

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 64123 / March 24, 2011

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3255 / March 24, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14305

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In the Matter of	:	ORDER INSTITUTING CEASE-AND-DESIST
	:	PROCEEDINGS PURSUANT TO SECTION
	:	21C OF THE SECURITIES EXCHANGE ACT
	:	OF 1934, MAKING FINDINGS, IMPOSING
BALL CORPORATION,	:	A CEASE-AND-DESIST ORDER AND A
	:	CIVIL MONEY PENALTY
Respondent.	:	
	:	

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 Ball Corporation (“Ball,” “the Company,” 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 Respondent 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 and a Civil Money Penalty (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

1. Ball Corporation, an Indiana corporation based in Broomfield Colorado, is a manufacturer of metal packaging for beverages, foods and household products. From July 2006 through October 2007, Ball, through its Argentine subsidiary Formametal, S.A., offered and paid at least ten bribes, totaling at least \$106,749, to employees of the Argentine government to secure the importation of prohibited used machinery and the exportation of raw materials at reduced tariffs.

2. Although certain accounting personnel at Ball learned soon after Ball acquired Formametal in March 2006 that Formametal employees may have made questionable payments and caused other compliance problems before the acquisition, the Company failed to take sufficient action to ensure that such activities did not recur at Formametal after Ball took control of the Argentine company. Within months of Ball's acquisition of Formametal, two Formametal executives—the then-Formametal President and then-Formametal Vice President of Institutional Affairs (hereinafter the "President" and "Vice President of Institutional Affairs," respectively)—authorized improper payments to Argentine officials. The true nature of the payments was mischaracterized as ordinary business expenses on Formametal's books and records and went undetected for over a year.

Respondent

3. In addition to supplying metal cans to food, beverage, and household products customers, Ball Corporation provides aerospace and other technological services to commercial and governmental customers. The Company employs approximately 14,000 people in more than ninety locations worldwide. Its stock is registered pursuant to Section 12(b) of the Exchange Act and is listed on the New York Stock Exchange under the ticker symbol BLL. Ball's Form 10-K for the period ending December 31, 2009, reported consolidated net income of \$387.9 million on revenue of \$7.34 billion. Ball acquired Argentine company Formametal, S.A., on March 27, 2006, as part of an acquisition of a larger U.S. aerosol container business. Formametal, a wholly-owned subsidiary of Ball, manufactures aerosol cans. Formametal's financial results are reported on a consolidated basis in Ball's financial statements.

Facts

A. Formametal Made or Offered Unlawful Payments to Officials of the Argentine Government

4. In June 2006, approximately three months after Ball acquired Formametal, a financial analyst in the general accounting group for Ball's Metal Food and Household Packaging Products Division made a routine visit to the newly acquired subsidiary to gather information about its operations. During the course of his visit, the analyst discovered that Formametal's employees may have made questionable payments and caused other compliance problems in the past. Concerned that such activity could recur at Formametal in the future, the analyst included his findings in a report ("the Formametal Report") that he submitted to the director of accounting of Ball's Metal Food and Household Packaging Products Division. The Formametal Report highlighted prior infractions by Formametal, including questionable customs fees, used machinery being declared new to circumvent customs regulations, other dishonest customs declarations, and the destruction of documents. Although Ball had demoted Formametal's incumbent President and replaced the Chief Financial Officer after acquiring the subsidiary in March 2006, when the Formametal Report came to the attention of several senior executives in Ball's Metal Food and Household Packaging Products Division, Ball's actions were not sufficient to prevent future infractions by Formametal executives.

5. In the period between July 2006 and October 2007, and following the analyst's discoveries, Formametal's senior officers authorized at least ten unlawful payments totaling approximately \$106,749 to Argentine government officials. Some payments were specifically authorized by Formametal's President, while in other instances, he appeared to have been aware that the unlawful payments were occurring and acquiesced to them. In some instances, the President learned about the opportunity to make a bribe from the Vice President of Institutional Affairs, who would then make the arrangements for the bribe without providing details to the President. These payments were disguised to appear as legitimate business expenses in Formametal's books and records and included in Ball's consolidated financial results reported for fiscal year 2006 and the first three quarters of 2007. These improper payments are explained below.

B. Equipment Import

6. Formametal paid bribes totaling over \$100,000 in 2006 and 2007 to secure the importation of equipment for use in its manufacturing process. Formametal's President authorized at least two of these payments. In most cases, the bribes were paid to induce government customs officials to circumvent Argentine laws prohibiting the importation of used equipment and parts. The bribes often appeared on invoices from a non-governmental customs agent for Formametal. The payments were invoiced as separate line items described inaccurately as "fees for customs assistance," "customs advisory services," "verification charge," or simply "fees," were invoiced in addition to other customs-related fees, and were sometimes in rounded peso amounts. To further obscure that the payments were really bribes, Formametal posted the payments

inaccurately identified as “customs advice” or “professional fees” to an “Other Expenses” account or in some instances to an account named for the related equipment.

