

EXHIBIT 2



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Michael G. Capeci
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January 2, 2019

Mr. Jeffery Ovall, FOIA Branch Chief
Ms. Ronnye L. Hall
Office of FOIA Services
Securities and Exchange Commission
100 F Street, NE
Room 2736
Washington, DC 20549-2465
foiapa@sec.gov
hallr@sec.gov

BY EMAIL AND OVERNIGHT MAIL

Re: *Request No. 17-02665-FOIA*

Dear Mr. Ovall and Ms. Hall:

I write to you concerning the above-referenced Freedom of Information Act ("FOIA") request.

On May 10, 2017, I served the request on the U.S. Securities and Exchange Commission ("SEC") for, *inter alia*: (1) all records pertaining to the SEC's investigation into Hertz Global Holdings, Inc. ("Hertz") restatement of its financial results for fiscal years 2011 through 2013, as reported in Hertz's Form 10-K for fiscal year 2014, filed on July 16, 2015 (the "Restatement"); and (2) all records pertaining to any accounting or internal control deficiencies at Hertz during the time period of January 1, 2013 to the present (together, the "Request"). On May 18, 2017, I received a letter from Mr. Ovall, copying Ms. Hall, which assigned the Request the control number 17-02665-FOIA and denied it in full (the "May 18 Letter") citing 5 U.S.C. § 552(b)(7)(A), which, according to your letter, "protects from disclosure records compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement activities." At the time of the Request, Hertz had disclosed the existence of an active SEC investigation into the Restatement and its surrounding events.

Now, the SEC investigation has concluded or is substantially complete. On December 31, 2018, Hertz entered into a settlement with the SEC that resulted in the Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (the "Order") and Hertz agreeing to pay \$16 million. A copy of the Order is attached as Exhibit A.

Robbins Geller
Rudman & Dowd LLP

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As the SEC's investigation is either no longer ongoing or substantially complete, the SEC should produce the records sought in the Request. *See, e.g., Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of Justice*, 746 F.3d 1082, 1096 (D.C. Cir. 2014) ("We therefore **'require** a law enforcement agency invoking [Exemption 7(A)] to show that the material withheld relates to a concrete **prospective** law enforcement proceeding.") (emphasis added and citation omitted); *Dow Jones Co. v. FERC*, 219 F.R.D. 167, 174 (C.D. Cal. 2002) (noting that Exemption 7(A) "is aimed at preventing disclosure which would compromise an **ongoing** investigation").

Accordingly, I request that the SEC produce the records sought in the Request, which covers all the factual findings described by the SEC in the Order, at your earliest convenience. I further request that this production be made, if possible, electronically, or via email, and that the records be produced in either portable document (PDF) or tagged image file (TIFF) formats. I authorize aggregate fees relating to this request of up to \$2,000. If you believe that these fees will be exceeded, please contact me and we can discuss increasing this limit.

Separately, in response to the other portion of the Request, which sought all records previously produced by the SEC pertaining to Hertz for the time period of January 1, 2013 to the present, in the May 18 Letter you assigned the control number 17-02666-FOIA and produced responsive records as of May 18, 2017. We appreciate your quick response to this portion of the Request. In the interest of completeness, we also request that the SEC produce any subsequently released records that pertain to Hertz from after May 18, 2017.

We request that you expedite your response to this letter given that legal proceedings involving my law firm's clients and Hertz have concluded and any motion to reopen those proceedings, which the requested records directly bear upon, needs to be filed in short order.

Please feel free to contact me at 631-367-7100 or at mcapeci@rgrdlaw.com to discuss this matter.

Very truly yours,



Michael G. Capeci

EXHIBIT A

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10601 / December 31, 2018

SECURITIES EXCHANGE ACT OF 1934
Release No. 84979 / December 31, 2018

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4012 / December 31, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18965

In the Matter of

HERTZ GLOBAL HOLDINGS, INC.
and
THE HERTZ CORPORATION,

Respondents.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND 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 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against the entities currently known as Hertz Global Holdings, Inc. and The Hertz Corporation (collectively, “Respondents” or “Hertz”).

II.

In anticipation of the institution of these proceedings, Respondents have 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 them and the subject matter of these

proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offer, the Commission finds¹ that:

Summary

1. Respondent Hertz Global Holdings, Inc. (“Hertz Holdings”) is the accounting successor to an entity also called Hertz Global Holdings, Inc. (“Hertz Global”), and Respondent The Hertz Corporation (“Hertz Corp.”) is its wholly owned subsidiary.

2. From at least February 2012 through March 2014, Hertz’s public filings materially misstated pretax income because of accounting errors made in a number of business units, and over multiple reporting periods, as reflected in the Restatement that Hertz filed on July 16, 2015. Part of the misstated income resulted from errors made in various accounts that are subject to management estimate. For example, Hertz’s car rental business routinely recovers sums of money from third parties for damages that occur during rental. Hertz estimated an allowance for uncollectible amounts as an offset to what it recorded as potential recoveries. For years, Hertz’s allowance related expenses were understated and income was inflated because Hertz relied on inappropriate estimation methodologies that resulted in inadequate allowances and write-offs. The inappropriate methodologies occurred within a pressured corporate environment where, in certain instances, there was an inappropriate emphasis on meeting internal budgets, business plans, and earnings estimates.

3. Pressure also existed at times when other inadequate disclosures were filed with the Commission. For example, Hertz, consistent with the regular course of its business, routinely estimated how long it would hold cars before disposing of them and replacing them. The planned holding periods were one of the variables in the formula Hertz used to depreciate its car rental assets, and also could have impacted other aspects of Hertz’s business, such as maintenance costs. During 2013, Hertz decided to extend the holding periods of a significant portion of its U.S. car rental fleet. That decision, and its impact on aspects of Hertz’s business, were not adequately disclosed to investors.

4. Also in 2013, after having already revised its earnings guidance downward, Hertz reaffirmed the revised guidance publicly in November 2013 despite certain internal analysis indicating that the revised guidance had been based in part on inaccurate information and that certain recent internal estimates fell below the low end of that guidance range.

¹ The findings herein are made pursuant to Respondents’ Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

5. On July 16, 2015, Hertz restated its financial results for 2012, 2013, and prior periods, including selected data for 2011 (unaudited). Including revisions made in early 2014, the company reduced its previously reported GAAP pretax income by a total of \$235 million (the “Restatement”). The Restatement identified 17 areas with material accounting errors across the company’s business units, identified additional information regarding historical depreciation and planned holding periods, identified eleven separate material weaknesses in Hertz’s internal controls over financial reporting, and acknowledged that “an inconsistent and sometimes inappropriate tone at the top” had existed and may have contributed to a number of errors, misstatements and omissions.

6. Based on the foregoing and the conduct described herein below, Hertz Holdings violated Sections 17(a)(2) and 17(a)(3) of the Securities Act and Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder, and Hertz Corp. violated Section 15(d) of the Exchange Act and Rules 12b-20, 15d-1, 15d-11 and 15d-13 thereunder.

Respondents

7. **Hertz Global Holdings, Inc.** (“Hertz Holdings”) is a Delaware corporation headquartered in Estero, Florida. Its securities are registered pursuant to Section 12(b) of the Exchange Act. Its common stock trades on the New York Stock Exchange, and Hertz Holdings files periodic reports, including Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder. As of June 30, 2016, Hertz Holdings was spun off from and designated as the accounting successor to Hertz Global, whose securities had also been registered pursuant to Section 12(b) of the Exchange Act.

8. **The Hertz Corporation** (“Hertz Corp.”) is a Delaware corporation headquartered in Estero, Florida. It filed registration statements with the Commission on Form S-4 that became effective in February and October 2013. Accordingly, as required by Section 15(d) of the Exchange Act, Hertz Corp. filed periodic reports, including Forms 10-K and 10-Q, respecting fiscal year 2013 pursuant to Section 15(d) of the Exchange Act and related rules thereunder. Hertz Corp. is the wholly-owned operating subsidiary of Hertz Holdings, and it previously was the wholly-owned subsidiary of Hertz Global.

