

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 91721 / April 29, 2021**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 4217 / April 29, 2021**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20273**

**In the Matter of**

**ROKK3R, INC.,**

**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 Rokk3r, Inc. (“Rokk3r” 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 finds<sup>1</sup> that:

#### **Summary**

1. These proceedings arise out of the violation of Exchange Act Rule 12b-25, which requires that issuers that fail to file timely a periodic report shall file a Form 12b-25 "Notification of Late Filing," commonly known as "Form NT," which contains, among other things, reasonable detail as to why the issuer's periodic report could not be filed on time and an explanation of any anticipated, significant changes in the issuer's results of operations.

2. In November 2019, Rokk3r violated Rule 12b-25 by filing a Form 12b-25 with the Commission in which Rokk3r failed to disclose why, in sufficient detail under the circumstances presented, its third-quarter, fiscal year ("FY") 2019 Form 10-Q could not be timely filed. Rokk3r's Form 12b-25 also failed to acknowledge anticipated, significant changes in Rokk3r's results of operations for the third quarter of FY2019, compared with Rokk3r's operating results in the third quarter of FY2018, and to provide an explanation of the changes, as required under the rule. Four days after filing its Form 12b-25, Rokk3r filed a Form 8-K disclosing to investors and the market that the company's financial statements for the first and second quarters of FY2019 could no longer be relied upon and would be restated. Rokk3r, however, had failed to include in its Form 12b-25 any disclosure that the discovery, and ongoing correction, of errors in prior FY2019 quarterly financial statements were among the principal reasons that it was unable to file timely the subject Form 10-Q for the third quarter of FY2019. Additionally, Rokk3r failed to file its Form 8-K within the required period for filing a Form 8-K under Exchange Act Rule 13a-11.

#### **Respondent**

3. Rokk3r, a Nevada corporation based in Miami, Florida, provides consulting services to startup companies. Prior to a May 2020 going-private transaction, Rokk3r common stock was registered under Section 12(g) of the Exchange Act and quoted on the Pink Open Market.

#### **Legal Framework and Facts**

4. Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder require issuers with a security registered pursuant to Section 12 of the Exchange Act to file with the Commission annual reports on Form 10-K and quarterly reports on Form 10-Q.

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<sup>1</sup> 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.

5. Rule 12b-25 provides that if an issuer fails to file a Form 10-K or 10-Q within the time period prescribed for such report, the issuer, no later than one business day after the due date for such report, shall file a Form 12b-25 with the Commission, disclosing the issuer's inability to file the report timely and the reasons therefore in reasonable detail.<sup>2</sup> Form 12b-25 requires the issuer to affirm, among other things, that the subject periodic report will be filed within fifteen calendar days, for a Form 10-K, or within five calendar days, for a Form 10-Q, of the report's prescribed due date, and requires that the report actually be filed within such period. Form 12b-25 also requires the issuer to confirm whether or not it anticipates that any significant change in results of operations from the corresponding period for the prior fiscal year will be reflected by the earnings statements to be included in the subject periodic report. If such change is anticipated, the issuer must attach a narrative and quantitative explanation of the anticipated change and, if appropriate, state the reasons why a reasonable estimate of the results cannot be made.

6. Section 13(a) and Rule 13a-11 of the Exchange Act require issuers with a security registered pursuant to Section 12 of the Exchange Act to file or furnish, as applicable, current reports with the Commission on Form 8-K. Issuers are required to file a Form 8-K within four business days after the occurrence of certain events specified in the Form 8-K. Section 4, Item 4.02 of the Form 8-K specifies that if an issuer concludes, or is advised by its auditor, that any previously issued financial statements required to have been provided should no longer be relied upon, the issuer shall disclose the event and certain enumerated information on a Form 8-K.

7. On November 14, 2019, Rokk3r filed with the Commission a Form 12b-25 disclosing that Rokk3r could not file timely its Form 10-Q for its third fiscal quarter, ended September 30, 2019, "due to its delay in compiling financial information required to be included in its Quarterly Report on Form 10-Q, which delay could not be eliminated by Registrant without unreasonable effort and expense." Rokk3r's disclosure contained no further details regarding the cited delay.

8. Furthermore, in its Form 12b-25, Rokk3r indicated that it did not anticipate that any significant change in results of operations from the corresponding period for the prior fiscal year would be reflected in the subject Form 10-Q.

9. On November 18, 2019, Rokk3r filed with the Commission a Form 8-K disclosing that, "[o]n November 8, 2019, the Board of Directors of [Rokk3r] concluded, after review and discussion with management, that [Rokk3r's] unaudited condensed consolidated financial statements for the periods ended March 31, 2019 and June 30, 2019 [*i.e.*, the first and second quarters of FY2019] ... should no longer be relied upon" because Rokk3r had incorrectly accounted, in those financial statements, for variable interest entities. The November Form 8-K disclosed material changes to Rokk3r's total assets, total revenues, net loss, and stockholders' equity. Rokk3r's auditor, on November 5, 2019, had raised the issue which led to Rokk3r's restatement of financial results. Rokk3r failed to file its Form 8-K within the required statutory period.

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<sup>2</sup> Form 12b-25 specifies a "narrative" disclosure. (*See* Form 12b-25, Part III.)

10. Rokk3r's inability to meet the filing deadline for its third-quarter FY2019 Form 10-Q was due, in large part, to the discovery, and ongoing correction, of errors in its first-quarter and second-quarter FY2019 financial statements. In its Form 12b-25, however, Rokk3r failed to disclose this information and failed to provide the detailed narratives and quantitative explanation specifically called for by the form. The company anticipated that its third-quarter FY2019 financial results, when reported, would differ significantly from its third-quarter FY2018 financial results, including a greater than 60% increase in quarterly loss versus third quarter FY2018.

#### **Violations**

11. As a result of the conduct described above, Rokk3r violated Section 13(a) of the Exchange Act and Rules 12b-25 and 13a-11 thereunder.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Rokk3r's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Rokk3r cease and desist from committing or causing any violations and any future violations of Section 13(a) of the Exchange Act and Rules 12b-25 and 13a-11 thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$50,000.00 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:

- (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 Rokk3r 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 Anita B. Bandy, 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