

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 77057 / February 4, 2016

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3738 / February 4, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17100

In the Matter of

Ignacio Cueto Plaza

Respondent.

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

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 Ignacio Cueto Plaza (“Cueto” 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 him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, 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 (“Order”), as set forth below.

III.

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

Summary

1. In 2006 and 2007, Ignacio Cueto Plaza ("Cueto"), the CEO of LAN Airlines S.A. ("LAN"), authorized \$1.15 million in improper payments to a third party consultant in Argentina in connection with LAN's attempts to settle disputes on wages and other work conditions between LAN Argentina S.A. ("LAN Argentina"), a subsidiary of LAN, and its employees. At the time, Cueto understood that it was possible the consultant would pass some portion of the \$1.15 million to union officials in Argentina. The payments were made pursuant to an unsigned consulting agreement that purported to provide services that Cueto understood would not occur. Cueto authorized subordinates to make the payments that were improperly booked in the Company's books and records, which circumvented LAN's internal accounting controls.

Respondent

2. Ignacio Cueto Plaza, age 51, is a Chilean citizen and, since 2012, has been CEO of LAN. From 1995 to 1998, Cueto served as President of LAN Cargo, a LAN subsidiary located in Miami, Florida. He served on the Board of Directors of LAN from 1995 to 1997. From 1999 to 2005, Cueto was CEO of LAN's passenger airline business. In 2005, Cueto became President and COO of LAN Airlines S.A. He remained in that position until June of 2012, when LAN merged with Brazilian Airline TAM, S.A. ("TAM") and became LATAM Airlines Group S.A. ("LATAM").² Cueto remains CEO of LAN, which is now part of LATAM.

Relevant Entities

3. LAN Airlines S.A. ("LAN") was a publicly traded airline company headquartered in Santiago, Chile, that provided passenger and cargo airline services throughout Latin America. LAN merged with TAM, S.A. in 2012. Throughout the relevant period, LAN's common stock was registered in the United States pursuant to Section 12(b) of the Exchange Act and LAN filed annual and quarterly reports as required under Section 13(a) of the Exchange Act and Rules thereunder. Prior to the merger with TAM, LAN's common stock traded on the NYSE under the symbol "LFL."

4. LATAM Airlines Group is a Chilean based holding company. LAN became LATAM after the merger of LAN and its consolidated subsidiaries/or affiliates and TAM, S.A. and its consolidated subsidiaries on June 22, 2012. Following the merger, LATAM's holdings

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.

² The LAN brand, which was launched in 2004 and includes subsidiaries in Peru, Argentina, Columbia and Ecuador continues to exist as part of LATAM.

included LAN and its subsidiaries/or affiliates in Peru, Argentina, Colombia and Ecuador, TAM and its subsidiaries, and LAN Cargo and its affiliates. LATAM's common stock is registered pursuant to Section 12(b) of the Exchange Act and LATAM files annual and quarterly reports as required under Section 13(a) of the Exchange Act and Rules thereunder. LATAM's common stock trades on the NYSE under the symbol "LFL."

5. LAN Argentina S.A. ("LAN Argentina"), formerly known as AERO 2000, was a subsidiary of LAN during the relevant period. LAN Argentina began operations in 2005, and operated domestic and international flights throughout Latin America. It continues to do business as part of LATAM. LAN Argentina's financial statements were consolidated into the financial statements of LAN and later LATAM.

6. Atlantic Aviation Investments LLC ("AAI") was an indirect subsidiary of LAN incorporated in Delaware. LAN used AAI to conceal the sham payments to a company controlled by its consultant in Argentina. AAI's financial statements were consolidated into the financial statements of LAN and later LATAM.

LAN's Entry into Argentina

7. For several years prior to 2004, LAN, a Chilean airline, explored expansion into Argentina. LAN put its Vice President of Business Development at LAN Cargo, a LAN subsidiary, in charge of the expansion efforts. The Vice President of Business Development was based in Miami, Florida, and, reported directly to Cueto.

8. In late 2004, the Vice President of Business Development received a call from a lawyer and purported business consultant in Argentina offering to help LAN with its expansion efforts. The two men later met in Buenos Aires and discussed the obstacles that LAN might face in trying to enter the Argentine airline market. Following the meeting, they kept in touch.

