

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95193 / July 1, 2022

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4314 / July 1, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20923

In the Matter of

VOXELJET AG

and

RUDOLF FRANZ,

Respondents.

**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 voxeljet AG and Rudolf Franz (“voxeljet” and “Franz,” respectively, or collectively the “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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V as to Respondent Franz, Respondents consent 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 Respondents' Offers, the Commission finds¹ that:

Summary

1. These proceedings concern voxeljet's reporting during two quarters in 2019 of its compliance with a Finance Contract it entered into with the European Investment Bank ("EIB") and the state of its internal accounting controls.

Respondents

2. voxeljet AG ("voxeljet" or the "Company") is a Foreign Private Issuer incorporated in Germany and headquartered in Friedberg, Germany. The Company is a provider of 3D printers and on-demand parts services to industrial and commercial customers. In 2013, voxeljet conducted an initial public offering of American Depositary Shares (ADSs). During the relevant period, the Company's ADSs were registered with the Commission pursuant to Section 12(b) of the Exchange Act and were listed on the New York Stock Exchange. voxeljet's ADSs are currently listed on the Nasdaq Capital Market under the ticker symbol VJET.

3. Rudolf Franz ("Franz") serves as voxeljet's Chief Financial Officer ("CFO") and Chief Operating Officer ("COO"). Franz resides in Germany.

Background

4. In November 2017, voxeljet entered into a Finance Contract with the EIB. The Finance Contract provided that the EIB would disburse a credit of up to €25 million to voxeljet, in three tranches. In December 2017, the EIB disbursed the first tranche of €10 million to voxeljet.

5. In 2019 and 2020, the €10 million loan was material to voxeljet's current liabilities and to its long-term liabilities. The financing provided by the EIB was also material to voxeljet's ability to continue as a going concern.

6. The Finance Contract required voxeljet to comply with debt covenants. One of the debt covenants was a ratio of Total Net Financial Debt to EBITDA (earnings

¹ The findings herein are made pursuant to the Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

before interest, taxes, depreciation, and amortization) (hereafter, “EBITDA Covenant”). The first testing date for the debt covenants was June 30, 2019.

voxeljet Breached the EBITDA Covenant

7. According to a “Progress Report” that voxeljet generated for the EIB on or about June 26, 2019, voxeljet would not be in compliance with the EBITDA Covenant on the June 30, 2019 testing date.

8. Although the EIB took the position that it had the right to demand repayment of the loan as a result of the noncompliance with the EBITDA Covenant, EIB exercised its business judgment and chose to engage in discussions with voxeljet with a view toward reaching agreement on a waiver. The Company noted the existence of these discussions in the June 30, 2019 Compliance Certificate that it provided the EIB. If the EIB instead had sought repayment it could also have required voxeljet to make a cash payment to the EIB pursuant to a Synthetic Warrant Agreement between the two parties.

9. Although the EIB did not send a formal notice of breach of the EBITDA Covenant, voxeljet remained in breach of the EBITDA Covenant throughout 2019.

10. As a result, voxeljet and the EIB thereafter engaged in discussions about the possibility of amending the EBITDA Covenant and the issuance of a waiver of the EBITDA Covenant. The negotiations began after the June 30, 2019 testing date, and continued until March 2020 when the EIB ultimately issued a written waiver to voxeljet.

11. In or about June 2019, Franz became aware that voxeljet had breached the EBITDA Covenant. During the second half of 2019, he participated in face-to-face negotiations with EIB representatives, and written communications with them, concerning how to remedy the breach.

voxeljet's Interim Financial Results

12. On August 15, 2019, on Form 6-K, voxeljet furnished to the Commission its interim financial statements for the quarter ended June 30, 2019 (“Q2 Financial Statements”). On November 14, 2019, voxeljet filed a Form 6-K which furnished its interim financial statements for the quarter ended September 30, 2019 (“Q3 Financial Statements”).

