

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 55384 / March 2, 2007

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2570 / March 2, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12578

<p>In the Matter of</p> <p style="text-align:center">John Paul Orr,</p> <p>Respondent.</p>

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934

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 John Paul Orr (“Orr” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Orr 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 him and the subject matter of these proceedings, which are admitted, Orr consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

III.

On the basis of this Order and Orr’s Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Orr’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

A. RELEVANT ENTITIES

1. Kmart Corporation (“Kmart” or the “company”)

Kmart was a Michigan Corporation headquartered in Troy, Michigan, during the relevant period. On January 22, 2002, Kmart filed a voluntary petition for reorganization relief under Chapter 11 of the Bankruptcy code. The company’s common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act [15 U.S.C. § 78l(b)] and traded on the New York Stock Exchange until December 19, 2002, when trading was suspended. Kmart’s fiscal year ends the last Wednesday in January.

2. Eastman Kodak Company (“Kodak”)

Kodak is a New Jersey corporation headquartered in Rochester, New York. Kodak is one of the world’s largest photo imaging companies and a major Kmart vendor. Kodak’s common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on the New York Stock Exchange.

B. RESPONDENT

Orr was Divisional Vice President of Kmart’s photo division from October 1999 to February 15, 2001, when he left the company.

C. FACTS

1. Kmart Improperly Recognized Vendor Allowances

Kmart improperly recognized millions of dollars worth of vendor “allowances” prior to bankruptcy. Kmart obtained allowances from its vendors for various promotional and marketing activities. A significant number of allowances were recognized prematurely – or “pulled forward” -- on the basis of false information provided to Kmart’s accounting department, while the true terms of the payments were set forth in undisclosed side agreements. As a result of these accounting irregularities, Kmart’s cost of goods sold was understated for the fourth quarter of fiscal year ended January 26, 2000 (“fiscal year 1999”).

2. Kmart’s Vendor Allowance Tracking System (“VATS”) Forms

The principal document involved in the pulling forward of vendor allowances was Kmart’s VATS form. VATS forms summarized the basic terms of vendor allowances for the company’s accounting department. Bookkeepers inputted information from the VATS form into the company’s computerized accounting system, where it was eventually posted to the general ledger. To ensure proper accounting for an allowance, the VATS form should have reflected the true purpose of, and effective dates for, the payment. To pull forward an allowance, this information was misrepresented on the VATS form to make it look like the payment was for past performance, when in truth it related to future obligations. Kmart had a number of safeguards designed to ensure

the accuracy of the VATS forms and proper recognition of vendor allowances. These included the requirement that vendors co-sign VATS forms.

3. Orr's Division Pulled Forward \$2.5 Million Of Kodak Allowances

Towards the end of fiscal year 1999, Kmart's photo division was projecting a profit shortfall, meaning actual results were short of what senior management expected. Orr's division dealt with the profit shortfall in part by asking Kodak for additional allowances. Kodak responded by agreeing to pay \$2.5 million to secure for itself the right to display product at the front of Kmart stores during calendar year 2000. On or about January 24, 2000, a Kmart buyer in the photography products group prepared and signed VATS No. 197017. VATS No. 197017 misrepresented the effective date of the \$2.5 million allowance as 2/1/99 to 1/25/00. VATS No. 197017 also misrepresented that the allowance related to an "Annual Rolling Rack Program for 1999." This information was inaccurate because the allowance related to activity scheduled for calendar year 2000. On or about January 27, 2000, Kmart's accounting department entered the inaccurate VATS information into the company's computerized accounting system, where it was eventually posted to the general ledger. VATS No. 197017 caused cost of goods sold to be understated by \$2.5 million in fiscal year 1999.

D. CONCLUSION

As a result of the foregoing, Orr caused a violation of Rule 13b2-1 of the Exchange Act.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanction agreed to in Orr's Offer.²

Accordingly, IT IS HEREBY ORDERED that Respondent Orr cease and desist from committing or causing any violations and any future violations of Rule 13b2-1 of the Exchange Act.

By the Commission.

Nancy M. Morris
Secretary

² In connection with the institution of these proceedings, the Commission is voluntarily dismissing with prejudice as to Respondent a civil action previously filed against him in the United States District Court for the Eastern District of Michigan.