

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58451 / September 3, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13157

In the Matter of

Tracinda Corporation,

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 Tracinda Corporation (“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 finds¹ that:

Respondent

1. **Tracinda Corporation** is a Nevada company with its headquarters in Beverly Hills, California. The principal business of Tracinda is buying, holding and selling equity securities. Kirk Kerkorian is the sole shareholder and director of Tracinda.

Summary

2. This matter concerns violations of the reporting provisions of Section 13(d) of the Exchange Act by Tracinda in connection with its ownership of 56 million shares, or 9.9%, of General Motors Corporation ("GM") common stock. By November 20, 2006, Respondent had a plan to sell 28 million shares of GM stock. On that day, Respondent proposed selling 28 million shares of GM stock to a broker-dealer, but only sold 14 million shares because the bid offered by the broker-dealer for 28 million shares reflected a much deeper discount than Kerkorian was expecting. In Amendment No. 12 to its Schedule 13D filed on November 22, 2006, Respondent reported this sale of 14 million shares, but omitted to disclose its plan and proposal to sell the 28 million shares. This omission was material and violated Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder because Respondent did not comply with Item 4(a) of Schedule 13D. Further, that amendment was materially misleading and violated Exchange Act Rule 12b-20 because it stated that Respondent might purchase or sell more GM stock, when there was only a remote possibility that it would buy any GM stock at that time.

Relevant Facts

Respondent's Investment in GM

3. In February 2005, Kerkorian asked a trusted business associate and advisor to analyze GM as a possible investment. On April 1, 2005, the advisor completed his report and told Kerkorian that he thought an investment in GM at that time was a "no-brainer."

4. On April 19, 2005, Tracinda and 250 Rodeo, Inc.² began purchasing GM stock. On May 9, 2005, Tracinda commenced a partial tender offer for up to 28,000,000 shares of GM common stock. Through the tender offer, Tracinda purchased 18,761,152 shares of GM stock giving it a total of 40,761,152 shares. From four subsequent purchases of GM stock in August, September and October, Respondent ultimately held

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.

² 250 Rodeo, Inc., a Delaware corporation owned by Kerkorian and Tracinda, also purchased and sold GM stock. 250 Rodeo was dissolved in December 2006.

56 million shares of GM stock, representing approximately 9.9% of the total outstanding common stock of GM.

5. In the fall of 2005, Kerkorian became concerned about Tracinda's investment and sought representation on GM's board of directors. Tracinda's nominee was subsequently appointed to the board. Tracinda also wanted GM to consider a possible alliance with Nissan Motor Company Ltd. and Renault, S.A. (collectively "Nissan/Renault"). Over the next several months, Tracinda requested that GM explore a possible alliance with Nissan/Renault.

6. Eventually, GM's board of directors considered the proposed alliance, but announced, on October 4, 2006, that it would not pursue any further discussions concerning the alliance. Two days later, Tracinda's representative resigned from GM's board.

Respondent Sells Its GM Stock

7. On November 16, 2006, Kerkorian met with Tracinda's closest advisors to discuss Respondent's investment in GM. In the meeting, Tracinda's key advisor expressed his view that the price of GM stock would likely fall after the second quarter of 2007. The discussion concerned, among other things, whether Respondent should sell half of its GM holdings.

8. By November 20, 2006, Respondent had a plan to sell 28 million shares of its GM holdings.

9. On November 20, 2006, Respondent contacted a broker-dealer and offered to sell 28 million shares of GM stock. That firm was willing to buy 28 million shares, but only at a significant discount to the then-current market price. Respondent was not willing to sell at that price at that time. Instead, Respondent asked for a bid on 14 million shares. This time the price was higher and Respondent executed the transaction that day.