13. Franz signed the Forms 6-K through which voxeljet furnished the Q2 Financial Statements and the Q3 Financial Statements to the Commission.

14. The Q2 Financial Statements and the Q3 Financial Statements each represented that “[T]hese financial statements were prepared in accordance with the disclosure requirements . . . for interim financial reporting purposes specified by IAS 34.” (IAS refers to International Accounting Standards.)

15. The Q2 and Q3 Financial Statements were not, however, prepared in accordance with IAS 34’s requirements, as they did not disclose voxeljet’s breach of the EBITDA Covenant. IAS 34.15B provides examples of events and transactions for which disclosures are required if significant. One of the listed examples is: “Any loan default or breach of a loan agreement that has not been remedied on or before the end of the reporting period.” Franz knew, or should have known, that voxeljet should have disclosed the EBITDA Covenant breach.

16. In addition, the Q2 and Q3 Financial Statements misclassified the €10 million loan as a non-current liability. The Company should have recorded the debt as a current liability, because IAS 1.74 provides, in part: “When an entity breaches a provision of a long-term loan arrangement on or before the end of the reporting period with the effect that the liability becomes payable on demand, it classifies the liability as current” Franz knew, or should have known, that voxeljet should have classified the debt as a current liability.

In 2020, the EIB Granted a Waiver and voxeljet Disclosed the Breach

17. In 2020, the EIB granted voxeljet a waiver of the EBITDA Covenant breach. On March 12, 2020, the EIB and voxeljet entered into an agreement in which the EIB waived voxeljet’s covenant breach. In exchange for the waiver, voxeljet collateralized the loan by providing the EIB a security interest in voxeljet’s land and facility in Friedberg, Germany, valued at approximately €10 million. The Company also agreed to pay a waiver fee of €30,000.

18. In a Form 6-K dated March 18, 2020, voxeljet for the first time disclosed that it had breached the EBITDA Covenant.

19. On May 7, 2020, voxeljet filed with the Commission its annual report on Form 20-F for the fiscal year ended December 31, 2019. The Form 20-F also disclosed the EBITDA Covenant breach: “We have breached our Total Net Financial Debt to EBITDA ratio financial covenant . . . with the European Investment Bank (“EIB”), during the fiscal year and remain in default as at December 31, 2019.” The Form 20-F further disclosed: “Consequently, the EIB could have called the loan due, however after discussions which started in July 2019, in March 2020, we received a waiver for the covenant breaches in 2019”

20. The Company also disclosed in its Form 20-F that, as a result of the EBITDA Covenant breach, voxeljet reclassified the €10 million debt from a non-current liability to a current liability.

voxeljet’s Material Weaknesses in Internal Control Over Financial Reporting

21. For several years following voxeljet’s initial public offering—including 2018 to 2021—the Company disclosed material weaknesses in internal control over financial reporting. As a result, the Company’s disclosure controls and procedures were also not effective. For fiscal 2018, voxeljet’s auditor expressed an adverse opinion on the effectiveness of the Company’s internal control over financial reporting.

22. In July 2018, voxeljet’s Internal Audit staff drafted internal controls concerning the financial covenants of the EIB loan. However, the Company had not implemented these internal controls by the time that the Company reported the Q2 and Q3 Financial Statements.

23. Each year after voxeljet’s IPO, Company management, including Franz, conducted an evaluation of the effectiveness of the design and operation of voxeljet’s disclosure controls and procedures. Each year, Franz and the CEO concluded that voxeljet’s disclosure controls were ineffective.

24. As an example of voxeljet’s ineffective internal controls, the company’s independent auditor was not appropriately informed of the EBITDA Covenant breach during its reviews of the Q2 and Q3 Financial Statements. Information about the covenant breach was not adequately documented and shared with the auditor at the time of those reviews. voxeljet’s internal processes for the review and tracking of financial reporting and disclosure were not sufficiently formalized, documented, and reviewed by the audit committee and the supervisory board.

