital II, L.P. ("Fund II") (collectively, the "Funds"), as well as to other venture capital funds. The limited partnership agreement ("LPA") and private placement memorandum ("PPM") for each of the Funds contemplate that Aisling may receive transaction fees from the Funds' portfolio companies for certain services that Aisling provided, including consulting fees. The Funds' LPAs and PPMs required Aisling to offset a specified percentage of transaction fees it received against the management fees paid by the Funds.

2. Between July 2012 and September 2013, Aisling received \$1,208,253 in consulting fees from two portfolio companies of the Funds, of which Aisling was required to offset \$759,870 based on the specified offset percentages in the Funds' LPAs and PPMs. However, Aisling failed to offset these consulting fees, resulting in the Funds and their limited partners overpaying \$759,870 in management fees. As a result, Aisling violated Section 206(2) of the Advisers Act in connection with its breach of fiduciary duty to the Funds and also violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

RESPONDENT

3. **Aisling Capital LLC** is a Delaware limited liability company with its principal place of business in New York, New York. Aisling is not registered with the Commission as an investment adviser. Aisling reports to the Commission as an "exempt reporting adviser" under Section 204(a) of the Advisers Act and Rule 204-4 thereunder. In its exempt reporting adviser report on Form ADV dated March 28, 2018, Aisling reported private fund assets of approximately \$639 million.

RELEVANT ENTITIES

4. **Perseus-Soros BioPharmaceutical Fund, L.P. and Aisling Capital II, L.P.** are Delaware limited partnerships formed in 1999 and 2005, respectively, to make investments in healthcare companies. Investors committed approximately \$999 million in capital to the Funds combined. During all times relevant to the findings herein, Respondent served as manager of the Funds and Respondent's affiliates served as general partners of the Funds.

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.

FACTS

5. Aisling is a New York-based venture capital firm that advises the Funds and other venture capital funds, with a focus on investing in life sciences companies. The limited partners in the Funds include pension funds, public employee retirement systems, charitable organizations, other large institutional investors, and high net worth individuals. The limited partners commit a specified amount of capital to the Funds for their use to make qualifying investments during the investment period of the fund.

6. Each Fund is governed by an LPA and PPM setting forth the rights and obligations of its limited partners, including their obligations to pay advisory and other fees and expenses to Aisling pursuant to a separate management agreement between each Fund and Aisling. Aisling charges a quarterly advisory fee or management fee of 2% of committed capital during the investment period.

7. Aisling also provides services to the portfolio companies in which the Funds invest. The Funds' LPAs and PPMs contemplate that Aisling may receive transaction fees from the portfolio companies, including fees for providing consulting services. The transaction fees paid by the portfolio companies are in addition to the management fees paid by the Funds. Fund I's LPA and PPM required Aisling to offset 50% of transaction fees it received from Fund I portfolio companies against the management fees paid by Fund I. Similarly, Fund II's LPA and PPM requires Aisling to offset 70% of transaction fees it receives from Fund II portfolio companies against the management fees paid by Fund II.

8. Beginning in September 2003, the Funds made investments in Quintiles Transnational Corporation ("Quintiles"), a medical research and sales company. Beginning in April 2007, Fund II invested in Catalent, Inc., a drug development company.

9. From 2008 to 2013, Aisling provided consulting services to Quintiles by helping it to identify and evaluate potential investments. From July 2, 2012 to May 14, 2013, Aisling received \$910,897 from Quintiles for the consulting services. Aisling retained the entire amount of these consulting fees, without offsetting the appropriate percentage of them against the management fees owed by the Funds, as required by the Funds' LPAs and PPMs. The Funds paid \$555,432 more than they should have in management fees due to Aisling's failure to properly offset consulting fees from Quintiles.

10. From July 1, 2012 to October 12, 2012 and August 5, 2014 to October 6, 2014, Aisling received \$1,067,037 from Catalent for consulting services, and properly offset 70% of the fees by reducing the management fees owed by Fund II, as required by Fund II's LPA and PPM. From July 16, 2013 to September 16, 2013, Aisling also received \$297,356 from Catalent for consulting services. Aisling retained the entire amount of these consulting fees, without offsetting 70% of them against the management fees owed by Fund II, as required by the Fund II's LPA and PPM. Fund II paid \$204,438 more than it should have in management fees due to Aisling's failure to properly offset consulting fees from Catalent.

11. In sum, from July 2, 2012 to September 16, 2013, Aisling received a total of \$1,208,253 in consulting fees from Quintiles and Catalent that it did not properly offset against the management fees owed by the Funds, resulting in the Funds paying a total of \$759,870 more than they should have paid.

12. On January 20, 2017, the Division of Enforcement staff contacted Aisling. With respect to the Quintiles fees, on February 22, 2017, Aisling voluntarily reimbursed limited partners in the Funds a total of \$630,319, representing \$555,432 plus interest of \$74,887 for excess management fees. With respect to Catalent fees, Aisling voluntarily reimbursed limited partners in Fund II a total of \$230,196, representing \$204,438 for excess management fees refunded in June 2017, plus interest of \$25,758 refunded in January 2018. In sum, Aisling voluntarily reimbursed limited partners in the Funds a total of \$860,515, representing \$759,870 plus interest of \$100,645, for excess management fees improperly borne by the Funds.

13. Aisling also voluntarily undertook several remedial measures, including naming a new chief compliance officer who implemented new controls to verify the accuracy of management fees that Aisling charged and the calculation of offsets for consulting fees. Aisling also retained a compliance consulting firm that, among other things, conducts quarterly testing of existing policies and procedures for expense allocations and ensuring compliance with disclosure obligations.

VIOLATIONS

14. Section 206(2) of the Advisers Act prohibits investment advisers from directly or indirectly engaging “in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.” A violation of Section 206(2) of the Advisers Act may rest on a finding of simple 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, 195 (1963)). Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act. *Id.* As a result of the conduct described above, Respondent violated Section 206(2) of the Advisers Act.

15. Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder make it unlawful for any investment adviser to a pooled investment vehicle to “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.” Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act. *Steadman*, 967 F.2d at 647. As a result of the conduct described above, Respondent violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

RESPONDENT'S COOPERATION AND REMEDIAL EFFORTS

In determining to accept Respondent's Offer, the Commission considered remedial acts taken by Respondent and cooperation afforded the Commission staff during its investigation.

IV.

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

Accordingly, pursuant to Section 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

B. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$200,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

C. 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 Aisling Capital 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 Panayiota K. Bougiamas, Assistant Regional Director, Asset Management Unit, New York Regional Office, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, New York, 10281.

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.

Brent J. Fields
Secretary