9. In early 2005, officials from the Argentine Transportation Secretary's Office contacted LAN to ask whether it would be interested in purchasing Lineas Aereas Federales S.A. ("LAFSA"), a state owned airline, as a means to enter Argentina. LAN declined the offer to purchase LAFSA but continued discussions with government officials to enter into the market. Eventually the officials informed LAN that LAFSA would cease operations and LAN would enter the Argentine market through the purchase of 49% of the shares of AERO 2000, a non-operating Argentinean airline that possessed an airline operation certificate and owned various flight routes. As part of the deal, LAN agreed to hire workers from LAFSA and another Argentine airline, Southern Winds, to operate AERO 2000.

10. In March 2005, Cueto and the Vice President of Business Development met with the President of Argentina and the Transportation Secretary, as well as other officials from the Ministry of Federal Planning, Public Investment and Services, and Transportation to finalize the terms of the deal. LAN completed its purchase of AERO 2000 on or about April 2005, and AERO 2000 began operations in June 2005. In December 2005, AERO 2000's name was changed to LAN Argentina S.A. The LAN employees primarily involved in these negotiations were the Vice

President of Business Development and the General Manager of LAN Argentina, who later became Chief Operating Officer of LAN. Both employees reported directly to Cueto.

LAN Faces Major Issues Upon Entering the Argentine Market

11. Upon entering the Argentine passenger airline market LAN immediately faced several major issues impacting its viability and began losing money. First, it needed to meet demands from labor unions representing the employees acquired from LAFSA and Southern Winds. Second, LAN needed majority ownership of its Argentine subsidiary, and therefore had to persuade the Argentine government to change its existing law on foreign ownership of domestic airlines and to increase caps on airfares. Third, LAN needed regulatory authorization to operate various flight routes, both domestically and internationally, in Argentina. Since the Argentine passenger airline market was heavily regulated by the government, particularly officials within the Department of Transportation who had close ties to the unions, LAN sought help from the government officials with each of these issues.

12. In early 2006, the consultant again contacted the Vice President of Business Development and offered to assist LAN in Argentina. By this time, the consultant was a government official in the Ministry of Federal Planning, Public Investment and Services, Department of Transportation. On January 31, 2005, the Secretary of Transportation appointed the consultant as a Cabinet Advisor “ad-honorem.”³

13. LAN executives, including Cueto, knew that for LAN Argentina to become profitable it would need an infusion of cash. LAN asked Argentine government officials to liberalize the laws on foreign ownership so that LAN could own a majority share of LAN Argentina and sought government authorization to raise regulated airfares. On or about August 8, 2006, the President of Argentina signed a Decree that enabled LAN to become a majority owner of LAN Argentina and allowed LAN to raise airfares by 20%. LAN Argentina was also awarded critical additional flight routes by the Transportation Secretary.

LAN Encounters Problems with the Unions in Argentina

14. As part of the deal that LAN reached with the Argentine government in March 2005, LAN was required to hire between six and eight hundred employees from the defunct LAFSA and Southern Winds airlines. LAN was bound by the existing bargaining agreements between LAFSA, Southern Winds and the labor unions.

15. There were five unions representing airline employees in Argentina. They included the grounds crew union, the *Asociación del Personal Aeronáutico* (APA), the pilots’ union, the *Asociación de Pilotos de Lineas Aereas* (APLA), the mechanics’ union, *Asociacion del Personal Técnico Aeronáutico* (APTA), the flight attendants’ union, *Asociación de Tripulantes de Cabina de Pasajeros de Empresas Aerocomerciales* (ATCPEA), and the supervisors’ union, *Unión del Personal Superior y Profesional de Empresas Aerocomerciales* (UPSA).

³ The consultant resigned from the position on or about July 2, 2009.

16. All of the unions were powerful and unafraid to make demands on LAN. They sought wage increases and additional benefits, and used the terms of their respective Collective Bargaining Agreements (“CBAs”) as leverage. These labor agreements contained provisions that LAN believed were unfavorable, such as restrictions on the hours employees could work and their work locations.

17. The mechanics’ union, the flight attendants’ union and the supervisors’ union each had a single-function rule contained in their CBAs. The single-function rule was a provision that limited workers from performing more than one work function at a time for LAN. The single-function rule was loosely interpreted and for the most part not enforced by the unions. Had it been enforced, the single-function rule would have required LAN to double its work force and would have seriously imperiled LAN’s ability to continue its operations in Argentina.

18. Around 2006 the unions began campaigning for wage increases. The unions threatened to enforce the single-function rule unless LAN Argentina agreed to a substantial wage increase. LAN’s management, including Cueto, attempted to negotiate on the wage issues but made no progress and things worsened over time. Eventually there were work stoppages and slowdowns on the part of the workforce, including strikes involving the pilots’ and the mechanics’ unions.

