

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 11033 / February 22, 2022

SECURITIES EXCHANGE ACT OF 1934

Release No. 94295 / February 22, 2022

ACCOUNTING AND AUDITING ENFORCEMENT

Release No. 4284 / February 22, 2022

ADMINISTRATIVE PROCEEDING

File No. 3-20782

In the Matter of

JEFFREY SCHAIBLE,

Respondent.

**CORRECTED 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**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Jeffrey Schaible (“Schaible” 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 him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this 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 (“Order”), as set forth below.

III.

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

Summary

1. From 2005 until October 2019, Respondent Jeffrey Schaible was an employee in the Treasury department of Baxter International Inc. ("Baxter"), a publicly-traded, U.S.-based healthcare product company.

2. Baxter generates the majority of its revenue outside of the U.S. Baxter reports its consolidated financial results in U.S. dollars, although many of its subsidiaries have a different functional currency as they manufacture and sell products globally and transact in foreign currencies. The values of these foreign currencies relative to the U.S. dollar fluctuate frequently.

3. From at least 1995 through July 2019, the foreign exchange rate convention ("FX Convention") Baxter used to record foreign currency transactions recognized by subsidiaries in their functional currencies and to uniformly translate the results of subsidiaries with foreign functional currencies into U.S. dollars was not in accordance with U.S. generally accepted accounting principles ("GAAP").

4. Beginning in at least 2009 and continuing through July 2019, Baxter improperly leveraged its FX Convention by engaging in intra-company transactions for the purpose of generating foreign exchange accounting gains or avoiding foreign exchange accounting losses (the "FX Transactions"). Schaible and his staff were primarily responsible for executing the FX Transactions. The FX Transactions had the effect of materially misstating Baxter's net income as reported in its public filings.

5. In October 2019, Baxter announced that it was conducting an internal investigation concerning the FX Transactions. In March 2020, Baxter restated its financial statements, which reduced its previously reported net income for 2017 through June 30, 2019 and retained earnings as of January 1, 2017 by \$582 million, collectively. Of this amount, \$517 million was related to foreign exchange gains and losses dating back to 2010, which was in part attributable to FX Transactions.

6. Based on his conduct, and as described in further detail below, Schaible violated Sections 17(a)(2) and 17(a)(3) of the Securities Act and caused Baxter's violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 13a-1, 13a-11 and 13a-13 thereunder.

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.

Respondent

7. **Jeffrey Schaible**, age 57, is a resident of Frontenac, Missouri. Schaible started at Baxter in 2005 in its Treasury department. He became Baxter's Assistant Treasurer in 2010. He held that role until he was put on administrative leave in October 2019. Schaible ultimately resigned in March 2020. Prior to his employment at Baxter, Schaible was employed by other publicly-traded companies in their treasury departments. While Schaible had extensive experience working in treasury departments, he is not a certified public accountant. Schaible has no prior enforcement or disciplinary history with the Commission.

Other Relevant Entity

8. **Baxter International Inc.** is a Delaware corporation with its principal place of business in Deerfield, Illinois. Its common stock is registered pursuant to Section 12(b) of the Exchange Act and trades on the New York Stock Exchange. Baxter files periodic reports, including annual reports on Form 10-K and quarterly reports on Form 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder. During the relevant period, Baxter sold securities to the public pursuant to registration statements filed with the Commission.

Facts

Baxter's Foreign Exchange Rate Convention

9. FASB Accounting Standards Codification Topic 830, "Foreign Currency Matters" (ASC 830), provides guidance concerning foreign exchange rate conventions. ASC 830-20-30-1 requires that foreign currency transactions initially be measured and recorded in an entity's functional currency using the exchange rate on the date of the transaction. ASC 830-20-35-2 requires that foreign currency denominated assets and liabilities be remeasured at the end of each reporting period using the exchange rate at that date.

10. Before 2019, Baxter's FX Convention was not in accordance with GAAP because foreign currency transactions in a given month were initially measured using exchange rates from a specified date near the middle of the previous month as opposed to the exchange rate on the date of the transaction. Additionally, foreign currency denominated assets and liabilities were subsequently remeasured at the end of each month using exchange rates from a specified date near the middle of the then current month, called "T Day," and not at the end of the reporting period.

11. Because of Baxter's FX Convention, Baxter employees knew the exchange rates that would apply to intra-company transactions from the T Day in a given month through month-end.

Treasury Employees Leveraged Baxter's Foreign Exchange Rate to Record Gains

12. Baxter's Treasury department was responsible for managing Baxter's exposure to fluctuations in foreign exchange rates, which Baxter managed on a consolidated basis.

13. Beginning in about 2007, Baxter's Treasury department began focusing on managing Baxter's foreign exchange rate exposure more efficiently and at a lower cost. Baxter wanted to reduce its use of third-party derivative contracts and instead manage its foreign currency exposures on a consolidated basis through offsetting cash positions. By at least 2009, Baxter developed the FX Transactions as a way to better control reported foreign exchange gains and losses.

14. Each FX Transaction comprised a series of transactions designed to create a foreign exchange gain or avoid a loss at a Baxter subsidiary. For example, when the dollar was strengthening in comparison to the Euro, Baxter would generate a foreign exchange gain by moving U.S. dollars to a Euro-functional Baxter entity. Specifically, a U.S. dollar Baxter entity would make a capital distribution in U.S. dollars to its Baxter Euro-functional parent ("Euro Parent"). Euro Parent would then enter into simultaneous transactions with Baxter's Euro-functional cash pooling entity ("Euro Cash Pooling Entity") to (i) trade the dollars for Euros and (ii) loan Euros in the same amount it just traded. The Euro Cash Pooling Entity would record a foreign exchange gain on the U.S. dollars that it held at month end. The gain was the difference between exchange rates for the prior month's T Day and current month's T Day. After month-end, the Treasury group would typically unwind the currency trade and the loan.

15. Schaible and his staff were primarily responsible for executing the FX Transactions for the Treasury department since at least 2009. Initially, the Treasury department used the FX Transactions to avoid losses caused by foreign exchange rate fluctuations. Over time, this practice evolved to proactively generating gains from foreign exchange rate fluctuations. Baxter used the FX Transactions to generate non-operating foreign exchange accounting gains or avoid accounting losses since at least 2009.

16. During his tenure as Assistant Treasurer, Schaible forecasted minimal foreign exchange gains or losses for Treasury's management of Baxter's foreign exchange exposures, which flowed through Baxter's forecasts of its financial statements. However, beginning in the fourth quarter of 2017, Baxter's Treasurer began to forecast more substantial foreign exchange gains.

17. Because of Baxter's FX Convention, Schaible and other Treasury personnel knew the foreign exchange rates that would apply to month-end transactions before they happened. With this knowledge, Schaible and certain Treasury personnel executed FX Transactions to generate specific amounts of accounting gains or avoid specific amounts of accounting losses. Throughout the period of his involvement in FX Transactions, Schaible believed the FX Transactions had been authorized by senior Baxter officials.

18. While Schaible believed the use of FX Transactions had been sanctioned by senior Baxter officials, he negligently failed to realize that it was improper to utilize Baxter's FX Convention to execute FX Transactions for the sole purpose of generating foreign exchange accounting gains or avoiding foreign exchange accounting losses.

Baxter's Inaccurate Financial Reporting

19. The accounting gains generated (or losses avoided) from the FX Transactions were reported on the "other (income) expense, net" line of Baxter's financial statements and were reflected in Baxter's net income and earnings per share ("EPS").

20. Baxter reported foreign exchange gains of \$113 million in 2015, \$28 million in 2016, \$50 million in 2017, \$73 million in 2018, and \$22 million for the first two quarters of 2019. The improper FX Transactions had the effect of inflating Baxter's net income and EPS.

21. In late July 2019, Baxter's Tax department asked about the details of the FX Transactions. Schaible explained the FX Transactions to the Tax personnel, including that the FX Transactions were used to generate foreign exchange gains or avoid losses. Shortly thereafter, Baxter undertook to change its FX Convention.

22. In October 2019, Baxter announced that it was conducting an internal investigation concerning the FX Transactions and Baxter placed Schaible on administrative leave.

23. On February 13, 2020, Baxter announced that its consolidated financial statements for the years ended December 31, 2016, 2017, and 2018 and its quarterly financial statements for the quarters ended March 31, 2017 through June 30, 2019, should no longer be relied upon because of misstatements to Baxter's previously reported foreign exchange gains and losses.

24. On March 17, 2020, Baxter filed its Form 10-K for the period ending December 31, 2019. In that filing, Baxter announced it had completed the investigation concerning the FX Transactions and restated its financial statements and financial information for 2017, 2018, and the first half of 2019, including each of the quarterly and year-to-date periods from 2018 through 2019, to correct material misstatements related to the FX Transactions as well as other immaterial misstatements. The 10-K also included restatements of selected unaudited financial information for the years ended December 31, 2015 and 2016. Schaible resigned in March 2020.

25. In quantifying the misstatements, Baxter identified all legal entities that had foreign exchange gains or losses on intra-company transactions above an immaterial threshold and remeasured the foreign exchange gains and losses for those transactions by applying a new exchange rate convention in accordance with GAAP. No distinction was made on whether the foreign exchange gain or loss resulted from FX Transactions. Baxter also remeasured the gains and losses on foreign currency derivative contracts in these same entities using the new exchange rate convention.

26. As a result of the restatement, Baxter reduced its total reported foreign exchange gains and losses from 2010 through the second quarter of 2019 by \$517 million.

27. Schaible's bonus compensation was based, in part, on Baxter meeting performance metrics tied to EPS, which had been inflated by Baxter's FX Convention and the related FX Transactions. From 2015 through 2019, Schaible received a total of approximately \$76,404 in excess bonus payments from Baxter due to Baxter's inflated EPS.

Violations

28. As a result of the conduct described above, Respondent violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit any person from directly or indirectly obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstance under which they are made, not misleading, or engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser, in the offer or sale of securities. A violation of these provisions does not require scienter and may rest on a finding of negligence. *See Aaron v. SEC*, 446 U.S. 680, 685, 701-02 (1980).

29. As a result of the conduct described above, Respondent caused Baxter's violations of Section 13(a) of the Exchange Act and Rules 13a-1, 13a-11, and 13a-13 thereunder, which require issuers with securities registered under Section 12 of the Exchange Act to file annual, current, and quarterly reports with the Commission containing such information as the Commission's rules may require. A violation of these reporting provisions does not require scienter and may rest on a finding of negligence. *See SEC v. Wills*, 472 F. Supp. 1250, 1268 (D.D.C. 1978). A finding of negligence is sufficient to establish causing under Exchange Act Section 21C(a) where the primary violation does not require scienter. *See KPMG, LLP v. SEC*, 289 F.3d 109, 120 (D.C. Cir. 2002).

30. As a result of the conduct described above, Respondent caused Baxter's violations of Section 13(b)(2)(A) of the Exchange Act, which requires issuers with securities registered under 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 assets of the issuer. Scienter is not an element of the books and records provision. *See Ponce v. SEC*, 345 F.3d 722, 737 n.10 (9th Cir. 2003) (noting that a "plain reading of Section 13(b) reveals that it also does not impose a scienter requirement").

Disgorgement

31. The disgorgement and prejudgment interest ordered in paragraph IV.B. is consistent with equitable principles and does not exceed Respondent's net profits from his violations, and will be distributed to harmed investors to the extent feasible. The Commission will hold funds paid pursuant to paragraph IV.B. in an account at the United States Treasury pending distribution. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

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:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act and Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 13a-1, 13a-11 and 13a-13 thereunder.

B. Respondent shall, within 10 days of the entry of this Order, pay disgorgement of \$76,404 and prejudgment interest thereon of \$12,955 to the Securities and Exchange Commission, and a civil money penalty in the amount of \$100,000 to the Securities and Exchange Commission. 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 Jeffrey Schaible 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 Jeffrey A. Shank, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Ste. 1450, Chicago, Illinois 60604.

C. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, prejudgment interest AND penalties referenced in paragraph IV.B. above (the "Schaible Fair Fund") and the Schaible Fair Fund shall be added to the Fair Fund established in the Commission's related proceeding, *In the Matter of Baxter International Inc.*, Admin. Proc. No.

3-20781 (instituted February 22, 2022) (the “Baxter Fair Fund”). The Baxter Fair Fund will be distributed to affected investors in accordance with a Commission-approved plan of distribution in that proceeding. 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, he shall not argue that he is entitled to, nor shall he 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 he 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.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary