

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8960 / September 24, 2008

SECURITIES EXCHANGE ACT OF 1934
Release No. 58633 / September 24, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2884 / September 24, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13234

In the Matter of

BEAZER HOMES USA, 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 Beazer Homes USA, Inc. ("Beazer" 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 finds¹ that:

Summary

1. In certain periods between 2000 and 2007, Beazer, acting through certain of its officers and employees, fraudulently misstated its net income for the purpose of improperly managing its quarterly and annual earnings. In May 2008, as a result of its earnings management and other errors, Beazer restated its financial statements to reflect adjustments for the fiscal years 1998 through 2006, as well as the first and second quarters of fiscal year 2007. Beazer restated its fiscal year 2006 net income from \$389 million to \$369 million (a reduction of \$20 million or 5%). Beazer also restated its fiscal 2005 net income from \$263 million to \$276 million (an increase of \$13 million or 5%) and increased its beginning retained earnings for the fiscal year 2005 by \$34 million (from \$742 million to \$776 million or 5%) to reflect the cumulative effect of adjustments for the fiscal years 1998 through 2004. Finally, Beazer also restated its net loss for the first quarter of fiscal year 2007 from \$59 million to \$80 million (an increased loss of \$21 million or 36%), and its net loss for the second quarter of fiscal year 2007 from \$43 million to \$57 million (an increased loss of \$14 million or 33%).

Respondent

2. Beazer, a Delaware corporation headquartered in Atlanta, Georgia, is a homebuilder with operations in at least twenty-one states. Since March 1994, Beazer's common stock has been registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange under the symbol BZH. On June 6, 2006, Beazer issued and sold a \$275 million aggregate amount of its 8.125% Senior Notes due 2016 in a private placement to qualified institutional buyers pursuant to Rule 144A and in offshore transactions pursuant to Regulation S. On August 15, 2006, Beazer filed an S-4 registration statement offering to exchange \$275 million in new notes for the notes issued on June 6, 2006. The prospectus filed with the registration statement incorporates by reference Respondent's annual and quarterly reports. In a June 2006 private placement, Beazer also issued \$103 million of junior subordinated notes. Additionally, in November 2005, Beazer announced an increase to 10 million shares of its prior repurchase plan which resulted in 3.65 million of its shares being repurchased during fiscal 2006 for an aggregate purchase price of \$205.4 million.

Beazer's Earnings Management

3. Between approximately 2000 and 2007, Beazer, acting through certain of its officers and employees, fraudulently misstated certain of its quarterly and annual net income by intentionally managing its earnings. From approximately 2000 to 2005, a period of strong growth and financial performance for Beazer, Beazer decreased its reported net income by

¹ 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.

improperly increasing certain reported operating expenses. This created improper accruals, or “reserves,” in Beazer’s books and records. In certain quarters, the existence of these reserves had the effect of smoothing Beazer’s earnings, *i.e.*, allowing Beazer to report earnings that still met or exceeded analysts’ expectations for its quarterly net income and earnings per share (“EPS”) while permitting it to improperly defer a portion of its income to future periods.

4. Beginning in the first quarter of fiscal year 2006, Beazer’s financial performance began to decline. In order to continue to meet or exceed analysts’ expectations for its quarterly net income and EPS, Beazer began reversing many of its previously created, improper reserves. In certain instances, Beazer also began purposefully not recognizing certain current period expenses. These actions had the effect of reducing Beazer’s operating expenses and thereby improperly increasing its net income.

5. Additionally during fiscal 2006 and the first two quarters of fiscal 2007, Beazer, again acting through certain of its officers and employees, improperly recognized income from the sale of approximately 360 model homes to three separate investor pools compiled and sponsored by a third party entity (the “Investor Pools”).

The Improper Accruals and Reversals

6. Between approximately 2000 and 2007, Beazer created, and later reversed, improper accruals and reserves by, among other ways, manipulating the amounts recorded in two series of accounts in order to manage earnings. These accounts were the land inventory accounts and the house cost to complete accounts.

7. The Land Inventory Accounts. As part of its homebuilding and sales operations, Beazer regularly acquired large parcels of land upon which it constructed houses. Beazer recorded this purchased land as an asset on its balance sheet in accounts denoted as “land inventory accounts.” Also recorded in these accounts were capitalized costs for the common development of the parcel, such as costs for sewer systems and streets. Each Beazer subdivision under construction had at least one land inventory account associated with it in Beazer’s general ledger.

