

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98923 / November 14, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21797

In the Matter of

CHARTER
COMMUNICATIONS, 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 Charter Communications, Inc. (“Charter” 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 him and the subject matter of these proceedings, which are admitted, Respondent 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 finds¹ that:

1. This matter concerns Charter's failure to devise and maintain internal accounting controls that reasonably assured that the company's stock buybacks were conducted in accordance with management authorizations.

2. Since September 2016, Charter has executed over \$70 billion in stock buybacks, reducing its outstanding shares by nearly 50%. As part of the share repurchase program, Charter personnel requested authorization from the Board of Directors to engage in buybacks within certain financial parameters and guidelines. For repurchases that were to occur during Charter's closed trading windows, the Board's authorizations were predicated on the company's use of trading plans that conform to Commission Rule 10b5-1, which provides an affirmative defense to insider trading if certain conditions are met. Charter's Board did not authorize the use of non-conforming plans.

3. From 2017 to 2021, many of Charter's trading plans did not comport with the requirements of Rule 10b5-1. These plans contained "accordion" provisions through which the amount of share repurchases under the plans would increase if the company elected to complete certain debt offerings. Because the company retained discretion over whether and when to conduct these offerings, the accordion provisions gave Charter the ability to increase its trading activity after adoption of the plans. Charter adopted nine trading plans that included accordion provisions during the relevant period. This was inconsistent with the requirements of Rule 10b5-1 and, consequently, the Board's authorizations.

4. These failures to comport with management authorizations were the result of Charter's insufficient internal accounting controls. Although Charter had controls designed to obtain share repurchase authorization from the Board, to stay within the Board's financial parameters and guidelines, and to confirm that its buyback transactions were accurately reflected in its accounts and ledgers, the company did not have reasonably designed controls to analyze whether the discretionary element of the accordion provisions was consistent with the Board's authorizations.

5. Consequently, Charter violated Exchange Act Section 13(b)(2)(B), which requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that corporate transactions, including share repurchases, are executed and access to assets is permitted only in accordance with management's general or specific authorization.

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.

Respondent

6. **Charter Communications, Inc.** is incorporated in Delaware and headquartered in Stamford, Connecticut. It is a broadband connectivity company and cable operator, serving more than 32 million customers in 41 states. Charter has a class of securities registered pursuant to Section 12(b) of the Exchange Act and its shares trade on the NASDAQ Global Select Market.

Facts

7. Since 2016, Charter's Board of Directors has been authorizing company personnel to conduct large volumes of stock buybacks. The Board's authorizations for these buybacks were predicated on the company's use of trading plans that conform to Rule 10b5-1 for stock repurchases occurring during closed trading windows.² From 2017 to 2021, Charter repurchased nearly \$15 billion of shares using trading plans that contained accordion provisions and thus did not conform to this proscription.

8. The trading plans Charter used for these buybacks allocated a pre-determined dollar amount (called "the Plan Dollar Cap") to repurchase shares within certain set parameters and guidelines. Charter planned to borrow billions of dollars to pay for much of these share repurchases. The trading plans were designed to ensure that Charter maintained a continuous buyback program while meeting the company's publicly-disclosed leverage ratio target.³

9. To implement this strategy, in 2017, Charter began to use a new funding mechanism in its trading plans. This mechanism allowed Charter to increase the Plan Dollar Cap if the company completed a debt offering in which a stated use of the proceeds from that offering included share repurchases. The increase in the Plan Dollar Cap, which was tied to the amount of the new debt, allowed for additional share repurchases under the previously-set parameters and guidelines of the trading plans.

10. Charter referred to this provision as an "accordion" and described it as giving the company built-in flexibility to increase its share repurchases as new funds became available through debt closures. Charter included accordion provisions in nine written trading plans from 2017 through 2021.

11. These trading plans did not satisfy the requirements of Rule 10b5-1. Charter retained continuing discretion over whether and when to complete debt offerings and trigger the accordions. Because the accordion provisions in these plans gave Charter the ability to change the

² In 2000, the Commission adopted Rule 10b5-1 to provide an affirmative defense to insider trading liability under Exchange Act Section 10(b) and Rule 10b-5 if certain conditions are met.

³ Charter sought to maintain a level of consolidated net debt that was between 4 and 4.5 times its EBITDA.

total dollar amounts available for share repurchases, and the timing of additional repurchases, Charter's plans did not meet the conditions of Rule 10b5-1(c)(1)(i)(B).

12. In conducting these share buybacks, Charter did not devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that its repurchases were executed and access to its assets was permitted only in accordance with the Board's authorizations. The Board's authorizations for these buybacks were predicated on the company's use of trading plans that comport with Rule 10b5-1. Yet Charter did not have controls that reasonably assured that the company used trading plans in accordance with these authorizations.

13. Specifically, Charter failed to implement a reasonable process to ensure that its trading plans were adequately reviewed for conformity with the requirements of Rule 10b5-1 prior to adoption. Charter had controls designed to obtain share repurchase authorization from the Board, to stay within the Board's financial parameters and guidelines, and to confirm that the buyback transactions were accurately reflected in its accounts and ledgers. However, Charter did not have reasonably designed policies or procedures for analyzing whether the accordion provisions comported with Rule 10b5-1 and thus accorded with management's authorizations.

14. As shown by Charter's repeated use of trading plans that contained accordion options, Charter's internal accounting controls failed to provide reasonable assurances that the accordions were adequately reviewed for conformity with Rule 10b5-1 and the Board's authorizations prior to adoption of the trading plans.

Violations

15. As a result of the conduct described above, Charter violated Exchange Act Section 13(b)(2)(B), which requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are executed and access to assets is permitted only in accordance with management's general or specific authorization.⁴

⁴ We have long recognized that the scope of Section 13(b)(2)(B) goes beyond the preparation of financial statements and broadly covers management authorizations for transactions. *See, e.g., Final Rule: Promotion of the Reliability of Financial Information and Prevention of the Concealment of Questionable or Illegal Corporate Payments and Practices*, Exchange Act Rel. No. 15,570 (Feb. 15, 1979) (adopting release) [44 Fed. Reg. 10,966 (Feb. 23, 1979)] ("It bears emphasis that the accounting provisions of the FCPA are *not* exclusively concerned with the preparation of financial statements. An equally important objective of the new law ... is the goal of corporate accountability.") (emphasis in original); *Statement of Policy Regarding the Foreign Corrupt Practices Act of 1977*, Exchange Act Rel. No. 17,500 (Jan. 29, 1981) [46 Fed. Reg. 11,547 (Feb. 9, 1981)] ("The purpose of the internal accounting control provisions, after all, is to assure that a public company adopts accepted methods of recording economic events, safe-guarding assets, and conforming transactions to management's authorization."); *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding Certain Cyber-Related Frauds Perpetrated Against Public Companies and Related Internal Accounting Controls Requirements*, Exchange Act Rel. No. 84,429 (Oct. 16, 2018), at 1 ("As the Senate emphasized over four decades ago when passing [Section 13(b)(2)(B)], a fundamental aspect of management's stewardship responsibility is to provide shareholders with reasonable assurances that the business is adequately controlled.") (internal references omitted).

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Charter cease and desist from committing or causing any violations and any future violations of Exchange Act Section 13(b)(2)(B).

B. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$25 million 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 Charter 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 Melissa R. Hodgman, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

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