

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 11162 / March 2, 2023

SECURITIES EXCHANGE ACT OF 1934

Release No. 97017 / March 2, 2023

ADMINISTRATIVE PROCEEDING

File No. 3-21318

In the Matter of

The Greenbrier Companies, 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 The Greenbrier Companies, Inc. (“Greenbrier” 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. These proceedings arise from Greenbrier's failure to disclose: certain perquisites to its founder and former CEO, William A. Furman ("Furman"), and certain other named executive officers (NEOs); and Greenbrier's failure to disclose certain information regarding related person transactions involving Furman.

2. In its proxy statements for fiscal years 2017 to 2020, Greenbrier failed to disclose an aggregate of approximately \$320,000 in perquisites to Furman and certain other Greenbrier NEOs for travel-related expenses for Furman's and such other NEOs' spouses and for personal security.

3. In its proxy statements for fiscal years 2017 to 2021, Greenbrier also failed to disclose that Furman received approximately \$1.6 million of the approximately \$3 million total that Greenbrier paid during those years for the charter of his private aircraft.

4. Throughout this time, Greenbrier's insufficient internal accounting controls resulted in Greenbrier's failure to record these expenses as perquisites as well as the amount of Furman's interest in Greenbrier's related person transactions in its books and records. In addition, Furman failed to identify certain travel-related and personal security expenses as perquisites and to provide required details regarding related person transactions involving his private aircraft. As a result, Greenbrier made material misstatements in its definitive proxy statements and annual reports filed with the Commission on Form 10-K.

5. As a result of the conduct described herein, Greenbrier violated Sections 17(a)(2) and 17(a)(3) of the Securities Act and Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, 14a-3, and 14a-9 thereunder.

Respondent

6. **The Greenbrier Companies, Inc.**, an Oregon corporation with its principal place of business in Lake Oswego, Oregon, is an international supplier of equipment and services to global freight transportation markets. Greenbrier's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the New York Stock Exchange under the ticker symbol, "GBX."

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.

Related Individual

7. **William A. Furman**, age 78, resides in Glen Brook, Nevada. Furman co-founded Greenbrier in 1981 and has been a member of its board of directors since then. Furman became CEO of Greenbrier in 1994 and Chairman of the Board in 2014. In March 2022, Furman ceased being CEO and assumed the new role of Executive Chairman. Furman retired from his position as Executive Chairman on August 31, 2022. He will remain a board member until January 2024.

Background on Related Person Transactions and Perquisite Disclosures

8. Section 14(a) of the Exchange Act makes it unlawful to solicit any proxy in respect of any security (other than an exempted security) registered pursuant to Section 12 of the Exchange Act in contravention of such rules and regulations as the Commission may prescribe. Exchange Act Rule 14a-3 prohibits the solicitation of a proxy without furnishing information specified by Schedule 14A, including related person transactions pursuant to Item 404 of Regulation S-K and executive compensation pursuant to Item 402 of Regulation S-K. Exchange Act Rule 14a-9 prohibits the use of, among other things, proxy statements containing any statement that is false or misleading with respect to any material fact, or omitting to state any material fact necessary in order to make the statements therein not false or misleading. Misstatements and omissions are material under Exchange Act Rule 14a-9 if they would alter the “total mix” of information considered by a shareholder in making a voting decision. *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

9. Item 402 of Regulation S-K requires a registrant to disclose the total value of all perquisites and other personal benefits provided to named executive officers who receive at least \$10,000 worth of such items in a given year. Item 402 also requires identification of all perquisites and personal benefits by type, and quantification of any perquisite or personal benefit that exceeds the greater of \$25,000 or 10% of total perquisites.

10. Item 404 of Regulation S-K requires a registrant to disclose any transaction, or series of transactions, exceeding \$120,000 in which a related person, such as an officer or director, had a material interest. For any such transaction, the registrant must disclose specified information, including the “approximate dollar value of the amount involved in the transaction” and the “approximate dollar value of the amount of the related person’s interest in the transaction, which shall be computed without regard to the amount of profit or loss.”

