

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 58433 / August 27, 2008**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 2867 / August 27, 2008**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13148**

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In the Matter of	:	
CON-WAY INC.	:	
Respondent.	:	<b>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</b>
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**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Con-way Inc. (“Respondent” or “Con-way”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) that 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 it 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.<sup>1</sup>

### III.

On the basis of this Order and Respondent’s Offer, the Commission finds<sup>2</sup> that:

#### Summary

1. This matter involves Con-way’s violations of the books and records, and internal controls provisions of the Foreign Corrupt Practices Act (“FCPA”) through a Philippine-based firm, Emery Transnational. From 2000 to 2003, Emery Transnational made hundreds of small payments totaling at least \$417,000 to Philippine customs officials and to officials of numerous majority foreign state-owned airlines. These payments were made with the purpose and effect of improperly influencing these foreign officials to assist Emery Transnational to obtain or retain business. In connection with these improper payments, Con-way failed to accurately record these payments on the company’s books and records, and knowingly failed to implement or maintain a system of effective internal accounting controls.

#### Respondent

2. Con-way is a Delaware corporation headquartered in San Mateo, California. Con-way is an international freight transportation and logistics services company that conducts operations in a number of foreign jurisdictions. During the relevant period, the company was named CNF, Inc. The company changed its name to Con-way in April 2006. Con-way’s common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on the New York Stock Exchange.

#### Other Relevant Entities

3. Menlo Worldwide Forwarding, Inc. (“Menlo Forwarding”)<sup>3</sup> was a wholly-owned U.S.-based subsidiary of Con-way that Con-way purchased in 1989. During the relevant period, Menlo Forwarding was headquartered in Redwood City, California and had a 55% voting interest in Emery Transnational. Con-way sold Menlo Forwarding to United Parcel Service of America, Inc. (“UPS”) in December 2004.

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<sup>1</sup> The Commission has contemporaneously filed a complaint in the United States District Court for the District of Columbia against Con-way alleging violations of Section 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5) of the Exchange Act and seeking a civil penalty. Without admitting or denying the Commission’s allegations, Con-way has consented to the entry of a final judgment by the Court that requires the company to pay a \$300,000 civil penalty. *See SEC v. Con-way Inc.*, No. 1:08-cv-01478 (Aug. 27, 2008) (D.D.C).

<sup>2</sup> The findings herein are made pursuant to Respondent’s Offer and are not binding on any other person or entity in this or any other proceeding.

<sup>3</sup> During the relevant period, Menlo Forwarding was named Emery Air Freight Corporation.

4. Emery Transnational was a Manila, Philippines-based firm engaged in shipping and freight operations within the Philippines. Emery Transnational was also sold to UPS in December 2004.

## **Facts**

### **A. Lack of Oversight Over Emery Transnational**

5. During the relevant period, Con-way and Menlo Forwarding engaged in little supervision or oversight over Emery Transnational. Neither Con-way nor Menlo Forwarding took steps to devise or maintain internal accounting controls concerning Emery Transnational, to ensure that it acted in accordance with Con-way's FCPA policies, or to make certain that its books and records were detailed or accurate.

6. During the relevant period, Con-way and Menlo Forwarding required only that Emery Transnational periodically report back to Menlo Forwarding its net profits, from which Emery Transnational then paid Menlo Forwarding a yearly 55% dividend. Menlo Forwarding incorporated the yearly 55% dividend into its financial results, which were then consolidated in Con-way's financial statements. Neither Con-way nor Menlo Forwarding asked for or received any other financial information from Emery Transnational. Accordingly, neither Con-way nor Menlo Forwarding maintained or reviewed any of the books and records of Emery Transnational – including the records of operating expenses, which should have reflected the illicit payments made to foreign officials.

### **B. Payments to Philippine Customs Officials**

7. Emery Transnational made hundreds of small payments to foreign officials at the Philippines Bureau of Customs and the Philippine Economic Zone Area between 2000 and 2003 in order to obtain or retain business. These payments were made to influence the acts and decisions of these foreign officials and to secure a business advantage or economic benefit. By these payments, foreign officials were induced to: (i) violate customs regulations by allowing Emery Transnational to store shipments longer than otherwise permitted, thus saving the company transportation costs related to its inbound shipments; and (ii) improperly settle Emery Transnational's disputes with the Philippines Bureau of Customs, or to reduce or not enforce otherwise legitimate fines for administrative violations.

8. To generate funding for these payments, Emery Transnational employees submitted a Shipment Processing and Clearance Expense Report ("SPACER") to Emery Transnational's finance department. These SPACER reports requested cash advances to complete customs processing. The cash advances were then issued via checks made payable to Emery Transnational employees, who cashed the checks and paid the money to designated foreign officials. Unlike legitimate customs payments, the payments at issue were not supported by receipts from the Philippines Bureau of Customs and the Philippine Economic Zone Area. Emery Transnational did not identify the true nature of these payments in its books and records. During the period 2000 to 2003, these payments total at least \$244,000.

