

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 78623 / August 22, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17407

In the Matter of

JOHN W.R. MILLER,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

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 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against John W.R. Miller (“Miller” 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 him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions and 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

Summary

These proceedings arise out of an investigation by the Division of Enforcement.

Respondent

1. John W. R. ("Randy") Miller, 65 ("Miller"), is the founder of GeNOsys, Inc. ("GeNOsys")² and has been a director of the company since that time. He also served as the company's Chief Executive Officer ("CEO") and Chairman from 2003 until November 22, 2011, when he resigned these positions and became Chief Technology Officer. Miller again became CEO and Chairman of GeNOsys on February 22, 2013, a position he still holds. He received a Bachelor of Science degree in education from Brigham Young University.

Relevant Entity

2. GeNOsys, a Utah corporation based in Provo, Utah, is a small research and development company focusing on medicinal uses of nitric oxide gas. In 2005, it became public via a reverse merger with a public shell company. The company's common stock was registered pursuant to Section 12(g) of the Exchange Act, and was quoted on OTC Link operated by OTC Markets Group Inc.³ GeNOsys ceased making its periodic Commission filings in November 2011. On August 25, 2014, an administrative law judge issued an initial decision revoking the registration of each class of the company's securities.

Background

Failure to make periodic filings

3. GeNOsys filed a Form 10-Q for the third quarter of 2011 on November 25, 2011.⁴ It failed, however, to obtain the audit of its financial statements for the fiscal year ended November 30, 2011, and it did not file a Form 10-K for fiscal 2011.

4. At the time GeNOsys ceased making its periodic filings in November 2011, Miller was its Chief Technology Officer and another executive was serving as its President. After Miller was reinstated as CEO and Chairman in February 2013, the company did not make any further periodic filings, until its securities registration was finally revoked in August 2014.

¹ The findings herein are made pursuant to Respondent's Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

² The spelling of the company's name refers to nitric oxide (NO) gas. Its products are related to the analysis and delivery of the gas.

³ The common stock of Genosys falls within the definition of a "penny stock" under Section 3(a)(51) of the Exchange Act and Rule 3a51-1 thereunder.

⁴ The company's fiscal year end is November 30.

5. During the time that he served as CEO and Chairman, Miller spent most of his time on projects related to the nitric oxide technology, and paid little attention to the details of operating a public company. He neglected to focus on the management or financial affairs of GeNOsys.

6. Miller had a practice of personally taking in funds from individuals who wished to invest in GeNOsys, rather than referring these individuals to the company so that they could invest directly. He frequently offset those investor funds against amounts the company owed him, such as unpaid salary, but did so informally and without properly accounting for the uses he had made of the funds.

7. In early 2013, the board of GeNOsys began a review of the company's books and records in order to prepare its financial statements, undergo an audit, and bring its periodic filings current. As part of this effort, Director 1, a CPA, was asked to join the board of GeNOsys in the spring of 2013. His role was, among other things, to function as a one-man audit committee and help the company to get its books and records into shape.⁵

8. Over the next several months, Director 1 became troubled by what he perceived as a lack of cooperation from the company and its CFO in delivering the books and records of GeNOsys to him for his review. He repeatedly brought this fact to the attention of Miller and the board. When Director 1 eventually did receive the books of GeNOsys, he informed Miller and the board that, because of Miller's failure to keep proper records of his fundraising transactions, he believed that they did not contain enough information to sort out the equity transactions of the company.

Filing of false Forms 8-K

9. GeNOsys filed three separate Forms 8-K with respect to the resignations of three directors from the board. Each of these forms was signed by Miller on behalf of GeNOsys and stated that the departing director had not had any disagreements with the company. Miller knew that these statements were false.

Resignation of Director 1

10. In the summer of 2013, Miller announced to the board that he intended to sell some of his personal stock to a new investor to raise additional funds for GeNOsys. These facts, together with the company's failure to make its periodic filings and his dissatisfaction with its records, led Director 1 to resign as a director of GeNOsys. The board members, including Miller, were aware of the disagreements Director 1 had had with the company over the past several months.

11. Director 1 notified the board of his resignation by e-mail on August 20, 2013, making it clear in his e-mail that he opposed the current direction of the company. Three days later, Director 1 also had his attorney notify Miller separately, by e-mail, that Director 1 disagreed

⁵ At the same time a local attorney, Director 2, also joined the board.

with both the company's failure to make SEC filings and Miller's intention to solicit additional investor funds.

12. Nevertheless, on August 23, 2013 GeNOsys filed a Form 8-K reporting the resignation of Director 1, but stating that Director 1 had had no disagreements with the company. Miller signed the form on behalf of the company.

Resignations of Directors 2 and 3 from the Board

13. On August 27, 2013, Director 2 e-mailed the board to say he was resigning as well, stating that "[t]his is based on the same reasons detailed in the letter from [Director 1's attorney] . . . to Randy Miller dated August 23, 2013." Director 2 also told the board verbally that he was resigning because of the problems encountered in obtaining the company's books and records. GeNOsys, however, filed a Form 8-K on August 28th, signed by Miller, stating that Director 2 had had no disagreements with the company.

14. On August 27th, Director 3 e-mailed the board and resigned as well. His e-mail stated, among other things, that his decision was based on Director 1's resignation e-mail, and that the board had not been able to obtain the full company records for review, even after months of effort. Despite this fact, on September 25, 2013, GeNOsys filed another Form 8-K, signed by Miller, stating that "there were no disagreements" between Director 3 and the Company.

Violations

15. As a result of the conduct described above,

a. Miller willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

b. Miller willfully aided and abetted and caused the violations by GeNOsys of Section 13(a) of the Exchange Act and Rules 13a-1, 13a-11, 13a-13 and 12b-20 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act file with the Commission information, documents, and annual and quarterly reports, and reports on Form 8-K, as the Commission may require, and mandate that such reports contain such further material information as may be necessary to make the required statements not misleading.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest and for the benefit of investors, to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Sections 10(b) and 13(a) of the Exchange Act and Rules 10b-5, 13a-1, 13a-11, 13a-13 and 12b-20 promulgated thereunder.

B. Respondent be, and hereby is:

barred from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$50,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

D. 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 Miller 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 Richard R. Best, Regional Director,

Division of Enforcement, Securities and Exchange Commission, 351 South West Temple, Suite 6.100, Salt Lake City, Utah 84101.

E. 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, he shall not argue that he is entitled to, nor shall he 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 he 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.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary