

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 74356 / February 24, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3640 / February 24, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16400

In the Matter of

**THE GOODYEAR TIRE &
RUBBER COMPANY,**

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 The Goodyear Tire & Rubber Company (“Goodyear” 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Exchange Act, 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. This case involves violations of the books, records, and internal control provisions of the Foreign Corrupt Practices Act ("FCPA") by Goodyear. Goodyear, headquartered in Akron, Ohio, is one of the world's largest tire companies. From 2007 through 2011, Goodyear subsidiaries in Kenya (Treadsetters Tyres Ltd., or "Treadsetters") and Angola (Trentyre Angola Lda., or "Trentyre") routinely paid bribes to employees of government-owned entities and private companies to obtain tire sales. These same subsidiaries also paid bribes to police, tax, and other local authorities. In all, between 2007 and 2011, Goodyear subsidiaries in Kenya and Angola made over \$3.2 million in illicit payments.

2. All of these bribery payments were falsely recorded as legitimate business expenses in the books and records of these subsidiaries which were consolidated into Goodyear's books and records. Goodyear did not prevent or detect these improper payments because it failed to implement adequate FCPA compliance controls at its subsidiaries in sub-Saharan Africa.

Respondent

3. **Goodyear**, an Ohio corporation headquartered in Akron, Ohio, is one of the world's largest tire manufacturers. Goodyear has manufacturing facilities in 22 countries and sells tires in most countries around the world. Goodyear's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on The NASDAQ Stock Market.

Other Relevant Entities

4. **Magister Ltd.** ("Magister") is a wholly-owned subsidiary of Goodyear incorporated in Mauritius, and headquartered in South Africa. Magister holds the shares and oversees the operations of the Goodyear subsidiaries in sub-Saharan Africa. During the relevant time period this included Treadsetters in Kenya and Trentyre in Angola.

5. **Treadsetters** is a retail tire distributor incorporated and located in Kenya. During the relevant time period, Treadsetters was an indirect subsidiary of Goodyear, and had annual revenues of approximately \$20 million. Goodyear divested its ownership interest in Treadsetters in 2013.

6. **Trentyre** is a retail tire distributor incorporated and located in Angola. Trentyre is a wholly owned subsidiary of Goodyear. During the relevant time period, Trentyre had annual revenues between \$6 million and \$20 million.

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.

Improper Payments in Kenya

7. Treadsetters is a retail tire distributor in Kenya. In 2002, Goodyear acquired a minority ownership interest in Treadsetters. By 2006, Goodyear had acquired a majority ownership interest in the company, though the day-to-day operations of Treadsetters continued to be run by Treadsetters' founders and the local general manager. During the relevant time period, Treadsetters had annual revenues of approximately \$20 million.

8. From 2007 through 2011, Treadsetters' management regularly authorized and paid bribes to employees of government-owned or affiliated entities, and private companies, to obtain business. The practice was routine and appears to have been in place prior to Goodyear's acquisition of Treadsetters. The bribes generally were paid in cash and falsely recorded on Treadsetters' books as expenses for promotional products.

9. Treadsetters' general manager and finance director were at the center of the scheme. They approved payments for phony promotional products, and then directed the finance assistant to write-out the checks to cash. Treadsetters' staff then cashed the checks and used the money to make improper payments to employees of customers, which included both government-owned entities and private companies.

10. Between 2007 and 2011, Treadsetters paid over \$1.5 million in bribes in connection with the sale of tires. This included improper payments to employees of government-owned or affiliated entities including the Kenya Ports Authority, the Armed Forces Canteen Organization, the Nzoia Sugar Company, the Kenyan Air Force, the Ministry of Roads, the Ministry of State for Defense, the East African Portland Cement Co., and Telkom Kenya Ltd. During that same time period, Treadsetters also made approximately \$14,457 in improper payments to local government officials in Kenya, including city council employees, police, and building inspectors.

11. Goodyear did not detect or prevent these improper payments because it failed to conduct adequate due diligence when it acquired Treadsetters, and failed to implement adequate FCPA compliance training and controls after the acquisition.

Improper Payments in Angola

12. Trentyre was incorporated in 2007, and is a wholly-owned subsidiary of Goodyear. Trentyre is primarily engaged in selling new tires for mining equipment. During the relevant time period, Trentyre had annual revenues between \$6 million and \$20 million.

13. From 2007 through 2011, Trentyre paid over \$1.6 million in bribes to employees of government-owned or affiliated entities, and private companies, to obtain tire sales. Trentyre paid approximately \$1.4 million of these bribes to employees of government-owned or affiliated entities in Angola, including the Catoca Diamond Mine, UNICARGAS, Engevia Construction and Public Works, the Electric Company of Luanda, National Service of Alfadega, and Sonangol. A majority of these improper payments were paid to employees of Trentyre's largest customer at the time, the Catoca Diamond Mine, which is owned by a consortium of mining interests, including Endiama E.P., Angola's national mining company, and ALROSA, a Russian mining

company. During the same time period, Trentyre also made approximately \$64,713 in improper payments to local government officials in Angola, including police and tax authorities.

14. The bribery scheme was put in place by Trentyre's former general manager. To hide the scheme and generate funds for the improper payments, Trentyre falsely marked-up the costs of its tires by adding to its invoice price phony freight and customs clearing costs. On a monthly basis, as tires were sold, the phony freight and clearing costs were reclassified to a balance sheet account. Trentyre made improper payments to employees of customers both in cash and through wire transfers. As bribes were paid, the amounts were debited from the balance sheet account, and falsely recorded as payments to vendors for freight and clearing costs.

15. Goodyear did not prevent or detect these improper payments because it failed to implement adequate FCPA compliance training and controls at this subsidiary.

Legal Standards and Violations

16. 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 or omission the person knew or should have known would contribute to such violation.

17. 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 disposition of the assets of the issuer. [15 U.S.C. §78m(b)(2)(A)].

18. 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 (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. [15 U.S.C. §78m(b)(2)(B)].

19. As described above, Goodyear subsidiaries in Kenya and Angola made improper payments to employees of government-owned entities and private companies to obtain business. These improper payments were falsely recorded as legitimate business expenses in the books and records of these subsidiaries which were consolidated into Goodyear's books and records. Accordingly, Goodyear violated Section 13(b)(2)(A) of the Exchange Act. As described above, Goodyear also violated Section 13(b)(2)(B) of the Exchange Act by failing to devise and maintain sufficient accounting controls to prevent and detect these improper payments.

Goodyear's Cooperation and Remedial Efforts

20. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff. After receiving information about the bribes, Goodyear promptly halted the improper payments and reported the matter to Commission staff. Goodyear also provided significant cooperation with the Commission's investigation. This included voluntarily producing documents and reports and other information from the company's internal investigation, and promptly responding to Commission staff's requests for information and documents. These efforts assisted the Commission in efficiently collecting evidence including information that may not have been otherwise available to the staff.

21. Goodyear also has undertaken remedial efforts. In Kenya, Goodyear divested its ownership interest in Treadsetters, and ceased all business dealings with the company. In Angola, after Goodyear halted the improper payments its subsidiary lost its largest customer. Goodyear is now in the process of divesting this subsidiary.

22. Goodyear also undertook disciplinary action against certain employees, including executives of its Europe, Middle East and Africa region who had oversight responsibility, for failing to ensure adequate FCPA compliance training and controls were in place at the company's subsidiaries in sub-Saharan Africa.

23. Goodyear also implemented improvements to its compliance program, both specific to its operations in sub-Saharan Africa, and globally. In Africa, the improvements include expanded on-line and in-person anti-corruption training for subsidiary management, sales, and finance personnel; regular audits, by internal audit, specifically focused on corruption risks; quarterly self-assessment questionnaires required of each subsidiary regarding business with government-affiliated customers; quarterly management certifications from every subsidiary that cover among other things controls over financial reporting; and annual testing of internal controls at each subsidiary. To increase oversight, Goodyear also put in place a new regional management structure, and added new compliance, accounting, and audit positions. Goodyear is also making technology improvements, where possible, to electronically link subsidiaries in sub-Saharan Africa to its global network. At the parent company, Goodyear created a new senior position of Vice President of Compliance and Ethics, which further elevated the compliance function within the company. Goodyear has also expanded on-line and in-person anti-corruption and ethics training at its other subsidiaries, and implemented a new Integrity Hotline Web Portal, which enhanced users' ability to file anonymous online reports to its hotline system. With that system, Goodyear is also implementing a new case management system for legal, compliance and internal audit to document and track complaints, investigations and remediation. Goodyear also has updated its policies governing third-party agents and vendors, and is in the process of implementing a new third-party due diligence software tool.

IV.

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

Accordingly, it is hereby ORDERED that:

- A. Pursuant to Section 21C of the Exchange Act, Respondent Goodyear 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.
- B. Respondent shall, within 10 days of the entry of this Order, pay disgorgement of \$14,122,525 and prejudgment interest of \$2,105,540 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payments must be made in one of the following ways:
 - 1) Respondent may transmit payment electronically to the Commission, which shall 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, 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 Goodyear as the 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 Brian O. Quinn, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

- C. Respondent shall report to the Commission staff periodically, at no less than twelve-month intervals during a three-year term, the status of its remediation and implementation of compliance measures. Should respondent discover credible evidence, not already reported to the Commission staff, that questionable or corrupt payments or questionable or corrupt transfers of property or interests may have been offered, promised, paid, or authorized by Respondent entity or person, or any entity or person while working directly for Respondent, or that related false books and records have been maintained, Respondent shall promptly report such conduct to the

Commission staff. During this three-year period, Respondent shall: (1) conduct an initial review and submit an initial report, and (2) conduct and prepare at least two (2) follow-up reviews and reports, as described below:

- 1) Respondent shall submit to the Commission staff a written report within one (1) year of the entry of this Order setting forth a complete description of its FCPA and anti-corruption related remediation efforts to date, its proposals reasonably designed to improve the policies and procedures of Respondent for ensuring compliance with the FCPA and other applicable anti-corruption laws, and the parameters of the subsequent reviews (the “Initial Report”). The Initial Report shall be transmitted to Brian O. Quinn, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549. Respondent may extend the time period for issuance of the Initial Report with prior written approval of the Commission staff.
- 2) Respondent shall undertake at least two (2) follow-up reviews, incorporating any comments provided by the Commission staff on the previous report, to further monitor and assess whether the policies and procedures of Respondent are reasonably designed to detect and prevent violations of the FCPA and other applicable anti-corruption laws (the “Follow-up Reports”).
- 3) The first Follow-up Report shall be completed by no later than one (1) year after the Initial Report. The second Follow-up Report shall be completed by no later than one (1) year after the completion of the first Follow-up Report. Respondent may extend the time period for issuance of the Follow-up Reports with prior written approval of the Commission staff.
- 4) The periodic reviews and reports submitted by Respondent will likely include proprietary, financial, confidential, and competitive business information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed by the parties in writing, (3) to the extent that the Commission staff determines in its sole discretion that disclosure would be in furtherance of the Commission’s discharge of its duties and responsibilities, or (4) is otherwise required by law.

D. Respondent acknowledges that the Commission is not imposing a civil penalty based upon its cooperation in a Commission investigation and related enforcement action. If at any time following the entry of the Order, the Division of Enforcement (“Division”) obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Division may, at its sole discretion

and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay a civil money penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to any statute of limitations defense.

By the Commission

Brent J. Fields
Secretary