

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 79454 / December 2, 2016**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3833 / December 2, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17705**

**In the Matter of**

**UNITED CONTINENTAL  
HOLDINGS, INC.,**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTION 21C OF THE SECURITIES  
EXCHANGE ACT OF 1934, MAKING  
FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND 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 against United Continental Holdings, Inc. (“United” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“Offer”) that 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, Respondent admits the Commission’s jurisdiction over it and the subject matter of these proceedings, and 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 Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### Summary

1. This matter concerns violations of the books and records and internal accounting controls provisions of the Securities Exchange Act of 1934 ("Exchange Act") by United, one of the world's largest airlines.

2. In 2011, United decided to institute a flight route from Newark, New Jersey, to Columbia, South Carolina (the "South Carolina Route") that was projected to lose money. United instituted the South Carolina Route following pressure from David Samson ("Samson"), then the Chairman of the Board of Commissioners of the Port Authority of New York and New Jersey ("Port Authority"). The route provided Samson—who exercised authority and influence as a Port Authority official in matters affecting United's business interests—with a more direct route to his house in South Carolina. United's then chief executive officer ("CEO") approved the South Carolina Route ("the Transaction") outside of United's normal processes, and United then scheduled the flight based on Samson's preference as conveyed to United by one of its consultants, and United initiated the route despite its poor financial projections. Moreover, the South Carolina Route's approval violated applicable United compliance and ethics policies ("United's Policies").

3. United violated Section 13(b)(2)(B) of the Exchange Act because, despite the significant potential corruption risks surrounding its dealings with public officials, United failed to design and maintain a system of internal accounting controls that was sufficient to prevent its officers from approving the use of United's assets in connection with the South Carolina Route in violation of United's Policies, which prohibited the use of assets for corrupt purposes. The ethics code in effect in 2011 provided that employees wishing to act in ways prohibited by the ethics code could request approval for an exception. In this instance, no exception was requested or granted. Indeed, the CEO was able to approve the South Carolina Route outside United's normal process because United lacked adequate controls to reasonably ensure that prior to authorization of the Transaction an exception was obtained from the Director of Ethics and Compliance or United's Board of Directors as required by United's Policies. The failure to seek such prior authorization of the Transaction—which required a written submission and any approval to be in writing—also caused United to violate Section 13(b)(2)(A) of the Exchange Act because its books and records did not, in reasonable detail, accurately or fairly reflect the South Carolina Route Transaction.

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<sup>1</sup> 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.

## **Respondent**

4. **United**, headquartered in Chicago, Illinois, is a publicly traded airline holding company whose stock trades on the New York Stock Exchange under the ticker symbol UAL. United is the parent company of United Airlines, Inc., which operated after a 2010 merger with Continental Airlines, Inc. (“Continental”). United’s common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and the company files annual and periodic reports with the Commission pursuant to Section 13(a) of the Exchange Act. United reported, on July 14, 2016, that it had reached a Non-Prosecution Agreement with the United States Attorney’s Office for the District of New Jersey (“USAO”) in connection with the South Carolina Route. According to United, it has accepted responsibility for, and admitted certain facts relating to, the establishment of the South Carolina Route; agreed to continue enhancing its anti-bribery and anti-corruption program; and further agreed to report to the USAO on an annual basis, for a period of two years, its compliance efforts. United also agreed to pay a financial penalty of \$2.25 million to the USAO. The USAO will not prosecute United for any violations related to the South Carolina Route provided that United complies with the Non-Prosecution Agreement over a two-year period.

## **Other Relevant Person and Entity**

5. **David Samson**, aged 77, was nominated to the Port Authority’s Board of Commissioners in late 2010 and confirmed by the New Jersey Senate on January 25, 2011. Samson was elected to serve as the Port Authority’s Chairman on February 3, 2011, and served as Chairman of the Port Authority until his resignation in March 2014. On July 14, 2016, the USAO announced that Samson pleaded guilty to bribery in connection with the South Carolina Route.

6. **The Port Authority** is a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the two states and thereafter consented to by the Congress of the United States. The two states established the Port Authority to provide transportation, terminal, and other facilities of commerce within the Port District, which includes the Cities of New York and Yonkers in New York State, and Newark, Jersey City, Bayonne, Hoboken, and Elizabeth in New Jersey State, as well as over 200 other municipalities in the two states. The Port Authority is headquartered in New York City, New York, and is an issuer of municipal bonds.

## **Background**

7. The Port Authority operates, among other facilities, Newark Liberty International Airport (“Newark Liberty”) under a lease with the City of Newark. Newark Liberty serves as United’s primary East Coast hub. United leases significant portions of Newark Liberty’s property, and United flies the majority of passengers on Newark Liberty’s originating and departing flights.

