Press Release

SEC Charges BMW for Disclosing Inaccurate and Misleading Retail Sales Information to Bond Investors

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Washington D.C., Sept. 24, 2020 —The Securities and Exchange Commission today announced settled charges against Germany-based automaker BMW AG and two of its U.S. subsidiaries for disclosing inaccurate and misleading information about BMW's retail sales volume in the U.S. while raising approximately $18 billion from investors in several corporate bond offerings.

According to the SEC's order, from 2015 to 2019, BMW inflated its reported retail sales in the U.S., which helped BMW close the gap between its actual retail sales volume and internal targets and publicly maintain a leading retail sales position relative to other premium automotive companies. The order finds that BMW of North America LLC (BMW NA) maintained a reserve of unreported retail vehicle sales — referred to internally as the "bank" — that it used to meet internal monthly sales targets without regard to when the underlying sales occurred. The order also finds that BMW NA paid dealers to inaccurately designate vehicles as demonstrators or loaners so that BMW would count them as having been sold to customers when they had not been. Additionally, the order finds that BMW NA improperly adjusted its retail sales reporting calendar in 2015 and 2017 to meet internal sales targets or bank excess retail sales for future use. As a result, according to the order, the information that BMW provided to investors in the bond offerings by BMW's U.S. financing subsidiary, BMW US Capital LLC, and to credit rating agencies contained material misstatements and omissions regarding BMW's U.S. retail vehicle sales.

"Companies accessing U.S. markets to raise capital have an obligation to provide accurate information to investors," said Stephanie Avakian, Director of the Division of Enforcement. "Through its repeated disclosure failures, BMW misled investors about its U.S. retail sales performance and customer demand for BMW vehicles in the U.S. market while raising capital in the U.S."

The SEC's order notes BMW's significant cooperation during the investigation amid challenges posed by the COVID-19 pandemic, including travel restrictions, work-from-home orders, and office closures, and that this cooperation was taken into account in imposing a penalty.

"This settlement illustrates the significant benefits to companies for providing concrete cooperation that substantially advances the quality and efficiency of our investigations once contacted by agency staff," said Anita B. Bandy, an Associate Director in the Division of Enforcement. "As we continue to vigorously pursue wrongdoing during the COVID-19 pandemic, companies wishing to receive credit should be forthcoming in their approach to cooperation."

The SEC's order finds that BMW AG, BMW NA, and BMW US Capital violated antifraud provisions of Sections 17(a)(2) and (3) of the Securities Act of 1933. Without admitting or denying the order's findings, the three companies agreed to pay a joint penalty of $18 million and to cease and desist from future violations of these provisions.

The SEC's investigation was conducted by Nishchay Maskay with assistance from Kristen Dieter, Kevin Gershfeld, and Alex Lefferts, and was supervised by Fuad Rana and Ms. Bandy.

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