

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 60843 / October 20, 2009**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 2939 / October 20, 2009**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13657**

**In the Matter of**

**PERCEPTIVE ADVISORS LLC,**

**Respondent.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-  
AND-DESIST PROCEEDINGS  
PURSUANT TO SECTION 21C OF  
THE SECURITIES EXCHANGE ACT  
OF 1934 AND SECTION 203(e) 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 administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”) against Perceptive Advisors LLC (“Perceptive” 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 Administrative and Cease-and-Desist Proceedings Pursuant to Section

21C of the Securities Exchange Act of 1934 and Section 203(e) 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 the Respondent’s Offer, the Commission finds that:

#### **Respondent**

1. Perceptive Advisors LLC is a Delaware limited liability corporation, based in New York, New York, and is the investment manager for the Perceptive Life Sciences Master Fund (“Perceptive Fund”).

#### **Summary**

2. From January 2005 through December 2005, Perceptive violated Rule 105 of Regulation M with respect to five repeat securities offerings. In each case, Perceptive sold securities short within five business days before the pricing of the offering, and then covered the short position, in whole or in part, with shares purchased in the offering. As a result, Perceptive obtained unlawful profits of \$245,902.34.

#### **Legal Framework**

3. Rule 105 of Regulation M, “Short Selling in Connection with a Public Offering,” at the time of the conduct described in this Order, prohibited covering a short sale with securities obtained in a public offering if the short sale occurred within the shorter of the period five business days before pricing and ending with pricing, or the period beginning with the initial filing of the registration statement or notification on Form 1-A and ending with pricing. In pertinent part, Rule 105 provided:

In connection with an offering of securities for cash pursuant to a registration statement...filed under the Securities Act, it shall be unlawful for any person to cover a short sale with offered securities purchased from an underwriter or broker or dealer participating in the offering, if such short sale occurred during the...period beginning five business days before the pricing of the offered securities and ending with such pricing.

17 C.F.R. § 242.105.

### **Perceptive's Trades**

4. On January 24 and 25, 2005, Perceptive sold short a total of 107,342 shares of Telik Inc. in an account it managed for the Perceptive Fund, at prices ranging from \$18.8376 to \$19.2402. After the market closed on January 27, 2005, a repeat offering of Telik shares was priced at \$18.75. The Perceptive Fund account received a total of 378,000 shares in the offering and used 107,342 of the shares to cover the restricted period short position. As a result of these transactions, Perceptive Fund realized a profit of \$15,195.06.

5. On September 15, 2005, Perceptive sold short 107,100 shares of Geron Corp. in an account it managed for the Perceptive Fund, at a price of \$10.4283. After the market closed on September 15, 2005, a repeat offering of Geron shares was priced at \$9.00. The Perceptive Fund account received a total of 107,100 shares in the offering and used the shares to cover the restricted period short position. As a result of these transactions, Perceptive Fund realized a profit of \$152,970.93.

6. On October 5, 2005, Perceptive sold short 12,300 shares of Cotherix Inc. in an account it managed for the Perceptive Fund, at \$14.1937. On October 6, 2005 a repeat offering of Cotherix shares was priced at \$13.00. The Perceptive Fund account received a total of 45,000 shares in the offering and used the shares to partially cover the restricted period short position. As a result of these transactions, Perceptive Fund realized a profit of \$8,236.53.

7. On November 2, 2005, Perceptive sold short 18,000 shares of Hythiam Inc. in an account it managed for the Perceptive Fund, at \$5.1496. After the market closed on November 2, 2005 a repeat offering of Hythiam shares was priced at \$4.75. The Perceptive Fund account received a total of 22,500 shares in the offering and used the shares to partially cover the restricted period short position. As a result of these transactions, Perceptive Fund realized a profit of \$1,798.20.

8. From November 30 through December 6, 2005, Perceptive sold short 202,500 shares of Dendreon Corp. in an account it managed for the Perceptive Fund, at prices between \$5.1366 and \$5.9059. After the market closed on December 6, 2005 a repeat offering of Dendreon shares was priced at \$4.50. The Perceptive Fund account received a total of 135,000 shares in the offering and used the shares to partially cover the restricted period short position. As a result of these transactions, Perceptive Fund realized a profit of \$67,701.62.

## Violations

9. As a result of the conduct described above, Perceptive willfully<sup>1</sup> violated Rule 105 of Regulation M.

## Remedial Efforts

10. In determining to accept the Offer, the Commission considered remedial acts undertaken by Perceptive and cooperation it afforded the Commission staff.

## 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 Section 21C of the Exchange Act and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

A. Perceptive shall cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M.

B. Perceptive is censured.

C. IT IS FURTHER ORDERED THAT Perceptive shall, within thirty (30) days of the entry of this Order, pay disgorgement of \$245,902.34 and prejudgment interest of \$68,852.92, for a total of \$314,755.26, to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Perceptive as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Andrew M. Calamari, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, Suite 400, New York, NY 10281.

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<sup>1</sup> For purposes of jurisdiction and assessing the sanctions enumerated herein, 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)).

D. IT IS FURTHER ORDERED THAT Perceptive shall, within thirty (30) days of the entry of this Order, pay a civil money penalty in the amount of \$125,000.00 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Suite 400, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Perceptive as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Andrew M. Calamari, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, New York, NY 10281.

By the Commission.

Elizabeth M. Murphy  
Secretary