

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 87054 / September 23, 2019

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4086 / September 23, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19492

In the Matter of

NISSAN MOTOR CO., LTD.

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 Nissan Motor Co., Ltd. (“Nissan” 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 is 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. From 2001 through November 2018, Carlos Ghosn ("Ghosn") served as Chairman of the Board and/or CEO² of Nissan Motor Co., Ltd. From fiscal year 2004 through 2018, Nissan's Board delegated to Ghosn the authority to set the amount of individual director and executive compensation, including his own compensation, within certain aggregate limits. Although in certain years the Board's delegation contemplated that Ghosn would consult with Nissan's representative directors on the compensation decisions, in practice, Ghosn set the amount of his compensation without input or oversight.

2. From fiscal year 2009 to fiscal year 2018, Nissan, through the fraudulent actions of Ghosn, with substantial assistance from Gregory L. Kelly ("Kelly"), a former Nissan executive and director, failed to disclose more than \$90 million³ in compensation for Ghosn. Although this undisclosed compensation was in fact not paid to Ghosn, his total compensation was fixed and certain in each fiscal year, with a paid portion that was disclosed by Nissan and a significant portion that was unpaid and undisclosed. Ghosn, with substantial assistance from Kelly and a senior employee in Nissan's Secretariat's Office ("Nissan Employee 1"), devised multiple ways to have the undisclosed portion of the fixed compensation paid through Nissan-related entities without public disclosure.

3. After their attempts to have the compensation paid from other Nissan-related entities in current periods raised certain disclosure issues, Ghosn, with substantial assistance from Kelly and Nissan Employee 1, instead crafted ways to structure payment after Ghosn's retirement from Nissan without disclosure in the periods when the compensation was earned and fixed. Among other schemes: Ghosn entered into secret contracts countersigned by Nissan Employee 1, and executed backdated letters granting himself cash bonuses under Nissan's annual Long Term Incentive Plan ("LTIP") in the amount of the undisclosed compensation.

4. In addition to the \$90 million in undisclosed fixed compensation, Ghosn and certain subordinates, including Kelly, made, or caused to be made, knowingly false and misleading statements regarding approximately \$50 million of additional pension benefits for Ghosn. This included affirmatively misleading Nissan's CFO and other Nissan executives

¹ The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

² Ghosn resigned his position as CEO on April 1, 2017, but remained Chairman of the Board. Ghosn was stripped of the Chairman title following his arrest on November 19, 2018. He was removed from Nissan's Board by shareholder vote on April 8, 2019.

³ Based on the average exchange rate during the year in which the undisclosed compensation was fixed and earned.

regarding the accounting for the additional pension amounts, and creating a false disclosure to support how Nissan accounted for them.

5. The failure to disclose the full amount of Ghosn's compensation and the false disclosure regarding the pension increase in annual securities reports certified by Ghosn violated Japanese disclosure requirements, and resulted in material misstatements in Nissan's annual securities reports in violation of Section 10(b) and Rule 10b-5 of the Exchange Act. Consistent with the exemption from Exchange Act registration on which Nissan relied, Nissan's annual securities reports were translated into English for, among other things, the benefit of U.S. investors in Nissan American Depository Receipts ("ADRs") (OTC: NSANF) that trade over-the-counter in the United States. Those reports contained materially false and misleading statements. As part of their schemes to underreport Ghosn's compensation, Ghosn, with substantial assistance from Kelly, participated in additional acts, practices or courses of business that operated as a fraud or deceit upon Nissan's U.S.-based ADR holders.

Respondent

6. **Nissan Motor Co., Ltd.** is a Japanese automaker based in Yokohama, Japan. Nissan's sponsored ADRs trade over-the-counter in the United States. Nissan does not have a class of securities registered with the Commission and does not file reports with the Commission, instead relying on the exemption contained in Exchange Act Rule 12g3-2(b). Nissan's common stock is listed and trades primarily on the Tokyo Stock Exchange (TYO: 7201). Nissan is a member of the Renault–Nissan–Mitsubishi Alliance, a strategic partnership between the automobile manufacturers based on a cross sharing agreement originally formed in 1999 and expanded to include Mitsubishi in 2016.

Other Relevant Persons

7. **Carlos Ghosn**, 65, is a citizen of France, Lebanon and Brazil and was most recently a resident of the Netherlands or Lebanon. Ghosn joined Nissan in 1999 as its Chief Operating Officer and became President in 2000. He served as Nissan's Chief Executive Officer from 2001 until April 2017, when he stepped down as CEO while maintaining his chairmanship. He served as Chairman from 2003 until November 22, 2018 (co-Chairman from 2003 to 2008). Ghosn was removed from the Chairman role after his arrest by Japanese authorities on November 19, 2018. Ghosn was formally removed from Nissan's Board by shareholder vote on April 8, 2019. Ghosn also served as Chairman and CEO of Renault S.A. starting in 2009 and Chairman of Mitsubishi Motor Corp. starting in 2016. Ghosn was removed as Chairman of Mitsubishi on November 26, 2018 and resigned his positions with Renault on January 24, 2019. Ghosn is currently unemployed and awaiting trial in Japan.

8. **Gregory L. Kelly**, 62, is a United States citizen and resident of Nashville, Tennessee. Kelly is an attorney admitted in Indiana, Tennessee, and various federal courts. Kelly served as an executive at Nissan North America since 1988, and served as a Senior Vice President of Human Resources of Nissan from 2008-2014. In that role, Kelly oversaw Nissan's CEO's Office, Secretariat's Office, Legal Department, and Internal Audit Department. In June 2012, Kelly was elected to serve as a representative director on Nissan's Board of Directors.

Kelly retired from his management role on January 31, 2015, but continued to serve as a representative director on Nissan's Board until he was arrested, along with Ghosn, by Japanese authorities on November 19, 2018. Kelly was removed as a representative director in November 2018 and was formally removed from Nissan's Board by shareholder vote on April 8, 2019. Kelly is currently unemployed and awaiting trial in Japan.

Nissan's Disclosure of Director Compensation

9. Prior to fiscal year 2009, Japanese law required Japanese reporting companies like Nissan to disclose the aggregate amount of all director compensation paid in each fiscal year. However, in early 2010, the Japan Financial Services Agency ("JFSA") amended its disclosure rules and began requiring companies to disclose the total compensation of each individual officer and director whose total compensation equaled or exceeded ¥100 million.⁴ *See Cabinet Office Ordinance on Partial Amendment of Cabinet Office Ordinance on Disclosure of Corporate Information, etc.* (2010 Cabinet Office Ordinance No. 12). This change impacted Nissan's Japanese securities filings beginning with fiscal year 2009, which ended on March 31, 2010.⁵ The compensation required to be disclosed encompassed salary, bonuses, stock options, severance payments, and "other" compensation paid during a fiscal year or where "an estimate of the amount to be paid became certain within [that] fiscal year."

10. Ghosn served as Chairman and/or CEO of Nissan from 2001 through November 2018. From fiscal year 2004 forward, Nissan's Board delegated to Ghosn the authority to set the amount of individual director and executive compensation, including his own compensation, within certain aggregate limits. Although the Board's delegation in certain years contemplated that he would consult with Nissan's representative directors on the compensation decisions, in practice, Ghosn set the amount of director and executive compensation without oversight. For each of Nissan's fiscal years 2009 through 2018, Ghosn's total compensation exceeded the ¥100 million threshold requiring disclosure.

11. Prior to the change in Japanese disclosure law, Ghosn's compensation from Nissan was not publicly available. After the impending change to Japan's disclosure rules was announced, Ghosn became concerned about criticism that might result in the Japanese and French media if Ghosn's total compensation became publicly known. As a result, when the amendments to the Japanese disclosure law were first announced, Ghosn directed a senior Nissan executive to undertake lobbying efforts to eliminate or postpone implementation of the new law. Those attempts were ultimately unsuccessful. So, beginning with fiscal year 2009, Ghosn and

⁴ The ¥100 million threshold was the equivalent of about \$1 million in U.S. dollars when the changed law took effect in or around February 2010.

