

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11129 / November 1, 2022

SECURITIES EXCHANGE ACT OF 1934
Release No. 96193 / November 1, 2022

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4360 / November 1, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21223

In the Matter of

Koppers Holdings 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 and in the public interest 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 Koppers Holdings Inc. (“Respondent” or “Koppers”).

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 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 Koppers’ failure to disclose material information about its debt reduction efforts that rendered statements it made materially misleading during fiscal year 2019. Throughout 2019, Koppers emphasized debt reduction and regularly reported two debt-related non-GAAP financial measures – net debt and net leverage ratio – in its press releases for quarterly earnings which were attached to its Forms 8-K furnished to the Commission at quarterly and year-end, and during its earnings calls.¹ In connection with its 2018 year-end press release, Koppers specifically announced that it planned to reduce debt by \$80 million during fiscal year 2019. Koppers continued to highlight its debt reduction goal throughout the 2019 fiscal year and announced that it had achieved its goal in its 2019 year-end earnings announcement.

2. As recognized by Koppers, the company’s high debt and leverage were concerning to investors. These measures were also emphasized by analysts who covered Koppers. Koppers itself tracked its debt on a daily basis.

3. However, to achieve its announced debt reduction target, Koppers delayed making material amounts of overdue payments to vendors. For instance, at fiscal year-end 2019, Koppers delayed the payment of approximately \$72 million in vendor invoices, which corresponded to over 85% of its reported \$81.6 million net debt reduction for 2019. Koppers then paid those past due invoices the week after the end of the reporting period through a drawdown of its revolving line of credit, thereby reversing most of its reported 2019 net debt reduction. Accordingly, Koppers’ net debt reduction was only temporary and was reversed soon after the close of each reporting period of 2019. Without these actions, Koppers would not have achieved the 2019 year-end debt reduction goal it had highlighted to investors.

¹ A non-GAAP financial measure is a numerical measure of a registrant’s historical or future financial performance, financial position, or cash flows that (i) excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the most directly comparable measure calculated and presented in accordance with Generally Accepted Accounting Principles (“GAAP”) in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or (ii) includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the most directly comparable measure so calculated and presented. 17 C.F.R. § 244.101(a)(1). A non-GAAP financial measure does not include financial measures required to be disclosed by GAAP. *Id.* § 244.101(a)(3).

4. As a result of Koppers' failure to disclose the impact of its debt reduction practices, Koppers' public statements were materially misleading. In particular, throughout 2019, Koppers made positive statements regarding its debt reduction efforts, goals, and the ultimate achievement of the 2019 goal, without disclosing its practice of delaying significant payments on past due vendor invoices. Koppers also failed to disclose that without these practices, it could not have met the debt reduction goal it highlighted to investors for 2019 nor that the net debt reduction the company announced was temporary and soon reversed after the close of the quarter.

5. As a result of this conduct, Koppers violated Section 17(a)(3) of the Securities Act, Section 13(a) of the Exchange Act, Exchange Act Rules 12b-20 and 13a-11, and Rule 100(b) of Regulation G thereunder.

Respondents

6. Koppers Holdings Inc., a Pennsylvania corporation headquartered in Pittsburgh, Pennsylvania, is a global provider of wood products, wood treatment chemicals, and carbon compounds. Koppers' common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its shares trade on the New York Stock Exchange under the ticker "KOP." Koppers files periodic reports, including Forms 10-K and 10-Q with the Commission, pursuant to Section 13(a) of the Exchange Act and the related rules thereunder. On February 27, 2020, contemporaneous with its 2019 fourth quarter earnings release, Koppers filed a 424B3 prospectus supplement for an at-the-market offering. Substantially all of Koppers' operations are conducted through its sole operating subsidiary, Koppers Inc.

FACTS

Koppers Emphasized Reducing Net Debt and Net Leverage Ratio

7. Koppers has a long history of repurposing steel production byproducts. In 2013, these product lines accounted for 60% of Koppers' revenue. However, in 2014, Koppers began a reorientation of its business around wood preservation products; this entailed facility consolidation and debt-funded acquisitions. To that end, Koppers purchased a chemical company in 2014, a utility pole company in 2018, and a railroad tie disposal company in 2018. As a result, by the end of 2018, Koppers' debt and leverage exceeded that of its peers.

