

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11144 / January 9, 2023

SECURITIES EXCHANGE ACT OF 1934
Release No. 96610 / January 9, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21269

In the Matter of

**STEPHEN J.
EASTERBROOK and
MCDONALD'S
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 Stephen J. Easterbrook (“Easterbrook”) and McDonald’s Corporation (“McDonald’s”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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, and except as provided herein in Section V, Respondents consent to the entry of this 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 Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds that:

INTRODUCTION

1. Effective November 1, 2019, McDonald’s terminated its former CEO, Stephen J. Easterbrook, after finding that he had exercised poor judgment and engaged in an inappropriate personal relationship with a McDonald’s employee in violation of corporate policy. During the internal investigation that preceded his termination, Easterbrook did not disclose other physical relationships with company employees and withheld information relevant to the internal investigation. For the reasons set forth below, Easterbrook’s conduct violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Section 17(a) of the Securities Act and caused violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-11 thereunder.

2. In its Definitive Proxy Statement filed after Easterbrook’s separation, McDonald’s disclosed that it had terminated Easterbrook “without cause” and described the terms of his separation agreement, including, among other things, his right to certain unvested equity-based compensation. In violation of Section 14(a) of the Exchange Act and Rule 14a-3 thereunder, McDonald’s failed to disclose that it exercised discretion in terminating Easterbrook “without cause” under the relevant compensation plan documents after finding that he violated corporate policy, allowing Easterbrook to retain certain equity-based compensation that would have been forfeited if the company had terminated him for cause.

RESPONDENTS

3. **Easterbrook**, age 55, resides in Chicago, Illinois. He was McDonald’s CEO and a board member from March 2015 through October 2019.

4. **McDonald’s** is a Delaware corporation with its principal place of business in Chicago, Illinois, and has a class of securities registered pursuant to Section 12(b) of the Exchange Act. McDonald’s common stock trades on the New York Stock Exchange under the symbol “MCD.” McDonald’s files periodic reports, including annual reports on Form 10-K and quarterly reports on Form 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder.

BACKGROUND

McDonald’s Internal Investigation Regarding Easterbrook’s Misconduct

5. In October 2019, counsel for a former McDonald’s employee (“Employee 1”) contacted counsel for the company to allege that Easterbrook had engaged in an inappropriate personal relationship with Employee 1. The McDonald’s Board of Directors retained outside counsel to conduct an independent internal investigation.

6. On October 22, 2019, McDonald's outside counsel interviewed Easterbrook. The interview was conducted pursuant to McDonald's Standards of Business Conduct, which required Easterbrook to participate in and cooperate with the investigation. When asked if he had ever engaged in a physical or non-physical sexual relationship with any other McDonald's employee, Easterbrook said that he had not. In July 2020, McDonald's learned that Easterbrook had in fact engaged in other relationships with McDonald's employees in violation of the company's Standards of Business Conduct.

7. During the course of the independent internal investigation, Easterbrook also withheld potentially relevant information from McDonald's.

8. As the company's CEO, Easterbrook knew or was reckless in not knowing that misleading McDonald's in the course of a formal corporate process convened to, among other things, make a determination about his continued employment and his compensation, would influence McDonald's disclosures to investors, including disclosures in the company's periodic disclosures and its Definitive Proxy Statement.

McDonald's Terminates Easterbrook and Enters Separation Agreement

9. On November 1, 2019, McDonald's terminated Easterbrook following the McDonald's Board of Directors' formal determination that Easterbrook "violated Company policy and demonstrated poor judgment involving a recent consensual relationship with [Employee 1]," in violation of the company's Standards of Business Conduct regarding dating and fraternization.

10. At the time, Easterbrook had multiple agreements with McDonald's that governed his compensation and potential benefits upon separation. Two of those agreements – the Stock Option Award Agreements and Performance-Based Restricted Stock Unit ("PRSU") Award Agreements – included in the definition of a Termination of Employment for Cause a termination due to a violation of the company's Standards of Business Conduct.

