

In the Matter of Biomet, Inc. (2017)

Nature of the Business.

Biomet, Inc. is a medical device company headquartered in Warsaw, Indiana that sells medical devices and dental products. Prior to 2008, Biomet's stock was registered with the Commission. In September 2007, Biomet was acquired by a group of private equity funds and went private. Following the acquisition, Biomet continued to file periodic reports with the Commission.

Influence to be Obtained.

In March 2012, Biomet consented, as part of a settlement with the Commission, to a permanent injunction against future violations of Sections 30(A), 13(b)(2)(A), 13(b)(2)(B) of the Exchange Act, as well as the appointment of an independent compliance monitor for a period of three years, for FCPA violations in multiple countries.

In June 2015, Biomet was acquired by Zimmer Holdings, Inc. and was renamed Zimmer Biomet. Zimmer Biomet began trading on the New York Stock exchange and the SIX Swiss Stock exchange.

According to the SEC, from approximately 2008 until 2013, Biomet, through its subsidiary and third-party customs brokers, allegedly made unlawful payments to Mexican customs officials to facilitate the importation of Biomet's unregistered and mislabeled dental products into Mexico.

In addition, the Commission claims that from 2009 to 2013, Biomet improperly recorded transactions with a known prohibited distributor in Brazil as transactions with another distributor. The SEC claims that Biomet had prohibited the use of the distributor after determining that the distributor made improper payments to public doctors in Brazil from 2000 to August 2008 to obtain sales of Biomet products, which was the subject of Biomet's 2012 settlement with the Commission and criminal authorities for FCPA violations. According to the SEC, Biomet could not account for the prohibited distributor's use of certain funds nor determine if the prohibited distributor had continued the same improper conduct. As a result, the SEC concluded that Biomet failed to appropriately record the transactions in Mexico and Brazil in its books and records. Further, the SEC accused Biomet of failing to devise and maintain a sufficient system of internal accounting controls.

Enforcement.

On January 12, 2017, the SEC announced that it had resolved an FCPA enforcement action against Biomet for violations of the FCPA's anti-bribery, books-and-records, and internal controls provisions. According to the SEC's cease-and-desist order, Biomet was required to pay disgorgement of \$5,820,100, prejudgment interest of \$702,705, and a civil penalty of \$6,500,000 for a total sanction of \$13,022,805. Biomet was also ordered to engage an independent compliance monitor for a three-year period. Zimmer Biomet separately resolved an enforcement action with the DOJ whereby the company agreed to pay a criminal fine of \$17,460,300.

Key Facts

Citation. *In the Matter Biomet, Inc.*, Admin. Proc. File No. 3-17771 (Jan. 12, 2017).

Date Filed. January 12, 2017.

Country. Brazil, Mexico.

Date of Conduct. 2008 – 2013.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Sales Agent/Consultant; Subcontractor.

Foreign Official. Unnamed Mexican customs officials; Unnamed Brazilian officials.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. \$13,002,805.

Compliance Monitor/Reporting Requirements. Independent Compliance Monitor.

Related Enforcement Actions. *United States v. Biomet, Inc.*; *SEC v. Biomet, Inc.*; *United States v. Zimmer Biomet Holdings, Inc.*; *United States v. Jerds Luxembourg Holding S.À.R.L.*

Total Combined Sanction. \$27,702,805.