

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101159 / September 25, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22175

In the Matter of

**Adage Capital Management,
L.P.,**

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**

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 Adage Capital Management, L.P. (“Adage” 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 (“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 who directly or indirectly acquires beneficial ownership of more than 5% of a registered class of equity security to file a statement with the Commission disclosing certain information and to file certain updating amendments. 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 security, 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 to facilitate rapid dissemination to the public.
4. Adage failed to file on a timely basis multiple required Section 16(a) reports of holdings and/or transactions in the securities of GCM Grosvenor, Inc. ("GCM") and Advent Technologies Holdings, Inc. ("Advent") it executed on behalf of an affiliated private fund it managed that held greater than 10% of GCM's and Advent's respective registered classes of common stock. Adage also failed to timely file an initial statement required under Section 13(d) with respect to beneficial ownership in GCM.

Respondent

5. Adage, a Delaware limited partnership headquartered in Boston, Massachusetts, has been registered with the Commission as an investment adviser since 2012. Adage provides investment management services to an affiliated private fund (the "Adage Fund") and an affiliated

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.

entity is the general partner of the fund. Adage had beneficial ownership of the securities held by the Adage Fund under Section 13(d) of the Exchange Act and the rules thereunder. The Adage Fund, the general partner of the fund, and Adage's control persons (collectively, the "Adage Affiliates") also shared direct or indirect beneficial ownership of the relevant securities. Adage took responsibility for making all beneficial ownership filings on behalf of Adage Affiliates.

Issuers

6. GCM is a Delaware corporation with its principal place of business in Illinois. GCM's Class A common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and trades on the Nasdaq Stock Market (ticker: GCMG). GCM registered its Class A common stock in connection with the completion of a business combination transaction with CF Finance Acquisition Corp. on November 17, 2020. Adage and the Adage Affiliates acquired beneficial ownership of more than 10% of GCM's Class A common stock on November 17, 2020. They continued to be greater than 10% beneficial owners until at least May 10, 2023, and they remain greater than 5% beneficial owners.

7. Advent is a Delaware corporation with its principal place of business in Massachusetts. Advent's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and trades on the Nasdaq Stock Market (ticker: ADN). Advent was formerly named AMCI Acquisition Corp., and its common stock traded with the NASDAQ ticker AMCI until February 4, 2021. Adage and the Adage affiliates became greater than 10% beneficial owners of Advent's common stock as of May 15, 2020 and remained as such until at least December 3, 2020.

Applicable Legal Framework

8. Section 13(d)(1) of the Exchange Act and Rule 13d-1(a) together require any person, including a group, who has acquired beneficial ownership of more than 5% of a class of equity security registered under Section 12 of the Exchange Act to publicly file a Schedule 13D disclosure statement with the Commission, which includes, among other things, the identity of the beneficial owner, the amount of beneficial ownership, and plans or proposals regarding the issuer. During the time period herein, Rule 13d-1(a) required the Schedule 13D to be filed, within 10 days² after the triggering acquisition.

² On October 10, 2023, the Commission adopted amendments to the rules governing beneficial ownership reporting under Sections 13(d) and 13(g) to update and shorten certain filing deadlines (the "2023 Amendments"). Modernization of Beneficial Ownership Reporting, SEC Release No. 34-98704 (Oct. 10, 2023), 88 Fed. Reg. 76896 (Nov. 7, 2023). Among other provisions, the 2023 Amendments shortened the deadline for filing the initial statement on Schedule 13D from 10 days to 5 business days. Id. at 76897, 76906. Compliance with this new deadline is required as of February 5, 2024. See id. at 76942.

9. As an alternative to filing on Schedule 13D, certain statutory provisions and rules allow the use of short-form disclosure statements on Schedule 13G with differing timing requirements under certain conditions. During the time period herein, Rule 13d-1(c) provided that, in lieu of filing a Schedule 13D, a person may file a short-form statement on Schedule 13G within 10 days³ 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 (a “Passive Investor 13G Filer”).

10. During the time period herein, a Passive Investor 13G Filer was required, under Exchange Act Rule 13d-2(b), to file an annual amendment within 45 days after the end of each calendar year if there were any changes in the information previously reported, unless certain limited exceptions applied.⁴ In addition, during the time period herein, a Passive Investor 13G Filer was also required, under Exchange Act Rule 13d-2(d), to amend the Schedule 13G promptly upon acquiring beneficial ownership of greater than 10% of a registered class of equity securities and to amend the Schedule 13G promptly thereafter upon increasing or decreasing its beneficial ownership by more than 5% of the class.⁵ Under the standard applicable during the time period herein, any delay in filing such amendment beyond the date the filing reasonably can be made may not be “prompt.”⁶

11. Under Section 13(d) of the Exchange Act and the application of Rule 13d-3, a beneficial owner of a security includes “any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise” has or shares voting or investment power with respect to such security. More than one person may be a beneficial owner of the same securities. Because a beneficial owner, under this standard, includes persons who have both direct and indirect, as well as shared, voting and investment power, beneficial

³ The 2023 Amendments shortened this filing deadline to five business days. See id. at 76897, 76916. Compliance with this new deadline is required by September 30, 2024. See id. at 76942.

