

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 93929 / January 7, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20696

In the Matter of

LEAF GROUP LTD.

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO 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 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Leaf Group Ltd. (“Leaf” 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 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 finds that:

Summary

1. During 2019 and 2020, Leaf did not adequately evaluate and disclose certain material information regarding the independence of members of its board of directors, the independence of board committees, and the existence of interlocking relationships between its directors and executive officers. This resulted in material misstatements and omissions in certain of its public filings. In connection with this conduct, Leaf violated Sections 13(a) and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, 13a-15(a), 14a-3, and 14a-9 thereunder.

Respondent

2. Leaf, a Delaware corporation headquartered in Santa Monica, California, is a digital media and e-commerce company that owns and operates consumer websites focused on "lifestyle" categories including health and art. Prior to Leaf's acquisition in June 2021 by a publicly traded education and media company, Leaf's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange ("NYSE"). During the relevant period, Leaf reported information regarding director independence, committee independence, and interlocking relationships in its annual proxy statements, incorporating that information by reference into its annual reports on Forms 10-K, and also reported independence information in current reports on Form 8-K.

Background

Disclosure Requirements Regarding Director Independence and Interlocking Relationships

3. Item 407 of Regulation S-K requires identification in Schedule 14A proxy statements and Forms 10-K of each of the issuer's directors who is independent under the independence standards of the national securities exchange on which the issuer's securities are listed. If the issuer uses its own definitions for determining whether members of specific board-of-director committees are independent, Item 407 of Regulation S-K also requires the issuer to disclose whether these definitions are available to security holders on the registrant's website and, if not, include a copy of the definitions in an appendix to the issuer's proxy statement. Moreover, if during the last completed fiscal year an executive officer of the issuer served as a member of the compensation committee of another entity, one of whose executive officers served as a director of the issuer, Item 407 of Regulation S-K requires a description of the relationship, under the caption: "Compensation Committee Interlocks and Insider Participation."

4. The independence standards of the NYSE (the national securities exchange on which Leaf's securities were listed during the relevant period) are set forth in Section 303A.02 of the NYSE Listed Company Manual. These standards state, *inter alia*, that a director is *not*

independent if the director is, or has been within the last three years, employed as an executive officer of another company where any of the listed company's present executive officers at the same time serves or served on that company's compensation committee. The NYSE may issue public reprimand letters to companies that violate its listing standards and may also suspend or delist such companies.

Leaf Made Materially Inaccurate Statements and Failed to Disclose Certain Material Information Regarding the Independence of Directors and Committees, and Regarding the Existence of Interlocking Relationships

5. Prior to its May 2019 annual shareholder meeting, Leaf averted a contested election by publicly announcing that it would conduct a review of its strategic alternatives, including a possible sale of the company, and by appointing a new, independent director ("New Director") to Leaf's board of directors, with a term expiring in May 2020. Before authorizing the filing of Leaf's Schedule 14A proxy statement in April 2019, Leaf's board determined that the New Director was "an 'independent' director within the meaning of the listing standards of the New York Stock Exchange and the rules of the Securities and Exchange Commission." After the annual shareholder meeting, Leaf's board appointed the New Director as chair of a newly formed "independent committee" authorized to oversee Leaf's previously announced review of strategic alternatives ("Strategic Review Committee"). However, in September 2019, the New Director became CFO of a third-party public company on whose board and compensation committee Leaf's CEO also served. At this time, a compensation committee interlock, thus, existed between the New Director and Leaf's CEO, and the New Director was no longer independent under the independence standards of the NYSE.

6. On March 16, 2020, Leaf filed a Form 10-K for its fiscal year ended December 31, 2019 ("2020 Form 10-K"). The Form 10-K stated that Leaf was incorporating by reference required information concerning director independence and compensation committee interlocks that would assertedly be set forth in Leaf's forthcoming Schedule 14A proxy statement, to be filed with respect to its 2020 annual shareholder meeting. On April 20, 2020, Leaf filed its Schedule 14A proxy statement ("2020 Proxy Statement") and announced that the annual meeting would be held on May 18, 2020. Leaf's board nominated the New Director and one additional incumbent director for election and requested proxies for the shareholder vote to be held at the annual meeting.

7. Despite the New Director's taking the aforementioned CFO position in September 2019, and the resulting interlock, the 2020 Proxy Statement materially misstated that, other than Leaf's own CEO (who served as a non-independent director), all of Leaf's board members, including the New Director, were "independent" and "independent under NYSE listing standards." The 2020 Proxy Statement also materially misstated that all of Leaf's standing board committees, including the Strategic Review Committee chaired by the New Director and tasked with "the responsibility for ... leading the comprehensive review of strategic alternatives we publicly announced in April 2019," were "comprised solely of directors who are considered independent under all applicable NYSE listing standards." Lastly, under the caption

“Compensation Committee Interlocks and Insider Participation,” the 2020 Proxy Statement materially misstated that “[n]o interlocking relationships [(i)] exist, or [(ii)] at any time during fiscal 2019 existed, between any member of our Board ... and any member of the board of directors or compensation committee of any other company.” All of these misstatements were also incorporated by reference into Leaf’s previously filed 2020 Form 10-K.

8. The Leaf board’s two nominees were the only director candidates nominated in connection with Leaf’s 2020 director election. At the annual meeting, the New Director and the board’s other nominee were elected to new terms, but voting shareholders withheld from each approximately 39% of votes cast.

9. On May 20, 2020, Leaf filed a Form 8-K (“May Form 8-K”) with an attached press release announcing the conclusion of Leaf’s strategic review and materially misstating that the Strategic Review Committee had “consist[ed] of independent directors.” Although Leaf believed that all of the directors on the committee were independent under Delaware law, the May Form 8-K did not reference any alternative definition for “independence” different from the NYSE standards previously referenced in Leaf’s 2020 Proxy Statement and Form 10-K.

10. On July 15, 2020, Leaf filed another Form 8-K (“July Form 8-K”), disclosing that the New Director had been appointed to Leaf’s audit committee in May 2020 but that the committee was later reconstituted on July 13, 2020 because the New Director was “unable to serve on the Committee under applicable NYSE rules.” The July Form 8-K further stated that Leaf’s audit committee had not convened during the New Director’s “brief tenure” on the committee. However, the July Form 8-K omitted material information that the reason that the New Director was “unable to serve” on the audit committee was that NYSE listing standards require audit committee members to be, *inter alia*, “independent” under the NYSE standards, *see* NYSE Listed Company Manual, Section 303A.07, and, contrary to Leaf’s prior disclosures, the New Director was not “independent” under these standards.

Leaf Did Not Maintain Disclosure Controls Concerning Director Independence and Interlocking Relationships

11. Leaf did not maintain disclosure controls or procedures to identify and analyze potential director independence and interlock issues for disclosure in its proxy statements, Forms 10-K, and Forms 8-K during 2019 and 2020. Certain of Leaf’s procedures failed, resulting in the company not collecting information from directors that would reasonably have been expected to elicit information from which the company could have assessed director independence and compensation committee interlock disclosures requirements for its 2020 Form 10-K and 2020 Proxy Statement. For example, Leaf did not send and/or collect independence questionnaires from its CEO and the New Director in advance of drafting the 2020 Proxy Statement, even though it had done so in advance of drafting the prior year’s proxy statement. Additionally, Leaf did not have a procedure for complying with its written Code of Business and Ethics, which required Leaf to present director conflicts to its board of directors for potential waiver and disclosure. The New Director and Leaf’s CEO each separately asked Leaf’s counsel, by

September 2019, whether the New Director’s CFO position posed an independence problem, but the matter was not presented to Leaf’s board for consideration and potential disclosure as a conflict of interest.

12. Moreover, Leaf’s board did not consider or pass a resolution determining which of its directors qualified as “independent” under NYSE listing standards until after its 2020 annual meeting even though the 2020 Proxy Statement materially misstated that it had already made such a determination. Also, Leaf’s board passed a resolution appointing the New Director to Leaf’s audit committee in May 2020 without a contemporaneous collection or review of information to determine the New Director’s “independence” under NYSE standards, instead relying on Leaf’s outdated review from 2019.

Violations and Findings

13. As a result of the conduct described above, the Commission finds that Leaf violated Exchange Act Rule 13a-15(a), which requires every issuer of a security registered pursuant to Section 12 of the Exchange Act to maintain disclosure controls and procedures designed to ensure that information required to be disclosed by the issuer is included in the reports that it files.¹

14. As a result of the conduct described above, the Commission finds that Leaf violated Section 13(a) of the Exchange Act and Rules 13a-1, 13a-11, and 12b-20 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission information, documents, annual reports, and current reports as the Commission may require, and mandate that statements and reports contain such further material information as may be necessary to make the required statements not misleading.

15. As a result of the conduct described above, the Commission finds that Leaf violated Section 14(a) of the Exchange Act and Rule 14a-3 thereunder, which prohibit the use of proxy statements omitting information required to be included by Schedule 14A, including director independence and compensation committee interlock disclosures pursuant to Item 407 of Regulation S-K, and Rule 14a-9, which prohibits the use of proxy statements containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading.

¹ Rule 13a-15(e) defines “disclosure controls and procedures” as “controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the [Exchange] Act ... is recorded, processed, summarized and reported, within the time periods specified in the Commission’s rules and forms.”

Cooperation

16. The Commission has considered the cooperation that Leaf afforded the Commission staff.

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 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(a) and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, 13a-15(a), 14a-3, and 14a-9 thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$325,000 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.

C. 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 Leaf 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 Jeffrey P. Weiss, Assistant Director, Enforcement Division, Securities and Exchange Commission, 100 F St., N.E, Washington, DC 20549.

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, Leaf 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