

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 90031 / September 28, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20092

In the Matter of

FIAT CHRYSLER
AUTOMOBILES N.V.

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 Fiat Chrysler Automobiles N.V. (“FCA” 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 are 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 finds that:

Summary

1. This matter involves disclosure violations by FCA concerning its public descriptions in early 2016 of an internal inquiry of the emissions control systems of certain of its light-duty diesel vehicles in the wake of the Volkswagen AG (“VW”) “Dieselgate” scandal. On September 18, 2015, the U.S. Environmental Protection Agency (“EPA”) issued a Notice of

Violation (“NOV”) to VW alleging, among other things, that VW had installed defeat devices in violation of the Clean Air Act and U.S. environmental regulations. Several days later, FCA commenced an internal review of the emissions control systems in its vehicles to confirm that they did not contain similar functionality. In February 2016, FCA issued a press release and an annual report, which both stated that the internal audit confirmed FCA’s vehicles complied with environmental regulations concerning emissions. Although the statements focused on the internal audit’s determination that FCA vehicles did not have a mechanism to detect that they were being tested in laboratory conditions, the statements were misleading because they did not sufficiently disclose that the internal audit had a limited scope focused only on finding cycle-beating defeat devices like the ones used by VW, and was not a comprehensive review of compliance with emissions regulations. In addition, at the time FCA made these statements, EPA and the California Air Resource Board (“CARB”) engineers had raised concerns to FCA about the emissions systems of FCA’s “EcoDiesel” engines. By engaging in the conduct described herein, FCA violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-16 thereunder.

Respondent

2. Fiat Chrysler Automobiles N.V. is a Dutch public company headquartered in London, United Kingdom. FCA’s common stock is registered under Section 12(b) of the Exchange Act. Since October 2014, FCA’s common stock has traded on the New York Stock Exchange (“NYSE”) under the ticker symbol FCAU. FCA’s common stock also trades under the ticker symbol FCA on the Mercato Telematico Azionario, operated by Borsa Italiana, in Milan, Italy. FCA files with the Commission annual reports on Form 20-F and also furnishes annual reports on Form 6-K pursuant to Section 13(a) of the Exchange Act and related rules thereunder.

Facts

3. FCA sells automobiles in the United States through its Michigan-based wholly-owned subsidiary, FCA US LLC (“FCA US”). In addition to its traditional gas engine vehicles, FCA US offered light duty diesel, or “EcoDiesel,” engine options for two of its vehicle models. FCA US sold approximately 100,000 model year 2014-2016 Ram 1500 and Jeep Grand Cherokee trucks equipped with 3.0-liter EcoDiesel engines. EcoDiesel vehicles are attractive to some consumers because they offer better fuel economy than their gasoline engine counterparts.

FCA’s Internal Audit in Response to VW “Dieselgate”

4. On September 18, 2015, the EPA issued an NOV to VW alleging that VW installed a defeat device on diesel vehicles in order to pass U.S. emissions tests and falsely certified that the vehicles complied with U.S. environmental regulations. In connection with the release of the NOV, VW admitted that it employed engine management software on its diesel vehicles that resulted in a noticeable deviation between bench test results and actual road use. In the following days, VW’s share price declined by about 30% and its CEO resigned.

5. The VW “Dieselgate” scandal had a spillover effect across the automotive industry. FCA and other manufacturers began receiving inquiries about their own diesel engines from the media and investors. Media and investor inquiries on the topic continued for months. On

September 25, 2015, the EPA and CARB announced publicly that they had issued letters to all major automobile manufacturers in the United States notifying them that EPA and CARB would be testing diesel vehicles for “the purposes of investigating a potential defeat device.”

6. Around this same time, FCA had launched on its own initiative an internal engine compliance review (“Internal Audit”) to determine whether any of its vehicles contained VW-like defeat devices. The Internal Audit was focused entirely on determining whether any of the software in the engines contained code or was calibrated to detect that the vehicle was undergoing emissions testing, similar to the defeat devices employed by VW. The Internal Audit was not, however, a comprehensive review of FCA’s emissions control systems to check for defeat devices generally or to ensure compliance with applicable U.S. emissions regulations. It primarily consisted of FCA engineers reviewing the software and calibrations of all gas, diesel, and hybrid engines in FCA vehicles.

7. The Internal Audit did not involve a comprehensive review of all emissions-related software, some of which was developed and owned by independent suppliers to FCA and was not fully available to FCA. FCA attempted to obtain written representations from the third-party supplier of emissions-related software for the EcoDiesel engines that the code provided to FCA was free of defeat devices. While FCA received some assurances from the supplier, the supplier did not provide a written representation to FCA.

8. FCA engineers provided updates on the findings of the Internal Audit to the Boards of Directors of FCA and FCA US on October 28, 2015 and January 13, 2016, respectively. The Internal Audit did not identify in FCA vehicle models any defeat devices similar to those installed in certain VW diesel vehicles. No written findings, outside of the PowerPoint presentations for the Board, or detailed audit reports were ever created.

EPA’s Inquiry into FCA’s Diesel Vehicles

9. Shortly following the EPA’s issuance of the VW NOV in September 2015, FCA learned that EPA and CARB would be performing additional testing for defeat devices on diesel vehicles of other manufacturers.

10. In early October 2015, the EPA notified FCA that its testing of the Ram 1500 with the EcoDiesel Engine had detected higher than expected nitrogen oxide (“NOx”) emissions. FCA’s diesel Jeep Grand Cherokee contained the same engine. Over the next several months, EPA requested additional information from FCA about the emissions controls in these vehicles.

11. At the end of November 2015, FCA engineers and regulatory compliance employees met in person with senior EPA compliance officials of EPA’s Office of Transportation and Air Quality (“OTAQ”) at the EPA’s Ann Arbor, Michigan office in order to discuss OTAQ’s testing and other requests. An employee of CARB also attended. EPA presented its testing data showing that the Ram 1500’s NOx emissions were higher when the vehicle was driven “off-cycle” (i.e., on-road rather than in a testing cycle).

12. In mid-December 2015, the senior compliance officials of EPA’s OTAQ and managers from CARB met with FCA’s engineers and senior regulatory compliance employees. At

the meeting, EPA compliance staff presented additional testing results and identified five concerns with the diesel emissions controls.

13. In mid-January 2016, FCA's engineers met again with EPA and CARB. FCA presented data to respond to EPA's five concerns. EPA and CARB continued to request additional data in the months following this meeting.

14. A few weeks later, on January 27, 2016, FCA held its quarterly earnings call and presented the financial results for 2015 as well as an update to the company's five-year Business Plan. On the earnings call, FCA's CEO referenced the Internal Audit and reiterated FCA's public position, stating: "[o]ne word on the European side. I think that after the advent of Dieselgate, for a lack of a better term, FCA has undertaken a pretty thorough review and a thorough audit of its compliance teams. I think we feel comfortable in making the statement that there are no defeat mechanisms or devices present in our vehicles. And I think the cars perform in the same way on the road as they do in the lab under the same operating conditions."

FCA's 2016 SEC Filings

15. As a foreign private issuer with its common stock traded on the NYSE, FCA files its annual reports on Forms 20-F and furnishes to the SEC on Forms 6-K other information, including press releases and semi-annual and quarterly financial reports.¹

16. On February 2, 2016, FCA furnished a Form 6-K with two attached press releases. One of the press releases was entitled "FCA on Real Driving Emissions," which stated "diesel emissions has been the subject of a great deal of attention, particularly in Europe, where diesel is quite common," and that, in response to these events, FCA had "conducted a thorough internal review of the application of this technology in its vehicles and has confirmed that its diesel engine applications comply with applicable emissions regulations." The press release further stated, "FCA diesel vehicles do not have a mechanism to either detect that they are undergoing a bench test in a laboratory or to activate a function to operate emission controls only under laboratory testing" and that "the emissions control systems of the FCA vehicles operate in the same way under the same conditions, whether the vehicle is in a laboratory or on the road."

17. On February 29, 2016, FCA furnished on Form 6-K its 2015 annual report required by its European securities regulator. In the "Risk Management" section of this report, FCA included a sub-section of disclosures entitled "Regulatory Compliance," which stated that FCA had

¹ Foreign public issuers ("FPI"), such as FCA, are instructed to furnish to the Commission on Form 6-K information that is material to the FPI and that the FPI "makes or is required to make public pursuant to the law of the jurisdiction of its domicile or in which it is incorporated or organized"; "files or is required to file with a stock exchange on which its securities are traded and which was made public by that exchange"; or "distributes or is required to distribute to its security holders," including information concerning "material legal proceedings." Form 6-K, General Instructions B, *available at* <https://www.sec.gov/files/form6-k.pdf>. Information and documents furnished on Form 6-K are not be deemed to be "filed" for the purposes of Section 18 of the Exchange Act. 17 CFR § 240.13a-16; 17 CFR § 240.15d-16.

undertaken the Internal Audit “in light of recent issues in the automotive industry related to vehicle health-based emissions.” FCA stated that the “audit revealed that all current production vehicle calibrations are compliant with applicable regulations and they appear to operate in the same way on the road as they do in the laboratory under the same operating conditions.”

18. Although the statements in the February 2 and February 29, 2016 Forms 6-K focused on FCA’s Internal Audit determination that FCA vehicles did not have a mechanism to detect that they were being tested in laboratory conditions, the statements were misleading because they did not sufficiently disclose that the Internal Audit had a limited scope focused only on finding VW-style cycle-beating defeat devices, was not a comprehensive review of compliance with emissions regulations, and did not cover or address certain issues that EPA had been raising.

EPA’s NOV to FCA

19. In the months following FCA’s public statements in February 2016, EPA and CARB continued their inquiry into FCA’s emissions strategies in the engines of its Ram 1500 and Jeep Grand Cherokee diesel trucks.

20. On January 12, 2017, EPA issued a notice of violation to FCA for “fail[ing] to disclose Auxiliary Emission Control Devices (AECs) in certain model year 2014 through 2016 (MY14-16) diesel light-duty vehicles equipped with 3.0 liter engines.”

21. On May 23, 2017, the Department of Justice (“DOJ”), on behalf of the EPA, filed a complaint against FCA, FCA US, and two of FCA’s subsidiaries, alleging that the companies violated the Clean Air Act with regard to FCA’s model year 2014 to 2016 Ram 1500 and Jeep Grand Cherokee diesel vehicles. The complaint alleged that these vehicles contained certain software functions and calibrations that “[d]uring normal vehicle operation outside of the parameters of the Federal Emission Tests . . . cause a reduction in the effectiveness of the emission control system, including the engine control system and the after-treatment control system, resulting in increased NOx emissions.” The complaint alleged that these software functions and calibrations were undisclosed AECs one or more of which had the “effect of bypassing, defeating, or rendering inoperative engine control systems and/or after-treatment control systems” installed in the vehicles. On January 9, 2019, the People of the State of California, by and through CARB and the California Attorney General, filed a complaint against FCA, FCA US, and two of its subsidiaries, alleging similar misconduct that violated California and federal laws.

22. On January 10, 2019, DOJ, on behalf of the EPA, and the People of the State of California, acting by and through the California Attorney General and CARB, entered into a Consent Decree with FCA that resolved the outstanding claims against FCA, FCA US, and two of its subsidiaries, concerning the companies’ alleged violations of federal and state environmental laws. The settlement, which was resolved without the adjudication or admission of the facts or law, included an agreement by FCA to implement a recall program to repair all eligible diesel vehicles, offer an extended warranty on repaired vehicles, and pay a civil penalty of \$305 million. FCA also agreed to implement a federal program to mitigate excess pollution from these vehicles, and agreed to pay CARB \$19.035 million to be used to fund actions or projects that reduce NOx

emissions in California. The recall and mitigation programs were estimated to cost up to \$200 million.

Violations

23. Section 13(a) of the Exchange Act requires that every issuer of a security registered pursuant to Section 12 of the Exchange Act file with the Commission periodic and current reports with the Commission. Rule 12b-20 under the Exchange Act requires issuers to add to their statements or reports such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading. Rule 13a-16 of the Exchange Act requires foreign private issuers with classes of securities registered pursuant to Section 12 to furnish to the Commission accurate reports on Form 6-K.

24. As a result of the conduct described above, FCA violated Section 13(a) of the Exchange Act and Rules 13a-16 and 12b-20 thereunder.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent FCA cease and desist from committing or causing any violations and any future violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-16 thereunder.

B. FCA shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$9,500,000 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 FCA 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 Daniel Michael, Division of Enforcement, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, New York, NY 10281-1013.

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.

By the Commission.

Vanessa A. Countryman
Secretary