

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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SECURITIES AND EXCHANGE COMMISSION,  
450 Fifth Street, N.W.  
Washington, D.C. 20549,

Plaintiff,

v.

ABB LTD,  
Affolternstrasse 44  
Zurich, Switzerland CH-8050,

Defendant.

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CASE NUMBER 1:04CV01141

JUDGE: Reggie B. Walton

DECK TYPE: General Civil

DATE STAMP: 07/06/2004

COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission") alleges that:

**SUMMARY**

1. From 1998 through early 2003, ABB's U.S. and foreign-based subsidiaries doing business in Nigeria, Angola and Kazakhstan, offered and made illicit payments totaling over \$1.1 million to government officials in these countries. These payments—at least \$865,726 of which were made after ABB became a reporting company in the United States in April 2001—were made to influence acts and decisions by these foreign officials to assist ABB's subsidiaries in obtaining and retaining business, and were made with the knowledge and approval of certain management level personnel of the relevant ABB subsidiaries. ABB also lacked any meaningful internal controls to prevent or detect such illicit payments, and improperly recorded these payments in its accounting books and records.

2. As a result of the foregoing illicit payments, ABB violated the anti-bribery provisions of the Foreign Corrupt Practices Act of 1977, as amended (the “FCPA”), which are codified as Section 30A of the Exchange Act [15 U.S.C. § 78dd-1]. During the period in which these payments were made, ABB obtained or retained business in Nigeria, Angola and Kazakhstan that generated profits totaling at least \$5,501,157. Moreover, by improperly recording these illegal payments, ABB violated the books-and-records provisions of the FCPA, codified as Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)]. Finally, by failing to devise or maintain an effective system of internal controls to prevent or detect these violations of the FCPA, ABB violated the internal accounting controls provisions of the FCPA, codified as Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

#### **JURISDICTION**

3. This Court has jurisdiction pursuant to Sections 21(d)(3) and 27 of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78u(d)(3) and 78aa. In connection with the conduct described herein, the defendant made use of the mails and/or the means or instrumentalities of interstate commerce.

#### **DEFENDANT**

4. Defendant ABB Ltd (“ABB”) is a Swiss corporation with its headquarters in Zurich, Switzerland. ABB is a global provider of power and automation technologies. ABB has numerous direct and indirect subsidiaries, including ABB Vetco Gray, Inc. (“Vetco Gray U.S.”), a U.S. subsidiary headquartered in Houston, Texas, that do business in the United States and in some 100 foreign countries. ABB’s American Depository Shares are registered with the Commission pursuant to Section 12(b) of the Exchange Act, 15 U.S.C. § 78l(b), and have been

traded on the New York Stock Exchange since April 6, 2001. As a foreign private issuer, ABB files annual reports with the Commission on Form 20-F.

## FACTS

### A. Nigeria

5. At all relevant times, ABB conducted business in Nigeria through ABB Vetco Gray Nigeria Ltd. (“Vetco Gray Nigeria”), which was 60% owned by Vetco Gray UK, with the remainder owned by Nigerian nationals. Vetco Gray Nigeria’s business in Nigeria included oil and gas-related contracts with the Nigerian government. At all relevant times, Vetco Gray UK and Vetco Gray U.S. often jointly marketed Vetco Gray’s services in Nigeria. In addition, other ABB affiliates not licensed to bid independently in Nigeria bid on projects through Vetco Gray Nigeria. After ABB became a reporting company in the United States in April 2001, the financial results of Vetco Gray Nigeria, Vetco Gray UK, and Vetco Gray U.S. were components of the consolidated financial statements included in ABB’s filings with the Commission.

6. From at least 1998 through 2001, employees of Vetco Gray U.S. and Vetco Gray UK provided cash and gifts to officials of the National Petroleum Investment Management Service (“NAPIMS”), the Nigerian state-owned agency responsible for overseeing Nigeria’s investment in petroleum exploration and production. These illicit payments—made to NAPIMS officials both directly and indirectly through a party that acted as a conduit (the “Intermediary”)—were part of a wide-ranging scheme to influence NAPIMS’ consideration of Vetco Gray Nigeria bids on oil and gas projects in Nigeria.

7. In particular, these payments were intended to (1) induce and reward NAPIMS officials’ provision of confidential and proprietary information regarding its evaluations of

competing bids and thereby provide a competitive advantage to Vetco Gray Nigeria in bidding for projects; and (2) to secure favorable consideration on Vetco Gray Nigeria bids from NAPIMS, whose approval was required to receive contract awards.

8. The largest of these payments totaled \$845,300—\$620,000 of which was paid after ABB became a reporting company in the United States—and related to the Bonga Project, a contract to provide undersea equipment for drilling in Nigeria's offshore Bonga Oil Field. The main phase of the Bonga Project was awarded to Vetco Gray Nigeria in February 2001 and, thereafter, the company delivered on its pre-award promise to compensate NAPIMS officials who had been instrumental in its selection. The Bonga Project alone generated approximately \$187,775,000 in revenues for ABB.

