

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

**SECURITIES ACT OF 1933**  
**Release No. 9032 / May 26, 2009**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 59973 / May 26, 2009**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 2974 / May 26, 2009**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13485**

**In the Matter of**

**CSK AUTO 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 CSK Auto Corporation (“CSK” 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 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

This case involves a financial reporting fraud at CSK during the company's fiscal years 2002, 2003, and 2004. Specifically, CSK, through its former chief operating officer, former chief financial officer, former controller, and former director of credits and receivables (all of whom left CSK in 2006), materially overstated the company's income by (i) failing to write off vendor allowance receivables when they knew, or should have known, the receivables were uncollectible, and (ii) improperly recognizing certain vendor allowances during fiscal year 2003. CSK's failure to write off vendor allowances and improper recognition of vendor allowances in 2003 were contrary to Generally Accepted Accounting Principles ("GAAP"). As a result of its failure to write off uncollectible vendor allowance receivables and over recognition of vendor allowances, CSK filed false financial statements materially overstating its pre-tax income for fiscal year 2002 by approximately 47%, or \$11 million, fiscal year 2003 by approximately \$34 million, thereby reporting pre-tax income instead of a pre-tax loss, and fiscal year 2004 by approximately 65%, or \$21 million.

#### Respondent

1. **CSK Auto Corporation** is a Delaware corporation with its principal executive offices in Phoenix, Arizona. CSK's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange. On July 11, 2008, CSK was acquired by another publicly traded company, O'Reilly Automotive Inc. On July 15, 2008, the NYSE filed a Form 25 delisting and deregistering from Section 12(b) CSK's common stock. On July 31, 2008, CSK filed a Form 15 deregistering its common stock from Section 12(g) of the Securities Act. CSK is currently a wholly owned subsidiary of O'Reilly.<sup>2</sup>

#### Background

2. As a retailer of automotive products, CSK purchased products from vendors that manufacture automotive parts and accessories. During CSK's fiscal years 2002, 2003, and 2004, CSK received vendor allowances from most of its vendors. Vendor allowances are a form of financial support that a vendor provides CSK, either by paying CSK or allowing CSK to deduct vendor allowance amounts from amounts CSK pays the vendor for goods, to support CSK's efforts to promote and advertise the vendor's products. Although CSK had various vendor allowance

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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.

<sup>2</sup> All of the conduct that gave rise to this proceeding took place before O'Reilly acquired CSK. The conduct described in this Order occurred before 2006. O'Reilly acquired CSK in 2008.

programs, its largest and most important was its Let's Work Together program ("LWT"). Typically, the LWT allowance agreements covered a one-year period, which CSK referred to as the "program year." The LWT allowance agreements varied from vendor to vendor, but in general CSK earned allowances as a (i) set dollar amount, (ii) percentage of the amount CSK spent to purchase the vendor's product, or (iii) certain number of cents per item CSK purchased from the vendor.

3. CSK recognized LWT allowances ratably, on a monthly basis, based on its estimate of the total allowances it expected to receive for the entire program year. CSK purported to base its estimate on the LWT agreement's terms and CSK's expected total purchases from each vendor during the program year.

4. Each LWT program year had its own account receivable. When CSK recognized LWT allowances during a program year, it increased the corresponding program year's account receivable. In general, CSK recognized vendor allowances as a reduction to cost of sales, thereby increasing the company's pre-tax income. When CSK collected vendor allowances for a particular program year, GAAP required that CSK reduce the outstanding receivable for that same program year.

5. During fiscal years 2002, 2003, and 2004, CSK knew that it could not collect all of the vendor allowances it had previously recognized. GAAP required CSK to write off an outstanding receivable once it is probable it will not be collected and the amount of the loss can be reasonably estimated. Statement of Financial Accounting Standards No. 5 ("SFAS No. 5"), Accounting for Contingencies Paragraph 8. Contrary to GAAP, CSK failed to write off its uncollectible vendor allowances receivables.

6. As a result, large unpaid amounts, or accounts receivable, built up on CSK's books. Instead of writing off these uncollectible amounts and taking the requisite reduction to earnings as required by GAAP, CSK hid the deficiencies by (i) improperly moving vendor allowances earned and collected for later program years to the prior program year's accounts receivable, referred to within CSK as "filling the bucket," and (ii) incorrectly accounting for amounts paid back to vendors. Through this conduct, CSK avoided writing off tens of millions of dollars in uncollectible receivables. CSK "filled the bucket" by (i) making baseless journal entries reducing the account receivable for the earlier LWT program year with an offsetting increase to the account receivable for a later program year, and (ii) applying vendor allowances earned and collected during a later LWT program year to an earlier LWT program year's receivable.

7. CSK also failed to write off vendor allowances it had to pay back to its vendors because the company had over-collected for prior periods. Instead of writing off amounts CSK had to pay back, which would reduce its pre-tax income, the company increased a later LWT program year's account receivable, making it appear to have collected an older account receivable when all CSK had done was move the outstanding receivable balance to a more recent year.

8. CSK failed to write off approximately \$11 million of uncollectible receivables during fiscal 2002, approximately \$24 million of uncollectible receivables during fiscal year 2003, and approximately \$21 million of uncollectible receivables during fiscal year 2004.

9. In addition, during fiscal year 2003, CSK improperly recognized approximately \$10 million in vendor allowances that either had not been earned or should have been applied to an outstanding account receivable.

10. During the summer of 2005, CSK issued approximately \$15 million in debit memos to its vendors to collect LWT allowances that CSK knew it had already collected. When the vendors complained and CSK had to pay them back, some of the credit memos CSK issued intentionally misrepresented the reasons for the paybacks.

11. Throughout this time, CSK failed to implement internal accounting controls relating to its inventory, cost of sales, and revenue accounts that were sufficient to provide reasonable assurances that these accounts were accurately stated in accordance with GAAP.

12. Because of the vendor allowance scheme, CSK filed false financial statements materially overstating its pre-tax income for fiscal year 2002 by approximately 47%, or \$11 million, fiscal year 2003 by approximately \$34 million, thereby reporting pre-tax income instead of a pre-tax loss, and fiscal year 2004 by approximately 65%, or \$21 million.

13. While the false financial statements were outstanding, CSK engaged in several private debt offerings. In January 2004, CSK issued \$225 million of 7% Senior Subordinated Notes. In August 2005, CSK completed a \$125 million issuance of 3 3/8% senior exchangeable notes. In December 2005, CSK issued \$100 million of 4 5/8% senior exchangeable notes. CSK's materially false financial statements filed with its Forms 10-K for fiscal years 2003 and 2004 were incorporated by reference in the Form S-3 and Form S-4 Registration Statements filed with the Commission during fiscal years 2004 and 2005.

14. As a result of the conduct described above, CSK violated Section 17(a) of the Securities Act, which prohibits fraudulent conduct in the offer or sale of securities, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

15. As a result of the conduct described above, CSK also violated Section 13(a) of the Exchange Act and Rules 13a-1 and 12b-20 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act file with the Commission information, documents, and annual reports as the Commission may require, and mandate that periodic reports contain such further material information as may be necessary to make the required statements not misleading.

16. As a result of the conduct described above, CSK also violated Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and

accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

17. Lastly, as a result of the conduct described above, CSK also violated Section 13(b)(2)(B), which requires all reporting companies 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 generally accepted accounting principles.

#### **CSK's Remedial Efforts**

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

#### **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 8A of the Securities Act, Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act.

B. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, and 13a-1 thereunder.

By the Commission.

Elizabeth M. Murphy  
Secretary