

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 79753 / January 6, 2017

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3841 / January 6, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17759

In the Matter of

CADBURY LIMITED and
MONDELĒZ
INTERNATIONAL, INC.,

Respondents.

ORDER INSTITUTING CEASE-AND-DESIST
PROCEEDINGS, PURSUANT TO SECTION
21C OF THE SECURITIES EXCHANGE ACT
OF 1934, MAKING FINDINGS AND
IMPOSING CEASE-AND-DESIST ORDERS
AND A CIVIL PENALTY

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 Cadbury Limited f/k/a Cadbury plc (“Cadbury”) and Mondelēz International, Inc. (“Mondelēz”) as the acquirer of Cadbury’s stock (collectively “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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 them and the subject matter of these proceedings, which are admitted, Respondents consent 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 Cease-and-Desist Orders and a Civil Penalty (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

Summary

1. Mondelēz, formerly known as Kraft Foods Inc., is a U.S.-based food, beverage, and snack manufacturer with securities registered with the Commission. In February 2010, Mondelēz acquired Cadbury, a U.K.-based confectionary and snack beverage company that had securities registered with the Commission. In early 2010, Cadbury India Limited ("Cadbury India"), a subsidiary of Cadbury, retained an agent ("Agent No. 1") to interact with Indian government officials to obtain licenses and approvals for a chocolate factory in Baddi, Himachal Pradesh, India. Cadbury India's failure to conduct appropriate due diligence on, and monitor the activities of, Agent No. 1 created the risk that funds paid to Agent No. 1 could be used for improper or unauthorized purposes. In addition, Cadbury India's books and records, which were consolidated into the books and records of Cadbury, did not accurately and fairly reflect the nature of the services rendered by Agent No. 1. Cadbury did not devise and maintain an adequate system of internal accounting controls sufficient to provide reasonable assurances that access to assets and transactions were executed in accordance with management's authorization and specifically to detect and prevent payments that may be used for improper or unauthorized purposes.

2. As a result, Cadbury violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934 ("Exchange Act"). As a result of Mondelēz's subsequent acquisition of Cadbury's stock, Mondelēz is also responsible for Cadbury's violations.

Respondents

3. **Cadbury Limited f/k/a Cadbury plc** ("Cadbury"), an English company headquartered in London, England, was a multi-national manufacturer and distributor of confectionaries and snack beverages. Cadbury's American Depositary Shares ("ADSs") were registered with the Commission under Section 12(b) of the Exchange Act and traded on the New York Stock Exchange under the ticker symbol "CBY." After being acquired by Mondelēz, on February 2, 2010, Cadbury terminated the registration of its ADSs with the Commission, which became effective on September 6, 2010.

4. **Mondelēz International, Inc.** ("Mondelēz") is a Virginia company with its principal executive offices in Deerfield, Illinois. During 2010, Mondelēz was known as Kraft Foods Inc. ("Kraft"). Kraft was a global manufacturer and marketer of food, beverage and snack products. Kraft's common stock was registered with the Commission under Section 12(b) of the Exchange Act and it traded on the New York Stock Exchange under the ticker symbol "KFT."

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

5. On February 2, 2010, Kraft acquired Cadbury and its subsidiaries, including Cadbury India. In October 2012, Kraft re-named itself Mondelēz International, Inc. and spun off its North American grocery business into a new company called Kraft Foods Group, Inc. Mondelēz retained the global snacking business, including Cadbury India, which later became Mondelēz India Foods Private Ltd. Mondelēz has common stock that is registered with the Commission under Section 12(b) of the Exchange Act and that trades on the NASDAQ under the ticker symbol “MDLZ.”

Other Relevant Entities and Individuals

6. **Mondelēz India Foods Private Limited** f/k/a Cadbury India Limited (“Cadbury India”) is Mondelēz’s subsidiary in India. It operates six manufacturing plants and four sales offices in India and its headquarters are in Mumbai.

7. **Agent No. 1** is a local business person and tile and marble vendor in Himachal Pradesh, India, whom Cadbury India retained as an agent to obtain licenses and approvals for a chocolate manufacturing facility in Baddi, India. Agent No. 1 formed a sole proprietorship on January 1, 2010, located on the same premises as the tile and marble business. On February 25, 2010, Agent No. 1 opened a bank account for his new business at the State Bank of India.

Facts

8. Cadbury India manufactures and sells chocolate products and other confectionaries in India. It operates six manufacturing plants in India and is headquartered in Mumbai. In 2005, Cadbury India built a major plant in Baddi, Himachal Pradesh, India. Cadbury India obtained licenses and approvals from the state government in Himachal Pradesh that were necessary to operate its new factory. Cadbury India’s employees at the Baddi plant drafted and submitted the applications for these licenses and approvals.

9. In 2008, Cadbury India decided to increase production capacity in Baddi. It called the additional facilities “Unit II.”

