INITIAL DECISION RELEASE NO. 718
ADMINISTRATIVE PROCEEDING
File No. 3-15989

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of SELECT FIDELITY TRANSFER SERVICES, LTD.	INITIAL DECISION December 15, 2014

APPEARANCES: Preethi Krishnamurthy and Teresa A. Rodriguez for the Division of Enforcement, Securities and Exchange Commission

BEFORE: James E. Grimes, Administrative Law Judge

SUMMARY

In this initial decision, I GRANT the motion for summary disposition filed by the Division of Enforcement and find that Respondent Select Fidelity Transfer Services, Ltd., violated Sections 17(a)(1), 17(a)(3), 17(b)(1), 17A(c)(2), and 17A(d)(1) of the Exchange Act and Rules 17Ac2-1(c) and 17Ac2-2 thereunder. *See* 15 U.S.C. §§ 78q(a)(1), (3), (b)(1), 78q-1(c)(2), (d)(1); 17 C.F.R. §§ 240.17Ac2-1(c), 240.17Ac2-2. I order Select Fidelity to cease-and-desist from further violations, revoke its registration, and impose a civil penalty of $325,000.

INTRODUCTION

The Securities and Exchange Commission instituted this proceeding on July 29, 2014, with an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP). As authority, the OIP cited Sections 17A(c)(3) and 21C of the Exchange Act. *See* 15 U.S.C. §§ 78q-1(c)(3), 78u-3.

I held a telephonic prehearing conference in this matter on September 8, 2014, during which I granted the Division leave to move for summary disposition. Select Fidelity did not attend the conference and has not answered the OIP. The Division filed a motion for summary disposition in October 2014. Select Fidelity did not file an opposition to the Division's motion.

In support of its motion, the Division submitted declarations of Kenneth A. Liebl ("Liebl Dec.") and Teresa A. Rodriguez ("Rodriguez Dec."). Mr. Liebl is an examination manager in the Office of Compliance Inspections and Examinations ("Compliance") in the Commission's New York Regional Office. His declaration is supported by five exhibits, labeled A through E. Ms. Rodriguez is a senior attorney in the Division. Her declaration is supported by seven exhibits, labeled A through G.

FINDINGS OF FACT

I base the following findings of fact and conclusions on the entire record, applying preponderance of the evidence as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 100-04 (1981). I find the following facts to be true.

Select Fidelity is a Canadian company incorporated in Ontario in 2003. Rodriguez Dec. Ex. A. On June 20, 2005, Select Fidelity filed a Form TA-1 with the Commission.[1] Rodriguez Dec. Ex. B. The form was prepared by Americo DeRosa. *Id.* Mr. DeRosa originally listed Select Fidelity's address on the form as 36 Toronto Street, Toronto, Ontario (the "Toronto Street address"). *Id.* Before submitting the Form TA-1, however, Mr. DeRosa crossed out 36 Toronto Street and wrote 335 Bay Street, Suite 600 (the "Bay Street address"). *Id.* A supplement to the form lists Mr. DeRosa as Select Fidelity's controller and Ivan Cavric as its director. *Id.* Each man was listed as a "control person" and each was described and as owning "50% up to 75%" of Select Fidelity.[2] *Id.* The Commission granted Select Fidelity's registration application in July 2005. Rodriguez Dec. Ex. C.

A registered transfer agent is required to report any change to information listed on its Form TA-1 within sixty dates following the date on which the information becomes inaccurate. 17 C.F.R. § 240.17Ac2-1(c). A registered transfer agent is also subject to an annual reporting requirement. 17 C.F.R. § 240.17Ac2-2(a). Annual reports are submitted via Form TA-2. *Id.* Since filing its original Form TA-1, Select Fidelity has never filed an amended Form TA-1 or any Form TA-2. Rodriguez Dec. Ex. D.

