

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 87611 / November 25, 2019

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4102 / November 25, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19607

In the Matter of

**CALUMET SPECIALTY
PRODUCTS PARTNERS, L.P.**

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 Calumet Specialty Products Partners, L.P. (“Calumet” 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. This matter concerns material misstatements made by Calumet in its March 2018 earnings release concerning its financial results for the year ending December 31, 2017 (“2017 Financial Results”).
2. Calumet disclosed in its third-quarter 2017 Form 10-Q that, beginning in September 2017, Calumet’s implementation of its new enterprise resource planning (“ERP”) system had resulted in various “operating and reporting disruptions, including limitations on [Calumet’s] ability to ship product and bill customers, project [its] inventory requirements, manage [its] supply chain, maintain current and complete books and records, maintain an effective internal control environment and meet external reporting deadlines.”
3. Between October and December 2017, three senior finance and accounting managers, including the company’s interim controller, left the company.
4. Calumet was seven weeks late filing its financial results for the third quarter of 2017 and, in that filing, announced two material weaknesses in internal control over financial reporting (“ICFR”).
5. Calumet’s ERP implementation issues and material weaknesses in ICFR continued into March 2018. On March 1, Calumet’s independent auditor identified a potential additional material weakness in the company’s ICFR with respect to the financial statement closing process.
6. Calumet investors, concerned that Calumet would not be able to disclose its 2017 Financial Results on time, began pressuring the company to issue an earnings release consistent with Calumet’s practice in prior years.
7. Despite the departure of senior finance and accounting managers, the pervasive ERP implementation and internal control issues, and the seven-week delay in the filing of its third quarter 2017 Form 10-Q, Calumet issued an earnings release on March 8, 2018, announcing the company’s 2017 Financial Results. The earnings release was furnished as an exhibit to a Form 8-K, which was filed with the Commission.
8. The earnings release materially misstated, among other things, the company’s earnings for 2017.
9. On March 19, Calumet filed a Form 8-K with the Commission disclosing that it expected its 2017 Financial Results to differ from what had been reported in the March 8 earnings release. Calumet’s shares declined over eight percent that day.
10. On April 2, Calumet filed its 2017 Annual Report on Form 10-K (“2017 Form 10-K”). The 2017 Financial Results reported in the 2017 Form 10-K were materially different from what had been reported in the March 8 earnings release. For example, in its March 8 earnings release, Calumet had reported 2017 earnings before interest, taxes, depreciation, and amortization

(“EBITDA”) that were \$18.7 million (7.6 percent) higher than what it reported in the 2017 Form 10-K and had under-reported its 2017 net loss also by \$18.7 million (eighteen percent). Calumet’s misstatements were directly related to the problems resulting from Calumet’s ERP implementation and ICFR weaknesses. .

RESPONDENT

11. Calumet Specialty Products Partners, L.P., a producer of specialty hydrocarbon products, is a Delaware limited partnership with its headquarters in Indianapolis, Indiana. Calumet’s common units are registered with the Commission pursuant to Section 12(b) of the Exchange Act. Calumet’s common units trade on the NASDAQ Global Select Market. Calumet files periodic reports, including Forms 10-K and 10-Q, and current reports on Form 8-K, with the Commission pursuant to Section 13(a) of the Exchange Act and the related rules thereunder.

FACTS

Calumet Filed Its Third Quarter Form 10-Q Seven Weeks Late Due to the ERP Implementation Problems and ICFR Weaknesses.

12. In September 2017, Calumet transitioned to a new ERP system, in an attempt to enhance the effectiveness of its business operations, including invoicing, inventory control, and financial reporting.

13. Calumet knew that deploying the new ERP system involved risks inherent in the conversion to a new computer system, including loss of information, disruption to normal operations, and changes in accounting procedures and ICFR.

14. Calumet disclosed in its third-quarter 2017 Form 10-Q that, beginning in September 2017, , Calumet’s implementation of its new ERP system resulted in various “operating and reporting disruptions, including limitations on [Calumet’s] ability to ship product and bill customers, project [its] inventory requirements, manage [its] supply chain, maintain current and complete books and records, maintain an effective internal control environment and meet external reporting deadlines.”

15. As a result of these disruptions, Calumet implemented a manual process to track shipments, goods received, and accounts payable invoices, which caused significant backlogs and stress on the company’s operating and accounting staff.

16. In late October 2017, Calumet’s interim controller left the company.

17. In November 2017, Calumet identified two material weaknesses in its ICFR,¹ including a failure to “exercise sufficient corporate governance and oversight, design effective controls over the ERP implementation to ensure appropriate data conversion and data integrity, or provide sufficient end user training to [its] employees to ensure that [its] employees could effectively operate the system and carry out their responsibilities.”

18. In December 2017, Calumet’s director of internal audit and compliance and the company’s financial planning manager both departed the company. At the same time, Calumet suffered from significant employee turnover in its accounts payable department.

19. Also in December 2017, Calumet management informed the company’s audit committee that Calumet likely would not have a stable ERP system until at least sometime in the first quarter of 2018.

20. Because of these and other challenges, Calumet did not file its Form 10-Q for the third quarter of 2017 until December 28, 2017 — approximately seven weeks late. The company disclosed the two material weaknesses described above at that time.

Calumet’s ERP Implementation Problems and ICFR Weaknesses Persisted into Early 2018 and Investors Pressured the Company to Pre-Announce Earnings.

21. Despite remedial efforts undertaken by the company, Calumet’s internal financial reporting challenges and material weaknesses created by the ERP transition continued into 2018.

22. As of mid-February 2018, Calumet had not announced when it expected to issue an earnings release, as it had done in prior years. Calumet had typically issued an earnings release prior to filing its annual report on Form 10-K in order to highlight for investors those results and messages that management believed were most important.

23. Calumet was informed by its external investor relations firm that investors were concerned that Calumet again was having problems reporting its financial results on time. Investors, analysts, and the media began asking when Calumet would release earnings and the reasons for the delay in doing so.

24. In addition, Calumet management had been planning to repurchase (or “call”) \$400 million in high-interest secured notes by mid-March 2018 and wanted to issue the earnings release at the same time that it announced that redemption to achieve a stronger market impact.

25. Calumet, therefore, was under significant pressure to file its Form 10-K by the March 16, 2018 deadline for doing so and, consistent with its usual practice, to issue an earnings release

¹ A “material weakness” is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the registrant’s annual or interim financial statements will not be prevented or detected on a timely basis. Rule 1-02(a)(4) of Regulation S-X.

several days prior to filing the Form 10-K.

26. In the face of those pressures, and notwithstanding the material weaknesses and the continuing challenges with its ERP system — all of which created a significant risk that Calumet would misstate its year-end financial statements — Calumet announced on February 28, 2018, that it would issue an earnings release on March 8.

27. On March 1, Calumet’s independent auditor sent a member of Calumet management a draft memo noting that the “pervasive ERP system issues have also resulted in a delay in the financial statement close process and execution of certain financial statement controls, including timely account reconciliation, analysis and review, not operating as intended for all financial statement accounts.” Calumet later concluded that this issue constituted a third material weakness, and it disclosed it on April 2, 2018.

28. On March 6, Calumet management presented to Calumet’s audit committee and the board of directors a draft of Calumet’s 2017 Form 10-K and the earnings release that included the company’s 2017 Financial Results.

29. During those meetings, Calumet management made a presentation describing the ongoing pervasive problems with the company’s accounting and ICFR, including that: (a) the company still had a “long way to go” to stabilize the ERP system; (b) the company had various enterprise-wide issues adversely affecting downstream accounting activities; and (c) the company’s accounts payable invoice backlog was “a major issue,” with at least 6,900 invoices in backlog (compared to a “stabilized level” of 1,500). Also at the March 6 meeting, the company’s independent auditor informed Calumet’s audit committee that its audit of the company’s 2017 year-end financial statements was still not complete, and that the “pervasive ERP system issues” had delayed the financial statement closing process and had resulted in over 150 post-closing accounting adjustments, which had substantially impacted all of the company’s financial statement accounts. The audit committee and the board of directors voted to approve the Form 10-K, which was scheduled to be filed on March 16.

Despite Persistent ERP Implementation Problems and ICFR Weaknesses, Calumet Issued the 2017 Earnings Release.

30. On March 6, shortly after the board of directors had approved the 2017 Financial Results, Calumet began to make additional accounting journal entries. Those accounting adjustments caused the company’s “limited partners’ interest basic and diluted net loss per unit”² to increase by four percent, from \$1.03 per unit to \$1.07 per unit. The company’s “net loss before income tax from continuing operations” increased by 33 percent, from \$9.1 million to \$12.1 million.

31. Calumet issued the earnings release on March 8, despite additional accounting

² “Limited partners’ interest basic and diluted net loss per unit” is a measure of “earnings per share” for master limited partnerships such as Calumet.

adjustments that had been recorded from March 6 to March 8, and although Calumet's auditor had identified a potential additional material weakness in the company's ICFR with respect to the financial statement closing process. The earnings release was furnished as an exhibit to a Form 8-K, which was filed with the Commission. The 2017 Financial Results included in the earnings release were presented as the company's final results, not preliminary results. Calumet management also held a conference call with investors in the morning of March 8 to discuss the company's financial results.

32. However, by March 13, Calumet realized that the earnings release would need to be corrected. Acknowledging that "reality [had] finally set in," a member of Calumet management explained in an email that Calumet likely would have to "make downward adjustments" to the 2017 Financial Results that had been disclosed in the March 8 earnings release, as well as disclose a third material weakness. The email also noted that the company had a "lack of practice and confidence in [its] ability to close the [accounting] system," that the company's accounts receivable, accounts payable, and "other piles of issues" would "likely not be mitigated" in the next two weeks, and that Calumet therefore probably would be "late in filings for 2-3 quarters."

33. On March 19, Calumet filed a Form 8-K disclosing that it expected its 2017 Form 10-K to contain 2017 Financial Results that differed from what had been reported in the March 8 earnings release.

34. Investors reacted negatively. The price of Calumet stock declined over eight percent that day, and trading volume increased by over 415 percent from the previous trading day. One investor told Calumet that it was concerned that it could no longer rely on the company's public data and that the incident "tarnishes the confidence that investors have in the company."

35. The misstatements in the earnings release principally were the result of (1) Calumet's failure to accurately record all invoices into the company's accounting system, and (2) Calumet's failure to accurately reconcile accounts, caused in part by a large backlog of unpaid invoices and goods receipts. Those failures were directly related to the persistent ERP implementation and ICFR problems that Calumet management had described during the March 6 meeting of Calumet's audit committee, prior to issuing the earnings release.

36. On April 2, 2018, Calumet filed its 2017 Form 10-K, in which it disclosed a third material weakness concerning the "untimely and insufficient operation of controls in the financial statement close process, specifically the lack of timely account reconciliation, analysis and review related to all financial statement accounts."

37. The 2017 Financial Results reported in that Form 10-K were materially different from what had been reported in the March 8 earnings release. For example, Calumet reported in its March 8 earnings release 2017 EBITDA of \$265.4 million, which was \$18.7 million (7.6 percent) higher than it reported in its 2017 Form 10-K, and a net loss of \$85.1 million, which was \$18.7 million lower than the net loss of \$103.8 million (eighteen percent) reported in the 2017 Form 10-K. The company's "limited partners' interest basic and diluted net loss per unit"

increased from \$1.07 per unit to \$1.31 per unit, an understatement of over eighteen percent.

VIOLATIONS

38. Section 13(a) of the Exchange Act and Rules 13a-11 and 12b-20 promulgated thereunder collectively require issuers of securities registered pursuant to Section 12 of the Exchange Act to file with the Commission accurate current reports on Form 8-K that contain material information necessary to make the required statements made in the reports not misleading.

39. As a result of the conduct described above, Calumet violated Section 13(a) of the Exchange Act and Rules 13a-11 and 12b-20 promulgated thereunder with respect to the Form 8-K filed on March 8, 2018.

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 Section 13(a) of the Exchange Act and Rules 13a-11 and 12b-20 promulgated thereunder.

B. Within 21 days of the entry of this Order, Calumet shall pay a civil money penalty in the amount of \$250,000 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 the Respondent's name 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 Antonia Chion, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, DC 20549-5720.

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 a 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