

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95800 / September 15, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21094

In the Matter of

GOL LINHAS AÉREAS
INTELIGENTES S.A.

Respondent.

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

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against GOL Linhas Aéreas Inteligentes S.A. (a/k/a GOL Intelligent Airlines Inc. and referred to as “Gol” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent admits the Commission’s jurisdiction over it and the subject matter of these proceedings, and consents to the entry of this Order Instituting Cease- and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

These proceedings arise out of a scheme to bribe government officials in Brazil in exchange for certain payroll tax and fuel tax reductions that financially benefited Gol, along with other airlines. The bribe scheme took place against a backdrop of insufficient internal accounting controls and Gol's books and records characterized the bribes as legitimate business expenses. As a result, Gol violated the anti-bribery, books and records, and internal accounting controls provisions of the Foreign Corrupt Practices Act ("FCPA").

Respondent

1. Gol, a Brazilian company based in São Paulo, Brazil, is the second largest domestic airline in Brazil by market share. Gol's shares are listed on the NYSE and it files periodic reports with the Commission pursuant to Section 13 or 15(d) of the Exchange Act. Gol Linhas Aéreas S.A. is Gol's wholly-owned air transportation operating subsidiary.

Background

2. In and around 2011, the Brazilian government proposed an economic stimulus program that consisted, in part, of tax cuts and incentives to boost domestic employment. Among other things, the new law reduced payroll taxes for labor-intensive industries by introducing an alternative payroll tax that allowed companies operating in certain industries to pay a 1% to 3% tax on revenues rather than the standard 20% tax on payroll. Around this time, a Gol Director committed to pay the approximate equivalent of \$5.4 million in bribes to Brazilian politicians, including a then influential and high-ranking Brazilian legislator ("Brazilian Official") and other politicians, to lower certain taxes that financially benefitted Gol, along with other airlines, and to benefit other companies the Gol Director owned.

3. By the end of June 2012, following pressure and intervention from the Brazilian Official and others, the Brazilian legislature expanded the new law to include the air transport industry (an industry not explicitly named in the original draft of the new law) at an attributed 1% tax rate, the lowest rate in the range of possible tax impositions under the new law. The Brazilian President signed the amended legislation on or about September 17, 2012, and it became effective January 1, 2013.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

4. Gol, through the Gol Director and operating subsidiary, paid bribes the approximate equivalent of \$1.14 million to the Brazilian Official from October 2012 through November 2013. Gol paid these bribes to the Brazilian Official through at least two companies that the Brazilian Official controlled and the payments were characterized as legitimate advertisement expenses including reimbursements for online advertisement.

5. In 2013, Gol also paid the approximate equivalent of \$496,600 in bribes to a company associated with a Brazilian legislator. A close associate to the Brazilian Official also received the approximate equivalent of \$137,000 from Gol through a Brazilian consulting company he owned. These bribes were characterized on Gol's books and records as payments for other services provided even though the services were never rendered. Additionally, the close associate of the Brazilian Official received \$350,000 from a company the Gol Director controlled through a U.S.-based company, which the close associate of the Brazilian Official owned. This payment was transmitted through a U.S. correspondent bank.

6. Gol, through the Gol Director and operating subsidiary, intended to influence, and did influence, the Brazilian Official to promote including the air transport industry in the new law at an earlier stage of the legislative process and ensuring that the industry was not removed during the amendment process. In all, Gol saved the approximate equivalent of \$39.7 million in 2013 because the air transport industry was included in the new legislation earlier than originally intended.

7. In 2013, the Gol Director met again with the Brazilian Official and other Brazilian politicians to discuss lowering aviation fuel taxes in the Federal District (Brasilia), Brazil. At the time, Brasilia's aviation fuel tax was 25%. Lower aviation fuel taxes in Brasilia allowed Gol to mitigate fuel costs because it could now begin to use Brasilia, a centrally located destination, as a refueling hub rather than rely on other more costly and inefficient fueling locations. Subsequently, the Gol Director, the Brazilian Official, and others then agreed to a bribery scheme that would result in lowering, and did lower, Brasilia's aviation fuel tax from 25% to 12% and thereafter Gol added more flights to and from Brasilia.

8. In addition to the bribes described above, Gol, through the Gol Director and operating subsidiary, paid the approximate equivalent of \$552,400 in bribes from June through August 2013 to a company associated with a former Brasilia official. The payments were characterized as a fee for other services provided even though the services were never rendered. As a result of the influence of the former Brasilia official, on or about May 26, 2013, Brasilia lowered its aviation fuel tax to 12%. In all, Gol saved the approximate equivalent of \$12.24 million from lower aviation fuel taxes and increased reliance on Brasilia as a refueling hub.

