

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

**SECURITIES ACT OF 1933**  
**Release No. 11032 / February 22, 2022**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 94294 / February 22, 2022**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 4283 / February 22, 2022**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20781**

**In the Matter of**

**BAXTER INTERNATIONAL  
INC.**

**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 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 Baxter International Inc. (“Baxter” 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 Respondent 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 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:

#### Summary

1. Baxter is a publicly-traded, U.S.-based healthcare product company that generates the majority of its revenue outside of the U.S. Baxter reports its consolidated financial results in U.S. dollars, although many of its subsidiaries have a different functional currency as they manufacture and sell products globally and transact in foreign currencies. The values of these foreign currencies relative to the U.S. dollar fluctuate frequently.

2. From at least 1995 through July 2019, the foreign exchange rate convention ("FX Convention") Baxter used to record foreign currency transactions recognized by subsidiaries in their functional currencies and to uniformly translate the results of subsidiaries with foreign functional currencies into U.S. dollars was not in accordance with U.S. generally accepted accounting principles ("GAAP").

3. Beginning in at least 2009 and continuing through July 2019, Baxter improperly leveraged its FX Convention by engaging in intra-company transactions for the purpose of generating foreign exchange accounting gains or avoiding foreign exchange accounting losses (the "FX Transactions"). These FX Transactions had the effect of materially misstating Baxter's net income as reported in its public filings.

4. In October 2019, Baxter announced that it was conducting an internal investigation concerning the FX Transactions. In March 2020, Baxter restated its financial statements, which reduced its previously reported net income for 2017 through June 30, 2019 and retained earnings as of January 1, 2017 by \$582 million, collectively. Of this amount, \$517 million was related to foreign exchange gains and losses dating back to 2010, which was in part attributable to FX Transactions.

5. Based on this conduct, and as described in further detail below, Baxter violated Sections 17(a)(2) and 17(a)(3) of the Securities Act and Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 13a-1, 13a-11 and 13a-13 thereunder.

#### Respondent

6. **Baxter International Inc.** is a Delaware corporation with its principal place of business in Deerfield, Illinois. Its common stock is registered pursuant to Section 12(b) of the Exchange Act and trades on the New York Stock Exchange. Baxter files periodic reports, including annual reports on Form 10-K and quarterly reports on Form 10-Q, with the Commission pursuant to

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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.

Section 13(a) of the Exchange Act and related rules thereunder. During the relevant period, Baxter sold securities to the public pursuant to registration statements filed with the Commission.

## Facts

### Baxter's Foreign Exchange Rate Convention

7. FASB Accounting Standards Codification Topic 830, "Foreign Currency Matters" (ASC 830), provides guidance concerning foreign exchange rate conventions. ASC 830-20-30-1 requires that foreign currency transactions initially be measured and recorded in an entity's functional currency using the exchange rate on the date of the transaction. ASC 830-20-35-2 requires that foreign currency denominated assets and liabilities be remeasured at the end of each reporting period using the exchange rate at that date.

8. Before July 2019, Baxter's FX Convention was not in accordance with GAAP because foreign currency transactions in a given month were initially measured using exchange rates from a specified date near the middle of the previous month as opposed to the exchange rate on the date of the transaction. Additionally, foreign currency denominated assets and liabilities were subsequently remeasured at the end of each month using exchange rates from a specified date near the middle of the then current month, called "T Day," and not at the end of the reporting period.

9. Because of Baxter's FX Convention, Baxter employees knew the exchange rates that would apply to intra-company transactions from the T Day in a given month through month-end.

### Treasury Employees Leveraged Baxter's Foreign Exchange Rate to Record Gains

10. Baxter's Treasury department was responsible for managing Baxter's exposure to fluctuations in foreign exchange rates, which Baxter managed on a consolidated basis.

11. Beginning in about 2007, Baxter's Treasury department began focusing on managing Baxter's foreign exchange rate exposure more efficiently and at a lower cost. Baxter wanted to reduce its use of third-party derivative contracts and instead manage its foreign currency exposures on a consolidated basis through offsetting cash positions. Baxter developed the FX Transactions as a way to better control reported foreign exchange gains and losses.

12. Beginning in at least 2009, personnel in Baxter's Treasury department engaged in the FX Transactions solely to generate non-operating foreign exchange accounting gains or avoid foreign exchange accounting losses.

13. Each FX Transaction comprised a series of transactions designed to create a foreign exchange gain or avoid a loss at a Baxter subsidiary. For example, when the dollar was strengthening in comparison to the Euro, Baxter would generate a foreign exchange gain by moving U.S. dollars to a Euro-functional Baxter entity. Specifically, a U.S. dollar Baxter entity would make a capital distribution in U.S. dollars to its Baxter Euro-functional parent ("Euro Parent"). Euro Parent would then enter into simultaneous transactions with Baxter's Euro-

functional cash pooling entity (“Euro Cash Pooling Entity”) to (i) trade the dollars for Euros and (ii) loan Euros in the same amount it just traded. The Euro Cash Pooling Entity would record a foreign exchange gain on the U.S. dollars that it held at month end. The gain was the difference between exchange rates for the prior month’s T Day and current month’s T Day. After month-end, the Treasury group would unwind the currency trade and the loan.

14. Because of Baxter’s FX Convention, Treasury personnel knew the foreign exchange rates that would apply to month-end transactions before they happened. With this knowledge, certain Treasury personnel executed FX Transactions to generate specific amounts of accounting gains or avoid specific amounts of accounting losses.

15. Beginning in the fourth quarter of 2017, Baxter began to more accurately forecast the “other (income) expense, net” line of its financial statements as part of a company-wide initiative to improve its forecast accuracy and as a result of the consistent gains being generated by the Treasury department. The foreign exchange component of the other (income) expense line forecast was based on the average actual foreign exchange gains reported by Baxter over the previous several quarters, discounted slightly for volatility.

16. Baxter did not have sufficient internal accounting controls over intra-company transactions. It also did not have adequate internal controls to monitor and quantify the difference between the foreign exchange gains and losses that it reported using its FX Convention and the gains and losses it would have reported using exchange rates in accordance with GAAP. Baxter’s internal accounting controls failed to identify that the foreign exchange gains generated by the FX Transactions were improper.

#### Baxter’s Inaccurate Financial Reporting and Ineffective Internal Control Over Financial Reporting

17. The accounting gains generated (or losses avoided) from the FX Transactions were reported on the “other (income) expense, net” line of Baxter’s financial statements and were reflected in Baxter’s net income and earnings per share (“EPS”).

18. Baxter reported foreign exchange gains of \$113 million in 2015, \$28 million in 2016, \$50 million in 2017, \$73 million in 2018, and \$22 million for the first two quarters of 2019. The improper FX Transactions had the effect of inflating Baxter’s net income and EPS.

19. Baxter should have discovered that the FX Transactions caused materially misstated financial results.

20. In late July 2019, Baxter’s Tax department asked certain Treasury personnel about the details of the FX Transactions. The Treasury personnel explained the FX Transactions to the Tax personnel, including that the FX Transactions were used to generate foreign exchange gains or avoid losses. Shortly thereafter, Baxter undertook to change its FX Convention.

21. In October 2019, Baxter announced that it was conducting an internal investigation concerning the FX Transactions.

22. On February 13, 2020, Baxter announced that its consolidated financial statements for the years ended December 31, 2016, 2017, and 2018 and its quarterly financial statements for the quarters ended March 31, 2017 through June 30, 2019, should no longer be relied upon because of misstatements to Baxter's previously reported foreign exchange gains and losses.

23. On March 17, 2020, Baxter filed its Form 10-K for the period ending December 31, 2019. In that filing, Baxter announced it had completed the investigation concerning the FX Transactions and restated its financial statements and financial information for 2017, 2018, and the first half of 2019, including each of the quarterly and year-to-date periods from 2018 through 2019, to correct material misstatements related to the FX Transactions as well as other immaterial misstatements. The 10-K also included restatements of selected unaudited financial information for the years ended December 31, 2015 and 2016.

24. In quantifying the misstatements, Baxter identified all legal entities that had foreign exchange gains or losses on intra-company transactions above an immaterial threshold and remeasured the foreign exchange gains and losses for those transactions by applying a new exchange rate convention in accordance with GAAP. No distinction was made on whether the foreign exchange gain or loss resulted from FX Transactions. Baxter also remeasured the gains and losses on foreign currency derivative contracts in these same entities using the new exchange rate convention.

25. As a result of the restatement, Baxter reduced its total reported foreign exchange gains and losses from 2010 through the second quarter of 2019 by \$517 million.

26. On February 13, 2020, Baxter announced that it had determined that it had material weaknesses in its internal control over financial reporting in the area of foreign exchange gains and losses, and that as a result of the material weaknesses, its disclosure controls and procedures were not effective as of December 31, 2018, March 31, 2019, and June 30, 2019.

27. In its Form 10-K for the year ended December 31, 2019, Baxter disclosed that it had a material weakness in its internal control over financial reporting related to accounting for foreign exchange gains and losses as of December 31, 2018 and continuing through December 31, 2019.

28. Specifically, Baxter disclosed that it did not have controls in place to monitor and quantify the difference between the foreign exchange gains and losses that it reported using the FX Convention and the foreign exchange gains and losses it would have reported using exchange rates determined in accordance with GAAP. In addition, Baxter did not have sufficient policies and controls for approving and monitoring intra-company transactions to prevent or detect the FX Transactions. As a result of this material weakness, Baxter did not maintain effective internal control over financial reporting as of December 31, 2019.

### **Violations**

29. As a result of the conduct described above, Baxter violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit any person from directly or indirectly 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 circumstance under which they are made, not misleading, or engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser, in the offer or sale of securities. A violation of these provisions does not require scienter and may rest on a finding of negligence. *See Aaron v. SEC*, 446 U.S. 680, 685, 701-02 (1980).

30. As a result of the conduct described above, Baxter violated Section 13(a) of the Exchange Act and Rules 13a-1, 13a-11, and 13a-13 thereunder, which require issuers with securities registered under Section 12 of the Exchange Act to file annual, current, and quarterly reports with the Commission containing such information as the Commission's rules may require. 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).

31. As a result of the conduct described above, Baxter violated Section 13(b)(2)(A) of the Exchange Act, which requires issuers with securities registered under Section 12 of the Exchange Act to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the issuer. Scienter is not an element of the books and records provision. *See Ponce v. SEC*, 345 F.3d 722, 737 n.10 (9th Cir. 2003) (noting that a "plain reading of Section 13(b) reveals that it also does not impose a scienter requirement").

32. As a result of the conduct described above, Baxter violated Section 13(b)(2)(B) of the Exchange Act, which requires issuers with securities registered under Section 12 of the Exchange Act to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that, among other things, transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP. Scienter is not an element of the internal accounting control provisions. *See Ponce*, 345 F.3d at 737 n.10.

### **Baxter's Remedial Efforts and Cooperation**

33. In determining to accept Baxter's Offer, the Commission considered Baxter's report of the FX Transactions to the Commission's staff, the cooperation provided by Baxter throughout the Commission's investigation, and remedial measures undertaken by Baxter.

34. Shortly before announcing the internal investigation publicly on October 24, 2019, Baxter disclosed to the Commission's staff that it was conducting an internal investigation concerning the FX Transactions.

35. Thereafter, Baxter provided substantial cooperation to the Commission's staff throughout its investigation, including by providing detailed explanations of how the FX Transactions worked, summarizing witness interviews, and providing other relevant information to the staff, both on their own initiative and at the staff's request. The cooperation afforded by Baxter substantially advanced the quality and efficiency of the staff's investigation and conserved Commission resources.

36. Baxter also undertook multiple remedial measures, including: (i) adopting a new, GAAP-compliant foreign exchange rate convention shortly after personnel raised concerns about

the FX Transactions; (ii) hiring a new treasurer with public company experience and creating two new roles to provide additional oversight over treasury matters; (iii) recouping bonuses paid to the CEO, CFO, and other officers pursuant to its Executive Compensation Recoupment Policy and Section 304(a) of the Sarbanes-Oxley Act of 2002; (iv) improving its approval process for intra-company transactions; and (v) restating its financial statements.

#### IV.

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

Accordingly, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Baxter cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act and Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 13a-1, 13a-11 and 13a-13 thereunder.

B. Baxter shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$18,000,000 to the Securities and Exchange Commission. 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 Baxter 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 Jeffrey A. Shank, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Ste. 1450, Chicago, Illinois 60604.

C. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the penalties referenced in paragraph IV.B. above. 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.

D. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of \$18,000,000 based upon its cooperation in a Commission investigation. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay an additional civil penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Vanessa A. Countryman  
Secretary