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.** **Novo Nordisk A/S** **Novo Alle** **DK-2880 Bagsvaerd** **Denmark** **Defendant.**	Case: 1:09-cv-00862 Assigned To : Sullivan, Emmet G. Assign. Date : 5/11/2009 Description: General Civil

COMPLAINT

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

SUMMARY

1. From approximately 2000 through 2003, Novo Nordisk A/S ("Novo Nordisk" or the "Company") violated the books and records and internal controls provisions of the Foreign Corrupt Practices Act (the "FCPA") by paying $1,437,946 in kickbacks and agreeing to pay an additional $1,315,454 in kickbacks in connection with its sale of humanitarian goods to Iraq under the United Nations Oil for Food Program (the "Program"). Novo Nordisk, a Danish pharmaceutical company and a leading supplier of insulin, authorized and paid kickbacks to Iraq in the form of "after-sales service fees" on sales of its products. Novo Nordisk knew that such payments were prohibited by the 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 allowed Iraq to purchase necessary humanitarian goods and related services through a U.N. escrow account. However, the kickbacks paid in connection with Novo Nordisk's sales of goods to Iraq had the effect of diverting funds out of the escrow account and were instead paid into Iraqi-controlled accounts at banks in countries such as Jordan.

3. Because Novo Nordisk paid "after-sales service fees" to Iraq outside of the confines of the U.N. program, Novo Nordisk failed to accurately record in its books and records the kickbacks that were authorized for payment to Iraq. Novo Nordisk 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, Novo Nordisk 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]. Novo Nordisk, 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 Novo Nordisk does business in this judicial district and

certain acts or transactions constituting the violations by Novo Nordisk occurred in this district.

DEFENDANT

7. **Novo Nordisk A/S** ("Novo Nordisk"), a Danish company headquartered in Bagsvaerd, Denmark, specializes in the manufacture and development of pharmaceutical products and services. Throughout the relevant period, Novo Nordisk's American Depositary Receipts were registered pursuant to Section 12(b) of the Exchange Act and were listed on the New York Stock Exchange (symbol: NVO). During the Oil for Food Program, Novo Nordisk entered into eleven contracts for which kickbacks were paid, and two for which kickbacks were promised but not paid.

RELEVANT ENTITIES

8. **Regional Office Near East** ("RONE") is based in Athens, Greece and is a branch of Novo Nordisk. RONE, along with the Near East Office, handled sales to Iraq under the Program.

9. **Near East Office** ("NEO") is based in Amman, Jordan, and is a branch of Novo Nordisk. NEO, along with RONE, handled sales to Iraq under the Program.

10. **Kimadia** is the Iraq State Company for the Importation and Distribution of Drugs and Medical Appliances. During the relevant period, Kimadia, which reported to the Iraqi Ministry of Health, requested kickbacks from Novo Nordisk.

FACTS

I. The United Nations Oil for Food Program

11. 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.

12. 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.

13. 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.

14. 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 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.

15. 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.

16. 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.

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

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[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.

II. Novo Nordisk Makes $1.4 Million in ASSF Payments and Authorizes Approximately $1.3 Million in Additional ASSF Payments to Iraq

18. Novo Nordisk manufactures and markets pharmaceutical products and services worldwide. While the Oil for Food Program was in effect, the Company sold insulin and other medicines to the Iraq Ministry of Health through Kimadia, the Iraq State Company for the Importation and Distribution of Drugs and Medical Appliances. Beginning in 2000, Kimadia along with various Iraqi ministries began requiring companies to pay kickbacks in the form of ASSFs to win contracts to supply humanitarian goods under the Program. Novo Nordisk acquiesced to Kimadia's demands and authorized the payment of illegal ASSFs through a third-party agent. Novo Nordisk's net profits from the thirteen contracts for which illegal payments were either made or authorized were $4,321,523.

