

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 51724 / May 20, 2005**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 2249 / May 20, 2005**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-11933**

**In the Matter of**

**DIAGNOSTIC PRODUCTS  
CORPORATION,**

**Respondent.**

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

**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 Diagnostic Products Corporation (“DPC” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

1. DPC, a California corporation based in Los Angeles, develops and manufactures medical diagnostic test systems and related test kits. DPC sells its products through subsidiaries and distributors in over 100 countries, and overseas sales have accounted for over 70% of its annual revenues. DPC's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and are traded on the New York Stock Exchange.

2. In October 1991, DPC established DePu Biotechnological & Medical Products Inc. ("DePu") in Tianjin, China as a joint venture. Initially, DPC owned 90% of DePu and the joint venture partner was a local Chinese government entity. In 1997, DePu became a wholly-owned subsidiary of DPC. Throughout the relevant period, the financial results of DePu were a component of the consolidated financial statements included in DPC's filings with the Commission.

3. As discussed below in Paragraph 6, the Foreign Corrupt Practices Act ("FCPA") prohibits public companies from making improper payments to foreign officials for the purpose of influencing their decisions in order to obtain or retain business. DePu's customers are primarily state-owned hospitals in China. From 1991 through 2002, DPC through DePu routinely made improper commission payments totaling approximately \$1.6 million to doctors and laboratory employees who controlled purchasing decisions at these state-owned hospitals. The commissions represented a certain percentage of sales to the hospitals (typically 3% to 10%), and DePu determined the percentages based on the prevailing rate in the customer's region, the sales amount, and the prior relationship with the customer. In most cases the payments were made in cash and delivered by DePu's sales employees by mail or wire transfer. During the relevant period, DePu's then management knew about, approved, and administered the payment of these commissions.

4. From 1991 through 2002, DePu improperly recorded the payments as legitimate sales expenses in its books and records.

5. In late October 2002, DePu's auditors raised certain Chinese tax issues related to the commission payments. In November 2002, DePu's then senior manager discussed the payments and the tax issues in a monthly report to current DPC management, which led to DPC's discovery of these payments. In January 2003, DPC instructed DePu management to stop all commission payments. DPC also took remedial measures, revised its code of ethics and compliance procedures, and established a compliance program with respect to the FCPA.

6. The FCPA, enacted in 1977, added Section 30A to the Exchange Act to prohibit public companies from, among other things, making improper payments to foreign officials for the

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<sup>1</sup> 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.

purpose of influencing their decisions in order to obtain or retain business. The FCPA also added to the Exchange Act Sections 13(b)(2)(A) and (B), which require public companies to keep accurate books and records and have sufficient internal controls. Public companies are responsible for ensuring that their foreign subsidiaries comply with Sections 13(b)(2)(A) and (B), and 30A of the Exchange Act.

7. Throughout the relevant period, the individuals who received improper payments from DePu were foreign officials within the meaning of the FCPA, and the hospitals were instrumentalities of a foreign government within the meaning of the FCPA. The purpose of the improper payments was to influence these individuals' official decisions and to induce them to use their influence with the hospitals to assist DPC to obtain or retain business.

8. As a result of the conduct described above with respect to the payments of improper commissions to individuals, DPC violated Section 30A of the Exchange Act, which prohibits making improper payments to foreign officials for the purpose of influencing their decisions in order to obtain or retain business.

9. As a result of the conduct described above with respect to the booking of the improper payments as legitimate sales expenses, DPC 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.

10. In addition, as evidenced by the duration of the improper payments made by DePu and the improper recording of such payments in DePu's books and records, DPC violated Section 13(b)(2)(B) of the Exchange Act, which requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorization; and (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets.

### **DPC's Remedial Efforts**

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.<sup>2</sup>

### **Undertakings**

Respondent has undertaken the following:

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<sup>2</sup> The Commission also has taken into consideration that DPC will pay a criminal penalty in the amount of \$2 million in the Department of Justice prosecution for the same conduct described in this Order.

1. Within 30 days after the date of this Order, DPC shall retain a qualified independent compliance consultant (the "Compliance Consultant"), not unacceptable to the staff of the Commission, to review annually DPC's compliance with its FCPA policies and procedures for a period of three years from the date of engagement. DPC shall cause the Compliance Consultant to complete its review and submit a report annually on the anniversary date of its engagement, in which it shall document its findings and, if necessary, make recommendations (the "Report") to DPC's Board of Directors, a copy of which shall be transmitted contemporaneously to the staff of the Commission. In the event a Report contains any recommendation for further action by DPC, within 90 days after receiving the Report, DPC's Board of Directors shall advise the staff of the Commission, in writing, of all decisions and determinations it has made as a result of the Report.

2. In the event DPC is acquired by another company and becomes a wholly-owned subsidiary of the acquiring company before it has fully complied with all of the terms of the above paragraph 1, DPC's obligations under paragraph 1 shall remain in effect only as to DPC as a wholly-owned subsidiary and only as to DPC's Board of Directors as constituted following the acquisition. In the event DPC is acquired by another company and ceases to be a wholly-owned subsidiary of such acquiring company before DPC has fully complied with all of the terms of this paragraph, DPC's obligations under paragraph 1 shall terminate upon the Compliance Consultant's submission of a report acceptable to the staff of the Commission certifying that (i) it has reviewed the FCPA compliance program of the acquiring company; (ii) such program is adequate; and (iii) DPC's operations are adequately integrated into such compliance program, otherwise, the acquiring company shall assume DPC's obligations under paragraph 1.

3. DPC (i) shall not have the authority to terminate the Compliance Consultant without the prior written approval of the majority of DPC's independent board members and the staff of the Commission; (ii) shall compensate the Compliance Consultant, and persons engaged to assist the Compliance Consultant, for services rendered pursuant to the Order at their reasonable and customary rates; and (iii) shall not be in and shall not have an attorney-client relationship with the Compliance Consultant and shall not seek to invoke the attorney-client privilege or any other doctrine or privilege to prevent the Compliance Consultant from transmitting any information, reports, or documents to the board members or staff of the Commission.

4. DPC shall require the Compliance Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Compliance Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with DPC, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. DPC shall require that any firm with which the Compliance Consultant is affiliated, and any person engaged to assist the Compliance Consultant in performance of his or her duties under this Order, shall not, without prior written consent of the independent board members and the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with DPC, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

#### IV.

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

Accordingly, it is hereby ORDERED that:

A. Respondent DPC 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 DPC shall, within 10 days of the entry of this Order, pay disgorgement in the amount of \$2,038,727, and prejudgment interest thereon in the amount of \$749,895, for a total payment of \$2,788,622 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies Diagnostic Products Corporation as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Michele Wein Layne, Assistant Regional Director, Pacific Regional Office, Securities and Exchange Commission, 5670 Wilshire Boulevard, 11<sup>th</sup> Floor, Los Angeles, California 90036.

C. Respondent shall comply with the undertakings enumerated in Section III above.

By the Commission.

Jonathan G. Katz  
Secretary