

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ABB INC.,

Defendant.

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CRIMINAL NO. H-10-664

PLEA AGREEMENT

PLEA AGREEMENT

The United States of America, by and through Denis McInerney, Chief, and Nicola J. Mrazek, Senior Trial Attorney, of the Fraud Section, Criminal Division, United States Department of Justice (the "Fraud Section"), and the defendant, ABB Inc., and the defendant's counsel, Laurence Urgenson, Laura Fraedrich, and Audrey Harris of Kirkland and Ellis LLP, pursuant to Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure, state that they have entered into an agreement, the terms and conditions of which are as follows:

The Defendant's Agreement

1. The defendant agrees to plead guilty to Counts One and Two of the Criminal Information filed with this agreement, which charges defendant with conspiracy to violate the laws of the United States in violation of Title 18, United

States Code, Section 371, specifically, violation of the Foreign Corrupt Practices Act (“FCPA”), Title 15 United States Code, Section 78dd-2 and violation of the FCPA, Title 15 United States Code, Section 78dd-2. The defendant further agrees to persist in that plea through sentencing and, as set forth below, to fully cooperate with the United States. The defendant, by entering this plea, agrees that it is waiving indictment on these charges and any right to have the facts that the law makes essential to the punishment of the offenses charged in the Criminal Information proved to a jury or proved beyond a reasonable doubt.

2. This plea agreement is between the Fraud Section and the defendant ABB Inc., and thus does not bind any other division or section of the Department of Justice or any other federal, state, or local prosecuting, administrative, or regulatory authority. This agreement does not apply to any other charges other than those specifically mentioned herein. However, the Fraud Section will bring this Agreement and the extraordinary cooperation of ABB Inc., its affiliates, subsidiaries, and parent corporation, to the attention of other prosecuting authorities or other entities, if requested.

3. The defendant agrees that this Agreement will be executed by an authorized corporate representative. The defendant further agrees that a Resolution duly adopted by the Board of Directors of ABB Inc., in the form attached to this

Agreement as Attachment B, or in a substantially similar form, represents that the signatures on this Agreement by ABB Inc. and its counsel are authorized by the Board of Directors of ABB Inc.

4. The defendant ABB Inc. and ABB Ltd, on behalf of ABB Inc., agree that each has the full legal right, power, and authority to enter into and perform all of its obligations under this Agreement.

5. The defendant agrees that any fine or restitution imposed by the Court will be due and payable within ten (10) business days from the date of sentencing, and the defendant will not attempt to avoid or delay payments. The defendant further agrees to pay the Clerk of the Court of the United States District Court for the Southern District of Texas the mandatory special assessment within ten (10) business days from the sentencing date.

6. The defendant agrees to make a complete financial disclosure by truthfully executing a sworn financial statement prior to sentencing if it is required to do so.

7. The defendant agrees that if it or its parent corporation issues a press release in connection with this Agreement, the defendant shall first consult the Fraud Section to determine whether the text of the release is acceptable, and shall only issue a release that has been deemed acceptable to the Fraud Section.

8. The defendant agrees to abide by all terms and obligations of this Agreement as described herein, including the obligations described in Attachment C (Corporate Compliance Program) and Attachment D (Enhanced Compliance Obligations) attached hereto and incorporated herein.

9. The defendant agrees that in the event it sells, merges, or transfers all or substantially all of its business operations as they exist as of the date of this Agreement, whether such sale(s) is/are structured as a stock or asset sale, merger, or transfer, the defendant shall include in any contract for sale, merger, or transfer a provision fully binding the purchaser(s) or any successor(s) in interest thereto to the obligations described in this Agreement, including the obligations described in Attachment C (Corporate Compliance Program) and Attachment D (Enhanced Compliance Obligations) attached hereto and incorporated herein.

THE UNITED STATES' AGREEMENT

10. In exchange for the corporate guilty plea of ABB Inc. and the complete fulfillment of all of its obligations under this Agreement, the Fraud Section agrees not to file any additional criminal charges against ABB Inc. for any of the corrupt payments described in the Statement of Facts, attached as Attachment A-1. This Agreement will not close or preclude the investigation or prosecution of any natural persons, including any officers, directors, employees,

agents, or consultants of ABB Inc. who may have been involved in any of the matters set forth in the Criminal Information, Statement of Facts, or in any other matter.

11. With respect to ABB Inc.'s present reliability and responsibility as a government contractor, the Fraud Section agrees to cooperate with ABB Inc., in a form and manner to be agreed, in bringing facts relating to the nature of the conduct underlying this Agreement and to ABB Inc.'s extraordinary cooperation and remediation to the attention of governmental and other debarment authorities, including the MDBs, as requested.

FACTUAL BASIS

12. The defendant, ABB Inc., is pleading guilty because it is guilty of the charges contained in Counts One and Two of the Criminal Information. The defendant agrees and stipulates that the factual allegations set forth in the Criminal Information are true and correct and accurately reflect its criminal conduct. The defendant further stipulates and agrees to the Statement of Facts attached hereto and incorporated herein as Attachment A-1.

DEFENDANT'S OBLIGATIONS

13. ABB Inc. agrees:
- a. To plead guilty as set forth in this Agreement;

- b. To abide by all sentencing stipulations contained in this Agreement;
- c. To (i) appear, through its duly appointed representatives, as ordered for all court appearances; and (ii) obey any other ongoing order in this matter;
- d. To commit no further crimes in violation of U.S. federal, state, or local law;
- e. To be truthful with the Court;
- f. To pay the applicable fine and special assessment;
- g. To comply with the compliance provisions set forth in Attachments C and D, attached hereto, and incorporated herein; and
- h. To ensure that in the event ABB Inc. sells, merges, or transfers all or substantially all of its business operations as they exist as of the date of this Agreement, whether such sale(s) is/are structured as a stock or asset sale, merger, or transfer, ABB Inc. shall include in any contract for sale, merger, or transfer a provision fully binding the purchaser(s) or any successor(s) in interest thereto to the obligations described in this Agreement,

including the obligations described in Attachments C (Corporate Compliance Program) and Attachment D (Enhanced Compliance Obligations) attached hereto and incorporated herein.

14. ABB Inc. further agrees to cooperate fully with the Fraud Section as directed and with any other U.S. federal, state, local, or foreign law enforcement agency at the request of the Fraud Section and consistent with applicable law and regulation and the attorney-client privilege or work product doctrine. This cooperation requires the defendant to:

- a. Provide full disclosure of all information concerning corrupt payments known to the defendant or its outside counsel as of the date of this Agreement;
- b. Produce voluntarily all documents, records, or other tangible evidence relating to such payment about which the Fraud Section, or its designee, inquires;
- c. Provide and/or ensure that the Fraud Section is given access to all ABB Inc. officers, directors, employees, agents, and consultants for interviews and testimony in the United States relating to such payments;

- d. Provide access to copies of original documents and records relating to such payments;
- e. Provide access to defendant's outside accounting consultants as well as the records, reports, and documents of those outside accounting consultants relating to such payments disclosed to the Fraud Section as of the date of this Agreement; and
- f. Upon request by the Fraud Section, provide all memoranda of interviews compiled and prepared by ABB Inc.'s counsel, outside counsel, consultants, accountants, or other agents of interviews with individuals relating to such payments disclosed to the Fraud Section as of the date of this Agreement.

WAIVER OF CONSTITUTIONAL RIGHTS

15. ABB Inc. knowingly, intelligently, and voluntarily waives its rights to appeal the conviction in this case. ABB Inc. similarly knowingly, intelligently, and voluntarily waives the right to appeal the sentence imposed by the court. In addition, ABB Inc. knowingly, intelligently, and voluntarily waives the right to bring a collateral challenge pursuant to Title 28, United States Code, Section 2255, challenging either the conviction or the sentence imposed on this case, except for a claim of ineffective assistance of counsel. ABB Inc. waives all defenses based on

the statute of limitations and venue with respect to any prosecution that is not time-barred on the date that this Agreement is signed in the event that: (a) the conviction is later vacated for any reason; (b) ABB Inc. violates this Agreement; or (c) the plea is later withdrawn. The Fraud Section is free to take any position on appeal or by other post-judgment matter.

PENALTY RANGE

16. The statutory maximum sentence that the Court can impose for a violation of Title 18, United States Code, Section 371 by a corporation is a fine of not more than \$500,000, or twice any pecuniary gain to the defendant or loss to the victim(s), whichever is greatest; 18 U.S.C. § 3571(c)(3) and (d); five years' probation, 18 U.S.C. § 3561(c)(1); and a mandatory special assessment of \$800, 18 U.S.C. § 3013(a)(2)(B). The statutory maximum sentence that the Court can impose for a violation of Title 15, United States Code, Section 78dd-2 is a fine of \$2,000,000 or twice any pecuniary gain to the defendant or loss to the victim(s), whichever is greatest; 15 U.S.C. § 78dd-2(g)(1) and 18 U.S.C. 3571(d); five years' probation, 18 U.S.C. § 3561(c)(1); and a mandatory special assessment of \$400, 18 U.S.C. § 3013(a)(2)(B). The statutory maximum sentences for multiple counts can be aggregated and run consecutively.

17. The Fraud Section and the defendant agree that an application of the United States Sentencing Guidelines (USSG) to determine the applicable fine range yields the following analysis:

- a. Guideline Manual The 2009 USSG are applicable.
- b. Base Offense Based upon USSG § 2C1.1, the total offense level is 34, calculated as follows:
- | | | |
|---------------|--|-----------|
| § 2C1.1(a)(2) | Base Offense Level | 12 |
| § 2C1.1(b)(1) | Specific Offense Characteristic
(More than one bribe) | +2 |
| § 2C1.1(b)(2) | Specific Offense Characteristic
(Value of Benefit Received >
\$7,000,000 based on profits received
from ABB Inc.'s CFE contracts,
Sitracen and Evergreen, totaling
\$7,814,673), USSG § 2C1.1,comment
(n. 3) and incorporating §
2B1.1(b)(1)(K) | +20 |
| | TOTAL | <u>34</u> |
- c. Base Fine Based upon § 8C2.4(a)(1) and (d), the base fine is \$28,500,000 (fine corresponding to the Base Offense level of 34 as provided in Offense Level Table)
- d. Culpability Score Based upon § 8C2.5, the culpability score is 5, calculated as follows:
- | | | |
|------------------|---|----|
| § 2C2.5(a) | Base Culpability Score | 5 |
| § 2C2.5(b)(3)(B) | The unit of the organization had
more than 200 employees and an
individual within high-level personnel
of the unit participated in the
offense. | +3 |

§ 2C2.5(c)(2)(A)	The organization or separately managed line of business committed a part of the instant offense less than five years after a criminal adjudication based on similar misconduct.	+2
§ 2C2.5(g)(1)	The organization prior to an imminent threat of disclosure or government investigation and within a reasonably prompt time after becoming aware of the offense, reported the offense to appropriate governmental authorities, fully cooperated in the investigation and clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct.	- 5
TOTAL		5

e. Calculation of Fine Range

Base Fine	\$28,500,000
Multipliers	1.0 (min) / 2.0 (max)
Fine Range	\$28,500,000 / \$57,000,000

SENTENCING FACTORS

18. The parties agree that pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the Court must determine an advisory sentencing guideline range pursuant to the USSG. The court will then determine a reasonable sentence within the statutory range after considering the advisory sentencing guideline range and the factors listed in 18 U.S.C. § 3553(a). The parties' agreement herein to any

guideline sentencing factors constitutes proof of those factors sufficient to satisfy the applicable burden of proof.

SENTENCING RECOMMENDATION

19. Fine. Assuming ABB Inc. accepts responsibility as explained above, the parties will recommend the imposition of a fine in the amount of \$28,500,000 payable to the Clerk of the Court for the United States District Court for the Southern District of Texas. The parties further agree that this amount shall be paid as a lump sum within ten (10) business days after the imposition of sentencing in this matter.

20. The parties have agreed that the fine of \$28,500,000 for the defendant is an appropriate disposition of the case based on the following factors:

- a. By entering and fulfilling the obligations under this Agreement, the defendant has demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct.
- b. The plea underlying this Agreement is the result of the voluntary disclosure made by ABB Ltd and ABB Inc., through its counsel, to the Fraud Section beginning in April 2005 and the disclosure of the extensive investigation its attorneys

conducted and continued to conduct into the operations of ABB Inc., its parents, affiliates, and subsidiaries.

- c. At the time of the initial disclosure, the conduct was unknown to the Fraud Section.
- d. The extraordinary cooperation of ABB Ltd and the defendant ABB Inc. has lead, in part, to the guilty plea by ABB Inc. agent Fernando Maya Basurto, 09-CR-325, and the indictment of former ABB Inc. General Manager John Joseph O'Shea, 09-CR-629.
- e. By entering into a deferred prosecution agreement with the Fraud Section, ABB Ltd has, among other things, agreed to: (i) implement a compliance and ethics program designed to detect and prevent violations of the FCPA, U.S. commercial bribery laws, and all applicable foreign bribery laws throughout its operations, including those of ABB Ltd's subsidiaries, affiliates, and successors; and (ii) agreed to enhanced compliance obligations.

21. The parties agree not to seek any adjustments to, or departures from, the agreed upon payment of \$28,500,000 as set forth herein.

22. Organizational Probation. The parties agree that organizational probation is appropriate in this case and shall include, as a condition of probation: (1) the creation and implementation of a Compliance Code as described in Attachment C, and (2) the fulfillment of the enhanced compliance obligations, as described in Attachment D. The parties recommend a three (3) year term of probation, which corresponds to the period of the deferred prosecution agreement of ABB Ltd, filed simultaneously with this Agreement.

23. Community Service. The parties agree that community service need not be ordered in this case.

24. Forfeiture. The parties agree that forfeiture need not be ordered in this case.

25. Special Assessment. The defendant agrees to pay the Clerk of the Court for the United States District Court for the Southern District of Texas within ten (10) business days of the time of sentencing the mandatory special assessment of \$400 per count.

26. Waiver of Presentence Report. The parties further agree, with the permission of the Court, to waive the requirement for a pre-sentence report pursuant to Federal Rule of Criminal Procedure 32(c)(1)(A), based on a finding by the Court that the record contains information sufficient to enable the Court to

meaningfully exercise its sentencing power. However, the parties agree that in the event the Court orders the preparation of a presentence report prior to sentencing, such order will not affect the agreement set forth herein.

27. Entry of the Guilty Plea and Sentencing. The parties further agree to ask the Court's permission to combine the entry of the plea and sentencing into one proceeding. However, the parties agree that in the event the Court orders that the entry of the guilty plea and the sentencing hearing(s) occur at separate proceedings, such an order will not affect the agreement set forth herein.

28. Court Not Bound. The Court is not bound by the recommendation of the parties or those made in any presentence report. Because this Agreement is made under Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, ABB Inc. may not withdraw any guilty plea or rescind this Agreement if the Court does not follow the agreements or recommendations herein.

29. Full Disclosure/Reservation of Rights. In the event the Court directs the preparation of a presentence report, the Fraud Section will fully inform the preparer of the presentence report and the Court of the facts and law related to ABB Inc.'s case. Except as set forth in this Agreement, the parties reserve all other rights to make sentencing recommendations and respond to motions and arguments by the opposition.

BREACH OF AGREEMENT

30. If ABB Inc. breaches the terms of this Agreement, or commits any new criminal offense between the signing of this Agreement and sentencing, the Fraud Section is relieved of its obligations under this Agreement but ABB Inc. may not withdraw its guilty plea. Whether the defendant has breached any provision of this Agreement shall be determined solely by the Fraud Section.


31. In the event of a breach of this Agreement by ABB Inc., should the Fraud Section elect to pursue criminal charges, or any civil or administrative action that was not filed as a result of this Agreement, then:

- a. ABB Inc. agrees that any applicable statute of limitations is tolled between the date of ABB Inc.'s signing of this Agreement and the discovery by the Fraud Section of any breach by the defendant; and
- b. ABB Inc. gives up all defenses based on the statute of limitations, any claim of pre-indictment delay, or any speedy trial claim with respect to any such prosecution or action, except that such defenses existed as of the date of the signing of this Agreement.

COMPLETE AGREEMENT

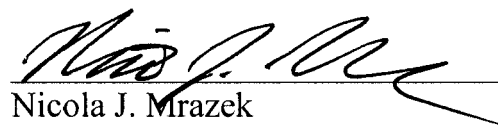
32. This plea agreement, including its attachments, states the full extent of the agreement between the parties. There are no other promises or agreements, express or implied. Any modification of this plea agreement shall be valid only if set forth in writing in a supplemental or revised plea agreement signed by all parties.

FOR ABB INC.


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FOR THE FRAUD SECTION

DENIS J. McINERNEY, Chief


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Filed in Houston, Texas on Sept. 29, 2010.

GENERAL COUNSEL'S CERTIFICATE

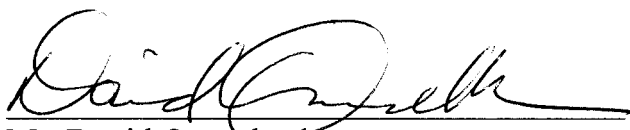
I have read this Agreement and carefully reviewed every part of it with outside counsel for ABB Inc. I understand the terms of this Agreement and voluntarily agree, on behalf of ABB Inc., to each of its terms. Before signing this Agreement, I consulted outside counsel for ABB Inc. Counsel fully advised me of the rights of ABB Inc., of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement.

I have carefully reviewed the terms of this Agreement with the Board of Directors of ABB Inc. I have advised and caused outside counsel for ABB Inc. to advise the Board of Directors fully of the rights of ABB Inc., of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into the Agreement.

No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of ABB Inc., in any way to enter into this Agreement. I am also satisfied with outside counsels' representation in this matter. I certify that I am General Counsel for ABB Inc. and that I have been duly authorized by ABB Inc. to execute this Agreement on behalf of ABB Inc.

Date: Sept. 29, 2010

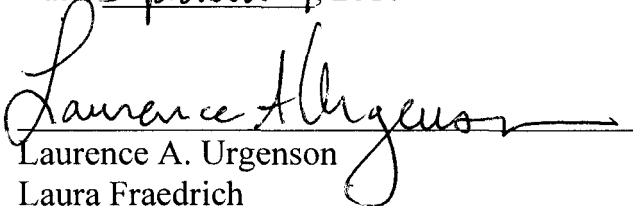
ABB Inc.