9. Vetco Gray UK made these payments for the Bonga Project through the Intermediary, and under cover of false invoices characterizing them as payments for consulting services rendered by the Intermediary's companies. After receiving the payments, the Intermediary, in turn, passed the funds on to NAPIMS officials. At least \$100,000 of these funds were wired—in July 2001—into the U.S. bank account of a NAPIMS official.

10. Vetco Gray U.S. and Vetco Gray UK employees caused numerous other illicit offers and payments to be made to NAPIMS officials in connection with Vetco Gray Nigeria's competition for at least five other contracts. Most of the payments were made directly in the United States, in the form of cash and gifts, by an employee of Vetco Gray U.S. (the "Employee"), using the Employee's corporate credit card and cash advances that were funded by Vetco Gray U.S. and Vetco Gray UK. The Employee payments—which were improperly recorded as ordinary business expenses in ABB's books and records—began as early as 1999 and

continued through 2001, with the Employee's last such payment being reimbursed in February 2002.

11. All of the direct and indirect payments to NAPIMS officials, including the payments on the Bonga Project, were known to and approved by employees of Vetco Gray UK and/or Vetco Gray U.S. Indeed, Vetco Gray UK's West Africa sales manager personally approved many of the payments. In December 2001—in the midst of ABB's campaign to make illicit offers and payments to NAPIMS officials—NAPIMS awarded ABB the "Abo" project, a contract that generated revenues of \$46,200,000, and yielded profits of \$2,600,000 for the company.

12. In all, between 1998 and the end of 2001, ABB's U.S. and UK subsidiaries made illicit payments totaling more than \$1.1 million to Nigerian government officials at NAPIMS—at least \$719,000 of which were made after ABB became a reporting company in the United States. All of these illicit payments were improperly recorded as ordinary business expenses in ABB's books and records.

**B. Angola**

13. At all relevant times, ABB conducted business in Angola through its Vetco Gray U.S. and UK subsidiaries. That business was comprised of oil and gas-related contracts that ABB entered into with the Angolan government that were administered by Sonangol, the Angolan state-owned oil company. After ABB became a public reporting company in April 2001, the financial results of ABB's Angolan operations were a component of the consolidated financial statements included in ABB's filings with the Commission.

14. Just as it had done in Nigeria, ABB's subsidiaries made corrupt payments to Angolan government officials during a period beginning before, and continuing after, ABB became a reporting company in the United States. The payments were made to Sonangol engineers who had responsibility for the technical evaluation of bids submitted to Sonangol, and were issued in the context of three separate training trips sponsored by ABB from 2000 to 2002: twice to the United States and Brazil, and once to Norway and the United Kingdom. In each instance, ABB's Vetco Gray U.S. and UK subsidiaries paid all the travel, meals, lodging and entertainment expenses of the Sonangol engineers, and also provided them with cash spending money of \$120 to \$200 per day, at a time when Angola's gross *annual* per capita income was just \$710.

15. These cash payments—made for the purpose of obtaining or retaining business with Sonangol—were passed out to the Sonangol engineers prior to their departures for each trip, and were improperly recorded in ABB's books and records. The cash payments made in connection with the second U.S. trip—which began in April 2001, after ABB had become a U.S. reporting company—were made to five Sonangol officials, totaled \$21,600 (\$4,320 apiece), and were distributed by ABB's country manager for its Angola operations (the "Country Manager") from a brown paper bag.

16. To fund the payments, ABB's subsidiaries employed various, elaborate, circuitous schemes designed to disguise both the source and the nature of these funds. For example, in one such scheme, an Angolan company whose principals were social friends of the Country Manager, fronted the money for the illicit payments and was reimbursed by a Florida company, which, in turn, was reimbursed by ABB's Vetco Gray subsidiaries through the use of misleading invoices.

17. The Angolan officials who received the training trips and the “per diem” payments were described by Vetco Gray senior management in contemporaneous documents as “future decision-makers for Sonangol” in “key positions.” At least one of the Angolan officials provided confidential competitor information in relation to ABB’s bid for a Sonangol contract.

18. Sonangol awarded two contracts to ABB, in May 2002 and March 2004, respectively—both after the “per diem” bribes had been made—that generated revenues of \$11,249,000 and yielded profits of \$1,480,000 for ABB.

19. The “per diem” payments were made despite the warning of an in-house attorney for one of ABB’s U.S. subsidiaries—a warning given a week before the first training trip in 2000—that the payments amounted to a “red flag” and a potential “violation of the FCPA.” All of these illicit payments were improperly recorded as ordinary business expenses in ABB’s books and records.

### **C. Kazakhstan**

20. At all relevant times, ABB conducted its oil and gas business in Kazakhstan through two entities: (i) ABB’s Kazakhstan-based subsidiary, ABB Kazakhstan Ltd. (“ABB KZ”), and (ii) Vetco Gray U.S. In April 2001, Vetco Gray U.S. entered into a wellhead supply contract with TengizChevroil (“TCO”), and ABB KZ entered into the related TCO service contract.

