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THOMAS G. BRUTON  
CLERK, U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

**20CR**

**745**

UNITED STATES OF AMERICA )  
 )  
 v. )  
 )  
 BEAM SUNTORY INC. )

No. )  
 )  
 Violation: Title 18, United States Code, )  
 Section 371 )  
 )  
Under Seal )

**JUDGE NORGLÉ**  
**MAGISTRATE JUDGE COLE**

**INFORMATION**

The United States charges that, at times relevant to this Information, unless otherwise specified:

**GENERAL ALLEGATIONS**

**Statutory Background**

1. The Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, *et seq.* (the “FCPA”), was enacted by Congress for the purpose of, among other things, making it unlawful to act corruptly in furtherance of an offer, promise, authorization, or payment of money or anything of value, directly or indirectly, to a foreign official for the purpose of obtaining or retaining business for, or directing business to, any person. In addition, the FCPA’s accounting provisions, among other things, require every issuer of publicly traded securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78l, or required to file periodic reports with the United States Securities and Exchange Commission (“SEC”) under Section 15(d) of the Securities Exchange Act, 15 U.S.C. § 78o(d), to make and keep books, records, and accounts that accurately and fairly reflect transactions and the distribution of the company’s assets; prohibit the knowing and willful falsification of an issuer’s books, records, or accounts; require every issuer to devise and maintain a system of internal accounting controls

sufficient to provide reasonable assurances that, among other things, transactions are executed in accordance with management's general and specific authorization; and prohibit the knowing and willful failure to implement and maintain an adequate system of internal accounting controls. 15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(2)(B), 78m(b)(5), and 78ff(a).

**Relevant Entities and Individuals**

2. Defendant Beam Suntory Inc. ("BEAM"), formerly known as Beam Inc., was a Delaware corporation headquartered in Deerfield, Illinois. BEAM produced and sold distilled beverages, including bourbon whiskey, tequila, Scotch whiskey, Irish whiskey, vodka, cognac, rum, cordials and pre-mixed cocktails. From on or about October 4, 2011, through April 2014, Beam Inc. had a class of publicly traded securities that were registered with the SEC pursuant to Section 12(b) of the Securities Exchange Act of 1934 and were traded on the New York Stock Exchange. During this time, Beam Inc. was an "issuer" within the meaning of the FCPA, Title 15, United States Code, Sections 78dd-1(a) and 78m(b). Before October 4, 2011, Beam Inc. was known as Beam Global Spirits & Wine, Inc., and was owned by Fortune Brands, Inc., a holding company which had a class of publicly traded securities registered with the SEC that traded on the New York Stock Exchange. Beam Global Spirits & Wine Inc. was a "domestic concern" and "United States person" within the meaning of the FCPA, Title 15, United States Code, Sections 78dd-2(h)(1)(B) and 78dd-2(i)(2). References to "BEAM" in this Information are to Beam Suntory Inc. and its predecessors, Beam Global Spirits & Wine Inc. and, after October 3, 2011, Beam Inc. In April 2014, BEAM was taken private and delisted from the New York Stock Exchange. At all relevant times, BEAM was incorporated under the laws of the state of Delaware and headquartered in the Northern District of Illinois.

3. Beam Global Spirits & Wine (India) Private Limited ("Beam India") was acquired by BEAM in 2006. Beam India imported Teacher's Scotch whiskey and distributed that and other

BEAM products throughout India. During the relevant time period, Beam India was a wholly owned subsidiary of BEAM and headquartered in Gurgaon, India. Beam India's financial statements were consolidated into the financial statements of BEAM. Starting in January 2011, Beam India came under the responsibility of BEAM's Asia Pacific/South America ("APSA") regional business unit, which was based in Sydney, Australia.

4. APSA Executive 1, an individual whose identity is known to the United States, was a high-ranking executive of BEAM's APSA region from 2011 to 2013 and was based in Australia. APSA Executive 1 was an employee of BEAM's Australian subsidiary. From at least in or around January 2011 until on or about October 3, 2011, APSA Executive 1 was an agent of a domestic concern within the meaning of the FCPA, Title 15, United States Code, Section 78dd-2(a). From at least on or about October 4, 2011, until on or about December 31, 2013, APSA Executive 1 was an executive officer of BEAM and an officer and agent of an issuer within the meaning of the FCPA, Title 15, United States Code, Section 78dd-1(a).

