

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97479 / May 11, 2023

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4406 / May 11, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21411

In the Matter of

KONINKLIJKE PHILIPS N.V.,

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**

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 Koninklijke Philips N.V. (“Philips” 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 it 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 (“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 from violations of the books and records and internal accounting controls provisions of the Foreign Corrupt Practices Act of 1977 (the "FCPA"). [15 U.S.C. § 78dd]. Philips, headquartered in the Netherlands, is a global manufacturer of health technology products, including diagnostic imaging equipment and patient monitoring systems. Between 2014 and 2019, Philips China employees, distributors, or sub-dealers engaged in improper conduct to influence foreign officials in connection with tender specifications in certain public tenders to increase the likelihood that Philips' products were selected. In some cases, Philips China's employees, distributors, or sub-dealers also engaged in improper bidding practices to create the appearance of legitimate public tenders by preparing additional bids with other manufacturers' products to meet the minimum bids requirement under Chinese public tender rules. As a result, Philips was unjustly enriched by approximately \$41 million.

2. In connection with some of these transactions, Philips China provided special pricing discounts to distributors, which created a corruption risk that the increased margins could be used to fund improper payments to employees of government-owned hospitals. During the relevant period, Philips China had insufficient internal accounting controls to prevent and detect the conduct described above and to provide reasonable assurances that certain transactions were recorded accurately in the books and records of Philips China, which were consolidated into the books and records of Philips. These deficiencies in China also created an environment that facilitated the conduct.

Respondent

3. **Philips** is a Dutch multinational corporation founded in Eindhoven, Netherlands and headquartered in Amsterdam. The company employs approximately 79,000 people in more than 100 countries. The company's securities are listed on the Euronext Amsterdam stock exchange. As a foreign private issuer during the relevant period, Philips' common stock was also registered with the Commission under Exchange Act Section 12(b) and publicly traded through a secondary listing on the New York Stock Exchange (symbol: PHG). Philips files annual reports on Form 20-F with the Commission. In 2013, Philips settled books and records and internal accounting controls charges by the Commission in connection with similar misconduct in Poland between 1999 and 2007. *In the Matter of Koninklijke Philips Electronics N.V.*, Rel. No. 34-69327 (April 5, 2013).

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.

Other Relevant Individuals and Entities

4. **Philips China** refers to Philips' healthcare business in China. Two Philips China subsidiaries, Philips Electronics Hong Kong Ltd. and Philips (China) Investment Co., Ltd., sold diagnostic imaging equipment through distributors and sub-dealers contracting with government-owned hospitals. Philips consolidates Philips China's financial results into its financial statements that are included in its filings with the Commission.

Facts

5. Philips entered the Chinese market in 1920 and established its first joint venture in 1985. Operating through Philips China, Philips has several wholly owned subsidiaries and representative offices in the region. In China, the majority of hospitals and other healthcare providers are state-owned enterprises. These government-owned entities purchase the majority of their diagnostic imaging equipment through public tenders. By 2016, the majority of Philips China's sales were made indirectly through authorized distributors or sub-dealers engaged by the authorized distributors. By 2018, 91% of Philips' diagnostic imaging revenue in China was earned through this indirect sales channel.

6. In this same timeframe, Philips China sought to grow its diagnostic imaging business and win public tenders in an increasingly competitive market. In some transactions, at the request of distributors, Philips China provided special pricing discounts on the health technology equipment that it sold to its distributors. However, Philips China's approval processes and its recording of the special pricing discounts were not subject to sufficient internal accounting controls to ensure appropriate management authorization of the discounts.

Philips China Employees and Distributors Improperly Influenced Public Hospital Tenders

7. In numerous transactions occurring from 2014 through 2019, Philips China employees, distributors, or sub-dealers engaged in improper bidding practices to increase the likelihood that Philips China's distributors or their sub-dealers were awarded public tenders to sell medical equipment to government-owned hospitals.

