

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 96796 / February 3, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21294

In the Matter of

Activision Blizzard, 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 Activision Blizzard, Inc. (“Activision Blizzard” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Activision Blizzard 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, Activision Blizzard 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 finds that:

Summary

1. This matter concerns violations of the Exchange Act's disclosure controls and procedures and whistleblower protection rules by video game development and publishing company Activision Blizzard.

2. In Form 10-K and 10-Q filings submitted between 2018 and 2021, Activision Blizzard acknowledged that attracting, retaining, and motivating a workforce of employees with specialized skills is particularly important to its business. During the time frames addressed by those filings, the company lacked controls and procedures designed to ensure that information related to employee complaints of workplace misconduct would be communicated to Activision Blizzard's disclosure personnel to allow for timely assessment on its disclosures.

3. Separately, from 2016 through 2021, Activision Blizzard, in the ordinary course of its business, entered into a significant number of separation agreements using templates that required former employees to notify the company if they received a request from a government administrative agency in connection with a report or complaint.

Respondent

4. **Activision Blizzard**, a Delaware corporation with headquarters in Santa Monica, California, is one of the world's largest video game development and publishing companies, employing over 9,500 individuals worldwide. Activision Blizzard operates through three primary business units: Blizzard Entertainment, Inc.; Activision Publishing, Inc.; and King Digital Entertainment, and has created numerous video game franchises, including World of Warcraft, Call of Duty, and Candy Crush. Activision Blizzard's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act, and is listed on the Nasdaq Stock Market under the ticker "ATVI."

Facts

Statutory and Regulatory Framework Concerning Disclosure Controls

5. Exchange Act Rule 13a-15(a) requires issuers such as Activision Blizzard that have a class of securities registered pursuant to Section 12 of the Exchange Act to maintain disclosure controls and procedures. Defined in Rule 13a-15(e), disclosure controls and procedures are "controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the [Exchange] Act (15 U.S.C. 78a et seq.) is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms." Exchange Act Rule 13a-15(e). The rule explains that disclosure controls and procedures include those "designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the [Exchange] Act is accumulated and communicated to the issuer's management . . . to allow timely decisions regarding required disclosure." *Id.* Disclosure controls and procedures "are intended to cover a broader range of information than is covered by an issuer's internal controls related to financial reporting" and

“should capture information that is relevant to an assessment of the need to disclose developments and risks that pertain to the issuer’s businesses.” *Certification of Disclosure in Companies’ Quarterly & Annual Reports Final Rule Adopting Release*, Release No. 33-8124 (Aug. 29, 2002).

6. If an Exchange Act Registrant fails to implement and maintain disclosure controls and procedures as required, its management may not have adequate information to assess whether the disclosures it makes to investors are fulsome, accurate, and not misleading by omission.

Activision Blizzard’s Risk Disclosures

7. Activision Blizzard made risk factor disclosures pertaining to its workforce in its annual reports on Form 10-K for the fiscal years ended December 31, 2017, December 31, 2018, December 31, 2019, and December 31, 2020. Those risk factor disclosures each included a heading stating, “If we do not continue to attract, retain, and motivate skilled personnel, we will be unable to effectively conduct our business.” Following the heading, the company stated:

Our success depends to a significant extent on our ability to identify, attract, hire, retain, motivate, and utilize the abilities of qualified personnel, particularly personnel with the specialized skills needed to create and sell the high-quality, well-received content upon which our business is substantially dependent. Our industry is generally characterized by a high level of employee mobility, competitive compensation programs, and aggressive recruiting among competitors for employees with technical, marketing, sales, engineering, product development, creative, and/or management skills. We may have difficulties in attracting and retaining skilled personnel or may incur significant costs to do so. If we are unable to attract additional qualified employees or retain and utilize the services of key personnel, it could have a negative impact on our business.

Additionally, each of Activision Blizzard’s quarterly reports on Form 10-Q filed between May 2018 and August 2021 included the following disclosure:

The company cautions that a number of important factors could cause Activision Blizzard, Inc.’s actual future results and other future circumstances to differ materially from those expressed in any forward-looking statements. Such factors include, but are not limited to . . . maintenance of relationships with key personnel . . . including the ability to attract, retain, and develop key personnel and developers that can create high-quality titles, products, and services.

Activision Blizzard’s Failure to Maintain Disclosure Controls and Procedures

8. Though Activision Blizzard disclosed the risk factors described above related to its workforce and how its ability to attract, retain, and motivate skilled personnel might materially impact its business, Activision Blizzard lacked controls and procedures designed to ensure that it captured and assessed – from a disclosure perspective – certain information related to these risk factors. This included lacking controls and procedures among its separate business units designed

to collect or analyze employee complaints of workplace misconduct. As a result, complaints related to workplace misconduct were not collected and analyzed for disclosure purposes.

9. Additionally, during the relevant period, Activision Blizzard required that individual business unit leaders report certain categories of potentially material information to Activision Blizzard's Disclosure Committee. However, these categories did not include information relevant to Activision Blizzard's ability to retain employees, such as employee complaints or incidents of workplace misconduct.

10. As a result, such information often was not accessible to Activision Blizzard's management and disclosure personnel, and was not assessed from a disclosure perspective. By lacking sufficient information to understand the volume and substance of employee complaints of workplace misconduct, Activision Blizzard's management was unable to assess related risks to the company's business, whether material issues existed that warranted disclosure to investors, or whether the disclosures it made to investors in connection with these risks were fulsome and accurate.

11. Between May 2020 and May 2022, Activision Blizzard implemented several company-wide structural changes and policies that enhanced the manner in which employee complaints were required to be documented, maintained, and communicated to the company's senior management and disclosure personnel.

Statutory and Regulatory Framework Protecting Whistleblowers

12. The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), enacted on July 21, 2010, amended the Exchange Act by adding Section 21F, "Whistleblower Incentives and Protection." The purpose of these provisions was to encourage whistleblowers to report possible securities law violations by providing, among other things, financial incentives and confidentiality protections.

13. To fulfill this Congressional purpose, the Commission adopted Rule 21F-17, which provides in relevant part:

(a) No person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement . . . with respect to such communications.

Rule 21F-17 became effective on August 12, 2011.

Activision Blizzard's Separation Agreements

14. As a regular part of its business, Activision Blizzard enters into separation agreements with employees when they end their employment with the company. A separation

agreement is a contract between a former employer and employee documenting the rights and responsibilities of both parties incidental to the employee's departure.

15. As of 2016, Activision Blizzard's separation agreement templates included a clause requiring former employees to notify Activision Blizzard of any requests from an administrative agency in connection with a report or complaint. Specifically, the separation agreement templates stated, in part:

Nothing in this Separation Agreement shall prohibit . . . disclosures that are truthful representations in connection with a report or complaint to an administrative agency (but only if I notify the Company of a disclosure obligation or request within one business day after I learn of it and permit the Company to take all steps it deems to be appropriate to prevent or limit the required disclosure).

Between 2016 and 2021, in the ordinary course of Activision Blizzard's business, a significant number of departing employees signed separation agreements that contained this notification clause.

16. Most, but not all, of the separation agreements executed between 2016 and 2021 also contained an additional clause stating, "Nothing in this Release prevents me from . . . giving truthful testimony, or truthfully responding to a valid subpoena, or communicating or filing a charge with government or regulatory entities (such as the Equal Employment Opportunity Commission, National Labor Relations Board, Department of Labor, or Securities and Exchange Commission.)" Notwithstanding this additional clause, the language found in the separation agreements requiring that Activision Blizzard be notified about the disclosure obligation or request undermines the purpose of Section 21F and Rule 21F-17(a) to "encourag[e] individuals to report to the Commission." *Securities Whistleblower Incentives and Protections Adopting Release*, Release No. 34-63434 (June 13, 2011).

17. The Commission is not aware of any specific instances in which a former Activision Blizzard employee was prevented from communicating with Commission staff about potential violations of securities laws or in which Activision Blizzard took action to enforce the notification clause or otherwise prevent such communications.

18. In early 2022, Activision Blizzard revised its separation agreement templates and removed the notification clause.

Violations

19. As a result of the conduct described above, Activision Blizzard violated Exchange Act Rule 13a-15(a), which requires issuers of a security registered pursuant to Section 12 of the Exchange Act such as Activision Blizzard to maintain disclosure controls and procedures designed to ensure that information required to be disclosed by an issuer in reports it files or submits under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the Commission's rules and forms.

20. Additionally, as a result of the conduct described above, Activision Blizzard violated Exchange Act Rule 21F-17(a), which prohibits any person from taking any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Activision Blizzard's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Activision Blizzard cease and desist from committing or causing any violations and any future violations of Exchange Act Rules 13a-15(a) and 21F-17(a).

B. Activision Blizzard shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$35,000,000 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.

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 Activision Blizzard as a respondent 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 Jason J. Burt, Division of

Enforcement, Securities and Exchange Commission, 1961 Stout St, Suite 1700, Denver, CO 80294.

C. 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, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it 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 Respondent 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.

By the Commission.

Vanessa A. Countryman
Secretary