

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 101167 / September 25, 2024**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-22183**

**In the Matter of**

**Jack W. Schuler,**

**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 Jack W. Schuler (“Schuler” 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, and except as provided herein in Section V, 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 finds<sup>1</sup> 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. While subject to these reporting requirements, Respondent violated Section 13(d) by failing to timely file required amendments with respect to Respondent's beneficial ownership of the registered common stock of Accelerate Diagnostics, Inc. ("Accelerate"), Biodesix, Inc. ("Biodesix"), Biolase, Inc. ("Biolase"), Soleno Therapeutics, Inc. ("Soleno"), and Yield10 Bioscience, Inc. ("Yield10"), and violated Section 16(a) by failing to timely file multiple reports of transactions in Aspira Women's Health Inc.'s ("Aspira"), Biolase's, Soleno's, and Yield10's securities.

#### Respondent

5. Schuler, 83, is a resident of Lake Bluff, Illinois. He was subject at all relevant times to Section 13(d) of the Exchange Act as an acquirer of greater than 5% beneficial ownership of

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<sup>1</sup> 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.

registered classes of securities of Accelerate, Aspira, Biodesix, Biolase, Soleno, Yield10, and was subject at all relevant times to Section 16(a) of the Exchange Act as a director and greater than 10% beneficial owner of Accelerate and Biodesix and as a greater than 10% beneficial owner of Aspira, Biolase, Soleno, and Yield10. Schuler's principal business is investing in healthcare industry securities for his own accounts, including the Jack W. Schuler Living Trust (the "Trust") for which he has served as the sole trustee, and for the accounts of a foundation (the "Foundation") that he controls.

### **Issuers**

6. Accelerate is a Delaware corporation with its principal place of business in Arizona. Accelerate'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: AXDX). As of April 2012, Schuler became subject to the reporting requirements of Sections 13(d) and 16(a) after acquiring greater than 10% beneficial ownership of Accelerate's registered class of common stock, and he remains subject to such requirements. Schuler most recently reported beneficial ownership of approximately 45.4% on a Schedule 13D amendment filed on May 23, 2024. Schuler has also served a director of Accelerate since June 26, 2012.

7. Aspira (formerly known as Vemillion, Inc.) is a Delaware corporation with its principal place of business in Texas. Aspira'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: AWH). As of May 2013, Schuler became subject to the reporting requirements of Sections 13(d) and 16(a) after acquiring greater than 10% beneficial ownership of Aspira's registered class of common stock in connection with a private placement agreement with the issuer, and he remains subject to such reporting requirements. Schuler most recently reported beneficial ownership of approximately 14% on a Schedule 13D amendment filed on July 11, 2024.

8. Biodesix is a Delaware corporation with its principal place of business in Colorado. Biodesix's common stock has been registered with the Commission under Section 12 of the Exchange Act since its registration statement in connection with its initial public offering ("IPO") became effective October 27, 2020, and its common stock trades on the NASDAQ stock market (ticker: BDSX). In connection with the closing of the IPO, Schuler became subject to the reporting requirements of Sections 13(d) and 16(a) as an acquirer of beneficial ownership of more than 10% of Biodesix's registered class of common stock and as a director of Biodesix, and he remains subject to such requirements. Schuler most recently reported beneficial ownership of approximately 21.4% on a Schedule 13D amendment filed on May 23, 2024.

9. Biolase is a Delaware corporation with its principal place of business in California. Biolase's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and was traded on the NASDAQ stock market (ticker: BIOL) until it was delisted by NASDAQ on June 20, 2024. Its common stock is currently quoted on OTC Markets under the same ticker. Schuler became subject to the reporting requirements of Section 13(d) since acquiring beneficial ownership of more than 5% of Biolase's registered class of

common stock as of July 2014, and remained as such until at least January 2021. Schuler became subject to the reporting requirements of Section 16(a) as a greater than 10% beneficial owner as of November 3, 2014, and remained as such until at least December 2020.

10. Soleno is a Delaware corporation with its principal place of business in California. Soleno'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: SLNO). As of December 2017, Schuler became subject to the reporting requirements of Sections 13(d) and 16(a) after acquiring greater than 10% beneficial ownership of Soleno's registered class of common stock in connection with a private placement agreement with the issuer. Schuler remained subject to Section 16(a) as a greater than 10% beneficial owner until at least December 9, 2022, and he remained subject to Section 13(d) as a greater than 5% beneficial owner until at least May 24, 2023.