⁵ In Japan, most companies operate on a fiscal year that runs from April 1 to March 31, so Nissan's fiscal year 2009 ran from April 1, 2009 through March 31, 2010. Nissan's annual securities report ("Yukashoken-Hokokusho") for fiscal year 2009 was filed in June 2010. The new disclosure law took effect in or around February 2010 and was applicable to companies' fiscal year 2009 disclosures.

certain subordinates, including Kelly, began taking steps to conceal a substantial portion of Ghosn's fixed compensation from public disclosure.

Ghosn Awarded Himself More than \$90 Million of Undisclosed Compensation

12. Beginning in fiscal year 2009, after the change in Japanese disclosure law, and continuing until his arrest in 2018, Ghosn and Kelly devised and executed a scheme whereby more than 50% of the compensation that Ghosn awarded to himself was not reported in Nissan's annual securities disclosures filed with the JFSA. Each year beginning with fiscal year 2011,⁶ Nissan Employee 1 would prepare for Ghosn's approval a document summarizing Ghosn's total fixed compensation, his paid compensation that was being disclosed, and his remaining compensation that was not being disclosed.

13. The following is a summary of Ghosn's total fixed compensation for fiscal years 2009-2017, the amount actually paid,⁷ and the amount of undisclosed compensation, according to records from the Secretariat's Office.

⁶ Although Nissan Employee 1 began keeping the tracking documents in 2011, in coordination with Ghosn and Kelly, he created backdated charts memorializing Ghosn's 2008-2010 compensation.

⁷ These numbers have been rounded and do not reflect exact amounts. The numbers also may not reflect all compensation and benefits that were paid to Ghosn from Nissan-related sources in the given year. Other than a few immaterial differences, the paid compensation is consistent with the amount disclosed in Nissan's annual securities reports ("Yukashoken-Hokokusho") for 2010-2017. For 2009, the paid compensation recorded by the Secretariat's Office exceeded the disclosed compensation recorded in Nissan's annual securities reports by ¥320 million, or 36%.

Fiscal Year	Total Fixed Comp (JPY/USD)⁸	Paid Comp	Undisclosed Comp
2009	¥1,437M / \$15M	¥1,211M / \$13M	¥226M / \$2M
2010	¥1,782M / \$21M	¥982M / \$11M	¥800M / \$9M
2011	¥1,894M / \$24M	¥987M / \$12M	¥907M / \$11M
2012	¥1,984M / \$24M	¥949M / \$11M	¥1,035M / \$12M
2013	¥2,048M / \$20M	¥958M / \$10M	¥1,090M / \$11M
2014	¥2,131M / \$19M	¥1,035M / \$9M	¥1,096M / \$10M
2015	¥2,228M / \$19M	¥1,071M / \$9M	¥1,157M / \$10M
2016	¥2,392M / \$22M	¥1,098M / \$10M	¥1,293M / \$12M
2017	¥2,422M / \$22M	¥735M / \$7M	¥1,688M / \$15M
Total	¥18,318M / \$186M	¥9,026M / \$91M	¥9,292M / \$94M

14. Beginning in 2010, and continuing until Ghosn and Kelly’s arrests in 2018, Ghosn, with substantial assistance from Kelly and Nissan Employee 1, devised a series of schemes designed to ensure the payment of the undisclosed compensation to Ghosn. The undisclosed compensation was originally in the form of fixed and certain compensation that Ghosn and certain subordinates, including Kelly, sought to have paid in the current year from certain Nissan-related companies. After their attempts to have the undisclosed compensation paid in current periods raised certain disclosure issues, Ghosn and certain of his subordinates sought ways to guarantee payment of the compensation after Ghosn’s retirement from Nissan without disclosure in the periods when the compensation was earned and fixed.

Ghosn and Kelly, with the assistance of Nissan Employee 1, Sought Payment of the Undisclosed Compensation through Other Related Entities

15. Beginning in early 2010, Ghosn and certain subordinates sought multiple ways to pay the undisclosed fixed compensation in current years from other Nissan-related entities without disclosure. Initially, certain of Ghosn’s subordinates suggested making payments through Renault-Nissan, B.V., the joint venture between Renault and Nissan, without disclosure in Japan or to the Renault Board. When further review raised concerns over potential disclosure requirements in France, this plan was abandoned.