In October 2010, the Commission's Division of Trading and Markets issued a notice that the Commission proposed to cancel the registrations of a number of transfer agents, including Select Fidelity. Rodriguez Dec. Ex. E. The notice provided that a transfer agent's representative could contact the Commission by December 15, 2010, if the representative believed the transfer agent's registration should not be canceled. *Id.*

In November 2010, a person identified as "*Michel* Herreweghe, Manager," e-mailed the Commission and asked that Select Fidelity's registration not be canceled. Rodriguez Dec. Ex. F. The e-mail address from which Mr. Herreweghe sent the e-mail was "mvh@selectfidelity.com." *Id.* Mr. Herreweghe represented in the e-mail that "[w]e will post haste[] be filing the update information." *Id.* He included in the e-mail the information he proposed to file. *Id.* Among the information was the indication that Select Fidelity was located at the Toronto Street address. *Id.*

In August 2012, Compliance officials attempted to conduct an on-site examination of Select Fidelity. Liebl Dec. at 2. In the course of their attempt, Compliance officials visited three locations: (1) the Toronto Street address; (2) 2 Pelham Square, Suite 201, Fonthill, Ontario (the "Fonthill address"), an address listed for Select Fidelity on the OTC bulletin board, www.otcbb.com; and (3) 4025 Dorchester Road, Suite 338, Niagara Falls, Ontario (the "Dorchester Road address"), an address listed on Select Fidelity's website and in the Commission's EDGAR system. *Id.* Compliance officials

[1] Form TA-1 is used by an applicant to register as a transfer agent. *See* Exchange Act § 17A(c), 15 U.S.C. § 78q-1(c); 17 C.F.R. § 240.17Ac2-1(a).

[2] Given the percentages, each man necessarily owned half of the company.

found no evidence that Select Fidelity was located at the Toronto Street or Fonthill addresses. *Id*. The Dorchester Road address was a UPS center where Select Fidelity maintained a mail box. *Id*.

Having failed to locate Select Fidelity, Compliance officials phoned Mr. Herreweghe, who reported that Select Fidelity had moved to an office on Valley Way in Niagara Falls, Ontario (the "Valley Way address"). Liebl Dec. at 2-3. Compliance officials traveled to the Valley Way address but found only an empty office and no sign of Select Fidelity. *Id*. at 3. When phoned again, Mr. Herreweghe said that Select Fidelity was actually "in the process of moving" to the Valley Way address. *Id*.

One month later, in September 2012, Compliance officials again phoned Mr. Herreweghe. Liebl Dec. at 3. He reported that Select Fidelity had completed its move to the Valley Way address. *Id*. Compliance officials then sent Select Fidelity a letter by e-mail, with attention to Mr. Herreweghe, asking that Select Fidelity provide certain records. Liebl Dec. at 3, Ex. A. Mr. Liebl sent a second e-mail letter on October 9, 2012, stating that Compliance officials intended to visit Ontario during the week of October 15, 2012, in order to conduct an on-site inspection of Select Fidelity. Liebl Dec. Ex. B. In the letter, Mr. Liebl asked that Mr. Herreweghe confirm by the next day that Select Fidelity staff would be available "to assist" in the inspection. *Id*.

Mr. Herreweghe e-mailed Mr. Liebl the next day and stated that he was "not an officer or director of Select Fidelity but [was] acting under power of attorney as a consultant." Liebl Dec. at 3, Ex. C. Mr. Herreweghe used the e-mail address "corpservices@selectfidelity.com." Liebl Dec. Ex. C. He attached a document to his e-mail that listed Roger Kirby and Joseph Olajos as the owners of Select Fidelity and stated that they acquired ownership in January 2006. *Id*. The attached document also described Kirby and Olajos as the firm's two directors and officers. *Id*. Finally, the attached document listed five different addresses from which Select Fidelity had operated, including the Toronto Street and Valley Way addresses. *Id*.

After Select Fidelity failed to produce the requested records or confirm its staff's availability for the proposed on-site inspection, Mr. Liebl e-mailed Mr. Herreweghe. Liebl Dec. at 4, Ex. D. Still using the e-mail address "corpservices@selectfidelity.com," Mr. Herreweghe responded that he would "not be available in Canada until mid[-]November." Liebl Dec. Ex. D. He also said that Select Fidelity was "suspending its activities under the TA-1 registration with a view of filing a Form TA-W and winding down its activities."[3] *Id*. According the Mr. Herreweghe, Select Fidelity's "office [would] be closed until further notice." *Id*.

By letter dated October 18, 2012, Compliance officials notified Mr. Herreweghe and Select Fidelity that Select Fidelity's failure to provide requested records constituted a violation of Section 17(b) of the Exchange Act. Liebl Dec. Ex. E; *see* 15 U.S.C. § 78q(b). The letter also raised the possibility that Compliance officials would recommend that the Commission take action against Select Fidelity. Liebl Dec. Ex. E.

