

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 62654 / August 5, 2010**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3166 / August 5, 2010**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13995**

**In the Matter of**

**MARK T. SCHWETSCHENAU,**

**Respondent.**

**ORDER INSTITUTING PUBLIC  
ADMINISTRATIVE AND CEASE-AND-DESIST  
PROCEEDINGS PURSUANT TO SECTIONS 4C  
AND 21C OF THE SECURITIES EXCHANGE  
ACT OF 1934 AND RULE 102(e) OF THE  
COMMISSION'S RULES OF PRACTICE,  
MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND A  
CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Mark T. Schwetschenau ("Schwetschenau" or "Respondent") pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement ("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 or conclusions contained herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### A. Respondent

1. Mark T. Schwetschenau, 54, of Glen Ellyn, Illinois, was the Corporate Controller and principal accounting officer of Navistar International Corporation ("Navistar" or the "Company") from 1998 through February 2006. Schwetschenau was one of several senior officers responsible for certain aspects of the Company's internal controls. Among other things, he was directly responsible for Navistar's accounting policies and procedures. Schwetschenau is a registered certified public accountant in Illinois. During the relevant period, Schwetschenau was a member of The American Institute of Certified Public Accountants ("AICPA").

#### B. Related Entity

2. Navistar, a Delaware corporation headquartered in Warrenville, Illinois, is a holding company whose principal subsidiary, Navistar, Inc. (f/k/a International Truck and Engine Corporation), manufactures and markets commercial trucks, school buses, diesel engines, and related parts worldwide. During the relevant period, Navistar's securities were registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange. As of November 30, 2009, Navistar had 70,718,762 shares outstanding.

#### C. Factual Findings and Conclusions

##### 1. Internal Controls

3. In December 2007, Navistar filed a delayed Form 10-K for fiscal year 2005 that disclosed various material weaknesses in its internal accounting controls for 2005-06. One of those material weaknesses concerned the Company's lack of a formalized process for "monitoring, updating, disseminating, and implementing GAAP-compliant accounting policies and procedures."

4. In 2002, the Company's Internal Audit department had advised senior management, including Schwetschenau, that Navistar's financial policies and procedures "have not been updated to keep pace with the changing business environment, which increases the risk of financial reporting misstatements." Internal Audit also had recommended that the Corporate Controllers' Office begin a process to evaluate and update such policies and procedures, and that a further process be implemented to help ensure that once the initial revisions have been made, adequate procedures exist to maintain the policies as current. Although Schwetschenau and another senior officer created and implemented a plan to address the issues identified by Internal Audit, not all of the concerned policies and procedures were updated within the three-year time frame agreed to by Internal Audit, due to the level of resources being devoted to this project. Schwetschenau should

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<sup>1</sup> 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.

have known that his conduct in this matter would contribute to a weakness in those internal controls.

## 2. Deferred Start-up Costs

5. In 2000, the Company entered into a long-term supply contract (the “Agreement”) with an automobile manufacturer (the “Automaker”) to develop and manufacture V-6 diesel engines commencing with model year 2002 and extending through 2012. From the fourth quarter of 2001 through the fourth quarter of 2002, the Company incurred substantial start-up costs relating to the Agreement, including expenses developing the engine, constructing a plant in Huntsville, Alabama, and leasing engine assembly assets. The Company began deferring some of these start-up costs in the fourth quarter of fiscal 2001 and as of the fourth quarter of 2002 had accumulated \$57 million of deferred pre-production costs. Specifically, the Company deferred \$4.3 million in the fourth quarter of fiscal year 2001, \$12.8 million in the first quarter of fiscal year 2002, and \$13.3 million in each of the second and third quarters of fiscal year 2002.<sup>2</sup>

6. Relevant accounting rules provided that such start-up costs could be deferred only if there existed an objectively verified and measured contractual guarantee of reimbursement. See FASB Emerging Issues Task Force Issue No. 99-5, *Accounting for Pre-Production Costs Related to Long-Term Supply Arrangements* (“EITF 99-5”).

7. The terms of the Agreement standing alone did not provide for reimbursement in a manner sufficient to satisfy the requirements for start-up cost deferral pursuant to EITF 99-5. Based on the requirements of EITF 99-5 and the Company’s independent auditor, the Company attempted to secure a letter that would document an oral promise from the Automaker to reimburse the Company for its investment under the Agreement. Without the guarantee, the Company was not entitled to defer these costs.

8. The Company never received from the Automaker a sufficiently specific written guarantee of reimbursement. Beginning in September 2001 and continuing until October 2002, when the Automaker cancelled the Agreement, Company management repeatedly but unsuccessfully sought such a guarantee in the form of a letter.

9. Schwetschenau, as principal accounting officer, and after consultation with senior management and the Company’s independent auditor on the financial reporting of the issue, permitted the deferral of these start-up costs from the fourth quarter of 2001 through the fourth quarter of 2002. Schwetschenau was aware of the aforementioned circumstances concerning these costs, including that the Company was unable to obtain a written guarantee of specific reimbursement from the Automaker. Consequently, Schwetschenau should have known that the decision to defer these start-up costs was not in compliance with Generally Accepted Accounting Principles (“GAAP”).

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<sup>2</sup> The \$12.8 million, \$13.3 million, and \$13.3 million totals represent 12.5 percent, 65.5 percent, and 25.4 percent, respectively, of the Company’s previously reported loss before income tax if adjusted to reverse these deferrals for each of the first three quarters of fiscal year 2002.

10. While Schwetschenau did receive assurances from Navistar senior officers that the Automaker had in fact committed to reimburse the Company for these start-up costs and Navistar's independent auditor was aware of all related facts and accepted the continuing deferral, these costs still should not have been deferred because the Company had not received the aforementioned written guarantee of reimbursement. Navistar, like all issuers registered with the Commission, is ultimately responsible for the accuracy of its books, records and accounts.

#### **D. Findings**

11. Section 13(a) of the Exchange Act requires all issuers with securities registered under Section 12 of the Exchange Act to file periodic reports. The obligation to file these periodic reports includes the obligation that they be complete and accurate in all material respects. *See SEC v. IMC Int'l, Inc.*, 384 F. Supp. 889, 893 (N.D. Tex.), *aff'd mem.*, 505 F.2d 733 (5th Cir. 1974). No showing of scienter is necessary to establish a violation of Section 13(a) of the Exchange Act. *See SEC v. McNulty*, 137 F.3d 732, 740-741 (2d Cir. 1998).

12. Section 13(b)(2)(B) of the Exchange Act requires all reporting companies 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 conformity with GAAP.

13. Section 21C of the Exchange Act provides that the Commission may issue a cease-and-desist order against a person who is "a cause of" a violation by an issuer "due to an act or omission the person knew or should have known would contribute to such violation . . . ." The Commission need not show that Respondent's conduct was a proximate cause of the primary violations. *Rita J. McConville*, 85 SEC Docket 3127, 3146 n.45 (June 30, 2005), *pet. denied*, 465 F. 3d 780 (7th Cir. 2006). Negligence is sufficient to establish liability for causing a primary violation that does not require scienter. *KPMG Peat Marwick LLP*, 74 SEC Docket 384, 421 (Jan. 19, 2001), *reh'g denied*, 74 SEC Docket 1351 (Mar. 8, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002), *reh'g en banc denied*, 2002 U.S. App. Lexis 14543 (D.C. Cir. July 16, 2002).

14. Based on the foregoing, the Commission finds that Respondent was a cause of Navistar's violations of Sections 13(a) and 13(b)(2)(B) of the Exchange Act.<sup>3</sup>

15. Rule 102(e)(1)(ii) of the Commission's Rules of Practice states that the Commission may deny to any person the privilege of appearing or practicing before it if such person engaged in "improper professional conduct."

16. Rule 501 of the AICPA Code of Professional Conduct, among other things, prohibits members from committing negligence in the preparation of financial statements or records through several means, including permitting another to make materially inaccurate

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<sup>3</sup> On August 5, 2010, the Commission issued a settled cease-and-desist order against Navistar that found, among other things, that Navistar had violated Sections 13(a) and 13(b)(2)(B) of the Exchange Act. Under terms of its settlement with the Commission, Navistar consented to entry of the cease-and-desist order without admitting or denying the findings or conclusions contained therein.

entries in an entity's financial statements or records. The decisions that allowed Navistar to defer the charges as discussed above from the fourth quarter of fiscal year 2001 through the fourth quarter of fiscal year 2002 constitute a violation of Rule 501. *See Rule 501 of the AICPA Code of Professional Conduct.*

17. Based on the foregoing, the Commission finds that the Respondent engaged in improper professional conduct within the meaning of Rule 102(e)(1)(ii) and Rule 102(e)(1)(iv)(B)(2) of the Commission's Rules of Practice.

#### 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, effective immediately, that:

A. Respondent shall cease and desist from causing any violations and any future violations of Sections 13(a) and 13(b)(2)(B) of the Exchange Act;

B. Respondent is denied the privilege of appearing or practicing before the Commission as an accountant;

C. After one year from the date of this order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the Respondent's or the firm's quality control system that would indicate that the Respondent will not receive appropriate supervision;

(c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent acknowledges his responsibility, as long as Schwetschenau appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

D. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state registration or licensure is current and he has resolved any disciplinary issues with the applicable state boards of accountancy. However, if state registration or licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Schwetschenau's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.<sup>4</sup>

By the Commission.

Elizabeth M. Murphy  
Secretary

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<sup>4</sup> In addition to the relief ordered herein, Schwetschenau consented to the filing of a parallel civil action in the United States District Court for the Northern District of Illinois in which he has consented to pay a civil penalty of \$37,500.