11. Yield10 (formerly known as Metabolix, Inc.) is a Delaware corporation with its principal place of business in Massachusetts. Yield10'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: YTEN). Schuler is and has been subject to the reporting requirements of Section 13(d) since acquiring beneficial ownership of more than 5% of Yield10's registered class of common stock as of September 14, 2011, and is and has been subject to the reporting requirements of Section 16(a) as a greater than 10% beneficial owner as of January 13, 2012. Schuler most recently reported beneficial ownership of approximately 16.4% on a Schedule 13D amendment filed on May 23, 2024.

### **Applicable Legal Framework**

12. 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 days<sup>2</sup> after the triggering acquisition.

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<sup>2</sup> 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.

13. During the time period herein, Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder required a filer to amend a Schedule 13D promptly<sup>3</sup> as material changes occur in disclosures previously made, including but not limited to, any material increase or decrease in the percentage of the class beneficially owned. An acquisition or disposition of beneficial ownership of securities in an amount equal to 1% or more of the class of securities is deemed material for purposes of Rule 13d-2. Under the standard applicable during the time period herein, any delay in filing beyond the date the filing reasonably can be made may not be prompt.<sup>4</sup>

14. 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.

15. 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.

16. 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.<sup>5</sup> 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

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<sup>3</sup> The 2023 Amendments created a bright-line rule that replaces “promptly” with a two-business day requirement. *Id.* at 76897, 76921. Compliance is required as of February 5, 2024. *See id.* at 76942.

<sup>4</sup> Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538 (Jan. 12, 1998), 63 Fed. Reg. 2854, 2855 n.14 (Jan. 16, 1998).

<sup>5</sup> Pecuniary interest is defined in Exchange Act Rule 16a-1(a)(2)(i) as “the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction in the subject securities.” Under Exchange Act Rule 16a-1(a)(2)(ii), the term indirect pecuniary interest is defined to include securities held in trusts for the benefit of a member of a person’s immediate family for which the person serves as a trustee and securities held by members of a person’s immediate family sharing the same household.

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).

17. There is no state of mind requirement for violations of Section 16(a) and 13(d) and the rules thereunder.<sup>6</sup> The failure to timely file a required report, even if inadvertent, constitutes a violation.<sup>7</sup>

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

18. Since becoming subject to the reporting requirements of Exchange Act Section 16(a) with respect to Aspira in May 2013, Biolase in November 2014, Soleno in December 2017, and Yield10 in January 2012,<sup>8</sup> Respondent failed to file on a timely basis multiple required Section 16(a) reports with the Commission, including to report transactions he executed on behalf of the Trust on the following dates that were required to be reported on Form 4 within two business days:

<u>Issuer</u>	<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
Yield10	4	3/14/2019	3/18/2019	6/5/2019
Soleno	4	10/25/2019	10/29/2019	6/26/2020
Yield10	4	11/14/2019	11/18/2019	1/30/2020
Yield10	4	1/15/2020	1/17/2020	1/30/2020
Biolase	4	2/11/2020	2/13/2020	5/15/2020

<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), at all relevant times, Respondent has had beneficial ownership of securities held directly and of securities held by the Trust and the Foundation. For purposes of reporting holdings and transactions under Section 16(a), at all relevant times, Respondent has had an obligation to report such securities to the extent of his direct or indirect pecuniary interest therein, which included his indirect pecuniary interest in the securities held by the Trust.

<u>Issuer</u>	<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
Yield10	4	8/26/2020	8/28/2020	8/31/2020
Soleno	4	12/7/2020	12/9/2020	8/3/2021
Soleno	4	12/8/2020	12/10/2020	8/3/2021
Soleno	4	12/30/2020	1/4/2021	8/3/2021
Soleno	4	12/31/2020	1/5/2021	8/3/2021
Soleno	4	1/4/2021	1/6/2021	8/3/2021
Soleno	4	1/19/2021	1/22/2021	8/3/2021
Soleno	4	1/20/2021	1/22/2021	8/3/2021
Soleno	4	1/21/2021	1/25/2021	8/3/2021
Soleno	4	1/22/2021	1/26/2021	8/3/2021
Soleno	4	1/25/2021	1/27/2021	8/3/2021
Soleno	4	1/26/2021	1/28/2021	8/3/2021
Soleno	4	1/27/2021	1/29/2021	8/3/2021
Soleno	4	2/18/2021	2/22/2021	8/3/2021
Soleno	4	2/25/2021	3/1/2021	8/3/2021
Soleno	4	4/8/2021	4/12/2021	8/3/2021
Soleno	4	4/9/2021	4/13/2021	8/3/2021
Soleno	4	4/28/2021	4/30/2021	8/3/2021
Soleno	4	4/30/2021	5/4/2021	8/3/2021
Soleno	4	5/5/2021	5/7/2021	8/3/2021
Soleno	4	5/18/2021	5/20/2021	8/3/2021
Soleno	4	8/2/2022	8/4/2022	10/14/2022
Soleno	4	8/3/2022	8/5/2022	10/14/2022
Soleno	4	8/4/2022	8/8/2022	10/14/2022
Soleno	4	8/5/2022	8/9/2022	10/14/2022
Soleno	4	8/8/2022	8/10/2022	10/14/2022
Soleno	4	8/10/2022	8/12/2022	10/14/2022
Soleno	4	8/11/2022	8/15/2022	10/14/2022
Soleno	4	8/12/2022	8/16/2022	10/14/2022

<u>Issuer</u>	<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
Soleno	4	8/15/2022	8/17/2022	10/14/2022
Soleno	4	8/16/2022	8/18/2022	10/14/2022
Soleno	4	8/17/2022	8/19/2022	10/14/2022
Soleno	4	8/18/2022	8/22/2022	10/14/2022
Soleno	4	8/19/2022	8/23/2022	10/14/2022
Soleno	4	8/22/2022	8/24/2022	10/14/2022
Soleno	4	8/23/2022	8/25/2022	10/14/2022
Soleno	4	8/24/2022	8/26/2022	10/14/2022
Soleno	4	8/25/2022	8/29/2022	10/14/2022
Soleno	4	8/26/2022	8/30/2022	10/14/2022
Yield10	4	10/6/2022	10/11/2022	5/9/2023
Yield10	4	10/7/2022	10/12/2022	5/9/2023
Yield10	4	10/11/2022	10/13/2022	5/9/2023
Yield10	4	10/12/2022	10/14/2022	5/9/2023
Soleno	4	10/13/2022	10/17/2022	5/15/2023
Yield10	4	10/13/2022	10/17/2022	5/9/2023
Yield10	4	10/14/2022	10/18/2022	5/9/2023
Yield10	4	10/17/2022	10/19/2022	5/9/2023
Yield10	4	10/18/2022	10/20/2022	5/9/2023
Yield10	4	10/19/2022	10/21/2022	5/9/2023
Yield10	4	10/20/2022	10/24/2022	5/9/2023
Yield10	4	10/21/2022	10/25/2022	5/9/2023
Yield10	4	10/24/2022	10/26/2022	5/9/2023
Yield10	4	10/25/2022	10/27/2022	5/9/2023
Soleno	4	10/26/2022	10/28/2022	5/15/2023
Yield10	4	10/26/2022	10/28/2022	5/9/2023
Soleno	4	10/27/2022	10/31/2022	5/15/2023
Yield10	4	10/27/2022	10/31/2022	5/9/2023
Soleno	4	10/28/2022	11/1/2022	5/15/2023



<u>Issuer</u>	<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
Yield10	4	10/28/2022	11/1/2022	5/9/2023
Soleno	4	10/31/2022	11/2/2022	5/15/2023
Yield10	4	10/31/2022	11/2/2022	5/9/2023
Soleno	4	11/1/2022	11/3/2022	5/15/2023
Yield10	4	11/1/2022	11/3/2022	5/9/2023
Soleno	4	11/2/2022	11/4/2022	5/15/2023
Yield10	4	11/2/2022	11/4/2022	5/9/2023
Soleno	4	11/3/2022	11/7/2022	5/15/2023
Soleno	4	11/4/2022	11/8/2022	5/15/2023
Yield10	4	11/4/2022	11/8/2022	5/9/2023
Soleno	4	11/7/2022	11/9/2022	5/15/2023
Yield10	4	11/7/2022	11/9/2022	5/9/2023
Soleno	4	11/8/2022	11/10/2022	5/15/2023
Yield10	4	11/8/2022	11/10/2022	5/9/2023
Soleno	4	11/9/2022	11/14/2022	5/15/2023
Yield10	4	11/9/2022	11/14/2022	5/9/2023
Soleno	4	11/14/2022	11/16/2022	5/15/2023
Yield10	4	11/14/2022	11/16/2022	5/9/2023
Soleno	4	11/15/2022	11/17/2022	5/15/2023
Yield10	4	11/15/2022	11/17/2022	5/9/2023
Soleno	4	11/16/2022	11/18/2022	5/15/2023
Soleno	4	11/17/2022	11/21/2022	5/15/2023
Soleno	4	11/18/2022	11/22/2022	5/15/2023
Soleno	4	11/21/2022	11/23/2022	5/15/2023
Soleno	4	11/22/2022	11/25/2022	5/15/2023
Soleno	4	11/23/2022	11/28/2022	5/15/2023
Soleno	4	11/25/2022	11/29/2022	5/15/2023
Soleno	4	11/28/2022	11/30/2022	5/15/2023
Yield10	4	11/28/2022	11/30/2022	5/9/2023