Mr. Liebl spoke to Mr. Herreweghe in November 2012. Liebl Dec. at 4. During that conversation, Mr. Herreweghe stated that because Select Fidelity had no living officers, he could not

[3] Form TA-W is the form used by a transfer agent to provide notice of withdrawal from registration. 17 C.F.R. § 240.17Ac3-1(a).

file a Form TA-W. *Id*. He also stated that he lacked the "authority to act for Select Fidelity and that [it] was no longer operational." *Id*.

In September 2014, after the Commission instituted this proceeding, I held a telephonic prehearing conference. The conference was attended by counsel for the Division and by Mr. Herreweghe. *See* Conference Transcript ("Tr.") at 3. During the conference, Mr. Herreweghe represented that he "was the last one standing," "was given power of attorney about four years ago," and "was basically around just to close the company down." *Id*. at 3-4. He also said that "the last director [had] passed away." *Id*. at 4.

Under the authority in Rule of Practice 323, I take official notice of *Matter of MRS Sciences*, a decision issued on February 2, 2011, by the Ontario Securities Commission. *See* 17 C.F.R. § 201.323 (permitting the taking of official notice "of any material fact which might be judicially noticed by a district court of the United States"); *see also United States v. New-Form Mfg. Co., Ltd*., 277 F. Supp. 2d 1313, 1325-26 & n.4 (Ct. Int'l Trade 2003). Among the respondents in the *MRS Sciences* decision are DeRosa and Cavric, the men listed on Select Fidelity's Form TA-1 as control persons and respectively as Select Fidelity's controller and director.

According to the Ontario Securities Commission, DeRosa and Cavric, among others, "engaged in unregistered trading and an illegal distribution of MRS shares." *Matter of MRS Sciences, Inc*., at 28 (Feb. 2, 2011). The decision reveals that Cavric incorporated Select Fidelity, which was MRS's second transfer agent, and that it operated out of MRS's Toronto offices. *Id*. at 18, 30. The decision describes "*Michelle* Van Herreweghe" as the president of Select Fidelity. *Id*. at 6. Finally, it states that MRS did not have an "arm's length" relationship with Select Fidelity. *Id*. at 35.

CONCLUSIONS OF LAW

Motions for summary disposition are governed by Rule of Practice 250. *See* 17 C.F.R. § 201.250. An administrative law judge "may grant [a] motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law." 17 C.F.R. § 201.250(b). Inasmuch as Select Fidelity has not appeared in this matter, has not opposed the Division's motion for summary disposition, and has offered no evidence to counter that submitted by the Division, the facts are undisputed. Summary disposition under Rule 250 is thus appropriate.

By statute, a transfer agent's registration is accomplished by filing the form designated by the Commission. 15 U.S.C. § 78q-1(c)(2). The Exchange Act requires registered transfer agents to "make[,] . . . keep[,] . . . [and] furnish copies" of "records" and "disseminate such reports as the Commission . . . prescribes." 15 U.S.C. § 78q(a)(1), (3). These records are subject to examination by the Commission "at any time." 15 U.S.C. § 78q(b)(1). The Exchange Act also prohibits transfer agents from "directly or indirectly[] engag[ing] in any activity as . . . [a] transfer agent in contravention of [Commission] rules and regulations." 15 U.S.C. § 78q-1(d)(1).

Consistent with the authority granted by these provisions, the Commission has adopted rules governing transfer agents. Pursuant to these rules, a transfer agent must apply for registration by filing a Form TA-1. 17 C.F.R. § 240.17Ac2-1(a). If, after the transfer agent's registration is approved, information listed on the Form TA-1 becomes inaccurate, the transfer agent must file an amendment within sixty days after the inaccuracy arises. 17 C.F.R. § 240.17Ac2-1(c). Registered transfer agents

must file annual reports using Form TA-2. 17 C.F.R. § 240.17Ac2-2(a). These reports are due every March 31. *Id.*

Select Fidelity willfully violated a number of requirements related to transfer agents. It never submitted an annual report on Form TA-2 and did not permit examination of its records when requested. It thus violated 15 U.S.C. § 78q(a)(1), (3), and (b)(1), and 17 C.F.R. § 240.17Ac2-2(a). The Compliance investigation revealed that Select Fidelity's office was not located at the address listed on its Form TA-1. It also was not located at any other address supplied by Mr. Herreweghe. Because the address listed on Select Fidelity's Form TA-1 was inaccurate, it was obligated to file an amendment. By failing to do so, it violated 15 U.S.C. § 78q-1(c)(2) and 17 C.F.R. § 240.17Ac2-1(c).

