

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10775 / April 22, 2020

SECURITIES EXCHANGE ACT OF 1934
Release No. 88720 / April 22, 2020

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4127 / April 22, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19758

In the Matter of

BRIAN L. FERDINAND,

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 Brian L. Ferdinand (“Ferdinand” 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 Cease-And-Desist Proceedings Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, 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. These proceedings involve Liquid Holdings Group, Inc.'s ("Liquid") disclosures in its periodic filings and secondary public offering Form S-1 regarding its reliance on loans and investments from Ferdinand and Liquid's largest shareholder ("Shareholder A") to provide a substantial portion of the money QuantX Management LLP ("QuantX")—Liquid's largest customer and a related party—paid to Liquid in software subscription fees. When QuantX needed to raise capital in 2013, Ferdinand and Shareholder A provided additional capital to QuantX to pay its quarterly software subscription fees to Liquid. Ferdinand knew that QuantX could not have paid the fees it owed to Liquid without this money. Liquid did not disclose these facts in the Form 10-Q for the third quarter of 2013 or the Form 10-K for 2013. In addition, Liquid's Form 10-Q for the third quarter of 2013, the Form 10-K for 2013, and the Form S-1 filed on April 9, 2014 stated that QuantX represented 69 percent or more of Liquid's revenue during the relevant periods but failed to disclose that Liquid was reliant on Ferdinand and Shareholder A to provide QuantX with additional money to pay its software subscription fees to Liquid. As a result, Liquid's disclosures regarding its reliance on QuantX were materially misleading. During the relevant period, Ferdinand was a member of its Board of Directors and Liquid's Head of Corporate Strategy. He was also a co-owner of QuantX, and was knowledgeable about its financial condition at all times during the relevant period.

2. During the relevant period, in his role as a board member, Ferdinand reviewed the Form 10-Q for the third quarter of 2013 and signed the Form 10-K for 2013 and the initial Form S-1 for Liquid's secondary public offering.

3. Ferdinand also failed to timely file new Forms 4 on two occasions in 2014, and to file amendments to Schedule 13D with the Commission following five material changes to his ownership of Liquid shares of common stock in 2014 and 2015.

4. As a result of the conduct described herein, Ferdinand was a cause of Liquid's violations of Section 13(a) of the Exchange Act and Rules 13a-1, 13a-13, and 12b-20 promulgated thereunder and Section 17(a)(2) of the Securities Act; and violated Sections 13(d)(2) and 16(a) of the Exchange Act and Rules 13d-2(a) and 16a-3 promulgated thereunder.

RESPONDENT

5. **Brian L. Ferdinand**, age 42, resides in Syosset, New York. Ferdinand was a founder of Liquid and was Liquid's second-largest shareholder until May 2014. From July 2013 through April 18, 2014, Ferdinand served as a member of Liquid's Board of Directors and was Head of

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.

Corporate Strategy. At all times during the relevant period, Ferdinand, through entities controlled by him, had a membership interest in QuantX.

RELATED ENTITIES

6. **Liquid Holdings Group Inc.** was a Delaware corporation that was headquartered in New York City. Liquid's common shares were registered pursuant to Section 12(b) of the Exchange Act and were quoted on the NASDAQ until the stock was delisted in September 2015. Liquid developed and sold software technology to the financial services industry. It filed for bankruptcy Chapter 11 protection in January 2016. Its bankruptcy was converted to Chapter 7 in February 2016. Liquid is currently controlled by a court-appointed bankruptcy trustee and is no longer operating.

7. **QuantX Management LLP** was a regulated UK Limited Liability Partnership with its main offices in London, and offices in New York City. QuantX was a partner-funded trading firm that allocated capital to traders. In Liquid's Form S-1 and S-1/A for its initial public offering, QuantX was disclosed as a related party to Liquid, owned in part by entities controlled by Ferdinand and Shareholder A. QuantX ceased operations in December 2014.

FACTS

8. Liquid developed and sold software technology to the financial services industry. Its main product (the "Liquid Platform") was comprised of three pieces of software, each of which was referred to as a "unit." Beginning on June 1, 2013, Liquid earned all of its revenue from licensing fees paid by software subscribers ("customers") on a monthly or quarterly basis ("software revenue").

9. During the third quarter of 2013 through the second quarter of 2014 (the "relevant period"), Liquid's largest customer in terms of revenue and unit subscriptions was QuantX. QuantX operated as a trading firm that traded for its own account using the Liquid Platform.

10. In addition to trading in its own accounts, QuantX recruited small hedge funds and individual traders ("QuantX Traders"). QuantX provided trading capital to the QuantX Traders ("allocation of trading capital"). QuantX required the QuantX Traders to subscribe to, and pay Liquid for, at least one unit of the Liquid Platform. QuantX was to receive a share of the QuantX Traders' trading profits generated from the capital allocated by QuantX.

Ferdinand's and Shareholder A's Loans and Investments

11. In early 2013, Ferdinand sought to expand QuantX's trading operations by recruiting additional QuantX Traders and allocating greater amounts of capital to them. However, QuantX lacked sufficient capital to fund the allocations. Ferdinand asked Shareholder A to loan QuantX approximately \$7.5 million in February 2013, which he did. QuantX used some of Shareholder A's loan to pay a portion of the software subscription fees that QuantX owed to Liquid during the first nine months of Liquid's 2013 fiscal year.

12. In the third and fourth quarters of 2013, QuantX's and the QuantX Traders' trading was not generating consistent and sufficient profits to support QuantX's expansion. Additionally, QuantX owned hundreds of thousands of Liquid shares that it used as collateral with its prime broker. The combination of Liquid's falling share price and trading losses resulted in margin calls from QuantX's prime broker in the third and fourth quarters of 2013. These margin calls increased in size and frequency over these two quarters. QuantX had to reduce its holdings and the size of its allocations of trading capital to QuantX Traders to meet or partially meet the calls. During the third and fourth quarters of 2013, QuantX was not generating sufficient profits to make all of its allocations of trading capital, and also pay, among other corporate obligations, the software subscription fees it owed Liquid.

13. In early October, Ferdinand asked Shareholder A to invest an additional \$4 million in QuantX, which he did. On October 11, 2013, \$391,147 of this investment was transferred to Liquid to pay QuantX's outstanding software subscription fees for the third quarter, which totaled \$556,312. This investment enabled QuantX to pay, among other corporate obligations, the software subscription fees that it owed to Liquid for this period.

14. Approximately half of Liquid's revenue for the first nine months of 2013 originated from Shareholder A's 2013 loans to, and investments in, QuantX.

15. During the fourth quarter of 2013, QuantX continued to receive margin calls, to have uneven trading profits, and increased capital allocations to the additional traders it brought on. By November 2013, Ferdinand knew or should have known that QuantX would not be able to pay its quarterly software subscription fees to Liquid in full.

16. In November and early December 2013, Ferdinand loaned QuantX approximately \$1 million. On December 30, 2013 approximately \$473,500 of the proceeds from this loan were transferred to Liquid to pay QuantX's October and November 2013 invoices, which totaled \$751,710. This loan enabled QuantX to pay, among other corporate obligations, the software subscription fees that it owed to Liquid for this period.

17. In 2013, Liquid was reliant on loans and investments from Ferdinand and Shareholder A to QuantX to fund approximately 70 percent of QuantX's software subscription fees that it paid to Liquid.

Liquid's Disclosures for the Third Quarter of 2013 and Fiscal Year 2013

18. In its Form 10-Q for the third quarter of 2013, Liquid reported third quarter software revenue of \$732,388. Liquid also reported \$2,016,159 in software revenue for the nine months ended September 30, 2013 and stated that "QuantX represented . . . 69% of our software licensing revenues" during the first nine months of 2013.

19. In its Form 10-K for 2013, Liquid reported that it had total software revenues of \$909,491 in the fourth quarter. It also reported having earned \$2,925,650 in software revenue in

2013 and that “QuantX represented . . . 72% [\$2,119,720] of our software services revenues” that year.

20. The representations in paragraphs 18 and 19 were materially misleading. Liquid failed to disclose in its Form 10-Q for the third quarter of 2013 its reliance on Shareholder A’s additional loans and investments in 2013 to enable QuantX to pay 55 percent of its software subscription fees to Liquid for that quarter. Approximately 50 percent of Liquid’s software revenue for the first nine months of 2013 originated from Shareholder A’s 2013 loans to, and investments in, QuantX. Liquid failed to disclose in its Form 10-K its reliance on Ferdinand to loan QuantX the additional money that comprised approximately 63 percent of QuantX’s fourth quarter fees to Liquid, which also accounted for more than half of Liquid’s software revenue during the fourth quarter, and its reliance on Ferdinand and Shareholder A to provide QuantX with the money that comprised approximately 70 percent of Liquid’s software revenue for the 2013 fiscal year.

21. Ferdinand knew or should have known that Liquid was reliant on Shareholder A and Ferdinand to invest in, or loan money to, QuantX to enable QuantX to pay a substantial amount of its fees to Liquid in the first nine months of 2013, including the third quarter of 2013, and for the fourth quarter of 2013. Ferdinand reviewed the Form 10-Q for the third quarter of 2013 and signed the Form 10-K in his role as a board member.

Liquid’s Disclosures in Connection with the May 2014 Public Offering

22. Liquid held a secondary public offering on May 15, 2014 and raised a net of \$40.6 million. On April 8, 2014, Ferdinand, along with Liquid’s CEO, CFO, and Liquid’s board, signed the Form S-1 for the offering, which was filed with the Commission on April 9, 2014. Ferdinand resigned from both his director and officer positions at Liquid on April 18, 2014. Liquid subsequently filed three Forms S-1/A after Ferdinand’s resignation and the May 15, 2014 offering.

23. In its Form S-1 and Forms S-1/A, Liquid stated that for 2013, “a total of \$2,119,720 . . . in software services revenues were recognized by us from QuantX” and that “QuantX represented . . . 72% of our software services revenues.” Liquid also stated in its Forms S-1 that it had total software revenues of \$909,491 in the fourth quarter of 2013. These representations were materially misleading because Liquid failed to disclose its reliance on Shareholder A and Ferdinand to loan to, or invest additional money in, QuantX to enable it to pay a substantial portion of these software revenues, as described above.

QuantX Ceases Operations and Liquid Files for Bankruptcy

24. In December 2014, QuantX ceased operations because of its financial difficulties. On December 23, 2014, Liquid announced that it had ended its relationship with QuantX. By the close of trading on December 24, 2014, Liquid’s share price had dropped 46% from the prior day’s closing price. Liquid filed for Chapter 11 bankruptcy protection in January 2016, which was converted to Chapter 7 in February 2016. Liquid is currently controlled by a court-appointed bankruptcy trustee and is no longer operating.

Ferdinand's Personal Security Reporting Violations

25. Section 13(d) of the Exchange Act requires reporting on a Schedule 13D by any person who acquires beneficial ownership of more than 5% of any class of securities registered pursuant to Section 12 of the Exchange Act. Section 13(d)(2) and Rule 13d-2(a) promulgated thereunder require a filer to promptly amend Schedule 13D when there are material changes or developments in the information previously reported. A disposition of 1% or more of the issuer's securities is per se material under the rule. The failure to timely file a required report, even if inadvertent, constitutes a violation. Any delay in filing beyond the date the filing reasonably can be made may not be considered prompt. Strict liability is sufficient to establish a violation of Section 13(d)(2) and Rule 13d-2(a).

26. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors and beneficial owners ("insiders") of more than 10% of any class of any equity security registered pursuant to Section 12 to file Forms 3, 4 and 5. Under Rule 16a-3, to keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days of the execution date. Strict liability is sufficient to establish a violation of Section 16(a) and Rule 16a-3.

27. Ferdinand filed his initial Schedule 13D on August 12, 2013 and subsequently filed four amendments on March 6, 2014, July 15, 2014, December 11, 2014, and July 8, 2015. Ferdinand filed his initial Form 4 on July 31, 2013, and subsequently made two additional Form 4 filings between on August 1, 2013 and March 4, 2014.

28. Ferdinand was subject to the reporting requirements of Exchange Section 13(d) during all relevant periods and was subject to the reporting requirements of Exchange Act Section 16(a) in March 2014.