8. Each of the relevant transactions included, in whole or in part, elements of the following types of misconduct in public tenders:

- (a) The hospital employee responsible for writing the technical specifications, in consultation with a manufacturer's employees, a distributor, or sub-dealer, determined the hospital's technical preferences and drafted technical

specifications that would provide a manufacturer with a competitive advantage in the public tender prior to the opening of the bidding period;

- (b) The hospital employee drafted the specifications to increase the likelihood that the selected manufacturer would qualify for the winning bid; and
- (c) The hospital employee directed the winning bidder or its distributor or sub-dealer to prepare the manufacturer's bid and also two additional accompanying bids to meet the three-bid requirement of public tenders and give the appearance of legitimacy.

9. The improper conduct occurred in several regions of China. The Philips China employees who participated in the conduct described above included district sales managers, sales employees, and employees in the technical group that supported sales.

10. One example of the conduct is a 2017 public tender in which a Philips China distributor won a procurement award for two Philips devices valued at \$4.6 million. At the time of the bid submission in March 2017, the hospital had already taken steps to increase the likelihood that Philips China's equipment would be selected for the award. The Philips China district sales manager for Hainan Province had delivered approximately \$14,500 USD equivalent to the home of a director of the hospital's radiology department in return for the director's assistance in the procurement process. The sales team discussed the specifications to be included in the bid with the relevant hospital director, and its distributor prepared an accompanying bid with another manufacturer's products. There also was at least one additional transaction involving improper conduct in which the Hainan district sales manager's team was involved.

11. A second example involved Philips China improperly influencing a public tender valued at \$475,000. Prior to the award, the decision-making directors at the tendering hospital discussed tailoring the technical specifications with Philips China employees so that only Philips China and two other manufacturers would qualify to compete in the bidding process. In October 2017, a Philips China distributor won the bid to sell two Philips devices to the hospital. This tender was won as a result of inappropriately influencing the tender specifications.

12. During the relevant period, Philips China's use of special price discounts with distributors created the risk that excessive distributor margins could be used to fund improper payments to employees of government-owned hospitals. Philips China maintained inadequate books, records, and accounts concerning special price discounts, as the discounts were unsupported by adequate documentation to ensure their business justification and management's approval of them. The company's books and records also contained certain inaccurate documents relating to the special price discounts. The special price discounts granted by Philips China were consolidated into Philips' books and records. In addition, Philips did not devise and

maintain an adequate system of internal accounting controls with respect to the approval process and recording of the special pricing discounts to provide reasonable assurances of appropriate management authorization of the discounts. This deficiency, combined with pressure to win additional sales, created an environment in which there was a risk that excessive distributor margins could be used to fund improper payments to employees of government-owned hospitals.

13. In addition, during the relevant period, Philips China did not enforce certain of its due diligence and training procedures for the engagement of distributors or conduct adequate testing in high risk areas of sales to identify control failures.

Legal Standards and Violations

14. Under Exchange Act Section 21C(a), 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 or omission the person knew or should have known would contribute to such violation.

15. Exchange Act Section 13(b)(2)(A) requires every issuer with a class of securities registered pursuant to Exchange Act Section 12 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. [15 U.S.C. § 78m(b)(2)(A)].

16. Philips violated Exchange Act Section 13(b)(2)(A) by keeping books and records relating to the special price discounts to its distributors that contained inaccurate documentation and failed to include adequate documentation to ensure their business justification and management's approval of them.

17. Exchange Act Section 13(b)(2)(B) requires every issuer with a class of securities registered pursuant to Exchange Act Section 12 to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. [15 U.S.C. § 78m(b)(2)(B)].

18. Philips violated Exchange Act Section 13(b)(2)(B) by failing to devise and maintain an adequate system of internal accounting controls regarding distributor transactions

and the use of these third parties. In addition, Philips' internal accounting controls were not sufficient to provide reasonable assurances that transactions were executed in accordance with management's general or specific authorization and that access to assets was permitted only in accordance with management's general or specific authorization.

