

W. Morgan Burns
+1 612 766 7136
morgan.burns@FaegreBD.com

Faegre Baker Daniels LLP
2200 Wells Fargo Center 90 South Seventh Street
Minneapolis Minnesota 55402-3901
Phone +1 612 766 7000
Fax +1 612 766 1600

May 1, 2015

Mary Kosterlitz, Esq.
Chief, Office of Enforcement Liaison
Division of Corporation Finance
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: SEC v. Archer Daniels Midland Company
United States v. Alfred C. Toepfer International (Ukraine) Ltd.

Dear Ms. Kosterlitz:

This letter is submitted on behalf of our client Archer Daniels Midland Company (“ADM”), in connection with the settlement of the above-captioned matters with the Securities and Exchange Commission (the “Commission”) and the Department of Justice (the “DOJ”). ADM hereby respectfully requests, pursuant to Rule 405 under the Securities Act of 1933, as amended (the “Securities Act”), that the Division of Corporation Finance, on behalf of the Commission, for good cause shown determine that ADM shall not be considered an “ineligible issuer” as defined in Rule 405 as a result of the entry of the judgment, described in greater detail below, against a subsidiary of ADM in Ukraine, Alfred C. Toepfer International (Ukraine) Ltd. (“Toepfer Ukraine”). The judgment against Toepfer Ukraine followed a plea agreement entered into as part of a comprehensive settlement with the Commission and the DOJ.

We believe that relief from the ineligible issuer provisions is appropriate for the reasons articulated below, including but not limited to the fact that none of the conduct described in the plea agreement or the judgment pertains to activities undertaken by ADM or its subsidiaries in connection with ADM’s or its subsidiaries’ role as issuers of securities or any related disclosure; the considerable efforts ADM has undertaken to remediate and enhance its anti-corruption training and compliance program and internal controls; and the burden that would be placed on ADM if the waiver were not granted.

BACKGROUND

ADM's resolution with the Commission involved (1) alleged violations of Section 13(b)(2)(A) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), resulting from the failure of ADM's foreign subsidiaries Toepfer Ukraine and Alfred C. Toepfer, International G.m.b.H. ("Toepfer Hamburg") to accurately record on their books and records improper payments they made between 2002 and 2008 to intermediaries in order to recover value-added tax refunds from the Ukrainian government; and (2) alleged violations of Section 13(b)(2)(B) of the Exchange Act by failing to maintain an adequate system of internal accounting controls to detect and prevent such improper payments by its foreign subsidiaries. The Division of Enforcement staff engaged in extensive settlement discussions with ADM in connection with the investigation of this matter. As a result of these discussions, ADM consented to a final judgment, which was entered on December 20, 2013, permanently restraining and enjoining the company from violations of Sections 13(b)(2)(A)-(B) of the Exchange Act and requiring ADM to pay disgorgement in the amount of \$33,342,012 and prejudgment interest thereon in the amount of \$3,125,354 for a total payment of \$36,467,366.

In related resolutions with the DOJ, Toepfer Ukraine agreed to plead guilty to one count of conspiracy to violate the anti-bribery provisions of the Foreign Corrupt Practices Act ("FCPA"), 15 U.S.C. § 78dd-3, in violation of 18 U.S.C. § 371. On December 20, 2013, the District Court entered a judgment against Toepfer Ukraine that imposed a criminal penalty of \$17,771,613.

In addition, on December 20, 2013 ADM and the DOJ entered into a Non-Prosecution Agreement (the "NPA") concerning the alleged improper conduct in Ukraine and other alleged conduct in Venezuela. Through the NPA, ADM agreed to, among other things, (i) pay a criminal penalty of \$9,450,000 that was subsumed within Toepfer Ukraine's criminal penalty, (ii) continue to cooperate fully with the DOJ regarding matters arising out of the conduct covered by the NPA, and (iii) undertake, for the three-year term of the NPA, compliance obligations to further strengthen its anti-corruption compliance program and internal controls as well as reporting obligations.

DISCUSSION

A company that qualifies as a "well-known seasoned issuer" (a "WKSI") as defined in Rule 405 is eligible, among other things, to register the offer and sale of securities under an automatic shelf registration statement, and to benefit from a streamlined registration process under the Securities Act. Designation as an ineligible issuer results in the loss of these benefits.

Rule 405(1)(v) of the Securities Act makes an issuer an "ineligible issuer" if during the past three years, the issuer or any entity that at the time was a subsidiary of the issuer "was convicted of any felony or misdemeanor described in paragraphs (i) through (iv) of section 15(b)(4)(B)" of the Exchange Act. The judgment against Toepfer Ukraine might therefore be deemed to render ADM an ineligible issuer for a period of three years after entry of the judgment. Such a determination would be a significant detriment to ADM and its stockholders because it would

substantially increase the time, labor, and money that ADM would need to spend to gain access to the United States capital markets.

Notwithstanding the foregoing, Rule 405 also authorizes the Commission to determine, “upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.” The Commission has delegated the authority to grant waivers from the ineligibility provisions to the Division of Corporation Finance.

17 C.F.R. § 200.30-1(a)(10). For the reasons explained below, we respectfully submit that good cause in this case exists for the grant of a waiver from the ineligibility provisions based on the three factors identified in the Division of Corporation Finance’s April 24, 2014 Revised Statement on Well-Known Seasoned Issuer Waivers: who was responsible for and what was the duration of the misconduct, what remedial steps did the issuer take, and impact if the waiver request is denied.

1. Who was responsible for and what was the duration of the misconduct?

The conduct at issue in the guilty plea by and judgment against Toepfer Ukraine exclusively concerns employees of Toepfer Ukraine and Toepfer Hamburg, both subsidiaries, rather than ADM. That conduct, which occurred between 2002 and 2008, does not relate to ADM’s disclosures in its own filings with the Commission nor does it allege fraud in connection with ADM’s offering of its own securities. Rather, the conduct relates to improper payments made to intermediaries to attempt to secure value-added tax refunds that Toepfer Ukraine was owed under Ukrainian law.

The handful of individuals involved with the improper payments made by Toepfer Ukraine and Toepfer Hamburg were but a few of the 30,000 employees ADM has worldwide, and the employees responsible for this conduct have since been terminated or have left those entities. Moreover, as reflected in the SEC and DOJ resolutions, these employees attempted to disguise the true nature of these payments to the intermediaries and provided incorrect and misleading information to ADM regarding the accounting treatment of these payments when questioned. Employees of ADM who were involved with, or had influence over, ADM’s disclosure to the Commission and to investors while the improper payments were being made did not know and could not have known about the misconduct.

We do not believe this misconduct under the FCPA of subsidiaries constitutes the type of ongoing risk to the reliability of disclosures made by ADM under the Securities Act that would warrant denial of this request.

2. What remedial steps did the issuer take?

The Commission and DOJ resolutions with ADM reflect the significant and voluntary remedial steps ADM has taken after learning of potential improper payments made by Toepfer Ukraine and Toepfer Hamburg to intermediaries to recover value-added tax refunds in the Ukraine. Indeed, the DOJ acknowledged that it entered into the NPA with ADM based on, among other things, ADM’s “early and extensive remedial efforts already undertaken at its own volition, and

the agreement to undertake further enhancements to its compliance program.” Examples of relevant enhancements ADM has undertaken to improve its global anti-corruption compliance program and internal controls framework include:

- (i) restructuring its global compliance structure to add key resources and personnel to the compliance function, including several personnel whose sole role is to support ADM’s anti-corruption compliance efforts;
- (ii) increasing oversight of, and asserting supervisory control over, Alfred C. Toepfer International’s operations to prevent the reoccurrence of misconduct;
- (iii) enhancing the anti-corruption compliance program and implementing several policies with the assistance of outside experts to bolster ADM’s controls and monitoring around the retention and use of third-party agents, including, but not limited to, more robust due diligence requirements, anti-corruption certifications and provisions in third party contracts, and online and in-person anti-corruption training; and
- (iv) strengthening payments controls and policies by implementing numerous global policies, including, but not limited to, the Bid & Tender Policy, the Advance Payment Policy, the Authorization for Expenditure Policy, the Global Petty Cash Policy, the Payment Control (Red Flags) Policy, and the Return of Funds Policy.

3. Impact if the waiver request is denied

Disqualification under the “ineligible issuer” provisions would create a significant hardship to ADM and would be unduly and disproportionately severe under the circumstances in light of ADM’s remediation efforts and the terms of its resolutions with the Commission and the DOJ. Under the terms of the resolutions, ADM and Toepfer Ukraine have paid substantial amounts in disgorgement, prejudgment interest, and criminal penalties, and ADM has undertaken certain compliance and reporting obligations and is subject to an injunctive order.

The automatic shelf registration process provides ADM with an important means of access to the United States capital markets, which are a significant source of funding for the company’s global operations. Since September 2006, ADM has utilized its automatic shelves to issue \$4.45 billion in debt securities and \$1.75 billion in equity units (the “equity unit offering”). In each take-down from its automatic shelves, ADM utilized a free writing prospectus (an “FWP”). ADM further utilized an automatic shelf to register \$1.15 billion in convertible debt securities for resale. These figures demonstrate the importance of the automatic shelf process to ADM in meeting its capital, funding, and operational requirements.

The automatic shelf registration process facilitates efficient and flexible access to the capital markets. As an ineligible issuer, ADM would lose the flexibility to (i) offer additional securities of the classes covered by a registration statement without filing a new registration statement, (ii) register additional classes of securities not covered by the registration statement by filing an immediately effective post-effective amendment (a process ADM utilized in its equity unit offering), (iii) omit certain information from the prospectus, (iv) take advantage of pay-as-you-go fees, (v) qualify a new indenture under the Trust Indenture Act of 1939, as amended, in certain circumstances without filing or having the Commission declare a new registration

May 1, 2015

Page 5

statement effective, or (vi) use an FWP other than one that contains only a description of the terms of the securities in the offering or the offering itself.

In light of the continuing volatility in the capital markets, the procedural and financial flexibility that the automatic shelf registration process provides is critically important in facilitating swift execution of ADM's funding and capital raising activities.

In light of the foregoing, we believe that disqualification of ADM as an ineligible issuer is not necessary under the circumstances—either in the public interest or for the protection of investors—and that ADM has shown good cause for the requested relief to be granted. Accordingly, we respectfully request that the Division grant a waiver of any “ineligible issuer” status that has attached to ADM under Rule 405 as a result of the judgment.

If you have any questions regarding this request, please contact me at 612-766-7136.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Morgan Burns". The signature is fluid and cursive, with a large initial "W" and "M".

W. Morgan Burns

cc: John Madison, Esq.
Stuart E. Funderburg, Esq.

US.55216234.03