

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72678 / July 28, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3571 / July 28, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15986

In the Matter of

**SMITH & WESSON HOLDING
CORPORATION,**

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 (the “Exchange Act”), against Smith & Wesson Holding Corporation (“Smith & Wesson” 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 Securities Exchange Act of 1934, 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 finds that¹:

Summary

1. This matter concerns violations of the anti-bribery, books and records and internal controls provisions of the Foreign Corrupt Practices Act ("FCPA") by Smith & Wesson. The violations took place from 2007 through early 2010, when a senior employee and other employees and representatives of Smith & Wesson made, authorized, and offered to make improper payments and/or to provide gifts to foreign officials in an attempt to win contracts to sell firearm products to foreign military and law enforcement departments. During this period, Smith & Wesson's international business was in its developing stages and accounted for approximately 10% of the company's revenues. Smith & Wesson's employees and representatives engaged in a systemic pattern of making, authorizing and offering bribes while seeking to expand the company's overseas business.

2. The bribe payments were inaccurately recorded in Smith & Wesson's books and records as legitimate sales commissions or other business expenses. Despite its push to make sales in new and high risk markets overseas, Smith & Wesson failed to establish an appropriate compliance program or devise and maintain an adequate system of internal accounting controls, which allowed the repeated improper offers and payments to continue undetected for years.

Respondent

3. Smith & Wesson is a Nevada corporation with its principal place of business in Springfield, Massachusetts. The company, through its wholly owned subsidiary, Smith & Wesson Corp., manufactures firearms and markets its products both domestically in the United States and internationally in multiple countries. Smith & Wesson does not have any international subsidiaries and conducts its international business directly and through brokering agents. Much of Smith & Wesson's international business involves the sale of firearms to foreign law enforcement and military departments. Smith & Wesson issues and maintains a class of publicly-traded securities registered pursuant to Section 12(b) of the Exchange Act, which trades on the NASDAQ Stock Exchange.

Facts

4. From 2007 through early 2010, as Smith & Wesson sought to break into international markets and increase sales, certain of the company's employees and representatives engaged in a pervasive practice of making, authorizing and offering improper payments to foreign government officials as a means of obtaining or retaining international business. Although only

¹ The findings herein are made pursuant to the Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

one of the contracts was fulfilled before the unlawful activity was identified, company employees made or authorized the making of improper payments in connection with multiple ongoing or contemplated international sales.

5. In 2008, for example, Smith & Wesson retained a third-party agent in Pakistan to assist the company in obtaining a deal to sell firearms to a Pakistani police department. Even after the agent notified the company that he would be providing guns valued in excess of \$11,000 to Pakistani police officials in order to obtain the deal, and that he would be making additional cash payments to the officials, the company authorized the agent to proceed with the deal. Smith & Wesson's Vice President of International Sales and its Regional Director of International Sales authorized the sale of the guns to the agent to be used as improper gifts and authorized payment of the commissions to the agent, while knowing or consciously disregarding the fact that the agent would be providing the guns and part of his commissions to Pakistani officials as an inducement for them to award the tender to the company. Smith & Wesson ultimately sold 548 pistols to the Pakistani police for \$210,980 and profited from the corrupt deal in the amount of \$107,852.

6. In 2009, Smith & Wesson attempted to win a contract to sell firearms to an Indonesian police department by making improper payments to its third party agent in Indonesia, who indicated that part of the payment would be provided to the Indonesian police officials under the guise of legitimate firearm lab testing costs. On several occasions, Smith & Wesson's third-party agent indicated that the Indonesian police expected Smith & Wesson to pay them additional amounts above the actual cost of testing the guns as an inducement to enter the contract. The agent later notified Smith & Wesson's Regional Director of International Sales that the price of "testing" the guns had risen further. Smith & Wesson's Vice President of International Sales and its Regional Director of International Sales authorized and made the inflated payment, but a deal was never consummated.

7. Similarly, Smith & Wesson made improper payments in 2009 to its third party agent in Turkey, who indicated that part of the payments would be provided to Turkish officials in an attempt to secure two deals in Turkey, for the sale of handcuffs to Turkish police and firearms to the Turkish military. Neither of these interactions resulted in the shipment of products, as Smith & Wesson was unsuccessful bidding for the first deal, while the latter deal was ultimately canceled. Similarly, Smith & Wesson authorized improper payments to third party agents who indicated that parts of these payments would be provided to foreign officials in Nepal and Bangladesh in unsuccessful attempts to secure sales contracts in those countries. Although these contemplated deals in Nepal and Bangladesh were never consummated in each case, the company had obtained or attempted to obtain the contract by using third party agents as a conduit for improper payments to government officials.

8. Despite making it a high priority to grow sales in new and high risk markets overseas, the company failed to design and implement a system of internal controls or an appropriate FCPA compliance program reasonably designed to address the increased risks of its new business model. The company did not perform any anti-corruption risk assessment and conducted virtually no due diligence of its third-party agents regardless of the perceived level of corruption in the country in which Smith & Wesson was seeking to do business. Smith & Wesson

failed to devise adequate policies and procedures for commission payments, the use of samples for test and evaluation, gifts, and commission advances. The Vice President of International Sales had almost complete authority to conduct the company's international business, including the sole ability to approve most commissions. Smith & Wesson's FCPA policies and procedures, and its FCPA-related training and supervision also were inadequate. As a result of these compliance and internal controls failures, Smith & Wesson's Vice President of International Sales and the Regional Director of International Sales were able to cause the company to pay and/or authorize improper payments in numerous countries around the globe for a period of several years.

