

ALERTS

BHP Billiton Settles with SEC for \$25 Million for Providing Foreign Officials with Luxury Travel to Olympics

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The U.S. Securities and Exchange Commission (“SEC”) on May 20, 2015 announced a settlement with global resources company BHP Billiton over allegations that BHP Billiton violated the Foreign Corrupt Practices Act (“FCPA”) by providing luxury travel packages to foreign government officials and their spouses at the 2008 Beijing Olympic Games. The settlement, imposed through a Cease-and-Desist Order (“Order”), underscores the importance of adequate safeguards and internal controls when providing hospitality to foreign government officials.

According to the Order, in December 2005, BHP Billiton became an official sponsor of the 2008 Beijing Olympics. In exchange for providing financial support and raw materials for the Olympic medals, BHP Billiton won certain privileges, including the use of the Olympic trademark and priority access to tickets, hospitality suites and accommodations in Beijing. To take advantage of its sponsor status and preferred access, BHP Billiton established a sponsorship program “to strengthen relationships with key local and global stakeholders, e.g.: Government Ministers, Suppliers and Customers.” The sponsorship program entailed inviting foreign government officials and stakeholders at state-owned enterprises (hereinafter, “foreign officials”) to attend the Olympic Games and offering them hospitality packages valued at between \$12,000 and \$16,000, which included business class airfare, luxury hotel rooms, meals, event tickets and sightseeing excursions. Each business division selected certain foreign officials as potential invitees, and the company ranked invitees in order of importance, with those in “Category A” considered

“most critical to the business.” Ultimately, BHP Billiton invited 176 foreign officials plus 102 spouses to attend the Olympic Games.

According to the Order, BHP Billiton recognized the corruption risk inherent in inviting the government officials to attend the Beijing Olympics and relied on its existing anti-corruption compliance program and an Olympic-specific internal process to address the risk. For example, BHP Billiton formed a steering committee to oversee the sponsorship program and formed an ethics panel subcommittee to provide ethics and compliance advice with respect to implementation of the hospitality program. In addition, for each official invited, business employees completed hospitality applications with detailed questions regarding the current business relationship between the company and the potential invitee. Finally, the hospitality applications were approved by the relevant business division or country president and included reminders about the anti-bribery provisions in the company’s guide to business conduct.

Though BHP had certain controls in place, the SEC found that such controls were “insufficient” and “did not adequately address the anti-bribery risks associated with offering expensive travel and entertainment packages to government officials.” Specifically, the SEC found that BHP Billiton violated the FCPA in five ways. First, the company did not require independent legal or compliance review of hospitality applications by someone outside the business sector submitting the application, and it incorrectly communicated that such applications would be subject to scrutiny by the ethics subcommittee. Second, some of the hospitality applications were not accurate or complete and failed to properly identify whether the company had business dealings in which the government official was involved. Third, the company did not provide its employees any training or guidance on how to complete the hospitality applications or evaluate whether an invitation to a foreign official complied with the company’s anti-corruption policy. Fourth, BHP Billiton did not institute a process to update the hospitality applications to account for any changed conditions or relationships. And fifth, the company had no process in place to consider whether a government official invited by one business division was involved in business dealings with other divisions.

Ultimately, the SEC found that BHP Billiton violated the books and records and internal controls provisions of the FCPA. (Although a dual-listed company headquartered in Australia and England, BHP Billiton qualifies as a U.S. issuer, subject to the books and records and internal controls

provisions of the FCPA, because its shares are traded on the New York Stock Exchange.) Without admitting or denying the SEC's allegations, BHP Billiton consented to the entry of an Order Instituting Cease-and-Desist Proceedings and agreed to pay a civil monetary penalty totaling \$25,000,000. The settlement takes into account BHP Billiton's "significant cooperation" with the investigation and "significant remedial actions," including: (1) the creation of a compliance group within the legal department that is independent from the business units; (2) a review of its anti-corruption compliance program; (3) the enhancement of its financial and auditing controls; (4) an extensive employee training on anti-corruption issues; and (5) an overhaul of its processes for conducting internal investigations of potential violations of anti-corruption laws.

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the following attorneys: *Barry A. Bohrer, Adam S. Hoffinger, Betty Santangelo, Gary Stein or Peter H. White.*

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**Betty
Santangelo**
New York



**Peter
White**
Of Counsel
Washington, DC

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