

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10702 / September 26, 2019

SECURITIES EXCHANGE ACT OF 1934
Release No. 87130 / September 26, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19533

In the Matter of

**BrixInvest, LLC (f/k/a Rich
Uncles, LLC and Nexregen,
LLC)**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933 AND SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against BrixInvest, LLC, formerly known as Rich Uncles, LLC and, earlier, as Nexregen, LLC (“BrixInvest” 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing 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

1. Respondent BrixInvest sponsors and advises three public, registered real estate investment trusts ("REITs") that do not trade on any exchange. This matter arises out of BrixInvest's violations of the broker-dealer registration and disclosure requirements of the securities laws.

2. BrixInvest's fundamental business premise was that it cut out broker-dealers and instead embraced the large scale reach of the internet, with a direct-to-consumer model using its web platform, www.RichUncles.com, to both market and sell shares in the REITs it advises. In doing so, BrixInvest itself acted as an unregistered broker: through its website, it effected thousands of securities transactions, including share purchases, share repurchases, and dividend reinvestments; it publicly marketed the REITs through its website, radio advertisements, social media advertising, and in-person presentations to prospective investors; it oversaw investor relations personnel who advised prospective investors as to the merits of the REITs; through its website, it handled investor funds and securities; and it took 3% of gross offering proceeds, i.e. transaction-based compensation, for "organization and offering expenses." Based on this conduct, BrixInvest violated Section 15(a) of the Exchange Act by acting as a broker without registering as such with the Commission.

3. BrixInvest ran thousands of radio endorser ads that did not comply with the prospectus requirements of the securities laws and played on nationwide, syndicated, and local radio shows, including shows hosted by prominent radio personalities. Because the transmitted radio ads were prospectuses with respect to REIT securities for which a registration statement had been filed that did not comply with the requirements of Section 10 of the Securities Act, BrixInvest violated Section 5(b)(1) of the Securities Act.

RESPONDENT

4. **BrixInvest, LLC**, formerly known as Rich Uncles, LLC and Nexregen, LLC, is a Delaware limited liability company formed in 2006, with its principal place of business in Costa Mesa, CA. BrixInvest and its affiliates sponsor and advise three public, non-exchange traded REITs. BrixInvest and its affiliates have never been registered with the Commission.

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

RELEVANT ENTITIES

5. **RW Holdings NNN REIT, Inc. (the “NNN REIT”)**, formerly known as Rich Uncles NNN REIT, Inc. and Rich Uncles Real Estate Investment Trust, Inc., is a Maryland corporation with its principal place of business in Costa Mesa, CA, formed in 2015, that is a REIT. The NNN REIT was sponsored by BrixInvest and is advised by a BrixInvest affiliate. The NNN REIT seeks to invest in single-tenant, income-producing corporate properties that are leased to creditworthy tenants under long-term leases that are net of taxes, insurance, and maintenance (the “NNN investment strategy”). The NNN REIT offering is registered on Form S-11, and the shares are not traded on any exchanges. The initial registration statement was declared effective on June 1, 2016, and the offering commenced in July 2016 and is ongoing pursuant to a replacement S-11 registration statement filed in May 2019. As of July 31, 2019, the NNN REIT offering raised approximately \$173,569,307.

6. **Rich Uncles Real Estate Investment Trust 1 (the “CA REIT”)**, is a California REIT formed in 2012 with its principal place of business in Costa Mesa, CA. The CA REIT is sponsored and advised by BrixInvest, and it also seeks to invest in accordance with a NNN investment strategy, except that it seeks to invest in properties that are principally located in California. From May 2012 to June 2016, the CA REIT engaged in a continuous offering to California investors. In April 2016, the CA REIT registered its common stock with the Commission under Section 12(g) on Form 10, and, in July 2016, BrixInvest closed the CA REIT to new investors, although existing investors could continue to purchase shares through the reinvestment of dividends. The CA REIT shares are not traded on any exchanges. As of July 31, 2019, the CA REIT offering raised approximately \$95,018,996.