8. From in or about February 2011, almost immediately after becoming Chairman of the Port Authority, Samson, through a United consultant and registered lobbyist (the “Consultant”), began pressing United concerning the initiation of a non-stop flight route from Newark, New Jersey to Columbia, South Carolina, or the South Carolina Route.

9. Prior to the merger that created United, Continental Airlines had previously flown a route from Newark Liberty to Columbia Metropolitan Airport in South Carolina, but canceled the route in 2009 due to business reasons, including, among other things, poor financial performance.

10. On February 18, 2011, the Consultant wrote to an individual who worked within United’s Government Affairs Department (“Government Affairs Employee 1”): “Fyi. Samson has home in columbia [*sic*], sc and has asked me repeatedly about flight from newark [*sic*].” Government Affairs Employee 1 responded to the Consultant, “[n]ever worked financially, but will make sure that is still the case.”

11. On March 18, 2011, United’s CEO was scheduled to have his first call with Samson. United understood that Samson would be calling the CEO from his home in South Carolina. The purpose of the call was introductory in nature, and Government Affairs Employee 1’s staff suggested talking points for the CEO relating to United’s priorities in respect to the Port Authority.

12. In the summer and fall of 2011, representatives of United and the Port Authority’s Aviation Department (which manages Newark Liberty) negotiated a proposed agreement that the Port Authority would lease approximately three acres of land at Newark Liberty to United for the construction and operation of a wide-body aircraft maintenance hangar (the “Hangar”). The Hangar would facilitate United’s ability to perform maintenance on its incoming fleet of wide-body aircraft at Newark Liberty, rather than having to perform such maintenance at a suitable United facility at another airport. Based on preliminary assessments and using information available at the time, United estimated that the Hangar would result in efficient routings that would drive \$47.5 million in value to the United network on an annual basis post-construction.

13. On September 13, 2011, Samson, another Port Authority employee (the “PA Employee”), and the Consultant met with representatives of United, including the CEO, Government Affairs Employee 1 and others, for dinner at a restaurant in New York City (the “September Dinner”).

14. In preparation for the dinner, Government Affairs Employee 1’s staff again prepared talking points for the CEO relating to United priorities concerning the Port Authority, including planned United investments at Newark Liberty. The talking points reflected that those investments included, among others things, construction of the Hangar. The talking points reflected a recommendation that United’s CEO tout at the September Dinner the Hangar and other planned investments as examples of United’s continued investment at Newark Liberty.

15. During the September Dinner, after discussion of certain of United's priorities for Newark Liberty, Samson stated that Continental Airlines used to have a non-stop route between Newark Liberty and Columbia, South Carolina and asked the CEO to consider re-establishing that non-stop route. The CEO responded to Samson that United generally stopped flying routes because they were not profitable, but told Samson that United would look into the South Carolina Route.

16. In the following weeks, United personnel in the Network Planning Group analyzed the projected financial performance of the South Carolina Route. Although United had no written policies or procedures concerning new route initiation, United's standard process for initiating new routes generally included: the preparation and consideration of financial forecasts and other market data of how the route could be expected to perform, review and approval by several levels of United's Network Planning Group, including approval by the Chief Revenue Officer ("CRO") or his staff, and thereafter presentation of the route and its details to a group of senior United executives at a regularly scheduled marketing meeting.

17. The Network Planning Group's preliminary financial analysis of the South Carolina Route revealed that the route would likely lose money.

18. On September 21, 2011, a managing director in the Network Planning Group informed an individual in United's Government Affairs Group ("Government Affairs Employee 2") that expectations should be that "the service will not be returning anytime soon" and stated that the route from Newark Liberty to Columbia, South Carolina "was continually one of the hub's poorest performing markets" before its cancellation in 2009.

19. Thereafter, another individual in United's Government Affairs Group ("Government Affairs Employee 3") wrote that, "I talked with [an individual in the Network Planning Group] and informed him of our interest in this market and why. He understands how this might be considered to advance our biz objectives. ... He is open if we see an oppty."

20. On October 13, 2011, the Consultant emailed Government Affairs Employee 1 with the subject line "Samson called me again on the columbia, sc flight," and writing "Just need direction so I can come up with a plan to figure out how to either let him down gently or buy time." Around that time, United conveyed to the Consultant that United was not interested in operating the South Carolina Route.

