

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11328 / November 22, 2024

SECURITIES EXCHANGE ACT OF 1934
Release No. 101702 / November 22, 2024

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4542 / November 22, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22327

In the Matter of

**UNITED PARCEL
SERVICE, INC.**

Respondent.

**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 United Parcel Service, Inc. (“UPS” 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 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 (“Order”), as set forth below.

III.

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

Summary

1. This matter concerns UPS's failures to adhere to the basic accounting principle that the "fair value" of an asset is the price that would be received to sell that asset in an orderly transaction between market participants. These failures resulted in material misrepresentations to investors regarding its earnings and other reported items and activities.

2. In 2019, UPS's corporate strategy group conducted a months-long analysis of one of the company's worst performing business units, UPS Freight. Although UPS was carrying the business on its balance sheet at \$1.4 billion, the 2019 analysis, which was available prior to the company's annual goodwill impairment test, concluded Freight was likely to sell for only about \$350 million to \$650 million. This reflected that the nearly \$500 million of goodwill associated with Freight was impaired. An impairment in that amount would have materially reduced UPS's earnings, goodwill balances, and shareowners' equity.

3. However when conducting the goodwill impairment testing required by Generally Accepted Accounting Principles in 2019, UPS ignored the company's own assessment of Freight's fair value. Instead it relied on valuation estimates prepared by an external consultant to support the carrying value UPS had assigned to Freight without giving the consultant the information it needed to fairly value the business. For example, UPS did not inform the consultant that its internal analysis had concluded a prospective buyer would expect Freight to generate significantly less profit after it was sold because it would no longer benefit from synergies and other cost savings it was getting as part of UPS. Using financial information and assumptions provided or approved by UPS, the consultant valued Freight at about \$2 billion. It was clear that the consultant's valuation was based on assumptions a prospective buyer would not make in valuing Freight, and therefore did not produce a fair value estimate determined in accordance with GAAP. Nevertheless, UPS relied on this valuation and did not record a goodwill impairment.

4. UPS decided to seek a sale of Freight in 2020. In October 2020, UPS executed a non-binding term sheet with a prospective buyer to sell Freight for \$800 million subject to various adjustments that were likely to reduce the final price. Yet when conducting the goodwill impairment test for 2020, UPS did not consider this proposed transaction when valuing Freight. Instead UPS relied again on the consultant's valuation of Freight without informing the consultant of the terms of the sale transaction the company was pursuing. As in 2019, the consultant again valued Freight at about \$2 billion using financial information and assumptions provided or approved by UPS that market participants would not make, and thus did not reflect Freight's fair value.

5. In 2019 and 2020, UPS made various disclosures regarding the amount of its earnings, goodwill balances, and shareowners' equity that were materially misleading. UPS failed

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.

to inform investors that these reported items were materially dependent on valuations for Freight that did not reflect the business's fair value and did not fairly align with information in the company's possession about the assumptions market participants would use in valuing Freight. Instead, these disclosures were based on UPS's conclusion that the goodwill for its Freight business was not impaired when the company had reliable information that it was. Had UPS complied with GAAP by valuing Freight using assumptions market participants would use and recognized the resulting goodwill impairment, its reported earnings, goodwill balances, and shareowners' equity would have been materially lower during the relevant period. UPS did not disclose or otherwise inform investors of these material facts.

6. UPS finally concluded that Freight's goodwill was impaired in the fourth quarter of 2020, when the company wrote off the goodwill after reaching an agreement to sell Freight for a net price of about \$650 million. The write-off reduced UPS's fiscal year 2020 income from continuing operations by about 6%, its fiscal year 2020 net income by about 20 percent, its goodwill balances by about 13 percent, and its shareowners' equity by about 32 percent.

7. In addition, UPS made false and misleading disclosures during this period about its goodwill impairment testing. For example, in the third quarter of 2020, while UPS was in negotiations to sell Freight for hundreds of millions of dollars below its carrying value, the company falsely claimed in a Form 10-Q that there had been "no events or changes in circumstances" that would indicate Freight's goodwill may be impaired.