### **C. Payments to Officials of Majority State-Owned Airlines**

9. Emery Transnational, in order to obtain or retain business, also made numerous payments to foreign officials at fourteen state-owned airlines that did business in the Philippines between 2000 and 2003.<sup>4</sup> These payments were made with the intent of improperly influencing the acts and decisions of these foreign officials and to secure a business advantage or economic benefit. Emery Transnational made two types of payments. The first type were known as “weight shipped” payments, which were made to induce airline officials to improperly reserve space for Emery Transnational on the airplanes. These payments were valued based on the volume of the shipments the airlines carried for Emery Transnational. The second type were known as “gain shares” payments, which were paid to induce airline officials to falsely underweigh shipments and to consolidate multiple shipments into a single shipment, resulting in lower shipping charges. Emery Transnational paid the foreign officials 90% of the reduced shipping costs.

10. Both types of payments to foreign airline officials were paid in cash by members of Emery Transnational’s management team. Checks reflecting the amount of the “weight shipped” and “gain shares” payments were issued to these managers, who cashed the checks and personally distributed the cash payments to the foreign airline officials. Emery Transnational did not characterize these payments in its books and records as bribes. During the period 2000 to 2003, these payments totaled at least \$173,000. Neither Con-way nor Menlo Forwarding requested or received any records of these payments, or any of Emery Transnational’s expenses, during this period.

### **D. Discovery of Improper Payments and Internal Investigation**

11. Con-way discovered potential FCPA issues at Emery Transnational in early 2003. Starting in January 2003, Menlo Forwarding initiated steps to increase Emery Transnational’s internal reporting requirements, including requiring Emery Transnational to begin reporting its income and expenses, in addition to its net profits. As a result, in reviewing Emery Transnational’s records, Menlo Forwarding employees noticed unusually high customs and airline-related expenditures.

12. Menlo Forwarding conducted an internal investigation of the suspicious payments at Emery Transnational and determined that Emery Transnational employees had been making regular cash payments to customs officials and employees of majority state-owned airlines. Based on Menlo Forwarding’s investigation, Con-way conducted a broader review of all of Menlo Forwarding’s foreign businesses and voluntarily disclosed the existence of possible FCPA violations to the staff. After completing its internal investigation, Con-way imposed heightened financial reporting and compliance requirements on Emery Transnational. Menlo Forwarding

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<sup>4</sup> Such payments were made to foreign officials at the following majority state-owned airlines: Air France, Alitalia (Italy), China Airlines, EgyptAir, Emirates (Dubai), Gulf Air (Bahrain, Abu Dhabi, Oman), Kuwait Airways, Malaysian Airlines, Pakistan International Airlines, Royal Brunei Airlines, Saudi Arabian Airlines, SilkAir (Singapore), Singapore Airlines, and Thai Airways International.

terminated a number of the Emery Transnational employees involved in the misconduct, and Con-way provided additional FCPA training and education to its employees and strengthened its regulatory compliance program.

### **Legal Analysis**

13. The FCPA, enacted in 1977, added Exchange Act Section 13(b)(2)(A) to require public companies to make and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer, and added Exchange Act Section 13(b)(2)(B) to require such companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (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. 15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B).

14. As detailed above, Con-way's books, records, and accounts did not properly reflect the illicit payments made by Emery Transnational to Philippine customs officials and to officials of majority state-owned airlines. As a result, Con-way violated Exchange Act Section 13(b)(2)(A).

15. Con-way also failed to devise or maintain sufficient internal controls to ensure that Emery Transnational complied with the FCPA and to ensure that the payments it made to foreign officials were accurately reflected on its books and records. As a result, Con-way violated Exchange Act Section 13(b)(2)(B).

16. Exchange Act Section 13(b)(5), 15 U.S.C. § 78m(b)(5), prohibits any person or company from knowingly circumventing or knowingly failing to implement a system of internal accounting controls as described in Section 13(b)(2)(B), or knowingly falsifying any book, record, or account as described in Section 13(b)(2)(A).

17. By knowingly failing to implement a system of internal accounting controls concerning Emery Transnational, Con-way also violated Exchange Act Section 13(b)(5).

### **Con-way's Remedial Efforts**

In determining to accept the Offer, the Commission considered the remedial acts undertaken by Con-way and cooperation afforded the Commission staff.

#### **IV.**

On the basis of the foregoing, the Commission deems it appropriate to accept the Respondent's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that Con-way cease and desist from committing or causing any violations and any future violations of Exchange Act Sections 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5).

By the Commission.

Florence E. Harmon  
Acting Secretary