

March 2, 2016

Foreign Corrupt Practices Act Alert

Olympus Corp. of the Americas and Olympus Subsidiary Agree to Pay \$646 Million and Qualcomm Incorporated Agrees to Pay \$7.5 Million to Resolve Allegations of FCPA Violations and Related Charges

Olympus Settlements

The Department of Justice (“DOJ”) announced settlements yesterday with Olympus Corp. of the Americas (“Olympus”) and an Olympus subsidiary, Olympus Latin America Inc. (“OLA”). The companies entered into separate deferred prosecution agreements (“DPA”) with the DOJ, and Olympus also entered into a civil settlement agreement with the DOJ’s Civil Division. In connection with the settlements, Olympus agreed to pay criminal and civil penalties totaling \$623.2 million to resolve claims that Olympus made improper kickback payments to U.S. doctors and hospitals in violation of the Anti-Kickback Statute and federal and state False Claims Acts. OLA agreed to pay a criminal penalty of \$22.8 million to resolve claims that OLA violated the anti-bribery provisions of the Foreign Corrupt Practices Act (“FCPA”) by making improper payments to employees of government-owned health care facilities in Central and South America to induce those employees to purchase medical equipment from OLA on behalf of the facilities.

According to the DOJ, from 2006-2011, Olympus made kickback and other types of payments, including improper grants, travel and entertainment expenses, and gifts, to U.S. doctors, hospitals, and other health care providers to induce them to purchase Olympus medical and surgical equipment. The DOJ alleges that Olympus realized more than \$600 million in revenue and \$230 million in gross profits from these purchases. The DOJ further alleges that during the 2006-2011 time period, Olympus had inadequate training and compliance programs, including the absence of any official compliance position until 2009.

In connection with the OLA settlement, the DOJ alleges that, from 2006-2011, OLA provided employees of health care facilities in Central and South America with a total of nearly \$3 million in cash, free travel,

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discounted or free medical devices, and other benefits in order to induce the employees to purchase medical equipment from OLA. The DOJ alleges that OLA delivered the improper benefits primarily through “training centers” that ostensibly were designed to educate and train health care practitioners, but that in fact were used to provide improper benefits to health care practitioners employed at government-owned health care facilities or who were members of public tender boards. The DOJ asserts that OLA hired these health care practitioners to manage the training centers and paid them inflated salaries and provided various side benefits, such as free travel, that were intended to induce them to acquire or retain OLA products and technologies. According to the DPA, OLA took affirmative steps to hide the true nature and intent of these payments. The DOJ alleges that OLA realized more than \$7.5 million in profits as a result of these improper payments.

Under the terms of the respective DPAs, Olympus and OLA accepted responsibility for the conduct and admitted the truth of the allegations against them. The DPAs require Olympus and OLA to retain a compliance monitor for three years (the same individual will serve as the monitor for both companies), and to implement certain new or enhanced compliance policies and procedures. The DPA with OLA states that OLA did not timely disclose the violations to the DOJ, but that the DOJ reduced the potential penalty by 20% in recognition of OLA’s cooperation, which included conducting an extensive internal investigation, translating numerous foreign language documents and collecting, analyzing and organizing voluminous evidence. The DPA with Olympus does not indicate whether or not Olympus voluntarily disclosed the violations at issue in that case. Additionally, the civil portion of the Olympus settlement resolves False Claims Acts charges brought in a lawsuit by the former chief compliance officer of Olympus. That individual will receive a portion of the settlement amount totaling more than \$50 million.

Qualcomm Settlement

In a separate settlement announced yesterday with the Securities and Exchange Commission (“SEC”), Qualcomm Incorporated (“Qualcomm”) – a NASDAQ Global Select Market listed company – agreed to pay \$7.5 million to resolve charges that it violated the books and records, internal controls, and anti-bribery provisions of the FCPA by hiring relatives of, and providing gifts, travel, and entertainment to, Chinese officials to induce them to adopt Qualcomm’s technology for use in mobile telephone products. The matter was resolved through an order instituting cease-and-desist proceedings in which Qualcomm did not admit or deny the SEC’s findings.

According to the SEC’s order, from at least 2002-2012, Qualcomm and certain unnamed company subsidiaries provided improper benefits to employees of Chinese government agencies with regulatory authority relating to telecommunications in technology, as well as to employees of Chinese state-owned telecommunications enterprises, in order to facilitate and expand the adoption of Qualcomm telecommunications products in China. Specifically, the SEC alleges that Qualcomm hired relatives of the employees of state-owned enterprises for internships and other positions despite the fact that in

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certain cases the individuals did not meet the requirements for the positions. Qualcomm also provided Chinese officials and their family members with meals, entertainment, and other gifts, including event tickets and sightseeing trips that had no legitimate business purpose and were designed to encourage the officials to use their influence to encourage adoption of Qualcomm's technology. The SEC alleges that these payments were not accurately recorded in Qualcomm's books and records, and Qualcomm failed to provide appropriate training to its employees regarding FCPA requirements. According to the SEC, these deficiencies were widespread across Qualcomm's operations and involved Qualcomm's San Francisco headquarters. Neither the order nor the SEC's accompanying press release indicates whether Qualcomm voluntarily disclosed the alleged violations or the extent to which Qualcomm cooperated with the investigation. Under the terms of the order, Qualcomm is required to provide the SEC with periodic reports for two years regarding its remediation and compliance enhancement efforts.

Key Takeaways

The OLA and Qualcomm settlements provide the latest examples of the need for companies with operations in higher-risk overseas jurisdictions to scrutinize carefully the conduct of employees and representatives there, especially with regard to the provisions of gifts and entertainment to officials, hiring practices, and the creation of unusual business arrangements, such as the training centers at issue in the OLA settlement. The Olympus settlement serves as a reminder that the potential for, and legal and compliance risks of, domestic corruption can be as severe to a company as overseas corruption, and that regulators have various statutory tools that enable them to pursue and severely sanction violations, including with respect to payments to private companies and individuals. That settlement also highlights the risks that companies face from allegations by whistleblowers, including the possibility that those allegations may be aired before a company can disclose suspected violations to the authorities. In addition, the OLA and Qualcomm actions reinforce the U.S. authorities' focus on the need for timely and complete disclosure and cooperation in connection with actual or suspected FCPA violations. The OLA settlement, like the recent settlements between PTC Inc. and the SEC and DOJ, indicates, however, that a company may be eligible for some penalty reduction even if it has not voluntarily disclosed the potential misconduct to regulators, by providing thorough and meaningful cooperation with the ensuing investigation.

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