

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

U.S. SECURITIES AND EXCHANGE
COMMISSION,
100 F. Street, NE
Washington, D.C. 20549-6030

Plaintiff,

v.

FIAT S.p.A.
Via Nizza 250
Turin, Italy

and

CNH GLOBAL N.V.
World Trade Center, Amsterdam Airport
Tower B, 10th Floor
Schiphol Boulevard
1118 BH Amsterdam
The Netherlands
Defendants.

Case: 1:08-cv-02211
Assigned To : Kollar-Kotelly, Colleen
Assign. Date : 12/22/2008
Description: General Civil

COMPLAINT

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

SUMMARY

1. From approximately 2000 through 2003, Fiat S.p.A. ("Fiat") and its subsidiary CNH Global N.V. ("CNH Global") violated the books and records and internal controls provisions of the Foreign Corrupt Practices Act (the "FCPA") when their subsidiaries, agents and distributors made approximately \$4.3 million in kickback payments in connection with their sales of humanitarian goods to Iraq under the United

Nations (“U.N.”) Oil for Food Program. Fiat’s and CNH Global’s subsidiaries authorized and paid kickbacks to Iraq in the form of “after-sales service fees” on sales of its products to Iraq. Fiat and CNH Global knew or were reckless in not knowing that kickbacks were paid or agreed to in connection with each of its subsidiaries’ transactions. Fiat and CNH Global 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 U.N. escrow account. However, the kickbacks paid in connection with Fiat’s and CNH Global’s subsidiaries’ sales of goods to Iraq had the effect of diverting funds out of the escrow account and were paid by third parties into Iraqi-controlled accounts at banks in countries such as Jordan.

3. Because their subsidiaries paid “after-sales service fees” to Iraq outside of the confines of the U.N. program, Fiat and CNH Global failed to accurately record in their books and records the kickbacks that were authorized for payment to Iraq. Fiat and CNH Global 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, Fiat and CNH Global 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]. Fiat and CNH Global, 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 Fiat and CNH Global do business in this judicial district and certain acts or transactions constituting the violations by Fiat and CNH Global occurred in this district.

DEFENDANTS

7. **Fiat S.p.A.** (“Fiat”), an Italian company headquartered in Turin, Italy, is a provider of automobiles, agricultural and construction equipment, trucks, and commercial vehicles. Throughout the relevant period, Fiat’s American Depositary Receipts were registered pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange under the symbol “FIA.” In August 2007, Fiat delisted its ADRs and applied for termination of its registration with the Commission, which was effective in November 2007. During the Oil for Food Program, Fiat subsidiary IVECO S.p.A. sold trucks to Iraq. Fiat subsidiary CNH Global was involved in sales of agricultural and construction equipment and parts to Iraq during the Oil for Food Program through two of its subsidiaries.

8. **CNH Global N.V.** (“CNH Global”), a Dutch company headquartered in Amsterdam, The Netherlands, is a provider of agricultural and construction equipment.

CNH Global is a majority-owned subsidiary of Fiat and is controlled by Fiat Netherlands Holding N.V., a wholly owned subsidiary of Fiat. Throughout the relevant period, CNH Global's American Depository Receipts were registered pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange under the symbol "CNH." Two CNH Global subsidiaries, Case France S.A. and New Holland Italia S.p.A., were involved in sales of agricultural and construction equipment and parts to Iraq during the Oil for Food Program.

RELEVANT ENTITIES

9. **IVECO S.p.A.** ("IVECO"), is a wholly-owned subsidiary of Fiat and is headquartered in Turin, Italy. IVECO's sales of fuel tankers, trucks, and spare parts during the Oil for Food Program were conducted out of the company's IVECO Egypt office.

10. **Case France S.A.** ("Case France"), now known as CNH France S.A., is a wholly-owned subsidiary of CNH Global and is headquartered in Plessis-Belleville, France. Case France sold construction equipment, including wheel loaders and excavators, to Iraq.

11. **New Holland Italia S.p.A.** ("New Holland"), currently known as CNH Italia S.p.A., is a wholly-owned subsidiary of CNH Global and is headquartered in Modena, Italy. New Holland sold agricultural equipment, including tractors, to Iraq.

