

**RALPH LAUREN SETTLES FOREIGN CORRUPT PRACTICES ACT ALLEGATIONS
WITH FIRST-EVER SEC NON-PROSECUTION AGREEMENT IN AN FCPA CASE**

On April 22, 2013, Ralph Lauren Corporation (“Ralph Lauren”) settled Foreign Corrupt Practices Act (“FCPA”) allegations with the Department of Justice (“DOJ”) and Securities & Exchange Commission (“SEC”). The case, which involved alleged bribes to customs officials in Argentina, is notable because the company settled the allegations with two Non-Prosecution Agreements (“NPAs”)—one with the DOJ and one with the SEC. It is the first FCPA case to be settled by the SEC with an NPA.

Allegations

The Ralph Lauren settlement arose from alleged customs issues in Argentina, where the company operated an indirect, wholly owned subsidiary, PRL S.R.L. (“RL Argentina”). From around 2004 to approximately 2009, RL Argentina and its customs broker allegedly made payments to government officials to assist the company in improperly obtaining the paperwork necessary for goods to clear customs, to permit customs clearance without the necessary paperwork, to permit the clearance of prohibited items, and to avoid customs inspections.

After making the payments, RL Argentina’s customs broker allegedly submitted invoices to RL Argentina’s General Manager (or others who reported to the General Manager) seeking reimbursement of the customs broker’s expenses. These invoices included line items for “Loading and Delivery Expenses” and “Stamp Tax/Label Tax,” which were purportedly used to disguise improper payments to government officials. RL Argentina personnel allegedly knew the true purpose of these expenses, but nonetheless approved them for reimbursement. In total, RL Argentina allegedly paid approximately \$580,000 in improper payments between 2004 and 2009.

In addition to making payments to customs officials, RL Argentina also allegedly provided or authorized several gifts to Argentine officials to secure the importation of products into Argentina. These gifts included perfume, dresses, and handbags valued at between \$400 and \$14,000 per item.

According to the DOJ NPA, in the five years in which RL Argentina was allegedly involved in the scheme, Ralph Lauren did not have an anti-corruption compliance program and did not provide any anti-corruption training or oversight with respect to RL Argentina. However, according to the SEC NPA, Ralph Lauren implemented a comprehensive anti-corruption program in or around February 2010 and thereafter discovered the issue when several employees raised concerns about the company’s customs broker. In response to the issues raised by employees, Ralph Lauren conducted an internal investigation, discovered the improper payments, and reported the issue to the SEC and DOJ.

Settlement

Under the NPAs, Ralph Lauren agreed to pay \$734,846 to the SEC and \$882,000 to the DOJ in fines, disgorgement, and prejudgment interest. In the DOJ NPA, Ralph Lauren agreed to a reporting requirement under which the company must self-report FCPA issues over a two-year period and submit two annual reports of its compliance program.

As noted above, the settlement is the first FCPA case to be settled by the SEC with an NPA. The SEC press release on the settlement indicates that the SEC agreed to the NPA “due to the company’s prompt reporting of the violations on its own initiative, the completeness of the information it provided, and its extensive, thorough, and real-time cooperation with the SEC’s investigation.”

According to the SEC release, Ralph Lauren’s cooperation “saved the agency substantial time and resources ordinarily consumed in investigations of comparable conduct,” and the SEC wanted to make clear that it will “confer substantial and tangible benefits on companies that respond appropriately to violations and cooperate fully with the SEC.” In Ralph Lauren’s case, its cooperation included:

- Reporting preliminary findings of its internal investigation to the SEC staff within two weeks of discovering the illegal payments and gifts;
- Voluntarily and expeditiously producing documents;
- Providing English-language translations of documents to the SEC staff;
- Summarizing witness interviews that the company’s investigators conducted overseas; and
- Making overseas witnesses available for SEC staff interviews and bringing witnesses to the United States.

Ralph Lauren also took various remedial measures, including (1) conducting new compliance training, (2) terminating employment and business arrangements with all individuals involved in the wrongdoing, (3) strengthening its internal controls and procedures for third-party due diligence, and (4) conducting a risk assessment of its major operations worldwide to identify other compliance problems (the risk assessment identified no further violations). The company also ceased its operations in Argentina.

SEC Policy on NPAs

The SEC announced that it would begin considering NPAs in January 2010 as part of its Enforcement Cooperation Initiative. The *SEC Enforcement Manual* (Section 6.2.4) specifies that an NPA “is a written agreement between the Commission and a potential cooperating individual or company, entered in limited and appropriate circumstances, that provides that the Commission will not pursue an enforcement action against the individual or company if the individual or company agrees to, among other things”:

1. Cooperate truthfully and fully in the Commission's investigation and related enforcement actions; and
2. Comply, under certain circumstances, with express undertakings, which include agreeing to cooperate truthfully and fully in investigations and related enforcement proceedings, and making agreed-upon disgorgement and penalty payments.

If the agreement is violated, the SEC staff retains its ability to recommend an enforcement action. NPAs must be approved by the Commission.

According to the *SEC Enforcement Manual*, to determine whether an NPA is appropriate, the SEC must conduct a "cooperation analysis" using the factors identified in Section 6.1 of the Enforcement Manual. For companies, these factors are described in greater detail in the SEC's Seaboard Report (available at <http://www.sec.gov/litigation/investreport/34-44969.htm>). The factors include:

- Self-policing prior to the discovery of the misconduct, including establishing effective compliance procedures and an appropriate tone at the top;
- Self-reporting misconduct when it is discovered, including conducting a thorough review of the nature, extent, origins, and consequences of the misconduct, and promptly, completely, and effectively disclosing the misconduct to the public, to regulatory agencies, and to self-regulatory organizations;
- Remediation, including dismissing or appropriately disciplining wrongdoers, modifying and improving internal controls and procedures to prevent recurrence of the misconduct, and appropriately compensating those adversely affected; and
- Cooperation with law enforcement authorities, including providing the SEC staff with all information relevant to the underlying violations and the company's remedial efforts.

In addition, in deciding whether an NPA is appropriate, the SEC staff is instructed to consider:

- Whether the individual or company has entered into or is likely to enter into a plea agreement with criminal prosecutors that will require them to cooperate in the SEC's investigation and related enforcement actions; and
- Whether other means of obtaining the desired cooperation are available and are likely to be timely and effective.

Discussion

The SEC was likely motivated to enter into the NPA in the Ralph Lauren case in substantial part to reward Ralph Lauren for its cooperation.

Given that this is the first SEC NPA issued in an FCPA case, it is difficult to determine the circumstances under which the SEC will agree to NPAs in other cases. However, based on this precedent, companies will likely argue in favor of NPAs where the factors specified in the *SEC Enforcement Manual* are met—particularly where the company has instituted a strong

compliance program and where the conduct in question is relatively contained in scope. To the extent that companies also take the measures identified in the Ralph Lauren settlement, the possibility of obtaining an SEC NPA may increase.

The Ralph Lauren settlement also highlights the continued risks that companies face in handling customs issues, particularly in Argentina. Many FCPA settlements have involved customs issues, and Argentina has proven to be a particularly problematic country for importers.

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