

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101176 / September 25, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22192

In the Matter of

Sunbeam Management, LLC

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 Sunbeam Management, LLC (“Sunbeam” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“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. Section 13(d) of the Exchange Act and Rule 13d-1 together require that any person who directly or indirectly acquires beneficial ownership of more than five percent of any voting class of equity security registered under Section 12 of the Exchange Act file a statement with the Commission. During the relevant time, beneficial owners could comply with this requirement by filing a Schedule 13D with the Commission within 10 days after acquiring the requisite amount of beneficial ownership. Whenever a material change occurred to the facts set forth in any Schedule 13D so filed, the disclosure statement was required to have been truthfully amended to reflect that material change and filed promptly.

2. Section 16(a) of the Exchange Act requires officers and directors of a company with a registered class of equity security, and any beneficial owners of greater than 10% of such class of equity security, to file certain reports of securities holdings and transactions. Enactment of Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of insider 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."² The obligation to make Section 16 filings applies irrespective of profits or the filer's reasons for engaging in the transactions.

3. In March 2020, Respondent accepted shares of convertible preferred stock of OWC Pharmaceutical Research Corp. ("OWC") in satisfaction of a dispute. Each preferred share was eligible to be converted into 1,000 shares of OWC common stock. As a result, Respondent was deemed to be a beneficial owner of the underlying OWC common stock. When the amount of beneficial ownership attributable to the convertible preferred stock was combined with a small existing position in OWC common stock, Respondent beneficially owned more than 14% of OWC outstanding shares. Respondent did not file a Schedule 13D or a Form 3 until May 2020. Thus, Respondent violated Sections 13(d) and 16(a) and related rules.

4. Thereafter, Respondent presented its convertible shares to OWC for conversion. However, OWC informed Respondent that it would not convert Respondent's convertible shares into common stock. As a result, Respondent no longer could be deemed to beneficially own the underlying common stock. This decrease in the amount of beneficial ownership held represented a material change to the facts set forth in its filed Schedule 13D. Respondent failed to amend that Schedule 13D and thus violated Section 13(d)(2) and Rule 13d-2.

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.

² H.R. Rep. 73-1383, at 13, 24 (1934).

Respondent

5. Sunbeam is a Maryland corporation based in Pikesville, Maryland. Sunbeam is primarily engaged in the business of management and consulting.

Legal Framework

6. Section 13(d)(1) of the Exchange Act and Rule 13d-1(a) thereunder together require any person who has directly or indirectly acquired beneficial ownership of more than five percent of any voting class of equity security registered under Section 12 of the Exchange Act to file a statement with the Commission disclosing certain information specified in a Schedule 13D. During the relevant time, individuals or entities could comply with this requirement by filing a Schedule 13D with the Commission within 10 days after they acquired the requisite amount of beneficial ownership.³ Section 13(d) allows shareholders and potential investors to evaluate changes in substantial shareholdings.⁴

7. During the time period relevant to this matter, Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder required a person who had filed a Schedule 13D to file an amendment “promptly”⁵ if any material change occurred in the facts set forth in that filing, 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 one percent or more of a class of equity securities is deemed material by Rule 13d-2(a).

8. Section 16(a) of the Exchange Act and Rule 16a-3 apply to every officer, director, and greater than 10% beneficial owner⁶ of any class of equity security registered pursuant to

³ 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 five business days, which became effective on February 5, 2024. *Id.* at 76897, 76906.

⁴ See generally *GAF Corp. v. Milstein*, 453 F.2d 709, 717 (2d Cir. 1971) *cert. denied*, 406 U.S. 910 (1972); see also *SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1167 (D.C. Cir. 1978) *cert. denied*, 440 U.S. 913 (1979), *citing*, S. Rep. No. 550, 90th Cong., 1st Sess. 1 (1967) and H.R. Rep. No. 1711, 90th Cong., 2d Sess. 2 (1968) (“The purpose of section 13(d) is to require disclosure of information by persons who have acquired a substantial interest, or increased their interest in the equity securities of a company by a substantial amount, within a relatively short period of time.”).

⁵ Although the term “promptly” was not defined under the rules in effect at the time of the violation, any delay in filing beyond the date the filing reasonably could have been made may not have been prompt. *Amendments to Beneficial Ownership Reporting Requirements*, SEC Rel. No. 34-39538, 1998 WL 7449, at *3 n.14 (Jan. 12, 1998).

⁶ For purposes of determining who is a greater than 10% beneficial owner required to report under Section 16(a), Rule 16a-1(a)(1) incorporates the standards in Exchange Act Rule 13d-3, which specifies that a “beneficial owner” includes any person who directly or indirectly has or shares voting or investment power, regardless of whether they have any economic interest in the securities. More than one person may be a beneficial owner of the same securities.

