06 CV 2942

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

APR 17 2006

SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	
v.	06 CV ____________
TYCO INTERNATIONAL LTD.,	
Defendant.	

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") alleges as follows:

SUMMARY

1. From 1996 through 2002, Tyco International Ltd. ("Tyco") violated the federal securities laws by overstating its reported financial results, smoothing those reported earnings, and hiding vast amounts of senior executive compensation and a large number of related party transactions from investors. To achieve those goals, the company utilized a number of improper practices conceived, guided, or encouraged by the individuals who managed the company at that time. As a result, the company overstated its operating income by an aggregate amount of at least one billion dollars.

2. During that time, Tyco acquired hundreds of companies. At least $500 million of Tyco's inflated operating income resulted from improper accounting practices related to some of its acquisitions. In addition, apart from its acquisition activities, Tyco used a variety of reserve accounts to enhance and smooth its reported financial results and to meet earnings projections from its fiscal year ended June 30, 1997, through its fiscal quarter ended June 30, 2002.

3. Another area of Tyco's misconduct involved a scheme designed to overstate operating income in connection with transactions between Tyco's ADT Security Services, Inc. ("ADT") subsidiary and the security alarm dealers from whom it purchased residential and commercial security alarm monitoring contracts. As a result, from its fiscal year ended September 30, 1998, through its fiscal quarter ended December 31, 2002, Tyco inflated its operating income by approximately $567 million and inflated its cash flow from operations by approximately $719 million.

4. Additionally, from September 1996 through early 2002, Tyco failed to disclose millions of dollars of executive compensation, executive indebtedness, and related party transactions of its former Chief Executive Officer L. Dennis Kozlowski ("Kozlowski"), former Chief Financial Officer Mark H. Swartz ("Swartz"), and former Chief Corporate Counsel Mark A. Belnick ("Belnick"). Tyco also incorrectly accounted for certain executive bonuses it paid in its fiscal years 2000 and 2001 by excluding the costs associated with these bonuses from operating expenses. Finally, Tyco violated the Foreign Corrupt Practices Act ("FCPA") when its employees or agents made illicit payments or provided entertainment to foreign officials for the purpose of obtaining or retaining business for Tyco.

5. As a result of these practices, Tyco made false and misleading statements or omissions during this time period in its filings with the Commission and in Tyco's statements to investors and analysts.

6. By virtue of the acts alleged herein, Tyco violated the provisions of the federal securities laws prohibiting fraud; prohibiting false and misleading proxy statements; requiring maintenance of accurate books, records, and accounts and sufficient systems of internal accounting

controls by public companies; requiring that accurate periodic reports be filed with the Commission by public companies; and prohibiting payments to foreign officials for the purpose of obtaining or retaining business.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to Sections 20(b) and 22(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77t(b) and 77v(a)] and Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

8. Tyco, directly or indirectly, made use of the means or instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

9. Tyco does business in this judicial district, and certain of the transactions, acts, practices, and courses of conduct constituting the violations of law alleged herein occurred within this judicial district.

DEFENDANT

10. Tyco is a Bermuda corporation with its headquarters in Bermuda. Tyco is a diversified manufacturing and service company involved in fire protection and safety systems, electronic security services, electrical and electronic components, medical products, and engineered products and services. Tyco's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act [15 U.S.C. § 78*l*(b)] and is traded on the New York Stock Exchange. Tyco files annual, quarterly, and current Reports with the Commission on Forms 10-K, 10-Q, and 8-K. Tyco registered securities offerings from February 1997 through

August 2001 by filing with the Commission Registration Statements on Forms S-3 and S-8. Subsequent to July 2002, Tyco brought in a new senior corporate management team and a new Board of Directors.

