

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71717 / March 13, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15791

In the Matter of

LIONS GATE
ENTERTAINMENT CORP.

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 Lions Gate Entertainment Corp. (“Lions Gate,” the “Company,” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Lions Gate has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Lions Gate admits the facts contained in Annex A attached hereto, the Commission’s jurisdiction over it, and the subject matter of these proceedings, and 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 Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, and the facts contained in Annex A, the Commission finds¹ that:

1. On July 20, 2010 Lions Gate participated in an extraordinary three-part set of transactions which put over 16 million shares of the Company stock in the hands of a director friendly to the Company's management (collectively with his investment partnership, the "Friendly Director") as part of the Company's effort to defeat a hostile tender offer by a large shareholder (the "Shareholder"). The Lions Gate public filings failed to disclose material information about the transactions.

2. For at least a year before these transactions occurred, Lions Gate and the Shareholder had been locked in a battle for control of the Company. During this time, the Shareholder had made several tender offers and acquired over 37 percent of the outstanding stock of the Company. For its part, the Company believed that allowing the Shareholder to control the Company was not in the best interest of the Company and its shareholders and accordingly pursued a vigorous defense strategy to thwart the Shareholder's effort to take control of the Company, including an active campaign to discourage shareholders from tendering their stock to the Shareholder.

3. Lions Gate management knew that a large, direct sale of stock from the Company to the Friendly Director would advance management's strategy as it would put voting rights in the hands of someone supportive of management and dilute the percentage of ownership of those hostile to management. However, such a transaction, commonly known as a "defensive recapitalization," would have required prior approval from the Company's shareholders under a NYSE rule and was not practical given the time constraints the Company faced in defending against the Shareholder's takeover effort. In early July 2010, Lions Gate began to explore a three-part set of transactions involving a holder of Company notes convertible into stock (the "Note Holder"), the Friendly Director, and the Company. These transactions involved an exchange of the Note Holder's notes for new notes that could be converted to Lions Gate stock at a much more favorable rate; the sale of the new notes from the Note Holder to the Friendly Director; and the conversion of the new notes to Lions Gate stock by the Friendly Director. Lions Gate took the position that the sale of notes to the Friendly Director was not a related party transaction and, thus, did not require shareholder approval under the NYSE rule.

4. Facing the likelihood of a new tender offer from the Shareholder at an unknown price, on July 20, 2010, the Company's Board of Directors (the "Board") approved the exchange of convertible notes and, at the same time, agreed to loosen timing restrictions under its insider trading

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

policy to allow the Friendly Director to purchase the notes and convert them to Lions Gate stock.

5. When the Shareholder announced a new tender offer on the morning of July 20, the convertible notes already had been exchanged by the Note Holder. Later that morning, they were sold by the Note Holder to the Friendly Director who promptly converted the notes to stock. As a result of the transactions executed on July 20 (the “July 20 Transactions”), the Friendly Director obtained control of approximately 16 million shares, representing 9 percent of the Company’s outstanding stock, effectively blocking the Shareholder’s bid for control of the Company.

6. Later on July 20, Lions Gate issued a press release announcing the exchange and conversion of the notes, which was incorporated in a Form 8-K filed with the Commission. This press release stated only that the exchange and conversion was done for the purpose of reducing debt and improving near term liquidity, and failed to disclose that a purpose and expected effect of the July 20 Transactions was to fend off the Shareholder’s takeover efforts, and that Lions Gate viewed that as a desirable benefit of the transactions. It also failed to disclose the steps Lions Gate took to incentivize the Friendly Director to purchase the notes and convert them to common stock.

7. After the July 20 Transactions, Lions Gate filed a Schedule 14D-9 with the Commission that stated that the note exchange was not part of a pre-arranged series of transactions to issue shares to the Friendly Director, but the Schedule 14D-9 failed to disclose details that would have demonstrated the extent to which Lions Gate planned and enabled the exchange of notes with the Note Holder and sale of the new notes to the Friendly Director. It also failed to disclose that a purpose and expected effect of the July 20 Transactions was to block the Shareholder’s takeover efforts and that Lions Gate viewed that as a desirable benefit of the transactions. In addition, Lions Gate failed to include in its Schedule 14D-9 other required information concerning the Friendly Director’s conversion of the notes to Lions Gate stock.

8. By engaging in the conduct described herein, Lions Gate violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-11 thereunder and Exchange Act Section 14(d) and Rule 14d-9 thereunder.

Respondent

9. Lions Gate is a corporation organized under the laws of the Province of British Columbia with its principal place of business in Santa Monica, California. It also has offices in New York, New York and Vancouver, British Columbia. At all relevant times, Lions Gate stock was registered pursuant to Section 12(b) of the Exchange Act [15 U.S.C. §78l(b)] and was listed on the New York Stock Exchange.

Battle for Control of Lions Gate

10. In 2008, the Shareholder began purchasing Lions Gate stock with the intent of gaining control of the Company and, by February 2009, he had acquired beneficial ownership of 14.28 percent of the outstanding shares of Lions Gate’s stock. On February 25, 2009, the Shareholder demanded that the Board permit him to appoint individuals to fill up to 5 of the 12 seats on the Board. The Company refused his demand.

11. Between March 2009 and February 2010, the Shareholder continued his efforts to obtain Lions Gate common stock and, on February 5, 2010, disclosed that he beneficially owned 18 percent of the outstanding shares of Lions Gate's stock. Later that same month, the Shareholder presented the Company with a list of conditions that it had to accept to avoid a battle with him over control of the Company. Lions Gate rejected the Shareholder's conditions and, on February 26, 2010, Lions Gate formed a Special Committee of independent directors to oversee the Company's response to the Shareholder (the "Special Committee").

12. On March 1, 2010, the Shareholder made a tender offer of \$6.00 per share for Lions Gate stock. The tender offer would give public shareholders a premium of 55 cents over the closing price of \$5.45 on the date prior to the announcement of the offer. The offer was conditioned on several prospective events not occurring, including the issuance of new shares, and the adoption of a shareholder rights plan, commonly known as a "poison pill." On March 11, 2010, in response to this tender offer, Lions Gate adopted a poison pill to discourage the Shareholder's hostile takeover by making it more expensive to acquire control of the Company.

13. A day after adopting the poison pill, Lions Gate recommended shareholders not tender their shares to the Shareholder's March 1, 2010 tender offer. Between April and June, the Shareholder launched and extended additional offers for Lions Gate's shares. In response to each of the offers, Lions Gate recommended shareholders not tender their shares to the Shareholder, claiming, among other things, that the Shareholder's offers were inadequate, opportunistic, and coercive.

14. On June 11, 2010, the Shareholder issued a public letter to the Lions Gate Board accusing the Board of mismanagement and of trying to scare shareholders into not tendering their shares. The Shareholder continued his efforts to obtain control of Lions Gate through tender offers for the Company's stock and through private transactions.

15. In late June, the Vice Chairman of Lions Gate, who was also a member of the Board (the "Vice Chairman"), became aware that two large shareholders desired to sell their blocks of shares (each amounting to approximately 5 percent of outstanding shares). The Vice Chairman attempted to arrange for third parties sympathetic to Lions Gate's management to purchase the two blocks of shares. Third party investors who are sympathetic to management and willing to purchase minority stakes in a company in order to aid in the defense of a hostile takeover are commonly referred to as "white squires." One of the potential white squires for one of the two potential transactions was the Friendly Director. However, despite the Vice Chairman's efforts, the Shareholder ended up purchasing both blocks of stock. By July 1, 2010, the Shareholder had beneficial ownership of approximately 37.9 percent of the Company's outstanding shares.

Lions Gate's Convertible Notes Present an Opportunity To Make the Shareholder's Attempted Takeover More Difficult

16. In June 2010, a capital management company supportive of Lions Gate's management (the "Note Holder") held convertible notes issued by Lions Gate worth approximately \$99.7 million. These notes were convertible to Lions Gate common stock at the option of the Note Holder and had approaching put dates of October 2011 and March 2012,

when they could be put to the Company at par value. It would have made no economic sense for the Note Holder to convert the notes to stock at that time since the then-current market price of Lions Gate's stock was less than the conversion price of the notes. For example, in July 2010, Lions Gate's two series of convertible notes held by the Note Holder had conversion prices of \$14.28 and \$11.50 per share while Lions Gate's stock was only trading at between \$6 and \$7 per share. Simply put, if the Note Holder wanted to increase the size of his Lions Gate stock holdings, it would have been considerably less expensive for the Note Holder to buy stock in the market than to convert the notes he owned to stock at those conversion rates. Buying stock in the market, however, would not have had a dilutive effect on the Shareholder, and, therefore, would not have advanced Lions Gate management's efforts to reduce the Shareholders' ownership stake in the Company.

17. On June 30, 2010, Lions Gate's Special Committee and Board met to discuss the Shareholder's efforts to gain control of the Company and, on that same day, the Vice Chairman spoke with the Note Holder about a possible exchange of the notes he held for newly issued notes of the same value, but with a conversion rate that would make converting the notes to common stock much more appealing. The Note Holder expressed interest in such an exchange.

18. Five days later, on July 4, in the course of negotiations with the Shareholder, the Vice Chairman wrote in an email to the Shareholder's financial adviser that Lions Gate would win the proxy fight and aggressively dilute the Shareholder. The next day, the Vice Chairman and the Friendly Director discussed a potential defensive recapitalization transaction through which the Friendly Director, acting as a white squire, would buy all the Note Holder's notes, which could be converted to Lions Gate stock at the stock's present market price. Three days later, on July 8, the Note Holder confirmed to the Vice Chairman that he was interested in exchanging all the Lions Gate notes he held for new notes with the more favorable conversion rate.

The Framework for the July 20 Transactions is Established Before A Standstill Agreement with the Shareholder Begins

19. By July 9, 2010, the Vice Chairman, in separate discussions with the Note Holder and the Friendly Director, had established the basic framework of the July 20 Transactions whereby: Lions Gate would first exchange the Note Holder's notes for new notes (the "Exchange"); the Note Holder would then sell the new notes—now convertible at market prices—to the Friendly Director at a premium (the "Note Sale"); and the Friendly Director would then convert the new notes to shares of Lions Gate stock (the "Conversion").

20. That same day, Lions Gate and the Shareholder entered into a ten-day standstill agreement in order to explore the possibility of a merger between Lions Gate and a movie production company. The standstill agreement, which was due to expire just after 11:59 p.m., July 19, 2010, precluded Lions Gate from negotiating transactions involving five percent or more of the outstanding shares of its stock and from arranging or encouraging others to do the same.

21. Lions Gate engaged in negotiations with the Note Holder and the Friendly Director. For example, on July 15, the Vice Chairman and the Friendly Director discussed a plan to increase the size of the Friendly Director's ownership interest through a series of text messages between the

two, in which the Friendly Director wrote: “Get me all and [the Shareholder] may leave. Its our only chance. I haven’t been wrong yet about him. You have to trust me.” The Vice Chairman replied: “Trying like hell.”

22. That same day, an attorney for the law firm that was advising Lions Gate sent a preliminary term sheet for the Exchange to the Friendly Director’s attorney. Three days later, on July 18, 2010, the Friendly Director’s attorneys contacted the Note Holder and sent him a draft purchase agreement for the new Lions Gate notes, in which the purchase price was still blank.