A. <u>Kimadia Demands Kickbacks from Novo Nordisk</u>

19. Novo Nordisk engaged its long-time Jordan-based agent ("Agent") to submit bids on Novo Nordisk's behalf to Kimadia under the Program. Two branches of Novo Nordisk -- RONE, based in Athens, Greece, and NEO, based in Amman, Jordan -- handled the sales to Iraq and supplied the Agent with bid prices for each contract. Once Kimadia accepted Novo Nordisk's bid, a contract was prepared. The fully-executed contract between Novo Nordisk and Kimadia was then forwarded to the United Nations for approval.

20. In late 2000 or early 2001, a Kimadia import manager advised the Agent that Kimadia required Novo Nordisk to pay a ten percent kickback in order to obtain a contract under the Program. The Kimadia import manager told the Agent that Novo Nordisk should increase its prices by ten percent and pay that amount to Kimadia. By

doing so, Novo Nordisk would recover the secret kickback from the U.N. escrow account when the contract, with the inflated price, was subsequently approved for disbursement and paid by the U.N. The Kimadia import manager informed the Agent that if Novo Nordisk did not agree, Novo Nordisk would not be awarded contracts from Kimadia.

B. Novo Nordisk Authorizes Illicit Kickback Payments Through its Agent

21. The Agent notified NEO's General Manager ("NEO GM") and RONE's business manager ("RONE Manager") of Kimadia's demand. The RONE Manager discussed the matter with the Vice-President of RONE ("RONE VP") who in turn notified a Novo Nordisk Senior Vice President ("Senior VP"). The Senior VP informed a Novo Nordisk Officer ("Officer A") of Kimadia's demand. Officer A rejected the request to pay Kimadia a ten percent kickback, and instead suggested that Novo Nordisk find another way. Novo Nordisk suggested to the Kimadia import manager that Novo Nordisk reduce the price of its medicines by ten percent. However, after the Kimadia import manager angrily refused the offer, the Senior VP, along with the RONE and NEO managers authorized the kickbacks to Kimadia despite Officer A's refusal to do so. On or about April 2001 and August 2001, respectively, Novo Nordisk paid increased commissions to its Agent to pay kickbacks to Kimadia. According to the RONE managers, later kickbacks were also approved by Novo Nordisk.

C. Novo Nordisk's Scheme to Conceal the Kickbacks

22. After Novo Nordisk agreed to Kimadia's demands, Novo Nordisk attempted to conceal the conduct. The U.N. contracts were artificially inflated by ten percent. Novo Nordisk then increased the Agent's commission from ten percent to twenty percent so that the Agent could funnel the additional ten percent to Kimadia as a

kickback on Novo Nordisk's behalf. The Agent's commission was increased under the guise that the payment was used to cover the Agent's increased distribution and marketing costs. Novo Nordisk advanced the Agent the ten percent kickback prior to the goods being shipping to Iraq because the Company knew that Iraqi officials would not allow the goods into the country if the ASSF had not been paid. Given Novo Nordisk was shipping medicine, it was extremely important that the goods not be delayed at the Iraqi border. Although the Agent began receiving the twenty percent commission and paying kickbacks on Novo Nordisk's behalf in April 2001, Novo Nordisk did not memorialize the Agent's commission increase in writing until January 2002. In January 2004, after the U.S. invasion of Iraq and the subsequent halt of the kickback scheme, the Agent's commission reverted back to ten percent.

23. Novo Nordisk's scheme to pay the kickbacks was evidenced in various e-mails. In a March 2001 e-mail discussing one of the contracts, the RONE Manager advised the RONE VP and the NEO GM that they had "discussed very carefully the pricing on this one" due in part to the "requested circular by Iraq for all companies to increase by 10% and pay-back the money!" In a May 2001, e-mail between the RONE Manager and the NEO GM discussing the NEO GM's response to an annual review for information on products sold below Novo Nordisk's minimum selling price requirements, the RONE Manager suggested listing the Agent's commission and "maybe even the 10% that MOH [Ministry of Health] now take [sic]" in the price.

24. In a June 7, 2001, e-mail from the RONE Manager to the NEO GM, the RONE Manager stated that the Agent had obtained three contracts for an "increased 10% in prices to cover the costs of orders for the new system and we have a REAL 10%

increase on top!" He went on to say that this would take Novo Nordisk's prices to "a really acceptable level." On or about June 7, 2001, the Agent sent the RONE Manager three original contracts and advised him that the contracts included "an additional 10% (over and above the 10% already added before)." These e-mails show that Novo Nordisk artificially inflated its contract prices to cover the illicit ASSFs.

D. Mechanics of the Kickback Scheme

25. Novo Nordisk paid the kickbacks in three ways. Initially, Novo Nordisk wired the kickback to the Agent's account at the Arab Bank in Amman, Jordan as an advance on his commission. The Agent would then wire the funds to an official Kimadia account at the Rafidain Bank in Amman, Jordan. After Kimadia received the kickback payment, the Iraqis authorized the opening of a letter of credit and then Novo Nordisk shipped the goods to Iraq. Later, Novo Nordisk informed Kimadia that it could not pay the ten percent kickback before it received payment from the U.N. as it was not easy for the Athens office to authorize large advance payments to the Agent. Thereafter, Kimadia no longer required the kickback be made upfront, and instead insisted on a bank guarantee. After receiving authorization from either the RONE or NEO managers, the Agent opened a bank guarantee from the Arab Bank payable to Kimadia's account at the Rafidain Bank in Jordan. Eventually, Kimadia informed Novo Nordisk that it would no longer accept bank guarantees paid to its account at the Rafidain Bank. Instead, Kimadia provided Novo Nordisk with an account number where the kickback was to be paid.

26. Altogether, Novo Nordisk made a total of $1,437,946 in improper kickback payments on eleven contracts through the Agent. Novo Nordisk also agreed to

pay approximately $1,315,454 in ASSFs on two additional contracts. Novo Nordisk recorded the kickbacks as legitimate commission payments on its books and records.

III. Novo Nordisk's Failure to Maintain Adequate Internal Controls

27. Novo Nordisk failed to maintain a system of internal controls sufficient to ensure that the Company's transactions under the Oil for Food Program were in accordance with management's authorization and to maintain accountability for the Company's assets. As discussed above, Novo Nordisk either made or agreed to make numerous kickback payments, which contravened the Oil for Food Program, U.S. and international trade sanctions, and its own internal policies.

28. Novo Nordisk knowingly submitted contracts to the U.N. for approval that were secretly inflated to cover the cost of illegal kickbacks to Iraq. The Company also increased its agent's commission as a means to funnel payments to Iraq, while not accurately reflecting the purpose of those payments on its books and records. Specifically, Novo Nordisk raised its agent's commission from ten percent to twenty percent under the guise of covering the Agent's increased distribution and marketing costs. Moreover, RONE wired large sums to the agent with little to no supporting documentation. Finally, the Company did not memorialize the agent's increased commission until January 2002, nine months after the first increased commission payment was made. Accordingly, Novo Nordisk 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. Novo Nordisk's Failure to Properly Maintain Its Books and Records

29. As described above, Novo Nordisk's accounting for its Oil for Food transactions failed properly to record the nature of the Company's kickback payments. For all eleven contracts where a kickback was paid, a portion of the Company's sale price for goods to Iraq constituted ASSF payments in violation of the U.N. regulations and trade sanctions. The Company failed to properly designate the kickback payments made on its Program contracts, instead characterizing them as legitimate commission payments to its agent. Thus, Novo Nordisk 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]

30. Paragraphs 1 through 29 are realleged and incorporated by reference.

31. As described above, Novo Nordisk, through their 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.

32. By reason of the foregoing, Novo Nordisk 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]

33. Paragraphs 1 through 32 are realleged and incorporated by reference.

34. As described above, with respect to illicit payments made in connection with Novo Nordisk's sales to Iraq, Novo Nordisk 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.

35. By reason of the foregoing, Novo Nordisk 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 Novo Nordisk 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 Novo Nordisk to disgorge ill-gotten gains, with prejudgment interest, wrongfully obtained as a result of its illegal conduct;

C. Ordering Novo Nordisk 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: May 11, 2009

Respectfully submitted,

Cheryl J. Scarboro

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