**Don't Lose the Forest for the Trees:**
**Failure to Spot Macro Accounting Issues that Violate GAAP**
**A Review of Highlighted SEC Activity in 2011 and 2012**

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In the quest to review a company's compliance with Generally Accepted Accounting Principles ("GAAP"), internal counsel and auditors should not forget to assess macro business trends to determine where a company may be most vulnerable to micro accounting improprieties. Recent federal lawsuits and administrative proceedings brought by the U.S. Securities and Exchange Commission ("SEC") should remind us that failure to do so can impede compliance with GAAP and the SEC's regulatory framework, as well as cause the downfall of individual careers and the company itself.

**BANKS: Loan Losses**

Toxic mortgages have received much attention over the past few years, but bank loan losses more generally have also been a hot button issue given the large number of bank failures during the financial turmoil from 2009 through 2011 and the subsequent regulatory fallout.[1] Under GAAP, "a loan is impaired when . . . it is probable a creditor will be unable to collect all amounts due according to the contractual terms of the loan agreement."[2] If a loan is impaired, the reporting entity must determine the measure of impairment and record this amount in an

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[1] In January and February 2012, the Federal Deposit Insurance Corporation already had reported nine institutional failures. Federal Deposit Insurance Corporation, Failures and Assistance Transactions 1980–2012, http://www2.fdic.gov/hsob/HSOBSummaryRpt.asp?begYear=1980&endYear=2012 (last visited Feb. 27, 2012). In 2011, there were 92 bank failures, 157 in 2010 and 140 in 2009, as compared to 25 in 2008. *Id.*

[2] Accounting by Creditors for Impairment of a Loan, Statement of Fin. Accounting Standards No. 114, § 8 (Fin. Accounting Standards Bd. 1993) *available at* http://www.fasb.org/cs/BlobServer?blobcol=urldata&blobtable=MungoBlobs&blobkey=id&blobwhere=1175820927999&blobheader=application%2Fpdf.

allowance of credit losses.[3] If the loan is collateral-dependent, "a creditor shall measure impairment based on the fair value of the collateral when the creditor determines that foreclosure is probable."[4]

On October 11, 2011, the SEC charged former United Commercial Bank ("UCB") and UCBH Holdings, Inc. ("UCBH") executives with misleading investors about loan losses incurred during the financial crisis in 2008 and 2009.[5] In *SEC* v. *Thomas S. Wu, Ebrahim Shabudin, Thomas T. Yu, and Craig S. On*, the SEC alleged that UCBH and UCB President and Chief Executive Officer ("CEO") Thomas Wu, UCBH and UCB Chief Operating Officer and UCB Chief Credit Officer Ebrahim Shabudin,[6] and UCB First Vice President Thomas Yu "concealed losses on loans and other assets from the bank's auditors, causing the bank's public holding company UCBH Holdings, Inc. (UCBH) to understate 2008 operating losses by at least $65 million (approximately 50 percent)."[7] At the end of 2008, UCB and UCBH reported assets of more than $13 billion, including loan assets of $8.6 billion.[8] At the end of 2009, the California Department of Financial Institutions closed the bank and appointed the Federal Deposit Insurance Corporation as receiver. According to the SEC, UCB "was one of the 10 largest bank

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[3] *See id*. at § 7 ("In addition to the allowance calculated in accordance with this Statement, a creditor should continue to recognize an allowance for credit losses necessary to comply with Statement 5.").

[4] *Id*. at § 13.

[5] *See* SEC Litigation Release No. 22121, SEC Charges Bank Executives with Hiding Millions of Dollars of Losses During 2008 Financial Crisis (Oct. 11, 2011), http://sec.gov/litigation/litreleases/2011/lr22121.htm.

[6] UCB was the primary operating subsidiary of UCBH.

[7] Litigation Release No. 22121, *supra* note 5.

[8] *See* Complaint at 5, *SEC* v. *Thomas S. Wu, et al.*, No. 11-CV-4988 (N.D. Cal. Oct. 11, 2011) *available at* http://sec.gov/litigation/complaints/2011/comp22121.pdf.

failures of the recent financial crisis, causing a loss of $2.5 billion to the FDIC's insurance fund."[9]

The complaint alleged that during 2008 and 2009, while preparing UCBH's financial statements, Wu, Shabudin and Yu learned of significantly reduced property appraisals and worthless collateral securing UCB's loans. Rather than properly reporting the changes, they (i) delayed the recording of those loan losses, (ii) hid information relating to the losses, and (iii) made misleading and false statements to UCBH's auditors, by approving memoranda containing false and misleading information. The SEC charged Wu with, among other things, "knowingly violating the antifraud provisions of Section 17(a) of the Securities Act of 1933 [(the "Securities Act")] and Section 10(b) of the Securities Exchange Act of 1934 [(the "Exchange Act")] and Rule 10b-5 thereunder."[10] Shabudin and Yu were charged with, among other things, "knowingly violating Sections 17(a)(1) and 17(a)(3) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act."[11]

In early 2008, UCB's troubled assets were managed by Yu's Special Assets Group. At weekly group meetings and through unofficial loss summaries maintained by Yu's group, Wu was made aware that collateral and bank-owned assets were significantly declining in value. "At least seven large loans were recorded in books and records of UCB at inflated values or with understated loss reserves . . . ."[12] The losses were incurred on commercial, construction and real

[9] Litigation Release No. 22121, *supra* note 5.

