

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 78608 / August 18, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17405**

**In the Matter of**

**Bay City Transfer Agency  
and Registrar, Inc. and  
Nitin M. Amersey,**

**Respondents.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS PURSUANT  
TO SECTIONS 17A AND 21C OF THE  
SECURITIES EXCHANGE ACT OF  
1934**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 17A and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Bay City Transfer Agency and Registrar, Inc. (“BCT”) and Nitin M. Amersey (together, “Respondents”).

**II.**

After an investigation, the Division of Enforcement alleges that:

**A. SUMMARY**

1. BCT has been unable or unwilling to comply with the Commission’s transfer agent rules since at least 2007. Since 2008, the Commission’s Office of Compliance Inspections and Examinations (“OCIE”) has conducted three examinations of BCT and issued three deficiency letters notifying BCT of what OCIE staff believed were multiple deficiencies and weaknesses and the steps that OCIE staff believed necessary to correct them. Nonetheless, BCT has failed to address many of these apparent deficiencies and weaknesses or take the action necessary to ensure future compliance with transfer

agent rules, including the rules providing for the safeguarding of client funds and the rules governing Forms TA-1 and TA-2.

2. BCT has been unable or unwilling to comply with the requirements set out in the transfer agent rules. Its failure to meet these requirements raises a risk of harm to investors because these requirements are designed to, among other things, safeguard funds and securities and maintain accurate shareholder records.

B. RESPONDENTS

3. BCT is a Michigan corporation with its principal place of business in Saginaw, Michigan. BCT has been registered with the Commission as a transfer agent since December 14, 2005.

4. Nitin M. Amersey (“Amersey”), age 63, is a resident of Michigan and the control person of BCT. Amersey has no prior disciplinary history. He controls BCT financially and makes the decisions about resources to employ toward compliance.

C. BACKGROUND.

5. OCIE conducted its first examination of BCT in 2008. The deficiency letter sent to BCT following that examination noted apparent violations of at least 14 rules applicable to transfer agents. For example, OCIE staff informed BCT of its view that BCT violated Rule 17Ac2-1 by failing to include Amersey as a control affiliate in its Form TA-1 and by failing to timely amend its Form TA-1 to disclose the appointment of Thomas Curtis (“Curtis”) as President.<sup>1</sup>

6. In its response letter, BCT acknowledged that “some of its past practices have not been fully compliant,” but claimed that “virtually all” of the apparent deficiencies were merely “a legacy created by the Company’s past management.” It indicated that “Mr. Curtis and the Company have corrected many of the identified issues and are in the process of updating the Company’s procedures to comply with industry best practices.”

7. OCIE conducted its next examination of BCT in 2011. The deficiency letter sent to BCT following that examination noted six apparent violations of the rules, including three that were potential repeat violations from the prior examination.

8. OCIE conducted another examination of BCT in 2013-2014. In its August 6, 2014 deficiency letter, OCIE highlighted 19 deficiencies involving 11 different rules. Ten of the apparent deficiencies had been previously identified in a prior examination.

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<sup>1</sup> Rule 17Ac2-1 requires a transfer agent to file a Form TA-1 upon registration of the transfer agent and again within 60 calendar days following the date on which information reported in the most recent Form TA-1 became inaccurate, incomplete, or misleading. Rule 17Ac2-2 requires a transfer agent to file a Form TA-2 each year, no later than March 31 of the subsequent calendar year.

9. For example, the OCIE staff noted that BCT had apparently failed to safeguard shareholder funds comingling shareholder funds with non-shareholder funds in an account that Amersey used for his own benefit and the benefit of other businesses he controlled. BCT had a bank account titled Bay City Transfer Inc. Trust Account (the “Trust Account”) for which there was no trust agreement or trustee in place. According to BCT, it opened the bank account to accommodate a shareholder rights offering for a BCT client in 2011. However, there were a number of transfers and transactions in this account that were unrelated to the client. In addition, Amersey himself used some of the money in the Trust Account.

10. OCIE identified a number of other deficiencies including, but not limited to:

a. Failure to secure personally identifiable information of individual security holders by keeping records in open boxes to which persons other than BCT employees had access (Rule 17Ad-12);

b. Failure to prepare and maintain a daily log of transfers so that turnaround times could be calculated (Rule 17Ad-6(a)(2));

c. Failure to retain cancelled certificates and accompanying documentation (Rule 17Ad-6(c));

d. Failure to file an amendment to Form TA-1 within the required timeframe (Rule 17Ac2-1);

e. Failure to file Form TA-2 for 2011 and 2012 within the required timeframe (Rule 17Ac2-2);

f. Failure to file assumption notices for two issuer clients and failure to file termination notices for at least nine issuer clients (Rule 17Ad-16);

g. Failure to search for lost security holders (Rule 17Ad-17);

h. Failure to notify the Commission of the loss or damage to two certificates (Rule 17f-1(c));

i. Failure to submit fingerprint card for Amersey (Rule 17f-2).

