

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 96819 / February 7, 2023

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4373 / February 7, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21296

In the Matter of

GENTEX CORPORATION
and KEVIN C. NASH,

Respondents.

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 Gentex Corporation (“Gentex”) and Kevin C. Nash (“Nash”) (collectively “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent 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 Respondents’ Offers, the Commission finds that:

Summary

1. This matter involves deficiencies in Gentex's accounting for its executive and employee bonus compensation programs from the third quarter of 2015 through the second quarter of 2018 (the "Relevant Period"). These deficiencies were caused by an ineffective system of internal accounting controls, which made it possible for the company's then-Chief Accounting Officer, Nash, and others in the accounting group, to make certain adjustments to the bonus compensation accruals without the required accounting analysis or without adequate supporting documentation.

2. As set forth herein, in certain quarters, Nash departed from Gentex's procedure for estimating the bonus compensation accruals. Additionally, because the bonuses were calculated and paid based on pre-tax profits of the company, the adjustments were made late in Gentex's quarterly financial statement closing process. He also failed to sufficiently document the basis for his accounting judgments related to certain accrual estimates.

3. Further, during Gentex's quarterly closing process for the third quarter of 2015, after Gentex's Chief Financial Officer ("CFO") had instructed Nash to reserve funds for a potential executive bonus program, Nash directed a \$300,000 accrual for the program. Nash subsequently determined that the accrual would cause Gentex to miss the consensus earnings per share ("EPS") estimates for the quarter, and the next day, he directed a reduction to the accrual by \$200,000. As a result, Gentex publicly reported EPS in line with consensus EPS estimates. If Nash had not reduced the accrual, Gentex would have missed consensus EPS estimates by one penny.

4. Nash directed the initial accrual for the executive bonus program and the subsequent reduction to the accrual without performing an analysis of the relevant criteria under generally accepted accounting principles in the U.S. ("GAAP"). As a result of his conduct, Nash violated Section 13(b)(5) of the Exchange Act, which prohibits knowingly circumventing or knowingly failing to implement a system of internal accounting controls. Nash further violated Rule 13b2-1 under the Exchange Act, which prohibits any person from directly or indirectly falsifying, or causing the falsification of, any book, record, or account required by the Exchange Act.

5. In addition, Gentex failed to devise and maintain a sufficient system of internal accounting controls related to its closing process, including its accounting for bonus compensation, and failed to maintain internal control over financial reporting.

Respondents

6. **Gentex Corporation** is a manufacturing company incorporated in Michigan and headquartered in Zeeland, Michigan. Gentex provides digital vision, connected car, dimmable glass, and fire protection products. Gentex's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act, and is traded on NASDAQ under the symbol

“GNTX.” Gentex files periodic reports, including Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder.

7. **Kevin C. Nash**, age 48, resides in Zeeland, Michigan. Nash was Gentex’s Vice President (“VP”) of Accounting and Chief Accounting Officer (“CAO”) from 2014 through 2018. Nash became Gentex’s Chief Financial Officer in 2018.

Facts

Background

8. Throughout the Relevant Period, Gentex maintained a discretionary quarterly profit-sharing bonus paid to all employees. Prior to February 2016, it had been the company’s practice to pay discretionary bonuses to certain executive officers and other key employees on an annual basis. In February 2016 Gentex adopted a second bonus program, the Performance Based Bonus Plan (“PB Bonus Plan”), for certain executive officers and other key employees.

9. Gentex made monthly accruals for the expected discretionary quarterly profit-sharing bonus expense based on the company’s adjusted pre-tax, pre-bonus income. During the quarter closing process, shortly before the books closed, Nash typically determined whether the previously entered monthly profit-sharing bonus accruals reflected the company’s expected profit-sharing bonus payout for the quarter. If Nash determined that it did not, he would instruct Gentex’s accounting staff to make adjustments to accruals to increase or decrease the reserve for the profit-sharing bonus.

