

April 9, 2015

Foreign Corrupt Practices Act Alert

FLIR Systems Agrees to Pay \$9.5 Million to Settle SEC Charges of Violating the FCPA by Providing Gifts and Personal Travel to Saudi Arabian Officials

SUMMARY

On April 8, 2015, the U.S. Securities and Exchange Commission issued a cease and desist order pursuant to which FLIR Systems, Inc. agreed to pay \$8.5 million in disgorgement and prejudgment interest and a \$1 million civil penalty to settle charges that the company violated the anti-bribery, books and records, and internal control provisions of the Foreign Corrupt Practices Act. According to the SEC, FLIR employees provided Saudi Arabia Ministry of Interior (MOI) officials with personal travel and gifts between 2008 and 2010, in connection with business opportunities that resulted in profits of over \$7 million. The SEC further alleged that FLIR falsely recorded the improper expenses in its books and records, and that FLIR's internal controls were insufficient to detect and prevent them. The SEC previously had charged two FLIR employees with FCPA violations relating to this conduct. FLIR consented to the SEC's order without admitting or denying the findings.

BACKGROUND AND DISCUSSION

In November 2008, FLIR and the MOI entered into a contract for the supply of binoculars that was subject to a requirement that the FLIR binoculars pass an MOI "Factory Acceptance Test." Two FLIR employees arranged to send MOI officials with decision-making authority over the testing on a "world tour," including stops in Casablanca, Paris, Dubai, and Beirut. These trips lacked a legitimate business purpose.

FLIR employees also arranged for MOI officials to take a weekend trip to New York City at FLIR's expense and paid for additional leisure activities in connection with an inspection trip to a FLIR facility in Boston. FLIR employees also gave expensive watches to the MOI officials.

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The SEC also alleged that FLIR, acting through a partner, paid for nine officials from the Egyptian Ministry of Defense to take a leisure trip to Paris in connection with a Factory Acceptance Test at FLIR's Stockholm facility. FLIR reimbursed the partner for the majority of the officials' travel expenses "based upon cursory invoices that were submitted without supporting documentation."

FLIR personnel improperly recorded the travel expenses and gifts as "business expenses" in FLIR's books and records and created false documents reflecting lower costs for the travel and gifts. FLIR employees also used a foreign travel agent to represent falsely that the MOI officials had paid their own travel costs, and to conceal the true cost of the watches from FLIR's finance department.

Following the equipment inspection in Boston, the MOI gave its permission for FLIR to ship the binoculars. The MOI later placed an order for additional binoculars for an approximate price of \$1.2 million. In total, FLIR earned over \$7 million in profits in connection with its sales of binoculars to the MOI.

FLIR had a code of conduct and an anti-bribery policy during the relevant period. In addition, FLIR's policies required employees to "accurately and honestly" record information in FLIR's books and records. However, FLIR had minimal internal controls governing the provision of travel or gifts by its foreign sales office, and it had no policies or controls concerning the use of foreign travel agencies. In November 2014, the SEC issued a cease and desist order against two FLIR employees in connection with a settlement with the two employees relating to the conduct summarized in the order's findings.

FLIR became aware of the improper travel and gifts when its foreign travel agent submitted a complaint letter to FLIR in November 2010. FLIR responded by conducting an internal investigation and self-reporting its findings to the SEC. FLIR also undertook significant remedial measures that included terminating employees and vendors involved in the misconduct, expanding its policies and employee training programs, and implementing a gift policy. FLIR is in the process of enhancing its foreign travel approval system, including by requiring Legal Department approval of all non-employee travel and subjecting all travel agencies acting on FLIR's behalf to FCPA due diligence and training.

The SEC's order charges that FLIR violated the anti-bribery provisions of Section 30A of the Securities Exchange Act of 1934 and the books and records and internal controls provisions of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and requires FLIR to cease and desist from any further violation of the books and records and internal controls provisions. FLIR consented to the order without admitting or denying the findings and agreed to pay disgorgement of \$7,534,000, prejudgment interest of \$970,584 and a penalty of \$1 million for a total of \$9,504,584. The order also requires FLIR to report to the SEC staff periodically, at no less than nine-month intervals during a two-year term, the status of its compliance review of its overseas operations and the status of its remediation and implementation of compliance measures and to report promptly to the SEC staff any credible evidence of an FCPA violation discovered during the two-year period.

IMPLICATIONS

The settlement of the FLIR action highlights the need for companies to do more than merely create policies and procedures concerning expense reimbursement, travel, and entertainment. Rather, companies must also ensure that their policies and procedures are fully implemented, well-functioning, and reasonably able to detect and prevent violations. Companies subject to the FCPA should be aware that US authorities may find violations of the FCPA, even if a company has expressly prohibited the conduct at issue, if the US authorities conclude that the company has not taken active steps to ensure that its personnel in fact comply with the company's policies, procedures, and controls.

The FLIR settlement also underscores the benefits that companies can receive when they voluntarily report FCPA violations to the US authorities, cooperate with any investigation, and undertake remedial measures. It is likely that the SEC's relatively small \$1 million penalty resulted from FLIR's proactive conduct in this regard.

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CONTACTS

New York

Nicolas Bourtin	+1-212-558-3920	bourtinn@sullcrom.com
Justin J. DeCamp	+1-212-558-1688	decampj@sullcrom.com
Theodore Edelman	+1-212-558-3436	edelmant@sullcrom.com
Robert J. Giuffra Jr.	+1-212-558-3121	giuffrar@sullcrom.com
John L. Hardiman	+1-212-558-4070	hardimanj@sullcrom.com
Steven R. Peikin	+1-212-558-7228	peikins@sullcrom.com
Karen Patton Seymour	+1-212-558-3196	seymourk@sullcrom.com
Samuel W. Seymour	+1-212-558-3156	seymours@sullcrom.com
Alexander J. Willscher	+1-212-558-4104	willschera@sullcrom.com

Washington, D.C.

Daryl A. Libow	+1-202-956-7650	libowd@sullcrom.com
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Palo Alto

Brendan P. Cullen	+1-650-461-5650	cullenb@sullcrom.com
Laura Kabler Oswell	+1-650-461-5679	oswelll@sullcrom.com
