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With No Civil Penalty, Goodyear FCPA Settlement Highlights Benefits of Cooperation and Remedial Actions

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The Securities & Exchange Commission ("SEC") announced last week that it charged The Goodyear Tire & Rubber Company ("Goodyear") with violating the Foreign Corrupt Practices Act ("FCPA"), and that Goodyear agreed to pay more than $16 million to settle the SEC's charges. The SEC did not, however, impose any civil penalty, stressing Goodyear's self-reporting of the violation, cooperation with the SEC's investigation, and prompt remedial actions. The case highlights steps a company can take after learning of an FCPA violation to minimize sanctions, but it also serves as a useful reminder that parent companies must carefully monitor their subsidiaries and operations in high-risk jurisdictions to avoid potential liability under the FCPA.

BACKGROUND

According to the SEC, from 2007 to 2011, a Goodyear subsidiary in Kenya, Treadsetters Tyres Ltd. ("Treadsetters"), and a subsidiary in Angola, Trentyre Angola Lda. ("Trentyre"), routinely paid bribes to employees of government-owned entities, private companies, and other local authorities to secure tire sales. The two Goodyear subsidiaries made over $3.2 million in illicit payments, and the bribery payments were falsely recorded as legitimate business expenses. Both the payments and the resulting revenue were consolidated into Goodyear's financial reports.

The SEC charged that Goodyear did not prevent or detect the bribes at either subsidiary because Goodyear failed to implement adequate FCPA compliance training and controls at the subsidiaries. The SEC further charged that Goodyear did not detect the bribes because it failed to conduct adequate due diligence when it acquired Treadsetters in 2006.

On February 24, 2015, the SEC initiated settled cease-and-desist proceedings, finding that Goodyear violated the books and records and internal control provisions of the federal securities laws: Sections 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934. Under the terms of the settlement, Goodyear must pay over $14 million in disgorgement of illicit profits it received as a result of the bribes, plus an additional $2.1 million in prejudgment interest. Notably, the SEC did not impose any civil penalty. The settlement requires Goodyear to report its FCPA remediation efforts to the SEC for a three-year period, but does not require that Goodyear retain an independent compliance monitor for any portion of the three-year period. Goodyear neither admitted nor denied the SEC's findings.

REWARDING GOODYEAR'S COOPERATION AND REMEDIAL ACTIONS WITH NO CIVIL PENALTY

The SEC expressly stated it was not imposing a civil penalty based upon Goodyear's cooperation in the investigation, and the settlement highlights Goodyear's extensive cooperation and remedial efforts, including the following:

- After learning about the bribes, Goodyear promptly halted the improper payments and self-reported to the SEC;
- Goodyear started an internal investigation and voluntarily produced documents and reports from that internal investigation to the SEC;
- Goodyear disciplined executives with oversight responsibilities for failing to ensure that adequate FCPA compliance training and controls were in place at the company's subsidiaries in sub-Saharan Africa;
- Goodyear divested its ownership interest in Treadsetters, and was taking steps to divest its interest in Trentyre; and
- Goodyear made improvements to its compliance program globally. These included creating a new senior position of Vice President of Compliance and Ethics, which raised the compliance function within the company.

The settlement reaffirms that companies may be able to avoid civil penalties—as well as expensive and intrusive third-party compliance monitors—by self-reporting, active cooperation, and remedial actions.

PARENT COMPANIES BEWARE

The settlement further illustrates the SEC's broad view of parent-subsidiary liability under the civil accounting provisions of the FCPA. The SEC can—and does—use the FCPA's accounting provisions to reach corrupt conduct taking place entirely outside the United States. In this case, the SEC did not charge Goodyear under the anti-bribery provisions of the FCPA, and it appears that there would not have been jurisdiction to do so. Specifically, the SEC did not allege any connections between the conduct at the foreign subsidiaries and the parent company in the U.S. In addition, there was no allegation that the parent company knew in advance or played any role in the alleged violations. However, as shown in this case, for an issuer whose stock trades on U.S. exchanges, the accounting provisions of the FCPA do not require the same territorial nexus to the U.S. that the anti-bribery provisions require. This case continues the trend of the SEC using the accounting provisions to reach conduct that it couldn't otherwise reach under the anti-bribery provisions, and reaffirms that global companies can face exposure for the actions of their subsidiaries even when they have no knowledge of, or direct involvement with, the subsidiaries' conduct.

KEY TAKEAWAYS

- In its press release, the SEC went to great lengths to trumpet the concrete credit that Goodyear was given based on its cooperation in the investigation. As a result, companies finding themselves with an FCPA issue will want to consider carefully whether, and how, to work with the agency.
- This case serves as a very useful reminder that parent companies must carefully monitor their subsidiaries and operations in high-risk jurisdictions. Although the SEC has significant jurisdictional issues to overcome in charging bribery if all of the improper conduct occurred overseas with no U.S. connection, the SEC always has jurisdiction over the books and records, and public financial reports, of a company traded on a domestic exchange.

- Finally, this case also outlines some of the potential pitfalls of acquiring subsidiaries in foreign countries. Particularly in high-risk jurisdictions, significant thought and effort must go into pre-merger due diligence, and post-merger due diligence and remediation, to protect against violations of the FCPA.

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