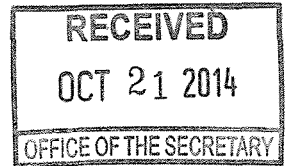


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**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**



**ADMINISTRATIVE PROCEEDING
File No. 3-15989**

In the Matter of

**SELECT FIDELITY TRANSFER
SERVICES, LTD.,**

Respondent.

**DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION
AS TO RESPONDENT SELECT FIDELITY TRANSFER SERVICES, LTD.**

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Pursuant to Rule 250 of the Securities and Exchange Commission's Rules of Practice ("Rules"), the Division of Enforcement ("Division") respectfully submits this memorandum of law in support of its motion for summary disposition against Respondent Select Fidelity Transfer Services, Ltd. ("Select Fidelity").

PRELIMINARY STATEMENT

Select Fidelity registered with the Commission as a transfer agent in 2005. Since then, it has failed to file any of the required annual reports with the Commission on Form TA-2, failed to amend inaccurate information on its Form TA-1, declined to furnish required records to Commission examiners, and declined to permit Commission inspection of its books and records. In doing so, it violated Sections 17(a)(1), 17(a)(3), 17(b)(1), 17A(c)(2), and 17A(d)(1) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 17Ac2-1(c) and 17Ac2-2 thereunder (the "Provisions"). Select Fidelity's time to answer the Order instituting these proceedings (the "OIP") has run, and Select Fidelity has failed to answer or otherwise contest the Division's allegations. There can be no dispute

that Select Fidelity has violated the Provisions, and the Division is therefore entitled to summary disposition as a matter of law. The Court should therefore grant the Division's summary disposition motion and, pursuant to Sections 17A(c)(3), 21B, and 21C of the Exchange Act, order Select Fidelity to cease and desist from committing or causing violations of the Provisions or future violations of the Provisions, revoke its transfer agent registration, and impose a civil penalty on Select Fidelity.

STATEMENT OF UNDISPUTED FACTS

On June 20, 2005, Select Fidelity filed a transfer agent registration statement on Form TA-1 with the Commission. (Declaration of Teresa A. Rodriguez ("Rodriguez Decl.") ¶ 4 & Ex. B.) Select Fidelity's Form TA-1 listed its principal office and mailing address as 335 Bay Street, Suite 600, Toronto, Ontario (the "Registration Address"). (*Id.*) The form listed another address that was crossed out by hand — 36 Toronto Street, Toronto, Ontario (the "Old Address") — and the Registration Address was written above the Old Address. (*Id.*) The Form TA-1 also listed two control persons, Americo DeRosa and Ivan Cavric. (*Id.*) On July 15, 2005, the Commission issued an order making Select Fidelity's registration statement effective. (*Id.* at ¶ 5 & Ex. C.)

On October 29, 2010, the Commission's Division of Trading and Markets ("Trading & Markets") issued a notice (the "Notice") informing Select Fidelity, along with several other transfer agents, that the Commission intended to issue an order under Section 17A(c)(4)(B) of the Exchange Act cancelling Select Fidelity's registration on or after December 15, 2010. (*Id.* at ¶ 9 & Ex. E.) The Notice stated that "[t]he representative of any transfer agent listed in the Appendix who believes the registration of the transfer agent should not be cancelled must notify the Commission in writing or by e-mail prior to December 15, 2010," and listed an email address for any responses. (*Id.*) On November 10, 2010, an individual identifying himself as Michel Herreweghe ("Herreweghe") emailed the address listed in the Notice — from a "selectfidelity.com" email address — identified himself in the email as Select Fidelity's "Manager," and included his telephone number. (*Id.* at ¶ 10 & Ex. F.) Herreweghe

requested that Select Fidelity not be de-registered and represented that Select Fidelity would file updated information. (*Id.*) Herreweghe was not one of the control persons listed on Select Fidelity's Form TA-1. (*Id.* at ¶ 4 & Ex. B.) Based on Herreweghe's representations, Trading & Markets did not cancel Select Fidelity's registration. (*Id.* at ¶¶ 8, 11 & Ex. D.) On December 29, 2010, Select Fidelity updated its EDGAR account information with a new business and mailing address: 4025 Dorchester Road, Suite 338, Niagara Falls, Ontario (the "Updated EDGAR Address"). (*Id.* at ¶ 12 & Ex. G.) Select Fidelity, however, failed to file the required amended Form TA-1 or any of the annual reports required to be filed on Form TA-2. (*Id.* at ¶¶ 6 & 7 & Ex. D.)

On August 22, 2012, Commission examiners from the Office of Compliance, Inspection and Examination ("OCIE") tried to conduct an on-site examination of Select Fidelity at three addresses: (i) the Old Address, (ii) an address listed for Select Fidelity at www.otcbb.com, and (iii) the Updated EDGAR Address. (Declaration of Kenneth A. Liebl ("Liebl Decl.") ¶¶ 6-9.) The OCIE examiners found no sign of Select Fidelity at any of these addresses. (*Id.*)

The same day, August 22, a Commission examiner contacted Herreweghe by telephone. (*Id.* at ¶ 10.) Herreweghe claimed that Select Fidelity had moved to a new address: 6150 Valley Way, Suite 116, Niagara Falls, Ontario (the "New Address"). (*Id.*) Later that day, OCIE staff visited the New Address but found no signs of Select Fidelity. (*Id.* at ¶ 11.) A Commission examiner contacted Herreweghe again, and Herreweghe claimed that Select Fidelity was still in the process of moving to the New Address. (*Id.* at ¶ 12.)

On September 17, 2012, Commission examiners again spoke with Herreweghe by telephone. (*Id.* at ¶ 13.) Herreweghe claimed that Select Fidelity had completed its move to the New Address. (*Id.*) Two days later, on September 19, 2012, Commission examiners requested in writing certain transfer agent books and records from Select Fidelity, including (i) lists of Select Fidelity's addresses, owners, vendors, and issuer clients, (ii) transfer journals, (iii) master security holder files, and (iv) control books

for each issuer client. (*Id.* at ¶ 14 & Ex. A.) On October 9, 2012, Commission examiners notified Select Fidelity by letter that they would commence an on-site examination of Select Fidelity beginning on October 15, 2012. (*Id.* at ¶ 15 & Ex. B.) The letter also requested confirmation by October 10, 2012, that Select Fidelity staff members would be on site and available during that time frame for an examination. (*Id.*) That day, the OCIE examiners spoke with Herreweghe by telephone and discussed the document requests and impending examination. (*Id.* at ¶ 16.)

The following day, Herreweghe emailed the examiners and claimed that he was “not an officer or director of Select Fidelity” but was “acting under power of attorney as a consultant.” (*Id.* at ¶ 17 & Ex. C.) Herreweghe produced a list of several addresses for Select Fidelity and the names of two of its purported owners, neither of whom was listed on Select Fidelity’s Form TA-1. (*Id.*) Herreweghe did not produce any documents in response to the examiners’ other requests or confirm Select Fidelity’s availability for the examination. (*Id.* at ¶ 18.) A Commission examiner replied to Herreweghe’s email saying that no response had been received regarding the availability of Select Fidelity staff for an examination and requested a response again by the following morning. (*Id.* at ¶ 19 & Ex. D.) The next afternoon, on October 11, 2012, Herreweghe emailed the examiners, claimed to be unavailable for the on-site examination, and said that Select Fidelity would suspend its activities, close its office until further notice, and file a Form TA-W to withdraw its registration. (*Id.* at ¶ 20 & Ex. D.)

The next week, on October 18, 2012, the examiners sent Select Fidelity a letter citing its failure to permit Commission inspection of its required books and records. (*Id.* at ¶ 21 & Ex. E.) The letter notified Select Fidelity that its failure could result in a recommendation to the Commission that action be taken against it. (*Id.*) Herreweghe spoke with the examiners by phone thereafter and claimed that Select Fidelity could not file a Form TA-W to withdraw its registration because it had no living officers, that he had no authority to act for Select Fidelity, and that Select Fidelity was no longer operational. (*Id.* at ¶ 22.) On June 4, 2013, the OCIE staff visited Select Fidelity’s Registration Address

listed on their original Form TA-1 and also found neither an office for Select Fidelity nor any indication that Select Fidelity was located there. (*Id.* at ¶ 23.)

Since its registration in 2005, Select Fidelity has never filed an annual report with the Commission on Form TA-2 or amended its Form TA-1. (Rodriguez Decl. at ¶ 6 & Ex. D.)

THE INSTANT ADMINISTRATIVE PROCEEDING

On July 29, 2014, the Commission instituted this administrative proceeding by issuing an Order Instituting Administrative and Cease-And-Desist Proceedings Pursuant to Sections 17A(c)(3) And 21C of the Securities Exchange Act of 1934 (the “OIP”). On August 29, 2014, the Commission accomplished service of the OIP. (Order Following Prehearing Conference, dated Sept. 9, 2014.) Select Fidelity’s answer was due on September 22, 2014. (*Id.*) Select Fidelity has not filed an answer. On September 9, 2014, the Court granted the Commission leave to file a motion for summary disposition. (*Id.*)

SUMMARY DISPOSITION STANDARD

Rule 250(a) permits a party, with the Court’s leave, to move for summary disposition. *See* 17 C.F.R. § 201.250(a). Under Rule 250(b), a motion for summary disposition should be granted 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).

ARGUMENT

I. THERE ARE NO GENUINE ISSUES OF MATERIAL FACT, AND THE PROCEEDINGS SHOULD BE DETERMINED AGAINST SELECT FIDELITY.

A. Select Fidelity Failed to File Forms TA-2.

Sections 17(a)(1), 17(a)(3), and 17A(d)(1) of the Exchange Act require registered transfer agents to make, keep, and furnish copies of reports as prescribed by the Commission. *See* 15 U.S.C. §§ 78q(a)(1), 78q(a)(3) & 78q-1(d)(1). Section 17A(c)(2) of the Exchange Act and Rule 17Ac2-2

thereunder require registered transfer agents to file annual reports on Form TA-2 within 90 days of the end of each calendar year. *See* 15 U.S.C. § 78q-1(c)(2); 17 C.F.R. § 240.17Ac2-2. Select Fidelity failed to file Form TA-2 for the years 2006 through 2013. (Rodriguez Decl. at ¶ 6.) Select Fidelity therefore violated Sections 17(a)(1), 17(a)(3), 17A(c)(2), and 17A(d)(1) of the Exchange Act and Rule 17Ac2-2 thereunder.

B. Select Fidelity Failed to File Amendments to Form TA-1.

Sections 17(a)(1), 17(a)(3), and 17A(d)(1) require that registered transfer agents make, keep and furnish copies of reports as prescribed by the Commission. *See* 15 U.S.C. §§ 78q(a)(1), 78q(a)(3) & 78q-1(d)(1). Section 17A(c)(2) of the Exchange Act and Rule 17Ac2-1(c) thereunder require registered transfer agents to file amendments to Form TA-1 if any information reported on Form TA-1 becomes inaccurate, misleading, or incomplete. *See* 15 U.S.C. § 78q-1(c)(2); 17 C.F.R. § 240.17Ac2-1(c). In such cases, the registrant has sixty days after the information becomes inaccurate, misleading, or incomplete to file an amendment. *See* 17 C.F.R. § 240.17Ac2-1(c).

Select Fidelity changed its address without updating its Form TA-1, as required. OCIE's site visit to the Registration Address, which did not find Select Fidelity's offices, demonstrated that that address was no longer accurate. (Liebl Decl. ¶ 23.) Select Fidelity also purported to have operated from multiple addresses on its website and OTCBB listing, yet Select Fidelity failed to file any Form TA-1 amendment with updated addresses. (Liebl Decl. at ¶ 5; Rodriguez Decl. at ¶ 7.) Select Fidelity thus violated Sections 17(a)(1), 17(a)(3), 17A(d)(1), and 17A(c)(2) of the Exchange Act and Rule 17Ac2-1(c) thereunder.

C. Select Fidelity Failed to Furnish Copies of Records Upon Request.

Section 17(a)(1) of the Exchange Act requires registered transfer agents to make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, has prescribed. *See* 15 U.S.C. § 78q(a)(1). Rule 17Ad-6(a)(10) provides that

“every registered transfer agent shall make and keep current . . . a copy of any transfer journal and registrar journal prepared by such registered transfer agent.” *See* 17 C.F.R. § 240.17Ad-6(a)(10). Rule 17Ad-10(b) requires that “every record keeping transfer agent shall maintain and keep current an accurate master securityholder file.” *See* 17 C.F.R. § 240.17Ad-10(b). Rule 17Ad-10(e) requires “every recordkeeping transfer agent shall maintain and keep current an accurate control book for each issue of securities.” *See* 17 C.F.R. § 240.17Ad-10(e). Under these provisions, Select Fidelity was required to maintain and keep current transfer journals, master security holder files, and control books for its issuers. Each of these items relates to “core” transfer agent functions that, by their nature, should be amenable to timely production.

Despite a request from the OCIE staff for such records on September 19, 2012, followed by a letter from the OCIE staff on October 18, 2012 that reiterated OCIE’s prior request, Select Fidelity failed to furnish copies of these (or any other) records to the Commission. (Liebl Decl. at ¶ 18.) By failing to furnish copies of records that the Commission, by rule, has prescribed that transfer agents “make and keep current,” Select Fidelity violated Section 17(a)(1) of the Exchange Act.¹

D. Select Fidelity Failed to Permit the Staff’s Examination of Records

Section 17(b)(1) of the Exchange Act requires a registered transfer agent to permit reasonable periodic, special, or other examinations of its records by representatives of the Commission. In August 2012, OCIE staff attempted to conduct an on-site examination of Select Fidelity by visiting several addresses associated with Select Fidelity. (Liebl Decl. at ¶¶ 7-9, 11.) The OCIE staff did not find anyone associated with Select Fidelity at any of these locations and was therefore unable to conduct an examination of Select Fidelity’s records. (*Id.*) On September 19, 2012, the OCIE staff sent Select Fidelity a letter requesting records relating to Select Fidelity’s transfer agent activities, including transfer

¹ The OIP does not allege that Select Fidelity violated Rules 17Ad-6(a)(10), 17Ad-10(b), or 17Ad-10(e), which simply require a transfer agent to make and keep current such records.

journals, master security holder files, and control books. (*Id.* at ¶ 14.) Select Fidelity failed to provide any of these records. (*Id.* at ¶ 18.) In addition, on October 9, 2012, the OCIE staff sent Select Fidelity a letter informing it that OCIE staff would be conducting an on-site examination beginning on October 15, 2012. (*Id.* at ¶ 15.) The staff received an email refusal from Herreweghe, stating that Select Fidelity would not be available for inspection and that its offices would be closed until further notice. (*Id.* at ¶ 20.) Finally, on June 4, 2013, the OCIE staff visited Select Fidelity's Registration Address and also found that Select Fidelity was not located there. (*Id.* at ¶ 23.) As a result of Select Fidelity's repeated refusal to permit Commission examination of its required books and records, Select Fidelity has violated Section 17(b)(1) of the Exchange Act.

II. THE COURT SHOULD ORDER FULL RELIEF AGAINST SELECT FIDELITY.

A. The Court Should Order Select Fidelity To Cease and Desist.

Section 21C of the Exchange Act authorizes the imposition of a cease-and-desist order on any person who has violated any provision of the Exchange Act or the rules and regulations thereunder. *See* 15 U.S.C. § 78u-3. In determining whether a cease-and-desist order is appropriate in the public interest, the Court should consider the following factors: (1) the egregiousness of the violator's actions, (2) the isolated or recurrent nature of the violations, (3) the degree of scienter, (4) the sincerity of the violator's assurances against future conduct, (5) the violator's recognition of his wrongful conduct, and (6) the likelihood that the violator's occupation will present opportunities to commit future violations. *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979) (citing *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)), *aff'd on other grounds*, 450 U.S. 91 (1981); *In re Muth*, Initial Decision, Rel. No. 262, 2004 WL 2270299, at *38 (Oct. 8, 2004) (citing *Steadman*). The Court should further consider the following additional factors in determining whether to impose a cease-and-desist order: "whether there is a risk of future violations, whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial

function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceedings.” *Muth*, 2004 WL 2270299, at *38 (citing *In re KPMG Peat Marwick LLP*, 74 SEC Docket 384, 436 (Jan. 19, 2001)). In applying these factors, the Commission has concluded that “although some risk of future violation is necessary, it need not be very great to warrant issuing a cease-and-desist order and ... in the ordinary case and absent evidence to the contrary, a finding of past violation raises a sufficient risk of future violation.” *In re KPMG Peat Marwick LLP*, Commission Order Denying Request for Reconsideration, Exchange Act Rel. No. 44050, 2001 WL 223378, at *7 (Mar. 8, 2001) (internal quotation marks and citation omitted).

The Court should impose an order requiring Select Fidelity to cease and desist from committing or causing any violations or future violations of the Exchange Act provisions and rules it has violated. First, Select Fidelity’s actions were egregious — in particular, its refusal to submit to a required on-site examination by OCIE and its repeated failure to file an annual Form TA-2. Second, Select Fidelity’s violations were both recurrent and recent. Select Fidelity’s failures to file its required Forms TA-2 have occurred without interruption from 2006 through the present. Third, Select Fidelity has made no assurances against future violations. All of these factors weigh heavily in favor of a cease-and-desist order to protect the public interest.