11. In 2006, the Commission adopted amendments to executive compensation disclosure rules, including Item 402 of Regulation S-K. *See* Commission’s Executive Compensation and Related Person Disclosure Final Rule adopting release, Release Nos. 33-8732A; 34-54302A; IC-27444A; File No. S7-03-06 (August 29, 2006) (the “Adopting Release”). According to the Adopting Release, “an item is not a perquisite or personal benefit,” and does not need to be reported:

[I]f it is integrally and directly related to the performance of the executive’s duties. Otherwise, an item is a perquisite or personal benefit if it confers a direct or indirect

benefit that has a personal aspect, without regard to whether it may be provided for some business reason or for the convenience of the company, unless it is generally available on a non-discriminatory basis to all employees.

12. The Adopting Release also states that “[t]he concept of a benefit that is ‘integrally and directly related’ to job performance is a narrow one,” which “draws a critical distinction between an item that a company provides because the executive needs it to do the job, making it integrally and directly related to the performance of duties, and an item provided for some other reason, even where that other reason can involve both company benefit and personal benefit.” According to the Adopting Release, even where the company “has determined that an expense is an ‘ordinary’ or ‘necessary’ business expense for tax or other purposes or that an expense is for the benefit or convenience of the company,” that determination “is not responsive to the inquiry as to whether the expense provides a perquisite or other personal benefit for disclosure purposes.” Indeed, “business purpose or convenience does not affect the characterization of an item as a perquisite or personal benefit where it is not integrally and directly related to the performance by the executive of his or her job.”

Greenbrier’s Undisclosed Perquisites

13. In Greenbrier’s proxy statements for fiscal years 2017 to 2020, Greenbrier disclosed a total of approximately \$106,000 in perquisites and other personal benefits to Furman and approximately \$363,000 in perquisites and other personal benefits to the other NEOs combined. The disclosed perquisites and other personal benefits to Furman and the other NEOs consisted of use of a company car, financial advisors, club dues, and a one-time medical expense for one NEO.

14. These same proxy statements failed to disclose perquisites of a total of approximately \$179,000 for Furman and \$142,000 for certain other NEOs combined for the fiscal years 2017 to 2020, consisting of travel-related expenses for Furman’s and the other NEOs’ spouses to attend customer and industry receptions and other functions, and for personal security that was not directly and integrally related to the performance of Furman’s and certain other NEOs’ duties. As a result, Greenbrier understated the perquisites provided to Furman and the other NEOs by approximately \$320,000 during fiscal years 2017 to 2020.

15. Greenbrier incorporated by reference relevant portions of its proxy statements for fiscal years 2017 to 2020 into its annual reports filed with the Commission on Form 10-K.

16. Between 2017 and 2021, during the period that its proxy statements and annual reports filed with the Commission on Form 10-K were materially misstated, Greenbrier offered and sold securities, including through grants of restricted stock units to its employees and through offers and sales of convertible notes.

Greenbrier's Failure to Disclose the Amount of Furman's Interest in Greenbrier's Charter of Furman's Private Aircraft

17. During fiscal years 2017 to 2021, Furman owned a private aircraft that he leased to a private aircraft management company, which operated the aircraft and chartered it to third-party customers on Furman's behalf. Greenbrier regularly chartered Furman's aircraft from the management company for Greenbrier's employees' business-related travel. Pursuant to an agreement between Furman and the aircraft management company, Furman was entitled to receive 85% of the aircraft's hourly charter rate for each actual flight hour that the management company chartered the aircraft to a third party. The management company also charged customers certain additional expenses and Furman did not receive a portion of those additional expenses. During fiscal years 2017 to 2021, Furman received approximately \$1.6 million of the total amount Greenbrier paid for the charter of his aircraft.

18. Each of Greenbrier's proxy statements for fiscal years 2017 to 2021 contain a section titled "Related Party Transactions." In those sections, Greenbrier disclosed that Furman owns a private aircraft that is managed by an independent management company; that Greenbrier had chartered Furman's aircraft from the independent management company; and that, in the aggregate, Greenbrier had paid the aircraft management company approximately \$3 million to charter Furman's plane.

