

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99651 / March 1, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-21881

In the Matter of

**HG VORA CAPITAL
MANAGEMENT, LLC**

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 HG Vora Capital Management, LLC (“HG Vora Capital Management” 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 violations of Section 13(d) of the Exchange Act and Rule 13d-1 thereunder by HG Vora Capital Management. Section 13(d) is a regulatory provision that allows shareholders and potential investors to evaluate substantial shareholdings and the implications of such shareholdings for their own investment in the class of securities. Under Rule 13d-1(b), certain persons required to file a Schedule 13D may instead file a short-form Schedule 13G if the person certifies that the securities "were acquired and are held in the ordinary course of business" and were not acquired "with the purpose [or] effect of changing or influencing the control of the issuer." However, any such person who has filed a Schedule 13G in lieu of Schedule 13D must file a Schedule 13D if the investor subsequently holds the securities with a disqualifying "control" purpose or effect. During the time period relevant to the findings herein, the filing was required to have been made within ten days.

2. As of December 31, 2021, HG Vora Capital Management beneficially owned 5.6% of the outstanding common stock of issuer Ryder System, Inc. ("Ryder"). HG Vora Capital Management disclosed this 5.6% beneficial ownership position in a Schedule 13G that it filed on February 14, 2022. From January through mid-April 2022, HG Vora Capital Management purchased an additional 2,050,000 shares of Ryder common stock, giving it total beneficial ownership of 5,050,000 shares, or approximately 9.9% of the outstanding shares. By no later than April 26, 2022, HG Vora Capital Management held its Ryder common stock with the intent to change or influence control of the issuer. However, HG Vora Capital Management failed to file the required Schedule 13D disclosing its "control" purpose, current shareholdings, and other specified information within ten days, *i.e.*, no later than May 6, 2022. Instead, HG Vora Capital Management did not file the required schedule until May 13, 2022, the same day that it submitted to Ryder, and publicly announced, a proposal to acquire all Ryder shares not already held by HG Vora Capital Management, at approximately a 20% premium to the prior day's closing trading price on the New York Stock Exchange ("NYSE").

Respondent

3. HG Vora Capital Management is an investment adviser registered with the Commission and headquartered in New York, NY.

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.

Issuer

4. Ryder is a Florida corporation headquartered in Miami, FL. Ryder's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the NYSE. Ryder is required to file 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.

Background

Legal Framework: Required Ownership Disclosures

Schedule 13D Reports

5. Section 13(d)(1) of the Exchange Act and Rule 13d-1(a) together require any person that has acquired, directly or indirectly, beneficial ownership of more than five percent of a registered class of an equity security with voting rights to file a statement with the Commission disclosing the purpose of the acquisition. During the time period herein, individuals or entities complied with this requirement by filing a Schedule 13D with the Commission within ten days after they acquired the requisite amount of beneficial ownership.

6. Schedule 13D requires disclosure of, among other things: (1) the identity of beneficial owners of the subject security;² (2) the aggregate amount beneficially owned by each reporting person and the percent of class represented by such amount; (3) a description, in Item 4, of the purpose(s) of the acquisition, including any plans that the reporting person may have which relate to or would result in, among other things, (i) the acquisition by any person of additional securities of the issuer, or (ii) an extraordinary corporate transaction, such as a merger, reorganization, or liquidation, involving the issuer or any of its subsidiaries; (4) the interest of all persons making the filing in securities of the issuer; and (5) a description, in Item 6, of all "contracts, arrangements, understandings or relationships" with respect to securities of the issuer. A duty to file under Section 13(d) and Rule 13d-1 creates the duty to make truthful and complete disclosures. *SEC v. Savoy Indus.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978) *cert. denied*, 440 U.S. 913 (1979). *Scienter* is not required to establish a violation of Section 13(d). *Id.* at 1167; *SEC v. Levy*, 706 F. Supp. 61, 69 (D.D.C. 1989).

Schedule 13G Reports

² Whether a person is a "beneficial owner" is determined through the application of Rule 13d-3 of the Exchange Act, which broadly includes "any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise" has or shares voting or investment power with respect to a registered equity security. *See* Rule 13d-3(a); *see also SEC v. First City Financial Corp.*, 890 F.2d 1215, 1221 (D.C. Cir. 1989).

7. In order to reduce disclosure obligations on persons whose acquisitions do not affect the control of issuers, Schedule 13G allows disclosure of much more limited information than Schedule 13D. The resulting decrease in the number of Schedule 13D filings improves the effectiveness of the beneficial ownership reporting scheme by allowing the marketplace, as well as the staff of the Commission, to focus more quickly on acquisitions involving the potential to change or influence control.

8. Under Item 10 of Schedule 13G, a filer relying upon Rule 13d-1(b) or 13d-1(c) must sign a certification specifically attesting to the lack of a “control” purpose or effect. Pursuant to Rule 13d-1(e), any person who has filed a Schedule 13G pursuant to Rule 13d-1(b) or 13d-1(c) becomes immediately subject to Rule 13d-1(a) and must file a Schedule 13D if the investor now holds the securities with a disqualifying “control” purpose or effect. During the time period herein, the filing was required to have been made within ten days.

9. The determination of whether beneficial ownership is held with the purpose or effect to change or influence control is fact specific. The term “control” is defined in Rule 12b-2 of the Exchange Act to mean “possession . . . of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.” Beneficial owners who are required to file a Schedule 13D, including any that are no longer able to certify that the securities are not held with the purpose or effect of changing or influencing control, must disclose the purpose of their acquisition of the issuer’s securities.

