

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 66594 / March 14, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14800

In the Matter of

SHARESPOST, INC. AND
GREG B. BROGGER

Respondents.

**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 SharesPost, Inc. (“SharesPost”) and pursuant to Section 21C of the Exchange Act against Greg B. Brogger (“Brogger”) (collectively “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”), 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 them and the subject matter of these proceedings, which are admitted, Respondents consent 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 Respondents' Offers, the Commission finds¹ that:

Summary

1. These proceedings arise out of an investigation into the secondary market trading of shares in private, venture-backed companies. This market proliferated in 2009 with the emergence of new online platforms and was driven, in part, by investors seeking to participate in popular private companies, including social media, clean technology, and others that had remained private beyond the life cycle typically experienced by companies during the so-called "dot com" boom of the early 2000s.

2. SharesPost has played a significant role in the emerging marketplace for the stock of companies that have not yet conducted an initial public offering (IPO). SharesPost holds itself out to the public as an online service to help match buyers and sellers of pre-IPO stock. It allows accredited investors to post indications of interest to buy or sell stock in private companies. During the relevant period, SharesPost personnel charged commissions through affiliated broker-dealers for effecting these transactions. As of March 2011, SharesPost had more than 60,000 members. SharesPost also collects and publishes on its website third-party provided information concerning issuers' financial metrics, SharesPost-funded research reports, and a SharesPost-created valuation index. It also has engaged in publicity to gain members for its website. Finally, a SharesPost affiliate managed a series of pooled investment vehicles designed to purchase stock in single private companies and interests in those funds were made available on the SharesPost platform.

3. Through these and other actions SharesPost was engaged in the business of effecting transactions in securities for the account of others without registering as a broker with the Commission. Registered broker-dealers are required to comply with an array of regulations and supervisory structures that are intended to promote confidence in the securities markets by ensuring that persons who effect transactions for the account of others can be relied upon to understand and faithfully execute their obligations to customers and the markets. Regulatory obligations that are incumbent on a registered broker-dealer include: membership in a self-regulatory organization and in the Securities Investor Protection Corporation, extensive recordkeeping and reporting obligations, suitability requirements, and capital and margin requirements. In addition, registered broker-dealers are subject to statutory disqualification standards and the Commission's disciplinary authority, which are designed to prevent persons with adverse disciplinary histories from becoming, or becoming associated with, registered broker-dealers.

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

4. As detailed below, through its conduct, SharesPost violated Section 15(a) of the Exchange Act. Brogger, SharesPost's founder and president, caused SharesPost's violations.

Respondents

5. SharesPost, Inc. is a Delaware corporation with its principal place of business in San Bruno, California. During the relevant period it was not registered with the Commission in any capacity. SharesPost operates an online platform that supports the purchase and sale of private company stock. SharesPost has bulletin boards for about 140 private companies. SharesPost offers a number of services to users including third-party research reports on companies listed on the SharesPost site, a Venture Index that tracks the valuation of several prominent companies presented on SharesPost, and auctions of units in limited liability companies designed to correlate with the value of popular private companies' stock, thus allowing buyers to aggregate their capital to purchase blocks of private company stock.

6. Greg Brogger resides in Park City, Utah and is the founder and president of SharesPost, Inc. He has a background in early-stage private companies and founded an incubator that provided seed money for SharesPost. He is the majority shareholder of that incubator, which is a large shareholder of SharesPost. In late 2010, Brogger ceased serving as SharesPost's chief executive officer and became its president.

Background

7. SharesPost's website began operations in June 2009. Initially, SharesPost sought to operate as a bulletin board where interested buyers and sellers of private company stock could meet and match interests. As SharesPost gained popularity and it confronted the complexity of shepherding these transactions to completion, the company repeatedly changed its business model.

8. SharesPost initially charged members a \$39 fee for access to the platform. Once on the platform, potential buyers and sellers interacted with each other to arrange transactions similar to other online bulletin boards, with little involvement by SharesPost. SharesPost discovered, however, that because of the complexity of private company stock transactions, few members were able to transact successfully without substantial assistance from SharesPost and/or a representative of a registered broker-dealer.

9. In the spring of 2010, SharesPost created a "Company Specialist" position by entering into agreements with registered representatives at two registered broker-dealers. Each Specialist was assigned certain issuers' bulletin boards on the SharesPost site (e.g., one "Specialist" handled social media companies, another green tech issuers, etc.) and assisted potential buyers and/or sellers with transactions for those issuers. The Specialist charged members a commission for helping effect the transaction. This commission was payable to the registered broker-dealer with whom the Specialist was associated, who would then pay the Specialist pursuant to whatever agreement it had with the Specialist.

10. In addition to the agreement with his broker-dealer, the Specialist also had an agreement with SharesPost providing that the Specialist would pay 35% of the gross commissions he received to a broker-dealer designated by SharesPost. At the time, however, SharesPost had no agreement with any broker-dealer to serve in this function. SharesPost kept track of the amounts that would have been earned had the Specialists paid that 35% to SharesPost.