21. A short time later, in early November 2011, United personnel expected the lease agreement relating to United's proposed Hangar project to be considered by the Port Authority Board. Prior to the Port Authority Board meeting, Government Affairs Employee 2 reported hearing "buzzing that the hangar piece has been or may be pulled from" the Port Authority Board's agenda. The lease agreement relating to the Hangar was ultimately not included in the agenda for the Port Authority's November 15, 2011 Board meeting. On the following day, the Consultant emailed Government Affairs Employee 1, writing "[o]ne of these days I think I need

to chat with you about the PA and Samson. ... I am also worried about samson [*sic*] view of company.”

22. Consideration of the lease relating to United’s proposed Hangar project was on the Port Authority Board’s December 8, 2011 meeting agenda. In and around the time that the Port Authority Board was conducting its December 8, 2011 meeting, Government Affairs Employee 2 reported that she was told that “NY commissioners wanted to pull our hangar project off of agenda again ... Samson ... also jumped on the bandwagon in a major way.” Government Affairs Employee 3 responded, “SC flight influencing this?”

23. Government Affairs Employee 1, upon learning of this potential development, met with the CEO and a colleague to discuss whether to cede to Samson’s demands for the potential initiation of the South Carolina Route. During a brief conversation, the CEO approved establishment of the South Carolina Route. At no time prior to reinstating the South Carolina Route, or during the route’s operation, did the CEO, or anyone at his direction, consult with any legal counsel or compliance personnel about the South Carolina Route.

24. Notwithstanding United’s standard process for flight initiation outlined above, the process was not followed in the case of the South Carolina Route. The South Carolina Route did not receive initial approval from the Network Planning Group or the CRO and was not presented during a regularly scheduled marketing meeting. Instead, the CEO unilaterally approved the route outside of United’s normal processes. The route personally benefited Samson and, as described below, the South Carolina Route was instituted in violation of United’s Policies, and no corporate record accurately and fairly reflected the authorization to approve the Transaction.

25. At the time the South Carolina Route was initiated, United’s Code of Business Conduct<sup>2</sup> provided that “company policy prohibits United employees from directly or indirectly making bribes, kickbacks or other improper payments to government officials, civil servants or anyone else to influence their acts or decisions” and that “[n]o gift may be offered or accepted if it will create a feeling of obligation, compromise judgment or appear to improperly influence the recipient.”

26. United’s Code of Business Conduct further provided that “[i]n the extremely unlikely event that a waiver of the Code for executive officers would be in the best interest of United, it must be approved by the Audit Committee of the Board of Directors and promptly disclosed to the SEC or on United’s website.”

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<sup>2</sup> Following the merger between Continental and United Airlines, Inc., there were two documents that comprised United’s Policies: United Airlines, Inc.’s Code of Business Conduct and Continental’s Ethics and Compliance Guidelines. Those policies were each dated 2006 and were effective until February 2012, when United, the merged entity, issued a new single ethics and compliance policy.

27. Continental's Ethics and Compliance Guidelines, which were also in force in the relevant time period as a result of the merger, similarly provided that employees "cannot entertain, provide hospitality to or give gifts, loans, and services to a supplier, customer or other person doing business with Continental that under the circumstances are reasonably considered lavish or excessive." It further provided that "[a]ny gift or entertainment that could reasonably be viewed as an attempt to influence a business decision" is considered lavish or excessive.

28. Pursuant to these guidelines, exceptions would be granted only in accordance with the following procedure:

Generally, requests for exceptions must be submitted in writing to the Director – Ethics and Compliance Program. Approvals for an exception will also be in writing and must be obtained in advance of the action requiring the exception. . . Any exceptions to these Guidelines for executive officers or members of the Board of Directors may be made only by the Board of Directors or an authorized Board committee, and must be promptly disclosed to the company's stockholders.

29. No one at United sought a waiver of United's Code of Business Conduct prior to initiating the South Carolina Route for Samson's personal benefit. Nor did anyone at United seek or obtain an exception to Continental's Ethics and Compliance Guidelines prior to initiating the South Carolina Route. As a result, no written record reflecting the authorization for the South Carolina Route was prepared or maintained, as required by United's Policies.

30. The South Carolina Route was initiated in violation of United's Policies.

31. The Port Authority's Board approved the lease agreement relating to United's Hangar the same day as the CEO approved the initiation of the South Carolina Route.

32. On January 9, 2012, in connection with actually scheduling the South Carolina Route approved by the CEO, Government Affairs Employee 1 sent an email to other Government Affairs employees about the new service stating that United was "testing the market" and advising them that she believed that "they want it all soft, so no proactive communications."

33. The twice-weekly flight from Newark Liberty to Columbia, South Carolina began in September 2012. United approved termination of the South Carolina Route in January 2014. By April 2014, United no longer flew to Columbia, South Carolina from Newark Liberty and had lost roughly \$945,000, including opportunity costs, in operating the South Carolina Route.