OTHER RELEVANT INDIVIDUALS

11. Kozlowski, age 59, was affiliated with Tyco beginning in 1975. In 1992, Kozlowski became an executive officer of Tyco, and, in 1997, became Tyco's Chairman of the Board, President, and Chief Executive Officer. Kozlowski resigned his positions with Tyco in June 2002 and was subsequently indicted by a New York State grand jury. The Commission sued Kozlowski on September 12, 2002, for violations of, and aiding and abetting violations of, the antifraud, proxy statement, periodic reporting, and corporate recordkeeping provisions of the federal securities laws. On June 17, 2005, a New York State jury found Kozlowski guilty of twenty-two of the twenty-three counts alleged against him in *People of New York v. L. Dennis Kozlowski and Mark H. Swartz.*

12. Swartz, age 45, was affiliated with Tyco beginning in 1993. In 1995, Swartz became Tyco's Chief Financial Officer, Executive Vice President, and a Director. Swartz resigned his positions with Tyco in August 2002 and was subsequently indicted by a New York State grand jury. The Commission sued Swartz on September 12, 2002, for violations of, and aiding and abetting violations of, the antifraud, proxy statement, periodic reporting, and corporate recordkeeping provisions of the federal securities laws. On June 17, 2005, a New York State jury found Swartz guilty of twenty-two of the twenty-three counts alleged against him in *People of New York v. L. Dennis Kozlowski and Mark H. Swartz.*

FACTS

13. From 1996 through the middle of 2002, Tyco under Kozlowski acquired more than 700 companies pursuant to its plan to become a global, diversified manufacturing and service conglomerate. During the same time period, Tyco pursued a strategy of aggressive and continual earnings growth. As a result of its massive acquisition campaign, Tyco came to have approximately 1,000 individual business units, which were organized by business line within various operating divisions, including Fire & Security Services, Electronics, Healthcare, Plastics and Adhesives, and Engineered Products and Services. The operating divisions reported to Tyco's corporate office.

14. During this time period, Tyco's corporate structure was highly decentralized, with many of its business units having their own financial statements, internal earnings before interest and taxes ("EBIT") targets, and incentive compensation systems. Senior financial management set aggressive EBIT targets for Tyco and its various business units. Under the incentive compensation systems in place at Tyco, the financial managers at a Tyco business unit could receive substantial bonuses for reporting financial results that met or exceeded their business unit's EBIT target. With the encouragement and financial inducement of the company's senior management at the time, various Tyco business units and reporting levels used improper accounting practices in order to increase EBIT.

Improper Acquisition Accounting

15. On multiple occasions, senior financial reporting personnel within Tyco's Fire & Security Services division provided managers within the division, including accounting personnel, with instructions on how to account for acquisitions. Managers were urged to apply

accounting principles improperly to reduce the value of acquired assets and increase the value of acquired liabilities. The managers were told to encourage improper adjustments to a target entity's books and records, thereby reducing the value of the assets and overstating the liabilities prior to their acquisition by Tyco. Alternatively, the managers were urged to record improper values for acquired assets and liabilities on Tyco's books. Personnel were also encouraged to establish purchase accounting reserves for costs that, pursuant to accounting principles, should not be charged to such reserves. In some instances, personnel were told to charge Tyco's then current expenses against purchase accounting reserves. At times, incorrect guidance on acquisition accounting was also provided to managers in other Tyco divisions, including the Electronics division and the Healthcare division. This guidance was followed in a number of instances, resulting in an overstatement of Tyco's earnings reported to the Commission and the investing public.

16. Understating acquired assets benefited Tyco's earnings by decreasing depreciation expense in future periods for long-lived assets and, for current assets, by allowing Tyco to record larger profits as the assets were utilized. Overstating acquired liabilities allowed Tyco to maintain on its books and records inflated reserves, which Tyco used in future periods to improve its earnings.

17. In certain acquisitions made in 1996, Tyco officials convinced the companies that were being acquired to make entries to their books and records that understated the assets and overstated the liabilities that Tyco would acquire. For example, at the urging of Tyco officials, Thorn-EMI, whose fire protection operations Tyco acquired, made adjustments that reduced its assets and increased its liabilities by $76.5 million, resulting in Tyco's operating income in

future financial periods being overstated by approximately $29 million. At Zettler AG, a security monitoring company Tyco acquired, adjustments were made to Zettler's books that overstated its liabilities and resulted in Tyco's operating income in subsequent reporting periods being increased by approximately $6.6 million. And at Carlisle Plastics, Carlisle management made entries to its books and records, at Tyco's request, that reduced its assets and increased its liabilities by $26.4 million, resulting in an overstatement of Tyco's post-acquisition earnings.

