
Periodic SEC Examination at Broker-Dealer Leads to Criminal FCPA, Money Laundering Charges Against Two Employees

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On May 7, 2013, federal prosecutors in the Southern District of New York unsealed criminal Foreign Corrupt Practices Act (“FCPA”), money laundering, and Travel Act charges against two employees of Direct Access Partners, LLC (“DAP”), a New York based broker-dealer, in connection with a “web of bribery and corruption” involving Banco de Desarrollo Económico y Social de Venezuela (“BANDES”), the state-owned economic development bank of Venezuela. Prosecutors also charged Maria Gonzales, the Vice President of Finance at BANDES—and a “foreign official” under the FCPA—with conspiring to violate and violating the Travel Act. In addition, DOJ brought a civil forfeiture action seeking the forfeiture of bank account assets and properties held by individuals associated with scheme. In releasing news of the charges, Acting Assistant Attorney General for the Criminal Division Mythili Raman stated that this case is a “wake-up call to anyone in the financial services industry who thinks that bribery is the way to get ahead.” Manhattan U.S. Attorney Preet Bharara noted that “[the SDNY] along with all of our federal partners, is committed to holding individuals who violate the Foreign Corrupt Practices Act to account.”¹ The SEC separately brought related, non-FCPA securities fraud charges against the two DAP employees and two other individuals involved in the “massive kick-back scheme” involving illicit bribes and “pay to play” arrangements with Gonzales.² The DOJ and SEC public statements did not say what, if any, action might be taken against DAP.

The charges arose out of a periodic SEC examination of DAP and its Global Markets Group (“DAP Global”). According to the SEC and DOJ, the SEC examination led to the discovery of the fraud, which resulted in somewhere between \$3.6 million and \$9.1 million in improper payments to Gonzales, who oversaw BANDES’ trading with DAP. The alleged fraud was funded by inflating the mark-ups and mark-downs DAP Global took on riskless principal trade executions in Venezuelan sovereign or state-sponsored bonds for BANDES, resulting in significant transaction fees for DAP Global. Some portion of these fees was then purportedly paid as a kick-back to Gonzales through a variety of sham “foreign finders” and shell companies. According to the government’s charging papers, it appears that the two named DAP Global employees, and possibly others, conspired to keep some amount of these fees for their own personal benefit.

Alleged Red-flags Around DAP Global's Relationship with BANDES Included:

- Payments to unregistered “foreign finders” who were not involved in introducing BANDES to DAP in violation of FINRA and SEC regulations.
- Unusually high commissions to those foreign finders (one was paid \$8 million in a three-month period in 2009).
- Evidence of the bribery scheme in company emails to client and use of personal email accounts for work-related business.
- Mark-ups and mark-downs that regularly exceeded 5% with no justification.
- Over 60 internal fictitious “wash trades” used to conceal trades with BANDES from DAP’s clearing broker.
- Inter-positioning another broker-dealer to conceal trades with BANDES from DAP’s clearing broker.
- Two major intra-day “round-trip” transactions resulting in a \$10.5 million profit to DAP and a correlative loss for BANDES.

Key Compliance Takeaways:

- This appears to be the first time the government has publicly noted that FCPA charges arose out of a periodic SEC examination of a registered entity. This may cause the SEC to increase its focus on corruption-related issues in the course of these routine exams.
- This is one of just a handful of occasions in which DOJ has brought criminal charges against a foreign national who qualifies as a “foreign official” under the FCPA in connection with an FCPA prosecution of other entities or individuals who are actually covered by the statute. It may be particularly meaningful here, where the foreign government official in question was in a position to regularly interface with many broker-dealers and financial institutions.
- These charges are consistent with a burgeoning trend of DOJ bringing concomitant money-laundering charges based on a predicate bribery scheme. This increasingly regular pairing puts a fine point on the need for financial services firms to coordinate their anti-corruption and AML controls.
- Though the risks of dealing with sovereign wealth funds have been much discussed in connection with the government’s particular scrutiny in this area (see [WilmerHale's 2012 FCPA Year-in-Review client alert](#)), this case crystalizes the risks associated with dealing with other state-owned institutional clients like central banks and economic development banks. It also highlights the risks in using foreign finders to attract fixed income brokerage clients, where much focus has previously centered on the use of finders in the investment banking context. Financial services firms should focus compliance control efforts around these risks, and should consider imposing heightened monitoring around these types of client relationships.
- Although DAP is a New York based broker-dealer, much of the alleged misconduct was directed out of the Miami branch office of the firm. This emphasizes the need for financial services firms to drill down centralized compliance policies, procedures and training to its branch locations, and to ensure that those branches are adequately supervised. In this

regard, firms should consider the incremental impact of in-person trainings.

- The alleged lack of controls and/or subversion of DAP's control environment demonstrate that, where possible, supervisory reviews of communications, mark-ups and other trade-related materials should be calibrated to corruption risks associated with the particular client at issue.

The SDNY criminal complaint can be found [here](#), the SDNY civil forfeiture complaint [here](#), and the SEC complaint [here](#).

¹<http://www.justice.gov/opa/pr/2013/May/13-crm-515.html>

²<http://www.sec.gov/news/press/2013/2013-84.htm>

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