11. The terms of those agreements provided for Easterbrook's unvested stock options and PRSUs to be forfeited if the company terminated him for cause, including a termination for cause resulting from the commission of acts in violation of the Standards of Business Conduct. The PRSU Award Agreements provided:

Termination for Cause or Policy Violation. If the Grantee has a Termination of Employment for Cause, including on account of a Policy Violation (which means a termination resulting from the commission of any act or acts which violate the Standards of Business Conduct of the Company or a Subsidiary or any successor thereto (including underlying polices or policies specifically referenced therein), as the same is effect [sic] and applicable to the Grantee at of the time of the Grantee's violation), as determined by the Committee or its delegee in its sole and absolute discretion, the RSUs and any Dividend Equivalents will be immediately forfeited.

The Stock Option Award Agreements provided:

Termination Due to Policy Violation. If the Optionee has a Termination of Employment for Cause due solely to a Policy Violation (as determined by the Committee in its sole and absolute discretion), any Options exercisable on the date of the Optionee's Termination of Employment may be exercised not later than the 90th day following the Optionee's Termination of Employment (but not beyond the Expiration Date). Any unvested Options shall be forfeited as of the date of the Optionee's Termination of Employment.

12. On October 29, 2019, the Board of Directors presented Easterbrook with a draft Separation Agreement and General Release. As a condition of settlement, Easterbrook was required to disseminate a letter to all McDonald's employees explaining his departure and endorsing the new CEO. He was also given an opportunity to review McDonald's press release regarding his termination. Both the letter to employees, which was covered in multiple mainstream media outlets, and the press release, which was attached as an exhibit to a Form 8-K filed by the company, described Easterbrook's misconduct as limited to a single consensual relationship with another McDonald's employee.

13. In relevant part, the letter to employees stated: "As for my departure, I engaged in a recent consensual relationship with an employee, which violated McDonald's policy. This was a mistake."

14. The press release stated that Easterbrook "separated from the Company following the Board's determination that he violated company policy and demonstrated poor judgment involving a recent consensual relationship with an employee."

15. Neither the letter to employees nor the press release disclosed information about Easterbrook's relationships with other McDonald's employees. Information about the other relationships came to light in July 2020.

16. On November 1, 2019, McDonald's and Easterbrook entered into a Separation Agreement and General Release, which stipulated that Easterbrook's termination would be "considered a termination of employment by McDonald's without 'Cause.'"

17. The Separation Agreement and General Release also stipulated that Easterbrook's stock options and PRSUs would "continue to vest or become exercisable pursuant to the original schedule" in the Stock Option Award and PRSU Award Agreements.

18. At the time of the settlement, McDonald's calculated the total value of the compensation that Easterbrook received pursuant to the Separation Agreement to be \$47,534,341, of which \$43,999,937 was composed of outstanding stock options and PRSUs.

19. McDonald's has publicly stated that, had Easterbrook been candid with the company during the internal investigation, it would not have terminated him "without cause."

McDonald's Files a Form 8-K Announcing Easterbrook's Termination

20. On November 4, 2019, McDonald's filed a Form 8-K announcing Easterbrook's termination from the company. It stated that Easterbrook was "separated from his officer and director positions" and that "[t]he Company has entered into a separation agreement with Mr. Easterbrook, which provides that he will be eligible for the severance benefits contemplated by the Company's benefit plans upon a termination of employment." The Form 8-K also attached the press release described in Paragraphs 12 and 14, *supra*, and the Separation Agreement and General Release.

21. As a result of Easterbrook's conduct during the company's internal investigation and in his review of the company's press release and his letter to McDonald's employees, the company's public filings and his own public statements did not disclose the existence of Easterbrook's other improper relationships.