18. As noted, in other acquisitions, Tyco improperly understated the value of acquired assets on its own financial statements. For example, in 1998, when Tyco acquired Holmes Protection, Inc. ("Holmes") and Wells Fargo Alarm Services, Inc. ("Wells Fargo"), both electronic security firms, Tyco valued at salvage value the installed electronic alarm equipment it acquired, even though Tyco continued to use and generate revenue from these assets after the acquisitions were made. Assigning a salvage valuation to the Holmes and Wells Fargo installed alarm assets understated the value of these assets on Tyco's balance sheet by $211 million and thus overstated Tyco's operating income over future reporting periods by an identical amount, less the amortization of goodwill associated with the asset reductions. Similarly, in its 1999 acquisition of Raychem Corporation ("Raychem"), an electronics manufacturer, Tyco understated the value of acquired inventory by $34.3 million, resulting in its operating income for its fiscal year ended September 30, 1999, being overstated by $13.3 million and its operating income for its fiscal year ended September 30, 2000, being overstated by $21 million.

19. In some acquisitions, Tyco's earnings were enhanced by establishing and using purchase accounting reserves for costs that, pursuant to accounting principles, should not have been charged to those reserves. For example, in at least five acquisitions of electronic security

companies during its fiscal years 1998, 1999, and 2001, Tyco improperly established and subsequently used purchase accounting reserves to offset the purported costs of removing the acquired security companies' yard signs and window decals. Not only was it improper to reserve for these costs, but Tyco never actually incurred the vast majority of the costs that it charged to these reserves. Tyco's improper utilization of purchase accounting reserves for sign and decal removal costs overstated its operating income by $7.45 million in its fiscal year ended September 30, 1998; by $1.7 million in its fiscal year ended September 30, 1999; and by $9.6 million in its fiscal year ended September 30, 2001.

20. Similarly, in at least four acquisitions of electronic security companies in its fiscal years 1998 and 1999, Tyco improperly established and subsequently used purchase accounting reserves to offset stay bonuses it paid to certain target entity employees who continued to work for a specified period after an acquisition, but who were involved in activities other than those connected with exiting the operations of the target companies. Stay bonuses may be reserved for in purchase accounting only when the employee receiving the bonus is involved solely in exit activities. Charging these stay bonuses to purchase accounting reserves established for these acquisitions overstated Tyco's earnings because it allowed Tyco to exclude from its income statement compensation costs that should have been expensed as incurred.

21. Moreover, in several acquisitions of electronic security and fire protection companies during its fiscal years 1998 through 2001, Tyco established and utilized purchase accounting reserves to increase the profit margins on certain in-progress service contracts that it acquired, a practice that does not comply with Generally Accepted Accounting Principles ("GAAP"). In connection with these acquisitions, Tyco overstated its operating income by

approximately $94 million from its fiscal year ended September 30, 1998, through its fiscal year ended September 30, 2001.

22. Tyco also inflated its earnings during the relevant time period by impermissibly charging normal current-period operating expenses against purchase accounting reserves. For example, in Tyco's acquisition of CAPS Korea Ltd., an electronic security company, $30 million of general operating expenses, including salaries and bonuses for non-terminated employees, were charged to Tyco's purchase accounting reserves during its fiscal years 2000 and 2001. In connection with Tyco's acquisition of Dong Bang Industrial Co. Ltd., a fire protection services firm, $3.7 million of normal period expenses were charged to purchase accounting reserves during Tyco's fiscal year 2001. Similarly, in connection with four other acquisitions that Tyco made during its fiscal years 1998 and 1999, Tyco improperly charged current operating expenses to its purchase accounting reserves in an aggregate amount of approximately $8.5 million.

Use of Reserves to Enhance and Smooth Earnings

23. From its fiscal year ended June 30, 1997, through its fiscal quarter ended June 30, 2002, Tyco used excess reserves to make period-end adjustments to enhance and smooth its publicly reported results and to meet earnings forecasts. Various Tyco business units moved amounts to reserve accounts in reporting periods in which it appeared that the units would not need the amounts to meet their EBIT targets. If a business unit's earnings fell short of its EBIT target in a subsequent period, the unit would make up the shortfall by reversing reserves, including those reserves where past "excess" amounts had been stored, to its income statement.