Exchange Act Section 12 (collectively referred to herein as “insiders”). Pursuant to Rule 16a-3(a), 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, Section 16(a)(2) of the Exchange Act and Rule 16a-3 thereunder require that 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 his or her beneficial ownership of all securities of the issuer. These same provisions require that insiders also file Form 4 reports disclosing certain transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction. Pursuant to Rule 16a-3(g)(1), 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, according to Rule 16a-3(f)(1), 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 corporate insider has previously reported all such transactions).

9. There is no state of mind requirement for violations of Sections 13(d) and 16(a) and the rules thereunder.⁷ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁸

Facts

10. On March 23, 2020, Respondent acquired 43,675 shares of convertible preferred stock of OWC. These shares were eligible to be converted into common stock at a ratio of 1,000 shares of common stock for each share of preferred stock. As a result, Respondent was deemed to acquire beneficial ownership of 43,675,000 shares of common stock. At the time, Respondent already owned an additional 500,000 shares of OWC common stock. Thus, in total, as of March 23, 2020, Respondent had beneficial ownership of 14.1% of outstanding OWC common stock.

11. On May 18, 2020, Respondent filed a Schedule 13D to report its beneficial ownership position in OWC common stock. Respondent represented the date of event that required filing (“Event Date”) of a Schedule 13D was March 23, 2020, which was the date it acquired the OWC convertible preferred shares.

12. Respondent further reported that its ownership of the OWC preferred stock “carries voting rights equivalent to 43,675,000 shares of Common Stock.” Respondent also represented

⁷ See, e.g., *Savoy Indus.*, 587 F.2d at 1167 (“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.”); *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).

⁸ Cf. *Oppenheimer & Co., Inc.*, 47 SEC 286, 1980 WL 26901, at *1–2 (May 19, 1980) (Commission opinion) (“We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation”); *Herbert Moskowitz*, 77 SEC 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).

that it “is deemed to be the beneficial owner” and it “has the sole power to vote or direct the vote, and dispose or direct the disposition, of” 44,175,000 shares of OWC common stock.

13. Finally, Respondent attached a Form 8-K filed by OWC, which disclosed that the preferred shares could be converted “provided that, at the time of conversion there were a sufficient number of shares of authorized but unissued shares of common stock that were not reserved for other purposes.” Respondent did not otherwise discuss the conditional nature of the preferred shares or the likelihood of converting those shares, nor did it disclaim beneficial ownership of the underlying common shares, as it was permitted to do pursuant to Rule 13d-4 of Regulation 13D-G, due to the conversion contingency.

14. Respondent should have filed a Schedule 13D within 10 days of the Event Date. As a result, the May 18, 2020 Schedule 13D was untimely.

15. On May 11, 2020, Respondent filed a Form 3 disclosing a position which included 43,675 shares of convertible preferred stock and 500,000 shares of common stock and an Event Date of March 23, 2020. Finally, as to its “Relationship of Reporting Person(s) to Issuer,” Respondent indicated it was a “10% Owner.”

16. Respondent’s Form 3 should have been filed within 10 days of the Event Date. As a result, the May 11, 2020 Form 3 was untimely.

17. On May 20, 2020, two days after filing its Schedule 13D, through external counsel, Respondent presented its notice to OWC to convert its shares of convertible preferred stock into common stock. However, as noted, the preferred shares were only convertible if there were a sufficient number of shares of authorized but unissued shares of common stock. Notwithstanding Respondent’s right to convert its preferred stock into the underlying common, on June 9, 2020, OWC responded to Respondent’s conversion notice, stating it would not convert Respondent’s preferred shares because there were not enough outstanding OWC shares to satisfy the conversion.

18. As a result, Respondent no longer could be deemed the beneficial owner of the common stock underlying the preferred shares. This decrease in the amount of beneficial ownership represented a material change to the facts set forth in its filed Schedule 13D. Thus, Respondent was required to file, but never filed, an amendment to its Schedule 13D.

19. Throughout the relevant time, Sunbeam consulted with counsel regarding its filing obligations.

Violations

20. As a result of the conduct described above, Sunbeam violated Sections 13(d)(1), 13(d)(2), and 16(a) of the Exchange Act and Rules 13d-1, 13d-2, and 16a-3 thereunder.

Cooperation

21. In determining to accept the Offer, the Commission considered cooperation afforded to the Commission staff.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Sunbeam Management, LLC cease and desist from committing or causing any violations and any future violations of Sections 13(d)(1), 13(d)(2), and 16(a) of the Exchange Act and Rules 13d-1, 13d-2, and 16a-3 thereunder.

B. Respondent shall pay civil penalties of \$40,000 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 shall be made in the following installments: \$15,000 within 14 days of the entry of the Order; \$10,000 within 120 days of the entry of the Order; \$10,000 within 240 days of the entry of the Order, and \$5,000, within 360 days of the entry of the Order. Payments shall be applied first to post order interest, which accrues pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

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 Sunbeam 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 D. Mark Cave, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

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, 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