16. Ghosn and certain subordinates, next explored paying Ghosn’s undisclosed compensation from an unconsolidated subsidiary. In October 2010, Kelly presented a plan to Nissan’s Executive Committee proposing the creation of a new unconsolidated subsidiary “to

⁸ United States dollar conversions are based on average JPY/USD exchange rate for the fiscal year.

analyze business opportunities such as potential joint ventures and investments in promising technologies.” Nissan’s Executive Committee approved the proposal and certain of Ghosn’s subordinates proceeded to set up new legal entities named Zi-A Capital B.V. (Netherlands) and Zi-A Capital Ltd. (Dubai), which Nissan initially funded with approximately \$60 million (USD).

17. Through the end of fiscal year 2010, Nissan Employee 1 made preparations to pay Ghosn’s postponed compensation through Zi-A Capital Ltd. However, in March 2011, Ghosn told him that they would not proceed with the payment of the undisclosed compensation from Zi-A Capital Ltd. In the end, the Zi-A entities never invested in any technologies, business opportunities or joint ventures as proposed to the Executive Committee.

Ghosn Signed Secret Contracts to Secure Payment of a Portion of his Fixed Compensation after his Retirement

18. After their failed attempts to pay the undisclosed portions of Ghosn’s compensation in current periods, Ghosn, Kelly, and Nissan Employee 1 devised plans to pay the postponed remuneration in future years as “consultant fees.”

19. First in 2011 and again in 2013, Ghosn entered into secret letter agreements with Nissan to have the outstanding postponed compensation for fiscal years 2009-2012 paid to Ghosn upon retirement. The letter agreements, prepared on Ghosn’s letterhead and addressed to himself, specified Ghosn’s fixed remuneration, the paid remuneration disclosed in prior years, and the remaining remuneration owed by Nissan to Ghosn upon his retirement. The letter agreements were signed by Ghosn and counter-signed by Nissan Employee 1. The 2011 and 2013 letter agreements specified that Ghosn would be paid the full amount of the undisclosed compensation in the year following his retirement from the Board, and that he would be appointed an Executive Consultant or Executive Advisor for two years following his retirement.

20. The 2011 and 2013 letter agreements also provided Ghosn currency price protection by granting Ghosn the right to choose, at the time the payments were to be made, whether to be paid in Japanese yen or U.S. dollars. The stated currency of Ghosn’s compensation for the fiscal years in question had always been Japanese yen. The option to choose the currency of payment years later in retirement would enable Ghosn to select the most advantageous currency based on the respective strength of the currencies. The letter agreements also stated that Ghosn could choose to have his retirement allowance paid in yen or dollars, a new benefit that was not included in his original 2007 award. As described below, Ghosn’s choice of currency when he directed the booking of additional amounts for his retirement allowance resulted in a more than \$20 million increase in the value of his retirement allowance that was not afforded to other directors and was outside the applicable shareholder approval.

Ghosn Executed Back-Dated LTIP Grant Letters to Secure Payment of a Portion of the Undisclosed Compensation

21. In the autumn of 2013, Ghosn was awarded a grant of interests in Nissan’s LTIP in the amount of the undisclosed compensation. Ghosn had not previously participated in Nissan’s LTIP program.

22. To implement this scheme, Nissan Employee 1 prepared four backdated LTIP award letters for fiscal years 2009-2012, granting Ghosn an LTIP interest in the amount of his previously undisclosed compensation for each of those years. The backdated LTIP letters included a U.S. dollar value for each LTIP award using an annual average exchange rate from the respective fiscal year, and allowed Ghosn to decide whether to be paid in Japanese yen or U.S. dollars after his retirement in 2017. The backdated LTIP letters were intended to ensure Ghosn would receive payment on the postponed compensation that had been omitted from Nissan's director compensation disclosures.

