

PRESS RELEASE

SEC Charges Archer-Daniels-Midland Company With FCPA Violations

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Washington D.C., Dec. 20, 2013 — The Securities and Exchange Commission today charged global food processor Archer-Daniels-Midland Company (ADM) for failing to prevent illicit payments made by foreign subsidiaries to Ukrainian government officials in violation of the Foreign Corrupt Practices Act (FCPA).

An SEC investigation found that ADM's subsidiaries in Germany and Ukraine paid \$21 million in bribes through intermediaries to secure the release of value-added tax (VAT) refunds. The payments were then concealed by improperly recording the transactions in accounting records as insurance premiums and other purported business expenses. ADM had insufficient anti-bribery compliance controls and made approximately \$33 million in illegal profits as a result of the bribery by its subsidiaries.

ADM, which is based in Decatur, Ill., has agreed to pay more than \$36 million to settle the SEC's charges. In a parallel action, the U.S. Department of Justice today announced a non-prosecution agreement with ADM and criminal charges against an ADM subsidiary that has agreed to pay \$17.8 million in criminal fines.

"ADM's lackluster anti-bribery controls enabled its subsidiaries to get preferential refund treatment by paying off foreign government officials," said Gerald Hodgkins, an associate director in the SEC's Division of Enforcement. "Companies with worldwide operations must ensure their compliance is vigilant across the globe and their transactions are recorded truthfully."

According to the SEC's complaint filed in U.S. District Court for the Central District of Illinois, the bribery occurred from 2002 to 2008. Ukraine imposed a 20 percent VAT on goods purchased in its country. If the goods were exported, the exporter could apply for a refund of the VAT already paid to the government on those goods. However, at times the Ukrainian government delayed paying VAT refunds it owed or did not make any refund payments at all. On these occasions, the outstanding amount of VAT refunds owed to ADM's Ukraine affiliate reached as high as \$46 million.

The SEC alleges that in order to obtain the VAT refunds that the Ukraine government was withholding, ADM's subsidiaries in Germany and Ukraine devised several schemes to bribe Ukraine government officials to release the money. The bribes paid were generally 18 to 20 percent of the corresponding VAT refunds. For example, the subsidiaries artificially inflated commodities contracts with a Ukrainian shipping company to provide bribe payments to government officials. In another scheme, the subsidiaries created phony insurance contracts with an insurance company that included false premiums passed on to Ukraine government officials. The misconduct went unchecked by ADM for several years because of its deficient and decentralized system of FCPA oversight over subsidiaries in Germany and Ukraine.

The SEC's complaint charges ADM with violating Sections 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934. ADM consented to the entry of a final judgment ordering the company to pay disgorgement of \$33,342,012 plus prejudgment interest of \$3,125,354. The final judgment also permanently enjoins ADM from violating those sections of the Exchange Act, and requires the company to report on its FCPA compliance efforts for a three-year period. The settlement is subject to court approval. The SEC took into account ADM's cooperation and significant remedial measures, including self-reporting the matter, implementing a comprehensive new compliance program throughout its operations, and terminating employees involved in the misconduct.

The SEC's investigation was conducted by Nicholas A. Brady and supervised by Moira T. Roberts and Anita B. Bandy. The SEC appreciates the assistance of the Justice Department's Fraud Section and the Federal Bureau of Investigation.

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Related Materials

- [SEC complaint](#)
- [Summaries of FCPA cases](#)
- [Spotlight on FCPA](#)