

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 89687 / August 27, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19936

In the Matter of

VStock Transfer LLC,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, PURSUANT TO
SECTIONS 17A 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 17A and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against VStock Transfer LLC (“VStock” 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 Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 17A 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 finds that:

Summary

1. Between November 2017 and April 2019, Commission-registered transfer agent VStock failed to comply with certain transfer agent rules relating to the turnaround, custody, and record-keeping provisions of the Exchange Act and the rules promulgated thereunder. These rules give the minimum performance standards and recordkeeping requirements for registered transfer agents. *See Regulation of Transfer Agents*, 12 SEC Docket 853 (June 16, 1977).

2. VStock failed to turnaround within three business days of receipt at least 90% of all routine items received for transfer in December 2017, in violation of Section 17A(d) of the Exchange Act, and Rule 17Ad-2(a) thereunder. VStock also failed to accurately reflect the date it received and/or the date it turned around routine items in December 2017 and October 2018 in violation of Section 17A(d) of the Exchange Act and Rule 17Ad-6 thereunder, and failed to timely provide the Commission with a written notice stating the reason for such failure and the steps which had been taken or would be taken to prevent a future failure, as required under Section 17A(d) of the Exchange Act and Rule 17Ad-2(c) thereunder.

3. For funds or securities in its custody or control related to its transfer agent activities, VStock failed to ensure that (1) all securities were held in safekeeping and were handled in a manner reasonably free from risk of theft, loss, or destruction; and (2) all such funds were protected against misuse, while serving as the escrow agent for the exercise of warrants for an issuer, in violation of Section 17A(d) of the Exchange Act and Rule 17Ad-12(a) thereunder.

4. Finally, VStock also failed to keep an accurate control book and master securityholder files for two issuers, in violation of Section 17A(d) of the Exchange Act and Rule 17Ad-10 thereunder.

Respondent

5. **VStock** is a California Limited Liability Copy and a transfer agent registered with the Commission. Originally known as Onyx Stock Transfer LLC, it has been registered as a transfer agent since 2009.

Turnaround of Routine Items

6. Rule 17Ad-2(a) states that every registered transfer agent must turnaround within three business days of receipt at least 90% of all routine items received for transfer during a month. In December 2017, VStock failed to accurately record the date that at least 17 routine items were received for transfer. On at least some occasions, VStock changed the date on which it received items for transfer in its recordkeeping database, making it appear as if those items were received in January 2018 and turned around within three business days when, in fact, they had been received

in December 2017 and turned around in greater than three business days. As a result, VStock turned around within three business days of receipt only 88.4% of all of the routine items it had received for transfer in December 2017.

7. As one example, according to VStock’s internal records, a routine item in one batch was received for transfer on the morning of January 4, 2018, and was made available to the presenter in a timely manner on the afternoon of January 4, 2018. However, VStock had actually received the batch before December 22, 2017, and had initially recorded the batch as received on that date. VStock then changed the receipt date for this item to January 4, 2018.

Deficiency Filings

8. Rule 17Ad-2(c) states that any transfer agent that fails to comply with Rule 17Ad-2(a) with respect to any month must, within ten business days following the end of such month, file with the Commission a written notice stating, among other things, the reasons for such failure and the steps which have been taken or will be taken to prevent a future failure. VStock did not make a timely filing. VStock only made the required filing in June 2019, one and a half years after its violation and after the Commission’s Office of Compliance Inspections and Examinations had completed an examination of VStock, raised this failure with VStock on multiple occasions and included it in its deficiency letter. VStock stated in its written notice that it “failed to accurately record the date of receipt of numerous items and the ‘made available’ date.”

Safeguarding Shareholder Funds and Securities

9. Rule 17Ad-12(a) states that any transfer agent “that has custody or possession of any funds or securities related to its transfer agent activities” must assure that (1) all securities “are held in safekeeping and are handled, in light of all facts and circumstances, in a manner reasonably free from risk of theft, loss or destruction”; and (2) all funds “are protected, in light of all facts and circumstances, against misuse.” VStock failed to comply with those requirements when serving as the escrow agent for an issuer (“Issuer A”) for the exercise of warrants.

