

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

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21263**

<p><b>In the Matter of</b></p> <p><b>ONWUKA AFAME,</b></p> <p><b>Respondent.</b></p>
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**THE DIVISION OF ENFORCEMENT'S**  
**MOTION FOR A DEFAULT AND REVOCATION ORDER**  
**AND SUPPORTING MEMORANDUM**

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The Division of Enforcement (the “Division”) respectfully requests that the Commission find Onwuka Afame (“Respondent” or “Afame”), a registered transfer agent, in default and revoke Respondent’s registration.

## **I. PRELIMINARY STATEMENT**

On December 27, 2022, the Securities and Exchange Commission (“Commission”) issued an Order Instituting Proceedings (“OIP”) against Respondent, pursuant to Section 17A(c)(3)<sup>1</sup> of the Securities Exchange Act of 1934 (“Exchange Act”), alleging Respondent failed (1) to amend its transfer agent registration Form TA-1 to provide an accurate phone number after that phone number changed; (2) to file a required annual report for 2021; (3) to furnish Required Records to the Commission upon request; and (4) to permit Commission staff to conduct an examination of all records related to its transfer agent business.<sup>2</sup> When Afame failed to respond to the OIP, the Commission issued an order to show cause.<sup>3</sup> Afame has not responded to the OIP or the Commission’s order to show cause.

## **II. PROCEDURAL HISTORY**

On December 27, 2022, the Commission instituted this proceeding pursuant to Exchange Act Section 17A(c)(3) to determine what, if any, remedial action is appropriate in the public interest against Respondent including, but not limited to, denial of registration, censure, placing limitations on the activities, functions, or operations of Afame, suspension for a period not exceeding 12 months, or revocation of Afame’s registration, based on its failure to comply with

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<sup>1</sup> 15 U.S.C. § 78q-1(c)(3).

<sup>2</sup> *In re Afame Onwuka*, Release No. 96584, 2022 WL 17979679 (December 27, 2022).

<sup>3</sup> *In re Afame Onwuka*, Release No. 97002, 2023 WL 2313148 (March 1, 2023).

the provisions of Sections 17(a)(1),<sup>4</sup> 17(b)(1),<sup>5</sup> 17A(c)(2),<sup>6</sup> and 17A(d)(1)<sup>7</sup> of the Exchange Act, and Rules 17Ac2-1(c)<sup>8</sup> and 17Ac2-2(a)(1)<sup>9</sup> thereunder.<sup>10</sup> In its OIP, the Commission ordered Respondent to file an answer within twenty (20) days after service of the OIP.<sup>11</sup>

Afame was served with the OIP on or about January 9, 2023, but did not file an answer within 20 days of service.<sup>12</sup> The Commission then ordered Afame to show cause by March 15, 2023, why a default judgment should not be entered against it.<sup>13</sup> The Division emailed a copy of the March 1 show cause order to Afame on March 2, 2023; however, Afame has not filed a response to the show cause order.

### **III. ARGUMENT**

#### **A. Afame Should Be Deemed in Default**

Rule 220(f)<sup>14</sup> provides that “[i]f a respondent fails to file an answer required by this rule within the time provided, such respondent may be deemed in default pursuant to Rule 155(a).” Rule 155(a)(2)<sup>15</sup> permits the Commission to deem such a respondent in default and “determine the proceeding against [it] upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true.”

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<sup>4</sup> 15 U.S.C. § 78q(a)(1).

<sup>5</sup> 15 U.S.C. § 78q(b)(1).

<sup>6</sup> 15 U.S.C. § 78q-1(c)(2).

<sup>7</sup> 15 U.S.C. § 78q-1(d)(1).

<sup>8</sup> 17 C.F.R. § 240.17Ac2-1(c).

<sup>9</sup> 17 C.F.R. § 240.17Ac2-2(a)(1).

<sup>10</sup> *In re Afame Onwuka*, 2022 WL 17979679, at \*3, §§ 23-27 (December 27, 2022).

<sup>11</sup> *Id.* at \*4

<sup>12</sup> *In re Afame Onwuka*, 2023 WL 2313148, at \*1 (March 1, 2023).

<sup>13</sup> *Id.*

<sup>14</sup> 17 C.F.R. § 201.220(f).

<sup>15</sup> 17 C.F.R. § 201.155(a)(2).