5. APSA Executive 2, an individual whose identity is known to the United States, was a high-level financial executive within the APSA region from 2011 to 2014. APSA Executive 2 dual reported to APSA Executive 1 and to BEAM's Chief Financial Officer ("CFO"). APSA Executive 2 was an employee of BEAM's Australian subsidiary. From at least in or around January 2011 until on or about October 3, 2011, APSA Executive 2 was an agent of a domestic concern within the meaning of the FCPA, Title 15, United States Code, Section 78dd-2(a). From at least on or about October 4, 2011, through in or around April 2014, APSA Executive 2 was an agent of an issuer within the meaning of the FCPA, Title 15, United States Code, Section 78dd-1(a).

6. Beam Executive 1, an individual whose identity is known to the United States, was a senior executive in BEAM's legal department from at least September 2001 until 2018 and was

based in BEAM's corporate offices in the Northern District of Illinois. From at least in or around January 2011 until on or about October 3, 2011, Beam Executive 1 was an officer, employee, and agent of a domestic concern within the meaning of the FCPA, Title 15, United States Code, Section 78dd-2(a). From at least on or about October 4, 2011, through in or around April 2014, Beam Executive 1 was an officer, employee, and agent of an issuer within the meaning of the FCPA, Title 15, United States Code, Section 78dd-1(a).

7. Beam Employee 1, an individual whose identity is known to the United States, was a high-ranking employee in BEAM's legal department from at least 2010 until 2017 and was based in BEAM's corporate offices in the Northern District of Illinois. From at least in or around January 2011 through on or about October 3, 2011, Beam Employee 1 was an employee and agent of a domestic concern within the meaning of the FCPA, Title 15, United States Code, Section 78dd-2(a). From at least on or about October 4, 2011, through in or around April 2014, Beam Employee 1 was an employee and agent of an issuer within the meaning of the FCPA, Title 15, United States Code, Section 78dd-1(a).

8. Beam India Executive 1, an individual whose identity is known to the United States, was a high-ranking executive of Beam India from 2006 to 2012. Before 2006, Beam India Executive 1 was an executive of Beam India's predecessor company. Beam India Executive 1 was based in Beam India's headquarters in Gurgaon, India.

9. Foreign Official 1, an individual whose identity is known to the United States, was a senior government official in a state Excise Ministry in India. Foreign Official 1 was a foreign official within the meaning of the FCPA, Title 15, United States Code, Sections 78dd-1(f)(1) and 78dd-2(h)(2)(A).

**Overview of the Conspiracy and Bribery Scheme**

10. The alcoholic beverage industry in India was highly regulated by government authorities. Beam India, and third parties acting on its behalf, regularly interacted with government officials in connection with Beam India's importation of distilled mixes for spirit products; shipments to Beam India's bottling facility in Behror, Rajasthan; inspections of the Behror plant; shipments from the facility in Behror to distribution warehouses in multiple states in India; label registrations required to distribute each brand of liquor in each state; licensing of warehouses in states prior to retail distribution; and sales to retail stores that were operated by the Indian government. The introduction of new spirit products and distribution warehouses required government approval of new label registrations and licensing of the warehouses in each state. Label registrations and warehouse licenses also required yearly renewal in Rajasthan and in the 26 Indian states where Beam India sold BEAM products or had warehouses.

11. During the relevant period, BEAM, through its officers, employees, and agents, knowingly and willfully conspired (1) to corruptly pay a bribe in the amount of one million Indian Rupees (approximately \$18,000 at the then exchange rate) to Foreign Official 1 with the intent to obtain an improper advantage and in exchange for Foreign Official 1's approval of a license to bottle a new line of products that BEAM sought to market and sell in India; (2) to fail to implement and maintain an adequate system of internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and preparation of financial statements and that would have helped to detect and put an end to Beam India's practice of making improper payments to government officials; and (3) to maintain false accounting records, by, among other things, recording falsified expenses that were consolidated into BEAM's books, records, and

accounts and by maintaining false Sarbanes-Oxley sub-certifications, in an effort to conceal the improper payments made to Indian government officials.

12. From the time BEAM acquired the Indian business in 2006 through the end of the third quarter of 2012, Beam India paid bribes and made other improper payments to various Indian government officials, including corrupt payments to obtain or retain business in the Indian market. Most of the corrupt payments were made through third-party sales promoters and distributors, who paid government officials to secure orders of BEAM products at government controlled depots and retail stores, obtain prominent placement of BEAM products in government retail stores, acquire and renew label registrations and licenses, and enable the distribution of BEAM spirit products from Beam India's Behror bottling facility to warehouses in other states throughout India. The payments to government officials were made with the knowledge, authorization, and complicity of Beam India's management, including Beam India Executive 1. One of those payments, a bribe of one million Indian Rupees (approximately \$18,000) to Foreign Official 1, was authorized by APSA Executive 1 in connection with a project initiated and overseen by, and for the benefit of, BEAM. BEAM profited from the illicit payment scheme at Beam India.

13. The payments to government officials on Beam India's behalf were funded through the submission of fictitious and/or inflated invoices to Beam India by the third parties. Senior Beam India management directed the distribution of funds to those third parties in different markets to make payments to government officials in those states. Certain Beam India finance executives maintained off-the-books accounts that tracked amounts and uses of the funds provided to the third parties. For example, during the relevant period, Beam India overpaid its third-party sales promoter in the state of Delhi more than \$550,000, and overpaid its third-party sales promoter in the sales channel for the India military's Canteen Stores Department ("CSD") more than \$1.5

million; the promoters used those funds, in part, to make improper payments to government officials at government-controlled retail stores and depots in those markets.

14. Before its acquisition by BEAM, the entity that subsequently became Beam India also made corrupt payments, directly and indirectly, to Indian government officials, including to secure and increase sales of spirit products and to facilitate distribution of the entity's products. When BEAM acquired the assets of the Indian entity, it also retained existing management of the entity, which continued the schemes at Beam India without interruption from the 2006 acquisition through the end of the third quarter of 2012. To conceal the scheme, Beam India management, which included Beam India Executive 1, maintained a second set of financial records that tracked the payments and disguised the scheme in the entity's books and records to make it appear that the illicit payments were legitimate business expenses.

15. During the relevant time period, in its official books and records, Beam India falsely characterized the illicit payments made to government officials as legitimate business expenses, including for "Customer Support," "Off-Trade Promotions," "Commission to Distributor/Promoter," and "Commercial Discount, Ongoing," which disguised the true nature of these payments. Ultimately, the disguised expenses were consolidated in BEAM's general ledger system and coded as "Selling and Distribution Expenses."

16. Beam India management also submitted false certifications to BEAM regarding Beam India's financial records, internal controls, and compliance with laws. As a wholly-owned subsidiary of BEAM, Beam India was required to provide quarterly certifications, which included certification by Beam India management that they were "aware of their obligations under the [FCPA] and Anti-Bribery provisions." Starting on or about October 4, 2011, when BEAM became a publicly traded company, Beam India began providing sub-certifications to BEAM that BEAM

maintained in its books and records, and that BEAM management relied upon in certifying the accuracy of the quarterly and annual financial statements that BEAM filed with the SEC, in accordance with the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley”). From at least October 2011 through in or around July 2012, Beam India management, including Beam India Executive 1, submitted false Sarbanes-Oxley sub-certifications to BEAM. These false sub-certifications, among other things, failed to report the direct and indirect payments to government officials and failed to report the falsified expenses that were consolidated into BEAM’s books and records, even though Beam India management knew about the improper payments and false records.

17. Notwithstanding multiple red flags regarding Beam India’s practice of making improper payments to government officials, BEAM knowingly and willfully failed to implement and maintain an adequate system of internal accounting controls, including failing to implement controls related to payments to third-parties in India, sufficient to provide reasonable assurances regarding the reliability of financial reporting and preparation of financial statements. For example, after being made aware of significant red flags indicating that Beam India was involved in making improper payments, Beam Employee 1 sent an email to Beam India Executive 1 noting an intention to approach an upcoming compliance review “with the understanding that a U.S. regulatory regime should not be imposed” and in a way that would acknowledge “India customs and ways of doing business.”

**Bribe Payment To An India State Excise Official**

18. In 2011, Beam India sought to introduce BEAM’s profitable “Ready to Drink” (“RTD”) products in India. At the time, BEAM had embarked on a broad global initiative to develop RTD beverages in emerging markets and had targeted India as one of the markets where



it would introduce RTD. BEAM and APSA employees were involved in the rollout of RTD products in India.

19. In or around May 2011, Beam India contracted with a third-party bottling company to produce the RTD drinks. Beam India's third-party bottler then filed, on Beam India's behalf, applications with the state Excise Ministry to obtain the label registrations required to operate the facility and bottle RTD products in that state.

20. In or around September 2011, APSA management, including APSA Executive 1 and APSA Executive 2, learned that Foreign Official 1 had solicited a bribe in the amount of one million Indian Rupees (approximately equal to \$18,000 at the then exchange rate or to the official's annual compensation) to approve the label registration for Beam India. Foreign Official 1 had the discretion to deny the label registration application. A senior Beam India manager ("Beam India Manager") informed a senior APSA manager in Australia ("APSA Manager"), who had been selected by BEAM to implement the RTD rollout in India, of the bribe solicitation by Foreign Official 1. In that capacity, APSA Manager was an agent of an issuer within the meaning of the FCPA, Title 15, United States Code, Section 78dd-1(a), on and after October 4, 2011, and was an agent of a domestic concern within the meaning of the FCPA, Title 15, United States Code, Section 78dd-2(a), before that date.

21. APSA Manager met with APSA Executive 1 and APSA Executive 2 in Sydney, Australia, and informed them of the bribe solicitation. At this meeting, APSA Executive 1, APSA Executive 2, and APSA Manager discussed the possibility of a third-party bottler making this payment and how the payment could be concealed and reimbursed through the submission of false invoices by the third-party bottler to Beam India. At the end of the meeting, APSA Executive 1 instructed APSA Manager to have the payment made to Foreign Official 1.

22. APISA Manager informed Beam India Manager that he had discussed the matter with APISA Executive 1, that the third-party bottler should make the payment to Foreign Official 1, and that Beam India would reimburse the third-party bottler for the amount of the payment through false invoices. Beam India Manager relayed that information to Beam India Executive 1, who told Beam India Manager to make the payment to Foreign Official 1 because it had been ordered by APISA Executive 1. Beam India's third-party bottler agreed to make, and did make, the unlawful payment of one million Rupees to Foreign Official 1.

23. Thereafter, on or about November 16, 2011, the Excise Ministry issued the approval to begin bottling the RTD product. Several months later, the third-party bottler submitted false invoices to Beam India, purportedly for consulting services at the bottling facility, in the total approximate amount of the payment to Foreign Official 1, which Beam India paid.

**Failure to Implement and Maintain Adequate Internal Controls**

24. BEAM also knowingly and willfully failed to implement and maintain an adequate system of internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and preparation of financial statements and that would have helped to detect and put an end to Beam India's practice of making improper payments to government officials. BEAM was cautioned on numerous occasions regarding the need to implement sufficient compliance measures and internal accounting controls relating to risks associated with improper activities by third parties in India. Nevertheless, for several years, BEAM failed to adopt significant recommended actions and failed to address the concerns those recommendations were meant to alleviate.

25. Under the circumstances of BEAM's acquisition of its Indian business, BEAM did not conduct thorough due diligence on Beam India before it acquired that business in 2006. BEAM

conducted internal audits of the Indian business in or around 2008 and 2009, but those audits did not focus on anti-corruption issues. The audits identified deficiencies in the accounting controls in India and a lack of supporting documentation for credit notes, promotional expenses, and vendor discounts. BEAM did not take steps sufficient to resolve these issues in Beam India until after the fall of 2012.

26. In or around November 2010, BEAM engaged a global accounting firm to conduct a compliance review of Beam India, which included transaction testing and interviews with employees. In or around early January 2011, the accounting firm issued a report on its findings that raised several red flags, including that Beam India did “not have many anti-corruption policies” and its employees had not received anticorruption training; Beam India management believed Beam India was not liable from a compliance standpoint for the conduct of its vendors and third-party sales promoters; Beam India management maintained it was “very difficult” to conduct business in India without making “grease/facilitation payments,” while certain Beam India employees believed that “promoters are likely making grease payments” to government officials in India; certain vendors engaged by Beam India presented a significant risk of corruption; and Beam India “d[id] not perform monitoring relative to corruption risks.” The report found that the military-run CSD sales channel presented a “high risk area in terms of anti-corruption compliance.” The global accounting firm recommended that BEAM “conduct and document due diligence to confirm activities undertaken” by third parties, “investigate red flags,” “discuss legal considerations of third party actions taken on BEAM’s behalf,” and “consider the need to further review” the CSD and other military outlet business in India. BEAM did not take these steps in India at that time, and BEAM did not implement many of the global accounting firm’s recommendations until fall 2012.

27. In or around January 2011, BEAM consulted a United States law firm (“U.S. Law Firm”), which advised that the issues identified by the global accounting firm required follow up. BEAM did not take steps to enhance its controls in India regarding payments to third parties at this time.

28. In or around February 2011, BEAM retained an Indian law firm (“Indian law firm”) to review and expand upon the compliance work performed by the accounting firm and to assess Beam India’s compliance with Indian laws and regulations applicable to the spirits industry. Beam Employee 1 was tasked with managing the Indian law firm’s review of Beam India’s business. At that time, Beam Employee 1 did not have any experience with, and had not received any training on, the FCPA or anti-corruption compliance issues.

29. In or around early February 2011, Beam Employee 1 and Beam Executive 1 had a conference call with APSA Executive 1 and APSA Executive 2 to explain the upcoming review by the Indian law firm. APSA Executive 1 and APSA Executive 2 expressed concern that, if the review uncovered improper activities by third parties, Beam India might have to stop doing business with those third parties, which could disrupt the Indian business. An APSA executive further stated at the meeting that if BEAM continued digging into the Indian business, it likely would find improper activities.

30. On or about February 4, 2011, Beam Employee 1 emailed Beam India Executive 1, stating: “Beam Legal believes it is critical to approach a compliance review with the understanding that a U.S. regulatory regime should not be imposed on our Indian business and that acknowledges India customs and ways of doing business.” Beam Employee 1 discussed the messages conveyed in this email, but not the exact wording, with Beam Executive 1 before it was sent.

31. The Indian law firm interviewed Beam India senior management to determine whether improper payments were being made to Indian government officials. The Indian law firm reported, among other things, that Beam India managers believed that third parties in India may make payments to customs officials and government employees in the CSD channel. The Indian law firm confirmed and reiterated many of the accounting firm's recommendations, including the need for Beam India employees to receive training on the FCPA and liability for third-party conduct; to conduct due diligence on high-risk vendors; to create policies and implement appropriate accounting controls for gifts, petty cash, and reimbursement claims; and to revise its contracts with third parties to include anti-corruption clauses and audit rights.

32. BEAM asked U.S. Law Firm to review the report and work done by the Indian law firm. On or about August 19, 2011, U.S. Law Firm issued a memorandum to BEAM noting that no significant analysis of Beam India's books and records, internal controls or other issues related to its finance and accounting practices, and no substantial transaction testing, had been conducted by the Indian law firm. The U.S. Law Firm memorandum also noted that the Indian law firm had raised issues concerning BEAM's oversight of third parties and the potential conduct of those third parties. In addition to confirming the advice given by the accounting firm and the Indian law firm, U.S. Law Firm made additional recommendations with respect to compliance and internal accounting controls, including that BEAM "should strongly consider undertaking a financial review of past invoices and debit notes received from Beam India's third-party business partners that interact with government officials." Because it believed there was "a high likelihood that the results of this type of financial review may uncover evidence of potentially improper payments," U.S. Law Firm recommended that BEAM "should consider structuring the review so that in-house or outside counsel engages an outside forensic investigator to conduct the review . . . ."

