

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68448 / December 17, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15132

In the Matter of

ALLIANZ SE,

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 AND 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 Allianz SE (“Allianz” 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 the 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 And Civil Penalty (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the books and records and internal controls provisions of the Foreign Corrupt Practices Act ("FCPA") by Allianz SE ("Allianz" or the "Company"), through its Indonesian majority-owned subsidiary, PT Asuransi Allianz Utama ("Utama"). Between 2001 and 2008, Utama managers made improper payments to employees of state-owned entities in Indonesia in order to obtain and retain business. Allianz learned of the improper payments from two complaints made several years apart. The first complaint was submitted in 2005 alleging significant misconduct, including unsupported payments to agents. A subsequent audit of Utama's accounting records uncovered that managers at Utama were using "special purpose accounts" to make illicit payments, many to government officials, in order to secure business in Indonesia. Despite the audit, the conduct continued. The second complaint was lodged in 2009 to Allianz's external auditors and alleged that Allianz created illicit off-the-books accounts. In response, Allianz began an internal investigation. The Commission staff opened an investigation in April 2010 after receiving an anonymous complaint of possible FCPA violations. The investigation determined that from at least 2001 through December 2008, the Utama managers, with the assistance of others in the Indonesian office, made payments to employees of state-owned entities in Indonesia to procure or retain insurance contracts related to large government projects in Indonesia. As a result of improper payments of approximately \$650,626 to agents and employees of state-owned entities and others, Allianz realized \$5,315,649 in profits.

2. The payments were improperly recorded as legitimate transaction costs, thereby causing Allianz's books and records to be inaccurate. Allianz failed to devise and maintain a system of internal controls sufficient to provide reasonable assurances to detect and prevent such payments.

Respondent

3. Allianz SE ("Allianz") was founded in 1890 and is headquartered in Munich, Germany. Allianz and its subsidiaries primarily engage in property and casualty insurance, life and health insurance, and asset management businesses worldwide. The Company operates in 70 countries, has 150,000 employees and in fiscal year 2011, the Company reported revenue of 103.6 billion euro. From November 3, 2000 to October 23, 2009, Allianz's American Depository Shares and bonds were registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange ("NYSE"). As such, Allianz was an "issuer" within the meaning of the FCPA. The conduct at issue occurred when Allianz was a U.S. issuer. On October 23, 2009, Allianz voluntarily delisted its securities from the

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

NYSE and soon thereafter terminated its reporting obligations with the Commission. The Company also delisted its ordinary shares from the London, Milan, Paris, and Swiss stock exchanges. Presently, Allianz's shares trade only on German stock exchanges.

Other Relevant Entities and Persons

4. Allianz of Asia-Pacific and Africa GmbH ("AZAP") is a German corporation and a wholly-owned subsidiary of Allianz. During the relevant period, AZAP's financials were consolidated into Allianz's financial statements.

5. PT Asuransi Allianz Utama Indonesia ("Utama") is located in Jakarta, Indonesia and is a majority-owned subsidiary of Allianz. Utama offers general insurance products to individuals and corporate clients. On June 6, 1989, Utama was formed as a joint venture with AZAP, PT Asuransi Jasa Indonesia ("Jasindo") and PT Asuransi Wuwungan.² Jasindo is an Indonesian state-owned entity. During the relevant period, AZAP owned 75 percent of Utama and Jasindo owned the remaining 25 percent. During the relevant period, Utama was treated as a subsidiary of Allianz, and Utama's financials were consolidated into Allianz's financial statements.

6. manroland AG ("Manroland") was a private German company that manufactured printing systems. In July 2006, Allianz Capital Partners, a wholly-owned subsidiary of Allianz, acquired a majority interest and majority voting rights in Manroland.

7. Utama CEO 1, a German citizen, was the Utama Chief Executive Officer ("CEO") from 1998 to 2001. Utama CEO 1 established the special purpose account for the purpose of making illicit payments to government officials. Utama CEO 1 is retired from the Company.

8. Utama CEO 2, a German citizen, was the Utama CEO from 2003 to 2006. Utama CEO 2 was aware that the special purpose account was used to make improper payments and that the practice continued after Utama was directed to close the account. Allianz terminated Utama CEO 2 in August 2011.

9. Utama Marketing Manager, an Indonesian citizen, was a member of the Utama senior management from 1990 to 2011. Utama Marketing Manager used the special purpose account to make improper payments. Allianz terminated the Utama Marketing Manager in August 2011.

10. Indonesian Agent, an Indonesian citizen, served as an agent for Utama since 1998. He was aware that the special purpose account was used to make improper payments to Indonesian officials. The Agent allowed the special purpose account to be opened in his name in return for a monthly fee. The Indonesian Agent is a current agent for Utama, not involved in the direct business.

² PT Asuransi Wuwungan is no longer part of the joint venture.

Facts

11. In 1981, Allianz commenced its operations in Indonesia with a representative office that provided financing and insurance for large government projects in Indonesia. Simultaneous with the opening of the office, Allianz opened a special purpose bank account with a local Indonesian broker. From 1981 to 1989, the account was used to pay legitimate commissions to the local Indonesian broker for business it generated for Allianz. In 1989, Allianz established Utama and continued the practice of using special purpose accounts for paying commissions to agents that generated business for Allianz. However, in February 2001, Indonesian Agent, an agent for Utama, Utama CEO 1 and Utama's Chief Financial Officer ("CFO") opened a separate, off-the-books account in the Indonesian Agent's name (the "Agent special purpose account"). The Agent special purpose account was used to make improper payments to employees of Indonesian state-owned entities and others for the purpose of obtaining and retaining insurance contracts. In February 2001, Indonesian Agent and Utama CEO 1 executed a "Paying Agency Agreement" that set up the scheme to make the payments to employees of state-owned entities. This agreement established the off-the-books account that served as a slush fund to make bribe payments to foreign officials and others as instructed by Utama.

A. Utama's 2001-2005 Improper Payments

12. During the period 2001 to 2005, Utama Marketing Manager made payments from the Agent special purpose account to account introducers employed by state-owned entities to secure insurance contracts on large government projects in Indonesia.³ Utama Marketing Manager received approval from Utama management to use the Agent special purpose account for improper purposes. Utama CEO 2, the CEO from 2003-2006, was aware of the Agent special purpose account and the improper payments to foreign officials.

13. The improper payments made to foreign officials were disguised in the Utama insurance contracts as "overriding commissions." Each insurance contract outlined two parts of the overall insurance premium: the technical premium (the actual cost of the coverage), which was usually 75-95% of the premium, and the non-technical premium (the overriding commission), which was typically 5-25% of the premium. The overriding commission was the portion that was paid to the foreign official as an inducement to purchase the Utama insurance product. Once the entire premium was deposited in the Utama bank account and booked in Utama's internal accounting system, Utama Marketing Manager would submit a "commission payment request" to the finance department. Once the request was approved the overriding commission portion was transferred to the Agent special purpose account. Utama Marketing Manager would withdraw the commission in cash from the Agent special purpose account and deliver the funds to the foreign official. Despite the fact that Allianz has a majority share of Utama and consolidated the subsidiary's accounts into its own books and records, Utama's accounting system was maintained in Indonesia and Allianz did not have effective controls over

³ Most of the account introducers were foreign officials because they were employees of Indonesian state-owned entities, who acted in their official government capacity to procure or retain insurance contracts from Allianz on government projects.

the accounting. Allianz did not have the ability to access Utama's accounting system and, therefore, did not detect the movement of funds to the Agent special purpose account. In addition, the Agent special purpose account was maintained in the name of the Indonesian Agent to make it appear that all movement of funds to this account was for legitimate commission payments. Likewise, Allianz did not have effective controls over the commission payment request process, which allowed payments to go to the Agent special purpose account without supporting documentation.

14. On December 1, 2005, a whistleblower complaint concerning the special purpose account was submitted to both the Allianz whistleblower hotline and Utama's joint venture partner Jasindo, and then forwarded to the head of AZAP. The complaint itemized a number of control weaknesses, most notably, the existence of the Agent special purpose account and its lack of transparency. On December 8, 2005, Allianz Group Audit initiated an audit of the Indonesian office; however, the review was limited to embezzlement from the Company. The audit identified the Agent special purpose account as an account mainly used by Utama Marketing Manager as a "vehicle to pay project development and overriding commissions to the special projects and clients for securing business with Utama." It also identified two internal accounts related to the Indonesian Agent; one for the agent's normal commissions, and one for "various" purposes. However, no additional steps were taken to determine the nature and purpose of the accounts or to identify the recipients of payments from the accounts. On December 12, 2005, based on the audit findings Allianz directed the Utama management to close the Agent special purpose account. Although the Utama management agreed to close the account and to stop making the payments, it continued making improper payments to secure business for Allianz through 2008.

B. Utama's Post-2005 Improper Payments

15. Despite the directive to close the account and to stop making payments, Utama Marketing Manager continued to use the Agent special purpose account to make improper payments to foreign officials from 2005 to 2008. In an email dated May 20, 2006, the Utama Chief Technical Officer emailed Utama Marketing Manager and Utama CEO 2 that the finance department had detected that the Agent special purpose account had been used to make payments in connection with two government insurance contracts. Utama Marketing Manager acknowledged that he used the Agent special purpose account to make the payments because the account introducers expected to receive the promised improper payments on the government insurance contracts. Utama CEO 2 approved the continued use of the Agent special purpose account to make payments on the two government insurance contracts at issue. Later, Utama Marketing Manager and his staff expanded the improper payments to numerous other foreign officials on government insurance contracts.

16. From 2005 to 2008, Utama Marketing Manager employed various methods to make payments to foreign officials. In addition to booking payments through the Agent special purpose account, Utama Marketing Manager made payments by either: 1) booking commissions to an agent that was not associated with the account for the government insurance contract and then withdrawing the funds booked to the agent's account as cash to pay the foreign official; or 2) overstating the amount of a client's insurance premium, booking the excess amount to an

unallocated account and then “reimbursing” the excess funds to the foreign officials, who were responsible for procuring the government insurance contracts.

17. Similar to the Agent special purpose account, Allianz did not have effective controls over the Utama accounting system or the commission payment process, which allowed payments to be made to an agent’s account without supporting documentation. Allianz did not have any controls over the use of the unallocated account that was maintained at Utama. As a result, Utama Marketing Manager was able to take funds from Utama to pay foreign officials without detection. In March 2009, Allianz’s outside auditor received an anonymous complaint alleging that an Allianz executive created or initiated slush funds during his tenure with AZAP. Between December 2005, when the Allianz Executive Vice-President of the Asia-Pacific Division directed Utama to close the Agent special purpose account and the March 2009 Whistleblower complaint, Allianz took no steps to ensure that the Agent special purpose account was closed and that similar improper payments were not being made.

C. Investigation and Remediation

18. In response to the March 2009 Whistleblower complaint, Allianz convened a Whistleblower Committee to do an internal investigation and retained counsel to conduct an internal investigation of Utama’s payment practices in Indonesia. Allianz did not report the conduct to the Commission staff.

19. In April 2010, the staff opened an investigation after receiving an anonymous complaint of possible FCPA violations. The staff contacted Allianz concerning the allegations. Allianz’s cooperation in the staff’s investigation and the timeliness of its response to the Commission’s requests for documents and information improved over time. Allianz hired new counsel and took steps to further its cooperation and remedial efforts.

20. The staff’s investigation uncovered 295 government insurance contracts that were obtained or retained by improper payments of approximately \$650,626 to Indonesian government officials and others from 2001 through 2008. As stated above, in some instances the nature of the improper payments was disguised in invoices as an “overriding commission” or as a commission for an agent that was not associated with the government insurance contract. In other instances the improper payments were structured as an overpayment by the government insurance contract holder, who was later “reimbursed” for the overpayment. The excess funds were then paid to foreign officials, who were responsible for procuring the government insurance contracts.⁴

21. Allianz took various remedial measures, including employment action against several individuals who were involved in the conduct or failed to stop the conduct. Allianz issued new or enhanced FCPA compliance and internal accounting control policies and procedures, including mandating strict scrutiny of payments to third party intermediaries. Allianz also updated the anti-corruption clause in its third-party contracts to specifically refer to

⁴ In late 2010, Allianz reported to the staff that Manroland, AG, an entity in which Allianz had invested in through its private equity arm, was under investigation by German tax authorities. The German tax investigation focused on the tax-deductibility of certain sales-related expenses, many of which occurred after Allianz ceased being an issuer. None of the irregularities in payments involve government projects or payments to foreign officials.

the FCPA. Allianz provided enhanced FCPA compliance training to its employees and improved its current global anti-corruption compliance program.

Legal Standards and Violations

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

FCPA Violations

23. The FCPA, enacted in 1977, added Section 13(b)(2)(A) of the Exchange Act 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.

24. The FCPA also added Section 13(b)(2)(B) of the Exchange Act to require public companies to, among other things, devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions: (i) are executed in accordance with management's general or specific authorization; and (ii) 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. *See* 15 U.S.C. §§ 78m (b)(2)(A) and 78m(b)(2)(B). Section 13(b)(2)(A) of the Exchange Act does not require that the amounts involved be "material," nor is it necessary to prove "scienter" under its provisions. *SEC v. World-Wide Coin Invs. Ltd.*, 567 F. Supp. 724, 749-51 (N.D. Ga. 1983). Similarly, there is no scienter requirement for establishing a violation of Section 13(b)(2)(B). *Id.*

25. Utama, a majority-owned subsidiary of Allianz, made improper payments to foreign officials to obtain or retain government insurance contracts. Utama improperly recorded the payments as legitimate transaction costs. Utama's financial statements were consolidated into Allianz's financial statements. As a result of the conduct described above, Allianz violated Section 13(b)(2)(A) of the Exchange Act, which requires issuers to keep accurate books, records and accounts. Further, as evidenced by the extent and duration of Utama's improper payments and their improper recordation, and the fact that Allianz was not aware that Utama's commission payment request process allowed funds to be diverted for improper payments, Allianz failed to recognize the compliance risks posed by Utama. Allianz also failed to devise and maintain an effective system of internal controls sufficient to provide reasonable assurances that improper payments were not being made by its subsidiary. As a result of the conduct described above, Allianz violated Section 13(b)(2)(B) of the Exchange Act, which requires issuers to devise and maintain a sufficient system of internal accounting controls.

Allianz's Cooperation and Remedial Efforts

26. In determining to accept the Offer, the Commission considered the cooperation afforded the Commission staff and certain remedial measures undertaken by Allianz including enhancements to its compliance program.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Allianz 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 shall, within 30 days of the entry of this Order, pay to the United States Treasury disgorgement of \$5,315,649, prejudgment interest of \$1,765,125 and a civil money penalty of \$5,315,649. If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If payment of a civil penalty is not timely made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;⁵
- (2) Respondent 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 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 Allianz SE as a Respondent in these proceedings, and the file number of these proceedings; a copy

⁵ The minimum threshold for transmission of payment electronically is \$50,000.00 as of April 1, 2012. This threshold will be increased to \$1,000,000 by December 31, 2012. For amounts below the threshold, respondents must make payments pursuant to option (2) or (3) above.

of the cover letter and check or money order must be sent to Tracy L. Price, Assistant Director, FCPA Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

By the Commission.

Elizabeth M. Murphy
Secretary