SEC Charges Daimler AG With Global Bribery

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Washington, D.C., April 1, 2010 — The Securities and Exchange Commission today announced a settlement with Daimler AG for violations of the Foreign Corrupt Practices Act (FCPA), alleging that the Stuttgart, Germany-based automobile manufacturer engaged in a repeated and systematic practice of paying bribes to foreign government officials to secure business in Asia, Africa, Eastern Europe and the Middle East.

Additional Materials
» SEC Complaint

Daimler agreed to pay $91.4 million in disgorgement to settle the SEC's charges and pay $93.6 million in fines to settle charges in separate criminal proceedings announced today by the U.S. Department of Justice.

The SEC alleges that Daimler paid at least $56 million in improper payments over a period of more than 10 years. The payments involved more than 200 transactions in at least 22 countries. Daimler earned $1.9 billion in revenue and at least $90 million in illegal profits through these tainted sales transactions, which involved at least 6,300 commercial vehicles and 500 passenger cars. Daimler also paid kickbacks to Iraqi ministries in connection with direct and indirect sales of motor vehicles and spare parts under the United Nations Oil for Food Program.

"It is no exaggeration to describe corruption and bribe-paying at Daimler as a standard business practice," said Robert Khuzami, Director of the SEC's Division of Enforcement. "The financial and reputational costs incurred by Daimler as a result are a lesson that should be studied closely by all companies."

Cheryl J. Scarboro, Chief of the SEC's Foreign Corrupt Practices Act Unit, added, "The bribery was so pervasive in Daimler's decentralized corporate structure that it extended outside of the sales organization to internal audit, legal, and finance departments. These departments should have caught and stopped the illegal sales practices, but instead they permitted or were directly involved in the company's bribery practices."

The SEC's complaint, filed in U.S. District Court for the District of Columbia, alleges that Daimler used bribes to further government sales in such countries as Russia, China, Vietnam, Nigeria, Hungary, Latvia, Croatia, and Bosnia. Among other means, Daimler used dozens of ledger accounts, known internally as "interne Fremdkonten" or "internal third party accounts" to maintain credit balances for the benefit of government officials. These credit balances were controlled by Daimler subsidiaries or outside third parties, including foreign government officials or Daimler's dealers, distributors or other agents who were at times used as
intermediaries to make payments to foreign government officials. The accounts were funded through several bogus pricing mechanisms, such as "price surcharges," "price inclusions," or excessive commissions. Daimler also used artificial discounts or rebates on sales contracts to effectuate bribes. In those instances, all or a portion of the discount was kicked back through a ledger account to a foreign government official, rather than credited to the purchasing government customer.

The SEC alleges that bribes also were made through phony sales intermediaries and corrupt business partners, as well as through the use of cash desks. Sales executives would obtain cash from the company in amounts as high as hundreds of thousands of dollars, enabling Daimler to obscure the purpose and recipients of the money paid to government officials.

According to the SEC's complaint, the bribery permeated several major business units and subsidiaries, was sanctioned by members of Daimler's management, and continued during the course of the SEC's investigation. Daimler's corrupt practices were authorized by or known to the former heads of Daimler's Overseas Sales and Commercial Vehicles departments, the former head of Daimler Export and Trade Finance (a subsidiary of Daimler Financial Services), and the former heads of Daimler subsidiaries in numerous foreign countries.

Daimler violated Section 30A of the Securities Exchange Act of 1934 by making illicit payments to foreign government officials in order to obtain or retain business. Daimler violated Section 13(b)(2)(B) of the Exchange Act by failing to have adequate internal controls to detect and prevent the payments, and it violated Section 13(b)(2)(A) of the Exchange Act by improperly recording the payments in its books and records.

Without admitting or denying the SEC's allegations, Daimler has consented to the entry of a court order permanently enjoining it from future violations of Sections 30A, 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act. The court order also requires Daimler to comply with certain undertakings regarding its FCPA compliance program, including a provision that requires the company to retain an independent consultant for three years. Daimler cooperated with the ongoing investigation, conducted its own substantial internal investigation, and remediated problems as they were identified.

The SEC acknowledges the assistance of the U.S. Department of Justice's Fraud Section and the Federal Bureau of Investigation.

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