[10] *Id.* The SEC's complaint seeks permanent injunctive relief, a judgment barring Wu, Shabudin, and Yu from serving as officers or directors of any public company, and civil money penalties. *Id*.

[11] *Id*.

[12] *See* Complaint at 10, *SEC* v. *Thomas S. Wu, et al.*, *supra* note 8.

estate loans. Instead of properly recording the losses, Wu instructed his subordinates to delay incorporating this information into UCB and UCBH's 2008 financial statements. The SEC also alleged that Wu intended to lower UCB's reported loan loss reserves and loss allowances, thereby lowering UCBH's 2008 reported losses. On May 20, 2009, two months after UCBH filed its 2008 10-K with the SEC, the company filed a Form 8-K, disclosing that UCBH's Board Audit Committee determined that UCBH's 2008 financial statements should be restated.[13] According to the SEC, if UCBH had properly recorded the losses in accordance with GAAP, the seven loans "would have increased UCBH's reported losses by about 50 percent, from a net loss of $134 million to a net loss of $200 million."[14]

The complaint also alleged that UCBH's former Chief Financial Officer, Craig On, actively misled UCBH's external auditors, and charged On with violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.[15] On (i) provided UCBH's external auditors with documents that miscalculated the loan loss reserves; (ii) signed a management representation letter about the accuracy of the books and records he provided; (iii) responded to the auditors' requests for information regarding issues that affected the 2008 financial statements; and (iv) certified the accuracy of the 2008 10-K.[16] The SEC alleged that On "should have known" that UCBH's 2008 10-K did not accurately reflect the bank's loan loss reserve and that the financial statements did not otherwise comply with GAAP.[17] The complaint further alleged that On "failed to implement

[13] *Id.* at 6.

[14] *Id.* at 10–11.

[15] Litigation Release No. 22121, *supra* note 5.

[16] *See* Complaint at 18, *SEC* v. *Thomas S. Wu, et al.*, *supra* note 8.

[17] *See id.* at 19.

a system of internal accounting controls sufficient to ensure the accuracy of the UCBH financial statements."[18]

Like all regulated entities, UCB had designed a variety of internal policies and controls to prevent improper reporting of loan losses.[19] The policies required that losses be determined and recorded as soon as feasible, and within 30 days after an impairment had been identified. The policies further required that the (i) "value of collateral dependent loans be determined by the lowest of several valuation measures including latest appraised value and latest listing price;" and (ii) bank prepare and maintain accurate Allowance for Loan and Lease Losses documentation.[20] And, as is typical in a fraud of this magnitude, the SEC alleged that UCB and UCBH's "controls and policies were insufficient to prevent bank executives and other bank employees from delaying known losses on loans, assets, and collateral"[21] and from causing the value of UCB's assets to be misrepresented to auditors and investors.

**<u>MEDIA SERVICE PROVIDERS: Online Advertising Revenues</u>**

Just as no discussion of recent accounting enforcement actions would be complete without reference to bank loan losses, we must also address online advertising, the mechanism through which many internet platforms became some of the world's most profitable companies. Actions related to revenue recognition improprieties are still among the most active in the SEC's

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[18] *Id*. On settled with the SEC without admitting or denying the allegations. He is permanently enjoined from violating antifraud, reporting, record-keeping and internal controls provisions of the federal securities laws and agreed to pay a $150,000 penalty. Litigation Release No. 22121, *supra* note 5.

[19] *See* Complaint at 8, *SEC* v. *Thomas S. Wu, et al.*, *supra* note 8.

[20] *Id*.

[21] *Id*. at 19.

enforcement caseload.[22] Under SEC Staff Accounting Bulletin No. 104 ("SAB 104"), revenue is properly recorded when: (i) persuasive evidence of an arrangement exists, (ii) delivery of the product or service has occurred, (iii) the fee or price to be received is fixed or determinable, and (iv) the likelihood of collection and returns is reasonably assured.[23]

On September 6, 2011, the U.S. District Court for the Southern District of New York ("S.D.N.Y.") entered a final judgment against John Michael Kelly, former Chief Financial Officer of AOL Time Warner, Inc. ("AOL Time Warner"),[24] who agreed to pay disgorgement of $200,000 and a civil penalty of $60,000 to resolve the SEC's charges that he violated Sections 17(a)(2) and (3) of the Securities Act in connection with his involvement in a fraudulent scheme to overstate online advertising revenues at AOL Time Warner.[25] With the entry of this judgment, the SEC brought to conclusion its nearly four-year litigation targeting eight former

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[22] *See* PricewaterhouseCoopers LLP, 2010 Securities Litigation Study 37 (2010), *available at* http://10b5.pwc.com/PDF/NY-11-0484%20SEC%20LIT%20STUDY_V6BONLINE.PDF. Revenue recognition cases dropped from 47% of SEC cases in 2009 to 27% in 2010. Thus far in 2012, approximately 60% of the SEC's Litigation Releases relate to revenue recognition improprieties, although approximately 83% of those actions are related to one another. *See* U.S. Securities and Exchange Commission, Accounting and Auditing Enforcement Releases, http://sec.gov/divisions/enforce/friactions.shtml (last visited Feb. 27, 2012).