29. On March 3, 2014, Ferdinand sold a put option to Shareholder A for 535,000 with a \$5.50 strike price. This transaction was material because it involved 2.1% of Liquid's current outstanding common stock. Ferdinand was required to report this transaction on Form 4 and under Item 6 in an amended Schedule 13D because it was a material transaction, but never did.

30. On March 23, 2014, Ferdinand and Shareholder A provided a put option to another Liquid shareholder ("Shareholder B"). Under this option, Shareholder B could sell up to one million shares to Ferdinand and Shareholder A if Shareholder B incurred any losses on Liquid shares that Shareholder B purchased in the public market at a price below \$5.51 between March 23 and April 15, 2014. This transaction was material because it involved 4% of Liquid's current outstanding common stock. Ferdinand was required to report this transaction on a Form 4, and under Item 6 in an amended Schedule 13D because it was a material change to prior disclosures, but never did.

31. On May 20, 2014, Ferdinand gifted 1.012 million shares of Liquid common stock to a family trust, which took ownership and control of the shares. This transaction constituted a material change in beneficial ownership because it involved 1.7% of Liquid's current

outstanding common stock. Ferdinand did not report this transaction on an amended Schedule 13D until July 15, 2014, by which time 56 days had passed.

32. On September 15, 2014, Ferdinand sold a call option for 1.012 million shares of Liquid common stock to Shareholder B. This transaction was material because it involved 1.7% of Liquid's current outstanding common stock. Ferdinand never reported this transaction under Item 6 on an amended Schedule 13D, as he was required to do.

33. On March 13, 2015, Ferdinand transferred 2.056 million shares of Liquid common stock to Shareholder B. This transaction was material because it involved 3% of Liquid's current outstanding common stock and therefore materially changed the amount of beneficial ownership previously reported by Ferdinand. Ferdinand did not report this material change in an amended Schedule 13D until July 8, 2015, by which time 117 days had passed.

VIOLATIONS

34. As a result of the conduct described above, Ferdinand was a cause of Liquid's violations of Section 17(a)(2) of the Securities Act, which prohibits, directly or indirectly, in the offer or sale of securities, obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading. Negligence is sufficient to establish liability for causing a primary violation that does not require scienter. In administrative proceedings, the Commission may impose sanctions upon any person who is, was, or would be a cause of a violation, due to an act or omission the person knew or should have known would contribute to such violation.

35. As a result of the conduct described above, Ferdinand was a cause of Liquid's violations of Section 13(a) of the Exchange Act and Rules 13a-1, 13a-13, and 12b-20 promulgated thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission information, documents, and annual and quarterly reports as the Commission may require, and mandate that periodic reports contain such further material information as may be necessary to make the required statements not misleading. These reports must be complete and accurate in all material respects. *See SEC v. Savoy Industries, Inc.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978). Negligence is sufficient to establish liability for causing a primary violation that does not require scienter. In administrative proceedings, the Commission may impose sanctions upon any person who is, was, or would be a cause of a violation, due to an act or omission the person knew or should have known would contribute to such violation.

36. As a result of the conduct described above, Ferdinand violated Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) promulgated thereunder, which require that a Schedule 13D must be promptly amended when there are material changes or developments in the information previously reported.

37. As a result of the conduct described above, Ferdinand violated Section 16(a) of the Exchange Act and Rule 16a-3 promulgated thereunder, which require every person who is the

beneficial owner of more than 10 percent of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security, to file initial statements of holdings and to keep such information current by reporting subsequent transactions with the Commission within two business days.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(d)(2), and 16(a) of the Exchange Act and Rules 13a-1, 13a-13, 12b-20, 13d-2, and 16a-3 promulgated thereunder.

C. Respondent shall pay a civil money penalty of \$115,000 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). Payment shall be made in the following installments: \$25,000 within 30 days of the entry of this Order and \$90,000 within 120 days of the entry of this Order. Payments shall be applied first to post order interest, which accrues pursuant to 31 U.S.C. §3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

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 Brian L. Ferdinand as 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 Steven L. Klawans, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Boulevard, Suite 1450, Chicago, IL 60604.

D. 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.

Vanessa A. Countryman
Secretary