10. From July 2018 through October 2018, warrant holders of Issuer A had exercised 11,274,500 warrants to purchase 11,274,500 common shares for \$0.06 per share. In connection with those exercises, VStock received from Issuer A \$676,470 of the warrant holders’ funds and deposited the funds into an escrow account.

11. VStock accepted for deposit funds that belonged to warrant holders before receiving any exercise instructions for the warrants. VStock then disbursed the funds to Issuer A almost as soon as it received the funds. Thus, the funds, which were intended to permit the warrant holders to purchase common shares, were used by Issuer A without any such issuance of common shares.

12. Issuer A only began to issue common shares to the warrant holders in October 2018. When VStock made its final disbursement to Issuer A, on October 17, 2018—after having taken \$6,200 in fees—only 5,627,417 common shares (50%) worth \$337,645 (based on \$0.06 per share exercise cost) had been issued to investors. Issuer A, through VStock, issued an additional

1,468,500 shares, worth \$88,110, in December 2018. By April 2019—six months after the final release of funds—4,844,583 shares of common stock worth \$290,675 (43%) still had not been issued to the investors. Most of the remaining shares were finally issued to investors on April 18, 2019, only after Office of Compliance Inspections and Examinations had raised this issue with VStock on multiple occasions and one of the former warrant holders contacted Issuer A.

13. Accordingly, by immediately disbursing to Issuer A the funds VStock had received in escrow, VStock failed to assure that the warrant holders' securities were held in safekeeping and were handled, in light of all facts and circumstances, in a manner reasonably free from risk of theft, loss or destruction, or that the warrant holders' funds were protected, in light of all facts and circumstances, against misuse.

Recordkeeping

14. Rules 17Ad-6 and 17Ad-10 of the Exchange Act require registered transfer agents to make and keep current accurate books and records relating to, among other things, items for transfer, control books, master securityholder files, and transfer and registrar journals. As a registered transfer agent, VStock's books and records are essential to ensuring that the capital markets have the tools necessary to function properly and effectively.

15. As described above, VStock failed to properly record in its books and records the dates that various items had been received for transfer and made available to presentors. As noted above, in December 2017, VStock failed to accurately record and on at least some occasions changed the dates that certain items had been received for transfer, making it seem that routine items had been turned around within three business days when they had not. VStock's recordkeeping understated the number of routine items received for transfer in December 2017 and overstated the number of routine items received in January 2018, and thereby VStock overstated its turnaround percentage for both months.

16. In October 2018, while similarly failing to accurately record the date it had received items for transfer, VStock also misrecorded non-routine items as routine. VStock recorded in its recordkeeping database that it received a batch of 120 routine items for transfer early on October 16, 2018 and that the items were made available to the presentor that same morning. VStock actually received the items, which were non-routine, no later than the week of October 8, 2018.

17. As a result, VStock failed to keep current and accurate records related to its turnaround of items received for transfer.

18. Additionally, VStock failed to keep current and accurate basic transfer agent books and records, including its control books detailing changes in the number of issued shares for each issuer; master securityholder files detailing the securities owned by each registered shareholder; transfer and registrar journals recording changes in the ownership as well as the issuance and cancellation of securities.

19. These failures were pervasive in connection with the securities of Issuer A. In July and August 2018, VStock erroneously cancelled 4,075,412 unexercised, in-the-money, \$0.10 warrants of Issuer A that were owned by investors, and did not reissue the 4,075,412 warrants until March 2019. As a result, the control book and master securityholder files understated the issued warrants by 4,075,412 warrants.

