

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 79825 / January 18, 2017

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3850/ January 18, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17797

In the Matter of

**GENERAL MOTORS
COMPANY,**

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 General Motors Company (“GM” 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 (the “Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Respondent

1. GM, a Delaware corporation based in Detroit, Michigan, designs, builds and sells cars, trucks, crossovers and automobile parts worldwide. GM common stock is registered under Section 12(b) of the Exchange Act and has been publicly traded since November 2010 on the New York and Toronto stock exchanges. GM is the successor entity solely for accounting and financial reporting purposes to General Motors Corporation ("Old GM"), which filed a voluntary petition for relief under the United States Bankruptcy Code in June 2009. In July 2009, NGMCO, Inc., an acquisition vehicle principally formed by the United States Department of the Treasury ("Treasury"), acquired substantially all of the assets and assumed certain liabilities of Old GM in connection with the bankruptcy proceedings and eventually changed its name to General Motors Company. Old GM changed its name to Motors Liquidation Company at the time of the sale and became a privately held company whose sole purpose was liquidating the remaining assets and liabilities of Old GM. On December 9, 2013, Treasury announced that it had sold all of its remaining holdings of GM stock. Old GM was a Delaware Corporation formed in 1916 and based in Detroit, Michigan that was engaged in the development, production and marketing of cars, trucks and automobile parts. Prior to July 2009, Old GM's common stock was registered under Section 12(b) of the Exchange Act and was publicly traded on the New York stock exchange and other exchanges.

Background

2. Section 13(b)(2)(B) of the Exchange Act requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles ("GAAP").

3. The Accounting Standards Codification ("ASC") is the principal source of GAAP. ASC 450 provides guidance for the recognition and disclosure of a loss contingency. The ASC defines a loss contingency as an existing condition, situation, or set of circumstances involving uncertainty as to possible loss to an entity that will ultimately be resolved when one or more future events occur or fail to occur. The term loss, as used in ASC 450, includes many charges against income that are commonly referred to as expenses and others that are commonly referred to as losses.

4. ASC 450 requires issuers to assess the likelihood that the future event or events will confirm the loss or impairment of an asset or the incurrence of a liability is remote, reasonably possible or probable. "Probable" means the future event or events is likely to occur. A loss is considered "reasonably possible" when the chance of the future event or events occurring is more

than remote but less than likely. A loss is considered “remote” when the chance of the future event or events occurring is slight.

5. When a loss is deemed probable and the amount of the loss can be reasonably estimated, ASC 450 requires the issuer to accrue the estimated loss. If a loss is probable but a reasonable estimate of the amount of the loss cannot be made, the issuer is required to disclose the nature of the contingency and provide an estimate of the loss or range of loss or a statement that such an estimate cannot be made. Disclosure is preferable to accrual when a reasonable estimate of loss cannot be made. ASC 450 also requires consideration of whether a loss contingency is reasonably possible and estimable, and whether disclosure is necessary. Neither accrual nor disclosure is required under ASC 450 if the loss contingency is remote.

GM’s Recall Process and Related Internal Accounting Controls

6. In 2012 and continuing until the third quarter of 2014, GM used two different approaches for accruing estimated losses associated with vehicle recalls. For small recall campaigns – up to \$5 million – GM used an actuarial-based estimation technique by which the company took a per-vehicle accrual at the time each vehicle was sold to account for the amount the company could expect to spend on small recalls over each vehicle’s lifetime. For large recall campaigns, defined as recalls exceeding \$5 million, GM recorded a specific accrual for each recall at the time the recall became probable and estimable.

7. Prior to the third quarter of 2014, GM had a formal recall process called the Field Performance Evaluation, or “FPE,” process. The FPE process included an investigation and, when merited, a recall decision-making process that relied on three committees (together “the FPE committees”): The Field Performance Evaluation Team (“FPET”), which had no recall decision making authority but was tasked with gathering information relevant to executing a potential recall should one occur; the Field Performance Review Committee (“FPERC”), which made a preliminary determination about whether an issue qualified as a safety defect and made a recommendation regarding recall decisions to the ultimate recall decision-making body, the Executive Field Action Decision Committee (“EFADC”), which made a final recall decision.

8. In typical cases, an issue would advance through the FPE process as follows. Engineers in the Product Investigations (“PI”) group were responsible for investigating suspected safety and compliance issues with GM vehicles. Once the PI group determined that an issue warranted moving forward in the recall decision-making process, it would present its evaluation of the problem to decision makers at an Investigation Status Review (“ISR”) meeting. If the ISR decision makers agreed that the issue should proceed in the process, the issue would be escalated into the FPE committees. Typically, the issue would be sent to the FPET first. Typically, at roughly the same time as review by the FPET, the issue would be reviewed by the FPERC, which would make a recommendation to the EFADC, which had the sole authority to issue a recall.

9. Prior to the second quarter of 2014, when a problem was moved from the ISR into the FPE committees, it was placed on the Emerging Issues List. At that point, GM generally considered the potential recall to be “probable and estimable” under ASC 450. The Warranty Group, those responsible for the accounting treatment of possible losses related to potential field actions, received the Emerging Issues List and would record the accrual based on information available at that point.

