

Bruker Pays \$2.4 Million to Settle FCPA Allegations Relating to Payments to Employees of Chinese SOEs

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Anti-Corruption

On December 15, 2014, Bruker Corporation (“Bruker”) agreed to pay nearly \$2.4 million to settle allegations brought by the U.S. Securities and Exchange Commission (“[SEC](#)”) that Bruker violated the US Foreign Corrupt Practices Act (“FCPA”) by bribing individuals employed by state-owned entities (“SOEs”) in China. This settlement, as set out in the [cease-and-desist order](#) filed by the SEC (the “SEC Order”), resolves allegations that, from at least 2005 through 2011, Bruker violated the books and records provisions of the FCPA. To settle the allegations, Bruker agreed to pay a civil penalty of \$375,000 and another \$2 million in disgorgement and prejudgment interest.

Alleged Misconduct

Bruker is a publicly traded corporation, headquartered in Massachusetts, USA, that manufactures high-performance scientific instruments, such as infrared spectrometers, x-ray devices, and microscopes.

The facts alleged in the SEC Order focus on Bruker’s payments for “leisure travel” and compensation under certain “Collaboration Agreements.” The order alleges that Bruker’s China offices funded leisure trips—sometimes following business-related travel and, at other times, wholly separate from any business purpose—to obtain business from unnamed SOEs in China . Bruker spent almost \$120,000 on at least 17 such trips. The trips included travel to the United States, the Czech Republic, Norway, Sweden, France, Germany, Switzerland, and Italy for sightseeing, shopping, and other leisure activities. Many of the officials who took part in these trips were responsible for authorizing or were otherwise involved in purchasing products from Bruker. The SEC Order also alleges that Bruker entered into 12 “Collaboration Agreements” under which more than \$111,000 was paid to Chinese SOE officials even though no work product was provided or even called for. Some of these agreements were made directly with SOEs, while others were entered into directly with particular SOE employees who were involved in purchasing products from Bruker.

The SEC Order alleged that Bruker’s lack of “adequate internal controls” allowed these violations to persist. Notably, none of the company’s anti-corruption materials, including FCPA training presentations, ethics presentations, FCPA policies, the company’s Code of Conduct, and the employee reporting hotline, were available in local languages, including Chinese. The failure to make such translations limited the policies’ effectiveness. In addition, Bruker maintained no independent compliance staff in China, and senior employees there abused the unsupervised control they had over the compliance process by approving non-business related travel and the suspicious Collaboration Agreements.

Consequences

To settle the SEC claims, Bruker entered into a settlement agreement under which Bruker must pay a \$375,000 civil penalty and \$2 million in disgorgement and prejudgment interest to the SEC.

Implications

This settlement agreement reinforces lessons learned from other FCPA and anti-corruption cases, including the need to:

- establish and ensure compliance with approval processes for nonemployee travel;
- ensure that detailed scope of works are inserted into research, collaboration, or consulting agreements, and ensure that the work product is actually provided;
- provide anti-corruption trainings and policies in local languages to employees of foreign subsidiaries;
- make reporting hotlines accessible to employees of foreign subsidiaries in local languages; and
- monitor and audit discretionary authority delegated to foreign subsidiaries to ensure independent compliance judgments.

If you have any questions concerning the material discussed in this client alert, please contact the following China-focused members of our [Global Anti-Corruption Practice Group](#):

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