

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98222 / August 25, 2023

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4450 / August 25, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21581

In the Matter of

3M 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 3M Company (“3M” 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 (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

SUMMARY

1. This matter concerns violations of the books and records and internal accounting control provisions of the Foreign Corrupt Practices Act ("FCPA") by 3M resulting from conduct by one of its China-based subsidiaries, 3M-China Ltd. ("3M-China") from at least 2014 to 2018 (the "Relevant Period"). During that time, employees of 3M-China arranged for Chinese health care officials ("Chinese Government Officials" or "Officials") employed by its state-owned entity customers ("SOE Customers") to attend overseas conferences, educational events, and health care facility visits (collectively, the "Educational Events") ostensibly as part of 3M-China's marketing and outreach efforts, but that in fact were often a pretext to provide overseas travel, sightseeing and entertainment ("Tourism Activities") to the Officials to obtain and retain business from the SOE Customers. As part of the scheme, funds were transferred to a complicit China-based travel agency and were improperly used by 3M-China and the China-based travel agency to help pay for the Tourism Activities.

2. In violation of the books and records provisions of the Exchange Act, the overseas travel and Tourism Activities were improperly recorded by 3M-China as legitimate business expenses and then consolidated into 3M's books and records, rendering them inaccurate. Also, in violation of the internal accounting controls provisions of the Exchange Act, 3M failed to devise and maintain an adequate system of internal accounting controls over the cross-border transfer of funds to vendors, which helped facilitate the scheme.

RESPONDENT

3. **3M Company** is a global manufacturer of products and services headquartered in St. Paul, Minnesota. 3M's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the New York Stock Exchange under the Ticker "MMM." 3M files periodic reports, including Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder.

FACTS

3M-China Improperly Funded Tourism Activities for Chinese Government Officials

4. During the Relevant Period, a former 3M-China marketing manager (the "Marketing Manager") colluded with two China-based travel agencies (the "China Travel

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.

Agencies”) to secretly provide Tourism Activities for Chinese Government Officials during Educational Events. The Marketing Manager was aided in the scheme by several employees in 3M-China’s sales, marketing and professional services departments.

5. The Marketing Manager and 3M-China employees (collectively, the “3M-China Employees”) targeted influential Officials of SOE Customers for attendance at overseas Educational Events and, in collusion with the China Travel Agencies, they would create a travel itinerary that included various legitimate business, training and marketing activities for submission to 3M-China’s compliance personnel for approval. The alternate itineraries (the “Alternate Itineraries”) planned by 3M-China Employees and the China Travel Agencies consisted of various Tourism Activities at or near the location of the Educational Events and were provided to the relevant Chinese Government Officials. Provision of the activities in the Alternate Itinerary were designed to improperly induce the Officials to purchase 3M products, and violated company policy.

6. The 3M-China Employees circulated the Alternate Itineraries through hand delivery or personal WeChat accounts and asked the participants to keep the agenda hidden, and falsified internal compliance documents that affirmatively denied and/or omitted mention of the Tourism Activities that were planned as part of the overseas trip.

7. In a number of instances the Tourism Activities were the primary reason for the overseas trip. For example: (a) Tourism Activities were scheduled at the same time as the Educational Event activities; (b) the ostensibly Educational Events were in English, and the trips included Chinese Government Officials who neither understood English nor had adequate translation services; and (c) at times Chinese Government Officials missed whole days of the Educational Event or simply never attended at all. Certain Chinese Government Officials also requested Tourism Activities as part of the overseas trip.

8. During the Relevant Period, 3M-China sent Chinese Government Officials on at least 24 overseas Educational Events that included Tourism Activities. 3M-China Employees also accompanied the Chinese Government Officials on the Tourism Activities. The Educational Events were held at tourist destinations and the Tourism Activities included guided tours, shopping visits, day trips to nearby sites and other leisure activities, all of which were detailed in the Alternate Itineraries. Examples of these trips include:

- **2017, St. Paul, MN, Nashville, TN, and Los Angeles, CA.** This nine-day trip included eleven Chinese Government Officials. While the official agenda had Educational Event activities for each day of the trip, the Alternate Itinerary had only one day of Educational Event activities, with most of the remaining days scheduled with Tourism Activities. 3M-China employees accompanied the Officials on the Tourism Activities and at least some of the Officials did not understand English and were not provided interpreters.
- **2017, Boston, MA and St. Paul, MN:** This seven-day trip included twelve Chinese Government Officials. While the official 3M-China agenda had Educational Event

activities for each day, the Alternate Itinerary had primarily Tourism Activities. At least some of the Chinese Government Officials did not understand English, interpreters were not provided, and the Chinese Government Officials mostly participated in Tourism Activities rather than attend the Educational Events.

