

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 86347 / July 10, 2019

INVESTMENT COMPANY ACT OF 1940
Release No. 33550 / July 10, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19243

In the Matter of

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

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 17A(c)
AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934 AND
SECTION 9(b) OF THE INVESTMENT
COMPANY ACT OF 1940 AND
NOTICE OF HEARING**

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(c) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Fidelity Transfer Services, Inc. and Ruben Sanchez (collectively, “Respondents”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Fidelity Transfer Services, Inc. (“Fidelity”) is a Nevada corporation formed in 2007 whose last-known mailing address was at a P.O. Box in Bonita, California. Fidelity has been registered with the Commission as a transfer agent pursuant to Section 17A of the Exchange Act since 2010.

2. Ruben Sanchez (“Sanchez”), age 49, is a resident of Chula Vista, California and the only known officer of Fidelity. Sanchez holds no securities licenses and has never been registered with the Commission in any capacity.

B. INACCURATE, UNTIMELY, AND MISSING COMMISSION FILINGS

1. Section 17A(d)(1) of the Exchange Act prohibits registered transfer agents from “engag[ing] in any activity as . . . transfer agent in contravention of such rules and regulations [] as the Commission may prescribe.”

2. Exchange Act Rule 17Ac2-1 describes the requirements for transfer agents’ registration with the Commission. Under Rule 17Ac2-1(a), transfer agents must first file a Form TA-1 to apply for registration. The TA-1 calls for certain basic information, including the address of the transfer agent’s principal office and its telephone number. If any information on the TA-1 subsequently “becomes inaccurate, misleading, or incomplete,” Rule 17Ac2-1(c) then requires the registered transfer agent to correct that information by filing an amendment within 60 days.

3. On June 10, 2010, Fidelity filed its Form TA-1 to register with the Commission as a transfer agent. The form listed a Santa Barbara address as Fidelity’s sole location, and provided a telephone number with an area code corresponding to the same geographic area. It was signed by Sanchez as President. It has since become clear that this information is no longer accurate. Fidelity has not been at the address listed since at least 2014, when staff from the Commission’s Office of Compliance Inspections and Examinations (“OCIE”) attempted and failed to conduct a surprise examination at Fidelity’s office location. In addition, the phone number provided by Fidelity was inaccurate by no later than July 2018, when staff from the Commission’s Division of Enforcement (“ENF”) called and found the number was answered by an unrelated business. However, to date, Fidelity has filed no amendments to its initial TA-1 updating its address or telephone number.

4. Exchange Act Rule 17Ac2-2(a) requires registered transfer agents to file annual reports on Form TA-2 by March 31st, describing their transfer agent activity over the previous calendar year. Form TA-2 also asks the filer to confirm whether it has amended its TA-1 as required during the relevant reporting period.

5. For the years 2010 through 2018, Fidelity has filed TA-2s for only seven of those nine years. Two years—2014 and 2018—are missing entirely. Of the seven years that were filed, four (2011, 2012, 2015, and 2016) were filed one to two years late. In each of its TA-2s, Fidelity also affirmed that no amendments to its TA-1 had been necessary in that reporting year. However, this statement was untrue from at least 2014, when Fidelity should have been required to update its principal address and/or telephone number. Therefore, Fidelity’s TA-2s in 2015, 2016, and 2017 included false statements of fact. All of Fidelity’s TA-2s were signed by Sanchez.

C. FAILURE TO FURNISH REQUESTED RECORDS

1. Under Exchange Act Section 17(a)(1), registered transfer agents must “make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate.” Section 17(a)(3) also lays out a similar obligation for registered transfer agents to make, keep, and furnish copies of records prescribed by rule by “the appropriate regulatory agency . . . in furtherance of the purposes of [Exchange Act S]ection 17A.” Section 17(b)(1) requires registered transfer agents to permit “reasonable periodic, special, or other examinations by representatives of the Commission.” Rules 17Ad-6, 17Ad-7, and 17Ad-10 of the Exchange Act prescribe specific types of records to be created and maintained by a registered transfer agent.