C. Copper Scrap Export Waiver

7. Formametal paid a bribe that its President authorized in October 2007 in an attempt to bypass high government duties imposed on copper scrap exports. These duties, which were generally 40 percent of the value of the copper, were imposed by Argentina in an effort to discourage export sales of domestically produced copper and copper scraps. The President estimated the additional profit from exporting this copper scrap with the export duty waivers versus selling it inside Argentina would be approximately \$1.5 million annually.

8. For six months prior to August 2007, Formametal unsuccessfully sought to gain government approval to export the scrap without the customarily high duties. After giving up on obtaining the waiver legitimately, on October 18, 2007, Formametal disbursed \$4,821, representing the first of five bribe installments authorized by its President to obtain an export duty waiver. The payment was funneled through Formametal’s third party customs agent. Obscuring that the transaction was a bribe, Formametal inaccurately recorded the payment as “Advice fees for temporary merchandise exported” in an “Other Expenses” account. Although the President believed that the payments were requested by a customs official and would result in a copper scrap export duty waiver, no copper scrap export shipments were made pursuant to the improper payment.

D. Ball Accountants Learn About One Bribe

9. As early as February 2007, two accountants in Ball’s Metal Food and Household Packaging Products Division learned about one of the bribes paid by Formametal to import machinery for use in its manufacturing process. Formametal’s Vice President of Institutional Affairs, an Argentine national, who was formerly president and owner of the subsidiary, had paid the bribe on behalf of Formametal out of his own funds and received reimbursement from Formametal in the form of a company car. Formametal initially booked the transfer of the car as an interest expense. After being pressed for details about the transaction, Formametal’s President revealed to the two Ball accountants that the car was reimbursement for a bribe paid by the Vice President of Institutional Affairs. Although Formametal subsequently changed the accounting to record the transfer of the car as a miscellaneous expense, it still failed to accurately describe the “transfer” as a reimbursement for an illegal payment made to Argentine customs officials.

E. Ball Failed to Establish Sufficient Internal Accounting Controls

10. Ball's and Formametal's weak internal controls, which included importing equipment into Argentina in 2006 and 2007 without appropriate invoices and documentation, made it difficult to detect that the subsidiary was repeatedly violating Argentine law through the payment of bribes. Ball's weak internal controls also factored into the Company's failure to prevent further abuses at Formametal, after Ball accountants learned of a bribe paid by Formametal to import machinery for use in its manufacturing process. As a result, Formametal continued to make improper payments during 2007.

11. Further, Ball lacked sufficient internal controls to bring about effective changes after information available to Ball's executives indicated anti-bribery compliance problems at Formametal. For example, key personnel responsible for dealing with customs officials remained at Formametal, even though external due diligence performed on Formametal suggested that Formametal officials may have previously authorized questionable payments.

Legal Analysis

12. The FCPA, enacted in 1977, added Exchange Act Section 13(b)(2)(A) to require public companies to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer. It also added Exchange Act Section 13(b)(2)(B) to require such companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions: (i) are executed in accordance with management's general or specific authorization; and (ii) are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets. 15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B).

13. As detailed above, Formametal failed to properly record illegal payments and transactions when it repeatedly paid bribes disguised as customs assistance on invoices from its customs agent. In addition, Formametal used a customs agent as an intermediary to obscure the source and destination of funds, and it created false or misleading journal entries to facilitate the illegal importation of used machinery into Argentina. Ultimately, the improper payments, as well as the book value of the car given as reimbursement for a bribe paid by Formametal's Vice President of Institutional Affairs were mischaracterized as ordinary business expenses on Formametal's books and records. Because Formametal's financial statements were consolidated with those of Ball, Ball failed to keep accurate books and records in violation of Exchange Act Section 13(b)(2)(A).

14. In violation of Exchange Act Section 13(b)(2)(B), Ball also failed to devise and maintain an effective system of internal controls to prevent and detect violations of the FCPA at Formametal, even after senior Ball officers were on notice in

mid-2006 that in the past Ball's subsidiary's employees had made questionable payments and caused other compliance problems.

Ball's Remedial Efforts and Cooperation

15. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent, Respondent's voluntary disclosure of these matters to the Commission, and cooperation afforded the Commission staff.

IV.

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

Accordingly, it is hereby ORDERED that:

- (A) Pursuant to Section 21C of the Exchange Act, Respondent Ball 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 fifteen (15) days of the entry of this Order, pay the civil penalty of \$300,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Ball Corporation as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-6010.
- (C) Respondent acknowledges that the Commission is not imposing a civil penalty in excess of \$300,000 based upon its cooperation in a Commission investigation and related enforcement action. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Division may, at its sole discretion and without prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay an additional civil penalty. Respondent may not, by way of defense to any resulting

administrative proceeding: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Elizabeth M. Murphy
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, Imposing a Cease-and-Desist Order and a Civil Money Penalty ("Order"), on the Respondent and its legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray
Chief Administrative Law Judge
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