

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 63243 / November 4, 2010

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3204 / November 4, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-14107

In the Matter of

ROYAL DUTCH SHELL plc,

and

**SHELL INTERNATIONAL
EXPLORATION AND
PRODUCTION INC.,**

Respondents.

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

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 Royal Dutch Shell plc, (“Respondent Shell”) and against Shell International Exploration and Production Inc. (“Respondent SIEP”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (“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 Respondents 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 Sanctions and A Cease-and-Desist Order ("Order"), as set forth below.

III.

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

A. SUMMARY

This matter concerns violations of the anti-bribery provisions of the Foreign Corrupt Practices Act ("FCPA") by Respondent SIEP and the record keeping and internal controls provisions of the FCPA by Respondent Shell. From September 2002 through November 2005, SIEP, on behalf of Shell, authorized the reimbursement or continued use of services provided by a company acting as a customs broker that involved suspicious payments of approximately \$3.5 million to officials of the Nigerian Customs Service in order to obtain preferential treatment during the customs process for the purpose of assisting Shell in obtaining or retaining business in Nigeria on Shell's Bonga Project. As a result of these payments, Shell profited in the amount of approximately \$14 million. None of the improper payments was accurately reflected in Shell's books and records, nor was Shell's system of internal accounting controls adequate at the time to detect and prevent these suspicious payments.

B. RESPONDENTS

Royal Dutch Shell plc ("Shell"), an English-chartered company, headquartered in The Hague, Netherlands, focuses, through its subsidiaries, on oil, gas, and power production and exploration. Shell's American Depositary Receipts are registered with the Commission pursuant to Section 12(b) of the Exchange Act, and trade on the New York Stock Exchange.²

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

² The conduct at issue in the matter primarily occurred prior to a corporate restructuring which created Royal Dutch Shell plc. Royal Dutch Petroleum Company, a Dutch company, and The "Shell" Transport and Trading Company, an English company, are predecessors to Royal Dutch Shell plc. During the relevant period, the ordinary shares of Royal Dutch Petroleum Company and the American Depositary Receipts of The "Shell" Transport and Trading Company were registered with the Commission and traded on the New York Stock Exchange. On October 28, 2004, the Royal Dutch Petroleum Company board and The "Shell" Transport and Trading Company board voted to propose to shareholders the unification of Royal Dutch Petroleum Company and The "Shell" Transport and Trading Company under a single parent company, Royal Dutch Shell plc. In July 2005, the transaction was completed in which Royal Dutch Shell

Shell International Exploration and Production Inc. (“SIEP”), a Delaware company with headquarters in Houston, Texas, is a wholly owned indirect subsidiary of Shell. SIEP acted as an agent of Shell for purposes of the Bonga Project. SIEP’s financial results are components of the consolidated financial statements included in Shell’s filings with the Commission.

C. OTHER RELEVANT ENTITY

Shell Nigerian Exploration and Production Company Ltd. (“SNEPCO”), located in Nigeria, is a wholly owned subsidiary of Shell Petroleum N.V., which, in turn, is a wholly owned direct subsidiary of Shell. SNEPCO performed work on the Bonga Project.

D. FACTS

I. The Bonga Project

Bonga, discovered by a Shell subsidiary in 1995, was the first deepwater offshore oil and gas project in Nigeria. Developmental drilling on the Bonga Project began in December 2000 and the project reached First Oil³ in November 2005.

The Bonga field was developed by SNEPCO (55% interest), on Shell’s behalf, and other oil companies pursuant to a Production Sharing Contract with the Nigerian National Petroleum Corporation (“NNPC”). Under the Production Sharing Contract, the oil companies were responsible for all upfront costs associated with reaching First Oil, but the costs were subsequently fully recoverable from the proceeds of oil production.

The Bonga Project, authorized and approved by Shell’s board, was executed jointly across several Shell entities, including SIEP and SNEPCO. In particular, SIEP provided experienced project and technical personnel for the project who were responsible for such things as project controls, project accounting, document control, cost planning, cost controls, and handling claims against contractors. A SIEP employee located in Houston managed the contractual relationship with one of the Contractors on the project and was responsible for reviewing and approving invoices and underlying documentation submitted by the Contractor. Another SIEP employee was head of the Bonga Project Services Team with responsibility for reviewing and approving invoices and underlying documentation submitted by the Contractors before the invoices were passed on to SNEPCO’s finance department for payment. In addition, on a monthly

plc became the parent company of Royal Dutch Petroleum Company and The “Shell” Transport and Trading Company.

³ “First Oil” is the point at which the project’s construction phase ceases, and the project commences production.

basis, the Bonga Project Manager reported on the progress of the Bonga Project through the corporate chain up to a member of Shell's board of directors.

Developing the Bonga field required the transportation of large amounts of equipment and parts into Nigeria. Pursuant to the Production Sharing Contract, ownership of this equipment passed to NNPC once imported into Nigeria. SNEPCO, on behalf of Shell, however, was responsible for arranging importation of the equipment and for paying customs duties on the items, which costs, pursuant to the contract, were recoverable later from the proceeds of oil production.

In developing Bonga, SNEPCO, on behalf of Shell, hired a number of contractors, unaffiliated with Shell, including Contractor A and Contractor B. In order to assist in the importation into Nigeria of equipment necessary for the Bonga Project, the Contractors, and in some instances SNEPCO directly, hired the services of an international freight forwarding and customs clearing company ("Courier Subcontractor") for transporting and customs clearance.⁴

One of the services Courier Subcontractor provided was an express door-to-door courier service ("Courier Service") that expedited the delivery of goods and equipment into Nigeria. The Nigerian customs clearance process was routinely delayed, often taking weeks or even months to clear equipment through customs. In addition, the Bonga Project was over-budget and behind schedule and a significant amount of equipment needed to be imported into Nigeria. These circumstances led to the repeated use of Courier Subcontractor's Courier Service.

Courier Subcontractor was able to expedite the importation of goods because of an "on the side" agreement between Courier Subcontractor and members of the Nigerian Customs Service ("NCS") in which Courier Subcontractor made corrupt payments to NCS officials to bypass the normal customs process. Goods shipped using Courier Subcontractor's Courier Service arrived in Nigeria "customs cleared," resulting in a significant savings of time and a reduction in the required customs duties and tariffs with a significantly higher freight fee. Typically, Courier Subcontractor billed the Contractors who paid the bill and, in turn, sought reimbursement, which required approval from SIEP. Certain of Courier Subcontractor's invoices charged a special fee (i.e. bribe). The special fee was initially invoiced as a "local processing fee" and later invoiced as "administration/transport charges." The use of Courier Subcontractor's Courier Service expedited shipments into Nigeria by about 20 to 39 days. Therefore, a shipment that would take 30 days to clear Nigerian customs using regular air freight could clear customs in as quickly as 10 days using the Courier Service.

⁴ In February 2007, one of the Bonga Project Contractors pleaded guilty to violations of the Foreign Corrupt Practices Act and agreed to pay \$26 million in criminal fines in connection with the payments to Nigerian customs officials through Courier Subcontractor to obtain preferential treatment during the customs process. See United States v. Vetco Gray UK Limited, CR H07-04 (LNH) (S.D. Tex. 2007).

II. The Bonga Project Contractors

a. Bonga Project Contractor A

Under the contracts with the Bonga Project Contractors all costs were borne by the Contractors, subject to certain exceptions, such as, customs duties. SNEPCO, on behalf of Shell, was financially responsible for all customs duties and the Contractors were responsible for all shipping costs. For customs duties greater than \$100,000, SNEPCO, on behalf of Shell, paid the Nigerian government directly. For customs duties less than \$100,000, the Contractors paid and sought reimbursement. The payments at issue in this proceeding were each under \$100,000, and were initially paid by the Contractors. In February 2004, Contractor A submitted a contract variation request for reimbursement of a \$1.8 million accrual in “additional transportation and related charges” relating to the use of Courier Subcontractor’s Courier Service and the payment of local processing fees.⁵

In analyzing whether to reimburse Contractor A for these courier costs, certain employees of SIEP responsible for approving the payment of invoices, were made aware of red flags relating to the service and that it likely involved illicit payments to customs officials. For example, SIEP repeatedly requested that Courier Subcontractor and Contractor A provide a receipt from NCS proving that the local processing fee had been deposited into a Nigerian Government account. However, neither company was able to supply such receipts. In addition, certain SIEP employees learned that Courier Subcontractor’s Courier Service bypassed the normal customs duty payment process and that using the service “reduced [] liability for Nigerian Customs and Import Duty.”

In July 2004, SIEP rejected Contractor A’s contract variation request for the additional charges relating to the use of the Courier Service. At the same time, a “no proof, no pay” policy was implemented for the Bonga Project. Pursuant to the policy, SIEP, on behalf of Shell, would not approve reimbursement to Contractor A for any expenses relating to the Courier Service unless Contractor A could provide (1) Courier Subcontractor’s receipts from NCS validating that customs duties were paid directly into an official NCS banking or financial institution and (2) NCS documentation confirming that associated payments satisfied the customs duties and that no further duties would be due. At the time, certain individuals at SIEP had concluded that it was unlikely that Contractor A would be able to provide such proof. However, certain SIEP employees continued to permit the Contractors to use Courier Subcontractor for customs clearance and Courier Subcontractor’s Courier Service. In addition to continuing to encourage and support the use of Courier Subcontractor’s courier service, certain individuals working on the Bonga Project also tried, without success, to modify the “no proof, no pay” policy in order to reimburse the courier expenses even without proof that payment had been made into a Nigerian government account.

⁵ Contractor A made subsequent additional requests bringing its total reimbursement request to \$2.1 million.

b. Bonga Project Contractor B

During the course of the Bonga Project, Contractor B sustained financial difficulties and accordingly, SIEP, on behalf of Shell, put in place a process to advance funds to Contractor B to pay Bonga Project expenses as they became due, including Contractor B's payment of shipping costs to Courier Subcontractor for the use of the Courier Service. Despite the red flags that came to SIEP employees' attention in examining whether to reimburse Contractor A for its courier expenses, SIEP approved advancing funds to Contractor B for the use of the Courier Service, even when Contractor B could not provide valid customs receipts as required by the "no proof, no pay" policy. Further, certain Bonga Project personnel agreed to a proposal by Courier Subcontractor to increase the tariff rate in Contractor B's and Courier Subcontractor's contract to hide the "local processing fees" which would no longer be broken out as a separate line item.

In total, approximately \$3.5 million in suspicious payments were made to Nigerian customs officials. Approximately \$1.8 million of these payments were for "local processing fees" and "administrative/transport charges" related to Courier Subcontractor's Courier Service. SIEP, on behalf of Shell, authorized reimbursement of approximately \$2.5 million of these payments.⁶

SIEP's Exchange Act Section 30A Violations

Section 30A of the Exchange Act makes it unlawful for an issuer that has a class of securities registered under Section 12 of the Exchange Act, or "for any officer, director, employee or agent of such issuer . . . acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to any person while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official . . ." for, among other things, influencing any act or decision of such foreign official in his official capacity in order to assist such issuer in obtaining or retaining business.

As detailed above, Respondent SIEP, an agent of Shell, authorized the reimbursement and continued use of Courier Subcontractor's services that involved unlawful payments to Nigerian customs officials in order to obtain preferential treatment during the customs process for the purpose of assisting Shell in obtaining or retaining business in Nigeria on Shell's Bonga Project. As a result, SIEP violated Section 30A of the Exchange Act. Shell benefitted through these payments by bypassing the normal customs process and importing equipment into Nigeria faster than Shell would have had the payments not been made. Ultimately, this accelerated Shell's ability to reach First Oil and

⁶ The activity relating to the additional \$1 million in suspicious payments was authorized by SIEP, but the reimbursement of those funds was ultimately not authorized.

provided Shell with the value of its oil production profits sooner than it would have had it not made the payments. By avoiding the payment of certain customs duties through these payments, Shell also benefited by having the use of those funds when Shell would have otherwise had to wait to be reimbursed from the proceeds of oil production. As a result of these payments, Shell profited in the amount of \$14,153,536.

Exchange Act Section 13(b)(2)(A) and 13(b)(2)(B) Violations

Section 13(b)(2)(A) of the Exchange Act requires every issuer to make and keep books, records, and accounts, that in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

Respondent Shell violated Section 13(b)(2)(A) because Shell's books and records did not accurately reflect the nature of the improper payments. Instead, the improper payments were recorded as legitimate transaction costs such as "local processing fees" and "administration/transport charges" and thus were not fairly reflected or accurately recorded in its books, records, and accounts.

Section 13(b)(2)(B) of the Exchange Act requires every issuer to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) that 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. As evidenced by the details surrounding SIEP's authorization of reimbursement and continued use of Courier Subcontractor's services, Respondent Shell failed to devise and maintain an effective system of internal controls to prevent or detect illegal payments and as such, violated Section 13(b)(2)(B).

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 pursuant to Section 21C of the Exchange Act:

A. Respondent SIEP cease and desist from committing or causing any violations and any future violations of Section 30A of the Exchange Act and Respondent Shell 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. Respondents shall, within 30 days of the entry of this Order, jointly and severally, pay disgorgement of \$14,153,536 and prejudgment interest thereon of \$3,995,923 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to Rule 600 of the Commission's Rules of Practice. Such

payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Royal Dutch Shell plc and Shell International Exploration and Production as Respondents in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Laura B. Josephs, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.

Elizabeth M. Murphy
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Sanctions and A Cease-and-Desist Order ("Order") on the Respondents and their legal agents.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray
Chief Administrative Law Judge
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