By: 
Mr. David Onuscheck

CERTIFICATE OF COUNSEL

We are counsel for ABB Inc. in the matter covered by this Agreement. In connection with such representation, we have examined relevant ABB Inc. documents and have discussed the terms of this Agreement with the ABB Inc. Board of Directors. Based on our review of the foregoing materials and discussions, we are of the opinion that the representative of ABB Inc. has been duly authorized to enter into this Agreement on behalf of ABB Inc. We have carefully reviewed the terms of this Agreement with the Board of Directors and the General Counsel of ABB Inc. We have fully advised them of the rights of ABB Inc., of possible defenses, of the Sentencing Guidelines' provisions and of the consequences of entering into this Agreement. To our knowledge, the decision of ABB Inc. to enter into this Agreement, based on the authorization of the Board of Directors, is an informed and voluntary one.

Date: September 29, 2010



Laurence A. Urgenson
Laura Fraedrich
Audrey L. Harris
Kirkland & Ellis, LLP
Counsel for ABB Inc.

ATTACHMENT A-1 (ABB INC.)

STATEMENT OF FACTS

The following Statement of Facts is incorporated by this reference as part of the Deferred Prosecution Agreement between the United States Department of Justice, Criminal Division, Fraud Section (the “Department”) and ABB Ltd and its subsidiaries. As set forth in Paragraph 2 of that agreement, ABB Ltd accepts and acknowledges that it is responsible for the acts of its officers, employees, and agents as set forth below. The following Statement of Facts is also incorporated by reference as part of the Plea Agreement between the Department and ABB Inc., as set forth in Paragraph 11 of that agreement. The parties hereby agree and stipulate that the following information is true and accurate.

The Foreign Corrupt Practices Act

1. The Foreign Corrupt Practices Act of 1977 (“FCPA”), as amended, Title 15, United States Code, Sections 78dd-1, *et seq.*, was enacted by Congress for the purpose of, among other things, making it unlawful for certain classes of persons and entities to act corruptly in furtherance of an offer, promise, authorization, or payment of money or anything of value to a foreign government official for the purpose of securing any improper advantage, or of obtaining or retaining business for, or directing business to, any person.

Relevant Persons and Entities

2. ABB Ltd was a corporation headquartered and incorporated in Switzerland and with sponsored American Depositary Shares (“ADSs”) publicly traded on the New York Stock Exchange. ABB Ltd issued and maintained a class of publicly-traded securities registered pursuant to Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. § 78l) and was required to file periodic reports with the United States Securities and Exchange Commission under Section 13 of the Securities Exchange Act (15 U.S.C. § 78m). Accordingly, ABB Ltd was an “issuer” within the meaning of the Foreign Corrupt Practices Act (“FCPA”), 15 U.S.C. § 78dd-1(a).

3. The defendant, ABB Inc., was an indirect subsidiary of ABB Ltd and was incorporated under the laws of the State of Delaware. ABB Inc. was a

“domestic concern” as that term is defined in the FCPA, 15 U.S.C. § 78dd-2(h)(1). ABB Inc. conducted business, in part, through a business unit called ABB Network Management that had its principal place of business in Sugar Land, Texas and was acquired by ABB Inc. in or around January 1999. The term “ABB NM” refers to this Sugar Land, Texas business both before and after its acquisition. ABB NM’s primary business was to provide products and services to electrical utilities for network management in connection with power generation, transmission, and distribution. Many of ABB NM’s clients were foreign state-owned utilities. ABB NM conducted business in a number of its foreign markets through local sales representatives.

4. John Joseph O’Shea was the General Manager of ABB NM and oversaw its operations both before and after its acquisition by ABB Inc. Among O’Shea’s responsibilities was approving payments to sales representatives. O’Shea was a citizen of the United States. In light of the foregoing, O’Shea was a “domestic concern” and an officer, employee, and agent of a domestic concern, as these terms are defined in the FCPA, 15 U.S.C. § 78dd-2(h)(1).

5. Comisión Federal de Electricidad (“CFE”) was an electric utility company owned by the United Mexican States (“Mexico”) and responsible for supplying electricity to all of Mexico other than Mexico City. CFE contracted with Mexican and foreign companies for goods and services to help it perform its mission. CFE did business with ABB NM.

6. CFE Officials N, J, C, and G held official positions at CFE and had influence over decisions concerning ABB NM’s contracts with CFE. CFE Officials N, J, C, and G were “foreign officials” as that term is defined in the FCPA, 15 U.S.C. § 78dd-2(h)(2).

7. Mexican Company X was a Mexican company headquartered in Mexico City, Mexico. The principal business of Mexican Company X was to be a sales representative for foreign and domestic companies doing business with Mexican government agencies. Mexican Company X was ABB NM’s sales representative in Mexico pursuant to representative agreements, and ABB NM was an important customer for Mexican Company X. In light of the foregoing, Mexican Company X was an agent of a domestic concern, as that term is defined in the FCPA, 15 U.S.C. § 78dd-2(h)(1).

8. ABB NM and Mexican Company X entered into multiple commission-based representation agreements in which Mexican Company X would receive a percentage of the revenue generated from business with Mexican governmental utilities, including CFE. Mexican Company X was retained by the Sugar Land operation prior to its acquisition by an ABB entity in 1999. ABB NM obtained multiple contracts with CFE for goods and services related to CFE's network while using Mexican Company X as its sales representative. In or around December 1997, CFE awarded a contract referred to as the SITRACEN Contract (using the Spanish language acronym for Real Time Information and Control System) to ABB NM. The purpose of this contract was to significantly upgrade the backbone of Mexico's electrical network system. The SITRACEN Contract generated over \$44 million dollars in revenue for ABB NM. In or around October 2003, CFE awarded ABB NM a multi-year contract for maintenance and upgrades of the SITRACEN Contract, referred to as the Evergreen Contract. The Evergreen Contract, a sole source award, generated over \$37 million in revenue for ABB NM.

9. Fernando Maya Basurto was a citizen of Mexico. Basurto was a principal of Mexican Company X, performed work for ABB NM on its contracts with CFE, and had primary responsibility at Mexican Company X for the Evergreen Contract. In light of the foregoing, BASURTO was an agent of a domestic concern, as that term is defined in the FCPA, 15 U.S.C. § 78dd-2(h)(1).

10. Co-conspirator X was a citizen of Mexico. Co-conspirator X founded and was a principal of Mexican Company X and also performed work for ABB NM on its contracts with CFE. In light of the foregoing, Co-conspirator X was an agent of a domestic concern, as that term is defined in the FCPA, 15 U.S.C. § 78dd-2(h)(1).

11. Intermediary Company O was a company incorporated in and headquartered in Mexico. Intermediary Company O maintained a bank account in Mexico. Intermediary Company O was paid by ABB NM in connection with the Evergreen Contract, purportedly to perform maintenance support and administration. In light of the foregoing, Intermediary Company O was an agent of a domestic concern, as that term is defined in the FCPA, 15 U.S.C. § 78dd-2(h)(1).

12. Intermediary Company S was a company incorporated in Panama and headquartered in Mexico. Intermediary Company S maintained bank accounts abroad. Co-conspirator S was the President and Executive Director of

Intermediary Company S and a Mexican citizen. Intermediary Company S was paid by ABB NM in connection with the Evergreen Contract purportedly to perform technical support. Intermediary Company S had previously also been paid by ABB NM in connection with the SITRACEN Contract. In light of the foregoing, Intermediary Company S and Co-conspirator S were agents of a domestic concern, as that term is defined in the FCPA, 15 U.S.C. § 78dd-2(h)(1).

Overview of the Conspiracy

13. ABB Inc., along with O'Shea, Basurto, Mexican Business X, Co-conspirator X, Intermediary Companies O and S, Co-conspirator S, and others engaged in a conspiracy to unjustly enrich themselves by making concealed corrupt payments to CFE Officials N, J, C, and G, and others in exchange for improper business advantages to ABB Inc. and ABB NM, including the award of CFE contracts.

14. CFE officials would inform O'Shea, Basurto, Co-conspirator X, and others that corrupt payments would need to be paid in order to receive the SITRACEN Contract. O'Shea would authorize ABB NM to make corrupt payments for the benefit of CFE officials through the use of Intermediary Company S. O'Shea would also authorize Basurto and Co-conspirator X to make corrupt payments to CFE Official J on ABB NM's behalf in exchange for the SITRACEN Contract. BASURTO and certain of his family members would make these payments in the form of checks to family members of CFE Official J.

15. In anticipation of future business based on the success of the SITRACEN Contract, O'Shea, Basurto, Co-conspirator X, and CFE Officials N and C would meet to discuss how to make corrupt payments to CFE Officials N and C, as well as others at CFE, in order to secure the Evergreen Contract and cause the inclusion of terms favorable to ABB NM. They agreed that the CFE officials collectively would receive approximately 10% of the revenue from the CFE contract to distribute among themselves and others. The conspirators planned to pay a portion of this bribe money, which they referred to as the "3WT" or "Third World Tax," through the payment of false invoices from Intermediary Companies O and S. They also agreed that Mexican Company X would serve as an intermediary company for approximately one million dollars of the corrupt payments over the course of the Evergreen Contract, which they referred to as

payments to the “Good Guys,” with Basurto and Co-conspirator X retaining a portion of these funds for themselves for their efforts.

Corrupt Payments to Intermediary Companies O and S

16. In or around March 2004, Basurto transmitted an invoice to ABB NM on behalf of Intermediary Company O that had been given to him by CFE Official C, which falsely requested payment for “6 MONTHS (7- 12/2003) OF MAINTENANCE SUPPORT SERVICES AND ADMINISTRATION OF CFE EVERGREEN PROJECT AT ALL SITES IN MEXICO” in the amount of \$327,000. On or about March 8, 2004, O’Shea caused ABB NM to wire transfer \$327,000 to Intermediary Company O’s Mexican bank account.

17. In or around May 2004, Basurto transmitted an invoice to ABB NM on behalf of Intermediary Company O that had been given to him by CFE Official C, which falsely requested payment for “4 MONTHS OF MAINTENANCE SUPPORT SERVICES AND ADMINISTRATION OF CFE EVERGREEN PROJECT AT ALL SITES IN MEXICO” in the amount of \$76,200. On or about June 3, 2004, O’Shea caused ABB NM to wire transfer \$76,200 to Intermediary Company O’s Mexican bank account.

18. On or around March 2004, Basurto transmitted an invoice to ABB NM on behalf of Intermediary Company S and signed by Co-conspirator S that had been given to him by CFE Official C, which falsely requested payment for “Technical support for 6 months” in the amount of \$218,000 and to a specified German bank account. On or about April 1, 2004, O’Shea caused ABB NM to wire transfer \$218,000 to Intermediary Company S’s German bank account. On or about April 5, 2004, Co-conspirator S caused a \$24,500 wire to be made to the U.S. bank account of a military academy to pay for the tuition of CFE Official N’s son.

19. On or around May 2004, Basurto transmitted an invoice to ABB NM on behalf of Intermediary Company S and signed by Co-conspirator S that had been given to him by CFE Official C, which falsely requested payment for “Technical support for 4 months” in the amount of \$50,800 and to a specified German bank account. On or about June 3, 2004, O’Shea caused ABB NM to wire transfer \$50,800 to Intermediary Company S’s German bank account. On or about June 4, 2004, Co-conspirator S caused a

\$5,000 wire to be made to the U.S. bank account of a military academy to pay for the tuition of CFE Official N's son.

Corrupt Payments for the "Good Guys"

20. On or about February 2, 2004, Basurto sent an email to O'Shea referring to payments from ABB NM to Mexican Company X, including those intended to be corrupt payments, that read, in part, "This is the transfer arrangement for the bonus portion we are handling. It is the same amount shown in the table you have, the first two figures under the Good Guys column." On or about February 17, 2004, O'Shea caused six wire transfers to be made to Basurto and his family, five for \$30,000 and one for \$31,750. At the direction of CFE Official C, Basurto further transferred these funds by causing two \$22,500 wire transfers on or about February 20, 2004, two \$22,500 wire transfers on or about February 23, 2004, and one \$45,000 wire transfer on or about February 23, 2004 to be made to a Merrill Lynch brokerage account held in the name of a third party. On or about February 26, 2004, Official C caused a \$68,159 wire transfer to be made to an account in the name of the son-in-law of CFE Official N.

21. On or about May 7, 2004, Basurto sent an email to O'Shea discussing corrupt payments Mexican Company X was responsible for transferring that read, in part, "We have already informed [CFE Officials N and C] that you are not coming the 11th. . . . Regarding the numbers we handle for them, we will need a transfer of US\$42,344." On or about May 11, 2004, Basurto sent an email to O'Shea regarding the latest requested corrupt payment that read, in part, "This 42k is for the extra we handle for our friends." On or about May 13, 2004, O'Shea caused a wire transfer of \$42,343 to be made to a member of Basurto's family. At the direction of CFE Official C, Basurto further transferred these funds by causing a \$30,831 wire transfer on or about May 14, 2004 to be made to a Merrill Lynch brokerage account held in the name of a third party. On or about May 21, 2004, Official C caused a \$15,875 wire transfer to be made to an account in the name of the son-in-law of CFE Official N. On or about June 21, 2004, CFE Official C caused a wire transfer of approximately \$2,000 to be made from the same Merrill Lynch brokerage account to a Mexican bank account in the name of the brother of CFE Official C.

22. On or about July 23, 2004, Basurto sent an email to O'Shea explaining which portion of Mexican Company X's commissions was for services and which was for corrupt payments, which read, in part, "Commission 3 is the extra bonus for our friends that we handle."

23. On or about September 27, 2004, O'Shea caused a wire transfer of \$42,342 to be made to a member of Basurto's family. At the direction of CFE Official C, Basurto further transferred these funds by causing a \$31,750 wire transfer on or about October 4, 2004 to be made to a Merrill Lynch brokerage account held in the name of a third party. On or about October 14, 2004, Official C caused a \$15,875 wire transfer to be made to an account in the name of the son-in-law of CFE Official N.

ATTACHMENT B

**CERTIFICATE OF CORPORATE RESOLUTION
BY THE BOARD OF DIRECTORS**

WHEREAS, ABB Ltd (“ABB Ltd” or the “Company”) has been engaged in discussions with the United States Department of Justice, Criminal Division, Fraud Section (the “Fraud Section”) in connection with issues arising in relation to certain improper payments to foreign officials to facilitate the award of contracts and assist in obtaining business for ABB Ltd; and

WHEREAS, in order to resolve such discussions, it is proposed that ABB Ltd enter into a certain Agreement with the Fraud Section; and

WHEREAS ABB Ltd’s General Counsel, Diane de Saint Victor, together with outside counsel for ABB Ltd, have advised the Board of Directors of ABB Ltd of its rights, possible defenses, the United States Sentencing Guidelines’ provisions, and the consequences of entering into such Agreement with the Fraud Section;

Therefore, the Board of Directors has RESOLVED that:

1. ABB Ltd agrees to enter into the attached Deferred Prosecution Agreement, which defers the prosecution of ABB Ltd for the conduct set forth in the Statements of Facts (Attachments A-1 and A-2) and for the conduct that ABB Ltd disclosed to the Fraud Section prior to the signing the Deferred Prosecution

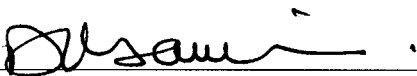
Agreement and defers the prosecution of its wholly owned subsidiary ABB Jordan for charges contained in the attached Criminal Information for three years. ABB Ltd further agrees that its wholly owned subsidiary ABB Inc. will plead guilty to the attached Criminal Information and will enter into the attached Plea Agreement.

2. The General Counsel of ABB Ltd, Diane de Saint Victor, and, as instructed and directed by Diane de Saint Victor, the counsels of ABB Ltd, Laurence A. Urgenson, Laura Fraedrich, and Audrey L. Harris, or their delegate, are hereby authorized, empowered and directed, on behalf of ABB Ltd, to execute the Deferred Prosecution Agreement substantially in such form as reviewed by this Board of Directors at this meeting with such changes as the General Counsel of ABB Ltd, Diane de Saint Victor, or the counsels of ABB Ltd, Laurence A. Urgenson, Laura Fraedrich, and Audrey L. Harris, or their delegate, may approve;

3. The General Counsel of ABB Ltd, Diane de Saint Victor, and, as instructed and directed by Diane de Saint Victor, counsels of ABB Ltd, Laurence A. Urgenson, Laura Fraedrich, and Audrey L. Harris, or their delegate, are hereby authorized, empowered and directed to take any and all actions as may be necessary or appropriate and to approve the forms, terms or provisions of any agreement or other documents as may be necessary or appropriate, to carry out and effectuate the purpose and intent of the foregoing resolutions; and

4. All of the actions of the General Counsel of ABB Ltd, Diane de Saint Victor, or the counsels of ABB Ltd, Laurence A. Urgenson, Laura Fraedrich, and Audrey L. Harris, which actions would have been authorized by the foregoing resolutions except that such actions were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved, and adopted as actions on behalf of ABB Ltd.

Date: 29 Sept, 2010



Diane de Saint Victor
Corporate Secretary
ABB Ltd

ATTACHMENT C

CORPORATE COMPLIANCE PROGRAM

In order to address deficiencies in its internal controls, policies, and procedures regarding compliance with the Foreign Corrupt Practices Act ("FCPA"), 15 U.S.C. §§ 78dd-1, *et seq.*, and other applicable anti-corruption laws, ABB Ltd and its subsidiaries (collectively, "ABB") agree to continue to conduct, in a manner consistent with all of its obligations under this Agreement, appropriate reviews of its existing internal controls, policies, and procedures.

Where necessary and appropriate, ABB agrees to adopt new or to modify existing internal controls, policies, and procedures in order to ensure that it maintains: (a) a system of internal accounting controls designed to ensure that ABB makes and keeps fair and accurate books, records, and accounts; and (b) a rigorous anti-corruption compliance code, standards, and procedures designed to detect and deter violations of the FCPA and other applicable anti-corruption laws. At a minimum, this should include, but not be limited to, the following elements:

1. ABB will develop and promulgate a clearly articulated and visible corporate policy against violations of the FCPA, including its anti-bribery, books and records, and internal controls provisions, and other applicable counterparts

(collectively, the “anti-corruption laws,”), including strong, explicit, and visible support and commitment from senior management to the program.

2. ABB will develop and promulgate compliance standards and procedures designed to reduce the prospect of violations of the anti-corruption laws and ABB’s compliance code and will take appropriate measures to encourage and support the observance of ethics and compliance standards and procedures against foreign bribery at all levels of the company. These standards and procedures shall apply to all directors, officers, and employees and, where necessary and appropriate, outside parties acting on behalf of ABB in a foreign jurisdiction, including but not limited to, agents and intermediaries, consultants, representatives, distributors, teaming partners, contractors and suppliers, consortia, and joint venture partners (collectively, “agents and business partners”), and shall notify all employees that compliance with the standards and procedures is the duty of individuals at all levels of the company. Such standards and procedures shall include policies governing:

- a. Gifts;
- b. Hospitality, entertainment, and expenses;
- c. Customer travel;
- d. Political contributions;
- e. Charitable donations and sponsorships;
- f. Facilitation payments; and
- g. Solicitation and extortion.

3. ABB will develop these compliance standards and procedures, including internal controls, ethics, and compliance programs on the basis of a risk assessment addressing the individual circumstances of the company, in particular the foreign bribery risks facing the company, including, but not limited to, its geographical organization, interaction with governments, and industrial sector of operation.

4. ABB shall review its compliance standards and procedures, including internal controls, ethics, and compliance programs, no less than annually, and update as appropriate, taking into account relevant developments in the field and evolving international and industry standards, and update and adapt as necessary to ensure the continued effectiveness of the company's internal controls, ethics, and compliance programs.

5. ABB will assign responsibility to one or more senior corporate executives of ABB for the implementation and oversight of compliance with policies, standards, and procedures regarding the anti-corruption laws. Such corporate official(s) shall have direct reporting obligations to independent monitoring bodies, such as the Audit Committee of ABB's Board of Directors, and shall have an adequate level of autonomy from management as well as sufficient resources and authority to maintain such autonomy.

6. ABB will ensure that it has a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts to ensure that they cannot be used for the purpose of foreign bribery or concealing such bribery.

7. ABB will implement mechanisms designed to ensure that the policies, standards, and procedures of ABB regarding the anti-corruption laws are effectively communicated to all directors, officers, employees, and, where appropriate, agents and business partners. These mechanisms shall include: (a) periodic training for all directors, officers, and employees, and, where necessary and appropriate, agents and business partners; and (b) annual certifications by all such directors, officers, and employees, and, where necessary and appropriate, agents, and business partners, certifying compliance with the training requirements.

8. ABB will establish an effective system for:

a. Providing guidance and advice to directors, officers, employees, and, where appropriate, agents and business partners, on complying with ABB's compliance policies, standards, and procedures, including when they need advice on an urgent basis on difficult situations in foreign jurisdictions;

b. Internal and, where possible, confidential reporting by, and protection of, directors, officers, employees, and, where appropriate, agents and

business partners, not willing to violate professional standards or ethics under instructions or pressure from hierarchical superiors, as well as for directors, officers, employees, and, where appropriate, agents and business partners, willing to report breaches of the law or professional standards or ethics concerning anti-corruption occurring within the company, suspected criminal conduct, and/or violations of the compliance policies, standards, and procedures regarding the anti-corruption laws for directors, officers, employees, and, where necessary and appropriate, agents and business partners; and

c. Responding to such requests and undertaking appropriate action in response to such reports.

9. ABB will institute appropriate disciplinary procedures to address, among other things, violations of the anti-corruption laws and ABB's compliance and ethics program by ABB's directors, officers, and employees. ABB shall implement procedures to ensure that where misconduct is discovered, reasonable steps are taken to remedy the harm resulting from such misconduct, and to ensure that appropriate steps are taken to prevent further similar misconduct, including assessing the internal controls, ethics, and compliance program and making modifications necessary to ensure the program is effective.

10. ABB will institute appropriate due diligence and compliance requirements pertaining to the retention and oversight of all agents and business partners, including:

a. Properly documented risk-based due diligence pertaining to the hiring and appropriate and regular oversight of agents and business partners;

b. Informing agents and business partners of ABB's commitment to abiding by laws on the prohibitions against foreign bribery, and of ABB's ethics and compliance standards and procedures or other measures for preventing and detecting such bribery; and

c. Seeking a reciprocal commitment from agents and business partners.

11. Where appropriate, ABB will include standard provisions in agreements, contracts, and renewals thereof with all agents and business partners that are reasonably calculated to prevent violations of the anti-corruption laws, which may, depending upon the circumstances, include: (a) anti-corruption representations and undertakings relating to compliance with the anti-corruption laws; (b) rights to conduct audits of the books and records of the agent or business partner to ensure compliance with the foregoing; and (c) rights to terminate an

agent or business partner as a result of any breach of anti-corruption laws, and regulations or representations and undertakings related to such matters.

12. ABB will conduct periodic review and testing of the compliance code, standards, and procedures designed to evaluate and improve their effectiveness in preventing and detecting violations of anti-corruption laws and ABB's compliance and ethics programs, taking into account relevant developments in the field and evolving international and industry standards.

ATTACHMENT D

ENHANCED CORPORATE COMPLIANCE AND REPORTING OBLIGATIONS AND CONDITION OF CORPORATE PROBATION

ABB Ltd and its subsidiaries (collectively, “ABB”) agree that they have or will undertake the following enhanced corporate compliance and reporting obligations for the duration of this Agreement:

General

1. ABB will continue to implement and adhere to the 101 compliance program elements recommended by the Independent Compliance Consultant in the *Report of the Independent Consultant to ABB Ltd, Securities and Exchange Comm’n v. ABB Ltd*, Civ. Action No. 04-1141 (D.D.C. July 23, 2007) (revised in December 2007), except where not possible because of local law.

2. ABB will continue to retain a senior corporate executive with significant experience with compliance with the FCPA, including its anti-bribery, books and records, and internal controls provisions, counterparts, as well as other applicable domestic and foreign anti-corruption laws and regulations to serve as Chief Compliance Officer. The Chief Compliance Officer will continue to have a dual reporting obligation directly to the Audit Committee of the Board of Directors and the General Counsel.

3. ABB will continue to maintain a global compliance team, including regional and country compliance officers, with responsibility for overseeing its company-wide compliance program, the Office of Special Investigations, and Internal Audit to foster and enforce compliance throughout ABB's operations.

4. ABB will continue to retain Legal Counsel for Compliance who will follow FCPA trends and developments and will monitor and rectify issues identified by Internal Audit, the Office of Special Investigations, and its Anti-Bribery Compliance Review ("ABCR") Protocol (described below).

5. ABB will continue to use its functional and substance based definition of "ABB Representatives," as defined in Group Directive LC 43, developed as part of the Independent Compliance Consultant recommendations and SEC approved enhanced ABB compliance program. For the purposes of the ABB compliance program and this Agreement, agents and business partners subject to due diligence are ABB Representatives as defined in Group Directive LC 43.