24. This practice was prevalent in Tyco's Fire & Security Services division, but also occurred from time to time in other Tyco divisions, including the Electronics division and the

Healthcare division. Within Tyco's Fire & Security Services division, if the aggregate earnings increases made by the division's business units were insufficient for the division to meet its earnings target, the division's management would make up the remaining shortfall by reversing amounts from the division's own reserves.

25. At times, Tyco enhanced its earnings by improperly reversing excess purchase accounting reserves to its income statement. During the period 1997 through 2001, Tyco reversed at least $47.1 million from those reserves to its income statement. On a number of occasions, the reversals of purchase accounting reserves to Tyco's income statement were timed for the purpose of meeting earnings targets.

26. In some instances, Tyco's corporate headquarters resorted to the practice of using reserves to bolster financial performance. In spite of the fact that such reserves are not permitted under GAAP, Tyco corporate kept a general unallocated reserve on its own books and used the reserve when unanticipated charges threatened to cause Tyco's earnings to fall short of what analysts expected.

27. For example, in October 1998, prior to the release of Tyco's 1998 fiscal year-end earnings, the company was informed by its independent accountants that it needed to recognize an additional $40 million of compensation expense. To help offset the unanticipated charge, Tyco partially reversed $2 million from its general unallocated corporate reserve. And in October 1999, Tyco utilized $3.1 million from its general unallocated corporate reserve to help offset $10.6 million in unanticipated expenses. Tyco also reversed $14.1 million in the third quarter of its fiscal year 1998, $6.4 million in August 1998, and $3.55 million in April 1999 from its general unallocated corporate reserve into earnings. At its fiscal quarter ended June 30, 2001,

Tyco's independent accountants noted that general reserves of $26 million had been allocated to various corporate-level accrual and reserve accounts with the "intention" of off-setting "possible (but unidentified) under accruals at a divisional level."

The Dealer Connection Fee

28. In 1997, Tyco implemented a scheme designed to overstate its operating income in connection with transactions between ADT and the security alarm dealers from whom ADT purchased residential and commercial security alarm monitoring contracts. Pursuant to Tyco's "ADT authorized dealer program," ADT regularly purchased from a network of independent security alarm dealers contracts that the dealers had entered into for the provision of residential and commercial security systems. In October 1997, as part of the scheme, Tyco management directed ADT to implement a $200 "connection fee" to be paid by the dealers to ADT for each customer contract purchased from them and simultaneously to increase the price ADT paid the dealers for those contracts by $200, a payment that Tyco initially called a "growth bonus." Tyco immediately recognized the $200 connection fee in its income statement, while the offsetting $200 growth bonus was amortized over ten years. As a result, Tyco inflated its operating income by approximately $567 million from its fiscal year ended September 30, 1998, through its fiscal quarter ended December 31, 2002.

29. The $200 connection fee paid by the dealers was fully offset by the $200 growth bonus that the dealers received. Accordingly, the $200 connection fee and the offsetting $200 growth bonus did not alter the economic substance of ADT's purchase of a security monitoring contract and should not have been recognized under GAAP.

30. The scheme also artificially increased Tyco's operating cash flow. From its fiscal year ended September 30, 1998, through its fiscal quarter ended December 31, 2002, Tyco's operating cash flow was overstated by approximately $719 million due to the accounting treatment given the dealer connection fee. Tyco received no additional cash in the dealer connection fee transaction, yet it failed to adjust its cash flow from operations to reflect this reality.

31. In 2003, as a result of a review of Tyco's financial statements by the Commission's Division of Corporation Finance, Tyco terminated the dealer connection fee and restated its operating income and operating cash flow.

Proxy Statement Disclosure Violations

32. From September 1996 through early 2002, Tyco failed to disclose in its annual Reports on Form 10-K and in its proxy statements certain executive indebtedness, executive compensation, and related party transactions of former executives Kozlowski, Swartz, and Belnick.

33. The executive indebtedness and executive compensation that Tyco failed to disclose involved, in large part, loans made under Tyco's Key Employee Loan Program ("KELP") and its relocation loan programs.

