



DEPARTMENT OF COMMERCE
Bureau of Industry and Security

Order Relating to Eric Baird

In the Matter of: Eric Baird, 647 Norsota Way Sarasota, FL 34242; Respondent; 16-BIS-0002.

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified Eric Baird, of Sarasota, Florida (“Baird”), that it has initiated an administrative proceeding against Baird pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),¹ through the issuance of an Amended Charging Letter to Baird that alleges that Baird committed one hundred sixty-six (166) violations of the Regulations.² Specifically, the charges are:

Charges 1-166 15 C.F.R. § 764.2(b) – Causing, Aiding or Abetting a Violation

1. On at least one hundred sixty-six (166) occasions beginning on or about August 1, 2011, and continuing through on or about January 7, 2013, Baird caused, aided, abetted, commanded, induced and/or permitted (“caused, aided or abetted”) the doing of an act prohibited by, or the omission of an act required by, the Regulations. As further alleged below, Baird caused, aided or abetted the filing of

¹ The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“the EAA”), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq. (2012) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, Pub. L. 115-232, tit. 17, subtitle B, 132 Stat. 2208 (2018) (“ECRA”). While Section 1766 of ECRA repeals the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

² The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2018). The charged violations occurred in 2011-2013. The Regulations governing the violations at issue are found in the 2011-2013 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2018 Regulations set forth the procedures that apply to this matter.

false or misleading export control documents, namely Shipper's Export Declarations and Automated Export System filings ("SED/AES filings"), and the failure to make required SED/AES filings, in connection with the export or attempted export of items subject to the Regulations. Baird also caused, aided or abetted the export and attempted export without the required BIS licenses of items subject to the Regulations and listed on the Commerce Control List ("CCL").

2. At all times pertinent hereto, Baird was Chief Executive Officer ("CEO") of Access USA Shipping, LLC, d/b/a MyUS.com and f/k/a Access USA Shipping, Inc. ("Access"), a company originally registered in Florida that he founded in 1997. Baird was directly or indirectly Access's primary shareholder until on or about August 28, 2012. After a partial sale of Access on or about August 28, 2012, Baird continued to serve as its CEO and maintained a minority equity stake in the company with the right to appoint two members of Access's board of directors. Baird was replaced as CEO of Access in or about September 2013. Baird's interests, however, were not fully divested until on or about March 22, 2016, at which time he no longer had an equity interest in Access or the right to appoint board members.
3. Access provided foreign customers with a U.S. physical address for items purchased from U.S. merchants for ultimate export from the United States. For a fee, Access provided such customers a "suite," which was a designated place or space at Access's warehouse facilities to which customers could have items delivered from U.S. merchants. When Access received items that a foreign customer had ordered from a U.S. merchant, Access employees entered into Access's order management system information regarding the name of the merchant, shipment tracking number, a detailed description of the item, and the value of the item. Before the shipment was exported from the United States, however, Access employees would revise the original item information, including the item's value and/or its description, to generate an invoice that contained false or misleading information for use in connection with the export of the items. At times, Access's order system included account notes that directed packaging or price tags be removed or that a shipment's declared value be kept below a certain dollar amount.
4. Baird established, directed, controlled, and/or authorized Access's policy and practice of falsifying the value and description of items being exported or intended for export, including items listed on the CCL. Baird also at times personally participated in the undervaluing and mis-description of such items.
5. Access routinely undervalued items using multiple different strategies or schemes, including, for example, by lowering values of items by 25%-50% depending on the country of destination. The extent of undervaluation reached or exceeded 75% on some occasions, and for some customers maximum declared values of no more than, for example, \$50 or \$100, were used, regardless of the true value of the items.

6. Similarly, on numerous occasions, descriptions of CCL items or other items subject to the Regulations were altered to help avoid export control scrutiny and detection by law enforcement, including on occasions when the items also were undervalued. For example, a night vision lens converter was described as “camera lenses”; laser sights as “tools and hardware”; and rifle scopes as “sporting goods” or “tools, handtools.” In one instance, rifle stocks and grips were described as “toy accessories.” Access’s October 2010 and October 2012 Customer Service Training Manuals illustrate the pervasiveness of altering descriptions of items, in part, to avoid export control scrutiny and detection, including those related to firearms and related parts that were considered prohibited or restricted items.
7. Baird also established, directed, controlled, and/or authorized Access’s “personal shopper program” or “alternative program.” Under this program, Access or an Access employee was presented to U.S. merchants as the purchaser and/or end-user of the items in situations where foreign customers were seeking products from U.S. merchants that did not accept foreign payment methods or had raised concerns that Access was not an end user and refused to sell or ship to Access because they wished to prevent the export of their goods, such as companies that sell weapons or weapon parts. Through this evasive program, Access purchased items for export to its foreign customers without informing the U.S. merchants that the items were intended for export. Foreign customers would email an Access employee their shopping list, and the Access employee would purchase the items using credit cards in Baird’s name, or using a credit card account or other payment mechanisms opened in the name of the individual employee, whom Access would subsequently reimburse. At times, shipments were delivered to the homes of Access employees so that, in addition to being misled to believe that a domestic customer was involved, the U.S. merchant would be misled to believe that Access itself was not involved in the transaction.
8. As part of this “personal shopper program,” Baird directed or authorized Access employees to use his credit cards and driver’s license information to make purchases of items for export. In addition, Baird personally asked Access employees to apply for credit card accounts and have customer deliveries sent to their personal addresses to make the shipments appear as if they were for domestic customers.
9. At all times relevant hereto, Baird knew of the Regulations and Access’s export control compliance obligations, including the need for items to be accurately valued and described for purposes of SED/AES filing requirements and the need to determine licensing requirements. Baird received this information through, for example, outreach visits from and other communications with BIS special agents and other federal law enforcement agents, as well as at various occasions through other Access officials or personnel and through companies that regularly served

as freight forwarders or carriers in connection with export transactions involving Access.

10. For example, on or about July 11, 2007, BIS's Office of Export Enforcement ("OEE") conducted an outreach visit to Access, during which a BIS Special Agent provided detailed oral and written information regarding compliance with the EAR and other U.S. export control laws and regulations. As part of this outreach visit, the BIS Special Agent met with Baird, including explaining that items should be checked for export license requirements and that customers should be screened. In addition, Access documents indicate that by no later than January 2008, Baird knew that false or misleading statements on SED/AES filings could lead to penalties of up to \$250,000 per violation,³ and that by March 2008, Baird knew that a SED/AES filing must be made for each export when the value of the items under a single Schedule B number is more than \$2,500.⁴ Access subsequently received Shield America outreach visits from the Department of Homeland Security, Homeland Security Investigations ("HSI") on March 27, 2009, June 9, 2010, and January 10, 2012, respectively, during which HSI special agents provided compliance information. Baird attended the January 10, 2012 outreach visit. In addition, the BIS Special Agent provided detailed information on properly valuing items on export control documents during a telephone discussion with CEO Eric Baird on January 18, 2012, and a related follow-up email with him.

11. Access documents also include correspondence among Baird and Access's then-Chief Technology Officer ("CTO") and other company officials indicating that Baird remained fully aware at and around the time of the violations alleged herein of SED/AES filing requirements and the potential significant sanctions for false or misleading statements on SED/AES filings. In emails in September 2011 to Baird, the CTO, who is Baird's sister, provided information on a BIS enforcement case involving false or misleading reporting of declared value on export documents. In an email dated September 20, 2011, she included information describing BIS's imposition of civil penalties as part of the settlement of a case involving repeat undervaluing of exports on Shipper's Export Declarations and stated, *inter alia*: "I will not be a party to [undervaluation]. I know we're doing it now. I know we have the means to avoid doing it. I know we are WILLINGLY AND INTENTIONALLY breaking the law." (Emphasis in original). In the same email chain later that day, Baird suggested that Access could undervalue by 25% and if Access was "warned by [the U.S.] government," then it "can stop ASAP."

³ The maximum penalty figure that currently applies in this case is \$295,141 per violation. *See* 15 C.F.R. 6.3(b); 83 Fed. Reg. 706 (Jan. 8, 2018). Since January 2008, the maximum penalties have been adjusted for inflation multiple times pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701 of Public Law 114-74, enacted on November 2, 2015. *See also* 15 C.F.R. § 6.5.

⁴ A Schedule B number is a ten-digit number used in the United States to classify physical goods for export to another country.