Risk Assessments and Audits

6. ABB will continue to implement its ABCR Protocol and thereby will continue to conduct risk-based, targeted, in-depth anti-bribery audits of business units following the ABCR Work Plan. The Work Plan will continue to require customized, non-routine audits to identify potential compliance violations and "red

flags” and remedy compliance weaknesses. Among other things, the Work Plan requires testing against statistical models to determine unusual financial activity; sampling of categories of financial transactions for review based on defined, risk-based criteria; transaction testing; interviews with management; and reviews of board minutes, financial receipts and disbursements, bank accounts, petty cash, vendors, ABB Representatives, sales contracts, facilitation payments, gifts, donations, sponsorships, political contributions, employee payroll and expense reports, high-risk contractual obligations, marketing activities, and fixed assets for category-specific, enumerated activities, risks, and controls.

Acquisitions

7. ABB will ensure that, to the degree possible under applicable law, new businesses are only acquired after full and thorough FCPA and anti-corruption due diligence by qualified accounting or legal personnel and only after review and approval by ABB, per the Independent Compliance Consultant recommendations, at the country or corporate level. Such due diligence reviews will be subject to more than one level of review within ABB prior to acquisition. When such due diligence is not possible prior to acquisition of a business due to restrictions of local law, ABB will conduct anti-corruption due diligence subsequent to the acquisition and report to the Department of Justice (“DOJ”) in a manner consistent

with the approach set forth in DOJ FCPA Opinion Release 08-02, including, if necessary, reporting to the DOJ.

8. ABB will ensure that ABB's policies and procedures regarding the anti-corruption laws and regulations are implemented as quickly as is practicable post-acquisition.

9. Promptly but in no circumstances more than a year post-closing, ABB will train all directors, officers, and employees, as well as ABB Representatives, on all aspects of its compliance program, including ABB's policies and procedures.

Business Model Modification

10. ABB will continue to implement changes to its business model to eliminate the use of ABB Representatives whenever possible.

Relationships with Third Parties

11. In its due diligence reviews, ABB will review all ABB Representatives to ensure compliance with the FCPA and other anti-bribery laws. As part of that due diligence review, ABB will also have specific and detailed discussions about the FCPA and other anti-bribery laws with all ABB Representatives. Such due diligence will be reviewed at no less than the Country Compliance Officer level within ABB prior to retention or contract renewal of any

ABB Representative. Such due diligence reviews will be updated no less than every three years.

12. Where permitted by applicable law, ABB will require that all ABB Representatives sign standard agreements that include provisions designed to prevent violations of the FCPA and other applicable anti-corruption laws, including:

- a. Anti-corruption representations and undertakings relating to compliance with the anti-corruption laws and regulations;
- b. Rights to conduct audits of the books and records of the ABB Representative that are related to their business with ABB;
- c. Certifications on all invoices that none of the work performed or payment requested has or will result in anything of value being transmitted directly or indirectly to a government official;
- d. Full documentation of all services performed in support of payment and list and detailed description of all interactions with government officials; and
- e. Rights to terminate as a result of any breach of anti-corruption laws and regulations or representations and undertakings related to such anti-corruption laws and regulations.

13. ABB will require that all payments to an ABB Representative be made in the country in which the ABB Representative resides or the work is performed, unless a bona fide reason for payment in another country is documented and approved in advance by a Compliance Officer.

14. ABB will not allow any ABB Representative to be paid in cash.

15. ABB will require that all payments to ABB Representatives are approved and recorded in accordance with the compliance program elements recommended by the Independent Compliance Consultant.

16. ABB will continue to maintain a computerized approval process and registry of all ABB Representatives, which will enhance the transparency of the due diligence reviews.

Gifts, Travel, and Entertainment

17. ABB will continue to maintain country-specific computerized approval processes and registries of Gifts, Travel, and Entertainment that fall under Group Directive LC 45, which will enhance the transparency of the reporting and approval process.

18. ABB will require that gifts, entertainment, and travel are to be given or received for bona fide business purposes only and are not to exceed country-specific limits without prior approval by the Country Compliance Officer or a

person designated by a Country Compliance Officer. All gifts and entertainment must be properly supported by original receipts, and in no event will cash or loans be given as gifts. All travel expenses must be properly supported by original receipts, and, other than daily allowances required by contract and approved by a Country Compliance Office, may not be made in cash.

Complaints, Reports, and Compliance Issues

19. ABB shall maintain its mechanisms for making and handling reports and complaints related to potential violations of anti-corruption laws and regulations, including its anonymous, toll-free Business Ethics Hotline, as well as its Ombudsperson program.

Training

20. ABB will provide FCPA and anti-corruption training to directors, officers, executives, and employees who may interact with government officials at least once annually. This training will be enhanced and specialized for all internal audit, financial, and legal personnel performing ABCR audits, performing due diligence reviews before acquisition of new businesses, and performing due diligence reviews of ABB Representatives.

21. ABB will provide FCPA and anti-corruption training to relevant ABB

Representatives acting on the company's behalf that may interact with government officials at least once every two years.

Certification

22. ABB shall implement a system of annual certifications from senior managers in each of ABB's corporate-level functions, divisions, and business units in each foreign country confirming that they are not aware of any FCPA or other corruption issues that have not already been reported.

Modification of Commitments

23. If ABB wishes to deviate from implementation or adherence of any of these commitments, ABB will notify the DOJ and the Securities and Exchange Commission ("SEC"), and the U.S. Probation Office ("USPO") 30 days in advance of any such desired change to discuss any such change. No change shall occur unless consented to by all parties.

Reporting Requirements

24. ABB will biannually report on the following to the DOJ, SEC, and USPO during the term of the agreement, both in writing and at a meeting in Washington, D.C.:

(a) In summary form, ABB will report any credible evidence of newly discovered and previously unreported violations of Group Directives LC 40

through 47 with respect to the anti-bribery provisions related to government officials, will provide the status of any investigation or disciplinary action that has been taken as a result of those violations, and will provide additional factual information about these violations as requested;

(b) Any emergency facilitation payments made pursuant to Group Directive LC 42 § 2.2.3;

(c) The progress of the ABCR Protocol, including the local business units reviewed and the significant findings concerning those business units;

(d) Improvements to its compliance program, including those undertaken due to discoveries made through the ABCR Protocol; and

(e) Any changes in the personnel and reporting chains of the Finance, Audit, and Compliance Committee.