34. The periodic reports and proxy statements that Tyco filed with the Commission stated that the purpose of the KELP was to provide low interest loans to enable Tyco executives and employees to pay taxes due as a result of the vesting of restricted stock granted under Tyco's restricted stock plan. Nevertheless, Kozlowski and Swartz borrowed from the KELP for purposes not authorized by the program, including personal investments and extravagant purchases. Of the approximately $270 million that Kozlowski borrowed from the KELP from

1997 to 2002, only $28,807,677 was used to pay taxes due on the vesting of his Tyco shares. Similarly, of the approximately $99 million that Swartz borrowed from the KELP from 1997 to 2002, only $12,884,893 was used to pay taxes on the vesting of his Tyco shares. Although aware that their borrowings for purposes unrelated to the payment of taxes resulting from the vesting of Tyco shares violated the purpose of the KELP, Kozlowski and Swartz annually failed to disclose these improper loans in their Tyco Director & Officer Questionnaires. Consequently, Tyco failed to disclose tens of millions of dollars of improper KELP borrowings in its annual Reports on Form 10-K and in its proxy statements filed with the Commission during this time period.

35. Tyco also failed to disclose millions of dollars that Kozlowski and Swartz received under Tyco's relocation loan programs between 1996 and 2002. The relocation loan programs were established to assist with real estate purchases by Tyco employees who were required to relocate from Tyco's New Hampshire offices to offices in New York City and, subsequently, to Boca Raton, Florida. To purchase separate waterfront compounds in Boca Raton, Kozlowski borrowed at least $18 million under the program, and Swartz borrowed at least $17 million. Kozlowski and Swartz also used loans from the relocation programs to fund purchases of property in locations other than New York City and Boca Raton as well as for other purposes not provided for under the programs, such as the purchase of an apartment for a former spouse and the purchase of a yacht. Although aware that their borrowings were inconsistent with the authorized purposes of the relocation loan programs, Kozlowski and Swartz consistently failed to disclose these loans on their Director & Officer Questionnaires. Consequently, Tyco

did not disclose these loans to investors in its annual Reports on Form 10-K and its proxy statements filed with the Commission during this time period.

36. Tyco also failed to disclose certain executive indebtedness of Belnick. Tyco failed to disclose a $4 million loan made to Belnick for his relocation to New York City, even though, at the time he received the loan, Belnick lived in Westchester County, New York and was already working in New York City. Additionally, in September 2001, Belnick received a loan exceeding $10 million to purchase real estate in Park City, Utah. Ostensibly, this loan was extended under the relocation loan program to assist Belnick with a "relocation" to Park City, Utah, even though Tyco had no corporate offices in Utah. Although aware that his borrowings were inconsistent with the authorized purposes of the relocation loan programs, Belnick failed to disclose these loans on his Director & Officer Questionnaires. Consequently, Belnick's relocation loan borrowings were not disclosed by Tyco in its annual Reports on Form 10-K and its proxy statements filed with the Commission.

37. In 1999 and 2000, Kozlowski and Swartz authorized transactions by which tens of millions of dollars of their KELP and relocation loans were forgiven and written off Tyco's books. In August 1999, Kozlowski authorized, and Swartz caused to be recorded in Tyco's books and records, a $25 million loan forgiveness against Kozlowski's outstanding KELP balance and a $12.5 million credit against Swartz' outstanding KELP balance. Although the KELP loan forgiveness was effectively a $37.5 million payment from Tyco to Kozlowski and Swartz, Tyco never disclosed these transactions to investors as part of Kozlowski's or Swartz' executive compensation in its annual Reports on Form 10-K and its proxy statements filed with the Commission.

38. In September 2000, Kozlowski engineered a program whereby Tyco covertly forgave tens of millions of dollars of relocation loans that he, Swartz, and others owed. Under that program, Kozlowski had $32,976,068 worth of relocation loans forgiven, and Swartz had $16,610,687 worth of relocation loans forgiven. Although this relocation loan forgiveness was effectively an additional $49,586,755 payment from Tyco to Kozlowski and Swartz, Tyco did not disclose these amounts to investors as part of Kozlowski's or Swartz' executive compensation in its annual Reports on Form 10-K and its proxy statements filed with the Commission.

