

CLIENT ALERT

SEC Settlement Highlights Risks for Corporate Executives Under the FCPA

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On December 11, Robert W. Philip, the former President, CEO, and Chairman of the Board of Schnitzer Steel Industries agreed to pay more than \$250,000 to settle charges with the Securities and Exchange Commission that he violated the U.S. Foreign Corrupt Practices Act. Last year, Schnitzer Steel and its Korean subsidiary paid more than \$15 million and entered into, respectively, a deferred prosecution agreement and corporate guilty plea to settle related charges by the SEC and the U.S. Department of Justice. Then in June 2007, Si Chan Wooh, another SSI executive, pled guilty and settled with the SEC for his involvement in the scheme which involved bribes and kickbacks to government and privately owned steel mills in China, Japan and Korea.

The SEC alleged that Philip violated the FCPA by (a) authorizing bribes consisting of cash and gifts to foreign officials to influence the purchase of SSI scrap metal, (b) allowing SSI to inaccurately record the payments on its books and records, and (c) aiding and abetting SSI's failure to establish adequate internal controls, including an FCPA training program and controls to detect and prevent violations of the law. This latest SEC settlement is important in several respects:

First, the settlement again demonstrates U.S. regulators' emphasis on pursuing individual corporate executives for FCPA violations. Philip was charged for his knowledge and authorization of bribes by employees of the Korean subsidiary.

Second, the case underscores the SEC's broad interpretation of "government official" under the statute. Some bribes were made to managers of steel mills in China, but because the mills were "at least partially government-owned," the managers are considered government officials by the SEC. Furthermore, some of the alleged bribes were paid to managers of *privately*-owned mills. Even though these managers were not government officials, Philip was held responsible for SSI's failure to account properly for the payments. Companies and executives can face significant risks under the accounting provisions of the FCPA, even where there is no allegation of bribes to foreign officials.

Third, the case demonstrates the risks individual executives face for failing to ensure that their companies have sufficient policies and procedures in place to prevent and detect violations. In this case, Philip was penalized individually for the company's failure to implement an adequate FCPA compliance program.

This latest enforcement action sends a strong message to corporate executives that they can and will be held responsible for the acts and omissions of company employees around the world. It is essential that executives set the correct "tone at the top" by establishing and requiring a comprehensive FCPA compliance and training program sufficient to detect and prevent bribes and to ensure the accuracy of the company's books and records.

The SEC Complaint may be viewed at:

<http://www.sec.gov/litigation/complaints/2007/comp20397.pdf>

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Aryeh S. Portnoy

Partner – Washington, D.C.

Phone: +1 202.624.2806

Email: aportnoy@crowell.com

Thomas A. Hanusik

Partner – Washington, D.C.

Phone: +1 202.624.2530

Email: thanusik@crowell.com

Alan W. H. Gourley

Partner – Washington, D.C.

Phone: +1 202.624.2561

Email: agourley@crowell.com