UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 55858 / June 5, 2007

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2616 / June 5, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12652

CORRECTED

In the Matter of

INTERNATIONAL BUSINESS MACHINES CORPORATION,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934

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 International Business Machines Corporation ("IBM" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent 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, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Respondent

IBM, a New York corporation based in Armonk, New York, is a world-wide information technology corporation. IBM's stock is registered pursuant to Section 12(b) of the Exchange Act. IBM stock trades on the New York Stock Exchange, Chicago Stock Exchange, Pacific Stock Exchange, and on other exchanges in the United States and around the world.

Summary

This matter involves a misleading chart presented by IBM during an April 5, 2005 conference call with analysts, which was simultaneously webcast, and included in a Form 8-K filed with the Commission, relating to the impact that the company's decision to expense employee stock options would have on its first quarter 2005 ("1Q05") and fiscal year 2005 ("FY05") earnings results.

During the conference call, IBM announced that beginning in 1Q05 it would report stock options as an expense in its financial statements and advised analysts to adjust their earnings models to account for the change. At the time, IBM expected that its stock options expense for 1Q05 would have a $0.10 impact on first quarter earnings per share results and estimated a $0.39 impact on FY05 earnings per share results. IBM did not disclose this information during the conference call or in its subsequently filed Form 8-K. IBM included a misleading chart in its presentation which was understood by many analysts to indicate that the earnings per share impact of the stock options expense would be $0.14 for 1Q05 and $0.55 for FY05, thereby causing analysts to lower their 1Q05 and FY05 earnings per share estimates by these amounts. By engaging in this conduct, IBM violated the reporting provisions of the federal securities laws.

Discussion

On April 5, 2005, one week after the SEC staff issued SAB 107 (regarding the reporting of employee stock options as an expense), and less than two weeks before IBM released its 1Q05 financial results, IBM announced that it would begin to report employee stock options as an expense in its financial statements for 1Q05. During the presentation (the text of which was filed with the Commission in a Form 8-K), IBM also advised analysts to update their 2004 models, for comparability, and their 2005 models to reflect the change. IBM explained to analysts that they should reduce their 2004 earnings per share figures by $0.14 for the first quarter and by $0.55 for the year, which were the actual amounts of stock options expense that IBM had disclosed in its 2004 pro-forma disclosures. IBM also said "(t)his is an accounting change and does not impact underlying business dynamics. Therefore, for purposes of your models, updated 2005 expectations should reflect the same level of year-to-year profit improvement as current estimates."

Furthermore, IBM said that it had taken steps that would result in lower stock options expense for 2005 compared to their 2004 pro-forma expense and that any savings would be used to offset a previously announced $1 billion year-to-year increase in pension expense for 2005.

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[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

During IBM's January 2005 earnings announcement, IBM had said that for 2005 it expected a $1 billion year-to-year increase in its pension expense. This was approximately $200 million more than the $800 million year-to-year increase IBM had anticipated for 2005 and had announced in October 2004. IBM had also said in January that it would take steps over the course of 2005 to overcome the $1 billion year-to-year increase in its pension expense. IBM identified "divesting the PC business," "redesigning (its) equity program with premium priced options," and "globalizing (its) business" as actions it would take to help overcome the increased pension expense.

During the April 5, 2005 conference call, IBM's management did not make any statements about the amount by which analysts should reduce their 2005 estimates to account for options expensing. IBM did present a chart which many analysts read to indicate that the stock option expense would reduce 1Q05 and FY05 earnings per share estimates by $0.14 and $0.55, respectively. At the time, IBM expected that its stock options expense would have only a $0.10 impact on 1Q05 earnings per share results, or $0.04 less than the first quarter 2004 pro-forma expense, and IBM estimated that its stock option expense would have only a $0.39 impact on FY05 earnings per share results, or $0.16 less than the pro-forma amount for the full year 2004. IBM did not disclose this information during the April 5 announcement or in its Form 8-K.

Although IBM considered disclosing that its 1Q05 stock options expense would be $0.03 to $0.04 less than the first quarter 2004 pro-forma expense, management rejected the idea due, at least in part, to concern that analysts would add back the year-to-year reduction to their earnings per share estimates instead of using the reduction to offset the increase in pension expense. Management wanted to avoid this because it would have increased the expected growth rate that analysts had set for IBM, which would have been difficult for the company to achieve because of the year-to-year increase in pension expense. However, as discussed above, the amount of the increase in IBM's pension expense for 2005 had been disclosed in October 2004 and updated in January 2005 and, therefore, had been available for analysts to factor into their 2005 models.

After IBM's April 5 announcement, many analysts reduced their earnings per share estimates for 2005 by the same amount as the 2004 pro-forma expense, $0.14 for 1Q05 and $0.55 for FY05. The average of analysts' earnings per share estimates was reduced to $0.90 for 1Q05 and to $5.07 for FY05. Many analysts' reports reflected that IBM's earnings per share estimates were lowered by $0.14 and $0.55 per share for 1Q05 and FY05, respectively, to account for stock options expenses.

On April 14, 2005, after the market's close, IBM announced its 1Q05 financial results. The announcement of 1Q05 results was formerly scheduled for April 18, 2005. IBM disclosed earnings of $0.85 per share, which was $0.05 less than the amount that many analysts were expecting following the April 5 presentation. IBM also disclosed that its equity compensation expense was $0.10 per share for 1Q05, or $0.04 lower than what many analysts had understood IBM's April 5 misleading chart to have indicated it would be. IBM's stock price dropped $6.94 the next day, or over 8%, closing at $76.33.

Violations

Section 13(a) of the Exchange Act and Rule 13a-11 thereunder require issuers of registered securities to file certain reports. 15 U.S.C. § 78m(a); 17 C.F.R. § 240.13a-11. Under Rule 13a-11, issuers are required to file current reports on material corporate developments on Form 8-K. 17 C.F.R. § 240.13a-11. In addition, issuers may choose to file certain reports on Form 8-K, as was done in this matter. Exchange Act Rule 12b-20 requires, in addition to information required to be in a report, any material information "necessary to make the required statements, in the light of the circumstances under which they are made not misleading." 17 C.F.R. § 240.12b-20. Information is material if there is a "substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988) (quoting TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976)). Information regarding a company's earnings is one of the most important considerations in making an investment decision.

IBM violated the above reporting provisions by filing with the Commission a materially misleading Form 8-K. The filing contained materially misleading information about the amount of IBM's stock options expense and the impact it would have on IBM's earnings per share. The Form 8-K created the impression that IBM's stock options expense would be greater than what IBM actually expected it to be for 1Q05 and FY05. In light of the statements made in the Form 8-K, IBM should have also included in its Form 8-K additional information it knew at the time relating to its stock options expense for 1Q05 and FY05, (i.e., that it expected the expense to have a $0.10 impact on earnings per share in 1Q05, and that it estimated the expense to have a $0.39 impact on earnings per share for FY05). By failing to include this information in its disclosure, IBM violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-11 thereunder.

IV.

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

Accordingly, it is hereby ORDERED that**:**

Respondent IBM cease and desist from committing or causing any violations and any future violations of Sections 13(a) of the Exchange Act and Rules 12b-20 and 13a-11 thereunder.

By the Commission.

Nancy M. Morris
Secretary