Facts

Hertz’s Inaccurate Financial Reporting

9. As noted, the Restatement identified a total of \$235 million in previously reported pretax income did not comply with generally accepted accounting principles (“GAAP”). One of the largest Restatement items concerned various internal accounts associated with “subrogation,” which accounted for a cumulative pre-tax misstatement of \$48 million.

10. Subrogation refers to Hertz's efforts to offset expenses for vehicle damage during rental periods by recovering money from renters and other third parties, depending on whether there was applicable insurance or credit card coverage and, in some cases, whether the renters purchased the loss damage waiver. Hertz accounted for subrogation by recording income and a receivable for amounts subject to recovery, partially offset by an associated expense and allowance for the possibility that some percentage of those amounts might not be recovered. Amounts ultimately uncollected would be written off against the allowance.

11. FASB Accounting Standards Codification Topic 450, "Contingencies" (ASC 450), provides guidance on the accounting for collectability of receivables. ASC 450-20-25-2 requires the accrual of losses from uncollectible receivables if a loss is probable and the amount of the loss can be reasonably estimated. Hertz's longstanding policy for calculating the allowance was based on a rolling 12-month average, not of collections experience, but of write-offs, divided by monthly billed receivables.

12. Starting in August 2012, Hertz began sending claims greater than \$5,000 that remained uncollected after approximately 120 days to attorneys to assist in the collections process. Whereas amounts due for more than approximately 120 days and sent to third parties for collection had previously been written off, Hertz did not significantly increase its allowance for or write off such amounts when sent to attorneys for collection. Instead, such claims were held and allowed for or written off on a case-by-case basis, based on the rationale that attorneys would be better at collecting debts but would take more time to do so. In addition, while Hertz's previous policy had been to maintain a 100% allowance for all claims older than 360 days, the allowance for claims sent to attorneys was then set based on the methodology used for other claims, using the much lower, rolling historical rate of overall claims write-offs, which averaged from approximately 11-16%.

13. However, at the time of these accounting changes, Hertz did not have historical data with respect to the speed of attorney collections or the amount that attorneys would collect. Months later, the actual attorneys' net collection rates for August through December 2012 were approximately 2%. Still, under persistent pressure to meet budgets, and to generate opportunities to help close company-wide budget gaps or revenue shortfalls, subrogation staff did not significantly increase the allowance for or write off most of these aging attorney-held claims. This was not in accordance with GAAP.

14. During 2013, on several occasions Hertz changed the methodology for either determining the subrogation allowance or the amounts of aged debt to be written off. Each of the changes had a favorable impact on the company's financial statements. And each of the changes was not in accordance with U.S. GAAP.

15. For example, in May 2013 Hertz's Internal Audit Department identified a spreadsheet error that had resulted in recording no allowance at all for any receivables aged over 360 days, whether or not sent to attorneys. Correcting the error by establishing a 100% allowance for such aged claims would have resulted in a \$7 million increase to the company's

expenses. Instead, Hertz staff reserved the receivables aged over 360 days at the rolling 12-month average write-off rate of 11%, based on the rationale that attorneys – who had most of the year-old receivables – would achieve substantial recoveries, and that Hertz did not yet have enough experience to gauge the level of reserve needed for those claims. This was inconsistent with actual results over the first nine months of the attorney referrals, which had yielded an approximately 3% net recovery rate. Moreover, other subrogation receivables uncollected for over 360 days that were not being handled by attorneys also were relieved of the 100% allowance requirement. Thus, instead of \$7 million, expenses were increased by less than \$1 million.

16. Likewise, in the fall of 2013 budget pressure at Hertz was severe, as the company had revised its earnings guidance downward in September, only to have certain internal earnings estimates fall below even the lowered guidance in October. A “gap-closing” effort ensued, and one idea that emerged from within senior Hertz management was to lower the allowance in subrogation and other parts of the U.S. rental car business. As of the beginning of October 2013, approximately \$9.3 million of subrogation receivables remained on Hertz’s books though they were over a year old.

17. In response to the gap-closing effort, Hertz staff proposed reducing certain non-subrogation allowances, but recommended a corresponding increase in the subrogation allowance, to alleviate the risk associated with the aged receivables. After internal review, the allowance for aged subrogation receivables was increased, but the allowance applied to younger receivables was reduced. Based on the methodology worked out during this process, some categories of receivables were reserved at an effective rate of approximately 4%, which implied a 96 percent recovery rate that was substantially above historical recovery rates for billed receivables.

18. Finally, in May 2012, April 2013, and May 2013 Hertz headquarters personnel directed the staff with primary responsibility for the subrogation accounts to make post-close adjustments to the subrogation unbilled receivable account, each of which departed from the historical methodology and improved reported results by approximately \$1 million. No formal documentation of a rationale for these changes has been identified. In the summer of 2013, Hertz’s Internal Audit Department discovered that the April 2013 \$1.2 million post-close adjustment lacked the written documentation of the rationale supporting the adjustment that was required by Hertz accounting policy. Ultimately, in September 2013, Internal Audit declared the incident a controls deficiency during its Sarbanes-Oxley independent controls testing.

Hertz’s Misstatements and Omissions Concerning its Extension of Fleet Holding Periods

19. At various times during the second through the fourth quarters of 2013, Hertz extended the planned holding periods for a significant portion of Hertz’s U.S. rental car fleet. Many of the company’s top models, for example, had their planned holding periods extended from 20 to 24 or 30 months.

20. The decisions were changes from prior practice with regard to planned holding periods, and made Hertz’s planned holding periods for portions of the fleet longer than those of

other major car rental companies. For Hertz, extending holding periods had a short-term benefit: it spread out over more months the depreciation expense Hertz had to incur on its cars, lowering such expense overall for current quarters. At the same time, extending holding periods had long-term risks, including that older cars were likely to require more costly maintenance, and could injure Hertz's premium brand.

21. FASB Accounting Standards Codification Topic 250-10-50-4 provides that the effect on, among other things, net income of a change in accounting estimate that affects several future periods, such as a change in service lives for depreciable assets, shall be disclosed. If a change in estimate does not have a material effect in the period of change but is reasonably certain to have a material effect in later periods, a description of that change in estimate must be disclosed whenever the financial statements of the period of change are presented.

22. During 2013, Hertz did not adequately disclose its decision to extend the planned holding period for substantial portions of its fleet. To the contrary, in its Form 10-Q for the second quarter of 2013, filed on August 2, 2013, Hertz stated the following concerning its depreciation policies in Management's Discussion of and Analysis of Financial Condition and Results of Operations ("MD&A"): "Depreciation rates are reviewed on a quarterly basis based on management's routine review of present and estimated future market conditions and their effect on residual values at the time of disposal. During the six months ended June 30, 2013, depreciation rates being used to compute the provision for depreciation of revenue earning equipment were adjusted on certain vehicles in our car rental operations to reflect changes in the estimated residual values to be realized when revenue earning equipment is sold." Hertz did not state in this Form 10-Q – as the Restatement later did - the significant adjustment it had made to extend the planned holding periods.

23. In the same filing's MD&A, Hertz stated the following explanation for why its depreciation expense had declined by \$15 million in the first half of the year, a decline concentrated almost entirely in the second quarter: "In the six months ended June 30, 2013, our monthly per vehicle depreciation costs decreased as compared to the prior year period due to improved residual values in the U.S., a continued move towards a greater proportion of non-program vehicles, mix optimization and improved procurement and remarketing efforts." In fact, however, this disclosure, which tracked the language from Hertz's disclosure in its Form 10-Q for the first quarter of 2013, was inaccurate, because residual values had declined in the second quarter of 2013, a fact discussed within Hertz. In addition, the disclosure did not address – as the Restatement did two years later – that extensions of holding periods had reduced depreciation expense.

24. The MD&A in the Form 10-Q for the third quarter of 2013 contained similar disclosures relating to typical adjustments in depreciation rates that omitted the adjustment in planned holding periods. Likewise, the filing explained the \$18 million decline in depreciation expense in the third quarter of 2013 in a manner similar to that stated in the Form 10-Q for the second quarter of 2013, stating that "monthly per vehicle depreciation costs decreased as compared to the prior year period due to residual values that remained strong in the U.S., a continued move

towards a greater proportion of non-program vehicles, mix optimization and improved procurement and remarketing efforts.” The disclosure once again did not adequately disclose the impact of longer planned holding periods later identified in the Restatement.

25. Moreover, Hertz’s Form 10-K for 2013, filed in March 2014, recited that “our approximate average holding period for a rental car was eighteen months in the United States.” This was the same 18-month average holding period reported in the Form 10-K for 2012, despite the intervening increases in planned holding periods for a substantial portion of the fleet. During 2013, the weighted average of all planned holding periods across the U.S. fleet increased, from 21 to almost 25 months. The disclosure of the 18-month average did not explain that the average had been calculated from the age of cars that had been disposed of, and not from the planned holding period that had changed for portions of the fleet. The MD&A in the same filing did not address the extension of planned holding periods, other than to list generally “extended holding periods” as one of several factors causing an increase in maintenance costs. While Hertz’s Form 10-K for 2013 disclosed that the “holding periods” for its cars ranged from 4 to 36 months, a broader range than the 4 to 28 months disclosed in its Form 10-K for 2012, that disclosure did not address either the scale of the shift to longer planned holding periods or that the cause was the result of an affirmative business decision to extend planned holding periods.

26. In late 2014, new Hertz management changed the fleet plan to include shorter planned holding periods. Hertz’s Form 10-K for 2014 filed on July 16, 2015, which included the Restatement, disclosed that there had been extensions in planned holding periods and the reduction in the company’s 2013 depreciation expense that resulted from the longer holding periods. As Hertz also disclosed in this Form 10-K, “[f]leet related expenses” in 2014 “increased \$182 million” due to increases in vehicle maintenance expense, vehicle damage expense, and damage related liability, which resulted from the “age and mileage” of the company’s fleet and having an “older fleet compared with the prior year,” as well as certain other factors.

Hertz’s Misstatements Concerning its Earnings Guidance in November 2013

27. Hertz also misrepresented the extent of its declining internal forecasts of overall financial performance in November 2013. On September 26, 2013, Hertz revised downward the earnings guidance it had issued in February 2013, based on a series of business and financial setbacks. The revised guidance was disclosed in a press release issued on the same day that Hertz publicly filed a slide deck from an investor conference presentation in which it was participating. The new guidance reduced projected 2013 net income from a range of \$1.78-1.88 per share to a new range of \$1.68-1.78 per share. Contemporaneous internal analysis projected the company’s 2013 results at \$1.72 per share.

28. Within two weeks, however, certain new internal analysis and data forecasted Hertz’s performance to be below the low end of the revised guidance range. Strenuous “gap-closing” efforts ensued, but by the end of October a Hertz internal estimate for 2013 still projected EPS at \$1.66. Moreover, the company’s process of identifying “opportunities and risks” not yet built into its projections for year-end financial results yielded a lower number: \$1.65 per share.

29. Hertz had analysis done to determine why internal estimates had changed so quickly. One analysis determined that the September 2013 revision had been flawed in part. Methodological errors occurred, such as recognizing marketing credits in 2013 when the accounting department had determined that in part they could only be recognized in 2014.

30. Nonetheless, Hertz reaffirmed its \$1.68-1.78 guidance range when it issued its third quarter 2013 financial statements on November 4, 2013.

Hertz's Internal Accounting Controls Failures

31. As set forth in the Restatement, Hertz's internal controls over financial reporting suffered from a series of material weaknesses that contributed to the restatement of the company's financial statements for 2012 and 2013 and each of the quarters of 2013. These included an inconsistent and sometimes inappropriate tone at the top, insufficient and inadequately trained financial personnel, unclear reporting lines, the distraction caused by multiple, conflicting business initiatives, and ineffective controls over procurement, exacerbated by problems associated with implementation of a new Oracle enterprise resource management system to manage Hertz's day-to-day business activities. All of these in turn contributed to the types of additional accounting-related material weaknesses detailed above: inadequate controls over accounting estimates, changes to accounting policies, journal entries, and the period-end financial reporting process, including account reconciliations and closing adjustments. Finally, as was also disclosed in the Restatement, Hertz's internal audit function lacked systems and personnel adequate to ensure the adequate monitoring of control activities.

32. For example, in the third quarter of 2013, Hertz staff performed some testing of relevant internal controls. In mid-November 2013 management informed the audit committee of Hertz's board of directors that there were no significant deficiencies in internal controls over financial reporting. Shortly thereafter, more analysis was performed, which revealed what the company determined to be pervasive problems with its journal entries and account reconciliations, which had existed throughout 2013. As noted above, the Restatement determined that these problems constituted material weaknesses.

Hertz's Restatement, Internal Investigation and Cooperation with SEC Staff

33. On May 13, 2014, Hertz announced that it was unable to file its Form 10-Q for the first quarter of 2014, explaining that it had identified certain errors relating to prior periods which might require it to restate its previously issued financial statements for 2011.

34. On June 6, 2014, Hertz further announced that its continuing review had identified additional accounting errors, that its Audit Committee had determined that the company's 2011 financial statements should no longer be relied upon and must be restated, and that it was reviewing its 2012 and 2013 financial statements to determine if a restatement of the financial statements in those periods would also be required. It also announced that it had identified at least one material weakness in its internal control over financial reporting and that its disclosure controls

and procedures were ineffective at December 31, 2013. The June 6, 2014 announcement further disclosed that Hertz was in the process of implementing new procedures and controls and strengthening its accounting and finance departments through the addition of new personnel, led by the recently hired Chief Financial Officer and with the assistance of a new Chief Accounting Officer and new Vice President of SOX/Compliance. Also in June 2014, the audit committee commenced an investigation of certain identified accounting errors with the participation of independent counsel.

35. On August 19, 2014, Hertz announced the departure and replacement of its lead independent director, and on September 8, 2014, it announced the departure and replacement of its chief executive officer. On November 14, 2014, Hertz announced that in addition to 2011, its 2012 and 2013 financial statements must be restated and should no longer be relied upon. On July 16, 2015, based on the results of its accounting review and the internal investigation led by its outside counsel, Hertz restated its 2011, 2012 and 2013 financial statements and disclosed 11 material weaknesses in its internal control over financial reporting.

36. The Restatement items and other material misstatements discussed above impacted, in sum, Hertz Holdings' Forms 10-K, Forms 10-Q, and/or earnings reports on Forms 8-K from at least February 2012 to March 2014, each of which was incorporated into continuous offerings and sales made during the same period pursuant to registration statements on Form S-8s filed by Hertz Holdings on May 22, 2008, August 13, 2010 and August 16, 2013 that registered the offer and sale of stock under an Employee Stock Purchase Plan and the sale of stock upon the exercise of stock options under an Omnibus Incentive Plan. They also affected Hertz Corp.'s parallel filing of Forms 10-K, Forms 10-Q and/or earnings reports on Forms 8-K, which were required to be filed from at least February 2013 through March 2014.

37. Throughout the staff's investigation, Respondents met with staff on multiple occasions, voluntarily providing information likely to be of interest to the staff, both on their own initiative and at the staff's request.

Violations

38. As a result of the conduct described above:
- a. Respondent Hertz Holdings violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit any person from directly or indirectly obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they made, not misleading, or engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser, in the offer or sale of securities. Claims under Sections 17(a)(2) and 17(a)(3) of the Securities Act do not require a showing of scienter; instead, a showing of negligence is

sufficient. *Aaron v. SEC*, 446 U.S. 680, 697 (1980); *SEC v. Hughes Capital Corp.*, 124 F.3d 449, 453-54 (3d Cir. 1997);

- b. Respondent Hertz Holdings violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, which require issuers with securities registered under Section 12 of the Exchange Act to file annual, current, and quarterly reports with the Commission containing such information as the Commission's rules may require and such further material information as may be necessary to make the required statements, in light of the circumstances under which they were made, not misleading. Additionally, the failure of the MD&As in Respondent Hertz Holdings' 2013 Form 10-K and Q2 and Q3 2013 Form 10-Qs to comply with Regulation S-K constitutes a violation under Section 13(a) of the Exchange Act. Finally, the failure of Respondent Hertz Holdings' Q2 and Q3 2013 Form 10-Qs to comply with Regulation S-X constitutes a violation under Section 13(a) of the Exchange Act;
- c. Respondent Hertz Corp, violated Section 15(d) of the Exchange Act and Rules 12b-20, 15d-1, 15d-11 and 15d-13 thereunder, which require issuers which have filed a registration statement with the Commission which has become effective pursuant to Section 15(d) of the Exchange Act to file annual, current, and quarterly reports with the Commission containing such information as the Commission's rules may require and such further material information as may be necessary to make the required statements, in light of the circumstances under which they were made, not misleading. Additionally, the failure of Respondent Hertz Corp.'s 2013 Form 10-K and Q2 and Q3 2013 Form 10-Qs to comply with Regulation S-K constitutes a violation under Section 15(d) of the Exchange Act, and the failure of its Q2 and Q3 2013 Form 10-Qs to comply with Regulation S-X constitutes a violation under Section 15(d) of the Exchange Act;
- d. Respondents violated Section 13(b)(2)(A) of the Exchange Act, which requires issuers with securities registered under Section 12 of the Exchange Act or which are required to file reports pursuant to Section 15(d) of the Exchange Act to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the issuer; and
- e. Respondents violated Section 13(b)(2)(B) of the Exchange Act, which requires issuers with securities registered under Section 12 of the Exchange Act or which are required to file reports pursuant to Section 15(d) of the Exchange Act to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that, among other things, transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP.

Respondents' Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondents, including replacement of numerous members of senior management and lower-level staff, and cooperation afforded the Commission staff.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Hertz Holdings cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act and Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder.

B. Respondent Hertz Corp. cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A), 13(b)(2)(B) and 15(d) of the Exchange Act and Rules 12b-20, 15d-1, 15d-11 and 15d-13 thereunder.

C. Respondent Hertz Holdings shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$16,000,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Exchange Act. 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) Hertz Holdings may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Hertz Holdings 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) Hertz Holdings 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 Hertz Holdings 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 Sanjay Wadhwa, Senior Associate Regional Director, Division of Enforcement, New York Regional Office, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, New York, NY 10281.

D. 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, Hertz Holdings 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 Hertz Holdings' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Hertz Holdings 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 Hertz Holdings 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.

E. Respondents acknowledge that the Commission is not imposing a civil penalty in excess of \$16,000,000.00 based upon their cooperation in a Commission investigation. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondents 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 Respondents, petition the Commission to reopen this matter and seek an order directing that the Respondents pay an additional civil penalty. Respondents may contest by way of defense in any resulting administrative proceeding whether they 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.

Brent J. Fields
Secretary

Sandra Mathis

From: Michael Capeci
Sent: Thursday, January 03, 2019 10:23 AM
To: Teresa Maloney; Sandra Mathis
Subject: FW: Request No. 17-02665-FOIA
Attachments: 190102 HERTZ LTR to FOIA SEC Washington DC .pdf

For the correspondence folder in Hertz, please. Thank you

From: Michael Capeci
Sent: Wednesday, January 02, 2019 6:09 PM
To: 'foiapa@sec.gov'; 'Hall, Ronnye L.'
Cc: Sam Rudman; Evan Kaufman
Subject: Request No. 17-02665-FOIA

Please see the attached correspondence. Please feel free to contact me at 631-367-7100 or at mcapeci@rgrdlaw.com to discuss this matter.

Regards,

Michael Capeci
Robbins Geller Rudman & Dowd LLP
58 South Service Road, Suite 200
Melville, NY 11747
(631) 367-7100

Patricia Fiorentino

From: UPS Quantum View <pkginfo@ups.com>
Sent: Friday, January 04, 2019 10:18 AM
To: Patricia Fiorentino
Subject: UPS Delivery Notification, Tracking Number 1ZA6533A0192282727



Your package has been delivered.

Delivery Date: Friday, 01/04/2019
Delivery Time: 10:11 AM

At the request of ROBBINS GELLER RUDMAN & DOWD this notice alerts you that the status of the shipment listed below has changed.

Shipment Detail

Tracking Number: [1ZA6533A0192282727](#)

Ship To: Mr. Jeffery Oval, FOIA BranchChief
Office of FOIA Services
100 F ST NE
WASHINGTON, DC 20549
US

UPS Service: UPS NEXT DAY AIR

Number of Packages: 1

Weight: 0.1 LBS

Delivery Location: INSIDE DELIVERY
GREEN

Reference Number 1: 130161-00001

Reference Number 2: 91133



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Error!
Hyperlink [Download the UPS mobile app](#)
reference

Patricia Fiorentino

From: UPS Quantum View <auto-notify@ups.com>
Sent: Wednesday, January 02, 2019 11:20 PM
To: Patricia Fiorentino
Subject: UPS Exception Notification, Tracking Number 1ZA6533A0192282727



The status of your package has changed.

Exception Reason: Due to operating conditions, your package may be delayed.

At the request of ROBBINS GELLER RUDMAN & DOWD, this notice alerts you that the status of the shipment listed below has changed.

Shipment Details

Tracking Number: [1ZA6533A0192282727](#)
Office of FOIA Services
Ms. Ronnye L. Hall
Securities and Exchange Commission
100 F Street, NE, Room 2736
WASHINGTON, DC 205492001
US

Ship To:

UPS Service: UPS NEXT DAY AIR

Package Weight: 0.1 LBS

Reference Number 1: 130161-00001

Reference Number 2: 91133



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UPS CampusShip: View/Print Label

1. **Ensure there are no other shipping or tracking labels attached to your package.** Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
2. **Fold the printed label at the solid line below.** Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.
3. **GETTING YOUR SHIPMENT TO UPS**
Customers with a Daily Pickup
 Your driver will pickup your shipment(s) as usual.

Customers without a Daily Pickup

Take your package to any location of The UPS Store®, UPS Access Point(TM) location, UPS Drop Box, UPS Customer Center, Staples® or Authorized Shipping Outlet near you. Items sent via UPS Return Services(SM) (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.

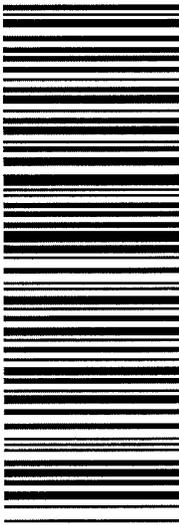
Schedule a same day or future day Pickup to have a UPS driver pickup all your CampusShip packages. Hand the package to any UPS driver in your area.

UPS Access Point™
THE UPS STORE
998 OLD COUNTRY RD
PLAINVIEW, NY 11803

UPS Access Point™
THE UPS STORE
273 WALT WHITMAN RD
HUNTINGTON STATION, NY 11746

UPS Access Point™
THE UPS STORE
338 JERICHO TPK
SYOSSET, NY 11791

FOLD HERE

<p style="text-align: right;">0.1 LBS LTR 1 OF 1</p> <p>SHIP TO: MR. JEFFERY OVALL, FOIA BRANCHCHIEF 631-367-7100 OFFICE OF FOIA SERVICES 100 F STREET, NE, ROOM 2736 SECURITIES AND EXCHANGE COMMISSION MS. RONNYE L. HALL WASHINGTON DC 20549-2001</p>	<p style="font-size: 2em; font-weight: bold;">MD 201 9-65</p> 	<p style="font-size: 2em; font-weight: bold;">UPS NEXT DAY AIR</p> <p style="font-size: 3em; font-weight: bold;">1</p> <p>TRACKING #: 1Z A65 33A 01 9228 2727</p> 	<p style="text-align: center;">BILLING: P/P</p> <p style="text-align: center;">Case Code: 130161-00001 Employee ID: 91133</p> <p style="text-align: center; font-size: 0.8em;">CS 20.6.13. WNTN050 06.0A.10/2018</p> 
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