

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98413 / September 18, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21672

In the Matter of

Lyft, Inc.,

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 Lyft, Inc. (“Lyft,” the “Company,” 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. These proceedings arise out of Lyft's failure to disclose a related person transaction involving a large shareholder's ("Shareholder") sale of its approximately 7.7 million shares, amounting to roughly 2.6% of the Company, that occurred in the weeks prior to Lyft's initial public offering ("IPO"). A Lyft director placed on the board by Shareholder ("Director") contacted an investor ("Investor") who was interested in purchasing the shares. Director arranged the sale of the shares to a special purpose vehicle ("SPV") set up by an investment adviser ("Investment Adviser") with which Director was affiliated; Investor acquired the shares by becoming a limited partner in the SPV. Lyft, which approved the sale and secured a number of terms in the contract, was a participant in the transaction. Director received millions of dollars in compensation from Investment Adviser for his role in structuring and negotiating the deal.

2. Lyft did not disclose information regarding the sale in its Form 10-K for the fiscal year ended December 31, 2019, filed February 28, 2020 ("2019 10-K").

RESPONDENT

3. Lyft, a Delaware corporation headquartered in San Francisco, CA, operates multimodal transportation networks in the United States and Canada that offer access to a variety of transportation options through the Company's platform and mobile-based applications, including peer-to-peer ridesharing, bikes and scooters, and short-term car rentals. In late March 2019, Lyft's common stock began trading on Nasdaq after it was registered with the Commission pursuant to Section 12(b) of the Exchange Act. Since then, Lyft has been required to file periodic reports, including Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder.

FACTS

4. In 2015, Shareholder purchased approximately 7.7 million shares of Lyft and appointed Director to Lyft's Board of Directors to represent Shareholder's interests.

5. Lyft conducted an IPO of its Class A common stock on March 29, 2019. In the months leading up to the IPO, Lyft secured lock-up agreements—contracts requiring shareholders to hold their stock for 180 days following the IPO—from its officers, directors, and substantially all shareholders.

6. Shareholder notified Lyft that it would not sign the lock-up agreement. Instead, in January 2019, Shareholder communicated to Lyft its desire to sell 50% or more of its shares in advance of or in Lyft's IPO. Under the governing shareholder agreements, Lyft Board approval was required for the sale.

7. On January 29, 2019, Lyft formed a special committee of its Board of Directors ("Special Committee") to explore allowing Shareholder to sell its stake in the Company. The Special Committee rejected Shareholder's initial bid to sell its shares, in part due to stated concerns

of insider trading arising from material, nonpublic information learned by Director in his position as a member of the Lyft Board of Directors that could be imputed to Shareholder.

8. To cure potential insider trading issues, Director proposed to Lyft that Shareholder sell its stake to Director or an affiliate of Director in a private transaction. On March 6, 2019, the Special Committee approved this proposal, subject to certain conditions including: (1) Shareholder sell its entire stake in Lyft; (2) all parties to the transaction sign lock-up agreements; (3) the price per share be equal to or more than the price of Lyft's last preferred stock round; (4) Shareholder sign a release of claims with respect to Lyft; and (5) the sale be completed before the printing of the preliminary prospectus for Lyft's roadshow.

9. In early March, Director reached out to an unaffiliated potential Investor to see if it would be interested in purchasing the shares prior to the IPO. In a matter of days, Director, Shareholder, and Investor negotiated a deal in which Investor would acquire Shareholder's approximately 7.7 million shares pre-IPO at a discount to the anticipated IPO price, through a newly formed SPV created and managed by Investment Adviser. Investor would not directly purchase and own the shares; instead, two entities controlled by Investor would become limited partner investors in the SPV.

10. Director was an employee of Investment Adviser and received both a fixed salary and compensation from Investment Adviser relating to his work bringing investment opportunities to Investment Adviser. Director did not disclose his compensation or his material interest in the transaction to Lyft.

11. At Shareholder's request, Director resigned from Lyft's Board on March 15, 2019, as a condition of the sale, in order to avoid potential Hart-Scott-Rodino ("HSR") issues.¹

12. On March 15, 2019, a Stock Transfer Agreement was signed by Shareholder, the SPV, and Lyft, resulting in the pre-IPO sale of approximately 7.7 million shares of stock to the SPV, for approximately \$424 million in cash. The Stock Transfer Agreement provided for a baseline price of \$55 a share, with an upward post-IPO price adjustment if the IPO price ended up being greater than \$61.

13. Lyft was a signatory of the Stock Transfer Agreement, as its consent was required for the transfer to take place. Lyft was also involved in reviewing and revising the Stock Transfer Agreement. In addition to the terms Lyft's Special Committee had required, the Stock Transfer Agreement included provisions that the shares be bound by the terms of Lyft's original purchase

¹ HSR required transactions over a certain monetary threshold to be reported to federal antitrust agencies at least 30 days prior to closing. Acquisitions of up to 10% of the stock of a company are exempt from this requirement if the purchases are made solely for the purpose of investment and the buyer "has no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer." 16 C.F.R. 801.1(i)(1). Director was affiliated with the SPV buyer and participated in Lyft business by virtue of his position on the Board; thus the exemption did not apply unless Director resigned.

agreement, voting agreement, and investors' rights agreement; that the SPV buyer waive certain other rights that should have transferred with the shares, such as the right of first offer with respect to future sales of Lyft shares; and that the SPV not distribute shares to its limited partners "unless and until such proposed transfer has been approved by the Board if such transfer is to occur prior to the closing of the IPO."

14. The Stock Transfer Agreement noted that, "Buyer [SPV] has a relationship with a person serving on the Board as of the date of this Agreement, and has had sufficient opportunity to evaluate the business, financial condition and results of the Company and is not relying on any representations and warranties of the Company or Seller or any of their representatives regarding the Company's business, financial results, prospects or the merits and risks of an investment in the Company."

15. On the same day that the Stock Transfer Agreement was signed, the limited partners of the SPV signed a Limited Partnership Agreement. The Limited Partnership Agreement, which Lyft was not a party to, provided that Investment Adviser, via an affiliate, would receive management fees as well as performance fees based on both "Pre-IPO Gain" and "Post-IPO Gain." Pre-IPO gain referred to the difference between the eventual offering price of the IPO and the negotiated purchase price per share of Shareholder's stake. Post-IPO gain referred to the difference between (1) the average of the Lyft share price on the first three days of trading beginning on the day of the IPO, and (2) the eventual offering price of the IPO.

16. Director had an agreement with Investment Adviser to receive 50% of the management fees and 85% of the performance fees generated from the deal.

17. Lyft's amended registration statement was declared effective on March 28, 2019, and on March 29, 2019, Lyft sold 32.5 million shares in its IPO at a price of \$72 per share.

18. Based on the Limited Partnership Agreement and Director's agreement with Investment Adviser, at an IPO price of \$72, Director was due to receive \$9.8 million as a result of his role in facilitating the sale of Shareholder's Lyft shares. However, as part of subsequent negotiations between Director and Investment Adviser concerning their overall relationship, that amount was ultimately reduced to a lower 7-figure amount.

19. Item 13 of Form 10-K requires a registrant to furnish information required by Item 404(a) of Regulation S-K [27 C.F.R. § 229.404(a)]. Item 404(a), in turn, requires a description of transactions since the beginning of the registrant's last fiscal year in excess of \$120,000 in which the issuer was or is to be a participant, and in which a related person had or will have a direct or indirect material interest. The sale of Shareholder's stake qualified as a related person transaction requiring disclosure in Lyft's 2019 10-K.

20. On February 28, 2020, Lyft filed its 2019 10-K with the Commission. Though the 2019 10-K disclosed a number of related person transactions, it did not disclose the related-person sale of Shareholder's stake in Lyft and the material interest of the Director in that sale, as required by Regulation S-K Item 404(a).

21. Neither the sale of Shareholder's stake nor Director's expected compensation from his role in the sale were disclosed in any subsequent Exchange Act filings.

VIOLATIONS

22. As a result of the conduct described above, Lyft violated Section 13(a) of the Exchange Act and Rule 13a-1 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission accurate information, documents, and annual reports as the Commission may require.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Lyft cease and desist from committing or causing any violations and any future violations of Section 13(a) of the Exchange Act and Rule 13a-1.

B. Lyft shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$10,000,000.00 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 Lyft, Inc. 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 Sheldon Pollock, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004.

C. 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, 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