HG Vora Capital Management’s Ryder Stock Purchases, Beneficial Ownership Filings, and “Control” Purpose

10. HG Vora Capital Management describes its investment approach as focused on event-driven and value-oriented strategies. It invests primarily in actively traded debt and equity instruments on a long and short basis.

11. HG Vora Capital Management began purchasing Ryder common stock in August 2021 and first exceeded the five percent beneficial ownership threshold on December 8, 2021. HG Vora Capital Management purchased these shares for the account of an affiliated hedge fund that it advises, which directly owned the shares.

12. HG Vora Capital Management’s investment thesis was that the sum of Ryder’s parts was greater than its current market valuation. Over the course of its investment, HG Vora Capital Management developed a view that Ryder could monetize, *i.e.*, sell or spin off, certain non-core businesses and pursue a “more efficient” asset-backed capital structure, *i.e.*, issue debt securities backed by its truck fleet, which HG Vora Capital Management perceived as undervalued by the market. HG Vora Capital Management also believed that Ryder would be a good candidate for a leveraged buyout if an acquirer were to securitize the truck portfolio *via* asset-backed lending and use the proceeds to help fund an acquisition of the company.

13. On February 14, 2022, HG Vora Capital Management filed an initial Schedule 13G (“Ryder Schedule 13G”) with the Commission disclosing that it beneficially owned 3,000,000 shares of Ryder common stock, or approximately 5.6% of Ryder’s outstanding common stock, as of December 31, 2021. The 5.6% position had a total value of approximately \$247 million at year’s end.

14. In response to Item 10 of its Ryder Schedule 13G, HG Vora Capital Management expressly certified that “the securities ... were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer [or] held in connection with or as a participant in any transaction having that purpose or effect.” This certification did not include all of the representations HG Vora Capital Management was required to make because it did not state that the securities were “acquired and are held in the ordinary course of business.”

15. Between January 1, 2022 and April 18, 2022, HG Vora Capital Management purchased an additional 2,050,000 shares of Ryder common stock, giving it a total beneficial ownership of 5,050,000 shares, or approximately 9.9% of outstanding Ryder common stock shares. HG Vora Capital Management also subsequently entered into cash-settled swap agreements with third-party financial institutions between April 27 and May 12, 2022. As disclosed in HG Vora Capital Management’s May 13, 2022 Schedule 13D filing, the swaps provided HG Vora Capital Management with economic exposure comparable to approximately an additional 450,000 shares or 0.9% of outstanding Ryder common stock.

16. After having discussed its Ryder thesis with a mid-sized private-equity firm in November 2021, HG Vora Capital Management engaged in discussions with a large private-equity firm during the February to April 2022 time period regarding HG Vora Capital Management’s Ryder investment. Those discussions initially concerned the potential for a private-equity firm to provide asset-backed financing to Ryder and later concerned the potential for an acquisition of Ryder by the private-equity firm. HG Vora Capital Management also shared its proprietary Ryder valuation models and analyses with the firm during this time period.

17. On April 26, 2022, HG Vora Capital Management first considered making its own acquisition bid for Ryder, with financing to be provided by a private-equity firm. Later that day, HG Vora Capital Management began drafting an offer letter to Ryder, with a “placeholder” offer price of \$85 per share. On April 27, 2022, HG Vora Capital Management contacted outside counsel to advise on its Schedule 13D filing, and the next day provided counsel with a copy of the draft letter.

18. On May 12, 2022, HG Vora Capital Management first met with Ryder management to discuss whether Ryder might be receptive to an acquisition bid. On the morning of May 13, 2022, HG Vora Capital Management sent a letter to Ryder proposing to acquire all of Ryder’s outstanding common stock not already held by HG Vora Capital Management, at a purchase price of \$86 per share, which HG Vora Capital Management stated was a 20.3% premium to Ryder common stock’s prior-day closing price on the NYSE. HG Vora Capital Management also filed its Schedule 13D disclosing, among other things, that HG Vora Capital Management’s beneficial

ownership of Ryder common stock had grown to 9.9% and that it had entered into swap agreements providing 0.9% additional economic exposure, and disclosing and attaching HG Vora Capital Management's proposal letter to Ryder. That day, Ryder common stock shares traded as high as \$85.50 per share and closed at a price of \$83.65 per share, up 17% from the May 12th closing price.

19. By no later than April 26, 2022, HG Vora Capital Management had a "control" purpose with respect to Ryder, and its Ryder Schedule 13G certification was no longer accurate. HG Vora Capital Management was therefore required to convert its Ryder Schedule 13G to a Schedule 13D within ten days, *i.e.*, no later than May 6, 2022. By not filing its Schedule 13D until May 13, 2022, the same day that it sent its acquisition proposal to Ryder, HG Vora Capital Management failed to disclose timely its "control" purpose under Item 4 of, and other information required by, Schedule 13D.

Violations

20. As a result of the conduct described in paragraphs 10 through 19, above, HG Vora Capital Management violated Section 13(d)(1) of the Exchange Act and Rule 13d-1 thereunder by failing to timely file a Schedule 13D to supersede its previously filed Ryder Schedule 13G, no later than May 6, 2022, regarding HG Vora Capital Management's "control" purpose with respect to the issuer, Ryder, and disclosing other information required by Schedule 13D.

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 HG Vora Capital Management cease and desist from committing or causing any violations and any future violations of Section 13(d)(1) of the Exchange Act and Rule 13d-1 thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$950,000.00 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 the above-named Respondent 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 D. Mark Cave, 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