23. In fiscal year 2014, Ghosn directed Nissan Employee 1 to have Nissan's finance department book approximately \$80 million into Nissan's LTIP reserve to cover \$58 million of LTIP awards to Ghosn for fiscal years 2009 through 2014, as well as approximately \$22 million for exchange rate fluctuations on Ghosn's recently-inflated retirement allowance, described below. At Ghosn's direction, Nissan Employee 1 contacted a senior finance department executive to discuss recording the LTIP, and was informed that, given the size of the booking, it would be best to use the CEO Reserve⁹ and for Ghosn to discuss the booking directly with the CFO. On or around February 23, 2015, at Ghosn's direction, Nissan Employee 1 submitted an "Application for Budget Usage" signed by Ghosn, Nissan Employee 1, and Nissan's CFO, to approve the use of the CEO Reserve to book the LTIP awards.

24. Nissan's CFO was falsely told that the LTIP awards were a broad-based grant to numerous Nissan participants rather than that the vast majority was for Ghosn and included exchange rate protection on the inflated retirement allowance. Relying on this information, Nissan's CFO approved and signed off on the LTIP expense request, and the amounts were recorded over three fiscal years. Nissan's CFO would not have approved booking the LTIP expense without additional disclosure if he had known the truth about its actual intended use.

25. By 2017, Nissan Employee 1 became concerned that Japan's tax authorities might raise questions about the tax treatment of the LTIP award and require disclosure of the LTIP award recipients in the event of a tax audit, and alerted Ghosn to his concerns. Fearing public disclosure of the LTIP award, Ghosn approved reversing the impact of his 2014 LTIP award in Nissan's accounting system.

26. Kelly provided substantial assistance to Ghosn's efforts to pay his undisclosed compensation through an LTIP award that was never disclosed to investors, including by discussing the plan with Ghosn and certain other Nissan subordinates, reviewing and editing backdated documents intended to effect the scheme, and directing other Nissan employees in furtherance of the scheme.

Ghosn and Kelly Fraudulently Inflated Ghosn's Pension Allowance by More Than \$50 Million and Created a False Disclosure to Disguise the Increase

⁹ Nissan's CEO Reserve was a budgetary tool that allowed non-allocated expenses to be charged to the CEO's Office for budget purposes so that they would not unexpectedly impact the results of other departments at Nissan.

27. In or around June 2007, Nissan's shareholders voted to discontinue Nissan's pension program for directors and statutory auditors.¹⁰ To implement the shareholder vote, Nissan determined the estimated value of each director's retirement allowance at that point in time and included the aggregate amount in "Other Long-Term Liabilities" for the fiscal year ended March 31, 2008. On June 18, 2007, Nissan informed Ghosn by letter that the estimated value of his retirement allowance was approximately ¥4.4 billion. The June 18, 2007 letter included the calculations used to arrive at that amount.

28. In or around July 2013, Ghosn asked certain subordinates, including Kelly, to consider whether Ghosn's retirement allowance had been miscalculated in 2007 and explore alternative ways to calculate it to make it a larger amount. As a result of those efforts, Ghosn approved an alternative calculation that would increase his retirement allowance from ¥4.4 billion to roughly ¥6.9 billion.

29. Although Nissan Employee 1 initially prepared calculations that considered changing the formula for all directors and statutory auditors, Ghosn ultimately decided that they would only increase his retirement allowance. In subsequent email communications, an employee in Nissan's legal department who was involved as one of the subordinates in the pension allowance increase scheme ("Nissan Employee 2") described the increase in Ghosn's retirement allowance as a "contrived construction of the pension plan."

30. In or around October 2013, after settling on the calculation, Ghosn directed Nissan Employee 1 to have the new pension amount recorded in Nissan's accounting records. Pursuant to those instructions, Nissan Employee 1 executed a new retirement allowance award letter that was backdated to September 1, 2007, and signed on behalf of Nissan before providing it to Ghosn. The backdated retirement award letter used the same formula as the original June 2007 award letter but increased the average annual remuneration on which the award was based by more than ¥600 million per year through a line-item labeled "Stock-option[s]," which resulted in Ghosn's retirement allowance increasing to roughly ¥6.9 billion.