FACTS

I. The United Nations Oil for Food Program

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.¹ 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.

17. 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 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.

18. 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. Fiat's and CNH Global's Subsidiaries Make Illicit Payments to Iraq

19. Fiat's and CNH Global's subsidiaries sell automobiles, trucks, agricultural and construction equipment, and commercial vehicles. While the Oil for Food Program

¹ 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.

was in effect, IVECO, a Fiat subsidiary, participated in the sales of tankers, trucks, and other equipment to Iraq and two of CNH Global's subsidiaries, Case France and New Holland, participated in the sales of tractors, harvesters and other equipment to Iraq through the Program. During this time period, Iraq's various ministries required the payment of ASSFs in connection with winning contracts to supply humanitarian goods under the Program. IVECO, Case France, and New Holland acquiesced to the demands of the Iraqi ministries and paid illegal ASSFs through third-party agents and distributors. Fiat's and CNH Global's total gains from contracts in which ASSF payments and other illicit payments were paid or authorized amounted to \$5,309,632.

A. IVECO Makes \$3.1 Million in ASSF Payments

1. IVECO's Direct Sales to Iraq

20. During the Oil for Food Program, IVECO used its IVECO Egypt office to enter into four direct transactions with Iraqi ministries, including the Ministry of Oil, for the sale of commercial vehicles and spare parts. IVECO Egypt used a Lebanese agent to facilitate each transaction. Between October 2000 and January 2001, IVECO entered into four contracts under the Program that involved the payment of ASSFs.

21. After agreeing to make the illicit ASSF payments, IVECO Egypt employees developed a scheme to conceal the kickbacks. The kickbacks were disguised as legitimate agent commissions. Accordingly, IVECO Egypt increased the Lebanese agent's commissions on sales to Iraq from five percent to between fifteen and twenty percent of the total contract price. The Lebanese agent would then pass the ASSF payments to the Iraqi ministries on IVECO's behalf and then submit an invoice to IVECO for payment of the falsely inflated agency commissions. Internal IVECO

financial documents for three Oil for Food contracts show line items for “contract pay-back” or “restituzione” (translated as “pay-back”) due to the Lebanese agent, in addition to the legitimate components of the agent’s commissions. These line items represent the Lebanese agent’s payment of ASSFs on IVECO’s behalf. IVECO Egypt personnel held the Lebanese agent’s invoices for approximately one year prior to submitting them to IVECO’s headquarters in Italy for payment. Despite the delay in submitting the invoices, and the unusually large commissions, the invoices were paid.

22. In connection with one of the contracts, IVECO initially set up a bank guarantee in the amount of the ASSF in favor of a Dubai-based firm that operated as a front company for the Iraqi government. IVECO did not complete the bank guarantee and, instead, IVECO’s Lebanese agent established an identical bank guarantee to conceal IVECO’s role. A line item identified as “pay-back” in internal IVECO documents corresponds to the amount of the bank guarantee the Lebanese agent paid to Iraqi ministries on IVECO’s behalf.

23. Altogether, IVECO paid approximately \$1,803,880 in ASSFs on the four contracts. In order to generate funds to pay the ASSFs and to conceal those payments, IVECO and the Lebanese agent inflated the price of the U.N. contracts by ten to fifteen percent before submitting them to the U.N. for approval. The ASSF payments were incorrectly recorded as legitimate commissions on the company’s books and records.

2. IVECO’s Indirect Sales to Iraq

24. Beginning in November 2000, IVECO changed its method of doing business for future contracts. IVECO decided to use the Lebanese agent its distributor, rather than simply its agent. As a distributor, the Lebanese agent purchased equipment

directly from IVECO for its own account. The Lebanese agent, in turn, then sold IVECO trucks and parts to Iraq and submitted its own inflated contracts to the U.N. Thus, IVECO was no longer the party named on the inflated contracts to the U.N., but rather, the Lebanese agent was the named party. With IVECO's knowledge, the Lebanese agent then facilitated payment of the ASSF to Iraq. Through this mechanism, IVECO was able to move its goods into Iraq, but keep itself distanced from any involvement in the ASSF scheme. IVECO personnel knew or should have known from their direct sales to Iraq that the Lebanese agent's sales of IVECO products included ASSF payments.