<u>Issuer</u>	<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
Soleno	4	11/29/2022	12/1/2022	5/15/2023
Yield10	4	11/29/2022	12/1/2022	5/9/2023
Soleno	4	11/30/2022	12/2/2022	5/15/2023
Yield10	4	11/30/2022	12/2/2022	5/9/2023
Soleno	4	12/1/2022	12/5/2022	5/15/2023
Yield10	4	12/1/2022	11/5/2022	5/9/2023
Soleno	4	12/2/2022	12/6/2022	5/15/2023
Yield10	4	12/2/2022	12/6/2022	5/9/2023
Soleno	4	12/5/2022	12/7/2022	5/15/2023
Yield10	4	12/5/2022	12/7/2022	5/9/2023
Soleno	4	12/6/2022	12/8/2022	5/15/2023
Yield10	4	12/6/2022	12/8/2022	5/9/2023
Soleno	4	12/7/2022	12/9/2022	5/15/2023
Yield10	4	12/7/2022	12/9/2022	5/9/2023
Soleno	4	12/8/2022	12/12/2022	5/15/2023
Yield10	4	12/8/2022	12/12/2022	5/9/2023
Soleno	4	12/9/2022	12/13/2022	5/15/2023
Yield10	4	12/9/2022	12/13/2022	5/9/2023
Yield10	4	12/12/2022	12/14/2022	5/9/2023
Yield10	4	12/13/2022	12/15/2022	5/9/2023
Yield10	4	12/14/2022	12/16/2022	5/9/2023
Yield10	4	12/15/2022	12/19/2022	5/9/2023
Yield10	4	12/16/2022	12/20/2022	5/9/2023
Yield10	4	12/19/2022	12/21/2022	5/9/2023
Yield10	4	12/20/2022	12/22/2022	5/9/2023
Yield10	4	8/15/2023	8/17/2023	10/10/2023
Yield10	4	12/20/2023	12/22/2023	5/17/2024
Aspira	4	1/26/2024	1/30/2024	6/18/2024

19. With respect to Soleno, Respondent's late-reported transactions primarily involved purchases from the issuer and open-market sales. Among others, Respondent purchased approximately \$2 million of common stock, equivalent to over 5% of Soleno's class of common stock, in a public offering by the issuer on October 25, 2019, which was not reported until June 26, 2020—eight months late. Respondent also had open-market sales from December 7, 2020 to May 18, 2021, with aggregate gross proceeds of more than \$2.8 million, none of which were reported until August 3, 2021; and additional open-market sales from August 2, 2022 to August 26, 2022, with aggregate gross proceeds of more than \$480,000, none of which were reported until October 14, 2022. In addition, Respondent had further open-market sales from October 13, 2022 to December 9, 2022, with aggregate gross proceeds of more than \$470,000, that Respondent did not report on Form 4 until after the Commission's enforcement staff contacted him in early 2023 regarding his filings. Respondent also failed to file required Forms 5 to report transactions in Soleno's securities that should have been reported on Forms 4 during Soleno's fiscal years 2019, 2020, 2021, and 2022, but were not.

20. With respect to Yield10, Respondent's late-reported transactions primarily also involved purchases from the issuer and open-market sales. Among others, Respondent purchased securities from the issuer on March 14, 2019 for more than \$660,000 and on November 14, 2019 for more than \$3.1 million, each of which was reported approximately two months late. Respondent also had substantial open-market sales between October 6, 2022 and December 20, 2022, representing a disposition of more than 25% of his holdings of Yield10 common stock with aggregate gross proceeds of more than \$600,000, that Respondent did not report on Form 4 until after the Commission's enforcement staff contacted him regarding his filings in early 2023. Thereafter, Respondent was also late in reporting purchases of Yield10 securities in an offering by the issuer on August 15, 2023 for approximately \$500,000, which he reported nearly two months late, and an open-market sale of Yield10 common stock on December 20, 2023, which he reported nearly five months late. Respondent also failed to file required Forms 5 to report transactions that should have been reported on Forms 4 during Yield10's fiscal years 2022 and 2023, but were not.

21. With respect to Biolase, on February 11, 2020, Respondent sold more than 60% of the Biolase common stock in which Respondent had a pecuniary interest for aggregate gross proceeds of more than \$780,000, which he reported approximately three months late.

22. With respect to Aspira, Respondent purchased securities from the issuer in a private placement on January 26, 2024, which he reported nearly five months late.

23. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

### **Respondent Failed to Timely File Schedule 13D Amendments**

24. At all relevant times, Respondent was subject to the reporting requirements of Exchange Act Section 13(d) as an acquiror of beneficial ownership of more than 5% of a registered class of equity securities of Accelerate, Biodesix, Biolase, Soleno, and Yield10.<sup>9</sup>

25. Respondent failed to timely file multiple amendments required as a result of material changes to the information set forth previously on his Schedule 13D with respect to Accelerate, including:

- Respondent's acquisitions of beneficial ownership during the following periods, each of which constituted an acquisition of more than 1% of Accelerate's outstanding class of common stock, and none of which was reflected in an amendment until October 5, 2021: (i) purchases on behalf of the Foundation and the Trust between January 31, 2019 and March 31, 2020; (ii) purchases on behalf of the Trust between April 20, 2020 and June 5, 2020; and (iii) purchases on behalf the Trust between June 5, 2020 and June 15, 2020
- Respondent's dispositions of beneficial ownership on the following dates, each of which constituted a disposition of beneficial ownership of more than 1% of Accelerate's outstanding class of common stock, none of which were reflected in an amendment until October 5, 2021: (i) on January 23, 2019 by gift of common stock from the Foundation to other entities for which Respondent did not have investment or voting power; (ii) by March 2020 by Respondent ceasing as a manager of certain trusts; (iii) on April 14, 2020 by gift of common stock from the Foundation to other entities for which Respondent did not have investment or voting power; and (iv) on September 15, 2021 by gift of securities from the Foundation to other entities for which Respondent did not have investment or voting power;
- Respondent's entry into an exchange agreement with Accelerate on August 15, 2022 on behalf of the Trust, which included the issuance of warrants to the Trust that became exercisable on February 15, 2023, which was not reflected in an amendment until June 8, 2023, and which constituted an acquisition of beneficial ownership by Respondent equivalent to more than 1% of Accelerate's outstanding class of common stock; and
- Respondent's entry into an agreement with Accelerate on January 23, 2024 for the Trust to purchase common stock and immediately exercisable warrants, the first tranche of which was issued on that date, constituting an acquisition of beneficial ownership by Respondent equivalent to more than 9% of Accelerate's outstanding

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<sup>9</sup> At all relevant times, Respondent had beneficial ownership under the standards set forth in Rule 13d-3 of, among others, securities held by the Trust and the Foundation because he had sole or shared investment and/or voting discretion over such securities.

class of common stock, and which was not reflected in an amendment until May 23, 2024.

26. Respondent also failed to timely file multiple amendments required as a result of material changes to the information set forth previously on his Schedule 13D with respect to Soleno, including:

- Respondent’s acquisitions of beneficial ownership of Soleno shares, each of which constituted more than 1% of the class of outstanding Soleno common stock during the following periods, and none of which was reflected in an amendment until July 17, 2020: (i) open-market purchases on behalf of the Foundation between March 21, 2019 and March 26, 2019; (ii) open-market purchases on behalf of the Foundation between March 27, 2019 and April 5, 2019; (iii) open-market purchases on behalf of the Foundation between April 8, 2019 and May 20, 2019, together with purchases on behalf of the Trust and the Foundation on October 25, 2019 in an offering by the issuer; and (iv) purchases on behalf of the Trust and the Foundation on June 26, 2020;
- Respondent’s dispositions of beneficial ownership of Soleno shares, each of which constituted more than 1% of the class of outstanding Soleno common stock during the following periods, and none of which was reflected in an amendment until April 5, 2022: (i) open-market sales on behalf of the Trust and the Foundation between December 7, 2020 and February 18, 2021; and (ii) open-market sales on behalf of the Trust and the Foundation between February 22, 2021 and at least April 9, 2021; and
- Respondent’s dispositions of beneficial ownership through open-market sales of Soleno common stock, each of which constituted a disposition of more than 1% of the class of outstanding common stock during the following periods: (i) open-market sales on behalf of the Trust between October 13, 2022 and November 4, 2022; (ii) open-market sales on behalf of the Trust between November 7, 2022 and November 16, 2022; (iii) open-market sales on behalf of the Trust between November 17, 2022 and November 25, 2022; (iv) open-market sales on behalf of the Trust between November 28, 2022 and December 7, 2022; (v) open-market sales on behalf of the Trust and the Foundation between December 8, 2022 and February 17, 2023; and (vi) open market sales on behalf the Foundation between February 21, 2023 and February 28, 2023. Respondent failed to reflect any of these dispositions in an amendment until May 26, 2023—after the Commission’s enforcement staff had contacted him regarding his filings, and by which time Respondent’s beneficial ownership had declined from approximately 17.5% as reflected in the last-filed amendment on April 5, 2022 down to less than 5% as of the May 26, 2023 amendment following additional sales on behalf of the Foundation between May 9, 2023 and May 24, 2023.

