

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 57333 / February 14, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2785 / February 14, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-12957

In the Matter of

**WESTINGHOUSE AIR BRAKE
TECHNOLOGIES CORPORATION,**

Respondent.

**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**

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 Westinghouse Air Brake Technologies Corporation ("Wabtec" 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 ("Order"), as set forth below.¹

¹ On February 14, 2008, the Commission filed a complaint against Wabtec in the United States District Court for the Eastern District of Pennsylvania alleging violations of Sections 13(b)(2)(A), 13(b)(2)(B) and 30A of the Exchange Act and seeking the imposition of a civil penalty. Without admitting or denying the Commission's allegations, Wabtec has consented to the entry of a final judgment that requires Wabtec to pay a civil penalty of \$87,000. See SEC v. Westinghouse Air Brake Technologies Corporation, Civil Action No. 08-CV-706 (E.D.Pa.).

III.

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

Summary

1. This matter involves violations of the Foreign Corrupt Practices Act of 1977 ("FCPA") by Westinghouse Air Brake Technologies Corporation. From at least 2001 through 2005, Wabtec, through its Indian subsidiary, Pioneer Friction Limited ("Pioneer"), made unlawful payments to employees of the Indian government in connection with Pioneer's efforts to obtain and retain business from the Indian national railway system. During this time period, Pioneer made over \$137,400 in improper cash payments to employees of the Indian government in order to have its competitive bids for government business granted or considered. None of these payments were accurately reflected on Wabtec's books and records and Wabtec failed to prevent or detect these payments.

Respondent

2. Wabtec, incorporated in Delaware and headquartered in western Pennsylvania, manufactures brake subsystems and related products for locomotives, freight cars and passenger vehicles, among other things. Wabtec employs approximately 5,000 people in 40 manufacturing plants, service centers, and sales offices located in the United States, Canada, Mexico, Europe, Asia, Australia and South America. Wabtec's stock is registered pursuant to Section 12(b) of the Exchange Act and is listed on the New York Stock Exchange. Wabtec files reports with the Commission pursuant to Section 13 of the Exchange Act.

Other Relevant Entity

3. Pioneer Friction Limited, incorporated and headquartered in India, manufactures low and high friction brake blocks for rail operations. Pioneer is a fourth tier, wholly-owned subsidiary of Wabtec. Two of the intermediate subsidiaries are Australian companies which are, in turn, owned by a U.S. holding company. Pioneer's financial results are reported on a consolidated basis as part of Wabtec's consolidated financial statements.

Facts

A. The Unlawful Payments

4. Pioneer sells brake blocks in India to Original Equipment Manufacturers ("OEM") and aftermarket customers. The OEM market includes train car manufacturers owned or controlled by the Indian government. The national railway system in India is controlled by the Indian government through the Ministry of Railroads ("MOR"). The Indian Railway Board ("IRB") is the operating arm of the MOR. The IRB includes sixteen "Zonal Railways."

5. The IRB and Zonal Railways solicit sealed bids for specific quantities of certain low friction products from various companies located in India (the "tender process"). The IRB and Zonal Railways award the contract to the lowest bidder (the "primary contract") and notify the higher bidders of the lowest bid. Because the IRB's and Zonal Railways' requirements often exceed the production capacity of any single manufacturer, after awarding the contract to the lowest bidder, the IRB engages in negotiations with the higher bidders. In most cases, the IRB will award the higher bidders some business at the low bidder's price.

6. From at least 2001 through 2005, employees of the IRB and Zonal Railways solicited from Pioneer two types of cash payments in connection with the tender process. First, during the times that the IRB was evaluating various bids received from Pioneer and others, employees of the IRB and Zonal Railways solicited cash payments from Pioneer in order for the IRB to approve Pioneer's contract price (hereinafter referred to as the "IRB Payments"). For the years 2001 through 2004, Pioneer paid approximately \$85,000 in cash to employees of the IRB to obtain business from the IRB. In 2005, Pioneer paid \$21,217 in IRB payments to employees of the IRB for the same purpose.

