

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11348 / December 20, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22378

In the Matter of

**UNDERDOG SPORTS
HOLDINGS, INC.,**

Respondent.

**ORDER INSTITUTING
CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, 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 8A of the Securities Act of 1933 (“Securities Act”) against Underdog Sports Holdings, Inc. (“Underdog” 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 8A of the Securities Act of 1933, 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 finds¹ that:

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.

Summary

1. These proceedings arise out of Respondent's failures to timely file a Form D in violation of Rule 503 under the Securities Act in connection with several unregistered securities offerings.

2. All offers and sales of securities must either be registered under the Securities Act or fall within an exemption from registration. Regulation D provides three exemptions from the Securities Act's registration requirements, allowing certain issuers to offer and sell their securities without registering the offering with the Commission. The Commission's primary source of information on the Regulation D market is Form D, which is used by issuers to provide notice of an exempt offering of securities under Regulation D. An issuer offering or selling securities in reliance on one of the exemptions provided by Regulation D is required by Securities Act Rule 503 to file a notice of sales on Form D for each offering of securities no later than 15 calendar days after the first sale of securities in the offering.

3. When an issuer does not follow the requirements to file a Form D (or amend its existing Form D filing) it has multiple negative effects. First, the Commission's ability to fully assess the scope of the Regulation D market is impeded, which is key to the Commission's understanding of whether Regulation D is appropriately balancing the need for investor protection and the furtherance of capital formation, particularly as it relates to small businesses. Second, it harms the Commission's ability to monitor and enforce compliance with the requirements of Regulation D as well as state securities regulators' and self-regulatory organizations' ability to monitor and enforce other securities laws and the rules of securities self-regulatory organizations. Finally, it impacts investors and other market participants. Forms D can be a source of information for those parties: to understand whether companies are complying with federal securities laws in their offerings, to do research and analysis on the Regulation D market, and to report on capital-raising in industries that use Regulation D. All of these uses of Forms D are adversely impacted when issuers fail to comply with the requirements of Rule 503.

Respondent

4. Underdog Sports Holdings, Inc. ("Underdog") is a Delaware corporation with its principal place of business in Brooklyn, New York. Underdog is a privately-held corporation that operates an online daily fantasy sports website and mobile app. It is not registered with the Commission in any capacity.

Facts

5. Regulation D provides a non-exclusive method for issuers to conduct securities offerings that are exempt from registration under Section 5 of the Securities Act.

6. Under Rule 503 of Regulation D, an issuer offering or selling securities in reliance on Rule 504 or 506 must file a notice of sales on Form D with the Commission for each new offering of securities no later than 15 calendar days after the first sale of securities in the offering. While a failure to provide such notice does not result in a loss of the exemption from

Section 5, the failure to comply with the requirements of Rule 503 itself is a violation of the Securities Act and rules promulgated thereunder.

7. From at least April 2020 to January 2022, Respondent engaged in several unregistered securities offerings, reaching out to at least several hundred prospective investors and ultimately raising tens of millions of dollars from over 100 investors. Respondent engaged in certain communications that constituted general solicitation for these offerings.

8. Because Respondent engaged in general solicitation, the offerings could not have been conducted as exempt offerings under Section 4(a)(2) of the Securities Act and therefore could not have been conducted without reliance on Rule 504 or Rule 506(c) of Regulation D. Accordingly, Respondent needed to file a Form D for each offering, but Respondent failed to timely file Forms D for all of these offerings.

Violations

9. As a result of the conduct described above, Respondent violated Rule 503 of Regulation D of the Securities Act which requires that any issuer relying on Rule 504 or Rule 506 of Regulation D file with the Commission a notice of sales containing the information required by Form D for each new offering of securities no later than 15 calendar days after the first sale of securities in the offering.

Respondent's Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent and cooperation 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, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondent cease and desist from committing or causing any violations and any future violations of Rule 503 of Regulation D of the Securities Act.

B. Respondent shall, within fourteen (14) days of the entry of this Order, pay a civil money penalty of \$175,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934. 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 Underdog 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 Sheldon L. Pollock, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, New York 10004.

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