8. As subdivisions were built, Beazer allocated the land acquisition cost, as well as past and future common development costs, to individual home lots which were then offered for sale. When a home sale was recorded in Beazer’s general ledger, all associated homebuilding costs, including the costs of the land recorded in the land inventory account, were expensed to cost of sales. As part of these journal entries, the land inventory account was reduced and a cost of sales expense account increased to reflect the value of the land and improvements that Beazer sold with the house. Because Beazer sold houses within a subdivision as the development of that subdivision progressed, the land expense recorded for any particular house sale was necessarily an estimate. As individual houses in a development were sold, the land inventory accounts were decreased by an amount representing the amounts of the land and development costs allocated to each individual house. Shortly after the final house in a development had been sold, the balance in the land inventory account would be at or near zero.

9. In certain quarters between 2000 through 2007, however, Beazer, acting through certain officers and employees, manipulated the amounts recorded in the land inventory accounts in order to manage earnings. Specifically, in various quarters during fiscal years 2000 through 2005, Beazer over-allocated land inventory expense to individual properties sold. This over-allocation caused Beazer to report more expense and less profit on each sold house in certain subdivisions. When all or most of the houses in a development were eventually sold, these over-allocations resulted in the affected land inventory accounts having negative (or credit) balances. The credit balances that resulted from the intentional over-allocation were then improperly held open in Beazer's general ledger—acting, in effect, as improper reserves. By these actions, Beazer understated its net income by a total of \$42 million for fiscal years 2000 through 2005.

10. Beginning at least by the second quarter of 2006, Beazer, acting through certain officers and employees, began to reverse the excess reserves existing in the land inventory accounts, which increased then-current period earnings. The credit balances in land inventory accounts were debited, *i.e.*, zeroed out, and a cost of sales expense credited, *i.e.*, reduced. This improperly reduced expenses and increased Beazer's earnings. During 2006, Beazer overstated its cumulative reported net income of \$389 million by \$16 million by "zeroing out" credit balances in its land inventory accounts. For the first two quarters of fiscal 2007, Beazer understated its cumulative reported net loss of \$102 million by \$1 million due to the reversal of improper land inventory reserves.

11. The House Cost to Complete Accounts. Under its accounting policies, Beazer recorded revenue and profit on the sale of a house after the close of the sale of that house to a third party. In the journal entries to record the sale, Beazer typically reserved a portion of its profit earned on the house. This reserve, called a "house cost to complete" reserve, was established to cover any known and unknown expenses that Beazer might incur on the sold house after the close, such as outstanding invoices, unbudgeted cost overruns, minor repairs or final cosmetic touchups. Although the amount of this reserve varied by region, it was typically \$2,000 to \$4,000 per house, above known outstanding invoices. Beazer's policy was to reverse any unused portion of the house cost to complete reserve within four to nine months after the house's close, taking any unused portion into income at that time. Although creation of such a house cost to complete reserve is proper, in some instances, Beazer, acting through certain officers and employees, utilized these reserves to manage improperly its earnings. In various quarters between 2000 and 2005, Beazer over-reserved house cost to complete expenses in order to defer profit to future periods. In later periods, Beazer eliminated these cost to complete reserves, resulting in inflated profits for those periods. In certain instances, Beazer also purposefully did not recognize certain current period house cost to complete expenses, again resulting in inflated profits for those periods.

12. Between fiscal years 2000 and 2005, Beazer understated its net income by \$6 million due to excess house cost to complete accruals. During fiscal year 2006, when Beazer began to reverse some of the excess accruals, Respondent overstated its net income by over \$1.2 million. Beazer also understated its cumulative net loss for the first two quarters of fiscal 2007 by \$1 million.

The Sale-Leaseback Transactions

13. As part of its marketing activities, Beazer typically builds and furnishes between one and five model homes for each of its housing developments. Prior to 2006, Beazer typically retained ownership of the large majority (upwards of 70-80%) of its model homes, and entered into sale-leaseback arrangements with third parties for the remaining ones. Beginning in fiscal 2006, Beazer significantly increased the number of model homes it leased. At the end of fiscal 2006, Beazer had leased 557 of its 793 model homes or 70%. Beazer improperly accounted for more than half of these leased model homes as sale-leasebacks in order to improve Beazer's financial results.

14. Specifically, beginning near the end of fiscal 2005, Beazer, acting through certain of its officers and employees, engaged in negotiations with the third party entity representing the Investor Pools concerning possible sale-leaseback transactions for Beazer's model homes. Pursuant to the transaction terms under discussion, the Investor Pools would purchase certain Beazer model homes at 92% of the homes' appraised value. Beazer would then lease the model homes, at monthly lease payments equal to the Investor Pools' purchase price multiplied by the current 30 day LIBOR rate plus 450 basis points (prorated on a monthly basis). Beazer would also retain a right to receive a percentage of the appreciation of the model home upon its sale at the end of the lease term (the "Appreciation Rights").

15. However, Beazer's outside auditor informed certain Beazer officers and employees that any Appreciation Rights represented a "continuing interest" that, pursuant to Generally Accepted Accounting Principles ("GAAP"), required Beazer to record the transactions as financing, not as sale-leasebacks. This proper accounting treatment would not have permitted Beazer to record the model home sales revenue and profit at the beginning of the lease term.

16. In order to circumvent GAAP, and deceive its outside auditor, Beazer, acting through certain officers and employees, caused the model home sale-leaseback written agreements with the Investor Pools to omit any reference to Appreciation Rights and recorded the model home transactions as sale-leasebacks, recognizing home sales revenue in fiscal 2006. Based upon the terms of the written agreements, the outside auditor agreed that the transactions qualified for sale-leaseback accounting. However, unbeknownst to the outside auditor, Beazer, acting through certain officers and employees, and the Investor Pools had also entered into oral side agreements which contained the Appreciation Rights, and allowed Beazer to receive a percentage of the model homes' price appreciation upon their sale at the end of the lease term.

17. As a result of Beazer's improper recording of these transactions as sale-leasebacks, Beazer overstated its fiscal year 2006 revenues by \$117 million and net income by \$14 million. For the first two quarters of fiscal 2007, Beazer understated its cumulative revenue by \$2.6 million and overstated its cumulative net loss by \$3.9 million due to the improper sale-leasebacks accounting.

Beazer's Anti-fraud Violations: Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

18. As a result of the conduct described above, Beazer violated Section 17(a) of the Securities Act, which prohibits materially false or misleading statements, or material omissions in the offer or sale of any security. Specifically, Beazer knowingly departed from GAAP and misstated its net income for certain periods in its registration statements and other filings with the Commission and other investor disclosures by using certain reserves and other accrued liabilities to recognize profits in 2006 and 2007 that were earned from 2000 through 2005. Beazer also intentionally and improperly recognized sales revenue from certain model home lease transactions, due to Respondent's use of sale-leaseback accounting treatment for these transactions despite knowing that such treatment was not in accordance with GAAP.

19. Additionally, Beazer violated 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. As set forth above, Beazer made untrue statements of material facts in registration statements, periodic reports filed with the Commission and other investor disclosures or omitted to state therein any fact necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading. Specifically, Beazer falsely stated its net income in certain periods in various Commission filings and other investor disclosures.

Beazer's Reporting Violations: Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 Thereunder

20. Also as a result of the conduct described above, Beazer violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 promulgated under the Exchange Act, which require that every issuer of a security registered pursuant to Section 12 of the Exchange Act files with the Commission information, documents, and annual and quarterly reports as the Commission may require, and mandate that periodic reports contain further material information as may be necessary to make the required statements not misleading.

Beazer's Record Keeping and Internal Control Violations: Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act

21. As a result of the conduct described above, Beazer 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 the transactions and dispositions of the assets of the issuer.

22. As a result of the conduct described above, Beazer violated Section 13(b)(2)(B) of the Exchange Act, 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 GAAP. Beazer's insufficient internal controls failed to prevent the recording of the fraudulent accounting

entries in its general ledger and caused Respondent to file with the Commission financial statements that failed to conform with GAAP.

Beazer's Remedial Efforts

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

Undertakings

24. Respondent shall cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in this Order. In connection with such cooperation, Respondent has undertaken:

- a. To produce, without service of a notice or subpoena, any and all documents and other information requested by the Commission's staff;
- b. To use its best efforts to cause its employees to be interviewed by the Commission's staff at such times as the staff reasonably may direct;
- c. To use its best efforts to cause its employees to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and
- d. That in connection with any testimony of Respondent to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, Respondent:
 - (i.) Agrees that any such notice or subpoena for Respondent's appearance and testimony may be served by regular mail on its attorney, David G. Januszewski, Esq., at Cahill Gordon & Reindel LLP, Eighty Pine Street, New York, New York 10005-1702; and
 - (ii.) Agrees that any such notice or subpoena for Respondent's appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

25. In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

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

Accordingly, it is hereby ORDERED that:

Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Beazer cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-11 and 13a-13 promulgated under the Exchange Act.

By the Commission.

Florence E. Harmon
Acting Secretary