- **2016, Chicago, IL.** This eight-day trip included five Chinese Government Officials, two of whom were accompanied by their spouses. One Official and his spouse left Chicago in the evening after the Educational Event started and returned after the Event had ended in order to participate in Tourism Activities. Another Official attended one day of the Educational Event, then left Chicago and never returned. Three other Chinese Government Officials participated in full days of Tourism Activities nearly every day of the scheduled Educational Event activities. The Officials were not seen at the Educational Event activities and did not attend a dinner that 3M had organized for them.
- **2016, Brisbane & Sydney, Australia.** This eight-day trip included four Chinese Government Officials. While the official 3M-China agenda had Educational Event activities scheduled for each non-travel day of the trip, the Alternate Itinerary only scheduled two half-days for Educational Event activities, with the bulk of the time scheduled for Tourism Activities. At least some of the Chinese Government Officials did not understand English, were not provided interpreters, and joined the Tourism Activities for entire days rather than attending the conference.

9. In order to cover certain of their own non-reimbursable expenses related to Tourism Activities, 3M-China Employees would at times work with the collusive China Travel Agencies to inflate their billing invoices for ostensibly legitimate, line item expenses (e.g. travel costs). In other instances, the 3M-China Employees submitted unpermitted invoices directly to the China Travel Agencies for reimbursement. In addition, the China Travel Agencies, with the support of the 3M-China Employees, at times directed that 3M-China's distributors pay for portions of the non-reimbursable expenses.

10. 3M-China Employees measured the impact that the provision of overseas Educational Activities had on sales. Certain 3M-China Employees tracked the effect of providing overseas Educational Events to Chinese Government Officials on 3M-China's sales to SOE Customers. One 3M-China Employee tracked post-trip sales to the SOE Customer to ensure they were consistent with 3M-China's sales goals. 3M-China management asked for the "return on investment" from an Educational Event (i.e. the effect of providing health care officials with overseas travel on sales to the SOE Customer) by comparing sales figures before and after an Educational Event.

11. From at least 2014 through 2017, 3M-China paid nearly \$1 million to fund at least 24 trips for Chinese Government Officials that included Tourism Activities. The costs of these trips were improperly recorded in 3M's books and records as legitimate business expenses, without any indication that they included Tourism Activities. As a result of the above conduct, 3M improperly benefited by at least \$3.5 million from increased sales.

**3M Provided Funds to a China Travel Agency that was Used to Pay for
Improper Tourism Activities**

12. As part of their scheme, 3M-China Employees arranged for 3M to directly provide funds to one of the China Travel Agencies, which it then improperly used to offset some of the costs of the Tourism Activities. 3M-China lacked oversight over the use of these funds: the funds were not allocated for particular projects, but would be distributed at the discretion of the China Travel Agency and the 3M-China Employees.

13. 3M's records indicate that between February 2016 and September 2018, 3M made 15 transfers totaling \$254,000 to the China Travel Agency for vaguely described "marketing" efforts. 3M had insufficient controls over the fund transfers, which did not adequately describe the purpose or uses of the funds.

LEGAL STANDARDS AND FCPA VIOLATIONS

14. Under Section 21C(a) of the Exchange Act, the Commission may impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act or any regulation thereunder, and upon any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation.

3M Violated Exchange Act Section 13(b)(2)(A)

15. The books and records provision of the FCPA, Section 13(b)(2)(A) of the Exchange Act, requires every issuer with a class of securities registered pursuant to Section 12 of the Exchange Act 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. 15 U.S.C. § 78m(b)(2)(A). As a result of the conduct described above, 3M violated Exchange Act Section 13(b)(2)(A).

3M Violated Exchange Act Section 13(b)(2)(B)

16. Section 13(b)(2)(B) of the Exchange Act requires companies with a class of securities registered under Section 12 of the Exchange Act to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. 15 U.S.C. § 78m(b)(2)(B). As a result of the conduct described above, 3M violated Exchange Act Section 13(b)(2)(B).

DISGORGEMENT AND CIVIL PENALTIES

17. The disgorgement and prejudgment interest ordered in section IV. is consistent with equitable principles, does not exceed Respondent's net profits from its violations, and returning the money to Respondent would be inconsistent with equitable principles. Therefore, in these circumstances, distributing disgorged funds to the U.S. Treasury is the most equitable alternative. The disgorgement and prejudgment interest ordered in Section IV. shall be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

3M'S SELF-REPORTING, COOPERATION AND REMEDIAL EFFORTS

18. In determining to accept the Offer, the Commission considered 3M's self-reporting, cooperation and remedial efforts. 3M promptly self-reported the misconduct after first learning of it. The company's cooperation included making witnesses available for interviews, voluntarily producing translations of relevant documents, sharing facts uncovered during its internal investigation – including notes of witness interviews – and providing comprehensive, periodic updates on its investigation. 3M also undertook significant remedial measures, including disciplining and/or terminating involved employees, terminating its relationship with the China Travel Agencies, and further enhancements to its internal controls environment and compliance program including additional controls over its cross-border fund transfers.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent 3M's Offer.

Accordingly, it is hereby ORDERED that:

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

B. Respondent shall, within 14 days of the entry of this Order, pay disgorgement of \$3,538,897 and prejudgment interest of \$1,042,721 and a civil money penalty in the amount of \$2,000,000 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 SEC Rule of Practice 600 and 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 3M as a 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 Charles Cain, Chief, FCPA Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

D. 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.

Vanessa A. Countryman
Secretary