31. On October 21, 2013, Nissan Employee 1 emailed Nissan Employee 2 about booking the increase to Ghosn's retirement allowance "without making it public." Nissan Employee 1 wrote, "It is necessary to explain to the accountants and external auditors . . . but it would be no problem by explaining that there was [a] miscalculation at the Secretariat."

32. Sometime afterward, certain Ghosn subordinates, including Kelly, took steps to have Nissan's finance department record the pension increase in Nissan's accounting systems, including by falsely informing Nissan's CFO that the increase was the result of a mistake at the Secretariat's Office. The additional retirement allowance was recorded in Nissan's accounting and finance records for fiscal year 2014.

¹⁰ In Japanese corporations, a statutory auditor is appointed by shareholder vote and performs functions different from an outside auditor, including auditing the execution of duties by officers, directors, and accounting advisors for a company.

33. In early 2015, Nissan Employee 2 sent the CFO and Kelly a proposed disclosure describing the increase as an “updated amount of retirement benefits for directors and statutory auditors.” The disclosure gave the impression that the increase benefited multiple directors and statutory auditors, when in fact the entire approximately \$29 million increase only benefitted Ghosn. Nissan’s fiscal year 2014 annual report filed in June 2015 reflected that misleading disclosure, and did not disclose that only Ghosn’s retirement benefits were substantially increased or that they were increased by roughly \$29 million.

34. In addition to changing the calculation of Ghosn’s pension allowance, Ghosn also instructed Nissan Employee 1 to change the currency in which Ghosn’s pension would be paid, resulting in an additional \$22 million increase in the value of Ghosn’s pension allowance. When it was valued in the original June 18, 2007 letter, Ghosn’s pension allowance was specifically calculated and expressed in Japanese yen, as required by the applicable shareholder approval. However, as described above, the letter agreement signed by Ghosn and Nissan Employee 1 in or around March 2011 included a clause allowing Ghosn to choose whether his pension allowance would be paid in Japanese yen or U.S. dollars. The currency clause included in the 2011 agreement was not included in Ghosn’s original pension agreement, and was inconsistent with the valuation of Nissan’s pensions for other directors.

35. Beginning in or around October 2014, Ghosn directed Nissan Employee 1 to include the value of the pension allowance in United States dollars on the spreadsheets tracking the value of Ghosn’s undisclosed compensation and retirement allowance, resulting in an approximately \$22 million increase in the value of Ghosn’s retirement allowance. In doing so, Nissan Employee 1 calculated the conversion using an exchange rate from 2012 that would provide Ghosn greater benefit than the prevailing exchange rate at the time of the conversion in 2014. Because of changes in the value of the Japanese yen relative to the U.S. dollar, the choice of currency resulted in a significant financial benefit to Ghosn.

36. In or around February 2015, Ghosn, with the assistance of Nissan Employee 1, approved the incorrect booking of the additional \$22 million in retirement allowance in connection with the booking of Nissan’s \$58 million increase in the value of the LTIP awards. This was never disclosed by Nissan or Ghosn.

37. Kelly provided substantial assistance to Ghosn’s efforts to increase his retirement allowance, including by discussing the plans with Ghosn and other Nissan employees, reviewing and editing documents intended to effect the schemes, providing a false description of the retirement allowance change to Nissan’s CFO, failing to correct the false and misleading disclosure regarding the change, and directing other Nissan employees in furtherance of the scheme.

Resulting Misstatements and Omissions

38. As a result of the above misconduct by Ghosn and Kelly, Nissan’s annual securities reports for fiscal years 2009-2017 contained materially false and misleading information. Those securities reports included officer and director compensation information required by Japanese law and were translated by Nissan into English and posted on Nissan’s

website consistent with Nissan's reliance on the Exchange Act Rule 12g3-2 exemption from Exchange Act Section 12(g) registration. Specifically, (1) Nissan's disclosures of director compensation for fiscal years 2009-2017 were materially understated by the amount of the undisclosed compensation awarded to Ghosn during those fiscal years, and (2) Nissan's disclosure regarding the increase to the retirement allowance in its fiscal year 2014 annual securities report was false and misleading because it implied that the change impacted all of Nissan's directors and statutory auditors who were subject to the retirement allowance.

Nissan's Remedial Efforts and Cooperation

39. In determining to accept the Offer, the Commission considered the significant cooperation afforded the Commission staff by Respondent. The Commission also considered remedial acts promptly undertaken by Respondent, including the following corporate governance changes: Respondent changed the basic structure of the Board of Directors to include a Compensation Committee and Audit Committee; Respondent constituted its Compensation Committee entirely of independent outside directors and gave it sole authority to determine compensation of Executive Officers, including the CEO and directors, which authority cannot be delegated; Respondent's Secretariat Office was modified to make its actions more transparent and subject to internal auditing and internal controls procedures; Respondent changed its Board composition to include a majority of independent outside directors, including the Chairman of the Board as an independent outside director and eliminating the Chairman's role in connection with business operations; Respondent constituted its Audit Committee of a majority independent outside directors, including an independent outside director as its chair, with at least one member of the Audit Committee having experience in international audits; and Respondent eliminated Nissan's CEO Reserve.

Undertakings

40. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Respondent undertakes and agrees to: (i) use best efforts to make employees, officers and directors appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) produce in any United States judicial district for deposition a witness pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure and a custodian of records capable of authenticating any documents produced by Respondent; (iii) accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iv) appoint Respondent's undersigned attorney as agent to receive service of such notices and subpoenas; (v) to waive the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules with respect to such notices and subpoenas, provided that the party requesting the testimony reimburses Respondent's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (vi) consent to personal jurisdiction over Respondent in any United States District Court for purposes of enforcing any such subpoena.

Violations

41. As a result of the conduct described above, Respondent violated Section 10(b) of the Exchange Act and Rule 10b-5, thereunder. Section 10(b) of the Exchange Act and Rule 10b-5 prohibit fraud in connection with the purchase or sale of securities. Section 10(b) and Rule 10b-5 prohibit: (1) using any device, scheme or artifice to defraud; (2) making a material misstatement of fact or omitting a material fact necessary to make a statement made not misleading; or (3) engaging in any act, practice or course of business that operates or would operate as a fraud or deceit upon any person. *Scienter* is an element of both Section 10(b) and Rule 10b-5. *See Aaron v. SEC*, 446 U.S. 680, 701-02 (1980).

42. Ghosn's perpetration of the fraudulent conduct, with Kelly's substantial assistance, described herein, including intent and knowledge of the misleading statements, devices, schemes and artifices to defraud Nissan investors can be imputed to Nissan, and serves as the basis for Nissan's liability. Under traditional principles of *respondeat superior*, the knowledge of an employee or agent of an entity may be imputed to that entity for purposes of establishing a violation of the federal securities laws, and a company is liable for the acts of its employees or agents, where the acts are undertaken within the scope of their employment. *See* Restatement (Third) of Agency, § 2.04 (2006) ("An employer is subject to liability for torts committed by employees while acting within the scope of their employment."); *SEC v. Morgan Keegan & Co.*, 678 F.3d 1233, 1249 (11th Cir. 2012); *Standard Oil Co. v. United States*, 307 F.2d 120, 127 (5th Cir. 1962).

43. Ghosn's conduct violated Section 10(b) of the Exchange Act and Rule 10b-5, and Kelly aided and abetted Ghosn's violation. The misleading statements, devices, schemes and artifices to defraud were material and evidenced a high degree of scienter. Ghosn's acts were undertaken within the scope of his employment, particularly in light of Nissan's specific delegation to Ghosn of authority to set individual director compensation, including his own. Therefore, his conduct, mental state, and liability can be imputed to Nissan, and Nissan thereby violated Section 10(b) of the Exchange Act and Rule 10b-5, thereunder.

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 shall cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act.

B. Respondent shall, within 30 days of the entry of this Order, pay a civil monetary penalty of \$15,000,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury. If timely payment is not made, interest shall accrue pursuant to 31 U.S.C. § 3717.

Payments 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 Service 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 Nissan Motor Co., Ltd. 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 Melissa Hodgman, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

C. Amounts ordered to be paid as civil money penalties in 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 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.

D. 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, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent 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 Respondent 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