39. In November 2000, Kozlowski and Swartz engineered another program whereby Tyco paid them (and certain other employees) bonuses comprised of cash, Tyco common stock, and/or forgiveness of relocation loans. Pursuant to that program, Kozlowski received 148,000 shares of Tyco common stock, a cash bonus of $700,000, and $16,000,000 in relocation loan forgiveness. Swartz received 74,000 shares of Tyco common stock, a cash bonus of $350,000, and $8,000,000 in relocation loan forgiveness. Tyco did not disclose these payments as part of Kozlowski's or Swartz' executive compensation in its annual Reports on Form 10-K and its proxy statements filed with the Commission.

40. In June 2001, Kozlowski and Swartz directed an acceleration of the vesting of Tyco common stock, for the benefit of themselves and certain other favored employees. As a result, Kozlowski and Swartz realized profits of approximately $8 million and $4 million, respectively. Tyco never disclosed these profits as part of Kozlowski's or Swartz' executive compensation in its annual Reports on Form 10-K and its proxy statements filed with the Commission.

41. Tyco was obligated to disclose to investors in its annual Reports on Form 10-K and its proxy statements filed with the Commission the cash, stock, and loan forgiveness that Kozlowski and Swartz received as part of their executive compensation pursuant to these programs, but it failed to do so.

42. From 1996 to 2002, Kozlowski and Swartz also engaged in several non-arms-length transactions with Tyco or its subsidiaries, principally involving real estate. For example, in one transaction, Tyco purchased real estate for the benefit of a trust of which Kozlowski was the sole beneficiary. In other transactions, Tyco or its subsidiaries purchased real estate from Kozlowski and Swartz at prices that exceeded the property's apparent fair market value. In yet other transactions, Kozlowski and Swartz separately purchased real estate from Tyco or its subsidiaries at prices that were below the property's apparent fair market value. Kozlowski and Swartz failed to disclose these related party transactions on their Director & Officer Questionnaires. Consequently, none of these transactions were disclosed by Tyco in its annual Reports on Form 10-K and its proxy statements filed with the Commission.

Incorrect Accounting for Certain Executive Bonuses

43. On three separate occasions in 2000 and 2001, Tyco incorrectly accounted for certain executive bonuses it had paid by classifying these bonuses in its financial statements so that they did not negatively impact operating income.

44. In July 2000, Tyco successfully completed an initial public offering ("IPO") of part of its previously wholly owned subsidiary, TyCom Ltd., which served as the holding company for Tyco's undersea fiber optic cable communication business. The TyCom IPO generated a one-time gain of approximately $1.76 billion on Tyco's books. In September 2000,

Kozlowski granted bonuses to fifty-one Tyco executives, managers, and employees totaling in the aggregate approximately $95.9 million. Of the $95.9 million in total bonuses paid, Tyco classified approximately $44.6 million as an expense of the TyCom IPO, in spite of the fact that the bonuses were not direct and incremental costs of the IPO. Accordingly, that $44.6 million in bonus expense was recorded in Tyco's financial statements in such a manner that it had no effect on Tyco's operating income.

45. In October 2000, Tyco sold its ADT Automotive business for approximately $1 billion, with a net gain on the sale of approximately $400 million. In November 2000, Kozlowski used the ADT Automotive divestiture as a vehicle for the payment of $56 million in bonuses to a small group of Tyco executives and managers. Rather than recording the $56 million in bonuses as an expense in its operating earnings, Tyco offset the entire expense against the gain realized on the sale of the ADT Automotive business. Consequently, these bonuses did not negatively impact Tyco's operating income.

46. In June 2001, Tyco paid cash and common stock in its subsidiary, TyCom Ltd., to acquire stock in FLAG Telecom. The transaction resulted in Tyco reporting a $79 million gain. Kozlowski and Swartz directed that bonuses aggregating $15 million be paid to a handful of executives. Tyco excluded these bonuses from its operating expenses by offsetting the bonuses against the gain associated with the FLAG Telecom transaction. Consequently, the bonuses did not lower Tyco's operating income.

Unlawful Payments to Foreign Officials

47. From 1999 through 2002, on at least one occasion, Tyco employees or retained agents made use of the mails or of a means or instrumentality of interstate commerce in

furtherance of the payment of money or things of value to foreign officials to obtain or retain business for Tyco. False entries were made to Tyco's books and records in an attempt to conceal these illicit payments. Moreover, the misconduct was made possible by Tyco's failure to implement procedures sufficient to prevent and detect FCPA misconduct.

48. In 1998, Tyco acquired Multiservice Engenharia Ltda., a Brazilian engineering company, and renamed it Earth Tech Brasil Ltda. ("Earth Tech Brazil"). Tyco acquired Earth Tech Brazil notwithstanding that its due diligence for the acquisition revealed that illicit payments to government officials were common in Brazil and were portrayed as necessary in the industries in which Earth Tech Brazil conducted business. After the acquisition by Tyco, Earth Tech Brazil was extensively engaged in constructing and operating water, wastewater, sewage, and irrigation systems for various Brazilian government entities. Earth Tech Brazil reported to Tyco's Earth Tech corporate offices, which were located in Long Beach, California.

49. From 1999 through 2002, employees at Earth Tech Brazil repeatedly paid money to various Brazilian officials for the purpose of obtaining business, primarily in the construction and operation of municipal water and wastewater treatment systems. The payments to Brazilian officials were so widespread during this time that approximately sixty percent of Earth Tech Brazil's total contracts involved some form of payment to a government official. At times, the payments were made by lobbyists that Earth Tech Brazil retained with full knowledge that all or a portion of the money that Earth Tech Brazil paid to the lobbyists would be given to various Brazilian officials for the purpose of obtaining work for Earth Tech Brazil.

50. Executives located at Earth Tech's corporate offices in Long Beach, California received e-mail communications, participated in telephone calls, and attended meetings where

illicit payments to Brazilian officials for the purpose of obtaining or retaining business for Earth Tech Brazil were discussed.

51. False invoices from companies that were owned by various Earth Tech Brazil employees were typically submitted to obtain the funds for the illicit payments and to conceal these payments on Earth Tech Brazil's books and records. In some instances, lobbyists submitted inflated invoices to Earth Tech Brazil to obtain the funds needed to make the payments.

52. From 1999 through 2002, on at least one additional occasion, false entries were made to Tyco's books and records in an attempt to conceal illicit payments and entertainment that were provided to foreign officials by Tyco employees to obtain or retain business for Tyco. This misconduct was made possible by Tyco's failure to implement procedures sufficient to prevent and detect FCPA misconduct, despite knowledge and awareness within the company that corruption and illicit payments were common practices in the foreign country where the unlawful payments were made.

53. In 1999, Tyco acquired Dong Bang Industrial Co. Ltd. ("Dong Bang"), a South Korean fire protection services firm. Tyco's due diligence for the Dong Bang acquisition revealed that illicit payments to government officials were prevalent in the South Korean contracting business. From 1999 through 2002, certain executives at Dong Bang made cash payments and provided entertainment to various South Korean officials to assist Dong Bang in obtaining contracting work on various government-controlled projects. For example, during Tyco's fiscal year ended September 30, 2001, Dong Bang's former president spent $32,000 entertaining various South Korean officials for the purpose of obtaining business for Dong Bang.

Dong Bang's former president also regularly provided entertainment to the South Korean Minister of Construction and Finance and a South Korean military general for the purpose of obtaining business for Dong Bang. In Tyco's fiscal year ended September 30, 2002, a Dong Bang executive paid $7,500 to an employee of the Wolsung Nuclear Power Plant, owned and operated by a South Korean governmental entity, to obtain contracting work for Dong Bang at the facility.

54. Dong Bang established fictitious employees on its books to finance some of the improper cash payments and entertainment that were provided to South Korean officials. Payroll disbursements for the fictitious employees were wired to the former Dong Bang executives, who subsequently used the funds to provide cash payments or entertainment to the various South Korean officials.

55. Prior to 2003, Tyco did not have a uniform, company-wide FCPA compliance program in place or a system of internal controls sufficient to detect and prevent FCPA misconduct at its globally dispersed business units. Employees at Earth Tech Brazil and Dong Bang did not receive adequate instruction regarding compliance with the FCPA, despite Tyco's knowledge and awareness that illicit payments to government officials were a common practice in the Brazilian and South Korean construction and contracting industries.

False Filings and Statements

56. From September 1996 through the fiscal quarter ended December 31, 2002, Tyco filed with the Commission false and misleading annual and quarterly reports, proxy statements, and registration statements. Those reports and registration statements included, directly or by incorporation, financial statements that materially misrepresented Tyco's financial results,

including significantly overstating its operating income. The annual reports and proxy statements also misrepresented or omitted to disclose certain executive compensation, executive indebtedness, and transactions between Tyco and its executives.

FIRST CLAIM FOR RELIEF

FRAUD

Violations of Section 17(a) [15 U.S.C. § 77q(a)] of the Securities Act, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5]

57. Paragraphs 1 through 31, paragraphs 43 through 46, and paragraph 56 are realleged and incorporated herein by reference.

58. As set forth above, Tyco, directly or indirectly, acting knowingly or recklessly, by use of the means or instrumentalities of interstate commerce, or by the use of the mails or of the facilities of a national securities exchange, in connection with the offer, purchase, or sale of securities has: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; (c) obtained money or property by means of an untrue statement of a material fact or an omission of a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or (d) engaged in transactions, acts, practices, or courses of business which operated as a fraud or deceit upon other persons.

59. By reason of the foregoing, Tyco, directly or indirectly, violated Section 17(a) of the Securities Act [15 U.S.C § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

SECOND CLAIM FOR RELIEF

REPORTING VIOLATIONS

Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13]

60. Paragraphs 1 through 46 and paragraph 56 are realleged and incorporated herein by reference.

61. The Exchange Act and rules promulgated thereunder require every issuer of a registered security to file reports with the Commission that accurately reflect the issuer's financial performance and provide other information to the public. Rule 12b-20 provides that in addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

62. By reason of the foregoing, Tyco violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13].

THIRD CLAIM FOR RELIEF

RECORDKEEPING VIOLATIONS

Violations of Section 13(b)(2)(A) and (b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A), (b)(2)(B)] and Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1]

63. Paragraphs 1 through 31 and paragraphs 43 through 56 are realleged and incorporated herein by reference.

64. The Exchange Act and rules promulgated thereunder require each issuer of registered securities to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the business of the issuer and to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain the accountability of assets.

65. By reason of the foregoing, Tyco violated Section 13(b)(2)(A) and (b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A), (b)(2)(B)] and Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1].

FOURTH CLAIM FOR RELIEF

PROXY DISCLOSURE VIOLATIONS

Violations of Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Exchange Act Rule 14a-9 [17 C.F.R. § 240.14a-9]

66. Paragraphs 1 through 12, paragraphs 32 through 42, and paragraph 56 are realleged and incorporated herein by reference.

67. The Exchange Act and the rules promulgated thereunder prohibit any person from soliciting any proxy or consent, in respect of any registered security, by means of any proxy statement or other communication containing any untrue statement of material fact or omitting to state a material fact.

68. By reason of the foregoing, Tyco violated Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Exchange Act Rule 14a-9 [17 C.F.R. § 240.14a-9].

FIFTH CLAIM FOR RELIEF

FOREIGN ANTIBRIBERY VIOLATIONS

Violations of Section 30A(a) of the Exchange Act [15 U.S.C. § 78dd-1(a)]

69. Paragraphs 1 through 12 and paragraphs 47 through 51 are realleged and incorporated herein by reference.

70. The Exchange Act prohibits issuers of registered securities, as well as its employees and agents, from using the mails or means and instrumentalities of interstate commerce corruptly in furtherance of paying money or providing things of value to foreign officials for the purposes of obtaining or retaining business.

71. By reason of the foregoing, Tyco violated Section 30A(a) of the Exchange Act [15 U.S.C. § 78dd-1(a)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Permanently restrain and enjoin Tyco from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), 14(a), and 30A(a) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A), 78m(b)(2)(B), 78n(a), and 78dd-1(a)], and Exchange Act Rules 10b-5, 12b-20, 13a-1, 13a-13, 13b2-1, and 14a-9 [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-13, 240.13b2-1, and 240.14a-9].

II.

Order Tyco to disgorge all ill-gotten gains, including pre-judgment interest, resulting from the violations alleged in this Complaint.

III.

Order Tyco to pay a civil penalty under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Sections 21(d)(3) and 32(c)(1)(B) of the Exchange Act [15 U.S.C. §§ 78u(d)(3) and 78ff(c)(1)(B)].

IV.

Grant such other relief as this Court may deem just and appropriate.

Dated: Washington, D.C.
April 13, 2006

Respectfully submitted,

Scott W. Friestad

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