⁴ The 2023 Amendments replaced this requirement with a requirement to file an amendment within 45 days after the end of a calendar quarter in which a material change occurred to the information previously set forth. See id. at 76898, 76921. Compliance with this new requirement is required beginning September 30, 2024. See id. at 76942.

⁵ The 2023 Amendments replaced “promptly” with a two-business day requirement. See id. at 76898, 76924. Compliance is required as of September 30, 2024. See id. at 76942.

⁶ Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538 (Jan. 12, 1998), 63 Fed. Reg. 2854, 2855 n.14 (Jan. 16, 1998).

ownership held 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.⁷

12. 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 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.⁸

13. 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 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 a Form 5 report within 45 days after the issuer’s fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 (as applicable) during the issuer’s most recent fiscal year and any transactions eligible for deferred reporting (unless the insider has previously reported all such transactions).

⁷ See id. at 2857. 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.

⁸ A limited exception under Rule 16a-1(a)(1) applies to certain specified types of institutional investors, such as registered investment advisers and broker-dealers, that permit such institutions to exclude any shares “held for the benefit of third parties or in customer or fiduciary accounts in the ordinary course of business” if “such shares are acquired ... without the purpose or effect of changing or influencing control of the issuer or engaging in any arrangement subject to Rule 13d-3(b)” (a “Qualified Institution”). A parent holding company or control person of a Qualified Institution may also exclude such shares if the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries and affiliates that are not Qualified Institutions, does not exceed 1% of the class of securities. Rule 16a-1(a)(1)(vii).

14. There is no state of mind requirement for violations of Sections 16(a) and 13(d) and the rules thereunder.⁹ The failure to timely file a required report, even if inadvertent, constitutes a violation.¹⁰

Respondent Was a Cause of Violations of Section 16(a) by Its Affiliates¹¹

15. The Adage Fund held greater than 10% of Advent’s common stock as of May 15, 2020, resulting in the Adage Affiliates becoming subject to the reporting requirements of Exchange Act Section 16(a). Adage failed to timely file an initial statement of beneficial ownership on Form 3 on behalf of the Adage Affiliates with respect to Advent until November 30, 2020—more than six months after the filing deadline of May 26, 2020.

16. The Adage Fund also held greater than 10% of GCM’s Class A common stock as of November 17, 2020, resulting in the Adage Affiliates becoming subject to the reporting requirements of Exchange Act Section 16(a). Adage failed to file any Section 16(a) reports on behalf of the Adage Affiliates with respect to GCM until July 2021—almost eight months after the requirement to do so. On July 13, 2021, Adage filed an untimely initial statement of beneficial ownership on Form 3 as well as untimely Forms 4 that reported transactions on numerous dates between November 20, 2020 and June 21, 2021. These late reports include transactions on the following dates that Adage executed on behalf of the Adage Fund on the following dates that were required to be reported on Form 4 within two business days:

⁹ See, e.g., 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”); SEC v. e-Smart Technologies, Inc., 82 F. Supp. 3d 97, 104 (D.D.C. 2015) (scienter is not required to establish a violation of Section 16(a) of the Exchange Act). Negligence is sufficient to establish liability for causing such violations. See KPMG Peat Marwick LLP, 74 SEC Docket 357, 2001 WL 47245, at *19 (Jan. 19, 2001) (Commission opinion) (“[N]egligence is sufficient to establish ‘causing’ liability under Exchange Act Section 21C(a) ... in cases in which a person is alleged to ‘cause’ a primary violation that does not require scienter.”).

¹⁰ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *2 (May 19, 1980) (Commission opinion) (“We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation”); see generally Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) (Commission opinion) (“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); Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003), 68 Fed. Reg. 25788, 25792 (May 13, 2003) (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).

¹¹ None of the Adage Affiliates were eligible at any time under Exchange Act Rule 16a-1(a)(1) subparagraphs (i) through (xi) to exclude any securities over which they were deemed to have direct or indirect beneficial ownership under Section 13(d) and the rules thereunder.

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	11/20/2020	11/24/2020	7/13/2021
4	11/25/2020	11/30/2020	7/13/2021
4	11/30/2020	12/2/2020	7/13/2021
4	12/1/2020	12/3/2020	7/13/2021
4	12/8/2020	12/10/2020	7/13/2021
4	12/9/2020	12/11/2020	7/13/2021
4	12/10/2020	12/14/2020	7/13/2021
4	12/11/2020	12/15/2020	7/13/2021
4	12/14/2020	12/16/2020	7/13/2021
4	12/15/2020	12/17/2020	7/13/2021
4	12/16/2020	12/18/2020	7/13/2021
4	12/17/2020	12/21/2020	7/13/2021
4	12/22/2020	12/24/2020	7/13/2021
4	12/31/2020	1/5/2021	7/13/2021
4	1/4/2021	1/6/2021	7/13/2021
4	1/6/2021	1/8/2021	7/13/2021
4	1/7/2021	1/11/2021	7/13/2021
4	1/12/2021	1/14/2021	7/13/2021
4	1/14/2021	1/19/2021	7/13/2021
4	1/20/2021	1/22/2021	7/13/2021
4	1/22/2021	1/26/2021	7/13/2021
4	1/26/2021	1/28/2021	7/13/2021
4	1/27/2021	1/29/2021	7/13/2021
4	1/29/2021	2/2/2021	7/13/2021
4	2/2/2021	2/4/2021	7/13/2021
4	2/5/2021	2/9/2021	7/13/2021
4	2/8/2021	2/10/2021	7/13/2021
4	2/9/2021	2/11/2021	7/13/2021
4	2/10/2021	2/12/2021	7/13/2021

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	2/11/2021	2/16/2021	7/13/2021
4	2/12/2021	2/17/2021	7/13/2021
4	2/17/2021	2/19/2021	7/13/2021
4	2/18/2021	2/22/2021	7/13/2021
4	2/22/2021	2/24/2021	7/13/2021
4	2/23/2021	2/25/2021	7/13/2021
4	2/24/2021	2/26/2021	7/13/2021
4	3/2/2021	3/4/2021	7/13/2021
4	3/8/2021	3/10/2021	7/13/2021
4	4/14/2021	4/16/2021	7/13/2021
4	4/15/2021	4/19/2021	7/13/2021
4	4/16/2021	4/20/2021	7/13/2021
4	4/19/2021	4/21/2021	7/13/2021
4	4/21/2021	4/23/2021	7/13/2021
4	4/22/2021	4/26/2021	7/13/2021
4	4/23/2021	4/27/2021	7/13/2021
4	4/26/2021	4/28/2021	7/13/2021
4	4/27/2021	4/29/2021	7/13/2021
4	4/28/2021	4/30/2021	7/13/2021
4	4/29/2021	5/3/2021	7/13/2021
4	4/30/2021	5/4/2021	7/13/2021
4	5/4/2021	5/6/2021	7/13/2021
4	5/5/2021	5/7/2021	7/13/2021
4	5/6/2021	5/10/2021	7/13/2021
4	5/7/2021	5/11/2021	7/13/2021
4	5/10/2021	5/12/2021	7/13/2021
4	5/12/2021	5/14/2021	7/13/2021
4	5/18/2021	5/20/2021	7/13/2021
4	5/19/2021	5/21/2021	7/13/2021

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	5/20/2021	5/24/2021	7/13/2021
4	6/3/2021	6/7/2021	7/13/2021
4	6/4/2021	6/8/2021	7/13/2021
4	6/7/2021	6/9/2021	7/13/2021
4	6/8/2021	6/10/2021	7/13/2021
4	6/9/2021	6/11/2021	7/13/2021
4	6/10/2021	6/14/2021	7/13/2021
4	6/11/2021	6/15/2021	7/13/2021
4	6/14/2021	6/16/2021	7/13/2021
4	6/16/2021	6/21/2021	7/13/2021
4	6/18/2021	6/22/2021	7/13/2021
4	6/21/2021	6/23/2021	7/13/2021

17. These late-reported transactions in GCM primarily involved open-market sales of GCM's common stock together with a smaller number of open-market purchases. In the aggregate, these transactions had a market value in excess of \$25 million and constituted a net disposition of the equivalent of approximately 2.3% of GCM's outstanding Class A common stock shares. Adage also failed to file a required Form 5 by February 14, 2021 on behalf of the Adage Affiliates to report the holdings and transactions that should have been reported on Forms 3 and 4 during GCM's fiscal year 2020 but were not.

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

Respondent Failed to Timely File as Required under Section 13(d)

19. Adage and the Adage Affiliates have been subject to the reporting requirements of Exchange Act Section 13(d) since acquiring beneficial ownership of more than 5% of GCM's Class A common stock as of November 17, 2020, and remain subject to those requirements. Adage and the Adage Affiliates were required to file a Schedule 13D within 10 days, or in lieu thereof, file a Schedule 13G within 10 days if eligible under Rule 13d-1(c) as Passive Investor 13G Filers. Adage's filing of an initial Schedule 13G statement on behalf of itself and the Adage Affiliates on July 13, 2021 did not comply with the applicable 10-day filing deadline.

20. As a result of the conduct described above, Adage violated Section 13(d) of the Exchange Act and Rule 13d-1 thereunder, and was a cause of violations by the Adage Affiliates of such provisions.

Respondent's Remedial Efforts

21. 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's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Adage 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 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 \$200,000 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). 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 Adage Capital Management, L.P. 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 Thomas

Smith, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004.

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