8. At the start of 2019, Koppers announced debt reduction as one of three main areas of focus for the year. Koppers used two non-GAAP financial measures to communicate its debt profile: "net debt" which it defined as total debt minus cash and "net leverage ratio" which it defined as the ratio of net debt to trailing twelve month adjusted earnings before interest, taxes, depreciation and amortization. For 2019, Koppers announced a goal of reducing net debt by \$80 million by year-end and achieving a net leverage ratio of between 3.8 and 4.1. Koppers closely monitors its net debt against its expected adjusted earnings. In fact, Koppers' net debt was the only measure which was tracked on a daily basis and distributed to senior management.

9. Koppers understood that investors were concerned with its high debt and leverage. In February 2020, on the year-end 2019 earnings call, Koppers explained, “It's been clear for some time that the investment community has concerns about our leverage although just about every other measure of performance and risk has improved from where we started five years ago.” Koppers was also regularly asked about its debt in meetings with investors.

10. Analysts covering Koppers also emphasized the importance of debt reduction to the company's health and stock price improvement and noted that the company expected to use its historically higher cash flows in the second half of 2019 to pay down debt. For instance, in August 2019, one analyst wrote: “We do expect a significant increase in free cash flow generation which will be used to reduce debt and move enterprise value from debt to equity holders.” Similarly, in October 2019, an analyst wrote: “Our investment thesis has been underpinned by debt pay down and improving operating efficiency.” Another analyst titled his October 2019 report “Upside Hinges on Debt Reduction, Productivity Gains” and still another wrote in November 2019, “Despite leveraging up in the past for acquisitions, the company has shown an ability to reduce debt through profit generation. . . . The company is focused on reducing its leverage to 3.0x by the end of 2020.”

Koppers' Undisclosed Practice for Achieving Debt Reduction and Misleading 2019 Disclosures

11. Throughout 2019, Koppers discussed its net debt and net leverage ratio on quarterly earnings calls as well as in press releases for quarterly earnings, which were attached to Forms 8-K it furnished to the Commission. On each quarterly and year-end call for 2019, Koppers reemphasized its year-end debt reduction goals and highlighted its progress towards achieving those goals.

12. However, Koppers did not disclose material information about its reported debt reduction. Every quarter, Koppers delayed paying its vendors beyond the payment terms of their invoices. Koppers had the ability to pay its vendors, but it chose not to do so in order to meet its net debt targets. Koppers delayed these vendor payments *en masse* until after the reporting period had ended, excepting only critical vendors to avoid disrupting the operations of the company. Then, within a week after the close of the reporting period, Koppers would draw down from its revolving line of credit to pay the past due vendor invoices and thereby materially increase its net debt and net leverage ratio. Indeed, by the time Koppers was announcing progress towards debt reduction for the quarter, a significant portion of that reduction had already been reversed.

13. In its first quarter 2019 press release, Koppers stated, “The [net leverage] ratio is projected to be in the range of 3.8x to 4.1x at December 31, 2019. The company continues to focus on debt repayment and plans to reduce debt by a minimum of \$80 million in 2019.” For the quarter, the company reported net debt of \$974.6 million and a net leverage ratio of 4.8. However, Koppers delayed about \$48.1 million in past due vendor payments to achieve this debt level. If it had not done so, Koppers would have had a net debt of over \$1.02 billion and a net leverage ratio of 5.1.

14. In its second quarter earnings press release, Koppers stated, “We continue to have a positive story to tell, starting with our strong first-half performance, which keeps us squarely on track to meet or exceed our financial goals for 2019... We should see operating cash flows improve in the second half of the year as typically occurs and in turn, this will allow us to focus on our near-term priority of reducing leverage and risk, which we believe will have a strong impact on improving total shareholder return.” During the earnings call, Koppers similarly highlighted its progress and that it was on track to meet its announced goal of reducing net debt by \$80 million by year end. The company reported net debt of \$965.1 million and a net leverage ratio of 4.6. However, Koppers did not disclose that it had delayed approximately \$24 million in past due vendor payments to achieve this debt level. Had it not done so, Koppers would have had a net debt of over \$989.1 million and a net leverage ratio of 4.7.