Because Afame has failed to respond to the OIP and show cause order, the Commission should find Afame to be in default, and deem the OIP's allegations to be true in order to decide what relief to impose.<sup>16</sup>

**B. The OIP Establishes that Afame Willfully Violated the Exchange Act and Rules Thereunder**

**1. Afame Willfully Failed to Amend the Form TA-1**

Transfer agents must register with the Commission by filing a Form TA-1 and must complete the form in accordance with its instructions. Section 17A(c)(2) of the Exchange Act and Rule 17Ac2-1(a)<sup>17</sup> thereunder. If any of the information reported on Form TA-1 becomes inaccurate, misleading, or incomplete, the transfer agent must correct the information by filing an amendment within 60 days following the date on which the information became inaccurate, misleading, or incomplete. Rule 17Ac2-1(c).

The allegations of the OIP establish that on November 25, 2020, Afame applied for registration as a transfer agent with the Commission by filing a Form TA-1.<sup>18</sup> The registration became effective on December 21, 2020.<sup>19</sup>

On February 2, 2021, Afame filed an amended Form TA-1 with the Commission, changing its phone number under the question pertaining to the “principal office where transfer agents activities are, or will be, performed.”<sup>20</sup> According to Afame's Form TA-1/A, filed on

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<sup>16</sup> *See id.* (same).

<sup>17</sup> 17 C.F.R. § 240.17Ac2-1(a).

<sup>18</sup> *In re Afame Onwuka*, 2022 WL 17979679, at \*1, ¶ 5 (December 27, 2022).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at \*1, ¶ 2 and \*2, ¶ 7.

February 2, 2021, it is a corporation primarily owned by Yungasi, Inc.<sup>21</sup> Afame Onwuka (“Onwuka”) submitted the amended registration form, using the title of “Treasurer/ CEO/ CFO/ Owner of Yungasi Inc.”<sup>22</sup>

On February 5, 2021, Afame filed a second amended Form TA-1 with the Commission, listing an address in Staten Island as its business address and Onwuka as “Treasurer,” and claiming Afame was acting under Onwuka’s authority as trustee.<sup>23</sup> The amended Form TA-1 included the same phone number.<sup>24</sup>

The phone number listed in both Forms TA-1/A was not in service as of at least February 5, 2021, and, therefore, is not the number for Afame’s principal office.<sup>25</sup> Afame has not filed an amendment to the Form TA-1 correcting the phone number.<sup>26</sup> Afame knew that an amendment was required by at least September 1, 2022, when the Division sent Afame a Wells notice at the email address listed on the Form TA-1, regarding this, and other, violations.<sup>27</sup>

The Division also sent the Wells notice by hard copy, via certified mail, return receipt requested, to the principal address on Afame’s Form TA-1/A.<sup>28</sup> The hard copy of the Wells notice sent by certified mail was returned unopened and stamped “Return to Sender. Not Deliverable As Addressed. Unable to forward,” evidencing that Afame had a new address.<sup>29</sup>

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<sup>21</sup> *Id.* at ¶ 3.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at \*2, ¶ 7.

<sup>25</sup> *Id.* at ¶ 8.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at \*3, ¶ 21.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

On September 6, 2022, Division staff spoke by telephone with Onwuka, who acknowledged having received the Wells notice by email.<sup>30</sup> Moreover, on or about January 9, 2023, a copy of the OIP and a letter from the Secretary were served on Afame, which again notified it that an amendment was required.<sup>31</sup>

Even after receiving the Wells notice, the OIP, and speaking with the Division, Afame did not file an amendment nor has Afame filed anything with the Commission asserting an innocent explanation for its failure to amend. By failing to correct Afame's principal office address and phone number on Form TA-1 by filing an amendment within 60 days following the date on which the information became inaccurate, misleading, or incomplete, Afame violated Section 17A(c)(2) of the Exchange Act and Rule 17Ac2-1(c) thereunder.<sup>32</sup>

These allegations and the reasonable inferences drawn from these allegations establish that Afame's submission of inaccurate information to the Commission was willful. "To act willfully for purposes of the federal securities laws means that a person intentionally committed the act which constitutes the violation." *Richard Allen Riemer, Jr.*, Release No. 84513, 2018 WL 5668898, at \*4 (Oct. 31, 2018) (internal quotation marks and citations omitted). The respondent need not "also be aware that he is violating one of the Rules or Acts; rather, it simply requires the voluntary commission of the acts themselves." *Id.* (internal quotation marks and citations omitted). Silence or inaction in response to notice of wrongful conduct is evidence of an intent to affirm the wrongful act. *See Villanueva v. Brown*, 103 F.3d 1128, 1138 (3d Cir.

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<sup>30</sup> *Id.* at ¶ 22.

<sup>31</sup> *In re Afame Onwuka*, 2023 WL 2313148, at \*1 (March 1, 2023).

<sup>32</sup> *In re Afame Onwuka*, 2022 WL 17979679, at \*3, ¶ 23 (December 27, 2022).



