

DOJ and SEC Announce Filing of FCPA Enforcement Action Against Broker-Dealer Executives

April 29, 2014

Continuing a flurry of recent enforcement activity under the U.S. Foreign Corrupt Practices Act (“FCPA”), the U.S. Department of Justice (“DOJ”) has brought criminal charges against the former CEO and managing partner of Direct Access Partners in connection with alleged bribes paid to a representative of the Venezuelan Economic and Social Development Bank (“BANDES”). The fifteen-count indictment charges the defendants with violations of both the FCPA and the Travel Act, as well as money laundering and conspiracy. Both individuals have pleaded not guilty. In a parallel action, the U.S. Securities and Exchange Commission (“SEC”) filed charges against the same individuals seeking civil penalties and disgorgement of ill-gotten gains. Both actions follow earlier enforcement actions by DOJ and the SEC against other individuals associated with the alleged bribery scheme, which resulted in guilty pleas.

Background

According to an indictment unsealed on April 14, 2014, Benito Chinaea and Joseph DeMeneses, who were the CEO and managing partner of a New York-based broker-dealer (known to be now-defunct firm Direct Access Partners (the “Firm”)), as well as others, operated a bribery scheme pursuant to which “millions of dollars” in payments were made to Maria de los Angeles Gonzalez de Hernandez (“Gonzalez”), a representative of BANDES, the state-owned and -controlled economic development bank of Venezuela. Specifically, from 2008 to 2012, payments were made to Gonzalez, who oversaw BANDES’s trading abroad, in exchange for her directing BANDES business to the Firm and authorizing BANDES to execute bond trades with the Firm.

The indictment alleges that Chinaea, DeMeneses, and others caused the Firm to charge BANDES mark-ups and/or mark-downs on the market price for various fixed-income instruments, generating more than \$60 million in commissions. A portion of this revenue was kicked back to Gonzalez, and the remainder divided among Chinaea, DeMeneses, and others. In order to conceal the scheme from regulators and other authorities, these individuals made payments to third-party intermediaries, designated as “foreign finders” or “foreign associates,” which would then secretly route funds to offshore accounts Gonzalez maintained in Switzerland. When certain members of the alleged conspiracy became concerned about this method of concealment, Chinaea, DeMeneses, and other Firm employees decided to hire another involved individual as a Firm employee, so that funds could be paid to him as purported salary and bonuses.

Chinaea and DeMeneses are the fifth and sixth individuals to be charged in connection with the foregoing scheme. In August and November 2013, four individuals—including Gonzalez—pleaded guilty in federal court to various charges of conspiracy to violate the FCPA and the Travel Act, and/or to commit money laundering, as well as substantive counts of these offenses. In May and June 2013, the SEC also filed complaints against various individuals involved in the scheme, alleging fraud and other claims. The SEC also amended its complaint to add Chinaea and DeMeneses as defendants. In the meantime, Chinaea and DeMeneses have entered pleas of not guilty in the criminal action. Trial has been set for February 2015.

Observations

Several aspects of the foregoing enforcement action are noteworthy as exemplifying recent themes in FCPA enforcement.

- **Prosecution of Individuals.** The government's charges demonstrate that both DOJ and the SEC are keenly focused on bringing action against individuals associated with bribery schemes. According to DOJ's release announcing the prosecution of China and DeMeneses, Acting Assistant Attorney General David A. O'Neil stated: "Today's charges show once again that we will aggressively pursue individual executives, all the way up the corporate ladder, when they try to bribe their way ahead of the competition." Additionally, even though the SEC has not charged any individual with FCPA violations (given that the Firm was not an issuer), it has filed other claims against various individuals for their participation in the bribery.
- **Non-FCPA Charges in Bribery Matters.** As noted, DOJ's charges were premised not only on the FCPA, but also violations of the Travel Act and Anti-Money Laundering statutes. This is in keeping with recent statements by DOJ, including former Acting Assistant Attorney General Mythili Raman, who [remarked](#) earlier this year that recent cases illustrate that DOJ is attacking foreign corruption by charging individuals and companies using a wide range of federal criminal statutes, including by charging wire fraud, Travel Act violations, money laundering and obstruction of justice.
- **Heightened Enforcement Activity.** In contrast to the relatively "quiet" period of FCPA enforcement activity toward the end of 2013, the actions against China and DeMeneses are one of multiple enforcement actions and/or settlements by U.S. authorities announced in the last several weeks alone. In March 2014, DOJ [announced](#) a settlement with Japanese trading company Marubeni Corp. arising out of alleged bribery of Indonesian government officials. Additionally, earlier this month, DOJ [announced](#) the unsealing of a criminal indictment against six individuals alleged to have participated in a conspiracy to bribe Indian officials to obtain mining licenses. Finally, earlier this month, [DOJ](#) and the [SEC](#) announced the settlement of FCPA bribery charges against technology company Hewlett-Packard Co. ("HP") arising out of conduct of HP subsidiaries in Poland, Russia, and Mexico.

DOJ's release announcing the prosecution can be found [here](#).

The SEC's release announcing the civil charges against China and DeMeneses can be found [here](#).

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