

## Tenaris reaches \$78 million FCPA resolution with the SEC

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Last week, the SEC announced charges against Tenaris for violating the FCPA. The resolution, which included a payment of \$78 million, is yet another follow-on case involving the Brazilian state-owned oil company (Petrobras) bribery scandal.

On June 3, 2022, the Securities and Exchange Commission (SEC or the Commission) announced a \$78 million resolution with Tenaris S.A., a global steel pipe product manufacturer and supplier charged with violating the anti-bribery, books and records and internal accounting controls provisions of the Foreign Corrupt Practices Act (FCPA). The resolution results from a subsidiary's participation in an alleged bribery scheme aimed at securing and maintaining business with the Brazilian state-owned entity (SOE) Petrobras. Notably, the SEC appears to have proceeded under an agency theory of liability, imputing anti-bribery liability of the subsidiary to the parent company, and allowed the company to resolve by neither admitting nor denying the resolution. In the wake of consistent messaging by the SEC and other government enforcement agencies, the SEC highlighted prior resolutions with Tenaris as a relevant factor in its resolution. It also appears that the SEC will be the only enforcement agency to bring a case here, as there was no joint announcement or resolution with the Department of Justice or other authorities.

### Background

The SEC's resolution with Tenaris, a Luxembourg-based company, stems from an alleged scheme in which the company's agents and employees bribed a Brazilian government official to obtain and retain business from the SOE Petrobras. According to the SEC order, companies affiliated with Tenaris' controlling shareholder funded \$10.4 million in bribes on behalf of Tenaris' Brazilian subsidiary, Confab Industrial S.A. (Confab), between 2008 and 2013. To increase sales, a Confab agent entered into an agreement with a Brazilian government official to persuade Petrobras to waive an international tender process for certain contracts, leaving Confab the preferred party. Tenaris' Brazilian subsidiary acquired more than \$1 billion in contracts with Petrobras during the period when the alleged scheme took place. Transactions associated with the scheme were inaccurately reflected in Confab's books and records. Tenaris, which controlled Confab, consolidated Confab's books and records into Tenaris' for the purpose of SEC filings.

### Resolution

Under the terms of the resolution, Tenaris agreed to pay more than \$78 million in disgorgement, prejudgment interest and civil penalties. In addition, Tenaris agreed to periodically report to the SEC for a two-year period on a variety of issues, including the status of its remediation and implementation of compliance measures related to the effectiveness of the anti-corruption policies, procedures, practices, internal accounting controls, recordkeeping and financing reporting processes. The order further obligates Tenaris to conduct formal reviews of and submit written reports on its FCPA and anti-corruption remediation efforts. Tenaris consented to the SEC's order without admitting or denying the findings that it violated the anti-bribery, books and records and internal accounting controls provisions of the FCPA.

With respect to the accounting provision violations, the SEC order notes that Tenaris failed to devise and maintain an adequate system of internal accounting controls to detect and prevent the payment of bribes in spite of known risks and

prior government resolutions: Tenaris was previously the subject of a Non-Prosecution Agreement (NPA) with the Department of Justice and a Deferred Prosecution Agreement (DPA) with the SEC following bribes to obtain business from an Uzbek SOE; Tenaris' Brazilian operations also presented known corruption risks.

## Key takeaways

There are several key takeaways from last week's resolution. First, the SEC, which only enforces conduct by issuers, appears to have relied on an agency theory of liability to reach the parent-issuer. Typically where there is no direct involvement by the parent-issuer in the corrupt conduct, the SEC would resolve on a violation of the accounting provisions of the FCPA. Here, however, the SEC resolved based on anti-bribery violations by the parent-issuer, grounded in the conduct by Confab, and relied on the following conclusory statement regarding the agency relationship: "Tenaris controlled Confab and consolidated Confab's results of operations into its financial statements."

Next, it is also noteworthy that, unlike many recent resolutions where U.S. authorities coordinated with relevant foreign authorities, the SEC brought a solitary action. Indeed, in a company statement last week, Tenaris announced that the DOJ had informed Tenaris that it had "closed its parallel inquiry into this matter" without further action. Moreover, despite Tenaris' prior disclosure that Brazilian, Italian and Swiss authorities were investigating its activities in Brazil, last week's order was not issued in parallel with any foreign authority; thus far, only individuals have been subject to prosecution by foreign authorities. Accordingly, it appears that this may be an SEC-only resolution, or, at the very least, that the SEC decided to proceed without any certainty about a resolution by a foreign authority.

Third, the resolution provides an example of how U.S. authorities will be seizing upon prior resolutions in connection with new misconduct. The order highlights Tenaris' prior resolutions with U.S. authorities. In 2011, Tenaris entered into an NPA and DPA with DOJ and the SEC, respectively, in relation to bribes Tenaris paid to obtain business from an SOE in Uzbekistan. On the one hand, the fact that last week's order notes that Tenaris failed to devise and maintain an adequate system of internal controls in spite of its prior resolutions suggests that these prior resolutions impacted the SEC's decision to proceed. On the other hand, despite this prior misconduct, the DOJ nevertheless chose to close its case, suggesting that prior misconduct will not always be a relevant factor for criminal enforcement.

Finally, that Tenaris neither admitted to nor denied the SEC's findings indicates that the Commission is still willing to reach resolutions under such terms, despite strong rhetoric from SEC leadership about how the agency will be requiring more admissions from companies.

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