33. BEAM did not conduct a further review of the Indian business or enhance its internal accounting controls over payments to third parties at that time.

34. On or about August 30, 2011, Beam Employee 1 wrote to BEAM compliance and finance personnel, copying APSA Executive 2, to discuss concluding the review in India, and stated, in relevant part: “I would like to discuss with you the results of the legal compliance review conducted by [the Indian law firm], as well as notes from [the U.S. Law Firm] with an eye toward making this a case closed within the next four weeks.”

35. On or about August 31, 2011, Beam Employee 1 wrote to the Indian law firm, copying APSA Executive 2 and others, stating, in relevant part: “As Beam prepares to become a listed company in one month, executive management directed me yesterday to ensure that the compliance review in India come to a close before then.” Beam Employee 1 later added: “Compliance review will be an ongoing process, but hopefully, upon completion of this legal compliance review, Beam India will not have to undergo another compliance review by any department for a long time.”

36. The Indian law firm recommended conducting additional interviews in India, this time with Beam India operational employees who interacted with the third-party sales promoters in the CSD channel. This recommendation was based on further conversations that the Indian law firm had with Beam India management, which raised concerns about third-party sales promoters in the CSD channel.

37. BEAM declined to follow the Indian law firm’s recommendation. Beam Employee 1 explained to APSA Executive 2 and others in a September 8, 2011 email, “I am concerned about [the Indian law firm] digging and finding information that we cannot impact, specifically, finding activities and practices by our [third parties] that we cannot remediate or change. The risk may be

ultimately having to choose whether to continue to conduct business with any [third parties] that create [FCPA] risks for us/Beam India.” Later in the email, Beam Employee 1 referenced an SEC enforcement matter concerning one of Beam’s competitors and noted that, if Beam was doing anything in the same manner as the competitor, Beam should change and do things in a more compliant manner. Beam Employee 1 noted further that it would be “beneficial” to conduct the review “in house” and involve external advisors if they felt it necessary.

38. BEAM decided to conclude the review being conducted by the Indian law firm, and did not conduct additional interviews in India until September 2012, after further allegations of corrupt conduct in Beam India were raised. BEAM also knowingly and willfully failed to maintain an adequate system of internal accounting controls, including failing to implement controls related to payments to third parties in India, sufficient to provide reasonable assurances regarding the reliability of financial reporting and preparation of financial statements until at least September 2012.

#### **False Books and Records**

39. As a result of the bribe paid to Foreign Official 1, and in order to conceal corrupt payments made by and on behalf of Beam India, among other things, between at least on or about October 4, 2011, and in or around September 2012, BEAM maintained falsely recorded expenses, including corrupt payments concealed as commission expenses, and falsified certifications, including false Sarbanes-Oxley sub-certifications submitted by APSA Executive 1, APSA Executive 2, and Beam India Executive 1, in its consolidated books, records, and accounts.

40. For example, between at least on or about October 19, 2011, and on or about July 18, 2012, APSA Executive 1 and APSA Executive 2 submitted Sarbanes-Oxley sub-certifications that falsely stated, in sum and substance, that they had no knowledge of non-compliance with anti-

corruption laws and that they had no knowledge of any fraud or suspected fraud, whether or not material, that involved management, other employees, or third parties who had a significant role in the region's internal controls. These sub-certifications failed to disclose, among other things, the one-million-Rupee bribe to Foreign Official 1 and the existence of false documents and accounting records related to that payment.

**COUNT ONE**

**(Conspiracy to Violate the Antibribery and Accounting Provisions of the FCPA)**

41. Paragraphs 1 through 10 and 12 through 40 are realleged here.

42. Between in or around 2011 and in or around 2012, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant

BEAM SUNTORY INC.,

together with others known and unknown to the United States, knowingly and willfully did conspire together and with each other to commit the following offenses against the United States:

a. as an issuer, to make use of the mails and means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, offer, gift, promise to give, and authorization of the giving of anything of value to a foreign official and to a person, while knowing that all or a portion of such money and thing of value would be and had been offered, given, and promised, directly and indirectly, to a foreign official, for purposes of (i) influencing acts and decisions of such foreign official in his or her official capacity; (ii) inducing such foreign official to do and omit to do acts in violation of the lawful duty of such official; (iii) securing any improper advantage; and (iv) inducing such foreign official to use his or her influence with a foreign government and agencies and instrumentalities thereof to affect and influence acts and decisions of such government, agencies, and instrumentalities, in order to assist BEAM in obtaining and retaining



business for and with, and directing business to, BEAM and others, in violation of Title 15, United States Code, Section 78dd-1(a);

b. as an issuer organized under the laws of a State of the United States, to corruptly do any act outside the United States 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 a foreign official and to a person, while knowing that all or a portion of such money and thing of value would be and had been offered, given, and promised, directly and indirectly, to a foreign official, for purposes of (i) influencing acts and decisions of such foreign official in his or her official capacity; (ii) inducing such foreign official to do and omit to do acts in violation of the lawful duty of such official; (iii) securing any improper advantage; and (iv) inducing such foreign official to use his or her influence with a foreign government and agencies and instrumentalities thereof to affect and influence acts and decisions of such government, agencies, and instrumentalities, in order to assist BEAM in obtaining and retaining business for and with, and directing business to, BEAM and others, in violation of Title 15, United States Code, Section 78dd-1(g);

c. as a domestic concern for the period of the conspiracy when it was not an issuer, to make use of the mails and means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, offer, gift, promise to give, and authorization of the giving of anything of value to a foreign official and to a person, while knowing that all or a portion of such money and thing of value would be and had been offered, given, and promised, directly and indirectly, to a foreign official, for purposes of (i) influencing acts and decisions of such foreign official in his or her official capacity; (ii) inducing such foreign official to do and omit to do acts in violation of the lawful duty

of such official; (iii) securing any improper advantage; and (iv) inducing such foreign official to use his or her influence with a foreign government and agencies and instrumentalities thereof to affect and influence acts and decisions of such government, agencies, and instrumentalities, in order to assist BEAM in obtaining and retaining business for and with, and directing business to, BEAM and others, in violation of Title 15, United States Code, Section 78dd-2(a);

d. as a United States person for the period of the conspiracy when it was not an issuer organized under the laws of a State of the United States, to corruptly do any act outside the United States 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 a foreign official and to a person, while knowing that all or a portion of such money and thing of value would be and had been offered, given, and promised, directly and indirectly, to a foreign official, for purposes of (i) influencing acts and decisions of such foreign official in his or her official capacity; (ii) inducing such foreign official to do and omit to do acts in violation of the lawful duty of such official; (iii) securing any improper advantage; and (iv) inducing such foreign official to use his or her influence with a foreign government and agencies and instrumentalities thereof to affect and influence acts and decisions of such government, agencies, and instrumentalities, in order to assist BEAM in obtaining and retaining business for and with, and directing business to, BEAM and others, in violation of Title 15, United States Code, Section 78dd-2(i);

e. to knowingly and willfully fail to implement and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions were executed in accordance with management's general or specific authorization; (ii) transactions were recorded as necessary to (A) permit preparation of financial statements in conformity with

generally accepted accounting principles or any other criteria applicable to such statements, and (B) maintain accountability for assets; (iii) access to assets was permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets was compared with the existing assets at reasonable intervals, and appropriate action is taken with respect to any differences, in violation of Title 15, United States Code, Sections 78m(b)(2)(B), 78m(b)(5), and 78ff(a); and

f. to knowingly and willfully falsify and cause to be falsified books, records, and accounts required, in reasonable detail, to accurately and fairly reflect the transactions and dispositions of the assets of an issuer within the meaning of the FCPA, in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5), and 78ff(a).

#### **Objects of the Conspiracy**

43. The objects of the conspiracy were for BEAM, through its officers, employees, and agents, to enrich itself by: (a) securing approval of a license to bottle RTD products that BEAM sought to market and sell in India by making a corrupt payment to Foreign Official 1, through Beam India's third-party bottler, in exchange for Foreign Official 1's approval of that license; (b) failing to implement and maintain an adequate system of internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and preparation of financial statements and that would have helped to detect and put an end to Beam India's practice of making improper payments to government officials; and (c) concealing improper payments made to Indian government officials by maintaining false accounting records, including by recording falsified expenses that were consolidated into BEAM's books, records, and accounts, and by maintaining false Sarbanes-Oxley sub-certifications.

**Manner and Means of the Conspiracy**

44. The manner and means by which BEAM and its co-conspirators sought to accomplish the purposes of the conspiracy include, among other things, the following:

a. BEAM, through certain of its officers and agents, authorized the payment of one million Indian Rupees to Foreign Official 1 to secure approval of the RTD label registration and concealed the payment by directing that it be made by Beam India's third-party bottler and reimbursed by Beam India.

b. BEAM, through certain of its employees and agents, failed, for a substantial amount of time, to implement and maintain an adequate system of internal accounting controls, despite being cautioned on numerous occasions regarding the need to implement sufficient internal accounting controls relating to risks associated with improper activities by third parties acting on behalf of Beam India.

c. BEAM, through certain of its officers and agents, recorded falsified expenses that were consolidated into BEAM's books, records, and accounts and submitted false Sarbanes-Oxley sub-certifications, which were relied upon by BEAM management, that concealed improper payments made to Indian government officials and the false recording of expenses.

**Overt Acts**

45. In furtherance of the conspiracy and to achieve its objects, BEAM and its co-conspirators committed or caused to be committed the following acts in the Northern District of Illinois and elsewhere:

a. In or around late September 2011, after meeting with APSA Executive 2 and APSA Manager in Sydney, Australia, and discussing the bribe solicitation by Foreign Official 1 related to the RTD registration approval, APSA Executive 1 instructed APSA Manager to have

the payment of one million Rupees made to Foreign Official 1 through Beam India's third-party bottler.

b. In or around late September 2011, APSA Manager told Beam India Manager that he had discussed the matter with APSA Executive 1, that the third-party bottler should make the payment to Foreign Official 1, and that Beam India would reimburse the third-party bottler for the amount of the payment through false invoices.

c. In or around October 2011, Beam India's third-party bottler made the unlawful payment of one million Rupees to Foreign Official 1.

d. In or around April 2012, Beam India's third-party bottler submitted false invoices to Beam India for services it did not perform, which Beam India paid, in order to obtain reimbursement for the one million Rupee payment to Foreign Official 1.

e. On or about September 8, 2011, Beam Employee 1 emailed APSA Executive 2, stating in part: "I am concerned about [the Indian law firm] digging and finding information that we cannot impact, specifically, finding activities and practices by our [third parties] that we cannot remediate or change. The risk may be ultimately having to choose whether to continue to conduct business with any [third parties] that create [FCPA] risks for us/Beam India."

f. On or about October 19, 2011, APSA Executive 1 and APSA Executive 2 submitted a Sarbanes-Oxley sub-certification that falsely stated, in sum and substance, that they had no knowledge of non-compliance with anti-corruption laws and that they had no knowledge of any fraud or suspected fraud, whether or not material, that involved management, other employees, or third parties who had a significant role in the region's internal controls.

g. On or about July 18, 2012, APSA Executive 1 and APSA Executive 2 submitted a Sarbanes-Oxley sub-certification that falsely stated, in sum and substance, that they had no knowledge of non-compliance with anti-corruption laws and that they had no knowledge of any fraud or suspected fraud, whether or not material, that involved management, other employees, or third parties who had a significant role in the region's internal controls.

All in violation of Title 18, United States Code, Section 371.

*Daniel S. Kahn*

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Acting Chief  
Fraud Section, Criminal Division  
U.S. Department of Justice



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