

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5041 / September 21, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18815

In the Matter of

OPHRYS, LLC,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 203(e) AND
203(k) OF THE INVESTMENT ADVISERS
ACT OF 1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Ophrys, LLC (“Ophrys” 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 Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that

Summary

These proceedings concern the failure of a registered investment adviser, Ophrys, LLC, to provide adequate written disclosure to clients regarding the capacity in which it was acting with respect to, and obtain consent from its clients for, agency transactions for which Ophrys received compensation in addition to its advisory fee, and Ophrys' failure to disclose its role in a principal transaction. In particular, in two transactions that took place in December 2012 and November 2013, Ophrys acted as broker within the meaning of Section 206(3) of the Advisers Act to a client who sold securities to other advisory clients, and ultimately received compensation as a result of the transactions. In a third transaction that took place in December 2014, Ophrys, through its wholly-owned subsidiary, purchased securities, which consisted of defaulted consumer debt, from a private fund of which it was the sole remaining investor. Ophrys then sold those same securities to another advisory client. Ophrys failed to disclose its conflicted role in these transactions and obtain the consent of its private fund clients to these transactions.

Respondent

1. Ophrys is a Washington limited liability company based in Seattle, Washington. Ophrys registered with the Commission as an investment adviser on September 29, 2014. As of March 2018, Ophrys managed 32 funds totaling over \$400 million of regulated assets under management. Ophrys' primary business is advising funds that invest in portfolios of defaulted consumer receivables.

Ophrys Clients and Other Relevant Entities

2. Candica, LLC ("Candica") is a Delaware limited liability company formed in 2009 principally for the purpose of acquiring, owning, collecting, managing and disposing of defaulted credit card receivables or judgments. Candica is managed by Ophrys.

3. Lutea, LLC ("Lutea") is a Delaware limited liability company formed in 2009 for the purpose of acquiring portfolios of defaulted consumer receivables. Lutea was managed by Ophrys. In January 2014, after Lutea's last investors received redemptions, Ophrys became the sole remaining investor in Lutea by virtue of a note issued to Lutea.

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.

4. Oak Harbor Capital V, LLC (“OHCV”) is a Delaware limited liability company formed in 2012 for the purpose of acquiring and effecting recoveries of defaulted consumer credit card accounts, loan portfolios, and other receivables. OHCV’s investors consist of high net worth individuals and family offices. OHCV is managed by Ophrys and is an investor in Vanda, LLC.

5. Oak Harbor Capital X, LLC (“OHCX”) is a Delaware limited liability company formed in 2013 for the purpose of acquiring and effecting recoveries of defaulted consumer receivables and providing loans to or investing in other entities which acquire and effect recoveries of defaulted consumer receivables. OHCX is managed by Ophrys. OHCX’s investors consist of high net worth individuals and family offices. OHCX is an investor in Candica and Pallida, LLC.

6. Pallida, LLC (“Pallida”) is a Delaware limited liability company formed in 2014 as a passive entity for the purpose of acquiring, owning, collecting, managing and disposing of consumer debt accounts or judgments. Pallida is managed by Ophrys. In 2014, Pallida purchased securities, which consisted of consumer debt accounts, from a wholly-owned subsidiary of Ophrys. The purchase was funded with the proceeds of a loan from OHCX to Pallida. The notes to OHCX entitled it to a security interest in the securities and the economic risks and benefits relating to the collectability of the consumer debt assets.

7. Vanda, LLC (“Vanda”) is a Delaware limited liability company formed as a passive entity principally for the purpose of purchasing and holding a portion of securities Candica purchased from Ophrys, consisting of credit card and installment loan receivables. Vanda is managed by Ophrys. In 2012, Vanda purchased certain portfolios of consumer receivables from Candica. The purchases were funded with capital contributions from OHCV and a third-party loan. Given Vanda’s capital structure, OHCV has the primary economic interest with respect to the collectability of the consumer debt assets.

Failure to Disclose Agency Transactions and a Principal Transaction

8. Ophrys’ clients invest in defaulted consumer receivables, such as Chapter 13 consumer receivables, which are securities for purposes of the Advisers Act. Ophrys provides investment advisory services to its clients regarding these securities.

9. Because Ophrys’ private investment funds typically are not qualified debt buyers for purposes of acquiring portfolios of defaulted consumer debt, Ophrys from time to time acquires portfolios of consumer debt itself or through an Ophrys subsidiary and later makes the consumer debt available for investments by Ophrys-managed funds. Ophrys serves as the adviser to the private funds, for which it receives a management fee, and makes efforts to collect on the receivables for an additional fee. It also typically receives a carried interest equal to a percentage of all collections on the receivables net of expenses.