Disgorgement and Civil Penalties

19. The disgorgement and prejudgment interest ordered in paragraph IV.B is consistent with equitable principles and does not exceed Respondent's net profits from its violations, and permitting Respondent to retain those profits would be inconsistent with equitable principles. Therefore, in these circumstances, distributing disgorged funds to the United States Treasury is the most equitable alternative. The disgorgement and prejudgment interest ordered in paragraph IV.B shall be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

Commission Consideration of Philips' Cooperation and Remedial Efforts

20. In determining to accept the Offer, the Commission considered the ongoing remedial efforts undertaken by Respondent and cooperation afforded the Commission staff. Philips undertook an internal investigation and regularly shared with Commission staff the facts developed in its inquiry, including facts previously unknown to the staff, and identified and voluntarily provided translations of key non-privileged documents.

21. Philips' ongoing remediation has included: structural improvements to its policies and procedures; improving its tone at the top and the middle, with a focus on Philips China; increased accountability for enforcing compliance policies by its business leaders; highlighting compliance as a key component of ethical business practices; terminating or disciplining Philips China employees involved in the conduct described above; and terminating business relationships with distributors involved in the conduct described above. The company also improved its internal accounting controls relating to distributors, bidding practices, and the use of discounts and special pricing. Additionally, Philips has revised its compliance training.

Undertakings

Respondent has undertaken to:

22. Report to the Commission staff periodically during a two-year term, on the status of its ongoing remediation and implementation of compliance measures. The reports will focus particularly on due diligence on prospective and existing third-party consultants and vendors, FCPA training, and the testing of relevant controls, including the collection and analysis of compliance data. During this period, if Respondent discovers credible evidence, not already

reported to Commission staff, that corrupt payments or corrupt transfers of value to a foreign official may have been offered, promised, paid, or authorized by Respondent, or any entity or person while acting on behalf of Respondent, or that related false books and records have been maintained, Respondent shall promptly report such conduct to the Commission staff. During this two-year period, Respondent shall: (1) conduct an initial review and submit an initial report and (2) conduct and prepare a follow-up review and report, as described below:

a. Respondent shall submit to the Commission staff a written report within 360 calendar days of the entry of this Order setting forth a complete description of its FCPA and anti-corruption related remediation efforts to date, its proposals reasonably designed to improve the policies and procedures of Respondent for ensuring compliance with the FCPA and other applicable anti-corruption laws, and the parameters of the subsequent review (the “Initial Report”). The Initial Report shall be transmitted to Charles E. Cain, Chief, FCPA Unit, Division of Enforcement, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC, 20549-5631. Respondent may extend the time period for issuance of the Initial Report with prior written approval of the Commission staff.

b. Respondent shall undertake one follow-up review, incorporating any comments provided by the Commission staff on the previous report, to further monitor and assess whether the policies and procedures of Respondent are reasonably designed to detect and prevent violations of the FCPA and other applicable anti-corruption laws (the “Follow-Up Report”).

c. The Follow-Up Report shall be completed by no later than 360 days after the Initial Report. Respondent may extend the time period for issuance of the Follow-up Report with prior written approval of the Commission staff.

d. The periodic reviews and reports submitted by Respondent will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these and other reasons, the reports and the contents thereof are intended to remain and shall remain nonpublic, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission’s discharge of its duties and responsibilities, or (4) as otherwise required by law.

e. During this two-year period of review, Respondent shall provide its external auditors with its annual internal audit plan and reports of the results of internal audit procedures and, subject to Respondent’s attorney-client privilege

and work product protections, its assessment of its FCPA compliance policies and procedures.

f. During this two-year period of review, Respondent shall provide Commission staff with any written reports or recommendations provided by Respondent's external auditors in response to Respondent's annual internal audit plan, reports of the results of internal audit procedures, and its assessment of its FCPA compliance policies and procedures.

23. Certify in writing compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Charles E. Cain, Chief, FCPA Unit, Division of Enforcement, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC, 20549-5631, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent 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 14 days of the entry of this Order, pay disgorgement of \$41,126,170, prejudgment interest of \$6,047,633, and a civil monetary penalty of \$15,000,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600, and if timely payment of a civil money penalty is not 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;

- (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 Philips as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Charles E. Cain, Chief, FCPA Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5631.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

D. Respondent shall comply with the undertakings enumerated in paragraphs III.22-23 above.

By the Commission.

Vanessa A. Countryman
Secretary