19. Greenbrier's annual reports filed on Form 10-K for fiscal years 2017 to 2021 incorporate by reference the "Related Party Transactions" section in the proxy statements for fiscal years 2017 to 2021.

20. Greenbrier's proxy statements and annual reports for fiscal years 2017 to 2021 did not disclose that Furman received approximately \$1.6 million from Greenbrier's charters of Furman's aircraft from the private aircraft management company.

D&O Questionnaires

21. During fiscal years 2017 to 2021, Greenbrier required Furman to complete an annual Directors & Executive Officers Questionnaire (the "D&O Questionnaire"), which Greenbrier used to prepare its annual proxy statements. Furman completed a D&O Questionnaire for each fiscal year from 2017 to 2021.

22. The D&O Questionnaires state that "[t]he Company is required by the SEC to disclose the value of nonmonetary benefits (commonly referred to as 'fringe benefits' or 'perquisites') given to you by the Company or any Affiliates." The D&O Questionnaires explain that perquisites "include items that provide direct or indirect benefit to you and that have a personal aspect, even if an item may be provided for some business reason or for the convenience of the Company." The D&O Questionnaires further explain that, "[y]ou do not need to disclose those items that are integrally and directly related to the performance of your duties." However, the questionnaires cautioned that, "[i]f you have doubts as to whether a particular item is a perquisite or personal benefit, disclose the item." In each D&O Questionnaire for fiscal years 2017 to 2021,

Furman did not disclose the perquisites listed above related to travel expenses for his spouse or for personal security.

23. The D&O Questionnaires ask the recipient to identify any related person transactions. For each related person transaction, the D&O Questionnaires asked the recipient to provide “[t]he approximate dollar value of the amount of the Person’s Interest in the Transaction, which shall be computed without regard to the amount of profit or loss.” In each D&O Questionnaire for fiscal years 2017 to 2021, Furman identified the “Furman aircraft” as a related person transaction, but he did not provide the approximate dollar value of the amount of his interest in Greenbrier’s lease of his aircraft.

Violations

24. Section 17(a)(2) of the Securities Act makes it unlawful, in the offer or sale of securities, to obtain 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. Negligence is sufficient to establish violations of Section 17(a)(2); no finding of scienter is required. *Aaron v. SEC*, 446 U.S. 680, 701-02 (1980). As a result of the conduct described above, Greenbrier violated Section 17(a)(2) of the Securities Act.

25. Section 17(a)(3) of the Securities Act makes it unlawful, in the offer or sale of securities, to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser. Negligence is sufficient to establish violations of Section 17(a)(3); no finding of scienter is required. *Aaron*, 446 U.S. at 696-97. As a result of the conduct described above, Greenbrier violated Section 17(a)(3) of the Securities Act.

26. In addition, as a result of the conduct described above, Greenbrier violated Section 14(a) of the Exchange Act and Rules 14a-3 and 14a-9 thereunder. No showing of scienter is required to establish violations of Section 14(a) and Rules 14a-3 and 14a-9 thereunder. *Gerstle v. Gamble-Skogmo, Inc.*, 478 F.2d 1281, 1299-1300 (2d Cir. 1973).

27. In addition, as a result of the conduct described above, Greenbrier violated Section 13(a) of the Exchange Act and Rules 13a-1 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 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.

28. In addition, as a result of the conduct described above, Greenbrier violated Section 13(b)(2)(A) of the Exchange Act, 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.

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

Greenbrier's Remedial Efforts

30. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent. Specifically, Greenbrier (i) developed new internal controls over perquisite and other proxy disclosures, expense reporting, and travel and (ii) trained NEOs and employees on expense report completion and the D&O Questionnaire.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Greenbrier cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act and Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, 14a-3, and 14a-9 thereunder.

B. Respondent Greenbrier shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount \$1,000,000 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-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Greenbrier 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 Monique Winkler, Regional Director, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA, 94104.

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