

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10061 / March 31, 2016

SECURITIES EXCHANGE ACT OF 1934
Release No. 77490 / March 31, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17190

In the Matter of

NAVISTAR
INTERNATIONAL
CORPORATION,

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 Navistar International Corporation (“Respondent” or “Navistar”).

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 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 finds¹ that:

Summary

1. From 2011 to 2012, Navistar made misleading statements regarding its development of an engine that could meet the U.S. Environmental Protection Agency's ("EPA") Clean Air Act standards that became fully effective in 2010. Navistar was the only U.S. engine manufacturer developing an exhaust-gas-recirculation-only technology, known as "EGR," to comply with the EPA's 2010 emissions standard for nitrogen oxides of 0.20 (the "EPA 2010 standard"). Navistar's then Chief Executive Officer and Chairman of the Board, Daniel C. Ustian ("Ustian"), was a staunch proponent of Navistar's EGR-only technology. By 2010, however, Navistar had not developed a commercially viable engine that could meet the EPA 2010 standard without emissions credits. Navistar's competitors, who all used a selective catalytic reduction technology, known as "SCR," began to suggest publicly that Navistar would not be able to develop a 0.2 NO_x engine with EGR alone and, even if it did, Navistar would not be able to maintain competitive fuel economy and performance.

2. To reassure the public about its EGR-only strategy, Navistar submitted a certification application for an EGR-only engine at 0.2 NO_x to the EPA in early 2011 for an engine that it knew was not ready for production and sale to customers. The EPA never approved that application for certification. Navistar submitted two additional certification applications in 2012 for certification of an EGR-only engine at 0.2 NO_x. In numerous communications with Navistar from early 2011 through the summer of 2012, the EPA staff repeatedly told Navistar that it would not be able to approve the company's applications if Navistar did not submit additional information and make changes to the technology to ensure that the engine complied with the EPA's emissions testing requirements. Navistar made some of these changes, but doing so negatively impacted the engine's fuel economy and performance. Navistar also failed to make other changes requested by the EPA.

3. Despite these difficulties, Navistar repeatedly addressed investor concerns about the status of development and certification work through statements in Commission filings, press releases, and presentations to investors that created the misimpression that the certification process was proceeding as it typically did and that the forthcoming engine would be commercially competitive. In these statements, Navistar failed to fully disclose the serious difficulties it was experiencing.

4. In July of 2012, after years of unsuccessful development work and failing to obtain EPA approval of three separate certification applications, Navistar announced that it would

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.

discontinue its EGR-only strategy and begin incorporating the SCR technology its competitors were using.

Respondent

5. Respondent Navistar International Corporation is a Delaware corporation with headquarters in Lisle, Illinois. Navistar is an international manufacturer of commercial and military trucks, buses, diesel engines, and provider of services parts for trucks and trailers. Navistar's common shares are registered pursuant to Section 12(b) of the Exchange Act and are quoted on the New York Stock Exchange.

Background

6. As a manufacturer of diesel engines, Navistar must obtain a certificate of conformity ("Certificate") from the EPA each year for each model of each engine family that Navistar sells.

7. In 2001, pursuant to the Clean Air Act, the EPA enacted a rule requiring new engines to emit no more than 0.2 NOx per brake horsepower hour by 2010. To comply with the 0.2 NOx rule, Navistar's competitors used SCR technology, which neutralizes NOx emissions in the exhaust stream by using a special after-treatment system and a diesel-based chemical agent known as urea. Navistar opted to develop engines using EGR-only technology, which reduces NOx emissions in the combustion chamber by, among other things, re-circulating a portion of an engine's exhaust back into the engine's cylinders.

8. Navistar believed that successful development of its EGR-only technology, including meeting emissions standards, was material to Navistar's business prospects. In Commission filings and in analyst conference calls from 2010 through 2012, Navistar officials predicted that EGR-only technology would provide a competitive advantage to Navistar in the big-bore engine and large truck markets.

9. From 2007 through 2009, the EPA rules allowed engine manufacturers to phase-in the new NOx standards. During this phase-in period, Navistar developed an EGR engine with lower NOx emissions than the EPA standards required at that time. As a result, Navistar accumulated emissions credits that could be applied starting in 2010 to legally sell engines with emissions higher than 0.2 NOx.

10. By 2010, Navistar did not have a 0.2 NOx EGR-only engine certified or ready to produce. Therefore, Navistar continued to legally sell its engines certified at 0.5 NOx and used its emissions credits to offset the difference in NOx. In the meantime, Navistar continued to try to develop an EGR-only big bore engine that emitted 0.2 NOx.

Navistar's Misleading Statements Relating to Its EGR Engine Development Efforts

1. March 2011 Conference Call

11. Navistar submitted an application to the EPA for certification of a 13-liter EGR-only engine at 0.2 NO_x in February 2011 (the "2011 application"). Navistar did not consider the engine that the company described in the 2011 application to be a commercially competitive engine. Both before and after the 2011 application was submitted to the EPA, Navistar engineers warned Navistar executives that the engine would not be drivable if installed in a truck and would not be sellable even if the EPA certified it.

12. In March 2011, Navistar conducted a conference call with securities analysts (the "March 2011 Conference Call") in conjunction with Navistar's filings of its quarterly earnings report.

13. During the call, Ustian discussed the 2011 application, stating as follows: "We want to get in front of the 0.2 now, because we can anticipate there is a next one coming out that 0.2 can't be done. So what we did is we submitted to the EPA a certification of 0.2 to take that argument away. We don't plan on using this for awhile, but we are going to have it out there on the shelf that says it can be done and we can meet the standards and get all of the performance features, as well. So that's what we have done. When you hear about it, it's not that it's coming into production tomorrow, it's just to get it out there and take all that argument away."

14. These statements in the March 2011 Conference Call misleadingly suggested that Navistar had an engine "on the shelf" that met 0.2 NO_x, met all of the performance features and was capable of going into production if certified. In fact, the engine described in the February 2011 application did not have such features and was not capable of going into production if certified.

2. April 2011 Press Release

15. On April 5, 2011, Navistar issued a press release entitled "Navistar Receives EPA Certification for MaxxForce DT Mid-Range Diesel Engine at 0.39-NO_x" with the sub-headline "With EPA and CARB [California Air Resources Board] Certification of MaxxForce® 15, Submission of MaxxForce® 13 at 0.2 NO_x, Company Continues to Make Strides in its In-Cylinder Emissions Technology Path" (the "April 2011 Press Release"). In the April 2011 Press Release, Navistar announced that it had received certification for a mid-range diesel engine and a 15-liter engine. Navistar then addressed its 2011 application, stating: "In addition, Navistar also recently submitted its MaxxForce 13 at 0.2g NO_x for EPA certification, once again reiterating its prime technology path in meeting the 0.20g NO_x standard through in-cylinder technologies." The press release discussed two other engines, both of which Navistar considered to be commercially competitive and which Navistar intended to produce immediately. By including the 2011 application in an April 2011 Press Release otherwise devoted to EPA certification of engines that Navistar considered to be commercially competitive and that Navistar was to immediately produce, Navistar created the misleading impression that the engine that was part of the 2011 application was commercially competitive and could be put into production if Navistar wanted to do so. In

fact, Navistar did not consider the engine to be commercially competitive, and, accordingly, Navistar could not put the engine into production even if certified by the EPA.

16. By summer 2011, Navistar decided not to pursue the 2011 application any longer.

17. By fall 2011, Navistar learned that its emissions credits for its big bore heavy-duty engines (11-liter, 13-liter and 15-liter engines) could be depleted as early as February 2012. Without emissions credits or a certified 0.2 NO_x engine, Navistar would be required to pay non-conformance penalties (“NCPs”) in order to continue to legally sell engines from its big bore heavy-duty line.

18. In fall 2011, Navistar communicated with the EPA staff about its credit status for its heavy-duty engines and its timing for development of a 0.2 NO_x big bore EGR-only engine. Navistar informed the EPA staff that it would be unable to certify a big bore 0.2 NO_x engine by the time it expected to use its remaining emissions credits in February 2012. As a result, the EPA promulgated an interim NCP rule in January 2012.