McDonald's 2020 Definitive Proxy Statement Solicits Shareholder Approval for Compensation Easterbrook Received Pursuant to the Separation Agreement

22. On April 9, 2020, McDonald's filed its Definitive Proxy Statement for fiscal year 2020. It disclosed that Easterbrook was terminated "without cause" and recommended that shareholders "approve, on an advisory basis, the [2019] compensation of the named executive officers," including, by extension, the terms of the Separation Agreement and General Release.

23. In the Definitive Proxy Statement, McDonald's represented to shareholders that "[i]n accordance with the terms of their outstanding equity awards, (i) Mr. Easterbrook's options that would have vested within the three years following his termination of employment will continue to vest in accordance with their regular schedule and will remain exercisable for three years"

24. The Definitive Proxy Statement did not disclose that, absent the company's exercise of discretion in treating Easterbrook's termination as without cause, Easterbrook would have forfeited unvested options and PRSUs as a result of his termination on account of a violation of the Standards of Business Conduct.

McDonald's Sues Easterbrook to Recover Compensation Received Pursuant to the Separation Agreement

25. From November 2019 to June 2020, Easterbrook exercised at least 193,000 options and sold the resulting shares for net cash proceeds of \$9,365,072.37. Easterbrook also received a performance payment for 63,687 PRSUs valued at \$7,054,291.83 after taxes.

26. In July 2020, McDonald's received an anonymous complaint that alleged another McDonald's employee engaged in an inappropriate personal relationship with Easterbrook. McDonald's commenced a second internal investigation, which identified evidence that Easterbrook engaged in inappropriate personal relationships with McDonald's employees, in addition to Employee 1.

27. On August 10, 2020, McDonald's sued Easterbrook in the Delaware Court of Chancery seeking to recover the compensation Easterbrook received as part of the Separation Agreement and General Release. The complaint asserted claims for breach of fiduciary duty and

fraud in the inducement related to Easterbrook's conduct during the course of the October 2019 internal investigation.

28. On December 16, 2021, McDonald's publicly announced that it had reached a settlement with Easterbrook. Under the settlement agreement, McDonald's agreed to dismiss the suit filed in Delaware Court of Chancery in exchange for Easterbrook's payment to McDonald's of his cash severance, prorated bonus, certain proceeds realized from the sale of securities that resulted from his exercise of options and PRSUs, and certain attorney's fees incurred by the company, as well as forfeiture of all outstanding equity and awards.

VIOLATIONS

29. As a result of the conduct described above, Easterbrook violated Section 10(b) of the Exchange Act and Exchange Act Rules 10b-5(a) and (c), which prohibit, in connection with the purchase and sale of securities, the use of any "device, scheme, or artifice to defraud" and any "act, practice or course of business which operates or would operate as a fraud or deceit upon any person."

30. As a result of the conduct described above, Easterbrook violated Securities Act Sections 17(a)(1) and (3), which prohibit, in the offer or sale of securities, the use of any "device, scheme or artifice to defraud" and "any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser."

31. As a result of the conduct described above, Easterbrook violated Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5(b), which prohibits any person from "making any untrue statement of a material fact" or "omit[ting] to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading," in connection with the purchase or sale of a security.

32. As a result of the conduct described above, Easterbrook violated Section 17(a)(2) of the Securities Act, which prohibits any person in the offer or sale of a security from "obtain[ing] 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 were made, not misleading."

33. As a result of the conduct described above, Easterbrook caused violations of Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20 and 13a-11, which prohibit an issuer from filing periodic or current reports that contain materially false or misleading information.

34. As a result of its failure to provide certain disclosures with respect to executive compensation required by Item 402 of Regulation S-K, McDonald's violated Section 14(a) of the Exchange Act and Exchange Act Rule 14a-3, which prohibit solicitation of a proxy without furnishing the information specified by Schedule 14A. Item 402(b) of Regulation S-K provides the Compensation Discussion and Analysis "shall explain *all* material elements of the registrant's compensation of the named executive officers." (Emphasis added.) The instructions to Item 402(b) call for registrants to address "specific decisions that were made or steps that were taken that could affect a fair understanding of the named executive officer's compensation." Item 402(b)(2) provides specific examples of potentially material information to be disclosed in the Compensation Discussion and Analysis, including "factors considered in decisions to increase or decrease

compensation materially.” *See* Item 402(b)(2)(ix). A registrant is also required to disclose, “[w]ith respect to any contract, agreement, plan or arrangement, whether written or unwritten, that provides for payment(s) at, following, or in connection with any termination or change-in-control, the basis for selecting particular events as triggering payment (*e.g.*, the rationale for providing a single trigger for payment in the event of a change-in-control).” *See* Item 402(b)(2)(xi). Finally, Item 402(j)(5) requires disclosure of any “material factors” regarding a “contract, agreement, plan or arrangement . . . that provides for payment(s) to a named executive officer at, following, or in connection with any termination.”

35. McDonald’s violation of Section 14(a) of the Exchange Act and Exchange Act Rule 14a-3 arose from its failure to disclose that it used discretion in treating Easterbrook’s termination as “without cause” under the relevant compensation plan documents after determining that he violated the Standards of Business Conduct and in entering into a Separation Agreement and General Release that provided for the continued vesting of options and PRSUs. Under the terms of the Separation Agreement and General Release, Easterbrook retained equity-based compensation valued at approximately \$44 million that otherwise would have been forfeited, absent the company’s exercise of discretion.

MCDONALD’S COOPERATION

36. In determining to accept McDonald’s Offer, the Commission considered the cooperation it provided during the Commission’s investigation, as well as remedial measures undertaken by McDonald’s.

37. McDonald’s provided substantial cooperation to the Commission’s staff throughout its investigation, including by voluntarily providing relevant documents and testimonial information that was otherwise not required to be produced in response to the staff’s requests; providing briefings to the staff that highlighted critical facts and key documents; and promptly making the company’s officers, directors, and other senior managers available for interviews and testimony. This cooperation substantially advanced the quality and efficiency of the staff’s investigation and conserved Commission resources.

38. McDonald’s also took affirmative remedial steps to recover value for its shareholders by suing Easterbrook in the Delaware Court of Chancery, seeking and ultimately recovering the compensation Easterbrook received pursuant to the Separation Agreement and General Release.

IV.

In view of the foregoing, the Commission deems it appropriate and for the protection of investors to impose the sanctions agreed to in Respondents’ Offers.

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

A. Easterbrook shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act; Sections 10(b) and 13(a) of the Exchange Act; and Exchange Act Rules 10b-5, 12b-20, and 13a-11.

B. McDonald's shall cease and desist from committing or causing any violations and any future violations of Section 14(a) of the Exchange Act and Exchange Act Rule 14a-3.

C. Easterbrook be, and hereby is, prohibited, pursuant to Section 21C(f) of the Exchange Act, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act for a period of five (5) years from the entry of this Order.

D. Easterbrook shall pay disgorgement and prejudgment interest of \$52,728,069. However, the full amount of disgorgement and prejudgment interest shall be deemed satisfied by the compensation Easterbrook repaid to McDonald's in resolution of the company's claims in *McDonald's Corporation v. Stephen J. Easterbrook*, C.A. No. 2020-0658-JRS (Del. Ct. Ch.).

E. Easterbrook shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$400,000 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. Easterbrook may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
2. Easterbrook 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. Easterbrook may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and handdelivered 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 the relevant 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 Mark Cave, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St. N.E., Washington, DC 20549.

F. 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, Easterbrook agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of any 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, Easterbrook agrees that he 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 any 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.

G. McDonald's acknowledges that the Commission is not imposing a civil penalty based upon its cooperation in a Commission investigation or related enforcement action. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that McDonald's 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 McDonald's, petition the Commission to reopen this matter and seek an order directing that McDonald's pay a civil penalty. McDonald's may contest by way of defense in any resulting administrative proceeding whether it 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. **V.**

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, Easterbrook stipulates that the findings in this Order are true, and further stipulates that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Easterbrook under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Easterbrook of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary