

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 82849 / March 9, 2018

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3925 / March 9, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18397

In the Matter of

ELBIT IMAGING LTD.,

Respondent.

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

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 Elbit Imaging Ltd. (“Elbit” 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 Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order, and Imposing a Civil Money Penalty (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

This case concerns violations of the books and records and internal accounting controls provisions of the Foreign Corrupt Practices Act of 1977 ("FCPA") involving millions of dollars of payments made by Elbit, and its then majority-owned indirect subsidiary Plaza Centers NV ("Plaza"). Between 2007 and 2012, Elbit and Plaza, directly and indirectly, paid millions of dollars to third-party offshore consultants and sales agents purportedly for their services related to a real estate development project in Romania and the sale of a large portfolio of real estate assets in the U.S. However, Elbit and Plaza made these payments even though they had no evidence that the consultants and sales agents had actually provided the contracted for services. Elbit and Plaza failed to properly record those payments in a manner that, in reasonable detail, accurately and fairly reflected the nature of the payments in their books and records. Elbit and Plaza also failed to devise and maintain internal accounting controls sufficient to provide reasonable assurances that company funds would only be used as authorized for legitimate corporate purposes and that transactions were recorded as necessary to maintain accountability for assets, particularly with regard to the accounts payable process.

Respondent

1. **Elbit** is an Israeli incorporated company with its headquarters located in Petach Tikva, Israel. Its ordinary shares are registered with the Commission pursuant to Section 12(b) of the Securities Act of 1933, and trades on the Tel Aviv Stock Exchange and NASDAQ (ticker: EMITF). Elbit is an international holding company with several direct and indirect subsidiaries focused on, among other industries, real estate investment and development. Elbit exerts functional control over its indirect subsidiary Plaza, and between 2007 and 2012 Elbit consolidated Plaza's financial statements into its own financial statements for the purposes of SEC reporting.

Other Relevant Entity and Person

2. **Plaza** is an indirect subsidiary of Elbit, and is incorporated in the Netherlands. Its securities are listed on the London Stock Exchange, the Warsaw Stock Exchange, and the Tel Aviv Stock Exchange. Plaza is a Central and Eastern European developer of shopping and entertainment centers, focusing on developing new Western-style centers and, where there is significant redevelopment potential, redeveloping existing centers.

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.

3. **Executive A**, an Israeli citizen, who, prior to February 2014, owned or controlled approximately 50 percent of Elbit's equity, served as Elbit's CEO and Plaza's Executive Director, and had a seat on both companies' boards of directors. Executive A passed away in June 2016.

The 2006 and 2011 Casa Radio Project Consultancy Contracts

4. Elbit, through Plaza, has been engaged in the business of real estate development in Central and Eastern Europe, including in Romania. In 2006, Plaza sought to be included in a large real estate development project located in Bucharest, Romania – the Casa Radio Project.

5. In 2006, Plaza hired an international property consultancy firm to value the Casa Radio Project. The firm projected that the project would be highly profitable for Plaza, if it obtained the development rights.

6. In August 2006, at the direction of Executive A, Plaza entered into a contract with a third-party offshore entity purportedly for consulting services ("2006 Consultant") to assist Plaza in (a) procuring an invitation from the Romanian government to participate in the Casa Radio Project, and (b) thereafter acquiring the governmental approvals needed to perform the development work. There is no evidence to suggest that Plaza conducted any due diligence on the 2006 Consultant prior to entering into this agreement.

7. In February 2007, with the Romanian government's consent, Plaza purchased a 75 percent interest in the Casa Radio Project for approximately \$40 million in cash and an agreement to develop a Romanian public authority building onsite at Plaza's expense. There is no documentation or other evidence showing that the 2006 Consultant provided any services in connection with this transaction.

8. In September 2011, once again at the direction of Executive A, Plaza entered into a second contract with a third-party offshore entity purportedly for consulting services ("2011 Consultant") related to the Casa Radio Project. The 2011 Consultant was to assist Plaza in (a) once again acquiring all of the governmental approvals needed to perform the development work, and (b) purchasing an additional 15 percent interest in the project from the Romanian government. There is no evidence to suggest that Plaza conducted any due diligence on the 2011 Consultant prior to entering into this agreement.

9. There are no documents or other evidence showing that either of the consultants performed any work related to Plaza acquiring governmental approvals necessary for the Casa Radio Project's development, or that the 2011 Consultant provided any services in furtherance of Plaza purchasing the Romanian government's 15 percent interest in the project. For example, the consultants did not attend any meetings between Romanian officials and Plaza officials and do not appear to have submitted any other materials evidencing any consulting work.

10. Between 2007 and 2012, Plaza, directly and indirectly, paid the consultants approximately \$14 million. Plaza's top officers authorized making these payments, even though the documentation supporting the payments did not identify the services that the consultants provided pursuant to the contracts. Plaza characterized the payments to the consultants in its books

and records as legitimate business expenses for services rendered, when some or all of the funds may have been used to make corrupt payments to Romanian government officials or were embezzled.

The 2011 Real Estate Portfolio Sale Agency Contract

11. In October 2011, a joint venture of investors (“Joint Venture”), including Elbit and Plaza who together held a 45.4 percent interest in the Joint Venture, sought to sell a portfolio of 47 shopping center real estate assets located in the U.S. (the “Portfolio”).

12. On November 15, 2011, at the direction of Executive A, Elbit and Plaza together (not the Joint Venture as a whole) entered into a sales agency contract with a third-party offshore entity (“Sales Agent A”), purportedly to assist in selling the Portfolio (“Sales Agent Contract”). Elbit and Plaza conducted no due diligence on Sales Agent A, and Executive A did not obtain a second signature for the Sales Agent Contract that he executed on behalf of Elbit, as required by Elbit’s signature authorization policy.

13. Pursuant to the Sales Agent Contract, Sales Agent A was to create marketing materials, locate potential buyers, and assist in negotiating a sales contract in exchange for a fee of 0.9 percent of the Portfolio’s gross sale price.

14. Unbeknownst to Elbit and Plaza, the day after the execution of the Sales Agent Contract, Sales Agent A entered into a subcontract with another offshore entity (“Sales Agent B”), assigning its rights and obligations under the Sales Agent Contract to Sales Agent B. Under this agreement, Sales Agent A was to pay Sales Agent B 0.88 percent of the Portfolio sale’s gross price (*i.e.* approximately 98 percent of the 0.9 percent commission that Sales Agent A was entitled to under the Sales Agent Contract). At the time, Sales Agent B was indirectly beneficially owned by Executive A. Executive A did not disclose this subcontract or his interest in Sales Agent B to Elbit or Plaza.

15. Approximately a month and a half prior to the execution of the Sales Agent Contract, the Joint Venture (as a whole) hired another financial institution to serve as its financial advisor for the Portfolio sale (“Financial Advisor”). The Financial Advisor was retained to provide nearly the same services to the Joint Venture as Sales Agent A had agreed to perform for Elbit and Plaza.

16. While no evidence suggests that Sales Agent A or Sales Agent B provided any known financial advisory services to Elbit and Plaza in connection with the Portfolio sale, the Financial Advisor did fulfill its obligations pursuant to its contract with the Joint Venture.

17. On June 21, 2012, Elbit announced that the Joint Venture obtained a gross sales price of \$1.428 billion from the Portfolio sale. In August 2012, Elbit and Plaza paid Sales Agent A a total of \$13 million (*i.e.* nearly double the \$6.75 million that the Joint Venture paid to the Financial Advisor that had actually provided services) for “commissions” and “expenses.” Elbit and Plaza made these payments despite the fact that the documentation supporting the payments did not identify the services that the consultants provided pursuant to the contracts. Thereafter,

unknown to anyone at Elbit or Plaza besides Executive A, Sales Agent A paid Sales Agent B \$12.75 million.

Elbit and Plaza's Deficient Books and Records and Internal Accounting Controls

18. Elbit and Plaza's applicable internal accounting controls were deficient. Elbit's and Plaza's internal accounting controls failed to identify the approximately \$27 million in payments made to the 2006 Consultant, the 2011 Consultant, and Sales Agent A, despite having no evidence that these counter-parties actually provided any of the contracted for services.

19. Elbit and Plaza did not devise and maintain internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to maintain accountability for assets, particularly with regard to the accounts payable process Elbit did not make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected its transactions and dispositions of its assets. Plaza's legal department had limited involvement with or supervision of contracts entered into between Plaza and third-party consultants or agents. Elbit and Plaza also did not have policies and procedures in place to detect corruption risks and provided little, if any, anti-corruption compliance training to employees during the relevant time period.

20. Elbit and Plaza mischaracterized the numerous payments made to the 2006 Consultant, the 2011 Consultant, and Sales Agent A as legitimate business expenses, even though some or all of the funds may have been used to make corrupt payments to Romanian government officials or were embezzled.

Elbit's 2014 Debt Arrangement

21. In February 2014, Elbit completed a debt arrangement (similar to Chapter 11 reorganization under U.S. bankruptcy law), pursuant to which its former debt holders became the new majority equity shareholders of the company. Along with this change in ownership and control, significant changes were made to the composition of Elbit's board of directors and senior officers. Similarly, in July 2014, Plaza completed its own debt arrangement. Although Elbit's ownership of reorganized Plaza was reduced to approximately 45 percent, Elbit continued to exert functional control over Plaza.

Discovery, Internal Investigation, and Self-Report

22. When Elbit discovered evidence which suggested that certain payments that Plaza, directly or indirectly, made in connection with the Casa Radio Project were improper and may have been recorded incorrectly in Plaza's books and records, Elbit and Plaza self-reported this information to authorities in both Romania and the U.S., fully cooperated with the Commission staff's investigation, and implemented extensive remedial measures.

23. Elbit, through a special committee of its board of directors, hired outside counsel ("Counsel") to conduct an independent investigation to determine the scope of potential issues

related to Elbit's and Plaza's business in connection with the Casa Radio Project. During the pendency of this investigation, additional facts were learned concerning the payments Elbit and Plaza made to Sales Agent A and the ownership of Sales Agent B, resulting in the formation of a joint special committee by Elbit and Plaza to investigate the Portfolio sale transaction as well. As the investigations progressed, Elbit shared Counsel's findings with the Commission staff, was fully responsive to requests for additional information, and provided translations of certain documents.

24. The joint special committee also directed Counsel to examine and recommend revisions to Elbit's and Plaza's internal accounting controls and anti-bribery policies and procedures. Counsel did so, and both Elbit's and Plaza's boards accepted all of the recommendations, and directed management to implement them.

Books and Records and Internal Accounting Controls Violations

25. As a result of the conduct described above, Elbit violated Section 13(b)(2)(A) of the Exchange Act which requires companies with a class of securities registered under Section 12 of the Securities Act to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and disposition of the assets of the issuer. 15 U.S.C. § 78m(b)(2)(A).

26. As a result of the conduct described above, Elbit also violated Section 13(b)(2)(B) of the Exchange Act which requires companies with a class of securities registered under Section 12 of the Securities Act to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. 15 U.S.C. §78m(b)(2)(B).

Commission's Consideration of Elbit's Remedial Efforts and Business Wind Down

27. In determining to accept the Offer, the Commission considered remedial acts that Respondent promptly undertook, its self-reporting, and its cooperation afforded to the Commission staff, including having conducted a thorough internal investigation, voluntarily providing detailed reports to the staff, fully responding to the staff's requests for additional information in a timely manner, and providing translations of certain documents.

28. The Commission also considered that Elbit is in the process of selling its principal assets in order to service its debt obligations, and does not develop current or new businesses.

IV.

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

Accordingly, it is hereby ORDERED that:

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

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$500,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-41
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Elbit Imaging Ltd. as the 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 Lara Shalov Mehraban, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 200 Vesey Street, Suite 400, New York, NY 10281.

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.

D. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of \$500,000 based upon its cooperation in a Commission investigation and related enforcement action. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent 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 Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay an additional civil penalty. Respondent 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.

By the Commission.

Brent J. Fields
Secretary