### **Legal Discussion**

34. Under Section 21C 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.

35. Under Section 13(b)(2)(A) of the Exchange Act, issuers are required to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

36. Under Section 13(b)(2)(B) of the Exchange Act, issuers are required to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions (i) are executed in accordance with management's general or specific authorization; and (ii) are recorded as necessary to (I) 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.

37. As a result of the conduct described above, United violated Section 13(b)(2)(A) of the Exchange Act by failing to make and keep records, which, in reasonable detail, accurately and fairly reflect the Transaction and use of assets in connection with the South Carolina Route. Contrary to United's Policies, the required written authorization of the Director - Ethics and Compliance Program or of the Board of Directors was not requested or obtained before initiating the South Carolina Route, and, thus, required records were not created or maintained. United thereby violated Section 13(b)(2)(A) of the Exchange Act. United also violated Section 13(b)(2)(B) by failing to devise and maintain a system of internal accounting controls that was sufficient to provide reasonable assurances that assets are used, and transactions are executed, only in accordance with management's general or specific authorization, including in a manner consistent with United's Policies. In particular, United had insufficient internal accounting controls in place to prevent approval of the South Carolina Route in derogation of United's Policies.

### **Remedial Efforts**

38. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent.

39. United has taken a series of remedial actions, including:

- a) separating from certain employees involved in the conduct set forth above;

- b) improving its Ethics and Compliance Office, including creating a new senior legal position focusing on global corruption risk;
- c) enhancing its global code of conduct and anti-bribery/anti-corruption policies;
- d) conducting extensive anti-bribery/anti-corruption training; and
- e) developing a third-party due diligence process and anti-bribery/anti-corruption compliance audit.

### **Undertakings**

40. Respondent undertakes to cooperate fully and truthfully with the staff of the Commission in any and all investigations, litigation, or other proceedings relating to or arising from the matters described in this Order, regardless of the time period in which cooperation is required. The full, truthful, and continuing cooperation shall include, but not be limited to, (a) producing, in a responsive and prompt manner, all non-privileged documents, information, and other materials to the Commission as requested by the Commission's staff, wherever located, in the possession, custody, or control of the Respondent; (b) using its best efforts to cause its employees to be interviewed by the Commission's staff at such times as the Commission staff may reasonably request; and (c) agreeing to use its best efforts to cause its employees to appear and testify truthfully and completely, without service of a notice of subpoena in such investigations, depositions, hearings, or trials as may be requested by the Commission's staff; and Respondent further agrees that (i) any such notice or subpoena for appearance and testimony may be served by regular mail, electronic mail, or facsimile on counsel; and (ii) any such notice or subpoena for appearance and testimony in an 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.

41. Respondent undertakes to do the following within one year of the entry of the Order:

- a) report to the Commission staff, at or before one year after the entry of the Order, the status of its remediation and implementation of compliance measures and accounting controls designed to address potential corruption risks surrounding dealings with domestic and foreign public officials;
- b) should any officer of Respondent become aware of credible evidence, not already reported to the Commission staff, that questionable or corrupt transfers of property, interests, or other benefits, have been offered, promised, paid, or authorized to a domestic or foreign public official by Respondent, or any entity or person working on behalf of Respondent (including its affiliates and any agent), or that related inaccurate books and

records have been maintained, Respondent shall promptly report such conduct to the Commission staff;

- c) train all employees who handle requests from domestic and foreign public officials for flights, undelaying flights, and other comps or perquisites (including access to lounges, refunds, and other requests) on United's policies and procedures, and code of ethics;
- d) if not provided within the previous twelve months, Respondent shall provide supplemental, in-person anti-corruption training to personnel in its (1) Corporate, Community, Government, and Congressional Affairs; (2) Corporate Real Estate; and (3) Regulatory and Policy groups;
- e) Respondent shall provide, at six months and one year after entry of this order, a certification that all new flights initiated during the reporting period were initiated for a proper business purpose;
- f) promptly revise any training materials to reflect updates to its policies relating to government officials, including its Anti-Bribery / Anti-Corruption Policy; and
- g) certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, 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 Celeste Chase, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 1028 with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

#### **IV.**

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

Accordingly, it is hereby ORDERED that:

- A. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

- A. Respondent shall comply with the undertakings enumerated in Section III. Paragraph 41 above.
- B. Respondent shall, within 10 days of the entry of this Order, pay a civil penalty of \$2,400,000 to the Securities and Exchange Commission for remission to 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 United Continental Holdings Inc. 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 Sanjay Wadhwa, Senior Associate Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

- 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.

Brent J. Fields  
Secretary