



DIVISION OF
ENFORCEMENT

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

March 28, 2023

VIA ECF

The Honorable LaShann DeArcy Hall
United States District Judge
United States District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: SEC v. Vale S.A., Case No. 1:22-cv-02405

Dear Judge Hall:

Plaintiff U.S. Securities and Exchange Commission (the “Commission”) writes to notify the Court that it has reached a settlement agreement with Defendant Vale S.A. (“Vale”), subject to Court approval that would resolve the Commission’s claims against Vale in this case. Vale’s executed consent and the parties’ proposed final judgment are attached as Exhibits 1 and 2 to this letter. The Commission respectfully submits this letter in support of its request that the Court enter the proposed consented-to final judgment.

I. Background

Vale is a mining company based in Brazil. The Commission filed the Complaint [ECF No. 1] initiating this matter against Vale on April 28, 2022. In the Complaint, the Commission alleged, among other things, that Vale violated Section 17(a) of the Securities Act, and Section 13(a) of the Securities Exchange Act and Rules 12b-20, 13a-1 and 13a-16 thereunder by negligently issuing false and misleading disclosures about the stability of a tailings dam in Brazil. Complaint ¶¶ 277–85.

After extensive negotiations, Vale has executed the attached Consent (Ex. 1), in which it agreed to settle certain of the Commission’s claims and to the entry of a final judgment against it (Ex. 2). Specifically, without making admissions or denials, Vale has agreed to settle the Commission’s claims against it by consenting to a final judgment that would:

- (1) permanently restrain and enjoin Vale from violation of Section 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(2), (3)], Section 13(a) of the

- Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1 and 13a-16 thereunder;
- (2) order Vale to pay disgorgement in the amount of \$25,000,000, plus \$5,900,000 in pre-judgment interest; and
 - (3) order Vale to pay a civil penalty in the amount of \$25,000,000 under Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

Vale has previously moved to dismiss the Commission's claims under Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10(b)(5) [17 C.F.R. § 240.10b-5] thereunder and Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]. In connection with this negotiated settlement, the Commission will no longer oppose Vale's motion to dismiss those scienter-based claims, and Vale will separately submit a proposed order dismissing those claims.¹ The Commission has reviewed and approved the terms of settlement as reflected in the Consent and Proposed Final Judgment submitted herewith.

II. The Proposed Settlement is Fair and Reasonable and Would Not Disserve the Public Interest

The Commission submits that the Court should approve the settlement, and enter the proposed final judgment, because it is fair and reasonable, and would not disserve the public interest. *See SEC v. Citigroup Global Markets, Inc.*, 752 F.3d 285, 293-96 (2d Cir. 2014). The proposed final judgment is “within the Court’s authority to enter . . . and within Plaintiff’s authority to enforce . . .” *U.S. v. International Bus. Machines, Corp.*, Case No. 14-Civ-936, 2014 WL 3057960, at *2 (S.D.N.Y. July 7, 2014). Moreover, absent a “substantial basis in the record for concluding that the proposed consent decree” is not fair, not reasonable, or would disserve the public interest, “the district court is required to enter the order.” *Citigroup*, 752 F.3d at 294.

Overall, the terms of the settlement take into account a careful assessment by both parties of the risks likely to be presented in the litigation of this matter, the benefits of avoiding those risks, and other considerations. For the foregoing reasons, the Commission submits that the proposed settlement is fair and reasonable and will serve the public interest. The Commission respectfully requests that the Court approve and enter the parties’ Proposed Final Judgment, which would, consistent with Vale’s proposed order, dismiss with prejudice the Commission’s first claim for relief under

¹ Scienter (including recklessness or knowing misconduct) is not an element of the Commission’s settled claims under Section 17(a)(2) and 17(a)(3) of the Securities Act, or Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-16 thereunder. Section 17(a)(2) and 17(a)(3) require only negligence. *See, e.g., Aaron v. SEC*, 446 U.S. 680, 697 (1980); *SEC v. Ginder*, 752 F.3d 569, 574 (2d Cir. 2014); *SEC v. First Jersey Secs., Inc.*, 101 F.3d 1450, 1466 67 (2d Cir. 1996). Section 13(a) and the related rules do not require any showing of scienter. *See, e.g., SEC v. Stanard*, No. 06 CIV 7736 (GEL), 2009 WL 196023, at *31 (S.D.N.Y. Jan. 27, 2009).

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Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder, and the second claim for relief to the extent that it alleges a violation of Section 17(a)(1) of the Securities Act.

Respectfully submitted,

/s/ Dean M. Conway

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cc: All Counsel of Record via ECF