11. For example, when SharesPost terminated its relationship with one of its Company Specialists, it sought and succeeded in receiving payment of a portion of the Specialist's commissions earned pursuant to the Company Specialist Agreement as part of a global settlement with that Specialist.

12. By late fall 2010, SharesPost determined that maintaining arrangements with multiple registered representatives affiliated with multiple broker-dealers was cumbersome. Accordingly, it changed its business model by entering into a "Broker Dealer Independent Affiliate Agreement" with a selected broker-dealer ("Broker-Dealer A"). Under this model, a number of SharesPost employees who were registered representatives of a registered broker-dealer, including the chief executive officer who replaced Brogger, an executive vice-president, and another senior executive at SharesPost would earn commissions from effecting transactions on the SharesPost platform. Those commissions would be paid into a compensation pool held at Broker-Dealer A. The agreement provided that "the current Chief Executive Officer of SharesPost (the "CEO") shall provide to Broker Dealer in writing (including email) the percentage each Affiliate [the registered representative] and Broker Dealer shall receive of the then available Compensation Pool." The agreement further specified that the determinations of SharesPost's chief executive officer were final and not subject to challenge. At the direction of SharesPost, Broker-Dealer A has made distributions from the compensation pool to the broker-dealer's representatives, some of whom were also SharesPost employees.

13. In addition, SharesPost was involved in the securities transactions processed through its website. First, SharesPost provided various form documents including stock transfer agreements on its website and suggested its members use the forms. These documents were on SharesPost stationery bearing a SharesPost copyright. Second, SharesPost also recommended one particular bank to serve as the escrow agent for transactions, for which the bank charged a flat fee to the members. Third, SharesPost personnel, including persons who were not registered representatives at a registered broker-dealer, served as intermediaries between buyer, seller, issuer, and transfer agent. For example, in one representative transaction, a SharesPost employee emailed on multiple occasions with counsel for the issuer, its transfer agent, and the potential seller to secure signatures and inform each party where the transaction stands and what the expected timeline for closing the deal is. Another SharesPost employee who was not a registered representative at the time, described spending "literally hours" trying to help facilitate a transaction in one issuer's stock among the buyer and seller.

14. SharesPost added features to the website to assist its members in making investment decisions. SharesPost began providing free research reports from third parties – akin to analyst reports for public companies – containing detailed information about the issuers posted on the SharesPost website. SharesPost paid for this research and one of the research providers is owned by an entity in which a SharesPost director has an ownership interest. SharesPost also

created a “Venture Index” that aggregates and weighs certain known or estimated data points for the most active companies on the bulletin boards.

15. In late 2010, SharesPost decided to create multiple funds from a series of limited liability companies designed to purchase stock in one issuer per series. These single-purpose funds were managed by an entity that is a wholly owned subsidiary of SharesPost. The SharesPost principals used the platform to create an auction process whereby potential sellers of a company’s stock would set a reserve price for the block of shares they wished to sell. In turn, SharesPost members who posted indications of interest to buy interests in the limited liability company were contacted by SharesPost personnel, who were registered representatives of Broker-Dealer A to see if they wanted to participate in the auction. The buyers were bidding on interests in the fund and the fund would in turn purchase the stock. The auction process began to feature prominently on the SharesPost website – thus, at that point, SharesPost was using the website to sell securities (interests in the fund) in which it had a financial interest. The SharesPost subsidiary management company entity charged a one-time service fee, which was five percent of the investment and a three percent fee on any distributions to the fund.

16. While he was CEO, Brogger did not require SharesPost to register as a broker-dealer. By no later than April 2010, Brogger was aware that SharesPost was engaging in activities that could be considered operating as a broker-dealer. For example, as Brogger was negotiating a Company Specialist Agreement, he commented that in the mid-term SharesPost would need to either sell itself to a registered broker-dealer or buy one. In October 2010, Brogger drafted a termination agreement that required a Company Specialist to pay SharesPost \$15,000 as SharesPost’s share of the commissions the Specialist earned while effecting securities transactions through the SharesPost platform.

17. As a result of the conduct described above, SharesPost willfully² violated Section 15(a) of the Exchange Act. Section 15(a) makes it unlawful for any broker or dealer who makes use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security unless such broker or dealer is registered with the Commission. Brogger caused SharesPost’s violation of Section 15(a) of the Exchange Act.

18. After the conduct described in Paragraphs 7 through 16 above, SharesPost acquired a registered broker-dealer, which is now a wholly owned subsidiary of SharesPost, and, on December 14, 2011, FINRA approved the related membership transfer agreement and authorized SharesPost to offer online services through the registered broker-dealer.

² A willful violation of the securities laws means merely “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.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

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

A. Respondents cease and desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act.

B. Respondent SharesPost is censured.

C. Respondent SharesPost shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$80,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies SharesPost as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Michael S. Dicke, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, CA 94104.

D. Respondent Brogger shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$20,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-

delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Brogger as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Michael S. Dicke, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, CA 94104.

By the Commission.

Elizabeth M. Murphy
Secretary