

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10558 / September 21, 2018

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3980 / September 21, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18819

In the Matter of

**HEARTLAND PAYMENT
SYSTEMS, LLC, F/K/A
HEARTLAND PAYMENT
SYSTEMS, INC. AND
ROBERT O. CARR.**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT OF
1933, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) against Heartland Payment Systems, LLC, f/k/a Heartland Payment Systems, Inc. (“Heartland”) and Robert O. Carr (“Carr”) (collectively “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

Summary

1. This matter arises from the disclosures of Heartland Payment Systems, Inc. and its CEO, Robert O. Carr, regarding an operating metric referred to by the company as "New Margin Installed" or "NMI." Between 2013 and 2015, Heartland and Carr disclosed NMI in quarterly filings with the Commission on Forms 10-Q and 10-K, in earnings releases filed with the Commission on Form 8-K, and on quarterly earnings calls with securities analysts. Heartland disclosed NMI publicly as both an absolute quarterly figure and a percentage change over prior periods (collectively, the "NMI Metrics"), and Carr often included commentary regarding the importance of NMI to the company's future revenue generation. NMI did not affect Heartland's financial statements, including its reported revenue and earnings.

2. NMI was a metric used by Heartland to estimate the expected annual gross profit from a merchant contract after deducting processing and servicing costs associated with the revenue over the merchant's first year processing payments with Heartland. Heartland used the NMI Metrics as a measure of salesperson productivity, and described NMI to analysts and investors as a leading indicator of organic revenue growth, explaining that increases in NMI from new customers should lead to increased revenue from card processing in future periods.

3. Between 2013 and 2015, Heartland's NMI Metrics were consistently overstated as a measure of new business or future revenue growth. During the relevant period, Heartland, with the knowledge of Carr, included in its disclosed NMI numbers categories of margin that (1) were not the result of new business but instead resulted from re-signing existing merchants in circumstances where accounts experience a change of ownership ("COO Margin," as further discussed below); and (2) resulted from products that were added to Heartland's calculation of NMI, but which were already being sold to merchants and included in reported revenue during prior periods ("APD Margin," as further discussed below, and collectively with COO Margin, "COO and APD Margin").

4. As a result of the increased NMI from COO and APD Margin, Heartland and Carr reported to the market inflated NMI Metrics on a quarterly basis during the relevant period. Research analysts cited the NMI Metrics as an important factor in issuing reports and analyses regarding Heartland and, in at least one case, a fund manager reported to investors that the fund's investment strategy regarding Heartland was directly linked to the relative level of the NMI Metrics. Absent the inflated NMI Metrics, Heartland's reported NMI would have been materially lower throughout the period.

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.

5. As a result, the descriptions of NMI given by Heartland and Carr to the market were misleading, and Heartland and Carr omitted material information by failing to disclose that a material amount of the company's growth in NMI was from COO and APD Margin.

Respondent

6. Respondent, Heartland Payment Systems, LLC, is a Delaware limited liability company with headquarters in Atlanta, Georgia. Prior to its 2016 merger with Global Payments Inc. ("Global Payments"), and at all times relevant to this action, Heartland Payment Systems, Inc. was a public company with common shares registered pursuant to Section 12(b) of the Exchange Act and quoted on the New York Stock Exchange (NYSE: HPY). At all times relevant to this action, Heartland Payment Systems, Inc. provided card payment processing services for merchants throughout the United States. All of the actions described herein took place prior to Heartland's 2016 merger with Global Payments.

7. Robert O. Carr, age 72, is a resident of Princeton, New Jersey. Carr founded Heartland in 1997 and remained as CEO after Heartland's initial public offering in 2005. At all times relevant to this action, Carr was CEO of Heartland and served on Heartland's Board of Directors. Carr has no role at Global Payments.

Heartland's New Margin Installed Metric

8. Heartland Payment Systems, Inc. (NYSE: HPY) was a payment processing company. Between 2013 and 2015, Heartland sold credit card processing services to retail merchants through an internal sales force.

9. Salespersons received compensation in the form of bonuses for newly signed merchants, and residual payments based on actual merchant profitability on a monthly basis. The signing bonuses were determined based on an operating metric that Heartland referred to as "new gross margin installed," and defined as "the expected annual gross profit from a merchant contract after deducting processing and servicing costs associated with that revenue."

10. Heartland, with the knowledge of Carr, aggregated individual salespersons' new gross margin installed into a reported operating metric referred to as "New Margin Installed" or "NMI."

Heartland and Analysts Describe NMI as a Forward Looking Growth Metric

11. In addition to their use as a measure of salesperson compensation, Heartland and Carr also reported the NMI Metrics to the market as forward looking growth metrics on a quarterly basis during earnings calls, in earnings releases, and in 10-Ks and 10-Qs filed with the Commission during the relevant period.

12. Heartland and Carr described the NMI Metrics as forward looking concepts that were important to driving long-term growth in processing volumes and revenues. Carr regularly referred to NMI as "new business" and "new sales," suggesting that NMI was a measure of organic revenue growth from new merchant accounts.

13. Analysts following Heartland adopted these concepts, describing NMI variously as a “leading indicator” for “new business,” “net revenue growth,” and “organic revenue growth.” Even in quarters when Heartland’s actual financial metrics fell short of analyst expectations, Heartland and analysts often cited growth in NMI as a reason for continued confidence in the stock moving forward.

Heartland Reported Increasing and Record Levels of NMI Throughout 2013-2015

14. Between 2013 and 2015, Heartland and Carr reported increasingly strong levels of NMI, citing the steady quarterly increases as evidence of improved sales force productivity and indicative of future growth. Analysts covering the company closely followed the steady increase in NMI, reporting it in bullish terms as a leading indicator of future revenues.

15. In its earnings releases during the relevant period, Heartland often stated both that it had achieved record levels of NMI and that NMI was indicative of future growth for the company. For example, in its third quarter 2013 earnings release, Heartland reported “An *all-time record \$18.5 million new margin installed*, up 28% from the third quarter of 2012 with new card margin installed up 29% in the quarter . . . the continued increase in new SME card margin installed is *key to accelerating the rate of organic card net revenue growth*.” (emphasis added). Heartland used similar language to report NMI figures in earnings releases every quarter during the relevant period.

16. Carr echoed the sentiments expressed in Heartland’s earnings releases during quarterly earnings calls with research analysts throughout the relevant period. For example, on its fourth quarter 2014 earnings call, Carr stated that Heartland had “a ninth consecutive quarter of *new business growth with another quarter of record new margin installed*.” (emphasis added). He elaborated that volume growth during the quarter was “a continuation of the solid *organic growth* and benefited from an *over two-year run of quarter after quarter record new margin installed*.” (emphasis added). Carr made similar statements during earnings calls in every quarter of the relevant period.

17. Reporting after the quarterly earnings calls, analysts reacted positively to Heartland’s description of NMI growth, even in quarters when Heartland’s actual financial metrics fell short of analyst expectations. For example, in maintaining an Equal-Weight rating after Heartland reported results from second quarter 2015, an analyst from Stephens, Inc. cited among “Key Positives” that “*New margin installed growth accelerated dramatically to 14.6%* and was higher than net rev growth *implying good news for future rev growth*.” (emphasis added). An analyst from Wells Fargo Securities was similarly upbeat after Heartland reported third quarter 2015 results, stating that “More important [than the financial figures reported], the *momentum of the growing sales force* and strategic shift of HPY to broaden out its offerings via *organic development* and M&A *continues to build with new margin installed up about 30% and at an all-time high*.” (emphasis added). Research analysts expressed similar impressions regarding the implications of Heartland’s NMI growth throughout the relevant period.

18. In addition to analysts, investors also relied on NMI in forming their investment strategies for Heartland. Writing in April 2014, one money manager with a position in Heartland

wrote to his investors, “The primary driver for price movements is the ‘new margin installed’ which is a measure of new customers signed up during a quarter.” The manager went on to describe how the fund’s approach to its investment in Heartland would depend on whether NMI was increasing or decreasing moving forward.

19. Heartland and Carr continued to disclose increasing and record amounts of NMI growth on earnings calls and in press releases throughout the relevant period, and analysts continued to consider NMI as a key point in their investment theses throughout the relevant period.

