Written by Nick Sanders
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In November, 2014, we **wrote** a rather glowing article about the company FLIR Systems and how its internal controls and proactive employee training acted to prevent it from being sanctioned by the SEC when two of its employees "engaged in a doozy of an FCPA violation." You can read the details of the Foreign Corrupt Payments Act violations in our original story.

We wrote "Because of [its] investments, FLIR was not held liable (at least so far) when two of its employees made bribes and offered gratuities to five officials of the Saudi government."

Yeah, about that. We may have been a bit hasty.

In April, 2015, it was **reported** that FLIR had agreed to pay $9.5 million in order to settle bribery charges filed by the SEC.

The SEC alleged that FLIR "earned more than $7 million in profits from sales influenced by the gifts" made by its two employees to the Saudi officials, according to the story.

Rather than laud the company's internal controls and employee awareness training sessions, as we did, the SEC stated—

"*FLIR's deficient financial controls failed to identify and stop the activities of employees who served as de facto travel agents for influential foreign officials to travel around the world on the company's dime."*

The SEC made that statement even though it also said that FLIR detected the conduct, reported the wrongdoing, and "cooperated in the investigation."

In addition to paying $9.5 million, FLIR Systems must "report to the SEC on its efforts to comply with [the FCPA requirements] for a period of two years," according to the article.

In fact, a $9.5 million fine is pretty small potatoes if the company really made $7 million in profit from its inadvertent wrongdoing. Certainly it should not be allowed to profit from a violation of the FCPA's requirements. On the other hand, we don't get what else the company could have done.

The company trained its employees about the requirements of the FCPA. It diligently reviewed expense transactions, seeking to detect FCPA violations. When it detected anomalous activity, it diligently investigated. When it confirmed a problem, it self-reported to the authorities. When the authorities investigated, the company cooperated. What step is missing?

None. There is no step missing. The company did everything it was supposed to do.

Given all that, what does that final aspect of the settlement mean—the part where the company must report on its efforts to comply with the FCPA for two years? This is one of those head-scratchers where we just don't get it. If the company is already doing everything it should be doing, and has a history of self-reporting violations, then what possible benefit is there to anybody from adding that final aspect to the settlement agreement?

Those are going be mighty short reports, we think. Here's an imaginary example of what one quarterly report to the SEC might look like:

DATE: Today

PERIOD COVERED: Fiscal Quarter ending Yesterday

PREPARED BY: FLIR Systems General Counsel, typed by GC's Executive Assistant

SUMMARY OF ACTIVITY IN REPORTING PERIOD:

- We trained 12 new employees in the requirements of the FCPA.
- We conducted annual refresher training for 200 employees via Computer Based Training (CBT).
- We reviewed 120 expense reports submitted by employees working abroad.
- Two of the expense reports reviewed had an inadequate description of activities.
- We investigated the two expense reports. We required that both be resubmitted with adequate descriptions. They were.

That is all.

So, basically, FLIR has to prepare that type of report and submit it to the SEC eight times (assuming a quarterly report). Where's the value in that to anybody, including the SEC and the taxpayers who fund the SEC's enforcement efforts?

Anyway, despite our head-scratching, that's the story on FLIR Systems, a company where two employees engaged in wrongdoing despite their training. A company that would seem to have done everything reasonably expected of it (except, perhaps, hiring the wrong employees).

Did the investments made in internal controls and employee training actually pay-off in this instance? Well, the picture is not as clear as we'd like, but we still think the answer is yes. Although the company had to disgorge its profits from the tainted sales, in fact the additional fine was relatively trivial. And despite our skepticism at the value added by two years' worth of additional SEC reporting, we don't think that reporting will be all that onerous for the company. So, yes. It was better for FLIR to have invested in internal controls and employee training, because we believe things would have gone much worse for the company if it had not done so.