7. **BRIX REIT, Inc. (the “Reg A+ REIT”)**, formerly known as Brix Student Housing REIT and Rich Uncles Student Housing REIT, Inc., is a Maryland corporation with its principal place of business in Costa Mesa, CA, formed in 2017 that is a REIT. The Reg A+ REIT is sponsored by BrixInvest and advised by a BrixInvest affiliate. The Reg A+ REIT offering is a Tier 2 offering pursuant to Regulation A+ of the Securities Act (“Reg A+”), and the shares are not traded on any exchanges. The Reg A+ REIT offering was qualified and commenced in April 2018 and is ongoing. In April 2018, the Reg A+ REIT sought to invest in student housing and other multi-tenant residential properties. In December 2018, the Reg A+ REIT expanded its investment criteria to include retail and residential properties and other investments in locations with above average concentrations of younger demographic profiles. As of July 31, 2019, the Reg A+ REIT offering raised approximately \$12,127,879.

FACTS

BrixInvest Acted as an Unregistered Broker

8. BrixInvest’s fundamental business premise was that it cut out broker-dealers and instead embraced the large scale reach of the internet, with a direct-to-consumer model using its web platform, www.RichUncles.com, to both market and sell shares in the REITs it advises. Although

BrixInvest did not use broker-dealers and none of the REITs' shares trade on any exchange, it has generated millions in investments.

9. The core of BrixInvest's business is its web platform: www.RichUncles.com. BrixInvest owned, controlled and paid for the website and employed the individuals who operated and managed the website. The platform allowed investors to browse investment offerings and then transact entirely online: investors received the prospectus, completed an investor suitability questionnaire, chose the form of ownership, and transferred funds. The platform allowed investors to purchase shares, tender shares back to the REITs for repurchase, and reinvest dividends, and it has processed thousands of share transactions across all three REITs.

10. In addition to processing securities transactions, the website contained marketing materials for all three of the REITs. BrixInvest employees also engaged in marketing efforts aimed at driving traffic to the website, including digital advertising, social media advertising, press releases, search engine optimization, and radio advertisements. BrixInvest used customer engagement software to send emails with marketing materials to prospective investors who sign up on the website.

11. BrixInvest also controlled investor relations ("IR") personnel who called prospective investors who sign up on the website. The IR personnel discussed the REITs, answered questions, provided prospectus information, discussed dividends, and advised prospective investors how to invest online. Although BrixInvest structured its operations so that the IR personnel were employed directly by the REITs, BrixInvest set the IR budget and management structure; approved IR hiring, firing, promotion, raises, and bonuses; conducted IR training; developed IR performance criteria; and monitored IR performance. BrixInvest also owned and managed the customer engagement technology supporting IR and drafted template e-mails and scripts for IR's use in communicating with prospective investors. Although the REITs employ IR, BrixInvest reimbursed the REIT for the cost of IR.

12. BrixInvest takes several fees, including asset management fees and fees relating to property management. In addition to the fees relating to its advisory services, the REITs reimburse BrixInvest for "actual organizational and offering expenses up to 3.0% of gross offering proceeds." In practice, BrixInvest has taken 3% of the offering proceeds for each REIT.

BrixInvest's Use of Radio Advertisements

13. As part of its effort to drive traffic to the website and convert visitors into shareholders, BrixInvest ran thousands of sixty-second endorser-voiced radio ads that were played on nationwide, syndicated, and local radio shows and podcasts, including shows hosted by prominent personalities. The radio ads described an investment in BrixInvest REIT shares, and included descriptions of REITs, references to dividends, descriptions of the properties purchased, favorable descriptions of BrixInvest and its equity founder, and references to how individuals can become wealthy or make money by investing in a BrixInvest REIT. The ads also included contact information for BrixInvest.

14. Although the ads purportedly marketed an upcoming Reg A+ offering,² the ads had the intended effect of arousing interest in the NNN REIT offering:

- Content of the Ads. The content of the ads described features of the NNN REIT instead of any of the Reg A+ REIT strategies then being discussed at BrixInvest, including references to properties owned by the NNN REIT and dividends currently paid by the NNN REIT. BrixInvest directed endorsers to “ad-lib” and encouraged certain individual endorsers to discuss their personal investments in the NNN REIT as well as various other features of the NNN REIT.
- The Ads Directed People to Information about the NNN REIT. The ads directed listeners to the BrixInvest homepage, which prominently featured the NNN REIT offering. The ads also directed listeners to a BrixInvest phone number during a time when the only IR who were available to answer the phones during this period were employed by the NNN REIT.
- Timing. The nationwide Reg A+ radio campaign was timed to launch at the same time that the NNN REIT offering commenced.
- Geography. BrixInvest only purchased local advertising in geographic markets where the NNN REIT offering was approved.
- Effect of the Ads. The Reg A+ ads resulted in material NNN REIT investments.