10. On November 22, 2006, Respondent filed Amendment No. 12 to its Schedule 13D announcing the sale of 14 million shares. That amendment did not disclose that Respondent had a plan to sell 28 million shares of its GM stock. Nor did Respondent disclose that it had proposed a sale of 28 million shares of GM stock. Instead, the amendment stated that the Respondent "may determine, based on market and general economic conditions, the business affairs and financial condition of General Motors, the market price of its shares and other factors deemed relevant by the Filing Persons, to acquire or dispose of additional shares."

11. On November 28, 2006, Respondent sold an additional 14 million shares of GM stock to another broker-dealer. This sale reduced its holdings in GM to 4.95%. Then, on November 30, 2006, Respondent sold its remaining shares of GM stock.

Legal Discussion

12. Section 13(d)(1) of the Exchange Act and Rule 13d-1 thereunder require any person who acquires more than five percent of any voting class of a Section 12 registered equity security to file, within 10 days of the acquisition, a statement with the Commission containing the information required by Schedule 13D. This statement must be complete and accurate. SEC v. Savoy Industries, Inc., 587 F.2d 1149, 1165 (D.C. Cir. 1978), cert. denied, 440 U.S. 913 (1979); In re Payson, Exchange Act Release No. 50589 (Oct. 26, 2004); In re Kass, Exchange Act Release No. 31046 (Aug. 17, 1992).

13. Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder require a filer to amend a Schedule 13D promptly as material changes occur in disclosures previously made. A disposition of one percent or more of a class of securities is deemed material for purposes of Rule 13d-2. Scienter is not required to establish a violation of Section 13(d) of the Exchange Act. Savoy Industries, 587 F.2d at 1167; SEC v. Levy, 706 F. Supp. 61, 69 (D.D.C. 1989). Section 13(d) is the key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings. See 113 Cong. Rec. 855 (1967).

14. Item 4(a) of Schedule 13D provides that a reporting person must disclose any plans or proposals relating to the disposition of securities of the issuer. Item 4(a) of Schedule 13D is broader than Rule 13d-2(a) and requires separate analysis to determine whether additional disclosures are required prior to any such purchase or sale.

15. Rule 12b-20 requires that a filer provide “such further material information, if any, as may be necessary to make the required statements . . . not misleading.” It is a violation of Rule 12b-20 to file a Schedule 13D that includes any material omissions. Kass, Exchange Act Release No. 31046. Boilerplate disclosures must also be accurate. Payson, Exchange Act Release No. 50589 (statement that shareholder “may at any time and from time to time sell or otherwise transfer shares or acquire additional shares” did not adequately disclose his actual plan to sell shares as soon as the next trading window opened for corporate insiders); see also In re Wilkerson, Exchange Act Release No. 48703 (Oct. 27, 2003) (disclosure of possible future actions did not adequately disclose specific plans).

16. Respondent filed an amendment to its Schedule 13D announcing the sale of 14 million shares on November 20, 2006. In that filing, Respondent did not disclose that by November 20, 2006, it had a plan to sell half (28 million) of the GM shares it owned or that it had made a proposal to sell 28 million GM shares to the broker-dealer on November 20, 2006. Because the amendment that was filed did not disclose the plan and proposal to sell 28 million shares of GM stock and no other amendment was promptly filed to disclose this material change to a previously filed Schedule 13D, Respondent violated Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder. In that same filing, Respondent also said that it might sell or acquire additional shares of GM stock, when there was only a remote possibility that it would purchase any GM stock at that time, which resulted in a violation of Exchange Act Rule 12b-20.

Tracinda's Violations

17. As a result of the conduct described above, Tracinda violated Section 13(d)(2) of the Exchange Act and Rules 12b-20 and 13d-2(a) thereunder.

Tracinda's Cooperation

18. In determining to accept the Offer, the Commission considered the 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 Respondent Tracinda Corporation cease and desist from committing or causing any violations, and any future violations, of Section 13(d)(2) of the Exchange Act and Rules 12b-20 and 13d-2(a) thereunder.

By the Commission.

Florence E. Harmon
Acting Secretary