**D. BCT’S FAILURE TO COMPLY WITH THE TRANSFER AGENT RULES**

11. Despite the Commission exam staff’s repeated communications regarding deficiencies, BCT violated several important transfer agent rules, as described below.

12. BCT has been deficient and delinquent in filing its Forms TA-1 and TA-2. Of the 15 Forms BCT filed in the past eight years, only one has been fully compliant.

- a. BCT filed a Form TA-1 on May 31, 2007 that contained inaccurate answers to certain questions.
- b. BCT filed a Form TA-2 on May 31, 2007 that was filed late and contained inaccurate answers to certain questions.
- c. BCT filed a Form TA-2 on January 8, 2009 that was filed late and contained inaccurate answers to certain questions.
- d. BCT filed a Form TA-1 on January 13, 2009 that contained inaccurate answers to certain questions.
- e. BCT filed a Form TA-2 on March 6, 2009 that contained inaccurate answers to certain questions.
- f. BCT's Form TA-1 filed on March 24, 2010 was filed late.
- g. BCT filed a Form TA-2 on March 30, 2010 that contained inaccurate answers to certain questions.
- h. BCT's Forms TA-2 filed on September 25, 2013 were both filed late.
- i. BCT filed a Form TA-1 on September 30, 2013 that was filed late and contained inaccurate answers to certain questions.
- j. BCT was alerted to apparent deficiencies in its operative Form TA-1 by Commission exam staff in 2014, and Curtis replied that he would file an amended Form "by the end of October." Nevertheless, BCT failed to file an amended Form TA-1 until March 10, 2015 – after it became aware that an enforcement investigation was underway and well after the 60-day window within which it was obligated to amend its Form.
- k. BCT filed a Form TA-2 on March 11, 2015 that was filed late and contained inaccurate answers to certain questions.
- l. BCT filed a Form TA-2 on March 30, 2015 that contained inaccurate answers to certain questions.
- m. BCT filed a Form TA-2 on April 25, 2016 that was filed late and contained inaccurate answers to certain questions. In particular, the Form erroneously stated that BCT had 60 issuer clients, when it actually has only six, despite the Commission's Division of Enforcement staff pointing out this same error to the 2014 TA-2 during Curtis's October 2015 investigative testimony.

13. Second, BCT has failed to safeguard client funds and securities in violation of Rule 17Ad-12 since at least 2011. BCT comingled shareholder funds with non-shareholder funds in the Trust Account that Amersey used for his own benefit and the

benefit of other businesses he controlled. Even after receiving OCIE's deficiency letter, BCT made at least one additional transfer from the Trust Account to the account of another of Amersey's companies.

14. Third, BCT has failed to create and follow proper procedures regarding searching for lost securityholders.

- a. Curtis admitted during testimony that BCT's policies and procedures with respect to locating lost security holders are "sloppy." BCT is required, under Rule 17Ad-17(a), to use reasonable care to ascertain the correct addresses of lost securityholders, including by conducting searches using an "information database service." Rule 17Ad-17(b) defines "information database service" as either (1) an automated database service that contains addresses from the entire United States geographic area and the names of at least 50% of the United States population, is indexed by taxpayer identification number, and is updated at least four times a year; or (2) a service or combination of services which produces comparable results. In its searches for lost securityholders, BCT did not employ an information database service or comparable combination of services as defined by Rule 17Ad-17(b).
- b. BCT failed to maintain records demonstrating its compliance with the rules regarding lost securityholders, as required by 17Ad-17(d).
- c. Until October of 2015, BCT did not have written procedures that described its methodology for searching for lost securityholders, as required in Rule 17Ad-17(d).

15. Fourth, BCT operated as exempt from certain transfer agent rules pursuant to Rule 17Ad-4. However, BCT did not prepare and maintain the required records or calculations to determine that it was exempt.

- a. BCT did not prepare and maintain any documentation certifying that it qualified under the small transfer agent exemption, as required by Rule 17Ad-4(b)(3)(i).
- b. BCT did not perform a calculation within five business days following the close of each month of the number of items it received during the preceding six months, as required by Rule 17Ad-4(c).

#### F. VIOLATIONS

21. As a result of the conduct described in paragraphs 11-14 above, BCT willfully violated Sections 17(a)(3) and 17A(d)(1) of the Exchange Act and Rules 17Ac2-1, 17Ac2-2, 17Ad-4, 17Ad-12, and 17Ad-17 thereunder.

22. As a result of the conduct described above, Amersey willfully aided and abetted and caused BCT's violations of Sections 17(a)(3) and 17A(d)(1) of the Exchange Act and Rules 17Ac2-1, 17Ac2-2, 17Ad-4, 17Ad-12, and 17Ad-17 thereunder.

### III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against BCT pursuant to Sections 17A of the Exchange Act including, but not limited to, civil penalties pursuant to Section 21B of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Amersey pursuant to Sections 17A and 21C of the Exchange Act including, but not limited to, civil penalties pursuant to Section 21B of the Exchange Act;

### IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields  
Secretary