

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97761 / June 20, 2023

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4422 / June 20, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21497

In the Matter of

**STANLEY BLACK &
DECKER, INC.,**

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 Stanley Black & Decker, Inc. (“SBD” 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:

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.

Summary

1. This matter arises from Stanley Black & Decker, Inc.'s failure to disclose in its definitive proxy statements at least \$1.3 million worth of perquisites and personal benefits paid to, or on behalf of, four of its named executive officers and one of its directors from 2017 through 2020. The perquisites predominantly consisted of expenses associated with the executives' use of corporate aircraft. In connection with this conduct, SBD violated Sections 13(a) and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, and 14a-3 thereunder.

Respondent

2. Stanley Black & Decker, Inc. is a Connecticut corporation headquartered in New Britain, Connecticut. SBD is a diversified global provider of hand tools, power tools, and other products and services. SBD's common stock is registered under Section 12(b) of the Exchange Act and trades on the New York Stock Exchange under the ticker symbol "SWK."

Background

3. Section 14(a) of the Exchange Act makes it unlawful to solicit any proxy in respect of any security (other than an exempted security) registered pursuant to Section 12 of the Exchange Act in contravention of such rules and regulations as the Commission may prescribe. Rule 14a-3 prohibits issuers with securities registered pursuant to Section 12 of the Exchange Act from soliciting proxies without furnishing proxy statements containing the information specified in Schedule 14A, including executive compensation disclosures pursuant to Item 402 of Regulation S-K. Item 402 of Regulation S-K requires disclosure of the total value of all perquisites and other personal benefits provided to named executive officers who receive at least \$10,000 worth of such items in a given year. Item 402 of Regulation S-K also requires identification of all perquisites and personal benefits by type, and quantification of any perquisite or personal benefit that exceeds the greater of \$25,000 or 10% of total perquisites.

4. In 2006, the Commission adopted amendments to executive compensation disclosure rules, including Item 402 of Regulation S-K. *See* Commission's Executive Compensation and Related Person Disclosure Final Rule adopting release, Release Nos. 33-8732A; 34-54302A; IC-27444A; File No. S7-03-06 (August 29, 2006) (the "Adopting Release"). According to the Adopting Release, "an item is not a perquisite or personal benefit," and does not need to be reported, "if it is integrally and directly related to the performance of the executive's duties. Otherwise, an item is a perquisite or personal benefit if it confers a direct or indirect benefit that has a personal aspect, without regard to whether it may be provided for some business reason or for the convenience of the company, unless it is generally available on a non-discriminatory basis to all employees." The Adopting Release also states that "the concept of a benefit that is 'integrally and directly related' to job performance is a narrow one," which "draws a critical distinction between an item that a company provides because the executive needs it to do the job, making it integrally and directly related to the performance of duties, and an item provided for some other reason, even where that other reason can involve both company benefit and personal benefit."

5. According to the Adopting Release, even where the company “has determined that an expense is an ‘ordinary’ or ‘necessary’ business expense for tax or other purposes or that an expense is for the benefit or convenience of the company,” that determination “is not responsive to the inquiry as to whether the expense provides a perquisite or other personal benefit for disclosure purposes.” Indeed, “business purpose or convenience does not affect the characterization of an item as a perquisite or personal benefit where it is not integrally and directly related to the performance by the executive of his or her job.”

Facts

6. Contrary to Item 402 of Regulation S-K and the Commission’s guidance in the Adopting Release, SBD’s system for identifying, tracking and calculating perquisites did not apply an integrally-and-directly-related standard when characterizing certain items as perquisites.

7. In definitive proxy statements disclosing executive compensation paid for 2017 through 2020, which were filed in 2018 through 2021, SBD disclosed a total annual average of approximately \$1 million worth of “All Other Compensation” for the four named executive officers and one director at issue. The proxy statements listed zero dollars in compensation attributable to the officers’ and director’s use of corporate aircraft.

8. However, these same definitive proxy statements failed to disclose at least \$1.3 million worth of perquisites and personal benefits, predominantly related to corporate aircraft usage, that were provided to these four named executive officers and the director, thereby understating the “All Other Compensation” portion of their compensation by a total annual average of at least \$325,000.

9. From 2018 through 2021, SBD incorporated its definitive proxy statements into its annual reports by reference.

10. On March 9, 2022, SBD filed a definitive proxy statement, which, among other things, provided revised disclosures regarding perquisites and personal benefits provided to certain named executive officers in 2019 and 2020.

Violations

11. Section 14(a) of the Exchange Act makes it unlawful to solicit any proxy in respect of any security (other than an exempted security) registered pursuant to Section 12 of the Exchange Act in contravention of such rules and regulations as the Commission may prescribe. Rule 14a-3 prohibits issuers with securities registered pursuant to Section 12 of the Exchange Act from soliciting proxies without furnishing proxy statements containing the information specified in Schedule 14A, including executive compensation disclosures pursuant to Item 402 of Regulation S-K. Item 402 of Regulation S-K requires disclosure of the total value of all perquisites and other personal benefits provided to named executive officers who receive at least \$10,000 worth of such items in a given year. Item 402 of Regulation S-K also requires disclosure of all perquisites and personal benefits by type, and specific identification of any perquisite or personal benefit that exceeds the greater of \$25,000 or 10% of the total perquisites. No showing of scienter is required

to establish a violation of Section 14(a) of the Exchange Act and Rule 14a-3 thereunder. *See, e.g., Gerstle v. Gamble-Skogmo, Inc.*, 478 F.2d 1281, 1299-1300 (2d Cir. 1973). As a result of the conduct described above, SBD violated Section 14(a) of the Exchange Act and Rule 14a-3 thereunder.

12. Section 13(a) of the Exchange Act and Rule 13a-1 thereunder require every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission, among other things, annual reports as the Commission may require. The Commission need not prove scienter to establish a violation of Section 13(a) of the Exchange Act (or Exchange Act Rules 12b-20 and 13a-1). *See, e.g., SEC v. McNulty*, 137 F.3d 732, 740-41 (2d Cir. 1998). As a result of its incorporation of deficient proxy statements by reference in its annual reports, SBD violated Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

13. As a result of the conduct described above, SBD violated Rule 12b-20 under the Exchange Act, which requires that, in addition to the information expressly required to be included in a statement or report filed with the Commission, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

SBD's Self-Reporting, Cooperation and Remedial Efforts

14. In determining to accept the Offer, the Commission considered the following:
- a. After learning of potential misconduct, SBD promptly acted to ensure that outside counsel conducted an internal investigation under the direction and oversight of a Special Committee of independent directors. Prior to completing its internal investigation, SBD self-reported to the Commission staff the failure to disclose perquisites referred to herein and other conduct potentially implicating the federal securities laws.
 - b. SBD cooperated with the Commission's investigation, including by providing to Commission staff facts developed through the internal investigation and compilations of relevant documents, information, and data.
 - c. SBD implemented remedial measures designed to ensure compliance with Item 402 of Regulation S-K and Commission guidance. SBD also made disclosures in the Form 10-K for its fiscal year ended January 1, 2022 concerning expenses it had identified that constituted undisclosed perquisites, and made additional disclosures thereafter.

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 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(a) and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, and 14a-3 thereunder.

B. Respondent acknowledges that the Commission is not imposing a civil penalty based in part upon its cooperation in a Commission investigation. If at any time following the entry of the Order, the Division of Enforcement (“Division”) obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay a civil money penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Vanessa A. Countryman
Secretary