1997) (a principal’s intent to ratify the wrongful act of an agent “may be inferred from the failure to repudiate an unauthorized act [or] from inaction”); *cf. Brink's Inc. v. City of New York*, 717 F.2d 700, 706 (2d Cir. 1983) (“inaction” by management with knowledge of employee’s wrongful acts was sufficient evidence of intent for an award of punitive damages).

## **2. Afame Willfully Failed to Timely File an Annual Report**

Transfer agents registered on December 31 of any given year are required to file an annual report on Form TA-2 by March 31 of the following year. *See* Rule 17Ac2-2(a).<sup>33</sup> The allegations of the OIP establish that Afame did not file the annual report for 2021, which was due by March 31, 2022.<sup>34</sup> Moreover, the Wells notice and OIP provided Afame with notice that the annual report had not been and was required to be filed. Afame’s continued failure to file the annual report and failure to assert an innocent explanation in this proceeding is additional evidence that the failure was intentional.<sup>35</sup> By failing to file the annual report on Form TA-2 for 2021 by March 31, 2022, Afame willfully violated Section 17A(c)(2) of the Exchange Act and Rule 17Ac2-2(a)(1) thereunder.<sup>36</sup>

## **3. Afame Willfully Failed to Furnish Records for Examination**

Transfer agents are required to make, keep, and furnish such records as the Commission, by rule, prescribes (“Required Records”). *See* Section 17(a)(1) of the Exchange Act. All transfer agent records are subject to examination by representatives of the Commission. *See* Section 17(b)(1).

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<sup>33</sup> 17 C.F.R. § 240.17Ac2-2(a).

<sup>34</sup> *In re Afame Onwuka*, 2022 WL 17979679, at \*3, ¶ 11 (December 27, 2022).

<sup>35</sup> *See id.* at \*3, ¶ 21.

<sup>36</sup> *Id.* at ¶ 24.

The OIP's allegations establish that on February 3, 2022, in furtherance of its examination, the Commission's Division of Examinations ("Examinations") sent Afame, through Onwuka, a document request seeking Required Records and other documents relating to Afame's transfer agent business and requested that Afame produce the documents by February 14, 2022.<sup>37</sup> Afame failed to provide the requested documents by that date.<sup>38</sup>

Examinations emailed Afame on February 15, 2022, requesting a complete response, and that same day Respondent emailed Examinations one spreadsheet, consisting of three lines of information concerning what appeared to be shareholder data for one issuer.<sup>39</sup> On the same day, Examinations asked Onwuka by email if Afame intended to provide any other documents in response to Examinations' document request. Onwuka replied, stating that some of the documents were publicly available, while other documents were sensitive, and signaled a reluctance to disclose them.<sup>40</sup> On February 17, 2022, Onwuka informed Examinations that Afame would not cooperate with the examination.<sup>41</sup>

On February 22, 2022, Examinations sent Afame a letter by email and mail, which was delivered on February 24, notifying Afame that the failure to provide Examinations with the requested books and records was a violation of Section 17(b) of the Exchange Act.<sup>42</sup> On March 8, 2022, Examinations sent Afame a letter notifying it that it was non-compliant with Sections 17(a) and (b) of the Exchange Act by failing to furnish requested books and records to the

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<sup>37</sup> *Id.* at \*2, ¶ 14.

<sup>38</sup> *Id.* at ¶ 15.

<sup>39</sup> *Id.* at ¶¶ 15-16.

<sup>40</sup> *Id.* at ¶ 17.

<sup>41</sup> *Id.* at \*3, ¶ 18.

<sup>42</sup> *Id.* at ¶ 19.

Examinations staff for examination and with Rule 17Ac2-1(c) by failing to correct the inaccurate number on its most recent Form TA-1 filing.<sup>43</sup>

By failing to furnish Required Records to the Commission as requested, Afame willfully violated Section 17(a)(1) of the Exchange Act,<sup>44</sup> and by failing to make records available for examination by representatives of the Commission, Afame willfully violated Section 17(b)(1) of the Exchange Act.<sup>45</sup> Moreover, by violating the regulations promulgated by the Commission, Afame willfully violated Section 17A(d)(1) of the Exchange Act, which prohibits registered transfer agents from engaging in any activity as transfer agents in contravention of rules and regulations prescribed by the Commission.<sup>46</sup>

### **C. Revocation of Afame’s Transfer Agent Registration Is Warranted**

Pursuant to Exchange Act Section 17A(c)(3), the Commission “shall” revoke the registration of a transfer agent if the transfer agent has engaged in certain wrongful acts and if revocation is in the public interest. 15 U.S.C. § 78q-1(c)(3).

