

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Civil No. \_\_\_\_\_

SECURITIES AND EXCHANGE COMMISSION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
UNITEDHEALTH GROUP INCORPORATED, )  
 )  
Defendant. )

**COMPLAINT**

Plaintiff Securities and Exchange Commission (“Commission”) alleges as follows against defendant UnitedHealth Group Incorporated (“UnitedHealth” or the “Company”):

**SUMMARY OF ALLEGATIONS**

1. From no later than April 1994 through 2005, UnitedHealth concealed hundreds of millions of dollars in expenses from investors, and significantly overstated the Company’s income, by backdating employee stock option grants and failing to properly disclose and account for its true compensation expenses. Certain UnitedHealth officers used hindsight to pick advantageous grant dates for the Company’s nonqualified stock options that on many occasions coincided with, or were close to, dates of historically low annual and quarterly closing prices for UnitedHealth’s common stock. They used the closing price of the Company’s common stock on those days as the strike price of the options that were granted. As a result of this misconduct, UnitedHealth routinely made grants of disguised and undisclosed in-the-money stock options to its officers and employees. In addition, certain UnitedHealth officers and employees created

false or misleading Company records indicating that the grants had occurred on the earlier dates when the Company's stock price had been at a low.

2. Many options granted by UnitedHealth contradicted the Company's public disclosures that it only granted options at strike prices not less than the fair value of its common stock on the date of grant, and contravened certain of UnitedHealth's stock option plans that prohibited in-the-money stock options.

3. Because of the undisclosed backdating, UnitedHealth filed with the Commission and disseminated to investors quarterly and annual reports, proxy statements and registration statements that contained materially false and misleading statements pertaining to the true grant dates of UnitedHealth options. This caused investors to believe, falsely, that the Company granted options with strike prices equal to the fair market value of UnitedHealth stock on the date of grant. In addition, contrary to Generally Accepted Accounting Principles ("GAAP"), UnitedHealth did not record or disclose the compensation expenses it incurred as a result of the in-the-money portions of the option grants. Consequently, UnitedHealth materially understated its compensation expenses and materially overstated its quarterly and annual pretax earnings and earnings per share in its financial statements. On March 6, 2007, UnitedHealth restated its financial statements and disclosed cumulative pre-tax errors in stock-based compensation accounting, which were material to the Company's financial statements for each year from 1994 through 2005 and totaled \$1.526 billion for that period under Accounting Principles Board Opinion No. 25 ("APB 25"). UnitedHealth also announced that its financial statements for this period, and all earnings and press releases and similar communications issued by the Company for such period and the related reports of the Company's independent registered public accounting firm, should no longer be relied upon.

4. By engaging in the acts alleged in this Complaint, UnitedHealth violated Section 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78m(a), 78(m)(b)(2)(A), and 78(m)(b)(2)(B)] and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13]. For the reasons discussed herein, the Commission seeks all of the relief sought herein.

### **JURISDICTION AND VENUE**

5. The Court has jurisdiction of this civil enforcement action pursuant to Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78(u)(e), and 78aa]. UnitedHealth, directly or indirectly, made use of the means or instruments of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the acts, transactions, practices and courses of business alleged in this Complaint.

6. Venue lies in the District of Minnesota pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Defendant UnitedHealth is a Minnesota corporation based in Minnetonka, Minnesota, and many of the acts alleged herein occurred in Minnesota.

### **THE PARTIES**

7. The plaintiff is the Securities and Exchange Commission, which brings this civil enforcement action pursuant to the authority conferred on it by Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)].

8. Defendant UnitedHealth is a Minnesota corporation based in Minnetonka, Minnesota, with approximately 75,000 employees. UnitedHealth is a diversified health and well-being company offering a variety of insurance and other products and services to approximately 70 million individuals through six operating businesses. At all relevant times,

UnitedHealth's securities were registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange under the symbol "UNH".

