

Securities Regulation Daily Wrap Up, TOP STORY—D.D.C.: SEC and DOJ announce largest FCPA bribery case in history, (Dec. 21, 2016)

Securities Regulation Daily Wrap Up

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By [Jacquelyn Lumb](#)

The SEC and the Department of Justice have announced the resolution of the largest foreign bribery case in history in which Braskem S.A., a Brazilian petrochemical manufacturer, has agreed to pay \$957 million as part of a [global settlement](#). The SEC's complaint alleges that Braskem made over \$300 million in profits by bribing a government official at Brazil's state-controlled petroleum company, and by bribing Brazilian legislators and political party officials to obtain or retain business. Braskem will pay \$325 million in disgorgement, over \$632 million in criminal penalties and fines, and will appoint an independent corporate monitor for at least three years ([SEC v. Braskem](#), December 21, 2016).

Massive scheme. In a joint news conference, Deputy Assistant Attorney General Sung-Hee Suhn with the Justice Department's criminal division, [said](#) that Odebrecht S.A. and Braskem used a hidden but fully functioning business unit, which she referred to as a department of bribery, to pay hundreds of millions of dollars to government officials on three continents. Odebrecht, a privately-held company based in Brazil, indirectly owned the majority of Braskem's voting share capital. Its chief executive served as the chair of Braskem's board of directors during the relevant time period and played a key role in Braskem's illegal bribery scheme.

Braskem's registered shares, represented by American Depository Receipts, are traded on the NYSE. The company files periodic reports with the SEC, including Forms 20-F. The SEC's complaint alleges that Braskem paid bribes between 2006 and 2014 through a complex web of international intermediaries and offshore bank accounts. The payments were approved by senior executives who knew that the funds would be used to pay Brazilian government officials, including one at Petroleo Brasileiro S.A. (Petrobras), the state-owned petroleum company, senators and representatives of the Brazilian congress, and foreign political party officials.

Benefits from scheme. Among the benefits that Braskem received as a result of the bribes was a favorable pricing formula from Petrobras for its supply of naphtha, the raw material used in the production of petrochemicals; legislative tax credits; and avoidance of the termination of a joint venture agreement involving a polypropylene plant.

False books and records. Braskem and Odebrecht created false books and records to conceal the bribes at the direction of senior executives, which were recorded as commission expenses. The SEC found that Braskem's internal accounting controls were inadequate because they failed to prevent the payments or to detect red flags that should have alerted employees that they were fictitious. Braskem violated the anti-bribery, the books and records, and the internal controls provisions of the FCPA, according to the complaint, and was ordered to disgorge its ill-gotten gains, illegal losses avoided, and unjust enrichment as a result of its illegal conduct. The investigation is continuing.

Criminal information. Odebrecht pleaded guilty to a one-count criminal information for conspiracy to violate the anti-bribery provisions of the Foreign Corrupt Practices Act and agreed that the appropriate criminal fine is \$4.5 billion, subject to an analysis of its ability to pay the total global penalties. In related proceedings, Odebrecht also settled with the Ministerio Publico Federal in Brazil and the Office of the Attorney General in Switzerland. The U.S. will credit the amount that Odebrecht pays to Brazil and Switzerland over the term of their billing agreements, with the U.S. and Switzerland receiving 10 percent each of the criminal fine and Brazil receiving 80 percent. Odebrecht has represented that it is only able to pay approximately \$2.6 billion.

During the news conference, the DOJ advised that 80 individuals have been or will be charged and sentenced in Brazil in connection with this matter. U.S. officials commended Brazilian officials for their extraordinary work in the investigation and for being strong partners with the U.S. authorities.

The case is [No. 1:16cv02488](#).

Companies: Braskem S.A.; Odebrecht SA

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