9. The Gol Director discussed the bribe schemes described in this Order with a close associate of the Brazilian Official in person, by text message, and by phone. The close associate, in turn, discussed the bribe schemes described in this Order with the Brazilian Official and others in person, by phone, and via an ephemeral messaging application that uses end-to-end encrypted and content-expiring messages with servers exclusively located in the U.S.

10. Additionally, the Gol Director authorized that one of the bribe payments be wired from a Bahamian company he controlled to a U.S.-based company that a close associate of the Brazilian Official owned. In May 2013, the Gol Director's company paid \$350,000 from a bank account in the Bahamas to a bank account in Switzerland belonging to the U.S.-based company. This bribe payment was transmitted through a U.S.-based correspondent bank.

11. The bribery scheme provided Gol with an improper financial benefit in the form of reduced tax costs and expenses. During the same period, Gol claimed publicly, including in SEC filings, that it was positioned as one of the lowest cost airlines in the world.

12. Gol failed to devise and maintain an adequate system of internal accounting controls in 2012 and 2013. Among other weaknesses, while corporate policy required that Gol select all vendors based on competitive pricing, a lack of sufficient internal accounting controls resulted in the payment of vendors who were given sole source contracts outside of the supply department. Additionally, Gol paid the vendors involved in this bribe scheme even though most of these vendors' purported services were never rendered. Moreover, the procurement process did not include an effective review of the documentation submitted before or after the disbursement of funds to monitor compliance with Gol's purchase policy. The insufficiency and ineffectiveness of the internal accounting controls resulted in a procurement process that relied primarily on the Gol Director for authorization and verification of these services with little oversight or review. Gol's internal accounting controls were also not adequately designed to reflect its corporate policy against making improper payments to government officials.

13. As a result of the conduct described above, Gol violated Section 30A of the Exchange Act, which prohibits any issuer with securities registered pursuant to Section 12 of the Exchange Act or which is required to file reports under Section 15(d) of the Exchange Act, or any officer, director, employee, or agent acting on its behalf, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an effort to pay or offer to pay anything of value to foreign officials for the purpose of influencing their official decision-making, in order to assist in obtaining or retaining business.

14. Also as a result of the conduct described above, Gol violated Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

15. Lastly, as a result of the conduct described above, Gol violated Section 13(b)(2)(B) of the Exchange Act by failing to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were executed in accordance with management's general or specific authorizations with regard to third parties, including selection and due diligence, monitoring of how services were rendered, and prohibition of bribe transactions with respect to advertising.

Disgorgement and Penalties

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

Respondent represented its financial condition as reflected by documents and information submitted to the Commission and its inability to fully pay disgorgement plus prejudgment interest.

Gol acknowledges that the Commission is not imposing a civil penalty based upon the imposition of an \$87,000,000 criminal fine as part of Gol's resolution with the U.S. Department of Justice.

Gol's Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff. Gol's cooperation included voluntarily summarizing and providing facts developed during its own internal investigation, translating certain documents, and making its current management available to the Commission staff, including those who needed to travel to the United States.

Gol's remediation included conducting a comprehensive risk assessment; re-evaluating and re-designing its anti-corruption compliance program; creating a risk and compliance department and hiring a new chief compliance officer to lead this new department; and terminating its relationships with third parties involved in the misconduct.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Gol cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A), 13(b)(2)(B), and 30A of the Exchange Act.

B. Respondent shall pay disgorgement of \$51,940,000 and prejudgment interest of \$18,060,000, for a total of \$70,000,000, to the Securities and Exchange Commission, but payment of such amount, except for \$24,500,000, is waived based upon Respondent's represented financial condition as reflected by documents and information submitted to the Commission. Payment shall be made to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3), in the following installments: a first installment of \$4,900,000 is due within 10 days of the entry of this Order, a second installment of \$8,950,000 is due within one (1) year of the entry of this Order, and a third installment of \$8,950,000 is due within two (2) years of the entry of this Order. Payment shall be applied first to post order interest which accrues pursuant to SEC Rule of Practice 600. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due.

The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement and pre-judgment interest. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement and interest should not be ordered; (3) contest the amount of disgorgement and interest to be ordered; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

Respondent shall receive an offset up to \$1,700,000 based on the U.S. dollar value of any disgorgement or restitution paid to the Brazilian Government reflected by evidence acceptable to the Commission staff in its sole discretion, in a proceeding conducted by the Controladoria-Geral da União ("CGU")/Advocacia-Geral da União ("AGU") in Brazil. Such evidence of payment shall include a copy of the wire transfer or other evidence of the amount of the payment, the date of the payment, and the name of the government agency to which payment was made. To receive this offset, Respondent must make the above-identified payments within two (2) years from the date of this Order. To the extent such offset payment is not made, Respondent shall pay the full amount due of \$24,500,000 as per the above schedule.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

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

By the Commission.

Vanessa A. Countryman
Secretary