25. As a result of the conduct described above, during the second and third quarters of 2019, voxeljet’s internal accounting controls were not designed or maintained to provide reasonable assurance that the Company’s financial statements would be presented in conformity with International Financial Reporting Standards (IFRS).

Violations

26. As a result of the conduct described above, voxeljet violated Section 13(a) of the Exchange Act and Rules 13a-16, and 12b-20 thereunder. Section 13(a) and Rule 12b-20 require every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission information, documents, and annual and quarterly reports as the Commission may require, and mandate that periodic reports contain such further material information as may be necessary to make the required statements not misleading. Rule 13a-16 of the Exchange Act requires foreign private issuers with classes of securities registered pursuant to Section 12 to furnish to the Commission accurate reports on Form 6-K.

27. As a result of the conduct described above, voxeljet violated Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

28. As a result of the conduct described above, voxeljet violated Section 13(b)(2)(B) of the Exchange Act, which requires reporting companies, among other things, to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements.

29. As a result of the conduct described above, Franz caused voxeljet's violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20, and 13a-16 thereunder.

The Respondents' Cooperation and Remedial Efforts

30. In determining to accept the Respondents' Offers, the Commission considered cooperation afforded the Commission staff and remedial acts promptly undertaken by the Respondents.

31. voxeljet self-reported and shared facts developed in its internal investigation, including providing regular updates and analyses and identifying key documents, and also facilitated the Commission staff's interviews and testimony with witnesses.

32. voxeljet also has taken certain remedial measures, including expanding its accounting and internal controls personnel and hiring an IFRS expert who reports to the audit committee. In particular, the Company has implemented new controls over the documentation, review, and reporting of the Company's compliance with its debt covenants.

33. In 2020, voxeljet prepared and began implementing a remediation plan (the "Plan"). The Company then hired an outside accounting expert to review the Plan against the 2013 Internal Control—Integrated Framework of the Committee of Sponsoring Organizations of the Treadway Commission (COSO), enhance the Plan, and assist the Company in implementing the Plan.

Undertakings

34. voxeljet has undertaken to:

- a. Complete, fully implement, and test its Plan by March 31, 2023, unless an extension has been provided by the Commission's staff pursuant to paragraph 34(b) below, and submit a report to the Commission staff no later than May 1, 2023. The report shall describe the implementation, testing, and completion of the Plan, and whether the Plan has, in management's opinion, fully remediated the material weaknesses in voxeljet's internal control over financial reporting identified in its 2020 and 2021 Forms 20-F.
- b. For good cause shown, the Commission's staff may extend any of the procedural dates set forth above in Paragraph 34(a). In the event voxeljet decides to request an extension of any such dates, it shall provide the Commission's staff a written extension request that explains the circumstances and rationale for such request. The written extension request shall be submitted to C. Joshua Felker, Assistant Director, no later than thirty (30) days before the applicable deadline.
- c. Certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and voxeljet agrees to provide such evidence. The certification and supporting material shall be submitted to C. Joshua Felker, Assistant Director, with a copy to the Office of Chief Counsel of the Enforcement Division, no later

than sixty (60) days from the date of the completion of the undertakings.

- d. The report submitted by voxeljet will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the report could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the report and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) as otherwise required by law.

IV.

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

Accordingly, it is hereby ORDERED that:

- A. Pursuant to Section 21C of the Exchange Act, Respondents voxeljet and Franz cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20, and 13a-16 thereunder.
- B. Respondent voxeljet shall comply with the undertakings enumerated in Paragraph 34, above.
- C. Respondents voxeljet and Franz shall, within 30 days of the entry of this Order, pay a civil money penalty in the respective amounts of \$175,000 and \$50,000 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.
- D. 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 voxeljet AG and Rudolf Franz as Respondents 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 Melissa Hodgman, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

E. 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, Respondents agree that in any Related Investor Action, Respondents shall not argue that they are entitled to, nor shall they 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 agree 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 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 Respondents 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 Franz, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Franz 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 Franz 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