

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84956 / December 26, 2018

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4009 / December 26, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18955

<p>In the Matter of</p> <p style="text-align:center">ADT INC.,</p> <p>Respondent.</p>
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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 ADT Inc. (“ADT” 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

These proceedings arise out of ADT’s violations of Section 13(a) of the Exchange Act and Rule 13a-11 thereunder relating to disclosure requirements concerning non-GAAP financial

measures contained in Item 10(e)(1)(i)(A) of Regulation S-K.¹ Specifically, ADT did not afford equal or greater prominence to comparable GAAP financial measures in two of its earnings releases containing non-GAAP financial measures – ADT’s Q4 2017 and Fiscal Year 2017 Earnings Release dated and furnished to the Commission on March 15, 2018 (the “FY 2017 Earnings Release”) and ADT’s Q1 2018 Earnings Release dated and furnished to the Commission on May 9, 2018 (the “Q1 2018 Earnings Release”).

Respondent

1. ADT, a Delaware corporation based in Boca Raton, Florida, engaged in home and business security businesses. ADT’s common stock is registered under Section 12(b) of the Exchange Act and trades on the New York Stock Exchange under the ticker symbol “ADT.”

Background

2. Section 13(a) of the Exchange Act requires every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission, among other things, annual, quarterly and current reports as the Commission may require. Rule 13a-11 of the Exchange Act requires every such issuer file current reports on Form 8-K as the Commission may require, including as triggered under Item 2.02 of Form 8-K when a registrant releases a quarterly or annual earnings release containing material non-public information regarding registrant’s results of operations or financial condition. Item 10(e)(1)(i)(A) of Regulation S-K provides that an issuer, when including a non-GAAP financial measure in a filing with the Commission, must include a presentation, with equal or greater prominence, of the most directly comparable financial measure or measures calculated and presented in accordance with GAAP. Instruction 1 of Item 2.02 of Form 8-K states that the “requirements of this Item 2.02 are triggered by the disclosure of material non-public information regarding a completed fiscal year or quarter. Release of additional or updated material non-public information regarding a completed fiscal year or quarter would trigger an additional Item 2.02 requirement.” Instruction 2 of Item 2.02 of Form 8-K states that the “requirements of paragraph (e)(1)(i) of Item 10 of Regulation S-K (17 CFR 229.10(e)(1)(i)) shall apply to disclosures under this Item 2.02.”

3. In its FY 2017 Earnings Release and its Q1 2018 Earnings Release, ADT provided non-GAAP financial measures such as adjusted EBITDA, adjusted net income, and free cash flow before special items, without giving equal or greater prominence to the comparable GAAP financial measures.

4. In the headline of the FY 2017 Earnings Release, ADT presented its adjusted EBITDA² for fiscal year 2017 and stated that adjusted EBITDA was up 8% year-over-year, without mentioning ADT’s net income or loss (the comparable GAAP financial measure) in the

¹ “GAAP” refers to U.S. generally accepted accounting principles.

² EBITDA (earnings before interest, taxes, depreciation and amortization) is an example of a non-GAAP financial measure.

headline.

5. In the headline of the Q1 2018 Earnings Release, ADT presented its adjusted EBITDA (a non-GAAP financial measure) for the first quarter of 2018 and stated that adjusted EBITDA was up 7% year-over-year, without mentioning ADT's net income or loss (the comparable GAAP financial measure) in the headline. On the top of the first page, ADT then listed "FIRST QUARTER 2018 HIGHLIGHTS" in nine bullet points, including bullet points that state ADT's adjusted EBITDA of \$620 million was up 7%, adjusted net income of \$249 million was up 26%, and adjusted net income per share of \$0.34 was up 10%. These three measures are all non-GAAP financial measures. ADT did not include comparable GAAP financial measures for net income or loss in the HIGHLIGHTS section. Instead, ADT reported in the second and sixth full paragraphs that its GAAP net loss had increased from \$141 million for Q1 2017 to \$157 million for Q1 2018.

6. As a result of the conduct described above, ADT violated Section 13(a) of the Exchange Act and Rule 13a-11 thereunder.

7. In determining to accept ADT's Offer, the Commission considered the cooperation ADT afforded the Commission staff.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent ADT cease and desist from committing or causing any violations and any future violations of Section 13(a) of the Exchange Act and Rule 13a-11 thereunder.

B. Respondent shall, within 20 days of the entry of this Order, pay a civil money penalty in the amount of \$100,000 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 ADT Inc. as the 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 Glenn S. Gordon, Division of Enforcement, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, FL 33131.

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.

Brent J. Fields
Secretary