Cueto Approves Improper Payments

19. Beginning in the summer of 2006, the consultant supplied LAN executives with information on how to deal with specific union members and the unions in general. Eventually, the consultant offered to negotiate directly with the unions on LAN’s behalf, making it clear that he would expect compensation for such negotiations, and that payments would be made to third parties who had influence over the unions. After his staff informed Cueto that the consultant was well connected with the unions and could effectively negotiate an agreement with union officials, Cueto approved the retention of the consultant.

20. During the summer of 2006, Cueto approved payments totaling \$1,150,000 to the consultant in connection with LAN’s attempts to settle disputes on wages and other work conditions with the unions. At the time, Cueto understood that it was possible the consultant would pass some portion of the \$1.15 million to union officials in Argentina. Cueto approved the payments to get the unions to abandon their threats to enforce the single-function rule and to get them to accept a wage increase lower than the amount asked for in negotiations. LAN and the consultant agreed that LAN would make the payment to a company controlled by the consultant in Argentina. In 2006, LAN did not have a policy requiring that due diligence be performed on consultants, and neither Cueto nor LAN conducted any due diligence on the consultant or any of his related entities.

21. Around August 2006, Cueto’s staff informed him that the consultant had reached an oral agreement to settle the wage dispute with the mechanics’ union on LAN’s behalf. Although the existing Collective Bargaining Agreement with the mechanics’ union would remain unchanged, Cueto understood that the union would orally agree not to seek enforcement of the single-function rule for a period of four years in exchange for a wage increase of approximately

15% of salary. The wage increase of approximately 15% was lower than the amount originally sought by the mechanics' union.

22. Around August 2006, the flight attendants' and supervisors' unions both agreed to accept wage increases of approximately 15% and 10% respectively of salaries. The amounts were lower than the amounts originally sought by each union.

Sham Contract with Consultant's Company

23. On October 2, 2006, the consultant sent the Vice President of Business Development an e-mail attaching a draft consulting contract between LAN and the consultant's company for his "consideration." The consultant copied the e-mail and draft contract to a chief advisor to the Transportation Secretary who oversaw airline and union issues. The following day, the Vice President of Business Development forwarded the draft contract to Cueto for his review. The contract described the \$1,150,000 to be paid to the consultant's company in three installments, and falsely stated that the consultant would undertake a study of existing air routes in Argentina and the regional market as a basis for the payment. The draft contract was never signed by the parties. Cueto knew that the consultant would not perform a study. Cueto did not inform anyone at LAN that the contract falsely stated the purpose of the payments to the consultant.

24. To further disguise the sham arrangement, an unrelated LAN subsidiary, AAI incorporated in Delaware, was used to make the improper payments to the consultant's company. Around October 20, 2006, the consultant's company sent a backdated invoice for \$300,000 to AAI, the LAN subsidiary that was designated by LAN to make the improper payments to the consultant's company. The invoice indicated that the amount due was for "consulting services provided by and payable...under contract signed by both parties." It also contained wire transfer instructions to a brokerage account in Virginia owned by the consultant and his wife. On October 20, 2006, LAN wired the \$300,000 to the brokerage account. Additional invoices for \$300,000 on November 21, 2006 and \$550,000 on January 17, 2007 were sent to AAI and paid to the same brokerage account. All of the improperly booked payments to the consultant's company were intentionally mis-recorded as payments to "other debtors" on AAI's books and records.

25. In November 2007, the Vice President of Business Development received an invoice from the consultant for \$58,000 payable to an account in Spain in the name of another company, which was owned by the consultant's son and wife and was headquartered in Costa Rica. The invoice was also directed for payment by LAN's AAI subsidiary. This payment was in addition to the \$1.15 million already authorized by Cueto and paid to the consultant. Cueto received a copy of the invoice via e-mail from the Vice President of Business Development. Like the consultant's draft contract, the invoice indicated that it was for payment for a study of existing air routes in Argentina and the regional market, which Cueto knew was inaccurate. In November 2007, LAN paid the invoice.

26. Cueto approved the consultant's compensation and instructed the CFO of LAN to pay the consultant's invoices. The invoices contained false references to consulting services that were never rendered by the consultant. At the time he approved the payments to the consultant, Cueto knew that the unsigned consulting contract with the consultant's company was a sham

contract. Cueto did not inform the CFO or LAN's legal department that \$1,150,000 in payments was being made to the consultant's company pursuant to a fake contract for improper purposes. Further, while copied on an email attaching the \$58,000 invoice for payment to the company owned by consultant's son and wife, Cueto took no action to stop the payment, which he knew contained false references to services never rendered.