15. In addition to the Reg A+ ads described above, at various points, BrixInvest ran radio ads with select endorsers that had the effect of arousing interest in the NNN REIT offering that did not include the Reg A+ disclaimer and therefore did not comply with the “testing the waters” provisions of Rule 255 for a Reg A+ offering:

- From June 2016 to July 2016, as BrixInvest was transitioning from the CA REIT to the NNN REIT but before the NNN REIT offering commenced, three radio personalities who had been involved in promoting the CA REIT were given new copy points “to discuss during the transition.” The new copy points stated: “Rich Uncles has been a huge success! Some newsworthy highlights: Last year, we had a \$25,000,000 offering and that got sold out... Increased to \$50,000,000 and that got sold out.... Now we are in the process of closing our CA \$100,000,000 offering to launch our SEC approved \$ 1 billion offering nationwide.” The copy points then continued to describe the successes of the CA REIT, which utilizes the same investment strategy as the NNN REIT.
- For a few weeks in October 2016, in anticipation of a NNN REIT Investor Open House that one of the radio personalities was going to host, the radio personality ran 15 second ads advising listeners of the upcoming open house and noting “there will

² The vast majority of the endorser ads purported to be for an upcoming Reg A+ REIT offering. Almost all of the radio ads included the disclaimer set forth in Rule 255 that must accompany Reg A+ “testing the waters” communications.

be food, drinks and a special presentation on their one billion dollar national offering.”

- Throughout the campaign, BrixInvest received free “adlets” from several radio stations, which were 5 to 15 seconds long, in which radio personalities said, “RichUncles.com, Real Estate Investing for Everyone, call 855-RichUncles.”

16. Although each of these radio ads constituted a prospectus under the Securities Act, they did not include the information required by Section 10 of the Securities Act for a registered offering.

VIOLATIONS

17. As a result of the conduct described above, BrixInvest violated Section 15(a) of the Exchange Act which provides that, absent an exception or exemption, it is unlawful for any broker or dealer “to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce, the purchase or sale of, any security ... unless such broker or dealer is registered in accordance” with Section 15(b) of the Exchange Act. Section 3(a)(4) of the Exchange Act generally defines a “broker” to mean any person, including an entity, engaged in the business of effecting transactions in securities for the account of others.

18. As a result of the conduct described above, BrixInvest violated Section 5(b)(1) of the Securities Act, which prohibits any person directly or indirectly from using any means or instruments of communication in interstate commerce to carry or transmit any prospectus related to any security with respect to which a registration statements has been filed under the Securities Act, unless the prospectus meets the requirements of Section 10 of the Securities Act. Section 2(a)(10) of the Securities Act broadly defines “prospectus” as any communication, written or by radio, which “offers” any security for sale. Section 2(a)(3) defines “offer” to include “every attempt or offer to dispose of, or solicitation of an offer to buy, a security, or interest in a security, for value.”

UNDERTAKINGS

19. BrixInvest has undertaken to:

a. As to any securities issued by a real estate investment trust or other issuer that is or was formed, organized, or advised by BrixInvest, any predecessor or successor to BrixInvest, or any affiliate or associated person of BrixInvest, BrixInvest and its associated persons and affiliates will not distribute such securities except through a registered broker-dealer.

b. Certify, in writing, compliance with the undertaking set forth above. The certification shall identify the undertaking, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Michele Layne, Regional Director, Los Angeles Regional Office, no later than six months from the date of this order.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent BrixInvest's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, BrixInvest cease and desist from committing or causing any violations and any future violations of Section 5(b) of the Securities Act and Section 15(a) of the Exchange Act.

B. BrixInvest shall comply with the undertakings enumerated in Paragraph 19 above.

C. BrixInvest shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$300,000 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.

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 BrixInvest 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 Michele Layne, Los Angeles Regional Office, Division of Enforcement, Securities and Exchange Commission.

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, it shall not argue that it is entitled to, nor shall it 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 it 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.

By the Commission.

Vanessa A. Countryman
Secretary