25. In correspondence with the U.N., the Lebanese agent conceded that it paid ASSFs to Iraqi ministries on twelve contracts that involved the sale of IVECO products. Specifically, the Lebanese agent confirmed that the payments were made through Al Rafidain Bank in "amounts equivalent to ten percent of the value of [the] contracts[.]"

26. In connection with these twelve contracts, ASSFs totaling \$1,364,080 in ASSFs were made by the Lebanese agent. IVECO either knew or was reckless in not knowing that the Lebanese agent was making improper payments on the twelve contracts.

B. Case France Makes \$187,720 in ASSF Payments

27. In mid-2001, Case France, a subsidiary of CNH Global, engaged in three direct transactions with Iraqi ministries, including the Ministry of Oil, for the sale of construction equipment under the Oil for Food Program. Case France's Regional Sales Marketing Manager for the Middle East region learned of the ASSF requirement during a trip to Iraq. On a separate occasion, armed Iraqi officials approached Case France's Baghdad facility and reiterated the request for kickbacks to the Case France employees. Case France then entered into a side letter agreeing to pay kickbacks. The side letter was

not disclosed to the U.N., nor was the agreement to pay the kickbacks. Case France employees drafted profitability analyses for two of the three contracts, which listed a ten percent ASSF payment and a five percent commission payable to a Lebanese company that was to act as a distributor in connection with the sales. The Lebanese company funneled the ASSF payments to the Iraqi ministries on behalf of Case France.

28. Case France paid ASSFs totaling approximately \$187,720. To generate funds to pay the kickbacks and to conceal those payments, Case France and its agent inflated the price of the U.N. contracts by approximately ten percent before submitting them to the U.N. for approval. Case France inflated its commission payments to its Lebanese distributor, and the Lebanese distributor forwarded these excess funds to Iraq as kickbacks. Case France did not record the kickbacks on its books and records.

C. New Holland Makes More Than \$1 Million in ASSF Payments and Authorizes \$312,198 in Additional ASSF Payments

1. New Holland's Direct Sales to Iraq

29. Between December 2000 and May 2001, New Holland engaged in two contracts for the sale of tractors under the Oil for Food Program. In early 2001, New Holland personnel learned that Iraqi officials were demanding kickbacks in connection with sales under the Program. With a Jordanian dealer acting as its agent, New Holland entered into two direct contracts under the program between December 2000 and May 2001. On one of the contracts, New Holland obtained a bank guarantee in favor of the Iraqi ministry in March 2001 in the amount of the ASSF. The bank guarantee and its payment were not disclosed to the U.N.

30. To generate funds to pay the kickbacks to the Iraqi government and to conceal those payments, New Holland inflated the price of the contracts by

approximately ten percent before submitting them to the U.N. for approval. New Holland did not disclose to the U.N. the fact that the contracts were inflated or the intent to pay illicit ASSFs.

31. ASSF payments totaling \$447,116 were made by New Holland. The payments of the ASSFs were recorded as cost of goods sold in New Holland's books and records.

2. New Holland's Indirect Sales to Iraq

32. Soon after the two direct contracts were negotiated, New Holland ceased entering into direct sales to Iraq. Several months later, after May 2001, New Holland employees were approached by Iraqi officials who inquired why the company was no longer conducting business in Iraq. Shortly after this discussion, New Holland resumed business in Iraq. However, New Holland changed its method of doing business for these future contracts in an effort to distance itself from the payment of improper ASSFs. New Holland decided to make the Jordanian dealer its distributor, rather than simply its agent. As a distributor, the Jordanian dealer purchased equipment directly from New Holland for its own account. The Jordanian dealer, in turn, then sold New Holland products to Iraq and submitted its own inflated contracts to the U.N. Thus, New Holland was no longer the party named on the inflated contracts to the U.N., but rather, the Jordanian dealer was the named party. With New Holland's knowledge, the Jordanian dealer then facilitated payment of the ASSF to Iraq. Through this mechanism, New Holland was able to move its goods into Iraq, but keep itself distanced from any involvement in the ASSF scheme. Correspondence from the Jordanian dealer to a New Holland employee dated November 2001 shows that the Jordanian dealer could make the payment rather

than New Holland. The correspondence discusses the fact that New Holland's direct sales to Iraq remain impracticable as long as the "famous 10" (a reference to the ten percent kickback) was required.