Agency Transaction 1

10. In 2012, Candica was the owner of portfolios of consumer receivables purchased in various transactions since Candica’s formation in 2009. These portfolios of defaulted consumer receivables (the “Candica Securities”) were Candica’s only assets.

11. Through 2012, all of Candica's purchases of consumer receivables were financed by a single third-party lender pursuant to a Bankruptcy Asset Loan Agreement ("Loan Agreement") entered into by Candica and the third-party lender in 2009. As security for each loan made pursuant to the Loan Agreement, Candica granted the third-party lender a security interest in the Candica Securities. Under the terms of the Loan Agreement, Ophrys was entitled to receive, in addition to its advisory fee, a fee equal to a percentage of collections on the receivables after payment of applicable fees, expenses, interest, and the principal loan amount, or, in the case that assets are subsequently sold, a percentage of the net proceeds from the sale (the "Ophrys Fee").

12. In December 2012, Ophrys caused Candica to sell a portion of the Candica Securities to Vanda. Vanda financed the transaction, in part, with capital contributions made by OHCV, a Vanda investor. The transaction resulted in Ophrys receiving the Ophrys Fee as it related to the transferred securities. The third-party lender acknowledged partial satisfaction of Candica's loan obligations and relinquished the third-party lender's security interest in the transferred Candica Securities.

13. This was an agency transaction because Ophrys acted as a broker within the meaning of Section 206(3) of the Advisers Act on behalf of Candica, an advisory client, for the sale of the Candica Securities to Vanda, another advisory client. Ophrys failed to provide adequate prior written disclosure to Vanda or OHCV that it was acting as an agent on behalf of Candica in the transaction or obtain Vanda's or OHCV's consent to the transaction.

Agency Transaction 2

14. In November 2013, Ophrys caused OHCX, another Ophrys advisory client, to invest in Candica by purchasing securities issued by Candica. This transaction was funded, in part, by capital contributions made by OHCX to Candica. Candica's original third-party lender was paid in full and released its security interest in the remaining Candica Securities. This transaction resulted in Ophrys receiving the remainder of the Ophrys Fee as it related to the remaining Candica Securities.

15. This was an agency transaction because Ophrys acted as broker within the meaning of Section 206(3) of the Advisers Act on behalf of Candica, its advisory client, for the sale of Candica LLC membership interests to OHCX, another advisory client. Ophrys failed to provide prior written disclosure to OHCX that Ophrys was acting as an agent on behalf of Candica or obtain OHCX's consent to the transaction.

Principal Transaction

16. Lutea was formed in 2009 to invest in consumer receivables for the benefit of third-party investors. In January 2014, after Lutea's last outside investors received redemptions, Ophrys became the sole remaining investor in Lutea by virtue of a note Lutea owed to Ophrys.

17. In December 2014, Ophrys caused one of its wholly-owned subsidiaries to purchase consumer receivables from Lutea (the "Lutea Securities"). Ophrys' wholly-owned subsidiary then sold the Lutea Securities to Pallida, another advisory client.

18. Pallida's purchase of the Lutea Securities was funded by a loan from OHCX to Pallida. As security for the loan, Pallida granted OHCX a security interest in the Lutea Securities. OHCX effectively bore the economic risks and benefits relating to Pallida's investment in the Lutea Securities.

19. At all relevant times, Ophrys was the investment adviser to Pallida and OHCX. Ophrys failed to provide prior written disclosure to Pallida and OHCX of Ophrys' role as a principal in the transaction and obtain Pallida's and OHCX's consent to the transaction.

Violation

20. As a result of the conduct described above, Ophrys willfully² violated Section 206(3) of the Advisers Act, which prohibits an investment adviser from engaging in or effecting a transaction on behalf of a client while acting either as a principal for its own account, or as broker for a person other than the client, without disclosing in writing to the client, before the completion of the transaction, the adviser's role in the transaction, and obtaining the client's consent.

IV.

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

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

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 206(3) of the Advisers Act.

B. Respondent is censured.

C. Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$500,000 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:

² A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

- (1) Respondent may transmit payments electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payments 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 Ophrys as 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 Dabney O'Riordan, Division of Enforcement, 444 South Flower Street, Suite 900, Los Angeles, CA 90071.

Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields
Secretary