KAYE | SCHOLER

Ralph Lauren Outed Its Subsidiary's Bribery and Set an Example for All

In 2010, while working to enhance its worldwide internal controls and compliance program, Ralph Lauren Corporation discovered evidence that its Argentine subsidiary had been paying bribes to government officials in Argentina. The bribes, paid through customs brokers, facilitated the entry of RL's products into the country without necessary paperwork and avoidance of inspections of prohibited products. The bribes were disguised, along with other legitimate charges, as "loading and delivery expenses" and "stamp tax/label tax" on invoices submitted by a local customs broker to RL's general manager in Argentina.

Between 2005 and 2009 RL paid approximately $568,000 in bribes to Argentine officials. Its general manager also provided or authorized gifts to three different government officials, including perfume, dresses, and handbags valued at $400 to $14,000 each, to secure the importation of RL's products into Argentina.

The challenges RL encountered in Argentina are similar to those encountered by many companies operating internationally, as general counsel and compliance officers everywhere well know. The Justice Department and the Securities and Exchange Commission have not hesitated in pursuing Foreign Corrupt Practices Act cases against companies involved in such conduct.

RL didn't act perfectly (it had, for example, little anti-corruption training or oversight in Argentina before 2010), but once under investigation it served as a model for any other company that faces such challenges in the future. It addressed the issues head on, by:

(1) Terminating its customs broker,
(2) revising its anti-corruption policy and translating the policy into eight languages,
(3) increasing its due diligence procedures for third parties,
(4) implementing more stringent commission and gifts policies,
(5) conducting in-person anticorruption training for certain employees, and, most significantly,

About the Authors

Jonathan Green is Counsel in Kaye Scholer's Complex Commercial Litigation Department, and a member of the White Collar Litigation and Internal Investigations group.. His practice focuses on securities regulatory and enforcement matters, government and corporate investigations, and white collar criminal defense. Prior to joining the firm, Jonathan was an Assistant US Attorney in the Eastern District of New York. He can be reached at ***jonathan.green@kayescholer.com***

James Athas is an Associate at Kaye Scholer who focuses his practice on government and internal investigations as well as complex commercial litigation. He has helped conduct international investigations related to the Foreign Corrupt Practices Act, evaluated corporate compliance programs to ensure conformity with current best practices and responded to federal criminal inquiries on behalf of small businesses and large corporations. He can be reached at ***james.athas@kayescholer.com***

This article was originally published in *Forbes* on April 26, 2013.

(6) ceasing retail sales in Argentina and winding down all of its operations there.

In addition, upon learning of the misconduct RL promptly—within two weeks—reported the violations to the SEC and the Justice Department, voluntarily and expeditiously produced documents and transcripts from interviews (translated into English), and otherwise cooperated in investigations by both. RL even made its overseas witnesses available for SEC interviews and brought them to the U.S.

> ***"The challenges RL encountered in Argentina are similar to those encountered by many companies operating internationally, as general counsel and compliance officers everywhere well know."***

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 non-prosecution agreements with both the SEC and the Justice Department. In sum, RL agreed to pay more than $700,000 in disgorgement and interest to the SEC, and $882,000 in penalties to the DOJ. These amounts are not insignificant, but they are significantly better than the company might otherwise have faced for a five-year bribery scheme involving hundreds of thousands of dollars. Most important, the company will not face charges and can now put the matter behind it.

This is not the first time the government has gone out of its way to encourage cooperation and praise robust compliance programs. In 2012 the SEC and the Justice Department publicly declined to bring enforcement actions against Morgan Stanley MS -0.09% after one of its employees bribed a Chinese government official in violation of the FCPA. That decision was the result, in large part, of 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 in the case.

The lesson to be learned from RL's recent experience is that a vigilant (re)assessment of one's anticorruption policies and swift action and cooperation when any misconduct is discovered will continue to be the height of fashion—and function—regarding the FCPA.