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SEC Adopts Aggressive Approach to FCPA Violations

The SEC recently took another step in its increased Foreign Corrupt Practices Act (FCPA) enforcement efforts with the creation of a unit dedicated solely to investigating the alleged bribery of foreign officials. According to SEC Enforcement Director Robert Khuzami, the Enforcement Division's recent activity in this area prompted the development of the FCPA unit, which will seek to develop new and proactive approaches to detecting violations of the FCPA and work more closely with foreign regulatory counterparts to develop a global approach to prosecution of these violations.

A recent settled enforcement action, *SEC v. Nature's Sunshine Products, Inc., Douglas Faggioli and Craig D. Huff*, Case No. 09CV672 (D. Utah, Filed July 31, 2009), underscores the SEC's newly aggressive approach to FCPA violations. In *Nature's Sunshine*, the SEC made the rare decision to also charge the company with violating anti-fraud provisions of federal securities law, as well as charging the two executives, in their capacity as control persons, with violating the internal controls and books and records provisions of the FCPA.

The charges against the individuals appear to stem solely from their supervisory positions at the company, not any involvement in the wrongdoing. In fact, the SEC has not made any allegations that the two individuals participated in or had knowledge of any of the alleged bribery or other improper conduct.

According to the SEC release, the charges against Nature's Sunshine and its two senior executives, Faggioli and Huff, related to "cash payments made in 2000 and 2001 by the Brazilian subsidiary of NSP, a manufacturer of nutritional and personal care products, to import unregistered products into Brazil and the subsequent falsification of its books and records to conceal the payments." As noted above, these two individuals were charged as control persons pursuant to Section 20(a) of the Securities and Exchange Act of 1934 for violating the books and records and internal controls provisions of federal securities law. Control person liability does not necessarily require any allegation that the defendants acted negligently or in bad faith. The prosecution of these individuals should be especially troubling for senior executives or any other individuals who have similar supervisory responsibility of a public company's books and records.

For more information on changes in the SEC's enforcement program, see the August 8, 2009, Katten Client Advisory, [SEC Enforcement Director Robert Khuzami Announces Revamping of Enforcement Program](#).

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