23. The terms of the new note indentures and the Note Holder’s “out of the money” notes were virtually identical, but included provisions designed to encourage the holder to immediately convert the notes to stock. For example, the new notes would convert at the market price of Lions Gate Stock rather than the “out of the money,” above-market prices of the old notes. This provision approximately doubled the number of shares that would be obtained upon conversion. Also, the new note indentures did not contain restrictions in the old notes that precluded their conversion if the conversion resulted in the note holder owning more than 4.99 percent of the Company’s outstanding stock. If this restriction had not been eliminated, the Friendly Director would have been unable to convert any portion of the notes to shares of Lions Gate stock because, in July 2010, the Friendly Director already was the beneficial owner of approximately 20 percent of Lions Gate’s outstanding stock. The new conversion price was later calculated to be \$6.32 per share. The expected effect of the July 20 Transactions was to increase the number of shares controlled by management and directors, thereby effectively blocking the Shareholder’s takeover efforts.

24. Less than a week after the standstill agreement went into effect, the prospect of a merger between Lions Gate and another movie production company became virtually nonexistent. The Shareholder and the Vice Chairman blamed each other for its failure. The Shareholder threatened that he would launch an “any and all” tender offer to “finish [management] off,” and the Vice Chairman replied that Lions Gate would issue stock and dilute the Shareholder’s holdings.

25. Lions Gate scheduled a Special Committee meeting for 12:01 a.m. on July 20—one minute after the standstill agreement expired—with a Board meeting to immediately follow. The meeting was scheduled just after midnight so that Lions Gate’s directors could potentially approve transactions with the Note Holder and Friendly Director involving more than five percent of the Company’s outstanding shares without violating the standstill agreement with the Shareholder.

Lions Gate Agrees to a Last Minute Request by the Friendly Director to Change the Conversion Price

26. The Friendly Director negotiated the conversion price with the expectation that the Note Holder would sell him the notes. Late on the evening on July 19, before the scheduled Board meeting, the Friendly Director asked the Vice Chairman to lower the conversion price in the note exchange that Lions Gate had negotiated with the Note Holder from \$6.32 to \$6.20 per share. This change would result in the Friendly Director receiving an additional 305,000 shares upon conversion.

27. While the request for a lower conversion would also be advantageous to the Note Holder, as the initial recipient of the new notes, the Note Holder did not request this change. Rather, the lower conversion price was requested by the Friendly Director, who was the expected purchaser of the new notes.

The Board Meets at Midnight

28. At 12:01 a.m. New York time on July 20, 2010, one minute after the standstill agreement expired, the Special Committee convened a meeting and the Board met immediately afterwards. The Board first discussed the time period during which a director was precluded from trading Lions Gate stock and then voted to shorten it. Without this change, the Friendly Director would not have been able to convert the new notes to Lions Gate stock immediately after purchasing them from the Note Holder. The Vice Chairman then described the terms of the Exchange to the Board, including the Friendly Director's request just hours earlier for a lower conversion price. The Board approved the terms of the Exchange, including the Friendly Director's request to reduce the conversion price from \$6.32 to \$6.20 per share. According to the minutes of the meeting, the Board considered the dilutive effect of the transaction on the Shareholder's holdings (and those of other common shareholders) and determined that the transaction would be beneficial to shareholders generally.

The July 20 Transactions Are Completed

29. At 1:07 a.m. on July 20, the Note Holder's attorney sent wire transfer instructions to the Friendly Director's attorney for all the notes and specified the final sale price of \$105,650,993. This price included a five percent premium over the face value of all the notes held by the Note Holder.

30. Approximately 40 minutes after the Note Holder sent wire transfer instructions to the Friendly Director for all his notes, Lions Gate asked the Note Holder's attorney if the Note Holder would be interested in exchanging all the notes he held. One minute later, the Note Holder's attorney said the Note Holder was "amenable" to that proposal.

31. By 4:00 a.m., Lions Gate and the Note Holder had signed the Exchange agreement. Although the change in the conversion price of the notes increased their value, the Note Holder did not demand more money from the Friendly Director. At 6:45 a.m., the Friendly Director's attorney emailed the Note Holder's attorney a revised purchase agreement and asked the Note Holder to sign the agreement and deliver the notes as soon as possible that morning.

32. At approximately 6:30 a.m., Lions Gate learned that the Shareholder made a new tender offer of \$6.50 per share for all of Lions Gate's stock, and by 9:30 a.m., the Friendly Director had purchased the notes from the Note Holder. By afternoon, he had converted the new notes into 16,236,305 shares of Lions Gate stock at \$6.20, representing approximately nine per cent of the outstanding shares of the Company's stock after the Conversion. As this conversion retired the new notes, it reduced Lions Gate's debt by \$99 million.

33. The July 20 Transactions diluted the positions of all Lions Gate shareholders including the Shareholder who was seeking to gain control of the Company. As a result of the July

20 Transactions, the percentage of Lions Gate's outstanding stock held by the Shareholder decreased from 37.87 percent to 33.5 percent, while the percentage beneficially owned by the Friendly Director increased from 19.99 percent to 28.9 percent.

Lions Gate Files a Form 8-K That Omits Material Information Regarding the July 20 Transactions

34. On the afternoon of July 20, 2010, Lions Gate issued a press release announcing the Exchange and Conversion and incorporated the release in the July 20, 2010 Form 8-K the Company filed with the Commission.

35. The press release attached to the Form 8-K stated in part: "The [Exchange] is a key part of the Company's previously announced plan to reduce its total debt, as well as its nearer term maturities."

36. Although Lions Gate had consummated and publicly disclosed four debt-reduction transactions between December 2008 and December 2009, Lions Gate had never announced a plan to reduce total debt prior to issuing the press release on July 20, 2010. Contrary to the statement in the July 20 press release, Lions Gate's prior public filings stated:

- a. the Company was likely to take on more debt;
- b. Lions Gate's regular course of business in producing or making motion pictures was to take on debt to finance films;
- c. most movies Lions Gate produced were financed with debt transactions; and
- d. Lions Gate had raised over \$224 million through the sale of high interest debt by October 27, 2009.

37. Neither the Form 8-K that Lions Gate filed nor the press release attached to it disclosed that:

- a. Lions Gate management hoped and expected the July 20 Transactions to effectively block the Shareholder's takeover of the Company and that Lions Gate management viewed that as a desirable benefit of the transactions;
- b. An investment partnership managed by the Friendly Director purchased and converted the new notes;
- c. Lions Gate changed its insider trading policy to allow the Friendly Director to convert the notes; and
- d. Lions Gate lowered the conversion price following discussions with the Friendly Director.

Lions Gate Fails to Disclose Material Information about the July 20 Transactions in its Schedule 14D-9, dated August 2, 2010

38. On August 2, 2010, Lions Gate filed a Schedule 14D-9 with the Commission (the “Original Schedule 14D-9”). In this filing, Lions Gate recommended that shareholders not tender their shares to the Shareholder’s July 20 tender offer. In Item 6 of the Schedule 14D-9, Lions Gate listed recent securities transactions by some directors. The listed transactions totaled 2.5 million shares of Lions Gate stock and included individual transactions ranging from 17,000 to 350,000 shares each, with share prices from \$6.70 to \$6.98. However, the July 20 Transactions were not listed and Item 6 did not include the following required information:

- a. the Friendly Director converted notes to Lions Gate stock;
- b. the date of the conversion of the notes by the Friendly Director;
- c. the \$6.20 per share conversion price of the stock; or
- d. the nature of the July 20 Transactions that resulted in the Friendly Director obtaining over 16 million shares of Lions Gate Stock.

39. Lions Gate did not include any of the required information about the July 20 Transactions in Item 6 of any of the subsequent twenty-two amendments to its Original Schedule 14D-9.

The New York Stock Exchange Raises Questions About the July 20 Transactions

40. On July 28, 2010, the NYSE contacted Lions Gate to inquire whether the July 20 Transactions may have violated Section 312.03(b) of the NYSE Listed Company Manual (“Section 312.03(b)”). Section 312.03(b) requires a company to obtain shareholder approval prior to the issuance of common stock and securities convertible into common stock to a director or to any company in which the director may have a substantial interest when the number of shares to be issued exceeds one percent of the shares of stock outstanding before the issuance. If the July 20 Transactions were a “related transaction” within the meaning of Section 312.03(b), Lions Gate would have been required to submit the July 20 Transactions to all its shareholders for approval prior to executing it—which it had not done. Lions Gate took the position that the transactions did not require a shareholder vote, which is required by a NYSE rule applicable to large transactions between NYSE-listed companies and related parties, including board members.

41. On or about September 7, 2010, Lions Gate provided NYSE a draft public disclosure concerning the nature of the July 20 Transactions. This disclosure included the representation that the Exchange of Notes—the first component of the July 20 Transactions—was not part of a “pre-arranged series of transactions to issue shares to [the Friendly Director],” but did not disclose other details about the exchange that would have demonstrated the extent to which Lions Gate enabled the exchange and sale of the notes.

Lions Gate Omits Material Information About the July 20 Transactions in its Third Amended Schedule 14D-9

42. In its response to the NYSE's inquiry, Lions Gate said it would disclose additional information in a publicly filed amendment to the Original Schedule 14D-9. On September 8, 2010, Lions Gate filed a Third Amended Schedule 14D-9 with the Commission that contained additional information about the July 20 Transactions.

43. In the Third Amended Schedule 14D-9, Lions Gate included a description of the July 20 Transactions. In this filing, Lions Gate stated that the "Exchange was not part of a pre-arranged series of transactions to issue shares to [the Friendly Director]" and failed to disclose key details about the July 20 Transactions that would have demonstrated the extent to which Lions Gate planned and enabled the Exchange of Notes with the Note Holder and Sale of the new notes to the Friendly Director, including the facts that:

- a. The Board amended the Company's insider trading policy at the same board meeting in which it approved the July 20 Transactions to allow the Friendly Director to immediately convert the notes to stock;
- b. The Board approved the Friendly Director's request to change the New Note conversion price although the change was not requested by the Note Holder; and
- c. Lions Gate allowed the Friendly Director to review the New Note terms, term sheet, and exchange agreement before it provided them to the Note Holder.

44. Also, like the Original Schedule 14D-9 Lions Gate filed with the Commission, Item 6 of the Third Amended Schedule 14D-9 did not:

- a. Disclose that the Friendly Director converted the notes to Lions Gate stock;
- b. Disclose the date of the conversion of the notes by the Friendly Director;
- c. Disclose the \$6.20 per share conversion price of the stock; and
- d. Describe the nature of the July 20 transaction that resulted in the Friendly Director obtaining over 16 million shares of Lions Gate Stock.

45. After filing the Third Amended Schedule 14D-9, Lions Gate filed eighteen additional amendments of the Original Schedule 14D-9 with the Commission that contained recommendations to investors to reject the Shareholder's tender offers. All of these amendments contained the statement that the "Exchange was not part of a prearranged series of transactions to issue shares to [the Friendly Director]" and all of them continued to omit the same information in Item 8 as the Third Amended Schedule 14D-9.

The July 20 Transactions Effectively Blocked The Shareholder's Attempt to Take Control of Lions Gate

46. At a shareholder's meeting on December 14, 2010, shareholders elected management's slate of directors and rejected the slate endorsed by the Shareholder. The margin of defeat for one of the five directors proposed by the Shareholder (who, if elected, would have occupied one of the Company's twelve board seats) was approximately 16 million shares—the same number of shares the Friendly Director obtained as a result of the July 20 Transactions.

47. As a result of the conduct described above, Lions Gate violated Sections 13(a) and 14(d) of the Exchange Act and Rules 12b-20, 13a-11, and 14d-9 thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Lions Gate's offer.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Lions Gate cease and desist from committing or causing any violations and any future violations of Sections 13(a) and 14(d) of the Exchange Act and Rules 12b-20, 13a-11, and 14d-9 thereunder.

B. Lions Gate, shall, within ten (10) business days of the entry of this Order, pay a civil money penalty in the amount of \$7,500,000 to the Securities and Exchange Commission. 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 Lions Gate 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 Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

C. Such civil money penalty may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended ("Fair Fund distribution"). Regardless of whether any such Fair Fund distribution is made, 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, Lions Gate 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 Lions Gate's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Lions Gate 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 United States Treasury or to a Fair Fund, as the Commission directs. 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 Lions Gate 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.

Jill M. Peterson
Assistant Secretary

ANNEX A

Lions Gate Entertainment Corp. (“Lions Gate” or the “Company”) admits to the facts set forth below and acknowledges that its conduct violated the federal securities laws:

1. On July 20, 2010 Lions Gate participated in an extraordinary three-part set of transactions which put over 16 million shares of the Company stock in the hands of a director friendly to the Company’s management (collectively with his investment partnership, the “Friendly Director”) as part of the Company’s effort to defeat a hostile tender offer by a large shareholder (the “Shareholder”). The Lions Gate public filings failed to disclose material information about the transactions.

2. For at least a year before these transactions occurred, Lions Gate and the Shareholder had been locked in a battle for control of the Company. During this time, the Shareholder had made several tender offers and acquired over 37 percent of the outstanding stock of the Company. For its part, the Company believed that allowing the Shareholder to control the Company was not in the best interest of the Company and its shareholders and accordingly pursued a vigorous defense strategy to thwart the Shareholder’s effort to take control of the Company, including an active campaign to discourage shareholders from tendering their stock to the Shareholder.

3. Lions Gate management knew that a large, direct sale of stock from the Company to the Friendly Director would advance management’s strategy as it would put voting rights in the hands of someone supportive of management and dilute the percentage of ownership of those hostile to management. However, such a transaction, commonly known as a “defensive recapitalization,” would have required prior approval from the Company’s shareholders under a NYSE rule and was not practical given the time constraints the Company faced in defending against the Shareholder’s takeover effort. In early July 2010, Lions Gate began to explore a three-part set of transactions involving a holder of Company notes convertible into stock (the “Note Holder”), the Friendly Director, and the Company. These transactions involved an exchange of the Note Holder’s notes for new notes that could be converted to Lions Gate stock at a much more favorable rate; the sale of the new notes from the Note Holder to the Friendly Director; and the conversion of the new notes to Lions Gate stock by the Friendly Director. Lions Gate took the position that the sale of notes to the Friendly Director was not a related party transaction and, thus, did not require shareholder approval under the NYSE rule.

4. Facing the likelihood of a new tender offer from the Shareholder at an unknown price, on July 20, 2010, the Company’s Board of Directors (the “Board”) approved the exchange of convertible notes and, at the same time, agreed to loosen timing restrictions under its insider trading policy to allow the Friendly Director to purchase the notes and convert them to Lions Gate stock.

5. When the Shareholder announced a new tender offer on the morning of July 20, the convertible notes already had been exchanged by the Note Holder. Later that morning, they were sold by the Note Holder to the Friendly Director who promptly converted the notes to stock. As a result of the transactions executed on July 20 (the “July 20 Transactions”), the Friendly Director obtained control of approximately 16 million shares, representing 9 percent of the Company’s

outstanding stock, effectively blocking the Shareholder's bid for control of the Company.

6. Later on July 20, Lions Gate issued a press release announcing the exchange and conversion of the notes, which was incorporated in a Form 8-K filed with the Commission. This press release stated only that the exchange and conversion was done for the purpose of reducing debt and improving near term liquidity, and failed to disclose that a purpose and expected effect of the July 20 Transactions was to fend off the Shareholder's takeover efforts, and that Lions Gate viewed that as a desirable benefit of the transactions. It also failed to disclose the steps Lions Gate took to incentivize the Friendly Director to purchase the notes and convert them to common stock.

7. After the July 20 Transactions, Lions Gate filed a Schedule 14D-9 with the Commission that stated that the note exchange was not part of a pre-arranged series of transactions to issue shares to the Friendly Director, but the Schedule 14D-9 failed to disclose details that would have demonstrated the extent to which Lions Gate planned and enabled the exchange of notes with the Note Holder and sale of the new notes to the Friendly Director. It also failed to disclose that a purpose and expected effect of the July 20 Transactions was to block the Shareholder's takeover efforts and that Lions Gate viewed that as a desirable benefit of the transactions. In addition, Lions Gate failed to include in its Schedule 14D-9 other required information concerning the Friendly Director's conversion of the notes to Lions Gate stock.

Respondent

8. Lions Gate is a corporation organized under the laws of the Province of British Columbia with its principal place of business in Santa Monica, California. It also has offices in New York, New York and Vancouver, British Columbia. At all relevant times, Lions Gate stock was registered pursuant to Section 12(b) of the Exchange Act [15 U.S.C. §78l(b)] and was listed on the New York Stock Exchange.

Battle for Control of Lions Gate

9. In 2008, the Shareholder began purchasing Lions Gate stock with the intent of gaining control of the Company and, by February 2009, he had acquired beneficial ownership of 14.28 percent of the outstanding shares of Lions Gate's stock. On February 25, 2009, the Shareholder demanded that the Board permit him to appoint individuals to fill up to 5 of the 12 seats on the Board. The Company refused his demand.

10. Between March 2009 and February 2010, the Shareholder continued his efforts to obtain Lions Gate common stock and, on February 5, 2010, disclosed that he beneficially owned 18 percent of the outstanding shares of Lions Gate's stock. Later that same month, the Shareholder presented the Company with a list of conditions that it had to accept to avoid a battle with him over control of the Company. Lions Gate rejected the Shareholder's conditions and, on February 26, 2010, Lions Gate formed a Special Committee of independent directors to oversee the Company's response to the Shareholder (the "Special Committee").

11. On March 1, 2010, the Shareholder made a tender offer of \$6.00 per share for Lions Gate stock. The tender offer would give public shareholders a premium of 55 cents over the

closing price of \$5.45 on the date prior to the announcement of the offer. The offer was conditioned on several prospective events not occurring, including the issuance of new shares, and the adoption of a shareholder rights plan, commonly known as a “poison pill.” On March 11, 2010, in response to this tender offer, Lions Gate adopted a poison pill to discourage the Shareholder’s hostile takeover by making it more expensive to acquire control of the Company.

12. A day after adopting the poison pill, Lions Gate recommended shareholders not tender their shares to the Shareholder’s March 1, 2010 tender offer. Between April and June, the Shareholder launched and extended additional offers for Lions Gate’s shares. In response to each of the offers, Lions Gate recommended shareholders not tender their shares to the Shareholder, claiming, among other things, that the Shareholder’s offers were inadequate, opportunistic, and coercive.

13. On June 11, 2010, the Shareholder issued a public letter to the Lions Gate Board accusing the Board of mismanagement and of trying to scare shareholders into not tendering their shares. The Shareholder continued his efforts to obtain control of Lions Gate through tender offers for the Company’s stock and through private transactions.

14. In late June, the Vice Chairman of Lions Gate, who was also a member of the Board (the “Vice Chairman”), became aware that two large shareholders desired to sell their blocks of shares (each amounting to approximately 5 percent of outstanding shares). The Vice Chairman attempted to arrange for third parties sympathetic to Lions Gate’s management to purchase the two blocks of shares. Third party investors who are sympathetic to management and willing to purchase minority stakes in a company in order to aid in the defense of a hostile takeover are commonly referred to as “white squires.” One of the potential white squires for one of the two potential transactions was the Friendly Director. However, despite the Vice Chairman’s efforts, the Shareholder ended up purchasing both blocks of stock. By July 1, 2010, the Shareholder had beneficial ownership of approximately 37.9 percent of the Company’s outstanding shares.

Lions Gate’s Convertible Notes Present an Opportunity To Make the Shareholder’s Attempted Takeover More Difficult

15. In June 2010, a capital management company supportive of Lions Gate’s management (the “Note Holder”) held convertible notes issued by Lions Gate worth approximately \$99.7 million. These notes were convertible to Lions Gate common stock at the option of the Note Holder and had approaching put dates of October 2011 and March 2012, when they could be put to the Company at par value. It would have made no economic sense for the Note Holder to convert the notes to stock at that time since the then-current market price of Lions Gate’s stock was less than the conversion price of the notes. For example, in July 2010, Lions Gate’s two series of convertible notes held by the Note Holder had conversion prices of \$14.28 and \$11.50 per share while Lions Gate’s stock was only trading at between \$6 and \$7 per share. Simply put, if the Note Holder wanted to increase the size of his Lions Gate stock holdings, it would have been considerably less expensive for the Note Holder to buy stock in the market than to convert the notes he owned to stock at those conversion rates. Buying stock in the market, however, would not have had a dilutive effect on the Shareholder, and, therefore, would not have advanced Lions Gate management’s efforts to reduce the Shareholders’ ownership stake in the

Company.

16. On June 30, 2010, Lions Gate’s Special Committee and Board met to discuss the Shareholder’s efforts to gain control of the Company and, on that same day, the Vice Chairman spoke with the Note Holder about a possible exchange of the notes he held for newly issued notes of the same value, but with a conversion rate that would make converting the notes to common stock much more appealing. The Note Holder expressed interest in such an exchange.

17. Five days later, on July 4, in the course of negotiations with the Shareholder, the Vice Chairman wrote in an email to the Shareholder’s financial adviser that Lions Gate would win the proxy fight and aggressively dilute the Shareholder. The next day, the Vice Chairman and the Friendly Director discussed a potential defensive recapitalization transaction through which the Friendly Director, acting as a white squire, would buy all the Note Holder’s notes, which could be converted to Lions Gate stock at the stock’s present market price. Three days later, on July 8, the Note Holder confirmed to the Vice Chairman that he was interested in exchanging all the Lions Gate notes he held for new notes with the more favorable conversion rate.

The Framework for the July 20 Transactions is Established Before A Standstill Agreement with the Shareholder Begins

18. By July 9, 2010, the Vice Chairman, in separate discussions with the Note Holder and the Friendly Director, had established the basic framework of the July 20 Transactions whereby: Lions Gate would first exchange the Note Holder’s notes for new notes (the “Exchange”); the Note Holder would then sell the new notes—now convertible at market prices—to the Friendly Director at a premium (the “Note Sale”); and the Friendly Director would then convert the new notes to shares of Lions Gate stock (the “Conversion”).

19. That same day, Lions Gate and the Shareholder entered into a ten-day standstill agreement in order to explore the possibility of a merger between Lions Gate and a movie production company. The standstill agreement, which was due to expire just after 11:59 p.m., July 19, 2010, precluded Lions Gate from negotiating transactions involving five percent or more of the outstanding shares of its stock and from arranging or encouraging others to do the same.

20. Lions Gate engaged in negotiations with the Note Holder and the Friendly Director. For example, on July 15, the Vice Chairman and the Friendly Director discussed a plan to increase the size of the Friendly Director’s ownership interest through a series of text messages between the two, in which the Friendly Director wrote: “Get me all and [the Shareholder] may leave. Its our only chance. I haven’t been wrong yet about him. You have to trust me.” The Vice Chairman replied: “Trying like hell.”

21. That same day, an attorney for the law firm that was advising Lions Gate sent a preliminary term sheet for the Exchange to the Friendly Director’s attorney. Three days later, on July 18, 2010, the Friendly Director’s attorneys contacted the Note Holder and sent him a draft purchase agreement for the new Lions Gate notes, in which the purchase price was still blank.

22. The terms of the new note indentures and the Note Holder’s “out of the money” notes were virtually identical, but included provisions designed to encourage the holder to

immediately convert the notes to stock. For example, the new notes would convert at the market price of Lions Gate Stock rather than the “out of the money,” above-market prices of the old notes. This provision approximately doubled the number of shares that would be obtained upon conversion. Also, the new note indentures did not contain restrictions in the old notes that precluded their conversion if the conversion resulted in the note holder owning more than 4.99 percent of the Company’s outstanding stock. If this restriction had not been eliminated, the Friendly Director would have been unable to convert any portion of the notes to shares of Lions Gate stock because, in July 2010, the Friendly Director already was the beneficial owner of approximately 20 percent of Lions Gate’s outstanding stock. The new conversion price was later calculated to be \$6.32 per share. The expected effect of the July 20 Transactions was to increase the number of shares controlled by management and directors, thereby effectively blocking the Shareholder’s takeover efforts.

23. Less than a week after the standstill agreement went into effect, the prospect of a merger between Lions Gate and another movie production company became virtually nonexistent. The Shareholder and the Vice Chairman blamed each other for its failure. The Shareholder threatened that he would launch an “any and all” tender offer to “finish [management] off,” and the Vice Chairman replied that Lions Gate would issue stock and dilute the Shareholder’s holdings.

24. Lions Gate scheduled a Special Committee meeting for 12:01 a.m. on July 20—one minute after the standstill agreement expired—with a Board meeting to immediately follow. The meeting was scheduled just after midnight so that Lions Gate’s directors could potentially approve transactions with the Note Holder and Friendly Director involving more than five percent of the Company’s outstanding shares without violating the standstill agreement with the Shareholder.

Lions Gate Agrees to a Last Minute Request by the Friendly Director to Change the Conversion Price

25. The Friendly Director negotiated the conversion price with the expectation that the Note Holder would sell him the notes. Late on the evening on July 19, before the scheduled Board meeting, the Friendly Director asked the Vice Chairman to lower the conversion price in the note exchange that Lions Gate had negotiated with the Note Holder from \$6.32 to \$6.20 per share. This change would result in the Friendly Director receiving an additional 305,000 shares upon conversion.

26. While the request for a lower conversion would also be advantageous to the Note Holder, as the initial recipient of the new notes, the Note Holder did not request this change. Rather, the lower conversion price was requested by the Friendly Director, who was the expected purchaser of the new notes.

The Board Meets at Midnight

27. At 12:01 a.m. New York time on July 20, 2010, one minute after the standstill agreement expired, the Special Committee convened a meeting and the Board met immediately afterwards. The Board first discussed the time period during which a director was precluded from trading Lions Gate stock and then voted to shorten it. Without this change, the Friendly Director

would not have been able to convert the new notes to Lions Gate stock immediately after purchasing them from the Note Holder. The Vice Chairman then described the terms of the Exchange to the Board, including the Friendly Director's request just hours earlier for a lower conversion price. The Board approved the terms of the Exchange, including the Friendly Director's request to reduce the conversion price from \$6.32 to \$6.20 per share. According to the minutes of the meeting, the Board considered the dilutive effect of the transaction on the Shareholder's holdings (and those of other common shareholders) and determined that the transaction would be beneficial to shareholders generally.

The July 20 Transactions Are Completed

28. At 1:07 a.m. on July 20, the Note Holder's attorney sent wire transfer instructions to the Friendly Director's attorney for all the notes and specified the final sale price of \$105,650,993. This price included a five percent premium over the face value of all the notes held by the Note Holder.

29. Approximately 40 minutes after the Note Holder sent wire transfer instructions to the Friendly Director for all his notes, Lions Gate asked the Note Holder's attorney if the Note Holder would be interested in exchanging all the notes he held. One minute later, the Note Holder's attorney said the Note Holder was "amenable" to that proposal.

30. By 4:00 a.m., Lions Gate and the Note Holder had signed the Exchange agreement. Although the change in the conversion price of the notes increased their value, the Note Holder did not demand more money from the Friendly Director. At 6:45 a.m., the Friendly Director's attorney emailed the Note Holder's attorney a revised purchase agreement and asked the Note Holder to sign the agreement and deliver the notes as soon as possible that morning.

31. At approximately 6:30 a.m., Lions Gate learned that the Shareholder made a new tender offer of \$6.50 per share for all of Lions Gate's stock, and by 9:30 a.m., the Friendly Director had purchased the notes from the Note Holder. By afternoon, he had converted the new notes into 16,236,305 shares of Lions Gate stock at \$6.20, representing approximately nine per cent of the outstanding shares of the Company's stock after the Conversion. As this conversion retired the new notes, it reduced Lions Gate's debt by \$99 million.

32. The July 20 Transactions diluted the positions of all Lions Gate shareholders including the Shareholder who was seeking to gain control of the Company. As a result of the July 20 Transactions, the percentage of Lions Gate's outstanding stock held by the Shareholder decreased from 37.87 percent to 33.5 percent, while the percentage beneficially owned by the Friendly Director increased from 19.99 percent to 28.9 percent.

Lions Gate Files a Form 8-K That Omits Material Information Regarding the July 20 Transactions

33. On the afternoon of July 20, 2010, Lions Gate issued a press release announcing the Exchange and Conversion and incorporated the release in the July 20, 2010 Form 8-K the Company filed with the Commission.

34. The press release attached to the Form 8-K stated in part: “The [Exchange] is a key part of the Company’s previously announced plan to reduce its total debt, as well as its nearer term maturities.”

35. Although Lions Gate had consummated and publicly disclosed four debt-reduction transactions between December 2008 and December 2009, Lions Gate had never announced a plan to reduce total debt prior to issuing the press release on July 20, 2010. Contrary to the statement in the July 20 press release, Lions Gate’s prior public filings stated:

- e. the Company was likely to take on more debt;
- f. Lions Gate’s regular course of business in producing or making motion pictures was to take on debt to finance films;
- g. most movies Lions Gate produced were financed with debt transactions; and
- h. Lions Gate had raised over \$224 million through the sale of high interest debt by October 27, 2009.

36. Neither the Form 8-K that Lions Gate filed nor the press release attached to it disclosed that:

- e. Lions Gate management hoped and expected the July 20 Transactions to effectively block the Shareholder’s takeover of the Company and that Lions Gate management viewed that as a desirable benefit of the transactions;
- f. An investment partnership managed by the Friendly Director purchased and converted the new notes;
- g. Lions Gate changed its insider trading policy to allow the Friendly Director to convert the notes; and
- h. Lions Gate lowered the conversion price following discussions with the Friendly Director.

Lions Gate Fails to Disclose Material Information about the July 20 Transactions in its Schedule 14D-9, dated August 2, 2010

37. On August 2, 2010, Lions Gate filed a Schedule 14D-9 with the Commission (the “Original Schedule 14D-9”). In this filing, Lions Gate recommended that shareholders not tender their shares to the Shareholder’s July 20 tender offer. In Item 6 of the Schedule 14D-9, Lions Gate listed recent securities transactions by some directors. The listed transactions totaled 2.5 million shares of Lions Gate stock and included individual transactions ranging from 17,000 to 350,000 shares each, with share prices from \$6.70 to \$6.98. However, the July 20 Transactions were not listed and Item 6 did not include the following required information:

- e. the Friendly Director converted notes to Lions Gate stock;

- f. the date of the conversion of the notes by the Friendly Director;
- g. the \$6.20 per share conversion price of the stock; or
- h. the nature of the July 20 Transactions that resulted in the Friendly Director obtaining over 16 million shares of Lions Gate Stock.

38. Lions Gate did not include any of the required information about the July 20 Transactions in Item 6 of any of the subsequent twenty-two amendments to its Original Schedule 14D-9.

The New York Stock Exchange Raises Questions About the July 20 Transactions

39. On July 28, 2010, the NYSE contacted Lions Gate to inquire whether the July 20 Transactions may have violated Section 312.03(b) of the NYSE Listed Company Manual (“Section 312.03(b)”). Section 312.03(b) requires a company to obtain shareholder approval prior to the issuance of common stock and securities convertible into common stock to a director or to any company in which the director may have a substantial interest when the number of shares to be issued exceeds one percent of the shares of stock outstanding before the issuance. If the July 20 Transactions were a “related transaction” within the meaning of Section 312.03(b), Lions Gate would have been required to submit the July 20 Transactions to all its shareholders for approval prior to executing it—which it had not done. Lions Gate took the position that the transactions did not require a shareholder vote, which is required by a NYSE rule applicable to large transactions between NYSE-listed companies and related parties, including board members.

40. On or about September 7, 2010, Lions Gate provided NYSE a draft public disclosure concerning the nature of the July 20 Transactions. This disclosure included the representation that the Exchange of Notes—the first component of the July 20 Transactions—was not part of a “pre-arranged series of transactions to issue shares to [the Friendly Director],” but did not disclose other details about the exchange that would have demonstrated the extent to which Lions Gate enabled the exchange and sale of the notes.

Lions Gate Omits Material Information About the July 20 Transactions in its Third Amended Schedule 14D-9

41. In its response to the NYSE’s inquiry, Lions Gate said it would disclose additional information in a publicly filed amendment to the Original Schedule 14D-9. On September 8, 2010, Lions Gate filed a Third Amended Schedule 14D-9 with the Commission that contained additional information about the July 20 Transactions.

42. In the Third Amended Schedule 14D-9, Lions Gate included a description of the July 20 Transactions. In this filing, Lions Gate stated that the “Exchange was not part of a pre-arranged series of transactions to issue shares to [the Friendly Director] . . .” and failed to disclose key details about the July 20 Transactions that would have demonstrated the extent to which Lions Gate planned and enabled the Exchange of Notes with the Note Holder and Sale of the new notes to the Friendly Director, including the facts that:

- d. The Board amended the Company’s insider trading policy at the same board meeting in which it approved the July 20 Transactions to allow the Friendly Director to immediately convert the notes to stock;
- e. The Board approved the Friendly Director’s request to change the New Note conversion price although the change was not requested by the Note Holder; and
- f. Lions Gate allowed the Friendly Director to review the New Note terms, term sheet, and exchange agreement before it provided them to the Note Holder.

43. Also, like the Original Schedule 14D-9 Lions Gate filed with the Commission, Item 6 of the Third Amended Schedule 14D-9 did not:

- e. Disclose that the Friendly Director converted the notes to Lions Gate stock;
- f. Disclose the date of the conversion of the notes by the Friendly Director;
- g. Disclose the \$6.20 per share conversion price of the stock; and
- h. Describe the nature of the July 20 transaction that resulted in the Friendly Director obtaining over 16 million shares of Lions Gate Stock.

44. After filing the Third Amended Schedule 14D-9, Lions Gate filed eighteen additional amendments of the Original Schedule 14D-9 with the Commission that contained recommendations to investors to reject the Shareholder’s tender offers. All of these amendments contained the statement that the “Exchange was not part of a prearranged series of transactions to issue shares to [the Friendly Director]” and all of them continued to omit the same information in Item 8 as the Third Amended Schedule 14D-9.

The July 20 Transactions Effectively Blocked The Shareholder’s Attempt to Take Control of Lions Gate

45. At a shareholder’s meeting on December 14, 2010, shareholders elected management’s slate of directors and rejected the slate endorsed by the Shareholder. The margin of defeat for one of the five directors proposed by the Shareholder (who, if elected, would have occupied one of the Company’s twelve board seats) was approximately 16 million shares—the same number of shares the Friendly Director obtained as a result of the July 20 Transactions.