21. TCO was a joint venture that was 20% owned by Kazakhstan’s state oil company, KazMunaiGas. Under inter-company accounting agreements, ABB KZ charged back to Vetco Gray U.S. its full costs plus 10% on all services and deliveries to the TCO projects. Throughout

the relevant period, the financial results of ABB KZ and Vetco Gray U.S. were a component of the consolidated financial statements included in ABB's filings with the Commission.

22. In December 2001, ABB KZ began making payments to Kazakhstan companies owned by ABB KZ's former sales manager who was, at the time of the payments, a government official employed in Kazakhstan's state oil and gas companies (the "Official"). These payments, which continued through February 2003, totaled \$125,126, and were made for the purpose of assisting in obtaining or retaining Kazakhstan government business for Vetco Gray U.S. and ABB KZ. By June 2004, the TCO contract generated \$11,841,857 in revenues and \$1,421,157 in profits for ABB.

23. In 2002, ABB KZ provided to Vetco Gray U.S., using the means or instrumentalities of interstate commerce, a request that it reimburse the first \$83,000 of these payments pursuant to its inter-company accounting agreements with ABB KZ. Although Vetco Gray ultimately refused to do so, based on concerns about the propriety of the payments, it did nothing to recover the first \$83,000 in payments already made or to stop the flow of more than \$40,000 in further payments to the Official's companies that were subsequently made by ABB KZ.

24. In all, six payments were made to five separate entities owned by the Official for the purposes of assisting in obtaining or retaining business. These payments were made pursuant to sham contracts for purportedly legitimate consulting services related to the maintenance of drilling equipment. No legitimate services were ever performed pursuant to these agreements and the illicit payments were documented with phony invoices to mislead ABB's auditors. All of



these illicit payments were improperly recorded as ordinary business expenses in ABB's books and records.

**FIRST CLAIM**  
**[Violations of Exchange Act Section 30A]**

25. Paragraphs 1 through 24 are re-alleged and incorporated by reference.

26. As described above, ABB, through certain of its United States and foreign subsidiaries, corruptly offered and made illicit payments, through money and gifts, to foreign officials for the purposes of influencing their acts or decisions and inducing them to use their influence to assist ABB in obtaining or retaining business with foreign government entities. Throughout the relevant period, the recipients of these illicit payments were foreign officials within the meaning of the FCPA.

27. By reason of the foregoing, ABB violated the anti-bribery provisions of the FCPA, as codified at Exchange Act Section 30A [15 U.S.C. § 78dd-1].

**SECOND CLAIM**  
**[Violations of Exchange Act Section 13(b)(2)(A)]**

28. Paragraphs 1 through 27 are re-alleged and incorporated by reference.

29. As described above, ABB, through its subsidiaries, failed to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflected its transactions and dispositions of its assets. By reason of the foregoing, ABB violated the books-and-records provisions of the FCPA, as codified at Exchange Act Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)].

**THIRD CLAIM**  
**[Violations of Exchange Act Section 13(b)(2)(B)]**

30. Paragraphs 1 through 29 are re-alleged and incorporated by reference.

31. As described above, with respect to improper payments to foreign officials, ABB and certain of its United States and foreign subsidiaries failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions were executed in accordance with management's general or specific authorization; and (ii) transactions were 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 its assets.

32. By reason of the foregoing, ABB violated the internal accounting controls provisions of the FCPA, as codified at Exchange Act Section 13(b)(2)(B) [15 U.S.C. § 78m(b)(2)(B)].

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff respectfully requests that this Court:

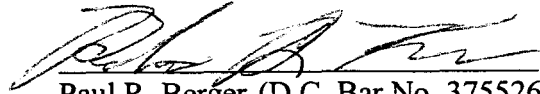
(a) permanently enjoin ABB from violating Sections 30A [15 U.S.C. § 78dd-1], 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)], and 13(b)(2)(B) [15 U.S.C. § 78m(b)(2)(B)] of the Exchange Act;

(b) order ABB to pay disgorgement of ill-gotten gains, together with prejudgment interest thereon, deriving from the conduct set forth in this complaint;

(c) order ABB to pay a civil penalty pursuant to Exchange Act Sections 21(d)(3) and 32(c) [15 U.S.C. §§ 78u(d)(3) and 78ff(c)]; and

(d) grant such other relief as the Court deems appropriate.

Respectfully submitted,



Paul R. Berger (D.C. Bar No. 375526)

Robert B. Kaplan

James L. Buck (D.C. Bar No. 421878)

James J. Bresnicky (D.C. Bar No. 453713)

Samuel J. Draddy

Attorneys for Plaintiff  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549-0806  
(202) 942-2803  
(202) 942-9630 (Kaplan fax)

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