

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 91718 / April 29, 2021

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4215 / April 29, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20271

In the Matter of

ASTA FUNDING, 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 Asta Funding, Inc. (“Asta” 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 finds¹ that:

Summary

1. These proceedings arise out of the violation of Exchange Act Rule 12b-25, which requires that issuers that fail to file timely a periodic report shall file a Form 12b-25 "Notification of Late Filing," commonly known as "Form NT," which contains, among other things, reasonable detail as to why the issuer's periodic report could not be filed on time and an explanation of any anticipated, significant changes in the issuer's results of operations.

2. In May 2020, Asta violated Rule 12b-25 by filing a Form 12b-25 with the Commission in which Asta failed to disclose why, in sufficient detail under the circumstances presented, its second-quarter, fiscal year ("FY") 2020 Form 10-Q could not be timely filed. Asta's Form 12b-25 also failed to acknowledge anticipated, significant changes in Asta's results of operations for the second quarter of FY2020, compared with Asta's operating results in the second quarter of FY2019, and to provide an explanation of the changes, as required under the rule. Eleven days after filing its Form 12b-25, Asta filed a Form 10-Q disclosing to investors and the market that the company's previously issued FY2019 year-end financial statements required corrections. Asta, however, had failed to include in its Form 12b-25 any disclosure that the discovery, and ongoing correction, of errors in its FY2019 year-end financial statements were among the principal reasons that it was unable to file timely the subject Form 10-Q for the second quarter of FY2020. Asta further failed to file the subject Form 10-Q within the extension period provided by Rule 12b-25.

Respondent

3. Asta, a Delaware corporation based in Englewood Cliffs, New Jersey, engages in the consumer receivables business in the United States, Puerto Rico, and South America. Prior to a September 2020 going-private transaction, Asta common stock was registered under Section 12(b) of the Exchange Act and traded on the NASDAQ Global Select Market.

Legal Framework and Facts

4. Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder require issuers with a security registered pursuant to Section 12 of the Exchange Act to file with the Commission annual reports on Form 10-K and quarterly reports on Form 10-Q.

5. Rule 12b-25 provides that if an issuer fails to file a Form 10-K or 10-Q within the time period prescribed for such report, the issuer, no later than one business day after the due date

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.

for such report, shall file a Form 12b-25 with the Commission, disclosing the issuer's inability to file the report timely and the reasons therefore in reasonable detail.² Form 12b-25 requires the issuer to affirm, among other things, that the subject periodic report will be filed within fifteen calendar days, for a Form 10-K, or within five calendar days, for a Form 10-Q, of the report's prescribed due date, and requires that the report actually be filed within such period. Form 12b-25 also requires the issuer to confirm whether or not it anticipates that any significant change in results of operations from the corresponding period for the prior fiscal year will be reflected by the earnings statements to be included in the subject periodic report. If such change is anticipated, the issuer must attach a narrative and quantitative explanation of the anticipated change and, if appropriate, state the reasons why a reasonable estimate of the results cannot be made.

6. On May 18, 2020, Asta filed with the Commission a Form 12b-25 disclosing that Asta could not file timely its Form 10-Q for its second fiscal quarter, ended March 31, 2020, "due to delays experienced in the collection, compilation and analysis of certain information that may be included in the Quarterly Report."

7. Furthermore, in its Form 12b-25, Asta affirmed that it would file the subject Form 10-Q within the five-calendar-day extension period, *i.e.*, by May 20, 2020, and indicated that it did not anticipate that any significant change in results of operations from the corresponding period for the prior fiscal year would be reflected in the subject Form 10-Q.

8. On May 29, 2020, *i.e.*, nine days after the five-day extension period had ended, Asta filed with the Commission its Form 10-Q for the second quarter of FY2020, disclosing that, "[d]uring the preparation of its Quarterly Report on Form 10-Q for the three and six months ended March 31, 2020, Asta ... determined that certain adjustments were needed to correct the previously issued September 30, 2019 consolidated financial statements. Specifically, management determined that it had understated its income taxes payable and related income tax expense from foreign operations and understated accrued professional fees and related professional fee expense as of and for the year ended September 30, 2019."

9. Asta's inability to meet the filing deadline for its second-quarter FY2020 Form 10-Q was due, in large part, to the discovery, and ongoing correction, of errors in its FY2019 year-end financial statements. In its Form 12b-25, however, Asta failed to disclose this information and failed to provide the detailed narratives and quantitative explanation specifically called for by the form. The company anticipated that its second-quarter FY2020 financial results, when reported, would differ significantly from its second-quarter FY2019 financial results, including a 26% decrease in quarterly revenue and a 96% decrease in quarterly income before income tax versus second quarter FY2019.

10. Additionally, although Asta affirmed in its May 18, 2020 Form 12b-25 that it would file its third-quarter FY2019 Form 10-Q within five calendar days of the original due date, it ultimately failed to do so. In fact, Asta did not file the subject Form 10-Q until fourteen calendar days after the original due date, on May 29, 2020.

² Form 12b-25 specifies a "narrative" disclosure. (*See* Form 12b-25, Part III.)

Violations

11. As a result of the conduct described above, Asta violated Section 13(a) of the Exchange Act and Rule 12b-25 thereunder.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Asta cease and desist from committing or causing any violations and any future violations of Section 13(a) of the Exchange Act and Rule 12b-25 thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$50,000.00 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 Asta 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 Anita B. Bandy, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

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