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March 28, 2023

HAND DELIVERY AND 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.*, No. 22-cv-02405 (LDH) (SJB)

Dear Judge Hall:

We are counsel for Defendant Vale S.A. (“Vale”) in the above-referenced matter. We write in connection with the settlement agreement between the Securities and Exchange Commission (the “SEC”) and Vale, which subject to Court approval, would resolve the Commission’s claims against Vale in this case.

As the SEC has explained in its letter motion to the Court filed today (ECF No. 49), without making admissions or denials, Vale has agreed to settle the Commission’s claims against it for alleged violations 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. The SEC submitted with its letter motion Vale’s executed consent (ECF No. 49, Ex. 1) and the parties’ proposed final judgment (ECF No. 49, Ex. 2), requesting that the Court enter the proposed consented-to judgment.

Additionally, on September 29, 2022, Vale moved (ECF No. 31) to dismiss the SEC’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)]. As the SEC noted in its letter motion, as part of the settlement, the SEC no longer

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opposes Vale's motion to dismiss those scienter-based claims (*see* ECF No. 49).<sup>1</sup> Accordingly, if the Court enters Final Judgment, Vale hereby respectfully requests that the Court enter the attached proposed order dismissing those claims (Ex. 1).

Respectfully submitted,



Jennifer Kennedy Park  
*Counsel for Defendant Vale S.A.*

cc: All Counsel of Record (via ECF)

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<sup>1</sup> 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).