12. Baird, however, did not stop Access's undervaluing of exports or its or his related violations of the Regulations. Rather, almost immediately following this September 20, 2011 email exchange, Baird and the CTO discussed on September 21, 2011, how Access's order system would be modified to either automatically or manually undervalue where there was no merchant invoice. The order system would be and was in fact modified to enable undervaluing by a set percentage based on the country of destination for the export, if there was no U.S. merchant's invoice or no value listed on the U.S. merchant's invoice. Additionally, when a U.S. merchant's invoice was included in a package received from a U.S. merchant, Access would remove the invoice at its customer's request, both before and after the September 2011 modification of the order system.
13. While Access for a short time did reduce the extent it engaged in its unlawful undervaluing activities, it fully resumed and even expanded those activities in no later than January 2012, pursuant to Baird's direction and/or authorization. Beginning no later than on or about January 16, 2012, Baird directed or authorized that Access customers be notified that Access's order system was being modified to remove the recent limitation on undervaluing and that Access would work together with them so that false values could be declared and undervalued to the extent of the customers' choosing.
14. In doing the foregoing, Baird caused, aided or abetted Access, as well as forwarders and carriers involved in export transactions with Access, to make false or misleading SED/AES filings with the U.S. Government. Such false or misleading filings violate Section 764.2(g) of the Regulations. Baird also caused, aided or abetted the failure by Access and its forwarders and carriers to make required SED/AES filings. The failure to make a required SED/AES filing violates Section 764.2(a) of the Regulations. Baird also caused, aided or abetted the export and attempted export of items classified under Export Control Classification Number ("ECCN") 0A987 and controlled for Crime Control reasons without the BIS licenses required pursuant to Section 742.7 of the Regulations to export the items to Argentina, Austria, Hong Kong, Indonesia, Libya, Saudi Arabia, South Africa and Yemen. Such unlicensed exports and attempted exports violated Section 764.2(a) and 764.2(c), respectively, of the Regulations.
15. In so doing, Baird committed one hundred sixty-six violations of Section 764.2(b) of the Regulations.

WHEREAS, BIS and Baird have entered into a Settlement Agreement pursuant to Section 766.18(b) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein;

WHEREAS, I have taken into consideration the admission of liability by Baird set forth in the Settlement Agreement with regard to the violations in the Amended Charging Letter;

WHEREAS, I have also taken into consideration the plea agreement that Baird has entered into with the U.S. Attorney's Office for the Middle District of Florida ("the plea agreement"); and

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

FIRST, Baird shall be assessed a civil penalty in the amount of \$17,000,000. Baird shall pay the U.S. Department of Commerce \$10,000,000 not later than 30 days from the date of this Order. Payment of the remaining \$7,000,000 shall be suspended for a period of five (5) years from the date of this Order, and thereafter shall be waived, provided that during this five-year payment probationary period, Baird has made full and timely payment of \$10,000,000 as set forth above and has otherwise complied with the provisions of the Settlement Agreement and this Order, has complied in full with the plea agreement and any sentence imposed upon him following his conviction, and has committed no violation of the Export Control Reform Act of 2018 ("ECRA")⁵ or the Regulations or any order, license, or authorization issued thereunder. If Baird fails to comply with the terms of the Settlement Agreement or of this Order, or the terms of the plea agreement or sentence, or commits a violation of ECRA or the Regulations or any order, license, or authorization issued thereunder, during the five-year payment probationary period under this Order, the suspension of the civil penalty may be modified

⁵ See note 1, *supra*.

or revoked by BIS and the remaining \$7,000,000 may become due and owing immediately.

SECOND, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2012)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and if payment is not made by the due date specified herein, Baird will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, for a period of five (5) years from the date of this Order, Eric Baird, with a last known address of 647 Norsota Way, Sarasota, FL 34242, and when acting for or on his behalf, his successors, assigns, representatives, agents, or employees (hereinafter collectively referred to as the "Denied Person"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, license exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject

to the Regulations, or engaging in any other activity subject to the Regulations; or

- C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

FOURTH, no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the

Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

FIFTH, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person related to the Denied Person by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

SIXTH, the five-year denial period set forth above shall be active for a period of four (4) years from the date of this Order. As authorized by Section 766.18(c) of the Regulations, the remaining one (1) year of the denial period shall be suspended, and shall thereafter be waived five (5) years from the date of this Order, provided that Baird has made full and timely payment as set forth above, has otherwise complied with the provisions of the Settlement Agreement and this Order, has complied with the plea agreement and any sentence imposed upon or following the entry of his plea and conviction, and has committed no other violation of ECRA or the Regulations or any order, license, or authorization issued thereunder. If Baird does not make full and timely payment as set forth above or otherwise fails to comply with the Settlement Agreement or this Order, does not fully and timely comply with the plea agreement or sentence, or commits another violation of ECRA or the Regulations or any order, license, or authorization issued thereunder, the suspension of the remaining one year of the denial period may be modified or revoked by BIS. If Baird fails to comply with any of the above conditions after the four-year active portion of the denial period but before five years from the date of this Order, the full one year suspended portion of the denial order may be imposed from the date BIS determines such violation occurred, and any license

issued pursuant to ECRA or the Regulations in which the Denied Person has an interest at that time will be revoked.

SEVENTH, Baird shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Amended Charging Letter or this Order.

EIGHTH, the Amended Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

NINTH, this Order shall be served on Baird, and shall be published in the *Federal Register*.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Issued on December 14, 2018.

Douglas Hassebrock,
Director,
Office of Export Enforcement,
performing the non-exclusive functions and
duties of the Assistant Secretary of
Commerce for Export Enforcement.

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