#### **1. Afame’s Conduct Satisfies the Prerequisite for Remedial Action**

The wrongful acts upon which revocation may be based include: (1) willfully violating any provision of the Exchange Act and the rules and regulations promulgated thereunder; or (2) willfully making a false or misleading statement of material fact in an application for registration filed with the Commission. Exchange Act §§ 17A(c)(3) and 15(b)(4)(A) & (D)<sup>47</sup>.

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<sup>43</sup> *Id.* at ¶ 20.

<sup>44</sup> *Id.* at ¶ 25.

<sup>45</sup> *Id.* at ¶ 26.

<sup>46</sup> *Id.* at ¶ 27.

<sup>47</sup> 15 U.S.C. §§ 78o(b)(4)(A) & (D).

As discussed above, Afame willfully violated several provisions of the Exchange Act and rules promulgated thereunder.<sup>48</sup> Moreover, by failing to amend the Form TA-1 once the information therein became inaccurate, Afame made a false and misleading statement of material fact in an application for registration filed with the Commission. *Cf. In re H. G. Stolle & Co.*, Release No. 6389, 1960 WL 56293, at \*2 (Oct. 14, 1960) (broker’s failure to amend registration application when subsequent events rendered information in the original application inaccurate constituted false and misleading statement within the meaning of Section 15(b)); *see also In re Fid. Transfer Servs., Inc. et al.*, Release No. 34548, 2022 WL 969898, at \*6 (Mar. 29, 2022) (failing to file an amended Form TA-1 to correct inaccurate address is a false and misleading statement and omission of material information).

## **2. Revocation Is in the Public Interest**

In determining the appropriate remedy, the Commission considers 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 its conduct, and the likelihood that the respondent’s occupation will present opportunities for future violations. *Id.* The inquiry is flexible and no single factor is dispositive. *Id.*

“The Commission’s oversight of transfer agents is substantially dependent on its transfer agent examination process.” *In re Phlo Corp.*, Release No. 307, 2006 WL 372657, at \*19 (Feb. 17, 2006). The Commission has repeatedly held that violations that hinder or prevent the Commission from conducting an examination of a transfer agent – such as failing to provide the

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<sup>48</sup> *In re Afame Onwuka*, 2022 WL 17979679, at \*1, ¶ 1 (December 27, 2022).

Commission with an accurate principal office address or failing to respond to document requests – are egregious. *Id.* at \*19-22 and \*28 (transfer agents’ failure to timely provide some records and failure to provide others was egregious); *Fid. Transfer Servs., Inc.*, 2022 WL 969898, at \*6 (transfer agent’s failure to correct its address and failure to respond to document requests constituted egregious violations because the conduct frustrated the Commission’s regulatory efforts); *In re Select Fid. Transfer Servs., Ltd.*, Release No. 718, 2014 WL 7145632, at \*7 (Dec. 15, 2014) (transfer agent’s failure to maintain a current address with the Commission was egregious).

Afame’s conduct was, therefore, egregious and recurrent, repeatedly demonstrating its disregard for its filing requirements by not amending its registration application and not filing its required annual reports. Afame’s repeated failures to comply with its filing obligations meant that Commission staff could not carry out its regulatory oversight functions. Afame’s repeated failures to respond to the Examinations’ document requests further frustrated the Commission staff’s regulatory efforts.

The same facts that establish that Afame’s violations are willful establish that its violations were intentional – not merely mistaken or inadvertent. *See In re China-Biotics, Inc.*, Release 70800, 2013 WL 5883342, at \*19 n.60 (Nov. 4, 2013) (the scienter inquiry focuses on whether the violation was intentional as opposed to inadvertent or mistaken).

Afame has not offered assurances against future violations, having defaulted in this proceeding. Moreover, its demonstrated unwillingness to comply with fundamental filing requirements and repeated refusals to cooperate with Commission examinations indicates a likelihood that, but for revocation, Afame will not only engage in future violations but also

engage in conduct that might have the effect of preventing Commission staff from identifying and addressing those violations. Accordingly, it is in the public interest to revoke Afame's transfer agent registration. *Fid. Transfer Servs., Inc.*, 2022 WL 969898, at \*6-7 (transfer agent's failure to file amended Form TA-1 to correct its address, failure to file annual reports, and failure to participate in examination was strong evidence that it would commit future violations).

#### IV. CONCLUSION

For the reasons set forth above, the Commission should grant the Division's motion and enter an order deeming Afame to be in default, and revoking Afame's transfer agent registration pursuant to Exchange Act Section 17A(c)(3).

April 5, 2023

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**CERTIFICATE OF SERVICE**

I hereby certify that I caused the Division of Enforcement's Motion for a Default and Revocation Order and Supporting Memorandum to be served on April 5, 2023 in the manner set forth below:

Via eFAP:  
Office of the Secretary

Via email to:  
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*/s/ Gregory N. Miller*  
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