Heartland’s Reported NMI Was Consistently Overstated as a Forward Looking Growth Metric Throughout 2013-2015

20. Contrary to the public statements of Heartland and Carr, a significant portion of the reported NMI Metrics during the 2013-2015 time period was not actually indicative of new business or organic revenue growth. Instead, a significant portion of Heartland’s NMI resulted from: (i) “change of ownership” accounts that provided no net revenue growth, and (ii) the addition of margin from credit card products that were already being sold to merchants and which were already included in reported revenue, though previously excluded from NMI calculations. As a result, Heartland’s NMI was overstated as an indicator of new business or organic revenue growth.

21. By including in its NMI figures margin that was not indicative of new revenue growth or was related to products already being sold, Heartland and Carr made statements to the market that were materially misleading. Moreover, Heartland and Carr failed to disclose material information that was necessary to make the disclosures made, under the circumstances, not misleading, including by omitting material information regarding the sources and amount of COO and APD Margin included in the NMI Metrics.

1. Change of Ownership Accounts

22. Throughout 2013, Heartland’s NMI Metrics were inflated by the inclusion of change of ownership (“COO”) accounts in salespersons’ installed margin numbers. Heartland’s internal sales policy defined a COO as, “An event involving an active HPS account in which the existing Client sells or otherwise transfers ownership of their business to another merchant.” Although the COO accounts generally did not represent a new revenue stream and were – in most instances² – simply a continuation of revenue Heartland earned from an existing merchant that purportedly changed ownership, Heartland included them in the NMI figures that it described to the market as new business that was indicative of future revenues.

23. Heartland and Carr recognized that COOs generally were not revenue-generating new business and were aware that a material amount of NMI was being generated by COOs in

² COO accounts could have been expected to generate increased revenue in certain limited situations, such as if the buyer of the existing business had expansion plans. However, this generally was not the case.

the 2013-2015 time period. Heartland nevertheless continued to include COO Margin in its reported NMI figures throughout the 2013-2015 time period, and Carr regularly referred to this NMI as “new business” and “new sales.” The inclusion of COOs in Heartland’s NMI figures, and the failure to disclose that a material portion of NMI resulted from these revenue-neutral account changes, made Heartland’s external descriptions of NMI misleading.³

24. Heartland and Carr were aware of the amount of NMI generated by COOs because Heartland tracked the number of COOs and the percentage of NMI resulting from COOs throughout the period in order to understand their impact on salesperson compensation and awards. In addition to the COOs that complied with Heartland’s sales-policy definition, salespeople sometimes incorrectly submitted COO applications as new merchant applications. Because of the way Heartland tracked its COOs, those that were presented as new merchant applications were not included in the tracked COO numbers. Thus, the COO figures tracked by Heartland did not reflect the entire magnitude of COO margin included in NMI. In late 2013, Heartland and Carr initiated policy changes intended to stop the practice.

2. Mischaracterization of Product Expansion as NMI Growth

25. The use of COOs to inflate the NMI Metrics was compounded by Heartland’s March 2013 decision to begin including margin from signing up American Express, PIN/Debit, and Discover card processing products (“APD Margin”) in the NMI numbers. In early 2013, Heartland started paying signing bonuses based on sales of American Express, PIN/Debit and Discover products. Although these products had previously been available for sale and the revenue from the sale of such products had already been included in Heartland’s net revenues, they had previously been excluded from salesperson bonus calculations.

26. At the same time it began including APD Margin in bonus calculations, the company also began counting the margin installed for these three additional product types and consolidating it into the publicly reported NMI figure. Carr approved the plan to include APD Margin in NMI by at least February 2013. Despite adding the margin from these products into its NMI figures, neither Heartland nor Carr ever disclosed to the market that this additional growth in margin came from the inclusion of APD products that were already being sold and reflected in Heartland’s revenue, rather than from organic growth in NMI.

27. With Carr’s knowledge, Heartland internally tracked margin from APD accounts along with other sources of “non-organic” margin. However, no breakdown of non-organic margin generated by APD accounts was disclosed to the market.

28. By adding the APD Margin to the NMI Metrics during the first quarter of 2013 without disclosing it to the market and tying the increase in NMI to future revenue growth, Heartland’s and Carr’s external disclosures from 2013 through the first quarter of 2014 gave the

³ Heartland and Carr disclosed an attrition metric that measured the number of merchant accounts that had stopped generating revenue for the company. While COOs ultimately were reflected in attrition, that metric did not provide a complete picture of the impact of COOs on Heartland’s reported NMI.

misleading impression that the company was experiencing a material increase in organic business growth. In fact, APD products were already being sold to merchants prior to their inclusion in the NMI Metrics, meaning the increase in the NMI growth rate caused by the inclusion of APD Margin would not correlate to a future increase in organic revenue growth.

29. APD Margin consistently accounted for approximately 10% of Heartland's monthly NMI after March 2013. However, neither Heartland nor Carr ever disclosed the inclusion of APD Margin in its externally reported NMI figures.

Heartland's Misstatements Regarding NMI Were Material

30. Heartland's inflation of its reported NMI Metrics was material because of both quantitative and qualitative factors.

31. Heartland's overstatement and mischaracterization of NMI regularly accounted for more than 10% of reported NMI for a given quarter, making the misstatements quantitatively significant. For example, in 2013, Heartland's reported NMI was overstated as an indicator of new business or organic revenue growth by at least 14.1%, 17.3%, 17.7%, and 13.9% on a quarterly basis and by 15.7% for the full year. These misstatements do not include the COOs that were processed as new merchant accounts since those numbers were not tracked by the company. As a result, the actual overstatements were likely higher.

32. Heartland's inflation of its NMI Metrics from 2013-2015 was qualitatively significant as well. First, the misstatements were material because the NMI Metrics were important to analysts and investors, who understood the NMI Metrics to be a leading indicator for future organic revenue growth at Heartland. Second, Heartland's inflation of the NMI Metrics allowed it to report increasing NMI Metrics in certain quarters when it otherwise would have had to report decreasing or otherwise negative NMI compared to prior periods. Third, Heartland's overstatements of the NMI Metrics allowed the company to consistently report new records in NMI growth throughout the relevant period, when in fact Heartland's actual NMI was not consistently growing over the period.

Global Payments' Conduct and Cooperation

33. In determining to accept the Offer, the Commission considered the fact that none of the described conduct took place following Heartland's merger with Global Payments in 2016. During the course of the investigation, Global Payments meaningfully cooperated with the Commission staff and, importantly, Global Payments discontinued the practice of disclosing NMI following the merger.

Violations

34. As a result of the conduct described above, Heartland violated Sections 17(a)(2) and (3) of the Securities Act and Carr violated Section 17(a)(2) of the Securities Act. Section 17(a)(2) prohibits a person, in the offer or sale of any securities, from obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary to make the statements made, in light of the circumstances under which they were

made, not misleading. Section 17(a)(3) of the Securities Act prohibits a person, in the offer or sale of securities, from engaging in any transaction, practice, or course of business which would operate as a fraud or deceit upon the purchaser. A violation of these sections does not require scienter, and may rest on a finding of negligence. *See Aaron v. SEC*, 446 U.S. 680, 685, 701-702 (1980).

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondent Heartland Payment Systems, LLC shall 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. Pursuant to Section 8A of the Securities Act, Respondent Robert O. Carr shall cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) of the Securities Act.

B. Respondent Heartland Payment Systems, LLC shall, within 30 days of the entry of this Order, pay a civil monetary penalty of \$2,160,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury. If timely payment is not made, interest shall accrue pursuant to 31 U.S.C. §3717. Respondent Robert O. Carr shall, within 30 days of the entry of this Order, pay a civil monetary penalty of \$120,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury. If timely payment is not made, interest shall accrue pursuant to 31 U.S.C. §3717.

Payments must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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 Service 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 Heartland Payment Systems, LLC or Robert O. Carr 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 Associate Director Melissa Hodgman, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

C. Amounts ordered to be paid as civil money penalties in 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, Respondents agree 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 Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agrees that they 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 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.

D. 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 Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents 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 Respondents 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.

Brent J. Fields
Secretary