

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**U.S. SECURITIES AND EXCHANGE
COMMISSION,
100 F. Street, NE
Washington, D.C. 20549-6030**

Plaintiff,

v.

**AKZO NOBEL N.V.
Strawinskylaan 2555
1077 ZZ Amsterdam
The Netherlands**

Defendant.

Case: 1:07-cv-02293
Assigned To : Kennedy, Henry H.
Assign. Date : 12/20/2007
Description: General Civil

COMPLAINT

Plaintiff, U.S. Securities and Exchange Commission (the "Commission"), alleges that:

SUMMARY

1. From approximately 2000 through 2003, Akzo Nobel N.V. ("Akzo Nobel") violated the books and records and internal controls provisions of the Foreign Corrupt Practices Act (the "FCPA") when two of its subsidiaries authorized and made approximately \$279,491 in kickback payments in connection with their sales of humanitarian goods to Iraq under the United Nations ("U.N.") Oil for Food Program. Akzo Nobel's subsidiaries authorized and paid kickbacks to Iraq on sales of its products to Iraq. The kickbacks were called "after-sales service fees" in Iraq. Akzo Nobel knew or was reckless in not knowing that kickbacks were paid in connection with those

transactions. Akzo Nobel knew that such payments were prohibited by the Oil for Food Program and U.S. and international trade sanctions on Iraq.

2. The Oil for Food Program provided humanitarian relief to the Iraqi population during the time that Iraq was subject to international trade sanctions. The program required that Iraq could purchase necessary humanitarian goods and related services through a U.N. escrow account. However, the kickbacks paid in connection with Akzo Nobel's subsidiaries' sale of goods to Iraq bypassed the escrow account and were instead paid by third parties to Iraqi-controlled accounts in banks in countries such as Lebanon and Jordan.

3. Akzo Nobel failed to accurately record in its books and records the kickbacks that its subsidiaries authorized for payment to Iraq outside of the confines of the U.N. program. Akzo Nobel also failed to devise and maintain a system of internal accounting controls to detect and prevent such illicit payments.

4. As a result of this conduct, Akzo Nobel violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

JURISDICTION

5. This Court has jurisdiction over this action under Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa]. Akzo Nobel, directly or indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

6. Venue is appropriate in this Court under Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain acts or transactions constituting the violations by Akzo Nobel occurred in this district.

DEFENDANT

7. Akzo Nobel is a corporation organized under the laws of the Netherlands. Akzo Nobel manufactures human and animal health care products, coatings, and other chemicals. At all relevant times, Akzo Nobel's American Depositary Receipts ("ADR") were registered with the Commission pursuant to Section 12(g) [15 U.S.C. § 78l(g)] of the Exchange Act and were quoted on NASDAQ under the symbol "AKZOY." In August 2007, Akzo Nobel delisted its ADRs, and in October 2007, it terminated its registration with the Commission. Two of Akzo Nobel's subsidiaries were involved in sales to Iraq under the Oil for Food Program.

RELEVANT ENTITIES

8. **N.V. Organon** ("Organon") is a wholly-owned subsidiary of Akzo Nobel that manufactures and sells prescription pharmaceuticals, including hormone and anesthesia products. Organon is located in the Netherlands. In September 2007, Akzo Nobel entered into an agreement to sell Organon, which is expected to close by the end of the year.

9. **Intervet International B.V.** ("Intervet") is a wholly-owned subsidiary of Akzo Nobel that manufactures veterinary vaccines and animal pharmaceuticals. Intervet is located in the Netherlands. In September 2007, Akzo Nobel entered into an agreement to sell Intervet, which is expected to close by the end of the year.

FACTS

I. The United Nations Oil for Food Program

10. On August 2, 1990, the government of Iraq, under Saddam Hussein, invaded Kuwait. Four days later the United Nations Security Council voted to enact U.N. Resolution 661, which prohibited member states from trading in any Iraqi commodities or products. The United Nations continued to enforce these sanctions until 2003.

11. On April 14, 1995, the United Nations Security Council adopted Resolution 986, which authorized the Government of Iraq to sell oil on the condition that the proceeds of all of its oil sales be deposited in a bank account monitored by the United Nations and used only to purchase designated humanitarian goods for the benefit of the Iraqi people. In May 1996, the Government of Iraq entered into a written Memorandum of Understanding to implement Resolution 986.

12. The United Nations Office of Iraq Program, Oil for Food (the "Oil for Food Program" or "Program") was subsequently established to administer Iraq's sale of oil and purchase of humanitarian goods by Iraq. A special bank account was established at a bank in New York (the "UN Escrow Account") to handle the transactions. The United Nations' economic sanctions on Iraq remained in place for all trade and transactions not authorized by the Oil for Food Program.

