

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11122 / October 21, 2022

SECURITIES EXCHANGE ACT OF 1934
Release No. 96126 / October 21, 2022

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4355 / October 21, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21213

In the Matter of

MATTEL, INC.

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND 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 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Mattel, Inc. (“Mattel” 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 8A of the Securities Act of 1933 and Section 21C of the Securities and 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. On August 8, 2019, Mattel disclosed in a Form 8-K that it was made aware of an anonymous whistleblower letter. The letter alleged accounting errors and questioned the independence of Joshua Abrahams ("Abrahams"), the then-lead engagement partner for Mattel with the company's outside audit firm, PricewaterhouseCoopers LLP ("PwC"). Mattel terminated its pending \$250 million senior notes offering, and its audit committee initiated an independent internal investigation. The audit committee's investigation concluded that there were material misstatements in the tax-related valuation allowance for Q3 2017, which was understated by \$109 million, and in the tax expense for Q4 2017, which was overstated by \$109 million. The valuation allowance was understated in Q3 because Mattel's Thomas the Tank Engine asset ("Thomas") was erroneously treated for purposes of the valuation allowance calculation as a definite-lived asset that should be amortized, whereas at the time it was classified as an indefinite-lived asset on Mattel's balance sheet. The audit committee also concluded that Abrahams violated auditor independence rules. The audit committee did not find that management had engaged in fraud.

2. On October 29, 2019, Mattel announced that it would restate its financial results for Q3 and Q4 2017. Because the Q3 understatement and Q4 overstatement self-corrected the error for the fiscal year ended December 31, 2017, the FYE 2017 financial statements did not need to be restated. Mattel's Form 10-K/A, filed on November 12, 2019, disclosed that the Q3 and Q4 financials were materially misstated and that, as a result of the \$109 million misstatement, Mattel's Q3 2017 provision for income taxes was understated by 14%, and net loss and net loss per share were understated by 15%. Additionally, Mattel's Q4 2017 provision for income taxes was overstated by 62%, and net loss and net loss per share were overstated by 63% for that period.

3. Mattel's Form 10-K/A also disclosed two material weaknesses in internal control over financial reporting related to the error: (1) failure to design and operate an internal control over the review of the income tax valuation allowance analysis (calculation), which was remediated by December 31, 2018; and (2) failure to design and operate internal controls to properly assess and communicate known financial statement errors and internal control deficiencies in a timely manner to those parties responsible for taking corrective action, including, for example, the CEO and board of directors, which was remediated as of December 31, 2019. In addition, Mattel disclosed that its outside auditor had restated its report on internal control over financial reporting and issued an adverse opinion.

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.

RESPONDENT

4. **Mattel, Inc.** is a Delaware corporation with its headquarters in El Segundo, California. Mattel's common stock trades on NASDAQ under the ticker symbol MAT. Mattel's common stock is registered pursuant to Section 12(b) of the Exchange Act.

FACTS

Mattel's Q3 2017 Valuation Allowance Calculation Error

5. At the end of Mattel's third quarter in 2017, Mattel recorded a valuation allowance against deferred tax assets. A deferred tax asset is an asset that a company can use to reduce or eliminate a future tax liability, but if a company does not expect to generate taxable income in the future, the deferred tax assets have no value because there will be no tax liability to offset. As a result, once a company determines that it is not likely to have future taxable income, it must record a valuation allowance against the deferred tax assets and reduce their value. As part of the calculation, a corporation may lower its valuation allowance by netting out the value of certain deferred tax liabilities. Under the tax law in Q3 2017, only liabilities classified as definite-lived (i.e., related to assets which are amortized) could be used to lower the valuation allowance. If a liability had been classified as indefinite-lived, it could not reduce the valuation allowance.

6. Prior to Q3 2017, Mattel had never taken a valuation allowance. However, as of Q3 2017, Mattel had suffered three years of cumulative losses and in September 2017, Mattel's largest customer declared bankruptcy. After consulting with its national office, PwC's engagement team informed Mattel that it would need to take a valuation allowance. Mattel personnel began calculating the valuation allowance. At that time, Mattel had no internal control specifically related to calculating a valuation allowance (as Mattel disclosed in its restatement, this material weakness was not remediated until the quarter ended December 31, 2018). In mid-October 2017, days before Mattel was scheduled to report its Q3 2017 earnings, one of PwC's tax managers identified a \$129 million error because a deferred tax liability related to goodwill had been included in the initial calculation of the valuation allowance. Because goodwill is an indefinite-lived asset, a deferred tax liability should not have been used to lower the valuation allowance. This error in the initial valuation allowance calculation was corrected before Mattel filed its Q3 2017 Form 10-Q.

Discovery of Another Error in January 2018

7. In mid-January 2018, one of Mattel's tax directors discovered another error in the reported calculation of the Q3 2017 valuation allowance. In Q3 2017, Thomas was classified as an

indefinite-lived asset. However, Mattel's tax department mistakenly accounted for Thomas as a definite-lived asset and used a deferred tax liability to reduce the amount of the valuation allowance by \$109 million. As a result, the reported \$561.9 million valuation allowance was understated in Q3 by \$109 million.

8. This Mattel tax director discovered the error on Saturday, January 13, and informed PwC's tax partners on the engagement. PwC's senior tax partner on the engagement sent an email to the junior tax partner with three possible options to correct the \$109 million error: a tax planning strategy to sell Thomas to a high tax jurisdiction; a reclassification of Thomas from an indefinite-lived to a definite-lived asset; and moving Thomas' book basis to the UK. On Monday, January 15, this Mattel tax director informed others in Mattel's tax department. Mattel's controller's office, along with the head of tax and head of internal audit, started researching the issue and held a series of internal meetings (in December 2017, Mattel had already decided to evaluate whether Thomas should be reclassified). On January 16, the head of Mattel's tax department informed Mattel's CFO of the error, and PwC's tax partners informed Abrahams of the error. On January 17, after consulting with Abrahams and Mattel's internal accounting team, both of whom recommended that Thomas should be reclassified, Mattel's CFO decided that Mattel should reclassify Thomas. As a result, Mattel reclassified the Thomas asset as of October 1 (the start of Q4) from indefinite-lived to definite-lived. Although this error did not affect Mattel's full year financial results, Mattel's Q3 and Q4 2017 tax provisions remained understated and overstated, respectively. Mattel's CFO did not inform Mattel's CEO of the \$109 million error.

9. Mattel's internal accounting groups failed to document any analysis regarding whether the Q3 2017 \$109 million understatement should be considered material and restated. Not only was there no documented analysis regarding an assessment of the error's materiality, but there was little other documentation of the error.

10. Similarly, with respect to internal control over financial reporting, Mattel's accounting groups should have known that there was an internal control deficiency (as set forth in the restatement, a material weakness) associated with the calculation of the valuation allowance, but Mattel did not document how and why the error happened and how it could be remedied, including with respect to the failure of any internal control over financial reporting and how to remedy the control deficiency. In addition, Mattel failed to have processes in place to inform its CEO or the audit committee of the \$109 million error or of any associated deficiencies in internal control over financial reporting.

Mattel's CFO Fails To Inform the Audit Committee

11. In late January, Mattel's audit committee met to discuss the year end results. Relying on his discussions regarding materiality with Abrahams and Mattel's accounting personnel, Mattel's CFO did not inform the audit committee of the \$109 million error. He also

failed to inform the audit committee of the impact of the Thomas reclassification on the reporting of the tax provision amounts (i.e., the self-correcting flip).

Mattel Repeats the Incorrect Valuation Allowance on its Earnings Call and in its Form 10-K

12. On February 1, 2018, Mattel held its year-end earnings call. Mattel's CFO repeated the erroneous \$561.9 million valuation allowance amount from Q3 2017 on the call, stating "[a]s I mentioned on our third quarter earnings call, we booked a onetime noncash charge of \$561.9 million to record a valuation allowance for a significant portion of our deferred tax assets." On February 27, Mattel filed its 2017 Form 10-K, which included the Q3 and Q4 uncorrected quarterly financial information and, in addition, twice repeated the \$561.9 million erroneous valuation allowance amount that was previously reported in the Q3 2017 Form 10-Q. Additionally, in May 2018, Mattel offered and sold senior notes in an offering at a time in which its financial statements for the third and fourth quarters of 2017 were materially misstated.

VIOLATIONS

13. Section 17(a)(2) of the Securities Act proscribes, in the offer or sale of a security, obtaining "money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." Section 17(a)(3) of the Securities Act proscribes, in the offer or sale of a security, engaging "in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." A violation of these provisions does not require scienter and may rest on a finding of negligence. *See Aaron v. SEC*, 446 U.S. 680, 685 & 701-02 (1980).

14. Section 13(a) of the Exchange Act and Rule 13a-1 thereunder require issuers to file such periodic and other reports as the Commission may prescribe and in conformity with such rules as the Commission may promulgate. Exchange Act Rules 13a-11 and 13a-13 require issuers with securities registered under Section 12 of the Exchange Act to file current and quarterly reports, respectively. The obligation to file such reports embodies the requirement that they be true and correct. *See, e.g., SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978). In addition to the information expressly required to be included in such reports, Rule 12b-20 of the Exchange Act requires issuers to add such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading. A violation of these reporting provisions does not require scienter. *See SEC v. Wills*, 472 F. Supp. 1250, 1268 (D.D.C. 1978).

15. Section 13(b)(2)(A) of the Exchange Act requires Section 12 registrants to make and keep books, records, and accounts that accurately and fairly reflect the transactions and dispositions of their assets. Section 13(b)(2)(B) of the Exchange Act requires all reporting companies, among other things, to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit

preparation of financial statements in accordance with GAAP. Scienter is not an element of the books-and-records and internal accounting controls provisions. *See Ponce v. SEC*, 345 F.3d 722, 737 n.10 (9th Cir. 2003) (noting that a “plain reading of Section 13(b) reveals that it also does not impose a scienter requirement”).

16. As a result of the conduct described above, the Commission finds that Mattel violated Securities Act Sections 17(a)(2) and 17(a)(3), and Exchange Act Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and Rules 12b-20, 13a-1, 13a-11, and 13a-13, thereunder.

MATTEL’S COOPERATION AND REMEDIAL EFFORTS

17. In determining to accept Mattel’s Offer, the Commission considered remedial acts promptly undertaken by Mattel and cooperation afforded the Commission staff. Mattel filed a Form 8-K only two days after being made aware of the whistleblower letter and immediately terminated its senior notes offering. In addition, Mattel’s audit committee promptly commenced an independent internal investigation, and the company restated its financials only three months after being made aware of the whistleblower letter. The results of the audit committee’s investigation were shared with the staff. The company remediated the material weaknesses in internal control and put new policies in place regarding, among other things, evaluating the materiality of errors and its internal controls. In addition, when Mattel announced its restatement, it also announced that its CFO would depart after a six month transition period (briefly extended because of the pandemic).

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent’s Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Mattel cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, and Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

B. Mattel shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$3,500,000 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 Mattel 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 Alka N. Patel, Associate Regional Director, Division of Enforcement, Los Angeles Regional Office, Securities and Exchange Commission, 444 South Flower St., Suite 900, Los Angeles, CA 90071.

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