

# Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION—SEC: Anheuser-Busch violated FCPA and whistleblower protection laws, (Sep. 28, 2016)

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The SEC entered an administrative cease and desist order regarding Anheuser-Busch InBev SA/NV (AB InBev), accepting its settlement offer and finding that AB InBev violated the Foreign Corrupt Practices Act and chilled a whistleblower who reported misconduct through an Indian subsidiary (*In the Matter of Anheuser-Busch InBev SA/NV*, [Release No. 34-78957](#), September 28, 2016).

**FCPA.** According to the Commission, AB InBev wholly owns an Indian subsidiary Crown Beers India Private Limited (Crown) which, from 2009 to 2012, used InBev India International Private Limited (IIPL) to manage marketing and distribution of Crown beer. During this time, IIPL utilized third parties to make improper payments to Indian government officials in order to obtain beer orders and increase production hours for Crown. Crown booked certain expenses related to the payments as legitimate promotional costs and had inadequate internal accounting controls to detect and prevent these payments.

Internal complaints did not prevent the use of these third party promoters and a 2010 internal audit following these complaints found a lack of internal controls, including a lack of awareness about FCPA, that were only partially corrected in 2011 or 2012. The new controls were easily bypassed by employees, however, and certain due diligence and record keeping related to the third parties were fraudulently created or changed. In addition, IIPL destroyed or hid documents despite the presence of Crown and IIPL's in-house counsel in attendance during planning meetings and notification to AB InBev of the pending document destruction by the Commission.

**Whistleblower silenced.** In addition to the violations of the FCPA, a Crown employee who had reported to AB InBev personnel their concerns had their employment

terminated. The separation agreement included a fine of up to \$250,000 for violating "strict secrecy and confidence" of AB InBev's confidential and/or proprietary information. The employee was voluntarily in communication with Commission staff until the time of the separation agreement at which point communication ended due to the employee's fear that the separation agreement prohibited it. Similar language was in common use within AB InBev.

**Cooperation.** AB InBev did not immediately respond to internal concerns nor was it quick to cooperate with the Commission although its efforts improved over time. Internal controls were put in place and IIIPL was dissolved in 2015. New language has been added to AB InBev's separation agreements explicitly allowing cooperation with government agencies or entities.

**Penalty.** In accordance with this order, AB InBev is under a two-year period of investigation of its FCPA and anti-corruption compliance programs including an initial report after one year and a final report after two years. AB InBev will also pay disgorgement of more than \$6 million, including interest and civil penalties.

**Growing whistleblower trend.** The Commission announced the order today in a [press release](#), specifically calling out not just the FCPA violations, but also the violation of whistleblower protection laws. This continues a [trend](#) not just at the SEC, but also among multiple agencies to examine employment agreements to ensure compliance with Exchange Act whistleblower provisions expanded by the Dodd-Frank Act.

The release is [No. 34-78957](#).

Companies: Anheuser-Busch InBev SA/NV; Crown Beers India Private Limited; InBev India International Private Limited

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