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## Latest crackdown on relationship hiring practices underscores the importance of compliance calibration

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The Securities and Exchange Commission (SEC) recently announced a nearly \$6.5 million settlement to resolve allegations that a major bank's hiring practices in the APAC region violated the Foreign Corrupt Practices Act (FCPA). Here is what you need to know.

### The key facts

The SEC alleged that the bank's APAC operations used relationship hiring practices to gain business advantage with government and non-government clients and prospective clients. On multiple occasions, APAC executives purportedly received requests from client contacts to hire individuals into the bank's internship programs or for permanent positions. According to the SEC, senior bankers recognized the business opportunity associated with these requests, and many—if not all—of those business opportunities were realized after the relationship hires were made. Most of the business success the SEC tied to those hiring practices was with state-owned or controlled entities.

On paper, the bank had it right. Under the FCPA, businesses are prohibited from providing, with corrupt intent, anything of value to foreign officials to gain or retain business advantage. "Anything of value" is broadly construed and encompasses a wide range of monetary and non-monetary considerations. And the bank appropriately accounted for such broad-sweep, including, among other things, "internships and offers of employment within the definition of 'anything of value'" as part of its anti-corruption policies and prohibitions.

But in practice, the SEC believed that those prohibitions were ignored, even by the bank's compliance personnel. Indeed, the SEC highlighted multiple instances of relationship hiring practices, allegedly deployed as part of efforts to obtain and retain business from state-owned and private businesses in APAC, that it believed ran afoul of the bank's own anti-bribery and corruption policies and the FCPA. Examples described in the SEC's order included China and Korea bankers pushing for hiring unqualified candidates solely for the purpose of the business opportunities with state-owned enterprises and private business resulting from that hiring. These practices persisted even in the face of the bank's own internal scrutiny of, and tightened compliance around, its hiring.

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But as reports surfaced about competitors under investigation for similar conduct, the bank finally clamped down and self-reported its relationship hiring misconduct to authorities.

## The key takeaways

1. **Review global hiring practices.** The hiring practices described in the SEC's order are not uncommon, even within the United States. Companies ought to carefully review their hiring practices throughout their global operations to ensure they are not relying on relationship hires as a means of obtaining or retaining business.
2. **Review anti-corruption policy definitions.** Recognizing that courts and regulators have interpreted—and will continue to interpret—“anything of value” broadly, companies should periodically revisit their respective policy definitions used to describe “anything of value” to confirm the language used is not too narrow.
3. **Global anti-corruption policies are effective only if personnel are trained about their applicability to local corruption risks.** Time and again, the Department of Justice and SEC remind that there is no one-size-fits-all anti-corruption policy for foreign business operations. The expectation remains that companies will understand their risk profiles throughout the world, and ensure their compliance policies account for local corruption risks. Practically speaking, however, as this SEC matter confirms, even when the policy is in place and captures the offending conduct, the lack of knowledge and training about policy application to real-life scenarios facing companies' global business units will routinely end in policy and FCPA violations. Companies must constantly refine their anti-corruption compliance training regimes to ensure stakeholders understand policy applicability to the local corruption risks they face.
4. **Creating specific or localized anti-corruption policies may be required.** The bank opted to enhance its oversight over APAC relationship hiring practices through implementation of a specific anti-corruption/relationship hiring policy. That policy sets out the control requirements for hiring practices risk, provides for targeted training, and establishes electronic resources to communicate the new policies, processes, and emerging risks. In reality, it is often challenging to operate under a fragmented anti-corruption policy regime. Yet there are circumstances where business climate in a particular region demands it. Creating issue-specific or localized anti-corruption policies may temporarily resolve problematic behavior. The concern with that approach, however, is a compliance team's ability to maintain oversight and conformance with that issue-specific or localized policy even after the originating problem is long put to rest.
5. **Businesses should promptly conduct internal investigations when misconduct is suspected.** While the relationship hiring described by the SEC was troubling, the bank did things exactly the right way when it learned of possible unlawful practices. Among other things, the bank conducted a thorough internal investigation to determine the full scope of its problem and, even before the SEC conducted its own investigation, undertook broad remedial efforts that included the termination of the employees involved in the conduct at issue and enhancements to its compliance programs. By taking such decisive action, the bank was able to demonstrate to the SEC its commitment to compliance, and thereby negotiate a resolution with the agency that was much more beneficial than it may otherwise have faced.

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