

## When a Rose is not a Rose but an FCPA Violation

We recently wrote about gifts and entertainment under the Foreign Corrupt Practices Act (FCPA). To view the prior article, [click here](#). This week the Securities and Exchange Commission (SEC) announced an enforcement action involving Veraz Networks. The enforcement action generally revolved around what one Veraz employee termed in an email as “the gift scheme”. Initially we would note that here in the US it is never a good idea to label any plan of action as a “scheme” and then to put it in an email as such labeling will always draw someone’s scrutiny. The gift scheme was made with the purpose to “improperly influence” foreign officials who were employees of Chinese and Vietnamese government-controlled telecommunications companies to award or continue to do business with Veraz.

Veraz, or its agents with the approval of Veraz, paid for the following amounts as gifts and entertainment:

1. **\$4,500** for gifts to the officials of the Chinese telecom company.
2. An ***unreported amount*** for gifts to and entertainment for the officials of the Vietnamese telecom company.
3. An unreported amount for ***flowers*** to the wife of the CEO of the Vietnamese telecom company.
4. Finally, Veraz failed to keep accurate books and records of all of the above.

The penalty reportedly paid by Veraz was relatively small for current FCPA standards. The FCPA Blog reported that Veraz paid a penalty of only \$300,000. The FCPA Professor noted in his posting on Veraz that in its Form 10Q filing for the period ending March 31, 2010, Veraz reported that it had shelled out \$3.0 million to investigate and handle the FCPA compliance issues. So once again, the costs to investigate a matter are much larger than the final penalty. However, Veraz may still consider itself well off as there has been no report that Veraz agreed to a monitor or that a Department of Justice criminal action is in the offing.

This enforcement action provides some additional guidance for what types of gifts and entertainment can be provided without one running afoul of the FCPA as this area is open to vagueness under the FCPA because there are no clear guidelines in the FCPA or the legislative history. While prohibiting payment of any money, or thing of value, to foreign officials to obtain or retain business, the FCPA arguably permits incurring certain expenses on behalf of these same officials. There is no *de minimis* provision set forth in the statute.

The presentation of a gift or business entertainment expense can constitute a violation of the FCPA if this is coupled with the corrupt intent to obtain or retain business. Under the FCPA, the following affirmative defense regarding the payment of gifts exists:

[it] shall be an affirmative defense [that] the payment, gift, offer or promise of anything of value that was made, was a *reasonable and bona fide* expenditure ... and was directly related to...the promotion, demonstration, or explanation of products or services; or...the execution or performance of a contract with a foreign government or agency thereof. *15 U.S.C. § 78dd-1(c)(2)(A)-(B)*.

However the Veraz case does provide direct and clear guidance in one area which has not been previously explored unexplored. It appears that a company should absolutely refrain from giving flowers to the wife of a company's CEO. In other words, do not call FTD and clearly sometimes a rose is not just a rose when it comes to FCPA enforcement.

For a copy of the SEC Complaint, [click here](#).