

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101756 / November 26, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-20945

In the Matter of

Surgalign Holdings, Inc. and
Robert P. Jordheim,

Respondents.

NOTICE OF PROPOSED PLAN OF
DISTRIBUTION AND
OPPORTUNITY FOR COMMENT

Notice is hereby given, pursuant to Rule 1103 of the United States Securities and Exchange Commission's ("Commission") Rules on Fair Fund and Disgorgement Plans (the "Commission's Rules"), 17 C.F.R. § 201.1103, that the Division of Enforcement has submitted to the Commission a proposed plan of distribution (the "Proposed Plan") for the distribution of monies collected in the above-captioned matter.

On August 3, 2022, the Commission issued an Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 4C and 21C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the "Order")¹ against Surgalign Holdings, Inc. (formerly known as RTI Surgical Holdings, Inc. and RTI Surgical, Inc.) ("Surgalign") and Robert P. Jordheim ("Jordheim") (collectively, the "Respondents"). In the Order, the Commission found that from 2015 through 2019, Surgalign shipped orders weeks or months before its customers had originally requested delivery, thereby pulling sales forward from future quarters, to address projected quarterly revenue shortfalls. In some instances, Surgalign did so after requesting and obtaining customer permission; in other instances, Surgalign shipped orders early without customer approval and then prematurely recognized revenue for the sales. In multiple quarters, Surgalign would not have met its revenue guidance without these undisclosed pull-forwards. Surgalign and its former senior management, including Jordheim, did not disclose to investors that Surgalign's apparent success at achieving its revenue guidance resulted from its reliance on pull-forwards. Respondents also did not disclose the known uncertainty that this practice created for Surgalign's future revenue streams.

On March 16, 2020, Surgalign issued a press release stating that the Audit Committee of Surgalign's Board of Directors, with the assistance of independent legal and forensic accounting

¹ Securities Act Rel. No. 11088 (Aug. 3, 2022).

advisors, was in the process of conducting an internal investigation of current and prior period matters relating to Surgalign’s revenue recognition practices regarding the timing of revenue with respect to certain contractual arrangements. The investigation primarily focused on contractual arrangements with original equipment manufacturer customers, including the accounting treatment, financial reporting and internal controls related to such arrangements.

On June 8, 2020, Surgalign issued a restatement to correct, among other things, its premature recognition of revenue, in violation of generally accepted accounting principles (GAAP), for orders shipped early to customers without their approval for the fiscal years ended December 31, 2016, 2017 and 2018, selected financial data for the years ended December 31, 2014 and 2015, and related disclosures for the quarterly periods for such years, each on Form 10-K/A, and restated condensed consolidated unaudited financial statements for the quarters ended March 31, 2019, June 30, 2019, and September 30, 2019, reflected in its 2019 Form 10-K.

As a result of the conduct described in the Order, the Commission ordered the Respondents to pay \$2,075,000 in civil money penalties. In the Order, the Commission created a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 so that the civil penalty collected, can be distributed to harmed investors.

Respondents have paid the full amount of \$2,075,000 into the Fair Fund. The Fair Fund has been deposited in a Commission-designated account at the United States Department of the Treasury, and any accrued interest will be added to the Fair Fund.

OPPORTUNITY FOR COMMENT

Pursuant to this Notice, all interested persons are advised that they may obtain a copy of the Plan from the Commission’s public website at <https://www.sec.gov/litigation/fairfundlist.htm>. Interested persons may also obtain a written copy of the Proposed Plan by submitting a written request to Michael Lim, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5876. All persons who desire to comment on the Proposed Plan may submit their comments, in writing, no later than 30 days from the date of this Notice:

1. to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090;
2. by using the Commission’s Internet comment form (<https://www.sec.gov/litigation/admin.shtml>); or
3. by sending an e-mail to rule-comments@sec.gov.

Comments submitted by email or via the Commission’s website should include “Administrative Proceeding File No. 3-20945” in the subject line. Comments received will be publicly available. Persons should submit only information they wish to make publicly available.

THE PROPOSED PLAN

The Net Available Fair Fund² is comprised of the \$2,075,000.00 in civil money penalties paid by the Respondents, plus interest and income earned thereon, less taxes, fees, and expenses. The Proposed Plan provides for the distribution of the Net Available Fair Fund to investors who purchased or acquired the Security on April 23, 2015 through March 16, 2020, inclusive, due to the misconduct of the Respondents described in the Order and suffered a Recognized Loss as calculated by the methodology used in the Plan of Allocation in the Proposed Plan.

For the Commission, by the Division of Enforcement, pursuant to delegated authority.³

Vanessa A. Countryman
Secretary

² All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Proposed Plan.

³ 17 C.F.R. § 200.30-4(a)(21)(iii).