20. VStock also failed to maintain accurate books and records pertaining to the errors related to the exercise of Issuer A warrants. In one instance, a warrant holder deposited \$38,070 into the escrow account in order to exercise 634,500 warrants. However, the warrant holder provided VStock with a certificate for 250,000 warrants, entitling the warrant holder to purchase only 250,000 common shares. VStock cancelled the 250,000 warrants, but inaccurately issued 634,500 shares of common stock. As a result, the control book and master securityholder files overstated Issuer A's common stock by 384,500 shares.

21. In another instance, a warrant holder deposited \$48,150 into the escrow account in order to exercise 802,500 warrants in September 2018. VStock issued 802,500 common shares of stock to the warrant holder, but failed to cancel the corresponding warrants. As a result, the control book and master securityholder files overstated Issuer A's warrants by 802,500.

22. In connection with another issuer ("Issuer B"), VStock failed to properly cancel tendered shares and warrants in the relevant control books. In November 2018, four shareholders tendered common shares of Issuer B, but VStock failed to cancel the common shares in the control book, once tendered and the funds sent to the shareholders, which resulted in overstated figures for the common stock in the control book and master securityholder files. Similarly, in November 2018 and January 2019, eight warrant holders tendered warrants, but VStock failed to cancel the warrants in the control book, once tendered and the funds sent to the securityholders, which resulted in overstated figures for the warrants in the control book and master securityholder files.

Violations

As a result of the conduct described above, VStock willfully¹ violated:

23. Section 17A(d) of the Exchange Act, which prohibits transfer agents from engaging, directly or indirectly, in any activity as a transfer agent in contravention of such rules and regulations prescribed by the Commission;

¹ "Willfully," for purposes of imposing relief under Section 17A of the Exchange Act, "means no more than that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

24. Rule 17Ad-2(a) of the Exchange Act, which states: “Every registered transfer agent (except when acting as an outside registrar) shall turnaround within three business days of receipt at least 90 percent of all routine items received for transfer during a month”;

25. Rule 17Ad-2(c) of the Exchange Act, which states that any registered transfer agent that fails to comply with Rule 17Ad-2(a) “with respect to any month shall, within ten business days following the end of such month, file with the Commission . . . a written notice” stating, among other things, “the reasons for such failure [and] the steps which have been taken, are being taken or will be taken to prevent a future failure . . .”;

26. Rule 17Ad-12(a) of the Exchange Act, which states that any registered transfer agent “that has custody or possession of any funds or securities related to its transfer agent activities” must assure that (1) all securities “are held in safekeeping and are handled . . . in a manner reasonably free from risk of theft, loss or destruction”; and (2) all funds “are protected . . . against misuse”;

27. Rule 17Ad-6 of the Exchange Act, which, among other things, requires transfer agents to “make and keep current”: “A receipt, ticket, schedule, log or other record showing the business day each routine item and each non-routine item is (i) received from the presentor and, if applicable, from the outside registrar and (ii) made available to the presentor and, if applicable, to the outside registrar;” a journal or other record reflecting “[t]he number of routine items received during the month that were turned around within three business days of receipt;” a journal or other record reflecting “[t]he number of routine items received during the month that were not turned around within three business days of receipt;” and “[a] copy of any transfer journal and registrar journal . . .”;

28. Rule 17Ad-10 of the Exchange Act, which requires transfer agents to “promptly and accurately post to the master securityholder file debits and credits containing minimum and appropriate certificate detail representing every security transferred, purchased, redeemed or issued”; “maintain and keep current an accurate master securityholder file and subsidiary files”; and “maintain and keep current an accurate control book for each issue of securities.”

Remedial Efforts

29. In determining to accept the Offer, the Commission considered certain remedial acts undertaken taken by VStock. VStock retained a third-party compliance consultant (“Compliance Consultant”) with whom it had never worked before to conduct a review of certain of VStock’s policies and procedures and to conduct a mock audit.

30. The Compliance Consultant submitted to VStock a written report describing the review it performed, the conclusions reached, and the Compliance Consultant’s recommendations for changes in, or improvements to, certain of VStock’s policies and procedures.

Undertakings

VStock has undertaken to:

31. Continue to retain the services of the Compliance Consultant, exclusively bearing all costs, including compensation and expenses, associated with the retention of the Compliance Consultant. VStock shall retain the Compliance Consultant to conduct a comprehensive review of, and recommend corrective measures concerning, VStock's policies and procedures relating to the turnaround of items, including categorizing items as routine and non-routine (Rule 17Ad-2(a)) and the filing of written notices (Rule 17Ad-2(c)); recording the dates received from and made available to the presenter (Rule 17Ad-6); the safeguarding of securities and funds relating to its transfer agent activities (Rule 17Ad-12(a)); and the maintenance of control books, master securityholder files, and transfer and registrar journals (Rule 17Ad-10). VStock shall cooperate fully with the Compliance Consultant and shall provide the Compliance Consultant with access to VStock's files, books, records, and personnel as reasonably requested.

32. No more than 120 days after the date of the entry of this Order, submit to the staff of the Commission a written report that VStock will obtain from the Compliance Consultant regarding VStock's policies and procedures referenced in paragraph 31 above. The report will include a description of the review performed, the conclusions reached, the Compliance Consultant's recommendations for changes in, or improvements to, the policies and procedures, and a procedure for implementing any recommended changes.

33. Adopt all recommendations made by the Compliance Consultant, provided, however, that within 150 days after the date of the entry of this Order, VStock will, in writing, advise the Compliance Consultant and the staff of the Commission of any recommendations it considers unnecessary or inappropriate. With respect to any recommendation that VStock considers unnecessary or inappropriate, VStock need not adopt that recommendation at that time, but instead propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose. As to any recommendation with respect to VStock's policies and procedures on which VStock and the Compliance Consultant do not agree, they will attempt in good faith to reach an agreement within 180 days of the date of entry of this Order. In the event VStock and the Compliance Consultant are unable to agree on an alternative proposal, VStock will abide by the determinations of the Compliance Consultant. Within thirty (30) days after final agreement between VStock and the Compliance Consultant or final determination of the Compliance Consultant, whichever occurs first, VStock shall adopt and implement all of the recommendations that the Compliance Consultant deems appropriate.

34. Require the Compliance Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Compliance Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with VStock, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Compliance Consultant will require that any firm with which he is affiliated or of which he is a member, and any person engaged to assist the Compliance Consultant in performance of his duties

under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with VStock, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

35. Certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, 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 VStock agrees to provide such evidence. The certification and supporting material shall be submitted to Michael D. Paley, Assistant Regional Director, New York Regional Office, Brookfield Place, 200 Vesey Street, Suite 400 New York, New York 10281-1022, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

36. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

37. To ensure the independence of the Compliance Consultant for the remainder of the engagement, VStock: (i) shall not have authority to terminate the Compliance Consultant or substitute another compliance consultant for the Compliance Consultant without the prior written approval of the Commission's staff; and (ii) shall compensate the Compliance Consultant, and persons engaged to assist the Compliance Consultant, for services rendered pursuant to this Order at their reasonable and customary rates.

38. The reports by the Compliance Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) as otherwise required by law.

IV.

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

Accordingly, pursuant to Sections 17A and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17A(d) of the Exchange Act, and Rules 17Ad-2(a), 17Ad-2(c), 17Ad-6, 17Ad-10, and 17Ad-12(a) thereunder.

B. Respondent shall comply with the undertakings as enumerated in Section III above.

C. Respondent is censured.

D. Respondent shall, within 15 days of the entry of this Order, pay a civil money penalty in the amount of \$65,000 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 VStock Transfer LLC, 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 Lara S. Mehraban, Associate Regional Director, Securities and Exchange Commission, New York Regional Office, 200 Vesey Street, Suite 400, New York, NY 10281.

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, Respondent 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