2. On July 21, 2014, OCIE staff attempted to conduct a surprise examination of Fidelity. The examination staff visited the Santa Barbara office address provided by Fidelity in its Form TA-1; however, Fidelity was not at that address, and the property management company for the building had no record of Fidelity having been a tenant at that location within the previous year.

3. OCIE staff then called Fidelity at the phone number listed in its March 31, 2014 Form TA-2; the operator who answered informed staff that Fidelity had relocated to an office in Bonita, California. Subsequent research has since revealed the Bonita address to be a U.S. Post Office box. Letters from OCIE sent to Fidelity’s Santa Barbara and Bonita addresses on August 5, 2014 via certified mail were both returned undeliverable.

4. On December 9, 2014, OCIE staff emailed a letter to Sanchez, requesting basic required records from Fidelity in connection with a broker-dealer examination. After Sanchez and Fidelity did not produce the requested records, OCIE staff followed up with additional emails and voicemails, and finally managed to speak with Sanchez on two separate occasions in February 2015. In both calls, Sanchez made excuses for not responding to the December 9, 2014 request. Sanchez ultimately failed to produce any records in response to the December 9, 2014 request.

5. On March 2, 2018, OCIE staff contacted Sanchez by telephone and informed him that they intended to request certain transfer agent records from Fidelity in connection with a broker-dealer examination. OCIE subsequently emailed a request letter to Sanchez that same day, requesting that the records be produced by March 9, 2018. After receiving no response, on March 12, 2018, OCIE staff tried once again to reach Sanchez by telephone, and then re-sent the original written request by email. OCIE staff later received notifications from the SEC’s secure email system that neither the March 2nd nor the March 12th emails to Sanchez had been read. After additional failed attempts to contact Sanchez by telephone, OCIE sent a new written request for records to Sanchez on March 28, 2018 via UPS to Fidelity’s Bonita address.

6. On April 11, 2018, OCIE staff received a call from Sanchez. Sanchez told staff he had not seen the request letter, but assured them if they re-sent it, he would provide the information the following day. Staff confirmed his telephone number, mailing address, and email address, and re-sent the March 28th letter by email. On April 26, 2018, staff received a notification that the April 11th email had not been read. No records were ever produced by Sanchez in response to the March 9, 2018 or March 28, 2018 requests.

7. On June 21, 2018, Enforcement Division (“ENF”) staff issued a subpoena to Fidelity for certain transfer agent records. The subpoena was sent via UPS to the Santa Barbara address, and was returned undelivered on July 9, 2018. ENF staff then attempted to contact Fidelity at the various phone numbers listed in its filings, but those numbers were apparently no longer connected to Fidelity.

8. On November 27, 2018, ENF staff attempted to contact Fidelity at the phone number listed in an issuer’s recent 10-Q, but found the number had been disconnected. ENF staff subsequently obtained Sanchez’s cell phone number. Over the following week, ENF staff made multiple attempts to reach Sanchez on his cell phone, finally managing to speak with him on December 7, 2018. ENF staff informed Sanchez that the Commission intended to serve a subpoena on Fidelity, and confirmed that the Bonita mailing address, email address, and cell phone number where they had been attempting to reach Sanchez were all correct and current. Sanchez also confirmed he could receive service of the SEC’s subpoena both at the Bonita address and via email.

9. On December 10, 2018, ENF staff issued a new subpoena to Fidelity and transmitted it to Sanchez (1) via UPS overnight to the Bonita address, and (2) as an attachment via secure email. The December 10th subpoena called for the production of transfer agent records by December 28, 2018, and required Sanchez to appear for testimony on February 21, 2019. The UPS package was confirmed delivered the following day, but the email was returned undelivered. Subsequent emails to the same email address were also returned, and calls to Sanchez’s cell phone went unanswered. ENF staff also sent a copy of the December 10th subpoena via UPS to Fidelity’s registered agent for service of process in Carson City, Nevada on December 14, 2018. On December 20, 2018, the registered agent confirmed that it had received the subpoena and forwarded it to Fidelity.

10. Fidelity failed to produce any documents in response to any of the ENF staff requests, and Sanchez did not appear for testimony on February 21, 2019.

D. VIOLATIONS

1. As a result of the conduct described above, Fidelity willfully violated Sections 17(a)(1), 17(a)(3), 17(b)(1), and 17A(d)(1) of the Exchange Act and Rules 17Ac2-1(c) and 17Ac2-2(a) thereunder.

2. As a result of the conduct described above, Sanchez willfully aided and abetted and caused Fidelity's violations of Sections 17(a)(1), 17(a)(3), 17(b)(1), and 17A(d)(1) of the Exchange Act and Rules 17Ac2-1(c) and 17Ac2-2(a) 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 Respondents pursuant to Section 17A(c) of the Exchange Act including, but not limited to, civil penalties pursuant to Section 21B(a)(1) of the Exchange Act;

C. Whether, pursuant to Section 21C of the Exchange Act, Respondents should be ordered to cease and desist from committing or causing violations of, and any future violations of, Sections 17(a)(1), 17(a)(3), 17(b)(1), and 17A(d)(1) of the Exchange Act and Rules 17Ac2-1(c) and 17Ac2-2(a) thereunder, and whether Respondents should be ordered to pay a civil penalty pursuant to Section 21B(a)(2); and

D. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 9(b) of the Investment Company Act.

IV.

IT IS ORDERED that a public hearing before the Commission for the purposes 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 by further order of the Commission, pursuant to Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

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

IT IS FURTHER ORDERED that the Division of Enforcement and Respondents shall conduct a prehearing conference pursuant to Rule 221 of the Commission's Rules of Practice, 17 C.F.R. § 201.221, within fourteen (14) days of service of the Answer. The parties may meet in person or participate by telephone or other remote means; following the conference, they shall file a statement with the Office of the Secretary advising the

Commission of any agreements reached at said conference. If a prehearing conference was not held, a statement shall be filed with the Office of the Secretary advising the Commission of that fact and of the efforts made to meet and confer.

If any Respondent fails to file the directed Answer, or fails to appear at a hearing or conference 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 Respondents by any means permitted by the Commission's Rules of Practice.

Attention is called to Rule 151(b) and (c) of the Commission's Rules of Practice, 17 C.F.R. § 201.151(b) and (c), providing that when, as here, a proceeding is set before the Commission, all papers (including those listed in the following paragraph) shall be filed with the Office of the Secretary and all motions, objections, or applications will be decided by the Commission. The Commission requests that an electronic courtesy copy of each filing should be emailed to APFilings@sec.gov in PDF text-searchable format. Any exhibits should be sent as separate attachments, not a combined PDF.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to filing with or disposition by a hearing officer, all filings, including those under Rules 210, 221, 222, 230, 231, 232, 233, and 250 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.210, 221, 222, 230, 231, 232, 233, and 250, shall be directed to and, as appropriate, decided by the Commission. This proceeding shall be deemed to be one under the 120-day timeframe specified in Rule of Practice 360(a)(2)(i), 17 C.F.R. § 201.360(a)(2)(i), for the purposes of applying Rules of Practice 233 and 250, 17 C.F.R. §§ 201.233 and 250.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that the Commission shall issue a decision on the basis of the record in this proceeding, which shall consist of the items listed at Rule 350(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.350(a), and any other document or item filed with the Office of the Secretary and accepted into the record by the Commission. The provisions of Rule 351 of the Commission's Rules of Practice, 17 C.F.R. § 201.351, relating to preparation and certification of a record index by the Office of the Secretary or the hearing officer are not applicable to this proceeding.

The Commission will issue a final order resolving the proceeding after one of the following: (A) The completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) The completion of briefing on a motion for a ruling on the

pleadings or a motion for summary disposition pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250, where the Commission has determined that no public hearing is necessary; or (C) The determination that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155, and no public hearing is necessary.

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.

Vanessa A. Countryman
Secretary