

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95766 / September 14, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20060

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In the Matter of	:	
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BAYERISCHE MOTOREN WERKE	:	ORDER APPOINTING
AKTIENGESELLCHAFT, BMW OF	:	FUND ADMINISTRATOR AND
NORTH AMERICA, LLC, and BMW	:	SETTING ADMINISTRATOR'S
US CAPITAL, LLC ,	:	BOND AMOUNT
	:	
Respondents.	:	
_____	:	

On September 24, 2020, the Commission issued a settled cease-and-desist order (the “Order”)¹ against Bayerische Motoren Werke Aktiengesellschaft (“BMW AG”), BMW of North America, LLC (“BMW NA”), and BMW US Capital, LLC (“BMW US”) (collectively, the “Respondents”) for violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 (“Securities Act”). In the Order, the Commission found that from 2015 to 2019, BMW inflated its reported retail sales in the U.S., which helped BMW close the gap between its actual retail sales volume and internal targets and publicly maintain a leading retail sales position relative to other premium automotive companies. The Commission also found that BMW NA used three practices that had the effect of inaccurately reporting its U.S. retail sales volume (a non-financial metric). First, from January 2015 through March 2017, BMW used its demonstrator and service loaner programs to boost reported retail sales volume and meet internal targets, resulting in

¹ See Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order, Securities Act Rel. No. 10850 (Sept. 24, 2020).

demonstrator and loaner vehicles accounting for over one quarter of BMW NA's reported retail sales in this period. Second, from 2015 through 2019, BMW NA maintained an excess reserve of unreported vehicle sales—referred to internally as the “bank” that it used when necessary to meet internal monthly sales targets without regard to when the underlying sales occurred. Finally, in January 2015 and January 2017, BMW NA improperly adjusted its retail sales reporting calendar, which usually followed a standard calendar used in the automotive industry, to achieve internal retail sales targets or bank excess retail sales for use in future reporting periods.

In addition, the Commission found that BMW AG, a German corporation and the ultimate parent company of BMW NA and BMW USC, raised approximately \$18 billion through seven bond offerings on the U.S. capital markets from 2016 through 2019, which were offered and sold to investors pursuant to Rule 144A promulgated under the Securities Act. According to the Order, in connection with these bond offerings, BMW AG, through BMW USC, provided information about BMW's U.S. retail vehicle sales to bond investors, initial purchasers, and credit rating agencies in offering memoranda and investor presentations. BMW NA also issued monthly press releases during this period regarding BMW's U.S. retail sales. The Commission found that BMW AG provided materially incomplete and inaccurate information regarding its U.S. retail sales performance and customer demand for BMW vehicles in the U.S. market because it failed to disclose BMW NA's practices that resulted in the inaccurate reporting of its U.S. retail sales volume.

The Respondents were ordered to cease and desist from future violations of the securities laws and ordered to pay an \$18,000,000 civil penalty. The Commission ordered the funds paid

pursuant to the Order be held in an account at the United States Treasury pending a decision whether the Commission, in its discretion, would seek to distribute funds.

On April 7, 2022, the Commission issued an order² that created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalty paid can be distributed to harmed investors (the “Fair Fund”).

The Fair Fund consists of the \$18,000,000.00 paid by the Respondents. The Fair Fund has been deposited in an interest-bearing account at the U.S. Department of the Treasury’s Bureau of the Fiscal Service, and any accrued interest will be for the benefit of the Fair Fund.

The Division of Enforcement now seeks the appointment of Kurtzman Carson Consultants, LLC (“KCC”) as the fund administrator and requests that the administrator’s bond be set at \$18,000,000.00. KCC is included in the Commission’s approved pool of administrators.

Accordingly, IT IS HEREBY ORDERED that 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”),³ and shall obtain a bond in accordance with Rule 1105(c) of the Commission’s Rules,⁴ in the amount of \$18,000,000.00.

For the Commission, by the Division of Enforcement, pursuant to delegated authority.⁵

Vanessa A. Countryman
Secretary

² See Order Establishing a Fair Fund, Exchange Act Rel. No. 94623 (Apr. 7, 2022).

³ 17 C.F.R. § 201.1105(a).

⁴ 17 C.F.R. § 201.1105(c).

⁵ 17 C.F.R. § 200.30-4(a)(17).