## FACTS

### **A. Background**

9. UnitedHealth relied heavily on stock options as a competitive tool to recruit, retain, and compensate employees in lieu of higher cash compensation. Each option gave the grantee the right to buy one share of UnitedHealth common stock from the Company at a set price, called the "exercise" or "strike" price, on a future date after the option vested. The option was "in-the-money" whenever the trading price of UnitedHealth's common stock exceeded the option's strike price. The option was "at-the-money" whenever the trading price of UnitedHealth's common stock and the strike price were the same. The option was "underwater" or "out-of-the-money" whenever the trading price of UnitedHealth's common stock was less than the strike price.

10. Throughout the relevant time period, UnitedHealth accounted for stock options using the intrinsic method described in APB 25. Under APB 25, employers were required to record as an expense on their financial statements the "intrinsic value" of a fixed stock option on its "measurement date." The measurement date, as defined by APB 25, is the first date on which the following information is known: (i) the number of options that an individual employee is entitled to receive, (ii) the identity of the employee receiving the options, and (iii) the strike price. An option that is in-the-money on the measurement date has intrinsic value, and the difference between its strike price and the quoted market price must be recorded as compensation expense to be recognized over the vesting period of the option. Options that are at-the-money or out-of-the-money on the measurement date need not be expensed.

**B. UnitedHealth's Option Plans and Public Disclosures about Stock Options**

11. In its filings with the Commission for fiscal years 1994 through 2005, UnitedHealth routinely represented that it complied with APB 25, and its financial statements reflected that the Company had not recognized compensation cost for its employee stock options. For example, in its 2002 Annual Report UnitedHealth stated: "we do not recognize compensation expense in connection with employee stock option grants because we grant stock options at exercise prices not less than the fair value of our common stock on the date of grant."

12. Beginning in approximately 2002, UnitedHealth granted millions of stock options pursuant to the Company's shareholder-approved 2002 Stock Incentive Plan (the "2002 Plan"). The 2002 Plan prohibited UnitedHealth from granting stock options with strike prices of less than the stock's fair market value on the date of grant.

**C. The Backdating Scheme**

13. From no later than 1994 through 2005, certain UnitedHealth officers disregarded and contravened UnitedHealth's public disclosures about stock options and, starting in 2002, provisions of the 2002 Plan by looking back and choosing, with the benefit of hindsight, purported grant dates that coincided with the dates of low closing prices for UnitedHealth stock, resulting in in-the-money options.

14. Certain UnitedHealth officers retrospectively priced "interim grants" to employees for selective promotions, new hires and special performance. These interim grants routinely were priced shortly after the end of the quarter or month in which the promotion, hire or special performance occurred. The purported date of the grant was that which corresponded to the lowest share price between the date of the offer letter, employment, promotion letter or official written recognition for special performance and the end of quarter or month in which the

event took place. This policy was approved by certain UnitedHealth officers and was reduced to writing no later than 2000.

15. UnitedHealth granted approximately 50 million split-adjusted shares of in-the-money interim grants from 1994 through 2005, while recording zero compensation expense under APB 25. In its March 2007 restatement, UnitedHealth reduced earnings before income taxes by \$82 million under APB 25 as a result of accounting errors for backdated interim grants.

16. Also as part of this backdating scheme, UnitedHealth retrospectively priced “Mass grants.” “Mass grants” were broad-based grants made once or twice per year to one or more categories of UnitedHealth employees, including thousands of middle and senior managers and top officers with ownership reporting obligations under Section 16 of the Exchange Act (“Section 16 grants”) [15 U.S.C. § 78p(a)]. The Company’s Chief Executive Officer (“CEO”) usually determined the strike price for mass grants. For Section 16 grants, the Compensation Committee approved grant dates and strike prices chosen by the CEO.

17. Like the interim grants described in paragraph 16 above, mass grants were priced by looking back over a window of time and selecting the purported grant date. Usually, this window opened when the mass grant was first being contemplated and closed around the next Compensation Committee meeting. But the size of the window was not fixed or consistent—it could be as long as four to six months, or as short as a week or two. However long the window, mass grants were often priced at or very near the lowest point in UnitedHealth’s quarterly stock price. On multiple occasions, historical stock price charts were used in connection with selecting favorable option prices and dates.

