Securities Regulation Daily Wrap Up, TOP STORY—Och-Ziff will pay nearly $200 million in SEC's first-ever FCPA action against a hedge fund, (Sept. 29, 2016)

Securities Regulation Daily Wrap Up

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By Jacquelyn Leatherman and John Filar Atwood

Och-Ziff Capital Management and its executives have agreed to pay hefty monetary penalties for violating the Foreign Corrupt Practices Act (FCPA) by paying bribes to high-level officials in Africa. The illegal activity came to light during the SEC's sweep of sovereign wealth funds, according to Enforcement Director Andrew Ceresney, and resulted in the Commission's first FCPA case against a hedge fund and financial services firm.

Allegations. The SEC said in a news release that Och-Ziff used intermediaries, agents, and business partners to pay bribes to government officials in Libya, including to one of the sons of Muammar Gaddafi, Libya's leader at the time. The Commission claimed that the bribes induced the Libyan Investment Authority sovereign wealth fund to invest in Och-Ziff managed funds. Other bribes were paid to secure mining rights and influence officials in Libya, Chad, Niger, Guinea, and the Democratic Republic of the Congo, the SEC said.

The SEC's order found that Och-Ziff executives, including CEO Daniel Och and chief financial officer Joel Frank, ignored red flags and corruption risks and permitted the illicit transactions to proceed. The Commission also found that Och-Ziff's books and records did not accurately describe the true purposes for which managed investor funds were used, and the company did not have adequate internal controls to detect or prevent the bribes.

Exchange Act violations. According to the Commission, Och-Ziff violated the anti-bribery, books and records, and internal controls provisions of the Exchange Act. In addition, affiliated investment adviser OZ Management LP violated the anti-fraud provisions of the Investment Advisers Act, the SEC stated. Och-Ziff and OZ Management agreed to pay disgorgement and interest of more than $199 million.

The order also found that Och caused violations in two Och-Ziff transactions in the Democratic Republic of the Congo. He agreed to pay $2.1 million in disgorgement and interest to settle the charges. Although the order found that Frank also caused violations in Och-Ziff transactions in Libya and the Democratic Republic of the Congo, his penalty will be assessed at a later date. Och and Frank consented to the SEC's order without admitting or denying the findings.

Significant case. During a news conference to discuss the case, Ceresney said it was significant for a number of reasons. First, it focuses on the responsibilities of CEOs and other senior officers in FCPA cases. In addition, it is the first FCPA case against a hedge fund and financial services firm and the second case arising from a sweep on sovereign wealth funds, which began about five years ago, he said.

When asked why the CEO did not receive an officer and director bar for his actions, Ceresney said it is not an available remedy under the books and records violations that were alleged. However, he pointed to the disgorgement that Och agreed to pay to settle the charges and extensive undertakings the hedge fund agreed to, which include the creation of a business risk committee, the designation of a chief compliance officer, and the imposition of a monitor for three years to ensure that the hedge fund adopts and implements appropriate policies, procedures, and internal controls to prevent future violations. He also explained that the censures for Och-Ziff and OZ Management were available for violations of the Investor Advisers Act but are not available for FCPA violations.

When asked why Frank's sanctions and penalties would be assessed in the future, Ceresney said he agreed to additional proceedings to determine what if any civil penalties would apply based on his cooperation in the

ongoing investigation. Ceresney would not comment on the two individuals who are not named in the order, other than to note that the investigation is continuing. He did confirm that Gaddafi's son was considered a government official based on his role in the Libyan government.

DOJ proceeding. As part of the settlement agreement, Och-Ziff acknowledged that it expected to enter into a deferred prosecution agreement with the Justice Department in a parallel criminal proceeding. In addition, subsidiary OZ Africa Management GP LLC agreed to enter into a plea agreement. According to the SEC, Och-Ziff is expected to pay a criminal penalty of $213 million.

Companies: Och-Ziff Capital Management Group; OZ Management LP

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