

[Securities Regulation Daily Wrap Up, TOP STORY—S.D.N.Y.: Nissan settles charges that it hid \\$140M of retirement payments to former CEO, \(Sept. 23, 2019\)](#)

Securities Regulation Daily

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By [John Filar Atwood](#)

Nissan agreed to pay a \$15 million civil penalty to settle the SEC's administrative proceeding, and the former CEO agreed to a \$1 million payment and a 10-year officer-and-director bar to settle the court case.

Nissan Motor Co., former CEO Carlos Ghosn, and former director Greg Kelly have settled SEC charges that they made false disclosures to conceal more than \$140 million of compensation and benefits to be paid to Ghosn in retirement. According to the SEC, the three parties hid \$90 million of compensation from public disclosure and took steps to increase Ghosn's retirement payments by \$50 million ([SEC v. Ghosn](#), September 23, 2019).

Starting in 2004, Nissan's board gave Ghosn the authority to set director and executive compensation levels, including his own. The SEC found that from 2009 until November 2018, Ghosn, with assistance from Kelly and subordinates at Nissan, engaged in the scheme to conceal the payments in question from public disclosure.

Secret contracts. The SEC stated that Ghosn fixed his own compensation levels each year, with a certain amount paid and disclosed and an additional amount that was undisclosed. Ghosn and subordinates, including Kelly, created ways to structure payment of the undisclosed compensation after Ghosn's retirement. According to the Commission, these included entering into secret contracts, backdating letters to grant Ghosn interests in Nissan's long-term incentive plan, and changing the calculation of Ghosn's pension allowance to provide more than \$50 million in additional benefits.

The SEC determined that Kelly and Ghosn's Nissan subordinates misled the company's chief financial officer, and Nissan issued misleading disclosure in connection with the increased pension allowance. According to the Commission, the \$140 million in undisclosed compensation and retirement benefits was never paid out to Ghosn.

In the [administrative proceeding](#), the SEC charged Nissan with violating the anti-fraud provisions of the Exchange Act. Nissan agreed to pay a \$15 million civil penalty and to cease and desist from committing or causing violations of the anti-fraud provisions. Nissan, Ghosn, and Kelly neither admitted nor denied the SEC's allegations and findings.

The SEC's complaint charged Ghosn with violating anti-fraud provisions, and charged Kelly with aiding and abetting Ghosn's and Nissan's violations. Ghosn and Kelly both agreed to be permanently enjoined from violating or aiding and abetting violations of the anti-fraud provisions.

Civil penalties and bars. Ghosn will pay a \$1 million civil penalty, and Kelly agreed to a \$100,000 civil penalty. Ghosn also agreed to a 10-year officer and director bar, while Kelly received a five-year officer and director bar and a five-year suspension from practicing or appearing before the SEC as an attorney.

The case is [No. 1:19-cv-08798](#).

Attorneys: John J. Bowers for the SEC.

Companies: Nissan Motor Co., Ltd

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