15. In its third quarter earnings press release, Koppers stated that net debt was lower from year end 2018 by \$31.4 million “consistent with the company’s focus on debt reduction. At September 30, 2019, the company’s net leverage ratio was 4.2, and a decrease from 4.6 at June 30, 2019.” Koppers reiterated its debt reduction guidance to reduce debt by \$80 million by year end and stated “we remain committed to further paying down debt in order to reduce leverage and risk to create shareholder value.” The company reported net debt of \$918.4 million and a net leverage ratio of 4.2. However, it did not disclose that to achieve this debt level, it delayed \$20 million in past due vendor payments. Had it not done so, Koppers would have had a net debt of over \$938.4 million and a net leverage ratio of 4.3.

16. On February 18, 2020, Koppers provided a preview of its year-end operating results which underperformed the company’s guidance and the consensus analysts’ estimates for earnings per share and revenue. However, the company announced that it achieved its debt reduction goals, stating, “On a year-over-year basis, the net debt was lower by \$81.6 million, which reflects our relentless focus on debt reduction.” Notwithstanding the disappointing quarter, the company stated “On the positive side, we had a very strong fourth quarter cash flow, which has brought our net debt at year-end to below \$870 million.” In its February 27, 2020 earnings announcement, Koppers confirmed its \$81.6 million reduction of net debt and reported that “The company’s net leverage ratio was 4.1 at December 31, 2019, compared with 4.2 on a pro forma basis at December 31, 2018.” On the same day, Koppers filed an automatic shelf registration on Form S-3 along with a prospectus supplement for an at-the-market offering.

17. However, Koppers' announced \$81.6 million net debt reduction was only made possible by delaying \$72 million in past due vendor payments. If Koppers had not delayed these payments, the company would not have met its net debt reduction target and would have reduced net debt by only \$9.6 million as of year-end 2019. Similarly, its net leverage ratio would have been 4.5 - a leverage ratio higher, not lower, than its prior year reported leverage ratio of 4.2. Indeed, shortly after the close of the year-end, Koppers paid the delayed vendor payments and its net debt and net leverage ratios returned to these higher levels shortly after the end of the reporting period.

18. Koppers' debt reduction was material to investors in assessing Koppers' execution of its business transition, its achievement of its own guidance and goals, and the financial risk associated with its high leverage. But Koppers' public statements created the impression that Koppers reduced its debt by improving the company's cash flow. Knowing that the reported debt reduction was achieved by means that would be reversed soon after the end of a reporting period would have been material to investors' evaluation of Koppers' statements about debt reduction. Koppers' failure to provide that material information rendered those statements materially misleading.

Violations

19. Section 17(a)(3) of the Securities Act, makes it unlawful, in the offer or sale of securities to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser. Negligence is sufficient to establish violations of Section 17(a)(3); no finding of scienter is required. *Aaron v. SEC*, 446 U.S. 680, 696-97 (1980). As a result of the conduct described above, Koppers violated Section 17(a)(3) of the Securities Act.

20. Section 13(a) of the Exchange Act and Rule 12b-20 and 13a-11 promulgated thereunder 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. As a result of the conduct described above, Koppers violated Section 13(a) of the Exchange Act, and Rule 12b-20 and 13a-11 promulgated thereunder.

21. Rule 100(b) of Regulation G of the Exchange Act, prohibits registrants from making public a non-GAAP financial measure that contains an untrue statement of material fact or omits to state a material fact necessary in order to make the presentation of the non-GAAP financial measure, in light of the circumstances under which it is presented, not misleading. As a result of the conduct described above, Koppers violated Rule 100(b) of Regulation G of the Exchange Act.

Koppers' Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent, including engaging an outside consultant to identify and adopt remedial measures strengthening policies and procedures relating to accounts payable and non-GAAP disclosures, and cooperation afforded to the Commission staff.

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, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(3) of the Securities Act, Section 13(a) of the Exchange Act, Exchange Act Rules 12b-20 and 13a-11, and Rule 100(b) of Regulation G thereunder.

B. Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$1.3 million 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 Koppers Holdings, Inc., 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 Carolyn Welshhans, 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.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other

amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary