

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1934
Release No. 96535 / December 19, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21256

In the Matter of

Exela Technologies, Inc.
and
James G. Reynolds

Respondents

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 Exela Technologies, Inc. (“Exela” or the “Company”) and James G. Reynolds (“Reynolds”) (collectively “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”), 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 them and the subject matter of these proceedings, which are admitted, and except as provided in Section V, Respondents consent 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 Respondents' Offers, the Commission finds¹ that:

Summary

1. This matter involves accounting, financial reporting and controls deficiencies by Exela, a business process automation company headquartered in Irving, Texas. These deficiencies led to a multi-year restatement of Exela's financial statements concerning, among other things, its failure to properly account for and report its exposure to a shareholder lawsuit and to disclose and account for related party transactions. Reynolds, Exela's former Chief Financial Officer, caused Exela's failure to properly report two related party transactions in one quarter.

2. From mid-2017 through 2019, Exela failed to properly account for and report equity and related liabilities associated with an appraisal action filed in 2017 by minority shareholders in connection with the complex set of transactions by which Exela became a public company through a merger with a special purpose acquisition company ("SPAC"). Those shareholders dissented from a merger that was one of the preliminary steps in the business combination and sought to obtain the fair value of their shares through an appraisal action. While Exela had disclosed to investors the existence of the appraisal claim in its public filings while the suit was pending, Exela failed to accrue for any payment it would have to make to those dissenting shareholders, on the basis that because it was unable to predict the outcome of the appraisal action, a loss was not probable and estimable. As subsequently determined with its outside auditor, however, Exela should have accrued an estimated liability at the time the action was filed, even though it could not predict the outcome of the appraisal action. In addition, the Company's auditor also discovered that during the same time period, the Company failed to properly identify, account for and, in one quarter, disclose certain related party transactions with a related entity that was controlled by Company leadership who were principals of the Company's then-largest shareholder. Reynolds caused Exela's failure to identify and disclose two of those transactions in one 2019 quarterly filing.

3. As a result of the conduct detailed herein, Exela violated Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 13a-1, 13a-13, 13a-15(a) and 12b-20 thereunder, and Reynolds caused Exela's violations of Section 13(a) of the Exchange Act and Rules 13a-13 and 12b-20 thereunder.

Respondents

4. Exela Technologies Inc., formed in June 2017 through a business combination, is a Delaware corporation with headquarters in Irving, Texas. Exela has over 17,000 employees and provides business process automation software and services to over 4,000 customers in a variety of industries throughout 50 countries. Exela's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the Nasdaq Stock Market.

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

5. James G. Reynolds was Chief Financial Officer of Exela from the time it was formed in June 2017 until May 2020, when he was replaced by Exela's then Executive Vice President of Global Finance. Prior to that he served as Co-Chairman of Exela's predecessor, SourceHOV Holdings, Inc. ("SourceHOV") from 2014, and until 2020, Reynolds was the COO and a partner at a family investment office that is affiliated with several of Exela's larger shareholders. Reynolds was a Certified Public Accountant in Michigan until his license lapsed in 2008.

Business Combination and Creation of Exela

6. Exela was created in June 2017 through a complex merger by which SourceHOV and another private company combined with a NASDAQ-listed SPAC. Due to more-than-anticipated redemptions by SPAC investors, the deal struggled to close, and a revised transaction structure was arranged. Under this structure, a new special purpose entity called Ex-Sigma, LLC ("Ex-Sigma") was established to hold SourceHOV's shareholders' merger consideration, which in turn was used as collateral for a margin loan ("Margin Loan") used to fund the amount required to close. Principals of Exela's new leadership, including Reynolds, as part of the Company's then-largest shareholder group, had ownership and economic interests in Ex-Sigma and its wholly-owned subsidiary Ex-Sigma 2, LLC ("Ex-Sigma 2").

7. SourceHOV, which became a subsidiary of Exela as a result of the business combination, agreed to reimburse Ex-Sigma for all "reasonable fees, costs and expenses" related to the Margin Loan, except "for principal, interest and original issue discount." Reynolds signed the agreement containing the reimbursement clause on behalf of SourceHOV and Ex-Sigma (the "Reimbursement Clause"). He also signed a margin loan agreement on behalf of Ex-Sigma 2. In addition, Reynolds signed a side-letter on behalf of both Ex-Sigma 2 and Exela, which specified that Exela would reimburse Ex-Sigma for certain amounts payable under the Margin Loan agreement. This side letter was not filed with the proxy materials or disclosed with the transaction documents.

Appraisal Action

8. Certain shareholders of SourceHOV dissented to the business combination that formed Exela and, on September 21, 2017, filed a petition for appraisal under Section 262 of the Delaware General Corporation Law in the Court of Chancery of the State of Delaware.² The Delaware appraisal statute provides equitable relief for shareholders dissenting from a merger on grounds of inadequacy of the offering price. The dissenting shareholders sought a determination of the fair value of their 10,304 shares of SourceHOV's common stock that they would tender back to the Company.

9. In early 2020, the Court of Chancery determined a fair value favorable to the dissenting shareholders of approximately \$4,500 per share and awarded them over \$57 million. While the suit was pending, Exela disclosed the appraisal action in its periodic filings but did not accrue for any potential resultant loss, stating that it was unable to predict the outcome of the

² *Manichaeian Capital, LLC, et al. vs. SourceHOV Holdings Inc.* (C.A. No. 2017-0673-JRS).

appraisal action or estimate any loss that might arise from it. Following the court's opinion, and for the reasons described further below, the Company and its auditor determined that this failure to accrue for the potential liability was in error.

Related Party Transactions

10. In the third and fourth quarters of 2019, Exela made several payments to Ex-Sigma pursuant to the Reimbursement Clause. Although Ex-Sigma was a related party – as it was an entity in which Reynolds and other members of Exela's senior leadership had an indirect ownership and financial interest, through their control of its then-largest shareholder – the Company failed to disclose two of these payments as related party transactions in the quarterly filing for the period in which they were made or otherwise to record them as related party transactions in its financial records.

11. Reynolds made the requests to have the payments made by Exela to Ex-Sigma under the Reimbursement Clause. He did so in spite of failing to identify Ex-Sigma as a related party and disclose and record these particular transactions as related party transactions. Reynolds was a member of Exela's Disclosure Committee, which was responsible for identifying related party transactions each quarter for approval by the Audit Committee. Additionally, as CFO, Reynolds was required to identify related parties such as Ex-Sigma in an annual D&O Questionnaire, yet he failed to do so.

Restatement

12. During its 2019 audit, Exela's auditor questioned how Exela accounted for the appraisal action and the related party transactions. As to the appraisal action, the Company and its auditor concluded that the Company should have accrued a liability for the fair market value of the dissenting shareholders' shares as of the date the action was filed, pursuant to Accounting Standards Codification 450 relating to the disclosure of loss contingencies. Prior to that time, from the date of the business combination of June 15, 2017, to the date on which the dissenting shareholders filed their petition on September 21, 2017, the rights conveyed to the dissenting shareholders represented a financial instrument within the scope of ASC 480 that should have been initially measured at fair value and reclassified as a liability.

13. As to the related party transactions, Exela's auditor identified related party transactions and related payments made in the second half of 2019 by Exela to Ex-Sigma that had not been identified and accounted for as related party transactions, all of which Reynolds as CFO requested be made. In addition, two of those related party transaction payments, totaling \$1.5 million, were made in the third quarter of 2019 but were not disclosed as related party transactions in Exela's quarterly filing.

14. The Company and its auditor also identified material weaknesses and significant deficiencies in the Company's internal controls relating to the oversight and governance of financial reporting, failure to establish reporting lines, and the lack of clearly specified financial reporting objectives. Further, the auditor found that Exela failed to design, implement and operate effective process-level control activities related to the approval, authorization and disclosure of related party transactions.

15 On March 17, 2020, Exela filed Form NT Notification of Late Filing of Form 10-K for period ending December 31, 2019, as well as Form 8-K in which it announced the errors and that it would be restating the appraisal action liability that should have been recorded in 2017 at the estimated fair value of the shares tendered. Following an internal investigation, in June 2020 Exela restated its prior financial reports for the years ending 2017, 2018 and for the nine months ending September 30, 2019. The errors resulted in an understatement of accrued liabilities and total stockholders' deficit of \$43.1 million, \$40.6 million and \$37.8 million as of September 30, 2019, December 31, 2018, and December 31, 2017, respectively. In addition, there was an understatement of loss of \$2.4 million, \$2.9 million and \$1.2 million for the nine months ended September 30, 2019, and for the years ended December 31, 2018, and December 31, 2017, respectively, due to the unrecorded interest expense accrual related to the appraisal action.

Violations

16. As a result of the conduct above, Exela violated Section 13(a) of the Exchange Act and Rules 13a-1, 13a-13 and 12b-20 thereunder, which require reporting companies to file with the Commission complete and accurate annual and quarterly reports and that such reports contain further material information as may be necessary to make the required statements not misleading. Reynolds caused Exela's violations of Section 13(a) of the Exchange Act and Rules 13a-13 and 12b-20 thereunder in one quarter relating to two related party transactions.

17. In addition, as a result of the conduct described above, Exela violated Section 13(b)(2)(A) of the Exchange Act, which requires issuers such as Exela to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect their transactions and disposition of their assets.

18. In addition, as a result of the conduct described above, Exela violated Section 13(b)(2)(B) of the Exchange Act, which, among other things, requires issuers such as Exela to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP or any other criteria applicable to such statements.

19. In addition, as a result of the conduct described above, Exela violated Exchange Act Rule 13a-15(a) which requires issuers of a security registered pursuant to Exchange Act Section 12 to design and maintain controls and procedures to ensure that information is accumulated and communicated to the issuer's management to make timely decisions regarding required disclosures.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Exela cease and desist from committing or causing any violations and any future violations of Sections 13(a),

13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 13a-1, 13a-13, 13a-15(a), and 12b-20 thereunder.

B. Pursuant to Section 21C of the Exchange Act, Respondent Reynolds cease and desist from committing or causing any violations and any future violations of Section 13(a) of the Exchange Act and Rules 13a-13 and 12b-20 thereunder.

C. Respondent Exela shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$175,000 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.

D. Respondent Reynolds shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$10,000 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.

E. 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](https://www.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 Exela Technologies, Inc., or James Reynolds, 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 Mark Cave, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

F. 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 Respondents 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.

V.

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 Reynolds, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Reynolds 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 Reynolds 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