

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11060 / May 6, 2022

SECURITIES EXCHANGE ACT OF 1934
Release No. 94859 / May 6, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20844

In the Matter of

NVIDIA 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 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 NVIDIA Corporation (“NVIDIA” or “Respondent” or the “company”).

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 a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

1. This matter concerns NVIDIA's disclosures during two consecutive quarters in its fiscal year 2018 related to the impact of cryptomining on the growth of revenue from the sale of graphics processing units ("GPUs") NVIDIA designed and marketed for gaming. During the second and third fiscal quarters of 2018 (the "relevant period"), as certain crypto asset prices rose, users of NVIDIA's GPUs were increasingly performing cryptomining. NVIDIA had information indicating that cryptomining was a significant factor in the year-over-year growth in revenue from the sale of GPUs that NVIDIA designed and marketed for gaming. The company, however, did not disclose this in the company's Forms 10-Q for these quarters as required by former Regulation S-K, Item 303(b)(2) (currently Item 303(c)(2)), part of the company's Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") disclosure requirements. NVIDIA also failed to maintain adequate disclosure controls and procedures as required by Exchange Act Rule 13a-15(a) related to its MD&A requirements.

Respondent

2. NVIDIA Corporation, a Delaware corporation headquartered in Santa Clara, California, designs and markets GPUs for various computing applications, including video games. NVIDIA's common stock is registered pursuant to Section 12(b) of the Exchange Act. NVIDIA's common stock trades on the NASDAQ.

Facts

Impact of Cryptomining on NVIDIA's Gaming Business

3. During fiscal year 2018 (ending January 28, 2018), NVIDIA reported its results in two reportable segments: GPUs and Tegra processors. GPUs designed for desktops, notebooks, or cryptomining were all reported in the GPU business segment. The company also reported its revenue by its specialized market platforms, including gaming and original equipment manufacturer ("OEM"), where products are categorized by how they are designed and marketed. The gaming specialized market ("Gaming") was historically and during this time frame the company's largest specialized market. During fiscal year 2018, over half of the company's total \$9.714 billion in reported revenue was attributed to Gaming, inclusive of GPUs for desktops and notebooks and system-on-a-chip modules for consoles.

4. Beginning in fiscal year 2018, GPUs became popular for cryptomining Ether ("ETH") and other crypto assets. Prior to fiscal year 2018, cryptomining did not meaningfully impact demand for the company's GPUs, and crypto assets were not referenced in NVIDIA's Form 10-K for fiscal year 2017.

5. The rise in demand for GPUs for performing cryptomining corresponded with the rise in certain crypto asset prices. ETH prices rose from under \$10 on January 1, 2017, to nearly \$800 on January 1, 2018. During the relevant period, some of NVIDIA's sales personnel expressed their belief that much of the increased demand for the company's Gaming products, primarily in China, was being driven by cryptomining.

6. NVIDIA's senior management internally expressed a desire to capture the cryptomining demand, and at the same time shelter its Gaming business from cryptominers and protect supply of GPUs for gamers. As a result, NVIDIA launched a product line of cryptomining processors, known as "CMP," which the company marketed to large cryptomining operations. NVIDIA's Forms 10-Q for the second and third fiscal quarters 2018 reported the CMP sales in the GPU reportable segment within PC OEM revenue. Based on known CMP sales, the company identified cryptomining as a significant element of the OEM GPU sales within the GPU reportable segment revenue in the company's quarterly reports.

7. During the relevant period, NVIDIA also received information indicating that cryptomining was a significant factor in year-over-year growth in NVIDIA's Gaming GPUs revenue. Some of the company's sales personnel, in particular in China, reported what they believed to be significant increases in demand for Gaming GPUs as a result of cryptomining. In addition, while the company could not track when and which specific Gaming GPUs were purchased for the purpose of cryptomining, company personnel estimated using various assumptions that the impact of cryptomining was at levels that would indicate cryptomining was a significant factor in the year-over-year growth in Gaming revenue during the relevant period.

8. During the relevant period, NVIDIA experienced material changes to its total and Gaming revenue as compared to the corresponding period of the prior fiscal year. The company's Gaming revenue increased by 52%, year over year for the second fiscal quarter 2018, and by 25%, year over year for the third fiscal quarter 2018.

9. During the relevant period, NVIDIA had information indicating that cryptomining was a significant factor in the material year-over-year growth in NVIDIA's Gaming and total revenue.

NVIDIA's Misleading Disclosures Regarding Cryptomining

10. NVIDIA filed its quarterly reports for the second and third fiscal quarters of 2018 on Forms 10-Q on August 23, 2017 and November 21, 2017, respectively. Analysts and investors were interested in understanding whether the company's Gaming revenue was impacted by cryptomining. However, NVIDIA failed to disclose in these filings that cryptomining was a significant factor in year-over-year growth in the company's Gaming revenue.

11. Section 13(a) of the Exchange Act and Rule 13a-13 thereunder require companies such as NVIDIA to file Forms 10-Q containing Item 303 of Regulation S-K disclosures. As operative during the relevant period, Item 303(b)(2) required issuers to disclose in quarterly reports "any material changes in the registrant's results of operations . . . with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year." Former 17 C.F.R.

§ 229.303(b)(2) (subsequently amended, 17 C.F.R. § 229.303(c)(2)). Regulation S-K also required that the discussion of material changes in results of operations during the quarter “shall identify any significant elements of the registrant’s income or loss from continuing operations which do not arise from or are not necessarily representative of the registrant’s ongoing business.” Former 17 C.F.R. § 229.303(b), Instruction 4 (subsequently amended, 17 C.F.R. § 229.303(c), Instruction 2). As the Commission stated in a 2003 MD&A interpretive release, “if events and transactions reported in the financial statements reflect material unusual or non-recurring items, aberrations, or other significant fluctuations, companies should consider the extent of variability in earnings and cash flow, and provide disclosure where necessary for investors to ascertain the likelihood that past performance is indicative of future performance.” Commission Guidance Regarding Management’s Discussion and Analysis of Financial Condition and Results of Operation (Dec. 19, 2003), *available at* www.sec.gov/rules/interp/33-8350.htm.

12. In the MD&A section of its Forms 10-Q for the second and third fiscal quarters 2018, NVIDIA failed to disclose that cryptomining was a significant factor in the material year-over-year growth in NVIDIA’s Gaming revenue. As a result, the Forms 10-Q omitted significant information relating to NVIDIA’s GPU segment revenue and its component GPUs for gaming, and any related risks, during these quarters.

13. At the same time, the company’s Forms 10-Q for the relevant period did disclose that cryptomining was a significant element of OEM GPU sales during the relevant period based on known sales of CMPs. The company’s omissions in the Forms 10-Q concerning the impact of cryptomining on GPUs for Gaming coupled with these disclosures about the impact on NVIDIA’s OEM revenue gave the misimpression in the Forms 10-Q during the relevant period that the year-over-year growth in the company’s Gaming revenue was not meaningfully impacted by cryptomining.

14. Throughout the relevant period, NVIDIA’s analysts and investors were interested in understanding the extent to which the company’s Gaming revenue was impacted by cryptomining, and routinely asked senior management about the extent to which increases in Gaming revenue during this time frame were driven by cryptomining. In light of the volatility of certain crypto asset prices during this time frame, investors and analysts probed the significance of cryptomining to NVIDIA’s Gaming business to determine how sustainable the contributions to the company’s largest specialized market would be going forward.

15. The company’s periodic reports did not identify cryptomining as a significant factor in year-over-year growth in Gaming revenue until the end of fiscal year 2018, disclosing this in the company’s Form 10-K for fiscal year 2018 (filed on February 28, 2018). In that Form 10-K, the company also identified fluctuations in crypto asset prices as a risk to the company’s results of operations.

16. During the relevant period, NVIDIA offered and sold securities, including issuing shares as compensation to certain employees under the company’s employee incentive plans, and selling shares under its employee stock purchase plan.

NVIDIA's Disclosure Control and Procedures Failures

17. Exchange Act Rule 13a-15(a) requires issuers such as NVIDIA to “maintain disclosure controls and procedures . . . as defined in paragraph (e) of this section.” Paragraph (e) defines disclosure controls and procedures to include, among other things, “procedures . . . designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the [Exchange] Act . . . is recorded, processed, summarized, and reported[] within the time periods specified in the Commission’s rules and forms.”

18. Even though NVIDIA had information indicating that cryptomining was a significant factor in the year-over-year growth in revenue for the company’s GPUs for Gaming in its GPU business segment during the relevant period, NVIDIA failed to maintain disclosure controls or procedures designed to ensure that information required to be disclosed in NVIDIA’s results of operations was reported as required by the MD&A provisions of Regulation S-K, Item 303.

Violations

19. As a result of the conduct described above, NVIDIA violated Sections 17(a)(2) and (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 circumstances under which they were 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 sales 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).

20. In addition, NVIDIA violated Section 13(a) of the Exchange Act and Rule 13a-13 thereunder, which require reporting companies to file with the Commission complete and accurate quarterly reports. NVIDIA also violated Rule 12b-20 of the Exchange Act, which requires an issuer to include in a statement or report filed with the Commission any information necessary to make the required statements in the filing not materially misleading.

21. In addition, NVIDIA violated Exchange Act Rule 13a-15(a), which requires every issuer of a security registered pursuant to Section 12 of the Exchange Act to maintain disclosure controls and procedures designed to ensure that information required to be disclosed by an issuer in reports it files or submits under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the Commission’s rules and forms.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and (3) of the Securities Act and Section 13(a) of the Exchange Act and Rules 12b-20, 13a-13, and 13a-15 thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$5,500,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). 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 NVIDIA 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 Kristina Littman, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, District of Columbia 20549.

C. 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.

Vanessa A. Countryman
Secretary