27. Respondent similarly failed to timely file multiple amendments required as a result of material changes to the information set forth previously on his Schedule 13D with respect to Yield10, including:

- Respondent's acquisitions on behalf of the Trust through, among other things, a purchase agreement with Yield10 on March 14, 2019, which constituted an acquisition of beneficial ownership of more than 1% of the outstanding class of Yield10 common stock and which was not reflected in an amendment until June 26, 2019;
- Respondent's acquisitions on behalf of the Trust through a purchase agreement with Yield 10 on November 14, 2019, which was not reflected in an amendment until February 6, 2020, and which resulted in Respondent's beneficial ownership increasing to approximately 77.4%, compared to the approximately 47% reported in his last-filed amendment on March 14, 2019;
- Respondent's dispositions of beneficial ownership through open-market sales of Yield10 common stock on behalf of the Trust, each of which constituted a disposition of more than 1% of the class of outstanding Yield10 common stock during the following periods, and none of which was reflected in an amendment until May 26, 2023—after the Commission's enforcement staff had contacted him regarding his filings: (i) between October 6, 2022 and October 18, 2022; (ii) between October 19, 2022 and October 28, 2022; (iii) between October 31, 2022 and December 2, 2022; and (iv) between December 5, 2022 and December 14, 2022; and
- Respondent's acquisition of beneficial ownership through a purchase agreement with Yield10 on August 15, 2023 on behalf of the Trust, which was not reflected in an amendment until October 11, 2023, and which constituted an acquisition of beneficial ownership equivalent to more than 12% of Yield10's outstanding class of common stock following the share issuance.

28. Respondent also failed to timely file amendments required as a result of material changes to the information set forth previously on his Schedules 13D with respect to Biodesix and Biolase, including:

- Respondent's acquisitions of beneficial ownership of Biodesix shares through open-market purchases between August 13, 2021 and August 19, 2021, which constituted more than 1% of the class of outstanding Biodesix common stock, which was not reflected in an amendment until January 4, 2022;
- Respondent's acquisitions of beneficial ownership through purchases on behalf of the Foundation in a public offering of securities by Biolase on July 22, 2020, which constituted an acquisition of beneficial ownership equivalent to more than

7% of Biolase's outstanding class of common stock, and which was not reflected in an amendment until July 2, 2021; and

- Respondent's dispositions of beneficial ownership through open-market sales of Biolase common stock, each of which constituted a disposition of more than 1% of the class of outstanding common stock during the following periods: (i) open-market sales on behalf of the Foundation between November 27, 2020 and December 2, 2020; (ii) open-market sales on behalf of the Foundation and Trust between December 4, 2020 and December 8, 2020; (iii) open-market sales on behalf of the Foundation between December 18, 2020 and December 23, 2020; (iv) open-market sales on behalf of the Foundation between December 28, 2020 and December 29, 2020; (v) open-market sales on behalf of the Foundation on January 14, 2021; and (vi) open-market sales on behalf of the Foundation on January 20, 2021. Respondent failed to reflect any of these dispositions in an amendment until July 2, 2021, by which time Respondent's beneficial ownership had declined from approximately 16.2% as reflected in his last-filed amendment on June 12, 2020 down to less than 5% as of the July 2, 2021 amendment.

29. As a result of the conduct described above, Respondent violated Section 13(d) of the Exchange Act and Rule 13d-2 thereunder.

#### **Respondent's Remedial Efforts**

30. 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 Schuler 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-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 \$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 Jack W. Schuler 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.

C. 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, he shall not argue that he is entitled to, nor shall he 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 he 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.



V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman  
Secretary