

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4991 / August 22, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18657

In the Matter of

ARIA PARTNERS GP, LLC,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
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 Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Aria Partners GP, LLC (“Aria Partners” 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 Administrative and Cease-and-Desist Proceedings Pursuant to 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. This matter involves violations of the Advisers Act by Aria Partners, an investment adviser to several private funds over the course of its history. Respondent failed to implement a compliance program consistent with its obligations as a registered investment adviser. Among other things, this led to a failure to disclose to all investors in one of those private funds all their options to redeem their investment in the fund. The fund's Limited Partnership Agreement ("LPA") required 90 days' written notice for redemptions. However, Respondent had an informal policy, which was not disclosed to all investors in the fund, of accommodating investors' requests to provide partial redemptions on significantly less notice than 90 days. In addition, Respondent granted full redemptions to a limited number of investors on 60 days' notice, while similarly situated investors were held to the 90 day notice period. These practices resulted in materially different full redemption amounts for two investors in 2015, when the fund lost value in a short period. Respondent's compliance failures also resulted in other violations, including violations of a Commission rule which required it to conduct annual audits, inaccurate statements concerning assets under management and private fund clients in the standard form that registered investment advisers must file with the Commission and update at least annually (known as the Form ADV), and renewing its registration with the Commission when Respondent was not eligible to do so based on insufficient assets under management.

Respondent

2. **Aria Partners GP, LLC** (SEC File No. 801-60797), a Delaware limited liability company formerly based in Boston, Massachusetts, and Los Angeles, California, is an investment adviser that was registered with the Commission from December 2001 through March 2017. Over the course of its history, Aria Partners was the investment adviser and general partner to four private funds. On March 16, 2017, Aria Partners filed a Form ADV-W terminating its registration status with the Commission. It no longer manages any investments or funds.

Related Party

3. **Aria Select Consumer Fund LP**, was a private fund formed in Delaware in June 2003. The Consumer Fund was an onshore feeder fund for the Aria Master Fund. Beginning on January 1, 2007, Respondent served as the sole general partner with responsibility for the day-to-day management of the Consumer Fund. The Consumer Fund was wound down by March 31, 2017.

¹ The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

Facts

4. The fund's LPA required at least 90 days' written notice for redemptions from the fund. Respondent also communicated the 90 day notice period in its marketing materials. However, Respondent had an informal policy, for at least a decade as of 2015, that permitted investors to make a partial redemption upon request with less than 90 days' notice. The informal redemption policy was never reflected in Aria Partners' written policies and procedures, and Respondent never broadly communicated the policy to all fund investors.

5. With regard to full redemption requests, during 2015, a new Aria Partners administrative employee mistakenly informed several investors who requested full redemptions that they could receive a redemption upon 60 days' notice. The administrative employee confused the 90 day redemption terms of one of Respondent's private funds with another private fund that permitted redemptions on 60 days' written notice.

6. Respondent did not have written policies and procedures or other controls to help ensure that Aria Partners' personnel correctly communicated redemption terms to all fund investors. As a result, in 2015, when two Consumer Fund investors sought full redemptions at approximately the same time, one investor was redeemed on 60 days' written notice and another investor was redeemed on 90 days' written notice. After the redemptions were requested, the fund declined in value, which had the unintended effect of the investor who was redeemed on 90 days' notice receiving significantly less than it would have received on 60 days' notice.

7. With respect to partial redemptions, over the years, Respondent processed several partial redemptions. These partial redemptions were typically small amounts that investors, including Respondent's principals, requested for tax payments or other life events. In such instances, Respondent processed the redemption requests in less than 90 days.

8. Although Aria Partners adopted a compliance manual and procedures in 2004, the compliance manual and procedures were not tailored to the type of business Respondent conducted and over time Respondent did not update the manual as its business changed. Respondent also failed to conduct annual reviews of the adequacy of its compliance policies and procedures, as required by the Advisers Act. Instead of conducting its own annual review, Respondent mistakenly relied on third-parties, including a fund administrator and fund auditor, to raise any issues concerning the adequacy of Aria's compliance policies and procedures.

9. Registered investment advisers who have custody of clients' funds or securities are required to comply with the Advisers Act Custody Rule, an SEC rule designed to ensure that advisers are safeguarding client assets. A registered investment adviser must comply with the Custody Rule by having independent public accountants do an annual surprise examination or audit of client assets. However, Respondent did not complete annual audits (or do an annual surprise examination) for the fiscal years ending December 31, 2015 and December 31, 2016. Respondent chose not to conduct audits for those two years because the funds had been materially wound down and the asset values at year-end were almost zero. Respondent did provide all investors with tax statements regarding their fund assets at the end of each year.

10. Finally, Respondent filed Forms ADV Part 1 dated March 30, 2015 and October 13, 2015, and Form ADV Part 2A dated March 30, 2015, that contained omissions and/or inaccuracies. Respondent did not update its regulatory assets under management, which at the time were significantly below the requirements to register as an investment adviser with the Commission pursuant to Section 203A(a)(1)(A) of the Advisers Act. In Form ADV, Part 1, Respondent also failed to identify Aria Partners as an adviser to private funds and provide the required information for each of the private funds it advised.

Violations

11. As a result of the conduct described above, Respondent willfully² violated, Section 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, which makes it unlawful for any investment adviser to a pooled investment vehicle to “[m]ake 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 “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.”³

12. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, which require investment advisers registered or required to be registered to, among other things, adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules, and to review at least annually the adequacy of the policies and procedures and the effectiveness of their implementation.

13. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder, which, among other things, prohibits an investment adviser registered or required to be registered under Section 203 of the Advisers Act from having custody of a pooled investment vehicle client’s assets unless the client is subject to an annual audit or surprise examination.

14. As a result of the conduct described above, Respondent willfully violated Section 207 of the Advisers Act, which makes it “unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission... or willfully to omit to state in any such application or report any material fact which is required to be stated therein.”

² A willful violation of the securities laws means merely “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.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)). The primary violations of the Advisers Act and rules thereunder that are cited in this Order may rest on a finding of simple negligence.

³ “Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act.” *In the Matter of Wunderlich Securities, Inc.*, Investment Advisers Act Rel. No. 3211, 2011 WL 2098195, at *8 (May 27, 2011) (citing *SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992)).

15. Section 203A of the Advisers Act generally prohibits an investment adviser that is regulated or required to be regulated in the State in which it maintains its principal office and place of business from registering with the Commission unless it has assets under management of not less than \$25 million, or such higher amount as the Commission may, by rule deem appropriate or is an adviser to an investment company registered under the Investment Company Act. In 2015, Aria Partners remained registered with the Commission as an investment adviser but did not have assets under management of at least \$25 million and was not an adviser to any registered investment company. As a result, Aria Partners willfully violated Section 203A of the Advisers Act.

IV.

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

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

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Sections 203A, 206(4), and 207 of the Advisers Act and Rules 206(4)-2, 206(4)-7, and 206(4)-8 thereunder.

B. Respondent is censured.

C. Respondent shall pay a civil money penalty in the amount of \$150,000 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). Payment shall be made in the following installments: (1) \$100,000 within 10 days of the entry of the Order; (2) \$12,500 within 95 days of the entry of this Order; (3) \$12,500 within 185 days of the entry of this Order; (4) \$12,500 within 275 days of the entry of this Order; and (5) \$12,500 within 365 days of the entry of this Order. If any installment is not made by the date payment is required by this Order, the entire outstanding balance of the civil penalty, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application.

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 Aria Partners GP, LLC as the 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 Robert B. Baker, Assistant Director, Boston Regional Office, Securities and Exchange Commission, 33 Arch Street, 24th Floor, Boston, MA 02110.

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