7. In addition, employees of the IRB and Zonal Railways solicited payments from Pioneer to ensure that the IRB and Zonal Railways would consider Pioneer's bids in the tender process and that Pioneer would be given the opportunity to sell additional quantities of certain products at the awarded price without going through a new tender process (hereinafter referred to as the "Ordering Payments"). For years 2001 through 2004, Pioneer paid approximately \$25,000 in cash in Ordering Payments to employees of the IRB and Zonal Railways for consideration of its bids and to obtain other business. In 2005, Pioneer paid approximately \$6,250 in cash in Ordering Payments to employees of the IRB and Zonal Railways for the same purpose.

8. In 2005, the IRB awarded Pioneer the primary contract and other related contracts. As a result of being awarded the contracts in 2005, Pioneer realized profits of \$259,000.

9. Pioneer's Chairman, a non-U.S. citizen and resident who is also a Vice President of Wabtec, knew about and did nothing to prevent the Ordering Payments and the IRB Payments.

B. Improper Recording of the Unlawful Payments

10. Pioneer made the Ordering Payments and IRB Payments with cash accumulated throughout the year primarily from "marketing agents." Marketing agents are typically companies that send invoices and collect payment on behalf of another company that has provided some service or sold some product. To generate the necessary cash, Pioneer asked certain marketing agents to invoice it for services rendered in connection with particular IRB and Zonal Railways contracts. In fact, the invoices were fictitious. No one rendered any services; the sole purpose of the invoices was to generate cash to make the unlawful payments. Pioneer issued checks to the marketing agent for the amount of the invoice less withholdings for taxes.

The marketing agent then returned cash to Pioneer, less a service commission. Other marketing agents submitted invoices for materials that Pioneer did not receive in whole or in part. Pioneer issued checks to the marketing agent for the amount of the invoice and the marketing agent returned cash (less the service fee and any amount owed for any material actually received) to Pioneer.

11. Pioneer maintained the cash generated through the use of marketing agents in a locked metal box. Pioneer documented each unlawful payment on a voucher which was maintained with the cash. Pioneer also kept track of the unlawful payments on a spreadsheet. The vouchers and the spreadsheet were maintained separately from Pioneer's other books and records and were not subject to review during annual audits.

12. Under Indian law, records generated in the normal course of business must be maintained for ten years. Wabtec requires its foreign subsidiaries to follow applicable local laws with respect to record retention. Despite these requirements, Pioneer destroyed all records relating to the Ordering Payments and the IRB Payments after one year, and records do not exist prior to 2005.

13. Pioneer failed to properly account for the unlawful payments in its books and records. Pioneer recorded the marketing agents' invoices as "consulting" expenses and supplies. In fact, Pioneer did not receive any services or supplies; the sole purpose of the invoice was to raise cash. Moreover, although Pioneer maintained records regarding the unlawful payments, Pioneer did not use those records to account for the unlawful payments. Wabtec's financial statements are prepared on a consolidated basis. Accordingly, Wabtec's books, records and accounts did not reflect the Ordering Payments or IRB Payments.

C. Wabtec's Lack of Internal Controls

14. From 2001 through July 2006, although Wabtec's Code of Conduct prohibited giving anything of value to improperly influence any person in a business relationship with Wabtec, it did not have a FCPA policy or provide training or education to any of its employees, agents or subsidiaries regarding the requirements of the FCPA. Wabtec also failed to establish a program to monitor its employees, agents and subsidiaries for compliance with the FCPA.

15. In January 2006, Wabtec conducted an internal investigation of Pioneer and, upon its completion, voluntarily disclosed the facts and documents relating to this matter to the Commission staff.

Legal Analysis

16. The FCPA, enacted in 1977, added Section 30A to the Exchange Act in order to prohibit public companies, or any officer, director, employee, or agent of a public company from, among other things, making improper payments to foreign officials for the purpose of influencing their decision in order to obtain or retain business.

17. In each of the transactions described above, Wabtec, through its subsidiary, intended to make, and did make, the Ordering Payments and IRB Payments to employees of the government of India in order to obtain or retain business for Wabtec. As a result, Wabtec violated Section 30A of the Exchange Act.

18. The FCPA also 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, and 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: (i) transactions are executed in accordance with management's general or specific authorization; and (ii) transactions 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.

19. As detailed above, Pioneer did not properly record the payments that it made to employees of the government of India in its books. As a result, Wabtec's books, records, and accounts did not, in reasonable detail, accurately reflect its transactions and dispositions of the assets. As a result, Wabtec violated Section 13(b)(2)(A) of the Exchange Act.

20. In addition, Wabtec failed to devise and maintain a system of internal accounting controls sufficient to ensure that its employees complied with the FCPA. As a result, Wabtec violated Section 13(b)(2)(B) of the Exchange Act.

Wabtec's Remedial Efforts

21. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent and cooperation afforded the Commission staff.

IV.

Undertakings

Respondent undertakes to:

Independent Compliance Consultant

22. Retain within 60 days of the issuance of the Order, an independent compliance consultant ("ICC"), not unacceptable to the staff of the Commission, to review and evaluate Wabtec's internal controls, record-keeping, and financial reporting policies and procedures as they relate to Wabtec's compliance with the books and records, internal accounting controls, and anti-bribery provisions of the FCPA, codified at Sections 13(b)(2)(A), 13(b)(2)(B), and 30A of the Exchange Act and other applicable foreign bribery laws. The ICC's compensation and all related

expenses shall be borne exclusively by Wabtec. Wabtec shall cooperate fully with the ICC and shall provide the ICC with access to its files, books and records, and personnel as reasonably requested for the review;

23. Require that the ICC issue a report, within 60 days after being retained, summarizing the review and recommending policies and procedures reasonably designed to ensure compliance with the federal securities laws as they relate to the FCPA. Wabtec shall require that the ICC transmit a copy of the report to the Commission staff;

24. Adopt all recommendations in the report of the ICC; provided, however, that within 60 days after the ICC serves that report, Wabtec shall, in writing, advise the ICC and the Commission staff of any recommendation that it considers to be unduly burdensome, impractical, or costly. With respect to any recommendation that Wabtec considers unduly burdensome, impractical or costly, Wabtec need not adopt that recommendation at the time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose. As to any recommendation on which Wabtec and the ICC do not agree, such parties shall attempt in good faith to reach an agreement within 60 days after Wabtec serves the written advice. In the event Wabtec and the ICC are unable to agree on an alternative proposal, Wabtec will abide by the determinations of the ICC; and

25. Require the ICC to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the ICC shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Wabtec, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the ICC will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the ICC in performance of his/her duties under this Order shall not, without prior written consent of the Philadelphia Regional Office, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Wabtec, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

26. Wabtec: (i) shall not have the authority to terminate the ICC, without the prior written approval of the staff of the Commission; (ii) shall compensate the ICC, and persons engaged to assist the ICC, for services rendered pursuant to the Order at their reasonable and customary rates; and (iii) shall not be in and shall not have an attorney-client relationship with the ICC and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the ICC from transmitting any information, reports, or documents to the Commission or the Commission's staff.

Certification

27. Wabtec agrees to certify in writing to the staff (at the address set forth herein), within twelve months of the issuance of the Order, that Wabtec has fully adopted and complied

in all material respects with the undertakings set forth in paragraphs 22 through 26 above and with the recommendations of the ICC, or in the event of material non-adoption or non-compliance shall describe such material non-adoption and non-compliance.

Recordkeeping

28. Wabtec shall preserve for a period of not less than six years from the end of the fiscal year last used, the first two years in an easily accessible place, any record of its compliance with the undertakings set forth in paragraphs 22 through 26 above.

Extension of Time

29. For good cause shown, the staff of the Commission may extend any of the procedural dates set forth above.

V.

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

Accordingly, it is hereby ORDERED that:

A. Respondent Wabtec cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A), 13(b)(2)(B), and 30A of the Exchange Act.

B. Respondent shall comply with the undertakings enumerated in Section IV. above.

C. IT IS FURTHERED ORDERED that Respondent shall, within ten days of the entry of this Order, pay disgorgement and prejudgment interest in the total amount of \$288,351, consisting of \$259,000 in disgorgement and \$29,351 in prejudgment interest, to the United States Treasury. Such payment shall be: (A) made by 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 Wabtec 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 Elaine C. Greenberg, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Philadelphia Regional Office, 701 Market Street, Suite 2000, Philadelphia, PA 19106.

By the Commission.

Nancy M. Morris

Secretary