

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 83575 / July 2, 2018

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3944 / July 2, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18568

In the Matter of

BEAM INC., n/k/a
BEAM SUNTORY INC.,

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 (“Exchange Act”), against Beam Inc., n/k/a Beam Suntory Inc. (“Beam” 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 finds¹ that:

Summary

1. These proceedings arise from violations of the books and records and internal accounting controls provisions of the Foreign Corrupt Practices Act of 1977 (the "FCPA") [15 U.S.C. § 78dd] by Beam in connection with conduct at Beam Global Spirits & Wine (India) Private Limited ("Beam India"). Beam makes and sells branded alcoholic beverages worldwide, and Beam India bottled and sold Beam products in India throughout the relevant period.

2. From at least 2006 through 2012, Beam's Indian subsidiary, Beam India, made improper payments to various government officials in connection with obtaining or retaining business in the Indian market. Senior executives at Beam India directed schemes using its third-party sales promoters, distributors and other third parties in connection with sales, promotions, distribution, and other commercial activities. The promoters, distributors, and other third parties made illicit payments to employees at government controlled depots and retail stores and various government offices to increase sales orders, get better positioning on store shelves, process and secure license and label registrations, and facilitate the distribution of Beam India's spirit products from its bottling facility to warehouses in other states. The third parties received funds, or were reimbursed, for the illicit payments by providing fabricated or inflated invoices to Beam India. The expenses were falsely recorded at Beam India and thereafter consolidated into Beam's books and records. During this period, Beam also failed to maintain a sufficient system of internal accounting controls.

3. In 2011, Beam sought to introduce a new product in India. The label registration for the product stalled when the Indian excise official with the discretion to issue the registration told the third-party bottler of the product that an improper payment to him of one million Rupees (approximately his yearly salary or \$18,000) was required to approve the registration. The illicit payment request ultimately made its way to three senior managers of Beam's Asia Pacific/South America region ("APSA"). The payment to be made by the third-party bottler and a method of reimbursing the bottler for making the payment was approved. Within weeks after communicating this down to the third-party bottler, the label registration was approved by the excise official and Beam India's bottler began canning and Beam India began distributing the new product.

4. As a result of the conduct during the relevant period, Beam violated Sections 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act.

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

Respondent

5. **Beam Inc., n/k/a Beam Suntory Inc.** is a corporation organized under the laws of the state of Delaware and headquartered in Chicago, Illinois. Through April 2014, Beam had a class of publicly traded securities pursuant to Section 12(b) of the Exchange Act, which were traded on the New York Stock Exchange. In April 2014, Suntory Holdings Limited (“Suntory”), a Japanese corporation, acquired Beam. Beam subsequently delisted from the New York Stock Exchange and continued its operations as a subsidiary of Suntory. During the period that Beam was a public company, it operated and managed its global business on the basis of reportable segments located in geographical regions, consisting of North America, Europe/Middle East/Africa, and APSA (APSA was operated from Beam’s Australian subsidiary).

Other Relevant Entities

6. **Beam Global Spirits & Wine (India) Private Limited** was acquired in 2006, and its books, records, and financial accounts were consolidated into Beam’s books and records and reported by Beam on its financial statements. In 2011, Beam India’s management started reporting to Beam’s APSA region management in Australia.

Background

7. In India the alcoholic beverage industry is highly regulated by government authorities. Beam India, and third parties acting as agents on its behalf, had numerous interactions with government officials related to importation of distilled mixes for its spirit products, shipments to its bottling facility in Behror, Rajasthan, various inspections of the Behror plant, shipments from the factory in Behror to distribution warehouses in multiple states in India, label registrations required to distribute each brand of liquor in each state, licensing of warehouses in states prior to retail distribution, and sales to retail stores that were operated by the Indian government. Introduction of new spirit products and distribution warehouses required new applications for label registrations and licensing of the warehouses in each state. Label registrations and warehouse licenses also required yearly renewal in Rajasthan and in the twenty-six Indian states where Beam sold its products or had warehouses.

8. Prior to its acquisition by Beam, the Indian entity that subsequently became Beam India regularly made direct and indirect payments to Indian government officials in connection with inspections of the bottling facilities, distribution of its products, label registration and warehouse license applications and renewals, and advantageous product placement and promotion in both government and retail stores. It also made payments to government officials responsible for ordering alcoholic products for distribution in government run retail channels in order to secure and increase sales of spirit products. The Indian management maintained a second set of financial records that tracked the payments and disguised the schemes in the entity’s books and records to make it appear that the illicit payments were legitimate business expenses.

9. When Beam acquired the assets of the Indian entity, it also retained existing management of the entity who knew of and orchestrated the bribe schemes. Those retained managers continued the schemes at Beam India without interruption from the 2006 acquisition through the end of the third quarter 2012. Beam profited from the illicit payment schemes at Beam India.

Improper Payments Made in Government Sales Channels

10. From 2006 through the end of the third quarter 2012, Beam, through Beam India, sold liquor products in six markets where the Indian state government regulated both the distribution and retail sale of alcoholic products. These included the Indian states of Delhi, Tamil Nadu, Andaman & Nicobar, Orissa, and Karnataka and the Indian military's Canteen Stores Department ("CSD").