By failing to maintain an address where it and its records could be located, Select Fidelity prevented Compliance officials from examining its records, as authorized by 15 U.S.C. § 78q(b)(1). As a result, Select Fidelity violated subsection (b)(1) and, by "directly . . . engag[ing] in . . . activity as . . . [a] transfer agent in contravention of [Commission] rules and regulations," violated 15 U.S.C. § 78q-1(d)(1).

SANCTIONS

The Division requests a cease-and-desist order, revocation of Select Fidelity's registration, and a maximum one-time second-tier civil penalty of $325,000.[4] Motion at 11. As is discussed below, (1) Select Fidelity's registration is revoked; (2) Select Fidelity is ordered to cease-and-desist from committing or causing violations of Sections 17(a)(1), 17(a)(3), 17(b)(1), 17A(c)(2), and 17A(d)(1) of the Exchange Act and Rules 17Ac2-1(c) and 17Ac2-2 thereunder[5]; and (3) Select Fidelity is ordered to pay a second-tier penalty of $325,000 for the violations noted above.

Section 21C(a) of the Exchange Act authorizes the Commission to enter a cease-and-desist order if a person has or is about to violate any provision of the Exchange Act or rule thereunder. *See* 15 U.S.C. § 78u-3(a). On finding that a registrant has willfully violated any provision of the Exchange Act or rule thereunder, I may order the registrant's registration revoked if I determine that doing so is in the public interest. Exchange Act § 17A(c)(3)(A), 15 U.S.C. § 78q-1(c)(3)(A); *see* Exchange Act § 15(b)(4)(D), 15 U.S.C. § 78*o*(b)(4)(D). The same requirements govern the imposition of civil penalties in cases instituted under Section 17A of the Exchange Act.[6] *See* Exchange Act § 21B(a)(1)(A), 15 U.S.C. § 78u-2(a)(1)(A).

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[4] The Division notes that the maximum second-tier penalty for violations that occurred between February 2005 and March 3, 2009, was $325,000, and that the maximum thereafter is $375,000. Motion at 11; *see* 17 C.F.R. §§ 201.1003, Subpt. E, Table III, 201.1004, Subpt. E, Table IV. As it does not specify which amount should be imposed as a penalty, I construe the Division's argument as a request that I impose a penalty of $325,000.

[5] *See* 15 U.S.C. §§ 78q(a)(1), (3), (b)(1), 78q-1(c)(2), (d)(1); 17 C.F.R. §§ 240.17Ac2-1(c), 240.17Ac2-2.

[6] In cases instituted under Section 21C of the Exchange Act, pertaining to cease-and-desist proceedings, a civil penalty may be predicated on the mere finding of a violation. *See* Exchange Act § 21B(a)(2)(A), 15 U.S.C. § 78u-2(a)(2)(A). Where, as here, a case is instituted under Sections 17A and 21C of the Exchange Act, a determination that sanctions are authorized under

In determining whether the public interest weighs in favor of sanctions, I am guided by the factors set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *22 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010); *Phlo Corp.*, Exchange Act Release No. 55562, 2007 SEC LEXIS 604, at *51-52 (Mar. 30, 2007) (applying *Steadman* to revoke transfer agent's registration). These factors include:

> the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.

Kornman, 2009 SEC LEXIS 367, at *22; *see* Exchange Act § 21B(c), 15 U.S.C. § 78u-2(c).[7] None of these "factor[s] is dispositive" of whether a sanction should be imposed. *Donald L. Koch*, Exchange Act Release No. 72179, 2014 SEC LEXIS 1684, at *80 (May 16, 2014) (citation and internal quotation marks omitted).

In addition to the *Steadman* factors, when deciding whether to issue a cease-and-desist order, I must consider the (1) recency of the violations at issue; (2) "'degree of harm to investors or the marketplace resulting from the violation[s]'"; (3) "'remedial function to be served by the cease-and-desist order in the context of any other sanctions . . . sought'" by the Division; and (4) "risk of future violations." *Donald L. Koch*, 2014 SEC LEXIS 1684, at *88 (quoting *KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at *116 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002)).

Consideration of the *Steadman* factors weighs in favor of revocation and imposition of a monetary penalty. Select Fidelity's actions in this matter are egregious and recurrent. Since registering in 2005, it has never filed its annual reports. It failed to maintain a current address with the Commission. Through its agent, Mr. Herreweghe, it actively forestalled the deserved cancelation of its registration in 2010 by telling the Commission that "[w]e will post haste[] be filing the update information." Rodriguez Dec. Ex. F. The update, however, was never filed.

Acting as Select Fidelity's agent, Mr. Herreweghe also impeded Compliance's investigation in various ways. In August 2012, he told Compliance officials that Select Fidelity was located at the Valley Way address, but after they visited that location, he changed his story and said the firm was merely in the process of moving there. Later, he went from being a manager to merely being someone who was given power of attorney. *Matter of MRS Sciences*, however, identifies him as president of the

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Section 21B(a)(1)(A) based on willful violations thus necessarily means that sanctions are authorized under Section 21B(a)(2)(A).

[7] Statutory public interest factors to be considered in relation to monetary penalties include whether a respondent deliberately "disregard[ed] . . . a regulatory requirement" and deterrence. Exchange Act § 21B(c), 15 U.S.C. § 78u-2(c).

firm. Mr. Herreweghe's obstructive behavior supports the determination that sanctions should be imposed.

Select Fidelity's complete failure to comply with its obligations as a transfer agent and Mr. Herreweghe's actions reflect a high degree of scienter. Needless to say, no one has made any assurances against future violations or shown that anyone affiliated with Select Fidelity recognizes the wrongfulness of the violations that have occurred. Furthermore, revocation and imposition of monetary penalties will serve as a deterrent to others. Any transfer agent that might otherwise have been encouraged to follow Select Fidelity's noncompliant example will know that doing so will subject it to sanction.

In this regard, a second-tier monetary penalty is appropriate in cases involving "deliberate or reckless disregard of a regulatory requirement." Exchange Act § 21B(b)(2), 15 U.S.C. § 78u-2(b)(2). That standard is easily met here. Because of the on-going, recurrent, and egregious nature of Select Fidelity's violations, I agree with the Division that imposition of a maximum penalty of $325,000 is appropriate.

Finally, a cease-and-desist order is appropriate. In addition to foregoing factors, which show that revocation and imposition of a monetary penalty are appropriate, I am persuaded that the acts and omissions at issue in this case show that there is a substantial risk of future violations. Inasmuch as "evidence showing that a respondent violated the law once probably also shows a risk of repetition that merits . . . ordering [the respondent] to cease and desist," *KPMG Peat Marwick LLP*, 2001 SEC LEXIS 98, at *102-03, evidence of repeated on-going violations suggests a substantial risk of repetition.

ORDER

It is ORDERED that, pursuant to Section 17A(c)(3) of the Securities Exchange Act of 1934, the registration of Respondent Select Fidelity Transfer Services, Ltd., is hereby REVOKED.

It is further ORDERED that, pursuant to Section 21C of the Securities Exchange Act of 1934, Respondent Select Fidelity Transfer Services, Ltd., shall CEASE AND DESIST from committing or causing any violations or future violations of Sections 17(a)(1), 17(a)(3), 17(b)(1), 17A(c)(2), and 17A(d)(1) of the Exchange Act and Rules 17Ac2-1(c) and 17Ac2-2 thereunder.

It is further ORDERED that, pursuant to Section 21B of Securities Exchange Act of 1934, Respondent Select Fidelity Transfer Services, Ltd., shall PAY A CIVIL MONEY PENALTY in the amount of $325,000.

Payment of penalties shall be made no later than twenty-one days following the day this Initial Decision becomes final. Payment shall be made by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order, payable to the Securities and Exchange Commission. The payment, and a cover letter identifying the Respondent and Administrative Proceeding No. 3-15989, shall be delivered to: Enterprises Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Bld., Oklahoma City, Oklahoma 73169. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

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James E. Grimes
Administrative Law Judge