Smith & Wesson's Remedial Measures

9. Smith & Wesson took prompt action to remediate its immediate FCPA issues, including: conducting an internal investigation, terminating its entire international sales staff; terminating pending international sales transactions; and re-evaluating the markets in which it sought international sales. In addition, Smith & Wesson implemented a series of significant measures to improve its internal controls and compliance processes, including: implementing new internal audit procedures to identify FCPA issues; creating more robust controls on payments, gifts, and other transactions in connection with international business activity; enhancing its FCPA compliance policies and procedures; and creating a Business Ethics and Compliance Committee.

Legal Standards and Violations

10. 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 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.

FCPA Violations

Anti-Bribery Violations

11. Smith & Wesson violated the anti-bribery provisions of the federal securities laws when it authorized its agents to provide gift guns and make other improper payments to foreign officials in Pakistan, Indonesia, Turkey, Nepal and Bangladesh in order to induce foreign officials in those countries to award sales contracts to Smith & Wesson.

12. As a result of the conduct described above, Smith & Wesson violated Section 30A of the Exchange Act, which prohibits any issuer with a class of securities registered pursuant to Section 12 of the Exchange Act, in order to obtain or retain business, from giving, or authorizing the giving of, anything of value to any foreign official for purposes of influencing the official or inducing the official to act in violation of his or her lawful duties, or to secure any improper advantage; or to induce a foreign official to use his influence with a foreign government or foreign governmental instrumentality to influence any act or decision of such government or instrumentality. 15 U.S.C. § 78dd-1.

Books and Records Violations

13. Smith & Wesson failed to properly account for the improper payments to its agent in Pakistan, the inflated lab testing payments to its agent in Indonesia, and the improper expense payments to its agents in Turkey in its books and records. Instead, Smith & Wesson improperly characterized the payments it made in Pakistan as legitimate commissions, and those that it made in Indonesia and Turkey as legitimate business expenses.

14. As a result of the conduct described above, Smith & Wesson violated Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect their transactions and disposition of their assets. 15 U.S.C. § 78m(b)(2)(A).

Internal Controls Violations

15. Smith & Wesson failed to devise and maintain sufficient internal controls with respect to its international sales operations. While the company had a basic corporate policy prohibiting the payment of bribes, it failed to implement a reasonable system of controls to effectuate that policy. For example, Smith & Wesson failed to devise adequate policies and procedures with regard to commission payments, the use of samples for test and evaluation, gifts, and commission advances. Further, Smith & Wesson's FCPA policies and procedures, and its FCPA-related training and supervision were inadequate.

16. As a result of the conduct described above, Smith & Wesson violated Section 13(b)(2)(B) of the Exchange Act, which requires reporting companies to, among other things, devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are executed in accordance with management's general or specific authorization; transactions are recorded as necessary to maintain accountability for assets, and that access to assets is permitted only in accordance with management's general or specific authorization. 15 U.S.C. § 78m(b)(2)(B).

Commission Consideration of Smith & Wesson's Remedial Efforts

In determining to accept the Offer, the Commission considered the remedial acts promptly undertaken by Respondent and the cooperation afforded the Commission staff.

IV.

UNDERTAKINGS

Respondent undertakes to:

17. Report to the Commission staff on the status of Respondent's remediation and implementation of compliance measures at six-month to twelve-month intervals during a two-year term, as set forth below. 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 an entity or person 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 two-year period, Respondent shall: (i) conduct an initial review and submit an initial report, and (ii) conduct and prepare follow-up reviews and reports, as described below:

a. Respondent shall submit to the Commission staff a written report within 180 calendar days of the signing of this agreement setting forth a complete description of its 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 report shall be transmitted to Paul G. Block, Assistant Regional Director, Enforcement Division, Boston Regional Office, U.S. Securities and Exchange Commission, 33 Arch Street, Suite 2300, Boston, Massachusetts 02110. The Commission staff may, upon written request of Respondent and for good cause shown, approve an extension of the time period for issuance of the report.

b. Respondent shall undertake two follow-up reviews, incorporating any comments provided by the Commission staff on Respondent's initial review and 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.

c. The first follow-up review and report shall be completed by 180 days after the initial review. A subsequent follow-up review and report shall be completed by 360 days after the completion of the preceding follow-up review.

d. The Commission staff may, upon written request of Respondent and for good cause shown, approve an extension of the time period for issuance of the report.

18. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence.

19. The periodic review 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 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.

V.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Smith & Wesson shall cease and desist from committing or causing any violations and any future violations of Sections 30A, 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act;

B. Respondent shall comply with the undertakings enumerated in Section IV above;
and

C. Respondent shall, within ten (10) days of the entry of this Order, pay \$2,034,892 to the United States Treasury, including \$107,852 in disgorgement, \$21,040 in prejudgment interest, and a civil monetary penalty of \$1,906,000. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. § 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will 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, made 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 Smith & Wesson as a 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 Paul G. Block, Assistant Regional Director, Foreign Corrupt Practices Act Unit, Boston Regional Office, Securities and Exchange Division, 33 Arch Street, Suite 2300, Boston, Massachusetts 02110.

By the Commission.

Jill M. Peterson
Secretary