

How to Turn a Season Around?

One of the more enjoyable aspects of a baseball season is its length. The fortunes of a team can ebb and flow over the course of a 162 games season. So even if a team starts out abysmally, it can pick things up over the course of the spring and summer and give some hope to the team in September and perhaps even into the next year. With this in mind, we posted the question in an April post as to who would have the better season, the Houston Astros, who started the season at 0-8, or Hewlett-Packard (HP) which, at that time, had announced that it was under an investigation for alleged Foreign Corrupt Practices Act (FCPA) violations regarding the sale of computer hardware in Russia. I'm happy to report that after an anemic start the Astros have played .500 ball, going 71-71 and even have one of the better records in the National League since the All-Star Game. However, the season may not be going along in such an upbeat manner for HP.

As reported on Friday in the Wall Street Journal (WSJ), the HP bribery probe has widened and HP, itself, has announced that investigators have "now expanded their investigations beyond that particular transaction." This original investigation pertained to an investigation of allegations that HP, through a German subsidiary, paid bribes to certain Russian officials to secure a contract to deliver hardware into Russia. The contract was estimated to be worth approximately \$44.5 million and the alleged bribes paid were approximately \$10.9 million. In a 10-Q filing made with the Securities and Exchange Commission (SEC) last week, HP stated that the investigation has now expanded into transactions "in Russia and in the Commonwealth of Independent States sub region dating back to 2000." The WSJ noted that US public companies, such as HP, are only required to report FCPA investigations in SEC filings if they "are material for investors."

The announcement of an expanded FCPA investigation comes on the heels of HP's much publicized ouster of (former) CEO Mark Hurd over issues relating to an allegation of sexual harassment and expense report issues. This public spectacle has become even messier as HP has now brought suit against Hurd to prevent him from violating a Non-Compete Agreement by going to work for his new employer Oracle and to prevent Hurd from releasing any confidential information to Oracle in his new position as President and a member of the Board of Directors at Oracle.

However, just as the Astros appear to have changed the momentum of their season by making striking changes in their line-up and by trading two of their older veterans, Roy Oswalt and Lance Berkman, for younger players, HP might use all of their recent events to improve its FCPA compliance and ethics outlook and we have previously opined that the departure of Mark Hurd might present HP with an opportunity to re-emphasize its "Tone at the Top". The 10-Q filing might now present HP with an opportunity to evaluate its overall FCPA compliance and ethics policies, procedures and training programs. As reported by the WSJ in April, the transaction which led to these FCPA investigations was discovered through an external audit by German tax authorities who noted its suspicious nature. Indeed, one of the witnesses in the investigation of the underlying transaction stated of the deal "It didn't make sense..." HP may now wish to thoroughly investigate

internally, and with the assistance of outside experts, the effectiveness of its internal monitoring and reporting procedures.

Just as mid-course corrections during a baseball season can show positive benefits later in the season, such actions can also show positive benefits throughout the course of an FCPA investigation and enforcement action. As we recently noted in the recent Department of Justice (DOJ) and SEC announcement of the settlement of the Alliance One and Universal Corporation FCPA enforcement actions, company's can take specific steps during the course of an investigation to reduce their overall liability for FCPA violations by taking specific steps.

So simply because a team starts out at 0-8 there may be a way to turn things around. If the Astros go 13-6 the rest of September they will finish the season over .500. The question we have for HP is whether it will make any mid-course corrections in its FCPA compliance and ethics program to help it during this most challenging of seasons?

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