11. During this period, Beam India used third-party promoters to market its products in the government channel. The third-party promoters, with Beam India's knowledge and authorization, also directed improper payments to government officials at retail stores and depots in order to secure orders of Beam products as well as placement of Beam products in a prominent shelf position in retail stores.

12. The illicit payments, made with the knowledge, authorization, and complicity of Beam India's management, were funded through the submission of inflated invoices from the promoters, often for inflated per-case commissions. Senior Beam India management directed the distribution of funds to the various promoters in different markets to make payments to government officials in those states. Certain Beam India finance executives maintained off-the-books accounts that tracked amounts and uses of the funds provided to promoters. For example, over the period, Beam India paid more than \$1.5 million to its promoter in the CSD channel and over \$550 thousand to its promoter in the state of Delhi to make improper payments to government officials at government-controlled retail stores and depots in those markets.

13. The illicit payments were falsely characterized in Beam India's books and records as legitimate business expenses for "Customer Support," "Off-Trade Promotions," "Commission to Distributor/Promoter," and "Commercial Discount, Ongoing" which disguised the true nature of these payments. Ultimately, the related expenses were consolidated in Beam's general ledger system coded as "Selling and Distribution Expenses."

Beam India's Payments to Excise Officials

14. From 2006 through the end of the third quarter 2012, Beam India also made improper payments to insure timely inspections at Beam India's Behror manufacturing facility, to Indian government officials in fourteen states to secure and expedite the processing of annual label registrations for distribution of Beam's products from Rajasthan to other Indian states where the liquor was to be sold, and for warehouse licenses in several states that served as depots for Beam India's products. The payments fell into two categories, payments to lower level government

employees to insure routine administrative processes and payments made to senior level ministry officials who had discretion to issue or renew label registrations or warehouse licenses, necessary for the distribution and sale of Beam's products in the various states.

15. In 2011, Beam India sought to introduce Beam's profitable "Ready to Drink" ("RTD") products in India. At the time, Beam had embarked on a broad global initiative to develop RTD beverages in emerging markets and had targeted India as one of the markets to introduce RTD. In May 2011, Beam India contracted with a third-party bottling facility to produce the RTD drinks. Applications were then filed with the Excise Ministry to obtain the label registrations required to operate the facility and bottle RTD products in that state.

16. The label registration process stalled for several months until the third-party bottler met with a senior excise official, who demanded an improper payment of one million Indian Rupees (approximately equal to the official's yearly salary or \$18,000 at the then exchange rate) to approve the label registration. The third-party bottler requested that Beam India fund the improper payment. Beam India management then sought approval to make the payment from Beam's APSA management located in Australia. The payment was approved and certain APSA senior management discussed how to disguise the payment by having the third-party bottler pay it to the Excise official, and then submit false invoices to be reimbursed for the illicit payment. After an APSA senior manager communicated the authorization, a Beam India senior manager implemented the scheme whereby the third-party bottler made the illicit payment. Within weeks after discussing the payment demand, the needed approvals were received from the Excise Ministry. Thereafter, the third-party bottler submitted two false invoices to Beam India, purportedly for consulting services rendered at the bottling facility, in the approximate amount of the payment demand, which Beam India paid.

Beam Failed to Timely Remediate Deficiencies

17. After Beam acquired Beam India in 2006, the company provided Beam India management with its Code of Conduct manuals and additional compliance training. Beam also instituted annual internal audits starting in 2008.

18. In 2010, Beam engaged a global accounting firm to conduct a compliance review of Beam India. The accounting firm interviewed executives at Beam India and conducted a limited sample testing of transactions. In early January 2011, the firm reported that certain Beam India executives believed that "promoters are likely making grease payments" to government officials in India and, as a result, recommended that Beam follow-up and "conduct and document due diligence to confirm activities undertaken" by third parties, "investigate red flags," "discuss legal considerations of third party actions taken on Beam's behalf," and "consider need to further review" the CSD and other military outlet businesses. After receiving this report, Beam consulted a U.S. law firm with FCPA expertise, which advised that these issues required follow up. Beam then retained an Indian law firm to review and expand upon the work performed by the accounting firm. The Indian law firm interviewed Beam India senior management to determine whether improper payments were being made to Indian government officials in contravention of company

policy and the FCPA. The Indian law firm reported that Beam India managers believed that third parties in India may make payments and/or provide gifts to customs officials and government employees in the CSD channel. The Indian law firm confirmed many of the accounting firm's recommendations including additional FCPA training and revising contracts with third parties. Beam then requested its U.S. law firm to review the report and work done by the Indian law firm.

19. Before the U.S. law firm completed its review, the firm forwarded to Beam's general counsel's office a July 2011 SEC enforcement action concerning FCPA violations by Diageo plc in India. Diageo, a direct competitor of Beam's in the Indian spirit markets, had settled an SEC administrative action related to, among other conduct, payments made through its third-party promoters to Indian government officials to obtain increased spirit orders in government sales channels and to secure initial and annual label registrations and other administrative approvals critical to Diageo's business in India. Beam subsequently sent a lawyer from its General Counsel's office to India to interview senior Beam India management to ask whether similar conduct was occurring at Beam India and to provide additional FCPA training. Thereafter, that lawyer revised Beam India's agreements with its customs house agent and third-party promoter in the CSD channel, the largest revenue channel for Beam India, and used those agreements as templates for agreements with other third parties in India.

20. In August 2011, the U.S. law firm reviewed the Indian law firm's report and noted that the Indian law firm had not provided an analysis of Beam India's books and records, internal controls or other issues related to its finance and accounting practices, that it had not conducted any substantial transactional testing, and that it raised issues concerning Beam's oversight of third parties and the potential conduct of those third parties. In addition to confirming the advice given by the major accounting firm and the Indian law firm, the U.S. law firm proposed additional recommendations, including that "Beam should strongly consider undertaking a financial review . . . and that Beam should consider structuring the review so that in-house or outside counsel engages an outside forensic investigator to conduct the review" Beam did not then conduct additional transactional testing as advised by the U.S. law firm or conduct due diligence on third parties as advised earlier in the year by the global accounting firm.

21. In September 2011, the Indian law firm advised Beam to conduct interviews of Beam India operational employees who interact and work with the promoters in the CSD channel to identify specific risks associated with activities of the promoters. Beam declined, as a Beam lawyer stated, "I believe we basically would like to see the same information for the same purposes, but with different approaches. I am concerned about [the Indian law firm] digging and finding information that we cannot impact, specifically, finding activities and practices by [promoters] that we cannot remediate or change. The risk may be ultimately having to choose whether to continue to conduct business with any [promoters] that create [FCPA] risks for us/Beam India. . . . [The Indian law firm] may be familiar with the Diageo matter but will not assess it as we would because it involves the [FCPA]. The lawyer added, "if we are doing anything in the same manner as Diageo did that was violative, we should change it and look to how we can do things in a more clearly compliant manner."

22. In November 2011, a former Beam India employee alleged a scheme through which a Beam India manager was using false invoices from third parties to generate cash that was then submitted to the manager. A review completed in March 2012 confirmed the conduct alleged by the former employee, and concluded that the cash from the distributors had been used to make payments totaling \$25,000 over two years to government officials in connection with the label registration process in one sales zone in India. However, Beam did not then expand the review to other third parties or other markets that presented similar risks. Beam did move up a planned FCPA compliance review by several months to August 2012. In July 2012, a former Beam India zonal accountant raised similar issues which, along with the results of the August 2012 compliance review, led to an internal investigation beginning in September 2012 that uncovered the schemes conducted by Beam India management, which included managing the misconduct by Beam India's third parties and maintaining a second set of financial records.

Legal Standards and Violations

23. 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 rule or 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

24. Section 13(b)(2)(A) of the Exchange Act requires every issuer with a class of securities registered pursuant to Section 12 of the Exchange Act to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and disposition of the assets of the issuer. [15 U.S.C. § 78m(b)(2)(A)].

25. As described above, Beam violated Section 13(b)(2)(A) of the Exchange Act. The company's subsidiary, Beam India, falsely characterized illicit payments to government officials as legitimate business expenses in Beam's books and records.

26. Section 13(b)(2)(B) of the Exchange Act requires every issuer with a class of securities registered pursuant to Section 12 of the Exchange Act to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. [15 U.S.C. § 78m(b)(2)(B)].

27. As described above, Beam violated Section 13(b)(2)(B) by failing to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that company funds would only be used as authorized for legitimate corporate purposes, that transactions would be recorded as necessary, and that access to company assets occurred only as permitted.

Beam's Self-Disclosure, Cooperation, and Remedial Efforts

28. In determining to accept the Offer, the Commission considered Respondent's self-disclosure, cooperation, and remedial efforts. Beam voluntarily disclosed this misconduct to the Commission staff and timely shared the facts developed during the course of an internal investigation by a special committee of its board. Beam also cooperated by voluntarily producing documents, summarizing its factual findings, translating numerous key documents, providing timely reports on witness interviews, and making current or former employees available to the Commission staff, including those that needed to travel to the United States or elsewhere for interviews.

29. Beam's remedial actions included: ceasing business operations at Beam India until Beam was satisfied it could operate Beam India compliantly; terminating certain Beam India employees who were involved in the misconduct; terminating third-party sales promoters in government markets in India; updating and expanding its anti-corruption policies and procedures on a global basis, including its relationship with third-party vendors and suppliers; enhancing its internal controls and compliance functions; developing and implementing FCPA compliance procedures, including expansion and implementation of policies and procedures such as the due diligence and contracting procedures for vendors and suppliers; and conducting extensive anti-corruption training throughout the Beam organization.

IV.

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

Accordingly, it is hereby ORDERED that:

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

B. Respondent shall, within 10 days of the entry of this Order, pay disgorgement of \$5,264,340, prejudgment interest of \$917,498, and a civil monetary penalty of \$2,000,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717 or SEC Rule of Practice 600. 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 Beam 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 Charles E. Cain, Chief, FCPA Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields
Secretary