3. December 2011 Annual Report

19. As of late 2011, Navistar was continuing to develop its big bore EGR-only technology but expected it would be at least two more years before its 0.2 NO_x big bore EGR-only engines with improved fuel economy and performance would be ready to certify and produce. Navistar began work on another 0.2 NO_x big bore technology to submit to the EPA for certification. This 0.2 NO_x technology was intended to bridge the gap between when Navistar’s big bore emissions credits expired and when its 0.2 NO_x big bore EGR-only engines with improved fuel economy and performance would be ready to go into production.

20. Navistar met with the EPA staff on December 16, 2011, and in the course of that meeting discussed the concept of Navistar’s proposed submission of an EGR-only big bore engine for certification at 0.2 NO_x. At the meeting, members of the EPA staff stated that the engine as described by Navistar would not meet EPA standards. Immediately after the December 16, 2011 meeting, the EPA staff emailed Navistar with “important takeaways” from the meeting, including notifying Navistar that “[t]he engine described today by the Navistar team for certification in February [2012] does not appear to meet” the EPA’s certification requirements.

21. Four days after the meeting with EPA staff, Navistar filed its 2011 annual report with the Commission on Form 10-K (the “December 2011 Annual Report”). In the December 2011 Annual Report, Navistar referenced its plans to submit big bore certification applications to the EPA and California Air Resources Board in the near future, and it stated in part, “We believe that our engines meet both agencies’ certification requirements.” This statement was materially misleading because it created the impression that Navistar was unaware of any facts indicating that its proposed submission would not meet the EPA’s certification requirements when, in fact, the EPA staff had just informed Navistar days earlier that the engine described by Navistar for certification did not appear to meet the EPA’s certification requirements.

4. March 2012 Quarterly Report, Press Release, and Conference Call

22. On January 31, 2012, Navistar submitted an application for certification of a big bore EGR-only engine at 0.2 NO_x to the EPA (the “January 2012 application”). At an analyst conference on the day following the submission, Ustian stated that there would be no impact on fuel economy and no impact on performance for this engine.

23. In response to the January 2012 application, on February 17, 2012, the EPA staff sent Navistar a letter stating that “our preliminary view is that Navistar’s application for a certificate of conformity raises several serious concerns [that] would need to be discussed and resolved before a decision could be made to approve the [January 2012] application.”

24. One concern the EPA staff identified was that Navistar’s application included a feature called a “Safe Operating Mode” Auxiliary Emissions Control Device (“AECD”). The Safe Operating Mode AECD would be activated whenever the engine was in a vehicle moving at 0.1 mph or higher. The EPA expressed concern that due to this limitation, this AECD was not activated during two of the required EPA tests. When the Safe Operating Mode AECD was in operation, the engine’s NO_x emissions exceeded the 0.2 NO_x limit. The EPA staff notified Navistar that this approach was unacceptable.

25. On February 27, 2012, Navistar sent the EPA staff a written reply to its February 17, 2012 letter. Navistar’s reply challenged the staff’s interpretation of some of its regulations. At this time, Navistar made no changes to its engine or to its certification testing protocol as a result of the EPA’s February 2012 feedback.

26. On March 1, 2012, the EPA staff responded to Navistar’s reply by noting that it was reviewing Navistar’s lengthy response and would send a prioritized list of next steps for the January 2012 application.

27. On March 8, 2012, Navistar filed its quarterly report for its first fiscal quarter of 2012 (the “March 2012 Quarterly Report”), issued a press release regarding the quarterly report (the “March 2012 Press Release”), and conducted the March 2012 Conference Call.

28. In the March 2012 Quarterly Report and the March 2012 Press Release, Navistar referred to the January 2012 application as a “key milestone.” The March 2012 Quarterly Report stated in part: “We reached a number of key milestones during the quarter that we believe will contribute to our long-term strategic profitability goals. Advanced Exhaust Gas Recirculation (‘EGR’), combined with other strategies is our solution to meet ongoing emissions requirements. We formally submitted our 0.2g NO_x engine certification data for our 13L engine to the United States Environmental Protection Agency (‘EPA’) on January 31, 2012, and to the California Air Resources Board (‘CARB’) on February 17, 2012 (collectively, our ‘0.2 NO_x Engine Submission’). These submissions are under review by EPA and CARB and we are engaged in ongoing discussions relating to our engine certification.”

29. These statements were materially misleading because they suggested that Navistar made substantial progress towards EPA certification. In fact, the EPA had notified Navistar of the EPA’s serious concerns with the application.

30. During the March 2012 Conference Call, Ustian responded to an analyst question regarding how many months Navistar was assuming it would have to continue making NCP payments by discussing the timing of certification of Navistar's January 2012 application, stating: "[H]ere's maybe a way to look at it. We have submitted for the 0.2 and that goes through a process of – typically, that's about three months, I think, is about the average of that. When we get the certification, it still takes some time for us to get to production on this. So what we are doing right now is getting ready to go into production, and it will be about June before we can get into production with that particular engine. So that kind of gives you a framework of where it would be. As for the preciseness of it, we can't tell you, but our objective is to be in production on that in June."

31. Navistar's statements on the March 2012 Conference Call were misleading because they created the impression that Navistar was unaware of any facts indicating that the EPA would fail to issue a certification in response to the January 2012 application within a typical three-month time frame for certification in order to meet a June production date. In fact, the EPA staff's notification to Navistar of their serious concerns with the application indicated that certification would be delayed or not obtained by Navistar.

5. June 2012 Quarterly Report and Conference Call

32. By mid-April 2012, Navistar recognized that its January 2012 application would not be approved by the EPA without further changes. Navistar engineers started work on technical changes that would result in a new certification application. These technical changes, however, came at the expense of engine fuel economy and other aspects of engine performance. Navistar met with the EPA staff again in late April 2012 to discuss its new proposal to achieve 0.2 NOx using EGR-only technology.

33. On May 10, 2012, Navistar withdrew its January 2012 application.

34. On May 21, 2012, Navistar submitted its third application for certification of an engine at 0.2 NOx (the "May 2012 application"). This application reflected a feature that, while different from the Safe Operation Mode AECD, also resulted in NOx emissions that exceeded 0.2 NOx when the engine was in a vehicle in motion.

35. On June 4, 2012, Navistar executives and engineers met again with the EPA staff to discuss the May 2012 application (the "June 2012 EPA meeting"). At this meeting, the EPA staff informed Navistar that they had serious concerns about the application.

36. In the hours immediately following the June 2012 EPA meeting, a Navistar executive called Ustian to inform him of the feedback from the EPA staff. The next day, the executive emailed an EPA official to request that the EPA not take any further action on Navistar's application until it could submit a list of questions.

37. Shortly after receiving Navistar's email, the EPA official wrote in response: "As I said yesterday, based on the information provided, I believe that your engine is unlikely to receive a certificate of conformity as it is currently designed." The executive forwarded this email to Ustian and another senior executive within hours of receiving it.

38. On June 7, 2012, Navistar filed its quarterly report for its second fiscal quarter of 2012 (the “June 2012 Quarterly Report”) and held an earnings conference call with securities analysts (the “June 2012 Conference Call”).

39. The June 2012 Quarterly Report stated in part: “We submitted to the EPA an application for a 0.2 NO_x engine certificate for one 13L engine family on January 31, 2012 and we submitted a similar application to CARB on February 17, 2012, but later withdrew both applications. In response to certain concerns raised by the EPA, on May 21, 2012, we submitted a revised application to the EPA and plan to submit a revised application to CARB. Certain issues raised by the revised application are under review by the EPA, and we are engaged in ongoing discussions relating to certification of this engine family at 0.2g NO_x.”

40. These statements were misleading because they suggested that although the EPA staff had expressed concerns about the January 2012 application, Navistar was unaware of any concerns by the EPA regarding the May 2012 application, and, instead, that certain issues raised by the revised application merely were “under review.” In fact, just days earlier, in response to the May 2012 application, the EPA staff had informed Navistar that its engine was unlikely to receive certification based on the engine’s current design.

41. In the June 2012 Conference Call, Ustian stated in his opening remarks that Navistar “want[s] to get our 0.2 certification behind us and not use the NCP, but that is a backup that the EPA is working on. On the other hand, we are also getting ready as soon as that certification is approved we can go into instant production within 30 days. So, we have all the mechanisms in place to respond quickly once we get that certification approved.” Ustian also stated, in response to a question related to “when and if” the application would be approved, “In working with the EPA, they asked us if there was some spots we wanted to modify, and so we did that. And we’ve been running tests on that to make sure they meet all the requirements, not just of the EPA but our own requirements on performance, et cetera.” During the call, an analyst also asked Ustian, “Last time we were talking about this you said it would be three to four months for the approval process. Does that clock start again now in May?” Ustian responded, “No, of course not. Again, it’s somewhat out of our control. But no, there is plenty of background out there now that it shouldn’t take nearly as long.”

42. Through these statements on the June 2012 Conference Call, Navistar created the misleading impression that it had made all of the modifications the EPA said were required for certification and that it was unaware of any facts that would lead it to believe that the EPA would not approve its application. In fact, the EPA had just told Navistar that the May 2012 application was unlikely to be approved based upon the current design of the engine that was the subject of the application.

43. These statements during the June 2012 Conference Call also misleadingly suggested that the engine that was the subject of the May 2012 application would have no degradation in fuel economy or performance. In fact, in an effort to address the EPA’s concerns about Navistar’s certification efforts, Navistar had made technical changes to the engine that sacrificed fuel economy and other performance features in the engine.

Navistar Decides to Transition to SCR Technology

44. Between June 7, 2012 and June 11, 2012, some of Navistar's engineers and senior executives advocated for a transition to SCR technology and began assessing the necessary technical changes and the financial ramifications of such a switch. On June 12, 2012, the United States Court of Appeals for the District of Columbia Circuit vacated the EPA's January 2012 interim NCP rule, which had authorized Navistar to continue selling certain big bore heavy-duty diesel engines at 0.5 NOx without credits. On July 6, 2012, Navistar informed the public that it was withdrawing its May 2012 application for certification and would begin work on an engine technology that incorporated SCR.

Violations

45. As a result of the conduct described above, Respondent violated Sections 17(a)(2) and (3) of the Securities Act. Section 17(a)(2) of the Securities Act prohibits a person, in the offer or sale of any securities, from obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. Section 17(a)(3) of the Securities Act prohibits a person, in the offer or sale of any securities, from engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser. A violation of these sections does not require scienter and may rest on a finding of negligence. *See Aaron v. SEC*, 446 U.S. 680, 685, 701-02 (1980).

46. As a result of the conduct described above, Respondent violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder. Section 13(a) of the Exchange Act and Rules 13a-1, 13a-11, and 13a-13 thereunder require issuers with securities registered under Section 12 of the Exchange Act to file annual, quarterly, and current reports with the Commission. The obligation to file such reports embodies the requirement that they be true and correct. *See SEC v. Savoy, Indus., Ind.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978), *cert. denied*, 440 U.S. 913 (1979). Rule 12b-20 further requires the inclusion of any additional material information that is necessary to make the required statements, in light of the circumstances under which they are made, not misleading. A violation of these reporting provisions does not require scienter and may rest on a finding of negligence. *See SEC v. Wills*, 472 F. Supp. 1250, 1268 (D.D.C. 1978).

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Navistar's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondent Navistar cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and (3) of the Securities Act. Pursuant to Section 21C of the Exchange Act, Respondent Navistar cease and desist from committing or causing any violations and any future violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

B. Respondent Navistar shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$7,500,000.00 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. 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 Navistar 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 Associate Director Robert Burson, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Blvd. Suite 900, Chicago, IL 60604.

C. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, 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.

Brent J. Fields
Secretary