13. Starting in the middle of 2000, the Iraqi government made a concerted effort to subvert the Program by demanding secret kickbacks from its humanitarian goods suppliers. Although contracts entered into pursuant to the Program were subject to UN review and approval, the Program gave Iraq discretion to select the companies from which it purchased goods. A humanitarian supplier would submit a bid for the sale of its

goods. After the Iraqi ministry would accept the bid, the ministry would inform the supplier of the requirement that the supplier make a secret payment, frequently in the form of an "After-Sales Service Fee" ("ASSF"), to Iraq in order to win the contract. The Iraqi ministry would also inform the supplier that the ASSF would have to be paid prior to the goods entering into the country, or the goods would be stopped at the border until the ASSF payment was paid.

14. Initially, when this scheme first began, suppliers met with the Iraqi ministries in person and signed a side agreement acknowledging that the supplier would make the illicit payment.¹ By October 2000, this fee was usually ten percent of the total contract value. Later in the scheme, everyone understood that the ten percent would have to be paid. Thus, side agreements were no longer needed -- the supplier would simply increase its original contract bid by ten percent.

15. The supplier would then submit its contract with the inflated contract price to the UN for approval, and not disclose the ten percent illicit payment, which was in violation of the Program rules. The supplier would pay the ASSF to Iraq prior to shipping its goods. Afterwards, the UN Escrow Account would pay the supplier the inflated contract price for the goods, thus, unknowingly reimbursing the supplier for the ten percent that the supplier had already provided to Iraq. As a result of this conduct, the UN Escrow Account lost the benefit of more than \$1 billion.

16. After the United States invaded Iraq in March 2003, at the request of the provisional government, the UN ceased Iraq's ASSF scheme. The UN required that all

¹ The side agreement was not provided to the UN when the Oil for Food contract was submitted and approved. This was in violation of the Program and U.S. and international trade sanctions against Iraq.

pending contracts that had been inflated by ten percent be amended to reflect the true contract value of the goods.

II. Akzo Nobel Subsidiaries Make Illicit Payments to Iraq

17. While the Oil for Food Program was in effect, Akzo Nobel's Intervet and Organon subsidiaries utilized local agents and consultants in the Middle East to facilitate sales of pharmaceuticals to Iraq. Akzo Nobel subsidiaries Intervet and Organon acquiesced to the demands of the Iraqi Ministries and paid illegal ASSFs through third-party agents and consultants. Akzo Nobel's total profits from contracts in which illegal payments were made amounted to more than \$1.6 million.

A. Intervet Authorizes \$38,741 in Illicit Payments Through Its Agents.

18. During the Program, Intervet conducted business in Iraq through two separate agents, Agent A and Agent B. They were paid jointly on all Iraqi contracts regardless of which agent secured the business. Prior to August 2000, each agent received a five percent fee. In August 2000, the agents' fees were reduced to 2.5 percent as a result of price pressures.

19. Intervet entered into one contract during the time that Iraq was requiring payment of kickbacks. In September 2000, Agent A negotiated a contract with an Iraqi Ministry on behalf of Intervet. Agent A informed Intervet that the Iraqi Ministry required that Intervet make an additional five percent kickback under the contract. Intervet informed the agent that it refused to agree to make the payment. Agent A informed Intervet that he would "handle" the situation. At the contract signing on October 21, 2000, an Intervet employee who was aware of the kickback demand saw the agent deliver

an envelope to one of the Iraqi representatives. The Intervet employee did not ask the agent about the contents of the envelope.

20. Shortly thereafter, the agent informed the Intervet employees that he had committed to make the five percent payment to the Iraqis and needed to be reimbursed. In order to reimburse the agent for the payment while not accurately reflecting the true purpose of the payment in the company's books and records, the Intervet employees agreed to revert to Intervet's pre-August 2000 commission arrangement with Agent A and Agent B, giving each agent a five percent commission. By doing so, the agents could keep the 2.5 percent they were each entitled to receive and be reimbursed for the five percent that they passed on to the Iraqi Ministry. In total, the Iraqi ministry received a five percent ASSF payment on this contract. It is likely that Agent B agreed to give up half of his five percent commission on the contract to reimburse Agent A for making the illegal payment. In November 2001, Intervet received payment from the U.N. escrow account for this contract.

21. In connection with this contract, \$38,741 in illegal ASSFs was paid to Iraq through these agents. Intervet was aware of the payment, and reimbursed the agents for the payment. Intervet took no action to notify the U.N. of the illegal payment, or to sanction the agents or the employees involved. The payment was mischaracterized on Intervet's books and records as a legitimate commission payment to the agents.

B. Organon Authorizes \$240,750 in Illicit Payments Through Its Agent

22. Organon entered into three contracts that involved the payment of ASSF payments to Iraqi ministries. Agent A, the same agent that worked on the Intervet transaction, was involved in each of these transactions. Prior to these transactions, Agent

A was paid a five percent commission; however, his rate was raised to fifteen percent once the Iraqis began demanding ten percent ASSF payments in order to award Program contracts. Each of these three Organon contracts was negotiated by Agent A and an Organon employee. On the first contract, Organon and the Iraq ministry agreed on an initial contract price. However, when Organon prepared the contract documents that were approved by the U.N., Organon inflated the contract price by ten percent to cover the ASSF payment. On the two subsequent contracts, Organon simply agreed with the Iraqi ministry on an initial contract price that was inflated by ten percent, and then submitted that inflated contract price in the U.N. documents. An Organon employee created backdated price quotes that matched the pricing reflected in the three contracts.

23. On the first contract, dated June 18, 2001, Agent A requested that Organon pay ten percent of his commission to an entity called "Sabbagh Drugstore." The payment was made in September 2001. On the remaining two contracts, both dated July 15, 2002, Agent A requested that Organon pay the extra ten percent commissions directly to an account in his name. The payments on both contracts were made on November 25, 2002. The Organon employees were aware that the contract price submitted to the U.N. was inflated by ten percent and that the increase in the agent's commission resulted in money going directly to the Iraqi Ministry of Health, also known as Kimadia.

24. In connection with these three contracts, \$240,750 in illegal ASSFs was paid to Iraq through this agent. Organon was aware of the payments, and even increased the agent's commission by ten percent to funnel the payment to Iraq. Organon did not disclose to the U.N. that it had inflated the contract price by ten percent to cover the ASSF payments. The payments were mischaracterized on Organon's books and records

as legitimate commission payments to the agent to conceal the true nature of the payments.

III. Akzo Nobel's Failure to Maintain Adequate Internal Controls

25. Akzo Nobel failed to maintain a system of internal controls sufficient to ensure that the company's transactions under the Oil for Food Program were executed in accordance with management's authorization and to maintain accountability for the company's assets. As discussed above, Akzo Nobel's subsidiaries made several illicit payments that contravened the Oil for Food Program, U.S. and international trade sanctions, and its own internal FCPA and anti-bribery policies.

26. Akzo Nobel's subsidiaries submitted contracts to the U.N. for approval, which the subsidiaries knew were secretly inflated to cover the cost of illegal kickbacks to Iraq. The subsidiaries also increased their agents' commissions as a means to funnel payments to Iraq, while not accurately reflecting the purpose of those payments on its books and records. In three transactions, a portion of the company's sale price for goods to Iraq constituted illicit payments in violation of U.N. regulations and trade sanctions, and also Akzo Nobel's FCPA and anti-bribery policies. In the fourth, a payment was made to Iraq in connection with the contract in violation of U.N. regulations and trade sanctions, and also Akzo Nobel's FCPA and anti-bribery policies. Moreover, as evidenced by the extent and duration of the improper illicit payments made by two Akzo Nobel subsidiaries and their agents, the improper recording of these payments in the company's books and records, and the failure of Akzo Nobel's management to detect these irregularities, Akzo Nobel failed to devise and maintain an effective system of

internal controls to prevent or detect these violations of the FCPA, as required by Exchange Act Section 13(b)(2)(B).

V. Akzo Nobel's Failure to Properly Maintain Its Books and Records

27. As described above, Akzo Nobel's accounting for its Oil for Food transactions failed properly to record the nature of the company's kickback payments. On three transactions, a portion of the company's sale price for goods to Iraq constituted ASSF payments in violation of U.N. regulations and trade sanctions, and also Akzo Nobel's FCPA and anti-bribery policies. A fourth contract involved a payment to Iraq in violation of U.N. regulations and trade sanctions, and also Akzo Nobel's FCPA and anti-bribery policies. The Akzo Nobel subsidiaries failed to properly designate the kickback payments made on its Program contracts, characterizing them as commission payments. Thus, Akzo Nobel failed to accurately record these payments in its books, records, and accounts to fairly reflect the transactions.

CLAIMS FOR RELIEF

FIRST CLAIM

[Violations of Section 13(b)(2)(A) of the Exchange Act]

28. Paragraphs 1 through 27 are realleged and incorporated by reference.

29. As described above, Akzo Nobel, through its officers, agents, consultants, representatives, and subsidiaries, failed to keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected its transactions and dispositions of its assets.

30. By reason of the foregoing, Akzo Nobel violated Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

SECOND CLAIM

[Violations of Section 13(b)(2)(B) of the Exchange Act]

31. Paragraphs 1 through 30 are realleged and incorporated by reference.

32. As described above, with respect to illicit payments made in connection with Akzo Nobel's sales to Iraq, Akzo Nobel failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) payments were made in accordance with management's general or specific authorization; and (ii) payments were recorded as necessary to maintain accountability for its assets.

33. By reason of the foregoing, Akzo Nobel violated Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a final judgment:

A. Permanently restraining and enjoining Akzo Nobel from violating Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and (B)];

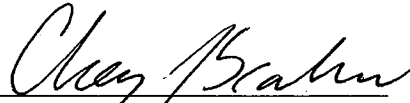
B. Ordering Akzo Nobel to disgorge ill-gotten gains, with prejudgment interest, wrongfully obtained as a result of its illegal conduct;

C. Ordering Akzo Nobel to pay civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and

D. Granting such further relief as the Court may deem just and appropriate.

Dated: December 20, 2007

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Cheryl J. Scarboro".

Cheryl J. Scarboro (D.C. Bar No. 422175)

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