8. As a result of this misconduct, UPS engaged in conduct that materially misled investors and failed to comply with its reporting, books and records, internal accounting controls, internal control over financial reporting, and disclosure controls and procedures obligations.

Respondent

9. UPS, a Delaware corporation headquartered in Atlanta, Georgia, is a package delivery company and provides supply chain management products and services. UPS's stock is registered under Section 12(b) of the Exchange Act and trades on the New York Stock Exchange.

Background

UPS's Failures to Properly Value the Freight Business

UPS's Internal Analysis of Freight

10. In mid-2019, UPS's corporate strategy group, which included the company's mergers and acquisitions specialists, worked with external financial advisors on a months-long evaluation of whether UPS should sell Freight, a business unit that had been underperforming the

company's expectations. That analysis concluded Freight would likely sell for between \$350 million and \$650 million.

11. This estimate was considerably less than the \$1.4 billion carrying value UPS had ascribed to Freight.² The corporate strategy group concluded that a sale at that price would require UPS to recognize an impairment of all the goodwill associated with Freight (about \$500 million) on its balance sheet and record a material charge to income.

12. Though UPS decided not to sell Freight at that time, its analysis of what Freight's sale price was likely to be should have been considered in the company's goodwill impairment testing under GAAP. Accounting Standards Codification 350 (*Intangibles – Goodwill and Other*) requires entities testing goodwill to compare the carrying value of the reporting unit to its fair value. Fair value is the price that would be received to sell an asset or transfer a liability in an orderly transaction between market participants at the measurement date under current market conditions.³

13. If the carrying value of a reporting unit that includes goodwill exceeds the fair value, GAAP requires the entity to record an impairment loss in an amount equal to that excess or the entire goodwill balance, whichever is lower. The impairment loss is recorded as a charge to income in the current period and thus can have a significant impact on an entity's financial results, including its earnings and shareowners' equity.

14. Because UPS's analysis of Freight reflected a range of likely sale prices that were well below the business's carrying value, it reflected that Freight's goodwill was impaired and that UPS should have recorded an impairment loss with respect to Freight's goodwill. However UPS did not record an impairment at that time because it did not use its analysis of Freight's likely sale prices, which it determined using assumptions market participants would use, in its goodwill impairment testing.

UPS's 2019 Goodwill Impairment Test

15. Prior to 2019, UPS had engaged a valuation consultant to prepare valuation estimates for Freight as part of its goodwill impairment testing. UPS used a valuation consultant again to prepare a valuation estimate for Freight in 2019.⁴ UPS knew or should have known, however, that the consultant's conclusions in 2019 would not reflect Freight's fair value because

² Freight's carrying value equaled the value of the business's assets on UPS's balance sheet (including goodwill) minus its liabilities.

³ ASC 350 provides that fair value shall be determined in accordance with ASC 820 (*Fair Value Measurement*). As explained in ASC 820, the term "fair value" is synonymous with a sale or exit price. ASC 820 further provides that the fair value determination shall be based on "assumptions market participants would use in pricing the asset or liability."

⁴ UPS tested Freight's goodwill balance for impairment annually, using an effective date of July 1, but the actual impairment testing occurred in the months following that date. UPS's external valuation consultant would prepare fair value estimates and provide UPS with a draft valuation report prior to the company's filing of its third quarter Form 10-Q. After review and comment by UPS, the consultant would issue a final report late in the fourth quarter or early the next calendar year.

the consultant's assumptions, which UPS provided or approved, differed substantially from those market participants would use to value the business.

16. The valuation consultant used two valuation methods for its work: the discounted cash flow ("DCF") method, which calculates the present value of a business's future cash flows, and the "Guideline Public Company" ("GPC") method, which derives a valuation by comparing the entity to similar public companies. Using these two methods, the valuation consultant estimated that Freight's value was about \$2 billion—more than three times the high end of UPS's expected sale price range for Freight.

17. The valuation consultant's DCF calculation did not reflect Freight's fair value for several reasons. First, the consultant assumed a higher profit margin for Freight than market participants would. UPS had internally allocated costs between Freight and a sister business unit in a way that allowed Freight to consistently generate about a 16% profit margin on its most important service. Absent this cost allocation arrangement, Freight would have been significantly less profitable. Though UPS's corporate strategy group had determined a third party buyer of Freight would not benefit from the same cost allocation arrangement, and would therefore earn a substantially lower profit from this service, the financial data UPS gave the valuation consultant did not reflect this conclusion.

18. In addition, the financial data UPS gave the valuation consultant did not include other costs a third party buyer would incur to operate Freight as a stand-alone entity. The data UPS gave the consultant for its DCF model included various cost savings that benefited Freight because it was part of the much larger UPS. For example, Freight did not have to incur certain human resources, technology, financial, accounting, legal, and pension-related costs as a component of UPS. Market participants would expect Freight to incur many of these costs—which were likely to be significant—and would adjust their assumptions to take them into account when valuing Freight.

19. UPS's internal forecasts for Freight also used aggressive assumptions about revenue and profit growth in future years. Although UPS's corporate strategy group concluded a prospective buyer would discount these projections by as much as 50 percent, the company did not reflect this conclusion in the financial data it gave the valuation consultant for use in its DCF model.

20. As a result of these factors, the valuation consultant's DCF valuation was not based on the likely assumptions market participants would use in valuing Freight, and therefore did not reflect the price UPS would receive for Freight in an orderly transaction between market participants.

21. The valuation consultant's 2019 GPC calculation also did not reflect Freight's fair value. In its selection of the peer companies it would use to estimate Freight's value, the valuation consultant included multiple firms that—unlike Freight—had non-unionized workforces. UPS understood the non-unionized firms had significantly higher valuation multiples than unionized firms like Freight. UPS was responsible for confirming the suitability of the peer companies proposed by the valuation consultant. Yet UPS did not advise the consultant to exclude the non-unionized firms or otherwise make appropriate adjustments for the valuations of the non-unionized

firms even though it knew or should have known the economic characteristics of the non-unionized firms were not comparable to Freight for valuation purposes. Consequently, the consultant included those firms in its sample and estimated Freight's value to be about \$2 billion using those firms as "comparables" in its GPC valuation.

22. Though UPS knew or should have known the valuation consultant's estimate was unreliable, the company used this work to conclude Freight's goodwill was not impaired and to continue carrying Freight on its balance sheet at about \$1.4 billion.

UPS's 2020 Goodwill Impairment Test

23. In June 2020, UPS launched an initiative to evaluate its asset portfolio and potentially exit businesses that were not meeting the company's expectations. At the time, Freight was one of UPS's worst performing businesses.

24. Later that month, UPS began pursuing a sale of Freight, with the goal of announcing a transaction before the end of 2020. In August 2020, UPS executives began negotiations with a company that had expressed interest in buying Freight. Consistent with UPS's internal analysis in 2019, the executives determined that Freight's sale price was unlikely to exceed \$650 million.

25. In September 2020, UPS told the prospective buyer it was open to selling Freight for \$900 million. The prospective buyer made a non-binding offer to buy Freight for between \$750 and \$800 million before various adjustments to the sale price to be calculated when the transaction closed that were likely to reduce the net sale price.⁵

26. In October 2020—several weeks before UPS filed its Form 10-Q for the third quarter of 2020—UPS and the prospective buyer signed a non-binding term sheet. The contract included a "headline" price of \$800 million before the future adjustments.⁶

27. On November 3, 2020, the day after UPS filed its Form 10-Q, during a regularly scheduled meeting, UPS's Board of Directors authorized management to conclude a sale of Freight to the prospective buyer on terms consistent with the term sheet. Management informed the Board that it expected the company would write off about \$500 million in goodwill for Freight at the close of the transaction.⁷

⁵ The proposed adjustments related to working capital, cash-on-hand, and various payments expected at the close of the transaction.

⁶ The term sheet contemplated that UPS and the buyer would sign a contract under which UPS would continue to provide a certain class of package transport service (as a subcontractor to the buyer) and realize a portion of the profits on that service.

⁷ Although GAAP required UPS to impair Freight's goodwill when its fair value declined below its carrying value—regardless of whether the company was selling the business—the then-senior accountant supervising the impairment analysis wrongly concluded Freight's goodwill would not be impaired until the period in which the company completed a sale of Freight. There was no basis for this in GAAP.

28. Despite this clear evidence of Freight’s fair value, UPS did not consider the signed term sheet when testing goodwill for impairment as of the third quarter of 2020.⁸ Instead UPS relied again on its consultant to prepare a valuation estimate for Freight – but did so without informing the consultant of the term sheet.

29. Moreover, like the prior year, UPS knew or should have known that the valuation consultant’s analysis was not based on assumptions market participants would use in valuing Freight. As it had the prior year, UPS gave the consultant financial results and forecasts for Freight that did not reflect how market participants would evaluate the business, and, again, the consultant estimated Freight’s value at about \$2 billion. Based on the valuation consultant’s estimate, UPS concluded Freight’s goodwill was not impaired and continued carrying Freight on its balance sheet at about \$1.3 billion.

UPS Announces the Sale of Freight and Impairs Goodwill

30. On January 25, 2021, UPS publicly announced that it had reached a definitive agreement to sell Freight for a “headline” price of \$800 million. UPS expected the net sale price would be about \$650 million after future adjustments. UPS also announced that it would record a goodwill impairment charge. The charge reduced UPS’s income from continuing operations and after-tax net income for the twelve months ended December 31, 2020 by about 6 percent (\$494 million) and 20 percent (\$357 million), respectively. It also reduced the values of UPS’s aggregate goodwill on its balance sheet by about 13 percent and its shareowners’ equity by about 32 percent.

UPS’s Materially Misleading Statements to Investors

31. In 2019 and 2020, UPS made various disclosures to investors in Forms 8-K, 10-Q, and 10-K, as well as during earnings calls, regarding its earnings, goodwill balances, and shareowners’ equity that were materially misleading. In reporting these financial statement line items, UPS did not inform investors that they were materially dependent on a valuation for Freight that did not reflect the business’s fair value and did not fairly align with information in the company’s possession about the assumptions market participants would use in valuing Freight. Instead, these disclosures were based on UPS’s conclusion that the goodwill for its Freight business was not impaired when the company had reliable information that it was. Had UPS complied with GAAP by valuing Freight using assumptions market participants would use and recognized the resulting goodwill impairment, its earnings, goodwill balances, and shareowners’ equity would have been materially lower. UPS did not disclose or otherwise inform investors of these material facts.

32. To the contrary, UPS’s public disclosures implied that the company’s goodwill tests were based on reliable valuations of its businesses. In periodic filings for the third quarter and full-year 2019, UPS disclosed that its financial statements used estimates that were based on the “most current and best information” available to the company, and that its impairment tests indicated goodwill was not impaired. Similarly, in its Forms 10-Q for the first three quarters of 2020, UPS represented that its estimates “contemplate current and expected future conditions,” and that its

⁸ UPS’s entry into the October 2020 non-binding term sheet was a Type 1 Subsequent Event under ASC 855 (*Subsequent Events*). As such, the company should have considered the term sheet additional evidence of Freight’s fair value for purposes of the annual goodwill impairment testing in the third quarter of 2020.

impairment tests indicated goodwill was not impaired. These statements were materially false and misleading: UPS's goodwill estimates were not based on the most current and best information available to it about Freight, and the company did not impair goodwill because it had failed to value Freight using assumptions market participants would use as GAAP required.

33. In its Form 10-Q for the quarter ended September 30, 2020 (filed on November 2, 2020), UPS disclosed in its Management's Discussion and Analysis, "There were no events or changes in circumstances during the third quarter of 2020 that would indicate the carrying amount of our goodwill may be impaired as of November 2, 2020." This was materially false. At that time, UPS was in discussions to sell Freight at a price far below its \$1.3 billion carrying value. These discussions indicated not only that UPS's goodwill "may be" impaired, but that it was.

UPS Knew or Should Have Known It Was Materially Misleading Investors

34. UPS knew or should have known the valuation consultant's estimates for Freight did not fairly value Freight in accordance with GAAP and were not a reliable basis on which to conclude that Freight's goodwill was not impaired, and thus that the company's disclosures regarding its earnings, goodwill balances, and shareowners' equity were materially misleading. UPS also knew or should have known the statements in the disclosures cited above regarding its estimates and its goodwill not being impaired were similarly false and misleading.

35. A then-senior accountant at UPS supervised the company personnel performing the goodwill impairment testing with the support of the valuation consultant. The senior accountant knew that under GAAP, a fair value estimate must be based on assumptions market participants would use, and that UPS was required to make adjustments to Freight's historical financial results and internal forecasts when valuing the business as part of its goodwill testing to account for the differences in how market participants would evaluate the business for a potential bid.

36. The then-senior accountant also knew the financial results and forecasts UPS provided to the valuation consultant for use in its valuation of Freight in 2019 and 2020 did not reflect how market participants would value Freight. The senior accountant knew a team of UPS executives, including the company's mergers and acquisitions group, had worked with an external financial advisor to prepare a set of financial results and forecasts that accounted for the various ways in which a potential buyer would evaluate Freight differently from UPS. These reflected the reduced profits, additional "standalone" costs, and less aggressive growth assumptions discussed above. Yet the senior accountant understood UPS did not provide this information to the valuation consultant.

37. The then-senior accountant also was aware of UPS's \$350 million to \$650 million expected sale price range for Freight as determined during the 2019 strategic assessment, and she knew that, weeks prior to filing its third quarter 2020 Form 10-Q, UPS had executed a non-binding term sheet to sell Freight for \$800 million subject to various adjustments that were likely to reduce the final sale price. Yet UPS did not disclose this information to the valuation consultant either.⁹

⁹ A UPS manager informed the valuation firm in late-August 2020 that the company was having discussions with a third party about a potential sale of Freight, but the manager did not share information about the sale price

38. The withheld information clearly reflected that Freight’s fair value was far below its \$1.3 billion then-carrying value. However the then-senior accountant did not consider UPS’s internal assessments regarding a likely sale price range for Freight, or the nonbinding agreement to sell Freight for \$800 million subject to adjustments, relevant to the fair value determination. Instead, UPS assumed that, until it executed a binding agreement of sale, the “best evidence” of Freight’s fair value was the valuation consultant’s estimates – despite the fact that the financial results and forecasts UPS had provided to the valuation consultant in 2019 and 2020 had not been adjusted to reflect assumptions market participants would use in valuing Freight.

39. UPS assumed, for purposes of its goodwill impairment testing, that a potential buyer of Freight would be a firm equal to UPS in scale and would integrate Freight into its consolidated operations as UPS had. However there was no factual basis for this assumption. UPS had concluded the buyer universe for Freight was limited and none of the potential buyers was even close to the size of UPS. Accountants at UPS also had expertise in goodwill impairment testing under GAAP, which requires that fair value estimates be based on “current market conditions” rather than hypothetical scenarios under which a buyer is assumed to have the same characteristics as the seller.¹⁰

UPS’s Insufficient Controls and Procedures

40. UPS’s failure to impair Freight’s goodwill as required under GAAP arose, in part, from inadequate internal accounting controls and internal control over financial reporting. UPS failed to devise and maintain controls and procedures sufficient to provide reasonable assurances that its accountants were appropriately considering reliable indicia of Freight’s fair value, including the company’s internal assessments of Freight’s likely sale price range and, in 2020, information regarding the negotiations to sell Freight for considerably below its carrying value.

41. UPS’s disclosure failures arose, in part, from and reflected inadequate disclosure controls and procedures. UPS failed to maintain controls and procedures designed to ensure that its disclosures in reports filed with the Commission relating to its earnings, goodwill balances, shareowners’ equity, and estimates were not materially false or misleading.

UPS’s Violations

42. As a result of the conduct described above, UPS violated Section 17(a)(2) and (3) of the Securities Act, which prohibit any person from directly or indirectly “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,” and from “engag[ing] in any transaction, practice, or course of

under discussion. The valuation firm was unaware of the “gap” between its valuation and the much lower sale price until shortly before UPS announced the impending sale of Freight on January 25, 2021.

¹⁰ ASC 820 provides, “[t]he objective of a fair value measurement is to estimate the price at which an orderly transaction to sell the asset ... would take place between market participants at the measurement date under current market conditions.”

business which operates or would operate as a fraud or deceit upon the purchaser” in the offer or sale of securities.¹¹

43. UPS violated Section 13(a) of the Exchange Act and Rules 13a-1, 13a-11, 13a-13 and 12b-20 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission information, documents, and annual, current, and quarterly reports as the Commission may require, and mandate that periodic reports contain such further material information as may be necessary to make the required statements not misleading.

44. UPS violated Exchange Act Section 13(b)(2)(A), which requires reporting companies to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

45. UPS violated 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 recorded as necessary to permit preparation of financial statements in accordance with GAAP.

46. UPS also violated Exchange Act Rule 13a-15, which requires that every issuer of a security registered pursuant to Exchange Act Section 12 maintain disclosure controls and procedures as defined in Exchange Act Rule 13a-15(e), and, for issuers required to file an annual report pursuant to Section 13(a) or 15(d) for the prior fiscal year, internal control over financial reporting as defined in Rule 13a-15(f).

Undertakings

47. Respondent undertakes to:

- a. Cooperate fully with the Commission in any and all investigations, litigations, or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, Respondent shall:
 - i. Produce, without service of a notice or subpoena, any and all non-privileged documents and other information requested by the Commission staff subject to any restrictions under the law of any foreign jurisdiction;
 - ii. Use its best efforts to cause its officers, employees, and directors to be interviewed by the Commission staff at such time as the staff reasonably may direct;
 - iii. Use its best efforts to cause its officers, employees, and directors to appear

¹¹ Violations of Sections 17(a)(2) and (3) of the Securities Act do not require scienter. *See Aaron v. SEC*, 446 U.S. 680, 697 (1980). During the relevant period, UPS offered and sold stock to its employees through an Omnibus Incentive Compensation Plan for which a Form S-8 was filed with the Commission on May 15, 2018. The S-8 incorporated by reference all subsequent filings by UPS under the Exchange Act, including the filings containing statements and omissions at issue herein. UPS also offered and sold stock to employees through an employee stock program in which its common stock was one of the investment options.

and testify without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission staff; and

- b. In connection with any testimony of Respondent's officers, employees, and directors to be conducted at deposition, hearing, or trial pursuant to a notice or subpoena, Respondent:
 - i. Agrees that any such notice or subpoena for Respondent's officers', employees', and directors' appearance and testimony may be served by regular or electronic mail on: David Woodcock, Esq., Gibson, Dunn & Crutcher LLP, 1700 M Street N.W., Washington, DC 200036; dwoodcock@gibsondunn.com.
 - ii. Agrees that any such notice or subpoena for Respondent's officers', employees', and directors' appearance and testimony in any action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

In determining whether to accept the Offer, the Commission has considered these undertakings.

48. Respondent also undertakes to complete the following actions:

- a. Remedial Training. Beginning within 90 days and ending no earlier than 36 months after entry of this Order:
 - i. UPS will cause all certified public accountants employed by the company who are involved in preparing, reviewing, or supervising fair value estimates to complete a minimum of 4 hours of annual training concerning the preparation of fair value estimates under ASC 820 and goodwill impairment testing pursuant to ASC 350, to be administered by an independent training provider not unacceptable to the staff of the Commission; and
 - ii. UPS will cause all officers and employees with responsibility for UPS's public disclosures, including but not limited to all members of the company's Disclosure Committee, to complete a minimum of 4 hours of annual training concerning UPS's public disclosure obligations required by the Securities Exchange Act of 1934 and the collection and assessment of information potentially subject to those requirements, to be administered by an independent training provider not unacceptable to the staff of the Commission.
- b. Retention of Independent Compliance Consultant. Within 30 days of the issuance of this Order, Respondent shall retain the services of an Independent Compliance Consultant ("Independent Consultant") not unacceptable to the staff of the

Commission and provide a copy of this Order to the Independent Consultant. Respondent shall provide the Commission staff with a copy of the engagement letter detailing the Independent Consultant's responsibilities, which shall include the reviews and reports to be made by the Independent Consultant as set forth in this Order. The Independent Consultant's compensation and expenses shall be borne exclusively by Respondent.

- c. Independent Consultant's Reviews. Respondent shall require the Independent Consultant to:
 - i. Review the company's policies, procedures, and controls relating to: preparation and use of fair value estimates in connection with annual and interim period goodwill impairment testing; and collection and assessment of information concerning UPS's public disclosure obligations required by the Securities Exchange Act of 1934 and the collection and assessment of information potentially subject to those requirements; and
 - ii. At the end of the review, but no later than 365 days after the entry of this Order, submit a written report to Respondent and the Commission staff that shall include a description of the review performed, the names of the individuals who performed the review, the Independent Consultant's findings and recommendations for changes or improvements to the disclosures, policies, and procedures, and a procedure for implementing the recommended changes and improvements.
- d. Respondent shall, within 60 days of receipt of the Independent Consultant's report, adopt all recommendations contained in the report, provided, however, that within 45 days after the date of the report, Respondent shall in writing advise the Independent Consultant and the Commission staff of any recommendations that it considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate, Respondent need not adopt that recommendation at that time but Respondent shall instead propose in writing to the Independent Consultant and Commission staff an alternative policy or procedure designed to achieve the same objective or purpose as that recommended by the Independent Consultant, or a different timeline for implementation in light of the recommendation. Respondent shall attempt in good faith to reach an agreement with the Independent Consultant on any recommendations objected to by Respondent. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation. At the same time, Respondent may seek approval from the Commission staff to not adopt the recommendations that Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. In the event that Respondent and the

Independent Consultant are unable to agree on an alternative proposal within 30 days and the Commission staff does not agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall abide by the determinations of the Independent Consultant.

- e. Within 30 days of Respondent's adoption and implementation of all of the recommendations in the Independent Consultant's report that the Independent Consultant deems appropriate, as determined pursuant to the procedures set forth herein, Respondent shall certify in writing to the Independent Consultant and the Commission staff that Respondent has adopted and implemented all recommendations in the applicable report. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence.
- f. Respondent shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to such of its files, books, records, and personnel as reasonably requested for the Independent Consultant's review, including access by on-site inspection. To ensure the independence of the Independent Consultant, Respondent (1) shall not have the authority to terminate the Independent Consultant or substitute another independent consultant for the initial Independent Consultant without prior written approval of the Commission staff; and (2) shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.
- g. The deadlines in this Undertaking shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.
- h. For the period of engagement and for a period of two years from completion of the engagement, Respondent shall not (i) retain the Independent Consultant for any other professional services outside of the services described in the Order; (ii) enter into any other professional relationship with the Independent Consultant, including any employment, consultant, attorney-client, auditing or other professional relationship; or (iii) enter, without prior written consent of the Commission staff, into any such professional relationship with any of the Independent Consultant's present or former affiliates, employers, directors, officers, employees, or agents acting in their capacity as such..
- i. Respondent shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or any other doctrine of privilege to prevent the Independent Consultant from transmitting any information, reports, or documents to the Commission.
- j. The reports by the Independent Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports could discourage cooperation, impede pending or potential government

investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) as otherwise required by law.

- k. Respondent shall certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Rami Sibay, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549, with a copy to the Office of Chief Counsel of the Enforcement Division, 100 F St., NE, Washington, DC 20549, no later than sixty (60) days from the date of the completion of the undertakings.

Respondent may apply to the Commission staff for an extension of the deadlines described above before their expiration, and upon a showing of good cause by the Respondent, the Commission staff may, in its sole discretion, grant such extensions for whatever time period it deems appropriate.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent shall cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) and (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, 13a-13, and 13a-15 thereunder.

B. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$45 million to the Securities and Exchange Commission. 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 UPS 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. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the penalty and interest referenced in paragraph B above. 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 shall comply with the undertakings enumerated in Paragraph 48 above.

By the Commission.

Vanessa A. Countryman
Secretary