10. Cadbury India estimated that it may require more than 30 different licenses and approvals for Unit II. In or around November 2009, Cadbury India decided to obtain outside assistance in securing these various licenses and approvals. In January 2010, Cadbury India employees met with Agent No. 1 to discuss potentially retaining Agent No. 1 to obtain the licenses and approvals. As part of these discussions, Cadbury India employees at Baddi and Agent No. 1 negotiated the prices of Agent No. 1’s services. Agent No. 1 issued at least two quotations detailing the fees for each license and approval. Shortly after this meeting, in late January 2010, Cadbury India employees at Baddi recommended the retention of Agent No. 1, which management approved without further due diligence. Agent No. 1 began its work shortly thereafter and on February 23, 2010, Cadbury India executed a letter of authorization authorizing Agent No. 1 to represent Cadbury India before government bodies.

11. From February 2010 to July 2010, Agent No. 1 submitted five invoices totaling \$110,446 to Cadbury India for “providing consultation, arrange statutory/government prescribed formats of applications to be filed for the various statutory clearances, documentation, preparation of files and the submission of the same with govt. authorities” for specific licenses. In contrast Cadbury India employees at Baddi, not Agent No. 1, prepared these license applications. Cadbury India paid Agent No. 1 a total of \$90,666 after deducting withholding tax upon receipt of the invoices. After receiving each payment, Agent No. 1 withdrew from its bank account most or all of the funds in cash. During this time period Cadbury India obtained some of the licenses and approvals for Unit II. This included a de-amalgamation approval to designate the property on which Unit II was built as legally distinct from that of the existing manufacturing facility.

12. Besides the meetings described above, Cadbury India performed no further due diligence on Agent No. 1. Other than the invoices from Agent No. 1, which contained a description of the specific licenses or approvals obtained as support for that invoice, Cadbury India did not receive documentary support for Agent No. 1’s services and did not have any written contract with Agent No. 1 when it paid Agent No. 1.

13. Cadbury India’s books and records did not accurately and fairly reflect the nature of the services rendered by Agent No. 1. Cadbury did not implement adequate FCPA compliance controls at its Cadbury India subsidiary, which created the risk that funds paid to Agent No. 1 could be used for improper or unauthorized purposes.

14. On February 2, 2010, Mondelēz acquired Cadbury. Because of the nature of the acquisition, Mondelēz was unable to conduct complete pre-acquisition due diligence, including anti-corruption due diligence.

15. Between April 2010 and December 2010, Mondelēz engaged in substantial, risk-based, post-acquisition compliance-related due diligence reviews of Cadbury’s business, which involved reviews in 24 countries, including India. This post-acquisition due diligence review did not identify the relationship between Agent No. 1 and Cadbury India.

16. In October 2010, upon commencement of an internal investigation related to Agent No. 1, Mondelēz required Cadbury India to end the relationship with Agent No. 1 and no further payments were made.

17. Mondelēz conducted an internal investigation, which included the retention of external counsel and forensic accountants and cooperated with the SEC’s investigation. Mondelēz also undertook extensive remedial actions with respect to Cadbury, including implementing Mondelēz’s global compliance program at Cadbury and conducting a comprehensive review of the use of third parties in Cadbury India’s business.

Legal Standards and Violations

18. Under Section 21C(a) of the Exchange Act, the Commission may impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act or any rule or regulation thereunder, and upon any other person that is, was, or

would be the cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation.

19. Under Section 13(b)(2)(A) of the Exchange Act, issuers are required to make and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and disposition of the assets of the issuer. [15 U.S.C. § 78m(b)(2)(A)].

20. Under Section 13(b)(2)(B) of the Exchange Act, issuers are required 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; (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. [15 U.S.C. § 78m(b)(2)(B)].

21. As described above, Cadbury India, a subsidiary of Cadbury, retained Agent No. 1 to interact with Indian government officials to obtain licenses and approvals for Unit II in Baddi, India. Cadbury India did not conduct appropriate due diligence on, and properly monitor the activities of, Agent No. 1, which created the risk that funds paid to Agent No. 1 could be used for improper or unauthorized purposes. In addition, Cadbury India's books and records did not accurately and fairly reflect the nature of the services rendered by Agent No. 1. As a result of the conduct described above, Cadbury violated Section 13(b)(2)(A) of the Exchange Act, by failing to keep accurate books, records and accounts, and Section 13(b)(2)(B) of the Exchange Act, by failing to devise and maintain internal accounting controls that were sufficient to provide reasonable assurances that access to assets and transactions were executed in accordance with management's authorization and specifically to detect and prevent payments that may be used for improper or unauthorized purposes. As a result of Mondelez's acquisition of Cadbury stock, Mondelez is also responsible for Cadbury's violations.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

- A. Pursuant to Section 21C of the Exchange Act, Respondents Mondelez and Cadbury cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.
- B. Respondent Mondelez shall, within 14 days of the entry of this Order, pay a civil penalty in the amount of \$13 million to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange

Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondent Mondelēz may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent Mondelēz may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent Mondelēz may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Cadbury and Mondelēz as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Brian O. Quinn, Assistant Director, Division of Enforcement, Securities & Exchange Commission, 100 F St., NE, Washington, DC 20549-5010.

By the Commission.

Brent J. Fields
Secretary