18. From 1994 through 2005, UnitedHealth made more than 29 separate mass grants of more than 340 million split-adjusted shares, while zero compensation expense was recorded

under APB 25. In its March 2007 restatement, UnitedHealth reduced earnings before income taxes by more than \$400 million under APB 25 as a result of backdated mass grants.

19. Certain UnitedHealth officers and employees prepared false or misleading official grant authorization documents indicating that the selection of the strike price for mass grants and interim grants occurred on the purported grant date, which date usually was earlier than when the selection had actually occurred and earlier than when the final documents were prepared or signed. These inaccurate and misleading documents consisted of Certificates authorizing grants, which were signed by the CEO, Written Actions of the Compensation Committee, or minutes of Compensation Committee meetings approved by certain Company officers. The inaccurate stock option grant information reflected in these authorizing documents concealed the real measurement date under APB 25, misled UnitedHealth's external auditors, and directly caused UnitedHealth to file false and misleading financial statements. Certain UnitedHealth officers and employees routinely provided copies of these documents directly to UnitedHealth's auditors. The inaccurate date and price data from these documents also was entered into a software application called Equity Edge, which UnitedHealth used to record and account for employee stock options. Equity Edge invariably calculated zero compensation expense under APB 25 because the strike price on the purported grant date of the option always equaled the fair market value of UnitedHealth's stock on that date. The Company regularly provided its auditors inaccurate options data from Equity Edge, together with false and misleading minutes, Written Actions, and CEO Certificates.

20. As a result of the foregoing, UnitedHealth's books and records falsely and inaccurately reflected the dates of option grants, the Company's stock-based compensation expenses, and the Company's financial condition. As a result, on March 6, 2007, UnitedHealth

restated its financial statements and disclosed cumulative pre-tax errors in stock-based compensation accounting totaling \$1.526 billion under APB 25. UnitedHealth's stock option accounting errors were material. UnitedHealth's financial statements for fiscal years 1994 through 2005 also falsely represented that UnitedHealth followed APB 25 and that it did not grant in-the-money options.

21. UnitedHealth failed to maintain a system of internal accounting controls sufficient to provide assurances that stock option grants were recorded as necessary to permit the proper preparation of financial statements in conformity with GAAP. In 2006, UnitedHealth disclosed that the Company had identified a significant deficiency in its controls relating to stock option plan administration and accounting for and disclosure of stock option grants.

#### **FIRST CLAIM**

*(Filing of False and Misleading Periodic Reports—Violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 Thereunder)*

22. The Commission realleges paragraphs 1 through 21.

23. Based on the conduct alleged above, UnitedHealth violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13], which require issuers of registered securities to file with the Commission factually accurate annual, quarterly and current reports that, among other things, do not contain untrue statements of material fact or omit to state material information necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.



**SECOND CLAIM**

*(Failure to Maintain Accurate Books and Records—  
Violations of 13(b)(2)(A) of the Exchange Act)*

24. The Commission realleges paragraphs 1 through 23.

25. Based on the conduct alleged above, UnitedHealth violated Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)], which obligates issuers of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

**THIRD CLAIM**

*(Failure to Maintain Adequate Internal Accounting Controls—  
Violations of 13(b)(2)(B) of the Exchange Act)*

26. The Commission realleges paragraphs 1 through 25.

27. Based on the conduct alleged above, UnitedHealth violated Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)], which obligates issuers of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] to devise and maintain a sufficient system of internal accounting controls.

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that the Court:

**I.**

Permanently enjoin UnitedHealth and its agents, servants, employees, attorneys, and assigns, and those persons in active concert or participation with them, from violating Section

13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78(m)(b)(2)(A), and 78(m)(b)(2)(B)] and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

**II.**

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

**III.**

Grant such equitable relief as may be appropriate or necessary for the benefit of investors pursuant to Section 21(d)(5) of the Exchange Act.

Dated: December <sup>22</sup>\_\_\_\_, 2008  
Washington, D.C.



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