

On July 31, 2020, the Commission issued four separate, but related settled orders (collectively, the “Orders”) against Valeant Pharmaceuticals International, Inc. n/k/a Baush Health Companies Inc. (“Valeant”),¹ J. Michael Pearson (“Pearson”),² Howard B. Schiller (“Schiller”),³ and Tanya R. Carro, CPA (“Carro”) ⁴ (collectively, the “Respondents”). In the Orders, the Commission found that beginning in 2014, when announcing certain GAAP and non GAAP financial measures, Valeant among other things, misstated revenue transactions and included erroneous revenue allocations. For example, the Orders found that for five consecutive quarters Valeant, former CEO Pearson, former CFO Schiller, and former controller Carro, touted double-digit same store organic growth, a non-GAAP financial measure that represented growth rates for businesses owned for one year or more. Much of that growth came from sales to Philidor, a mail order pharmacy Valeant helped establish, fund, and subsidize. The Orders found that Valeant improperly recognized revenue relating to Philidor sales and did not disclose its unique relationship with, or risks related to Philidor in SEC filings and earnings and investor presentations. Valeant ended its ties to Philidor in October 2015 and restated its 2014 financial statements in April 2016, reducing the revenue that was improperly recognized.

The Orders also found that Valeant failed to disclose the material impact of certain revenue it received from drug wholesalers following a 500% increase of the price of a single

¹ See 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, Securities Act Rel. No. 10809 (July 31, 2020).

² See 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, Securities Act Rel. No. 10810 (July 31, 2020).

³ See 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, Securities Act Rel. No. 10811 (July 31, 2020).

⁴ See Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 4C and 21C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, Securities Act Rel. No. 10812 (July 31, 2020).

drug that Valeant acquired in April 2015. Valeant erroneously attributed the resulting revenue to more than 100 unrelated products and did not record any as attributable to that drug.

Additionally, in its SEC filings and earnings presentations for the second and third quarters of 2015 and its 2015 year-end report, Valeant failed to disclose the impact of that allocation on its GAAP and non-GAAP financial measures.

In their respective orders, Valeant, Pearson, Schiller, and Carro were ordered, among other things, to pay civil penalties in the amount of \$45 million, \$250,000, \$100,000, and \$75,000, respectively, for a total of \$45,425,000 to the Commission. In each of the Orders, the Commission also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalties collected can be distributed to harmed investors.

On January 8, 2024, the Commission ordered that the Fair Funds created in each of the Orders be consolidated for the purposes of distribution administration (the “Fair Fund”).⁵ The Fair Fund consists of the \$45,425,000.00 collected from the Respondents and has been deposited in a Commission-designated account at the U.S. Department of the Treasury, and any accrued interest will be added to the Fair Fund.

The Division of Enforcement (the “Division”) now seeks the appointment of KCC Class Action Services, LLC (“KCC”) as the fund administrator and requests that the administrator’s bond be set at \$45,425,000.00. KCC is included in the Commission’s approved pool of administrators.

The Division further requests that the Commission authorize the Office of Financial Management (“OFM”), at the direction of an Assistant Director of the Office of Distributions, to pay the Fund Administrator’s fees and expenses from the Fair Fund, so long as the total amount

⁵ Exchange Act Rel. No. 99284 (Jan. 8, 2024).

paid to the Fund Administrator, including the invoice to be paid, does not exceed the total amount of the approved cost proposal submitted by the Fund Administrator.

Accordingly, IT IS HEREBY ORDERED that:

- A. KCC is appointed as the Fund Administrator, pursuant to Rule 1105(a) of the Commission's Rules on Fair Fund and Disgorgement Plans ("Commission's Rules");⁶
- B. KCC shall obtain a bond in accordance with Rule 1105(c) of the Commission's Rules,⁷ in the amount of \$45,425,000.00;
- C. the Fund Administrator will submit invoices to the Commission staff for services rendered, in accordance with Rule 1105(d) of the Commission's Rules;⁸ and
- D. at the direction of an Assistant Director of the Office of Distributions, OFM is authorized to pay the Fund Administrator's fees and expenses from the Fair Fund, in accordance with Rule 1105(e) of the Commission's Rules,⁹ so long as the total amount paid to the Fund Administrator, including the invoice to be paid, does not exceed the total amount of the approved cost proposal submitted by the Fund Administrator.

For the Commission, by the Division of Enforcement, pursuant to delegated authority.¹⁰

Vanessa A. Countryman
Secretary

⁶ 17 C.F.R. § 201.1105(a).

⁷ 17 C.F.R. § 201.1105(c).

⁸ 17 C.F.R. § 201.1105(d).

⁹ 17 C.F.R. § 201.1105(e).

¹⁰ 17 C.F.R. § 200.30-4(a)(17) and 17 C.F.R. § 200.30-4(a)(21)(vi).