

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

U.S. SECURITIES AND EXCHANGE)
COMMISSION,)
100 F. Street, NE)
Washington, D.C. 20549-5030)

Plaintiff,

v.

AGCO CORPORATION)
4205 River Green Parkway)
Duluth, Georgia 30096)
Defendant.)

Case: 1:09-cv-01865
Assigned To : Urbina, Ricardo M.
Assign. Date : 9/30/2009
Description: General Civil

COMPLAINT

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

SUMMARY

1. From approximately 2000 through 2003, AGCO Corporation ("AGCO") violated the books and records and internal controls provisions of the Foreign Corrupt Practices Act (the "FCPA") when its subsidiaries made approximately \$5.9 million in kickback payments in connection with their sales of humanitarian goods to Iraq under the United Nations ("UN") Oil for Food Program. AGCO's subsidiaries authorized and paid kickbacks to Iraq in the form of "after-sales service fees" on sales of its products to Iraq. AGCO knew or was reckless in not knowing that kickbacks were paid in connection with its subsidiaries' transactions. AGCO 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 UN escrow account. However, the kickbacks paid in connection with AGCO's subsidiaries' sales of goods to Iraq had the effect of diverting funds out of the escrow account and were paid by a third party into Iraqi-controlled accounts at banks in countries such as Jordan.

3. Because its subsidiaries paid "after-sales service fees" to Iraq outside of the confines of the UN program, AGCO failed to accurately record in its books and records the kickbacks that were authorized for payment to Iraq. AGCO also failed to devise and maintain systems of internal accounting controls to detect and prevent such illicit payments.

4. As a result of this conduct, AGCO 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]. AGCO, 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 AGCO does business in this judicial district and certain acts or transactions constituting the violations by AGCO occurred in this district.

DEFENDANTS

7. **AGCO Corporation** (“AGCO”), headquartered in Duluth Georgia, is a manufacturer and supplier of agricultural machinery under the brands Fendt, Valtra and Massey-Ferguson. Throughout the relevant time period, AGCO’s common stock was registered pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange under the symbol “AG”.¹ During the Oil for Food Program, AGCO subsidiary AGCO Ltd. marketed and negotiated transactions involving the sales of equipment and spare parts to Iraq.

RELEVANT ENTITIES

8. **AGCO Ltd.** is a wholly-owned subsidiary of AGCO based in Coventry, England. AGCO Ltd. is responsible for AGCO’s business in Europe, Africa and the Middle East. Throughout the relevant period, AGCO Ltd.’s financial results were included in the consolidated financial statements that AGCO filed with the Commission. During the Oil for Food Program, AGCO Ltd. marketed and negotiated the sales of equipment to Iraq through AGCO S.A., located in France, and AGCO Danmark A/S, located in Denmark.

9. **AGCO Danmark A/S** is a wholly-owned subsidiary of AGCO based in Copenhagen, Denmark. AGCO Danmark’s financial results were included in the

¹ In May 2009, AGCO’s ticker symbol changed to “AGCO.”

consolidated financial statements that AGCO filed with the Commission. AGCO Danmark sold agriculture equipment and parts to Iraq during the Oil for Food Program.

10. **AGCO S.A.** is a wholly-owned subsidiary of AGCO located in Beauvais, France. AGCO S.A.'s financial results were included in the consolidated financial statements that AGCO filed with the Commission. AGCO S.A. sold agriculture equipment and parts to Iraq during the Oil for Food Program.

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.² 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

² 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.

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.

II. AGCO Makes Illicit Payments to Iraq

18. AGCO and its subsidiaries sell agricultural equipment and farm machinery. While the Oil for Food Program was in effect, AGCO's U.K. subsidiary, AGCO Ltd., marketed and negotiated the sale of agricultural equipment and spare parts to Iraqi ministries through the Program. AGCO Ltd. marketed and negotiated the sale of equipment through two European subsidiaries, AGCO S.A., located in France, and AGCO Danmark A/S, located in Denmark. During this time period, Iraq's various ministries required the payment of after-sales service fees in connection with winning contracts to supply humanitarian goods under the Program. AGCO Ltd. acquiesced to the demands of the Iraqi ministries. AGCO's subsidiaries paid the illegal kickbacks through a third-party agent based in Jordan. AGCO's total gains from contracts in which ASSFs were paid are \$13,907,393.

A. AGCO's Subsidiaries Make \$5.9 Million in ASSF Payments

1. AGCO Ltd. Learns of the ASSF Requirement

19. Prior to the Oil for Food Program, AGCO had tried unsuccessfully to increase its market share in Iraq. Once the Program began, AGCO hired a Jordanian agent to facilitate sales to Iraq. From December 2000 to March 2003, AGCO entered into sixteen contracts under the Program that involved the payment of ASSFs. Each of the contracts involved the sale of farm machinery and spare parts to the Iraqi Ministry of Agriculture.

20. In December 2000, AGCO Ltd.'s business manager for Iraq learned from the Jordanian agent that the Iraqi Ministry of Agriculture was demanding a kickback of ten percent of the contract value as a condition to awarding Program contracts to AGCO. The agent stated that the kickback was required up front on all sales contracts. The business manager for Iraq notified his supervisor, the sales director for the Middle East, about the new requirement. The business manager and his supervisor agreed to the kickbacks, but informed the agent that AGCO could not pay the kickbacks directly to Iraq. The agent stated that he would make the payments directly to the Iraqis on AGCO's behalf, and that AGCO should set up bank guarantees in favor of the agent to facilitate the payments: In a December 2000 e-mail concerning the kickbacks, the agent informed the business manager and his supervisor that "the payments are in the 'interest of continuity of our solid position we are enjoying now.'" AGCO employees then proceeded to funnel payments to the Ministry of Agriculture through the agent. The payments were separate from and in addition to the normal commissions and fees that AGCO paid to the agent. In some instances, the agent asked that the funds be wired to his personal account.

2. AGCO Employees Create a Fictional Account to Fund the Kickback Payments

21. Prior to the payment of ASSFs, AGCO paid the majority of the agent's fees in the form of three commissions: (1) a flat rate commission; (2) a variable commission based upon the value of the equipment sold; and (3) an "After Sales" commission to allow the agent to establish and maintain an infrastructure in Iraq to support AGCO's farm machinery. The After Sales commission allowed the agent to provide trained service personnel and services such as installation, repairs and operator instruction on AGCO equipment. Typically, this After Sales fee was \$400 for a basic tractor and \$900 for more complex machines. The agent's total commissions were generally between three and seven percent of the total contract price.

22. Beginning in early 2001, AGCO began to pay additional amounts to the agent to make kickback payments to the Ministry of Agriculture on AGCO's behalf. To conceal the kickback scheme, AGCO's employees created a fictional account in its books and records denoted as "Ministry Accrual." The kickback payments were all recorded in this account. The AGCO employees made it appear that the account was being used to pay the agent for his After Sales commissions. However, the AGCO employees continued to maintain and use a separate accrual account for the payment of the agent's true After Sales commissions. Thus, AGCO maintained and used two accounts, both of which were described as for the purpose of After Sales work. The payments allocated to the Ministry Accrual account were approximately ten percent of the contract price, which was much larger than the After Sales commissions that historically were paid to the agent for ostensibly the same services.

23. The accrual account was created by AGCO Ltd.'s marketing staff with virtually no oversight from AGCO Ltd.'s finance department. No one questioned the

existence of the dual accounts. No one questioned why the Ministry Accrual account contained approximately ten percent of the contract value despite the fact that there was no contract in place requiring that such ten percent be paid to the ministry or anyone else. The Ministry Accrual account was used to record the payments made to the agent and kicked back to Iraq. When the finance department authorized payments from the Ministry Accrual account, it did not ask for or receive any proof of service to warrant the payments. Unlike other payments to the agent, the Ministry Accrual payments were made by bank guarantee and in French francs or Euros instead of U.S. dollars. In October 2002, an employee who set up bank guarantees for the agent knowing that the payments would be forwarded to the ministry warned AGCO Ltd.'s business manager for Iraq and his supervisor that AGCO's internal auditors might audit the Iraq commission accounts. The employee cautioned that "we do not want the auditors raising any questions on Iraq business!" Other employees who were aware of the improper payments wrote letters to the bank indicating that certain payments to the agent were for "unpaid commissions" when they knew that they were kickbacks for the ministry. Marketing and finance employees in the U.K., Denmark, and France were all instrumental in the scheme.

B. AGCO Conceals the Kickback Payments from the UN

24. As part of the scheme, AGCO's subsidiaries concealed the kickback payments from the UN. AGCO's subsidiaries secretly inflated UN contract prices by an artificial ten percent. In submitting its contracts to the UN for approval, AGCO's subsidiaries failed to disclose that they were paying Iraq a kickback of ten percent of the contract proceeds in direct contravention of UN, U.S. and international trade sanctions. Altogether, AGCO's subsidiaries paid approximately \$5,912,393 in ASSFs on sixteen

contracts. Documents, including banking records, confirm the ASSF payments received by Iraq in connection with the contracts. The ASSFs were inaccurately described as a “Ministry Accrual” for infrastructure repair in the company’s books and records and were included among legitimate commission payments to AGCO’s agent in Iraq.

C. AGCO Lacked Sufficient Controls Over Its Marketing Department

25. Due to a lack of sufficient internal controls, AGCO Ltd.’s sales and marketing employees were able to create and implement a scheme to pay kickbacks to the Ministry of Agriculture without raising suspicions at the company. Sales and marketing personnel were able to enter into contracts without review from the legal or finance departments. An AGCO Ltd. accounting employee described the Finance Department employees as “blind loaders” who input information into AGCO’s books without any adequate oversight role. Marketing personnel were able to create accrual accounts (such as the Ministry Accrual account used to pay the kickbacks) without any oversight and caused accounts to be created and payments to be made without proper documentation. On at least two occasions, the Jordanian agent asked for and received funds for “car payments” related to business in Iraq, and AGCO employees did not obtain any documentation as to the appropriateness of these expenses or ask if the cars were going to government officials.

26. AGCO Ltd.’s structure at the time allocated inappropriate accounting and finance responsibilities to the marketing department. Turnover in the marketing department at AGCO Ltd. was high and employees were forced to shoulder a great deal of the accounting burden. In February 2002, AGCO’s internal auditors noted numerous problems with AGCO Ltd.’s sales process, including the establishment of accrual

accounts by the marketing department. In response to internal audit's report, AGCO changed its methodology going forward. However, AGCO failed to conduct a review of the accrual accounts that existed at the time of the report. As a result, the Ministry Accrual account continued to be used in the scheme to make and record additional ASSF payments to Iraq.

D. AGCO Failed to Notice Red Flags Related to the Sales to Iraq

27. AGCO's management repeatedly failed to notice or follow up on red flags related to the company's sales to Iraq under the Oil for Food Program. AGCO's legal department was aware that the company was conducting sales under the Program into Iraq, a sanctioned country, but failed to ensure that the sanctions or the UN rules and regulations were followed. In fact, AGCO's General Counsel's office assisted on at least one occasion with obtaining 661 Committee approval for an Oil for Food contract. The General Counsel's office then sent a letter to a London bank asking that money be paid to the Jordanian agent. With regard to AGCO Ltd.'s relationship with the Jordanian agent, AGCO did not conduct any due diligence on the agent or require that the agent undergo FCPA training. In addition, the agent's contract with AGCO did not accurately explain the agent's services and payments, and lacked any FCPA language. In three instances when the agent's commission varied significantly from the typical three to seven percent covered by his contract, AGCO employees were not questioned by management as to the purpose of the additional costs. There is no evidence that management noticed these discrepancies, even when the invoicing instructions to pay the agent did not match the amounts actually paid. In 2004, AGCO management was questioned by a news reporter about rumors that the company paid kickbacks during the Oil for Food Program. In

direct contravention to their “Ministry Accrual” story that payments were made for infrastructure improvements, AGCO employees told the reporter that they had been requested to pay kickbacks, but refused. AGCO management did not follow up on the discrepancy until subpoenaed by the SEC staff.

28. AGCO, through its subsidiaries, entered into sixteen contracts with Iraqi ministries for the sales of AGCO products and made ASSF payments totaling \$5,912,393. AGCO either knew or was reckless in not knowing about the improper payments.

III. AGCO’s Failure to Maintain Adequate Internal Controls

29. AGCO failed to maintain a system of internal controls sufficient to ensure that the companies’ 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, AGCO’s subsidiaries made numerous illicit payments that contravened the Oil for Food Program, U.S. and international trade sanctions, and its own internal FCPA and anti-bribery policies.

30. In sixteen transactions that AGCO subsidiaries entered into with Iraqi ministries, a portion of the sales price for goods to Iraq constituted ASSF payments in violation of UN regulations and trade sanctions, and also AGCO’s FCPA and anti-bribery policies. As evidenced by the extent and duration of the improper ASSF payments made by AGCO, the improper recording of these payments in the company's books and records, and the failure of AGCO's management to detect these irregularities, AGCO 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).

IV. AGCO's Failure to Properly Maintain Its Books and Records

31. As described above, AGCO's accounting for its Oil for Food transactions failed properly to record the nature of the kickback payments. On sixteen transactions, a portion of the sales price for goods to Iraq constituted ASSF payments in violation of U.N. regulations and trade sanctions, and also AGCO's FCPA and anti-bribery policies. In these instances, AGCO's subsidiary AGCO Ltd. failed to properly designate those payments, recording them in a fictional accrual account as ordinary business expenses. Thus, AGCO 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]

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

33. As described above, AGCO, 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.

34. By reason of the foregoing, AGCO 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]

35. Paragraphs 1 through 34 are realleged and incorporated by reference.

36. As described above, with respect to illicit payments made in connection with AGCO's subsidiaries' sales to Iraq, AGCO 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.

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

PRAYER FOR RELIEF

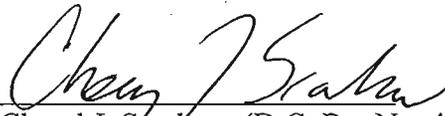
WHEREFORE, the Commission respectfully requests that this Court enter a final judgment:

- A. Permanently restraining and enjoining AGCO 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 AGCO to disgorge ill-gotten gains, with prejudgment interest, wrongfully obtained as a result of its illegal conduct;
- C. Ordering AGCO 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: September 30, 2009

Respectfully submitted,



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