10. Gentex recorded liabilities for its bonus programs in a single bonus liability account in its general ledger. Gentex’s policies and procedures for the quarterly closing process required reconciliations of all material balance sheet accounts, including the bonus account, to be completed during the quarterly closing process, shortly after quarter end. Specific accountants at Gentex were assigned to reconcile each balance sheet account, and all reconciliations were required to include the reconciliation document along with all supporting and backup documentation. Once the accountant performed the reconciliation, Gentex’s controller was required to review and verify the reconciliations.

11. In his role as Gentex’s VP and CAO, Nash, in part, was responsible for maintaining and implementing the company’s internal accounting controls and policies on accounting and financial reporting, including compliance with GAAP. For instance, Gentex’s Code of Business Conduct and Ethics required accurate recording and reporting of financial information in conformity with GAAP.

12. Nash was also responsible for estimating the PB Bonus Plan and profit-sharing bonus expenses and reconciling the bonus liability account. Nash’s judgment with respect to estimating the accrual for the bonus was not subject to review by other Gentex employees. Nash directed his staff to enter the bonus account journal entries, and then reviewed and approved those same bonus account entries that he had directed and purportedly reconciled.

PB Bonus Accrual in Third Quarter 2015

13. In 2015, Gentex's CFO proposed to the Chief Executive Officer and Board of Directors that the company adopt a new pay-for-performance executive bonus plan to address management retention concerns identified by management and shareholders. The proposed PB Bonus Plan would be tied to certain performance metrics and would be implemented in 2016. Under the proposal, the PB Bonus would be paid to certain executives for 2015 performance.

14. During the summer of 2015, before the PB Bonus Plan was approved, Gentex's CFO instructed Nash to reserve money for the plan so that bonuses for the 2015 time period would be partially reserved.

15. On October 7, 2015, during the closing process for the third quarter of 2015, Nash directed the accrual of \$300,000 for the PB Bonus Plan, which had not yet been approved by Gentex's Board of Directors. This journal entry was made without any supporting documentation. Additionally, Nash did not maintain documentation of any purported analysis that was required to be performed pursuant to Accounting Standards Codification ("ASC") Topic 450, *Contingencies*, concerning the loss contingency associated with the PB Bonus Plan.¹

16. On October 8, 2015, Nash realized that the initial accrual of \$300,000 would cause Gentex to miss the consensus EPS estimate of \$0.27 for the third quarter of 2015. He directed a journal entry to reduce the \$300,000 accrual to \$100,000. The journal entry for the revised accrual was again made without any supporting documentation and Nash did not conduct any analysis that should have been performed pursuant to ASC 450-20 concerning the PB Bonus Plan.

17. In an October 9, 2015 email exchange with the CFO, the CFO asked Nash if he had reserved some money for the PB Bonus Plan. Nash responded, "100K. had [sic] 300K, but had to reduce in order to keep .27 per share." The CFO replied, "[g]ood call. That puts in line with consensus, right?" to which Nash replied, "[y]es."

18. On October 21, 2015, Gentex reported its third quarter 2015 financial results. Among the financial metrics that it reported was an EPS of \$0.27, which met the consensus EPS estimate. Had Nash not directed the partial reduction of the \$300,000 accrual for the PB Bonus Plan expense, Gentex would have missed the third quarter 2015 EPS consensus estimate by a penny.

¹ ASC 450-20, *Loss Contingencies*, provides that a liability for a loss contingency is required to be recognized when it is both probable that a loss has been incurred and the loss is reasonably estimable.

Other Bonus Accrual Journal Entries

19. Fourth Quarter 2015: In January 2016, Nash directed the accrual of an additional \$250,000 for the PB Bonus Plan, which was under review by senior management of the company but still had not yet been approved by Gentex's Board of Directors at the time of the accrual. Nash did not maintain sufficient documentation of any accounting analysis supporting this accrual amount. Gentex's Board approved the PB Bonus Plan shortly before Gentex filed its 2015 Form 10-K, approximately a month after Nash had directed the accrual.

20. First and Second Quarters of 2016: Nash directed an increase of monthly profit-sharing bonus accruals by \$400,000 in April 2016, followed by a \$100,000 reduction in July 2016, without maintaining sufficient documentation supporting those adjustments. These journal entries were inconsistent with Gentex's procedure for calculating the profit-sharing bonus expense at a percentage of adjusted pre-tax, pre-bonus net income.

21. Fourth Quarter 2016: In January 2017, Nash directed an additional profit-sharing bonus accrual of \$115,000, without adequate supporting documentation. This entry was inconsistent with Gentex's procedure for calculating the profit-sharing bonus expense. It was also made after Gentex had already accrued more than the profit-sharing bonus payout which was made during the fourth quarter, thus further increasing an already over-accrued liability for the profit-sharing bonus.

22. Second Quarter 2017: In July 2017, Nash failed to direct a reduction to the profit-sharing bonus liability after realizing that it exceeded the expected payout. On July 13, 2017, Nash sent the CFO an email with proposed bonus payouts. In that email, Nash indicated that Gentex had built a cushion of \$220,000 in the bonus account in the first quarter of 2017. Nash recommended a payout of \$8.8 million and further indicated that if the company paid out a profit-sharing bonus of approximately \$8.2 million, Gentex would build another \$568,000 cushion in the account. Nash concluded his email stating that Gentex could pay a slightly smaller profit-sharing bonus and still build some cushion, which would not be bad to have for the third quarter and fourth quarter of 2017. The CFO ultimately selected a bonus payment of \$8.2 million.

23. Fourth Quarter 2017: In January 2018, as a result of changes to the tax laws, Nash directed the accrual of \$4 million for an incremental profit-sharing bonus of \$1,000 for each employee that was approved by Gentex's Board of Directors and was paid in the first quarter of 2018. This journal entry was not supported by adequate documentation.

24. Second Quarter 2018: In July 2018, Nash directed multiple journal entries resulting in an additional \$300,000 accrual for the profit-sharing bonus expense, and a \$402,500 accrual for the PB Bonus expense which was subsequently reduced by \$200,000. None of these journal entries had sufficient documentation supporting the adjustments.

Gentex's Inaccurate Books and Records and Internal Accounting Controls Failures

25. During the Relevant Period, Gentex did not keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and disposition of assets by Gentex in connection with its bonus programs.

26. In addition, Gentex failed to devise and maintain internal accounting controls that were sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP. In particular, Gentex lacked sufficient controls relating to its accounting for its bonus compensation programs, Gentex's internal accounting controls also did not provide for sufficient documentation and review of accounting entries associated with the bonus compensation programs.

Violations

27. Section 13(a) of the Exchange Act requires 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).

28. Section 13(b)(2)(A) of the Exchange Act requires Section 12 registrants to make and keep books, records, and accounts that, in reasonable detail, 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). Also, Exchange Act Rule 13a-15(a) requires issuers to maintain internal control over financial reporting.

29. Section 13(b)(5) prohibits any person from knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record, or account subject to Section 13(b)(2)(A).

30. Rule 13b2-1 prohibits any person from directly or indirectly falsifying or causing to be falsified, any book, record, or account subject to Section 13(b)(2)(A). A violation of Rule 13b2-1 does not require scienter and may rest on a finding of negligence. *SEC v. World-Wide Coin Investments*, 567 F. Supp. 724, 749 (N.D. Ga. 1983).

Findings

31. Based on the foregoing, the Commission finds that Gentex violated Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B), and Rules 13a-11, 13a-13, 13a-15, and 12b-20 thereunder.

32. Based on the foregoing, the Commission finds that Nash (a) violated Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder and (b) caused Gentex's violations of Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B), and Rules 13a-11, 13a-13, 13a-15, and 12b-20 thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Gentex cease and desist from committing or causing any violations and any future violation of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 13a-11, 13a-13, 13a-15 and 12b-20 thereunder.

B. Pursuant to Section 21C of the Exchange Act, Nash cease and desist from committing or causing any violations and any future violations of Exchange Act Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5), and Rules 13a-11, 13a-13, 13a-15, 13b2-1, and 12b-20 thereunder.

C. Gentex shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$4,000,000 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.

D. Nash shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$75,000 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) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

- (2) Respondents 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) Respondents 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 either Gentex or Nash 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 Mark Cave, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, DC 20549.

E. 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 Respondents 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, Nash stipulates that the findings in this Order are true, and further stipulates that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Nash 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 Nash 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