

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

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-19243**

**In the Matter of**

**FIDELITY TRANSFER SERVICES,  
INC. and RUBEN SANCHEZ**

**Respondents.**

**DIVISION OF ENFORCEMENT'S SUPPLEMENTAL BRIEF IN SUPPORT OF ITS  
MOTION FOR ENTRY OF DEFAULT JUDGMENT AND SANCTIONS**

## **I. INTRODUCTION**

Pursuant to the December 15, 2020 Order Requesting Additional Materials in this matter, Sec. Act Release No. 90674 (December 15, 2020), the Division of Enforcement (“Division”) submits this supplemental brief in support of its motion for default judgment and sanctions against Fidelity Transfer Services, Inc. (“Fidelity”). The Order asks the Division to respond to three separate requests: 1) address the extent to which Fidelity was required to make, keep, and furnish required records pursuant to Rules 17Ad-6, 17Ad-7, 17Ad-10, or another Commission Rule; 2) adduce evidence of requests for records that cited in the default motion; and 3) address the applicable standard for willfulness under Exchange Act Section 15(b)(4)(A), which Exchange Act Section 17A(c)(3) incorporates.

### **A. Fidelity Was Required to Keep the Records Sought by OCIE and the Division**

The Order’s first two topics -- concerning the extent to which Fidelity was required to make and keep records pursuant to Exchange Act Rule, and the request that the Division supplement the record with requests that were not set forth in the Rule -- are related. The records at issue were required to be kept by Fidelity by SEC rule. The applicable requests are submitted herewith with the Supplemental Declaration of Lynn M. Dean.

Each of the SEC requests was identified in the OIP in paragraphs C2-10. The specific records sought can be found in the attachments to the Supplemental Dean Declaration. Each of the requests included records that are required by the SEC’s rules governing transfer agents, and that are central to a transfer agent’s most basic duties. For example, Chicago OCIE’s March 2, 2018 and March 28, 2018 letters to Fidelity requested reports of daily transfer activity, which are required under Rule 17Ad-6(a)(1), and which are to be kept by transfer agents for a period of not less than two years under Rule 17Ad-7(a). *Id.* at ¶ C.5; Supplemental Dean Declaration Exs. 1, 2. Likewise, Los Angeles Enforcement’s December 10, 2018 subpoena called for GRNH’s shareholder list, which a transfer agent is required to “maintain and keep current” under Rule 17Ad-10(b). *Id.* at ¶ C.9; Supp. Dean Decl. Ex. 3.

Moreover, to the extent any of the requested records were not required by rule to be made or kept, those records were nevertheless subject to reasonable examination by the Commission pursuant to Section 17(b)(1). See *In the Matter of Phlo Corp. et al.*, Rel. No. 307, 87 SEC Docket 1101, 2006 WL 37,2657 at \*20 (Feb. 17, 2006). “The Commission’s authority to access a registrant’s books and records is unconditional, subject only to the requirement that any such examination be reasonable.” *Phlo Corp.*, at \*19.

### **B. Fidelity Acted Willfully In Making False Statements**

Sections 17A(c)(3) and (c)(4)(C) of the Exchange Act, incorporating by reference Section 15(b)(4)(A), authorize the SEC to impose remedial sanctions in an administrative proceeding against a transfer agent or associated person who has, among other things, “willfully made or caused to be made in any application for registration or report required to be filed with the Commission . . . any statement which was at the time and in light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein.”

“‘[W]illfully’ in this context means intentionally committing the act which constitutes the violation;” it does not mean “that ‘the actor [must] also be aware that he is violating one of the Rules or Acts.’” *Wonsover v. SEC*, 205 F.3d 414 (D.C. Cir. 2000) (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)). “Extreme recklessness,” a “lesser form of intent,” satisfies the mens rea requirement for willfulness and is characterized by an “extreme departure from the standards of ordinary care” which presents a danger of misleading “that is either known to the defendant or is so obvious that [he] must have been aware of it.” *Dolphin and Bradbury, Inc. v. SEC*, 512 F.3d 634, 639 (D.C. Cir. 2008) (internal quotation omitted); see *Robare Group, Ltd. v. SEC*, 922 F.3d 468, 479 (D.C. Cir. 2019).

The D.C. Circuit’s holding in *Robare* considered the term “willfully” as it is used in Section 207 of the Investment Advisers Act of 1940, which prohibits willfully omitting to state in a Form ADV (an investment adviser registration application) a material fact that is required to be

stated therein. *Robare*, 922 F.3d at 479-80. Like Section 3(a)(39), Section 207 incorporates the requirement that one have acted “willfully” in the violation itself. *Id.* In this context, the D.C. Circuit held, “the statutory text signals that” liability may be imposed only where it is shown that the petitioner “subjectively intended to omit material information from” his required disclosures. *Id.*

Here, Fidelity’s conduct satisfies the “willfulness” standard. The OIP alleges that Fidelity filed Forms TA-2 for seven of the nine years between 2010 and 2018. Dean Decl. Ex. 1 (OIP at ¶ B.5). Form TA-2 asks the filer to confirm whether it has amended its TA-1 as required during the relevant reporting period.<sup>1</sup> In each of the seven TA-2s that it filed, Fidelity responded that this question was “[n]ot applicable,” indicating that no such amendment had been necessary in that reporting year. *Id.* This statement was untrue from at least 2014, but Fidelity falsely claimed its TA-1 required no amendment in its 2015, 2016, and 2017 TA-2 filings. *Id.* This false statement was material, because it concealed the fact that Fidelity had failed to provide its current business address to the SEC, without which SEC staff were substantially hindered in their ability to contact, obtain documents from, and conduct on-site examinations of Fidelity—all acts vital to the SEC’s oversight of registered transfer agents. The filing of these false statements was clearly “willful.” Sanchez took affirmative actions to answer the question on the form and then file the form with the SEC. Moreover, the falsity of the representations regarding Fidelity’s business address must have been known to Sanchez. He knew that Fidelity was not using the Santa Barbara or Bonita addresses as its business address, and he knew Fidelity’s Form TA-1, contained those false statements because he filled out the forms and filed them. Because Fidelity has defaulted and failed to respond to the allegations against it, those allegations may be deemed to be true. 17 CFR § 201.155(a); OIP at p. 6.

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<sup>1</sup> Specifically, the question states: “During the reporting period, has the Registrant amended Form TA-1 within 60 calendar days following the date on which information reported therein became inaccurate, incomplete, or misleading?”

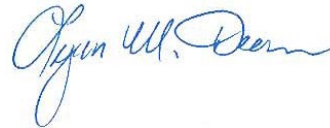
Thus, the evidence supports a finding that Sanchez subjectively intended to file the materially false information with the SEC. Under similar circumstances, the Commission recently held that the subjective intent of an investment adviser to omit material information from his U4 disclosures was “at least reckless” and sustained a finding that the Respondent acted willfully. *In the Matter of Holeman*, Exch. Act. Rel. 86523 at p. 16 (July 31, 2019) citing *Robare*, 922 F.3d at 479-80.

## II. CONCLUSION

For the foregoing reasons and those set forth in its motion, the Division respectfully requests that the Commission issue an order requiring Fidelity to cease and desist its violations of the federal securities laws and revoking its registration as a transfer agent.

January 15, 2021

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I certify that January 15, 2021, I caused the foregoing document to be served on the following persons, by electronic mail, facsimile, or by UPS overnight mail as stated:

Securities and Exchange Commission  
APFilings@sec.gov

(By Electronic Mail)

Mr. Ruben Sanchez  
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(Respondent)

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Fidelity Transfer Services, Inc.  
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Javier Delgadillo