10. The Warranty Group had no role in determining if or when issues were placed on the Emerging Issues List and they were not consistently provided with the relevant information from other parts of GM’s organization necessary to assess the likelihood of a liability arising out of a potential recall other than through the Emerging Issues List. As a result, from 2012 through the first quarter of 2014, the Warranty Group was not able to consistently consider whether a loss was “reasonably possible” under ASC 450 and for which disclosure was necessary prior to the point at which GM considered the potential field action for an accrual. Accordingly, the Warranty Group did not typically assess items beyond those placed on the Emerging Issues list through the FPE process. If the engineers in the PI group were aware of a problem but determined the evidence did not establish that there may be a defect requiring consideration for a potential recall, the issue would generally not be entered into the FPE process and therefore would not be placed on the Emerging Issues List until additional information became available or additional analysis was done.

The Ignition Switch Investigation

11. On February 7, 2014, GM notified the National Highway Traffic Safety Administration (“NHTSA”) that it was recalling 619,122 vehicles, including model year 2005 – 2007 Chevrolet Cobalts, to repair a defective ignition switch (the “Defective Switch”). The defect at issue was a low-torque ignition switch installed in certain vehicles which, under certain circumstances, may move out of the “Run” position. If this occurred, the driver would lose the assistance of power steering and power brakes. Moreover, if a collision occurred while the switch was in the “Accessory” or “Off” position, the vehicle’s airbags may fail to deploy. This recall, the first of three related to the Defective Switch, followed years of internal reviews.

12. By 2012, GM engineers were reviewing airbag non-deployment claims in certain vehicles that had occurred over several years. In or about early April 2012, a GM electrical engineer reported to his supervisor his view that a probable root cause of the airbag non-deployment problem was the Defective Switch moving out of the Run position to the Accessory or Off position. The same day, the supervisor reported this to the PI Senior Manager and a GM attorney. At this point, in approximately Spring 2012, certain GM personnel understood the Defective Switch presented a safety issue. However, the issue was not added to the Emerging Issues List at that time and thus the Warranty Group was not informed of it.

13. Yet, from approximately Spring 2012 until the fourth quarter of 2013, no one advised Warranty Group of the problems with the Defective Switch. Therefore, Warranty Group

could not evaluate the likelihood of losses resulting from a potential recall of cars with the Defective Switch under ASC 450.

14. On April 29, 2013, during a deposition in a case arising from a crash of a GM vehicle with the Defective Switch, the plaintiff's attorney showed evidence that a component of the Defective Switch in a model year 2008 Cobalt differed from the same component in an earlier model year Cobalt.

15. In July 2013, an expert retained by GM confirmed that Cobalts from model years 2008 through 2010 had a different ignition switch component than those in model years 2005 and 2006. The Warranty Group remained uninformed of this information and thus unable to assess the possible losses related to the potential recall of vehicles with the Defective Switch at this time.

16. In late October 2013, GM received documentary confirmation from the supplier of the ignition switch that there had been a part change in the Defective Switch. At this point, the engineers were satisfied that they understood the problem and they initiated the formal FPE process, which, as explained above, did not include the Warranty Group until a later stage.

17. In November 2013, the Warranty Group received information about the potential recall. In December 2013, the Defective Switch was placed on the Emerging Issues List and the Warranty Group accrued approximately \$41 million for estimated costs of recalling three models with the Defective Switch, which on an after tax basis, represented less than 0.7% of GM's \$3.8 billion net income for the year 2013.

**GM's Internal Accounting Controls Failed to Timely Identify and Evaluate Loss
Contingencies Related to the Defective Switch**

18. Under GM's system of internal accounting controls in place in 2012 through the second quarter of 2014, GM's processes were focused on recall accruals and thus generally only provided Warranty Group with information about vehicle issues at the point at which a recall was considered probable and the costs of such a recall were estimable, and did not provide information about potential vehicle issues to the Warranty Group prior to this point. The Warranty Group was therefore unable to make a timely evaluation of whether certain potential recall campaigns were reasonably possible and should be considered for disclosure, as required by ASC 450. In the case of the Defective Switch in the Cobalt, certain GM personnel understood that the Defective Switch presented a potential safety issue by approximately the Spring of 2012. Yet, GM's Warranty Group did not learn of the issue until the FPE Director informed them of the likely recall in November 2013, and, as a result, prior to this time the Warranty Group were unable to evaluate the likelihood of a loss related to the potential recall of the Defective Switch to determine if disclosure of the nature of the potential recall or an estimate of the possible loss or range of loss was required.

19. GM made fundamental organizational changes in 2014 in its processes for investigating and deciding on potential recall campaigns. As part of those organizational changes, information is required to be provided to the Warranty Group earlier in the process and separate from an Emerging Issues List, such that a timely reasonably possible disclosure determination can be made.

Violation

20. As a result of the conduct described above, for large recall campaigns for the period 2012 through the second quarter of 2014 GM violated Section 13(b)(2)(B) of the Exchange Act by not devising and maintaining a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, GM cease and desist from committing or causing any violations and any future violations of Section 13(b)(2)(B) of the Exchange Act.

B. GM shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$1,000,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). 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 General Motors Company as the 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 Sanjay Wadhwa, Senior Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Room 400, New York, NY 10281.

C. 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.

Brent J. Fields
Secretary