33. The Jordanian dealer entered into three contracts with Iraqi ministries for the sale of New Holland products and ASSF payments totaling \$576,861 were made by the Jordanian dealer. An additional \$312,198 ASSF payment was authorized by the Jordanian dealer, but never received by Iraq. New Holland either knew or was reckless in not knowing that the Jordanian dealer was making improper payments on the three contracts.

III. Fiat and CNH Global's Failure to Maintain Adequate Internal Controls

34. Fiat and CNH Global 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, Fiat's subsidiaries, including CNH Global, 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.

35. In nine transactions that Fiat and CNH Global subsidiaries entered into directly with Iraqi ministries, a portion of the subsidiaries' sales price for goods to Iraq constituted ASSF payments in violation of UN regulations and trade sanctions, and also Fiat's and CNH Global's FCPA and anti-bribery policies. In fifteen additional transactions entered into by distributors, Fiat's subsidiaries, including CNH Global, knew or were reckless in not knowing that the distributors were paid ASSFs and submitted inflated contracts to the UN. In fact, in each of those instances, the Fiat entity specifically

changed its business relationship with its distributor in an effort to conceal their involvement in the sales of its products to Iraq in which ASSF payments were made. Moreover, as evidenced by the extent and duration of the improper ASSF payments made by IVECO, Case France, New Holland, and their agents and distributors, the improper recording of these payments in the company's books and records, and the failure of Fiat's and CNH Global's management to detect these irregularities, Fiat and CNH Global 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).

V. **Fiat's and CNH Global's Failure to Properly Maintain Its Books and Records**

36. As described above, Fiat's and CNH Global's accounting for its Oil for Food transactions failed properly to record the nature of the companies' kickback payments. On at least nine transactions, a portion of Fiat's and CNH Global's subsidiaries' sales price for goods to Iraq constituted ASSF payments in violation of U.N. regulations and trade sanctions, and also Fiat's and CNH Global's FCPA and anti-bribery policies. In the instances in which the ASSF payments were made, either directly by a Fiat or CNH Global subsidiary, or by an agent or distributor, the Fiat or CNH Global subsidiary failed to properly designate those payments, characterizing some as commission payments, and others as ordinary business expenses. Thus, Fiat and CNH Global 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]

37. Paragraphs 1 through 36 are realleged and incorporated by reference.
38. As described above, Fiat and CNH Global, through their 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.
39. By reason of the foregoing, Fiat and CNH Global 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]

40. Paragraphs 1 through 39 are realleged and incorporated by reference.
41. As described above, with respect to illicit payments made in connection with Fiat's subsidiaries', including CNH Global, and their distributors' sales to Iraq, Fiat and CNH Global 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.
42. By reason of the foregoing, Fiat and CNH Global violated Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

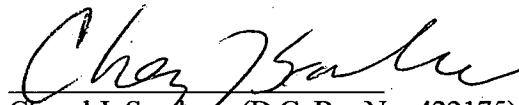
PRAYER FOR RELIEF

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

- A. Permanently restraining and enjoining Fiat and CNH Global 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 Fiat, on behalf of Fiat and CNH Global, to disgorge ill-gotten gains, with prejudgment interest, wrongfully obtained as a result of its illegal conduct;
- C. Ordering Fiat, on behalf of Fiat and CNH Global, 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: Dec 22, 2008

Respectfully submitted,



Cheryl J. Scarboro (D.C. Bar No. 422175)
Tracy L. Price
Kelly G. Kilroy

Attorneys for Plaintiff,
U.S. Securities and Exchange Commission
100 F Street, NE
Mail Stop 6030 SPII
Washington, DC 20549-6030
(202) 551-4403 (Scarboro)