B. The Court Should Revoke Select Fidelity’s Registration.

Section 17A(c)(3) of the Exchange Act authorizes the Commission to revoke the registration of a transfer agent if doing so is in the public interest and the transfer agent has willfully violated any provision of the Exchange Act or any rules or regulations thereunder. *See* 15 U.S.C. §§ 78q-1 & 78o(b)(4). Select Fidelity’s transfer agent registration should be revoked, given its willful violations of Exchange Act provisions and rules. Select Fidelity’s long-running delinquencies in its filing of required reports, its failure to produce required books and records to the OCIE staff, and its failure to allow the staff to conduct an on-site inspection warrant revocation of Select Fidelity’s transfer agent registration.

Under similar circumstances, transfer agents' registrations have been revoked where the transfer agents failed to submit to a Commission staff examination, failed to maintain and keep required transfer agent records, and failed to timely file periodic reports on Form TA-2. *See In re Global Sentry Equity Transfer, Inc.*, Order Making Findings and Imposing Sanctions By Default, Exchange Act Rel. No. 65302, 2011 WL 3979040 (Sept. 8, 2011); *In re Freedomtree Mutual Funds and Asset Mgmt., LLC*, Order Making Findings and Imposing Sanctions by Default, Exchange Act Rel. No. 64483, 2011 WL 1825022, at *3-4 (May 13, 2011). Given Select Fidelity's similar conduct, Select Fidelity's registration should be revoked.

C. The Court Should Impose a Civil Penalty on Select Fidelity.

Section 21B of the Exchange Act authorizes the Commission to impose a civil monetary penalty based on any willful violation of the Exchange Act. *See* 15 U.S.C. § 78u-2. To order payment of monetary penalties, the Commission must find that such penalties are in the public interest, based on the following factors: (1) deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) harm to others; (3) unjust enrichment; (4) prior violations; (5) deterrence; and (6) such other matters as justice may require. *See* 15 U.S.C. § 78u-2(c). "Not all factors may be relevant in a given case, and the factors need not all carry equal weight." *In re Weeks*, Initial Decision, Rel. No. 199, 2002 WL 169185, at *58 (Feb. 4, 2002).

A three-tier system identifies the maximum amount of civil penalties, depending on the severity of the respondent's conduct. *See* 15 U.S.C. § 78u-2(b). Second-tier penalties are imposed in cases involving "deliberate or reckless disregard of a regulatory requirement." *Id.* Select Fidelity has been on notice of its noncompliance with filing of the Forms TA-1 and TA-2 since at least October 2010, upon receipt of the Notice from the Commission's Division of Trading and Markets, and nonetheless Select Fidelity has failed to address these deficiencies. Because Select Fidelity deliberately or recklessly disregarded regulatory requirements over a significant period of time, second-tier

penalties should be imposed against Select Fidelity. The maximum second-tier penalty for each violation that occurred between February 15, 2005 and March 3, 2009 is \$325,000. *See* 15 U.S.C. § 78u-2(b)(2); 17 C.F.R. § 201.1003. The maximum second-tier penalty for each violation after March 3, 2009 — including Select Fidelity’s failure to submit to an OCIE examination in October 2012 — is \$375,000. *See* 15 U.S.C. § 78u-2(b)(2); 17 C.F.R. § 201.1004.

In *Global Sentry*, Judge Foelak imposed a civil penalty of \$375,000 on Global Sentry in a default order based on its failure to submit to a Commission staff examination, maintain and keep required transfer agent records, and to timely file periodic reports on Form TA-2. *See Global Sentry*, 2011 WL 3979040. In *Freedomtree*, the court similarly imposed a civil penalty of \$325,000 in a default order against a transfer agent that had failed to submit to a Commission staff examination and to maintain and keep transfer agent records. *See Freedomtree*, 2011 WL 1825022, at *3–4. This Court should similarly impose the maximum, one-time second-tier penalty on Select Fidelity.

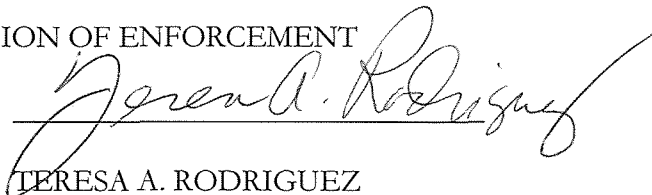
CONCLUSION

For the foregoing reasons, the Court should grant the Commission’s motion for summary disposition and order the relief described above against Select Fidelity.

Dated: October 20, 2014
New York, New York

DIVISION OF ENFORCEMENT

By:



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