Cueto Caused LAN's Inaccurate Books and Records

27. Cueto authorized improper payments that were not accurately and fairly reflected on LAN's books and records. Cueto directed subordinates to make the improper payments. The improper payments authorized by Cueto were improperly described in the books and records as "other debtors" costs in a LAN subsidiary that had no role in LAN's argentine business.

Cueto Caused LAN's Internal Accounting Control Failure

28. As President and Chief Operating Officer of LAN, Cueto, along with others, was responsible for devising and maintaining compliance with internal accounting controls at LAN. Cueto did not follow the company's existing internal accounting controls when he authorized the payment of \$1,150,000 to the consultant's company and failed to prevent the payment of \$58,000 to another company owned by consultant's son and wife. Cueto received and approved the sham contract for the consultant's company to provide consulting services to LAN, knowing that such services would never be provided. Cueto also authorized payment of invoices from the consultant's company that contained a description of services listed on the invoices that was false.

Legal Standards and Violations

29. Under Section 21C(a) of the Exchange Act, the Commission may impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act or any rule or regulation thereunder, and upon any other person that is, was, or would be a cause of the violation, due to an act of omission the person knew or should have known would contribute to such violation.

30. As a result of the conduct described above, Cueto caused violations of Section 13(b)(2)(A) of the Exchange Act by LAN, which requires issuers to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of the assets of the issuer.

31. In addition, as a result of the conduct described above, Cueto caused violations of Section 13(b)(2)(B) of the Exchange Act by LAN, which requires issuers 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. Cueto also violated Section 13(b)(5) of the Exchange Act, which states that no person shall knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book, record or account. Cueto also violated Rule 13b2-1, which states that no person shall, directly or indirectly, falsify or cause to be falsified, any book, record, or account subject to section 13(b)(2)(A) of the Exchange Act.

Remedial Actions and Undertakings

32. As the CEO of LAN, which is now a division of LATAM, Cueto is subject to LATAM's enhanced compliance structure and internal accounting controls. Cueto is required to certify compliance with LATAM's new Code of Conduct that was adopted in 2013, as well as other internal corporate policies, including an Anti-Corruption Guide, a Gifts, Travel, Hospitality and Entertainment Policy, an Escalation Policy, and Procurement and Payment policies.

33. Respondent has attended the Corporate Governance Training provided by the LATAM Chief Compliance Officer and has provided a certification confirming acknowledgement of the Code of Conduct, the relevant applicable regulations, as well as the Company policies. Respondent has also executed an amendment to his employment agreement whereby Respondent acknowledges having been informed regarding the LATAM Manual for the Prevention of Corruption, among other matters, and his responsibilities to perform his duties with the highest ethical standards, in compliance with all Company Policies and Procedures. Respondent undertakes to do the following: in connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Respondent (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Respondent's undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Respondent's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Respondent in any United States District Court for purposes of enforcing any such subpoena.

34. Respondent also undertakes to attend all anti-corruption training sessions required for senior executives at LAN. These sessions will include, but are not limited to, both live and online anti-corruption trainings to be completed on at least an annual basis and according to LAN's Compliance Department's training schedule. These sessions will include, in addition to anti-corruption laws and regulations, such as the FCPA, training on anti-trust laws, the Company's Code of Conduct and all other applicable policies that each LAN employee must follow. After the conclusion of each session Cueto will sign the appropriate documentation that acknowledges his attendance and understanding of the topics presented. Should LAN modify the schedule of such

training sessions for any reason, Cueto will, so long as he is a senior executive of LAN, attend a comparable anti-corruption session on an annual basis and complete appropriate documentation attesting to his attendance and the session's contents. The Respondent agrees to serve by hand delivery or by next-day mail all written notices and correspondence required by or related to this Agreement to Kara Novaco Brockmeyer, FCPA Unit Chief, Division of Enforcement, U.S. Securities and Exchange Commission, 100 F Street, N.E., Mail Stop 5631, Washington, D.C. 20549, unless otherwise directed in writing by the staff of the Division.

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

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Ignacio Cueto Plaza cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A), 13(b)(2)(B) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(2)(B) and 78m(b)(5)] and Rule 13b2-1 thereunder [17 C.F.R. § 240.13b2-1].

B. Respondent shall, within fourteen days of the entry of this Order, pay a civil money penalty in the amount of \$75,000 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 Ignacio Cueto Plaza 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 Tracy L. Price, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5631.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary