

SEC and DOJ Reward Ralph Lauren for Self-Reporting FCPA Violations

A subsidiary of Ralph Lauren Corporation (RL) engaged in significant, long-term FCPA violations, but the company's aggressive response to the problem led to non-prosecution agreements with the Securities and Exchange Commission (SEC) and Department of Justice (DOJ). The result the company secured through its approach underscores the government's commitment to rewarding cooperation and provides another example of the benefits of self-reporting in the FCPA arena.

Ralph Lauren Uncovers Misconduct While Improving Internal Controls and Compliance

In 2010, as a result of efforts to improve its worldwide internal controls and compliance program, Ralph Lauren Corporation uncovered evidence of bribes being paid by its Argentine subsidiary to government officials in Argentina. The bribes were paid through customs brokers to obtain entry of RL's products into the country without necessary paperwork, to avoid inspections of prohibited products, and to avoid inspections by customs officials.

Upon learning of the misconduct, RL promptly reported the violations to the SEC and DOJ, and provided ongoing assistance to them in their investigations. According to the SEC's Acting Director of Enforcement, RL's timely and thorough cooperation resulted in "substantial and tangible benefits" for the company, including a non-prosecution agreement (NPA) with the SEC and DOJ. RL agreed to pay more than \$700,000 in disgorgement and interest to the SEC, and \$882,000 in penalties to the DOJ.

Substantial FCPA Violations Involving Typical Red Flags

During its investigation, RL learned that in order to obtain money for bribe payments, an Argentinean customs broker submitted invoices to RL's General Manager in Argentina. In addition to line items for legitimate charges, the invoices also included requests for payments for "Loading and Delivery Expenses" and "Stamp Tax/Label Tax." These line items were used to disguise bribe payments. From 2005 to 2009, these bribes totaled approximately \$568,000. RL's General Manager in Argentina also provided gifts to three different government officials, including perfume, dresses and handbags valued at between \$400 and \$14,000 each to secure the importation of RL's products into Argentina.

The problems RL encountered in Argentina are common FCPA violations: third-party agents submitting false invoices to procure bribe money result in a number of reported enforcement actions each year. Gift and entertainment abuses by local managers are also a common problem with which compliance officers and general counsels must contend. Neither the DOJ nor the SEC has been hesitant to pursue cases against companies involved in such conduct. In this case, RL addressed the

corruption head on, including terminating its customs broker, revising its anti-corruption policy and translating the policy into eight languages, increasing due diligence procedures for third parties, implementing more stringent commission and gifts policies, conducting in-person anti-corruption training for certain high-risk employees, and, most significantly, ceasing retail sales in Argentina and winding down all of its operations there.

Attention to Compliance Efforts and Prompt Remedial Action Pays Dividends

RL's cooperation also saved the SEC substantial time and resources ordinarily consumed in investigations of comparable conduct, and the SEC rewarded RL accordingly. The key components of RL's cooperation included:

- Reporting preliminary findings of its internal investigation to the SEC within two weeks of discovering the illegal payments and gifts
- Making multiple presentations of its findings to law enforcement
- Voluntarily and expeditiously producing documents
- Providing English language translations of documents to the SEC
- Summarizing witness interviews conducted by RL's investigators overseas, and
- Making overseas witnesses available for SEC interviews and bringing witnesses to the US

These measures were necessary to counteract certain aggravating circumstances, such as the fact that RL had little anti-corruption training or oversight in Argentina prior to 2010 and that the payments were approved by RL's General Manager in Argentina. Also, of particular note was the fact that the corruption was first discovered by RL while in the process of implementing a new board-approved anti-corruption policy.

As we have seen before, the government appears to have gone out of its way to encourage cooperation and robust compliance programs. Acting SEC Enforcement Director George Canellos noted that RL "did the right thing by immediately reporting" the FCPA violations and "providing exceptional assistance." Kara Brockmeyer, the SEC's FCPA Unit Chief, noted that the "NPA shows the benefits of implementing an effective compliance program," adding that RL "discovered this problem after it put in place an enhanced compliance program and began training its employees."

These comments recall the 2012 criminal and civil cases against former Morgan Stanley executive Garth Peterson. In that case, both the SEC and DOJ publicly declined to bring enforcement actions against the company due, in part, to the fact that "Morgan Stanley constructed and maintained a system of internal controls, which provided reasonable assurances that its employees were not bribing government officials." Government officials similarly lauded Morgan Stanley's cooperation and thorough internal investigation.

The combined result of these matters demonstrates a continued focus by the government on securing and rewarding cooperation from companies. It appears that vigilant reassessment of anti-corruption policies and swift action concerning misconduct will continue to pay significant dividends when it comes to the FCPA. RL, for its part, successfully addressed a five-year bribery scheme involving

hundreds of thousands of dollars without any charges against the company and for less than \$1.7 million in disgorgement and penalties.

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