[23] *See* SAB 104, 17 C.F.R. Part 211 (2003), *available at* http://www.sec.gov/interps/account/sab104rev.pdf (2003) (originally issued in 1999).

[24] AOL Time Warner, Inc. was created in 2000 when America Online, Inc. ("AOL"), the iconic internet service provider, merged with Time Warner, Inc., a large media conglomerate.

[25] *See* SEC Litigation Release No. 22109, SEC Settles Litigation with Former CFO of AOL Time Warner Inc. and with Former CFO of the AOL Division (Sept. 29, 2011), http://www.sec.gov/litigation/litreleases/2011/lr22109.htm. Kelly entered into the settlement without admitting or denying the allegations. He also was permanently enjoined from future violations of those provisions of the federal securities laws.

AOL Time Warner executives for their roles in overstating the company's advertising revenue by more than $1 billion.[26]

In the SEC's May 19, 2008 complaint, the SEC alleged that from mid-2000 to mid-2002, Kelly, along with Steven E. Rindner, former senior executive in AOL's Business Affairs unit; Joseph A. Ripp, former Chief Financial Officer of the AOL Division; and Mark Wovsaniker, former AOL head of Accounting Policy, caused AOL Time Warner to improperly recognize a series of fraudulent round-trip transactions in which AOL Time Warner "funded its own advertising revenue by giving purchasers the money to buy online advertising that they did not want or need."[27]

The former executives also made false statements to investors through filings with the SEC and in public remarks and releases that included discussions of these round-trip transactions in AOL Time Warner's reported financial results. The complaint charged the executives with violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, Exchange Act Rules 10b-5 and 13b2-1, and with aiding and abetting AOL Time Warner's violations of Sections 10(b), 13(a), and 13(b)(2)(A) of the Exchange Act and Exchange Act Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13, and 13b2-1.[28] Kelly and Wovsaniker, who were both certified public

[26] *See* SEC Litigation Release No. 20586, SEC Charges Eight Former Executives of AOL Time Warner for the Company's Accounting Fraud (May 18, 2008), http://sec.gov/litigation/litreleases/2008/lr20586.htm.

[27] *Id*.

[28] *See id*. On July 19, 2010 the S.D.N.Y. entered a settled final judgment against Ripp, who, without admitting or denying the allegations in the complaint, was permanently enjoined from future violations of Rule 13b2-1 promulgated under the Securities Exchange Act of 1934 and from aiding and abetting violations of Exchange Act Section 13(b)(2)(A), and agreed to pay disgorgement of $130,000 and a civil penalty of $20,000. *See* Litigation Release No. 22109, *supra* note 25.

accountants, were charged with violations of Section 13(b)(5) of the Exchange Act and Exchange Act Rule 13b2-2 for misleading the company's external auditor about the transactions.[29]

As is typical with fraudulent revenue recognition practices, the SEC alleged that the defendants used the $1 billion in fraudulent revenue to inflate AOL Time Warner's reported financial results for the period from mid-2000 to the end of 2003. To conceal the round-trip transactions, the executives structured and documented them as bona fide and arm's-length transactions, and in return, the round-trip advertisers received untargeted, less desirable advertising, with little, if any, control over its quantity, quality and content.[30] The sham transactions took three forms: (i) vendor transactions, in which AOL Time Warner agreed to pay inflated prices for, or forgo discounts on, goods and services it purchased in exchange for the vendors' purchases of online advertising in the amount of the markup or forgone discount; (ii)

[29] *See* Litigation Release No. 20586, *supra* note 26. The SEC sought injunctive relief, disgorgement, civil monetary penalties, and officer and director bars. With any scheme of this magnitude, many hands are often involved. Accordingly, also on May 19, 2008, the SEC charged four other former AOL Time Warner executives: David M. Colburn, former head of the Business Affairs unit; Eric L. Keller, former senior manager in the Business Affairs unit; James F. MacGuidwin, former Controller; and Jay B. Rappaport, former senior manager in the Business Affairs unit, with participating in the scheme to artificially inflate the company's reported online advertising revenues. *Id.* Colburn, Keller, MacGuidwin and Rappaport settled the action without admitting or denying the allegations, agreed to permanent injunctions against, among other things, future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Exchange Rules 10b-5 and 13b2-1, and agreed to pay disgorgement and prejudgment interest and civil penalties. *Id.*

[30] *See* SEC Litigation Release No. 19147, SEC Charges Time Warner with Fraud, Aiding and Abetting Frauds by Others, and Violating a Prior Cease-and-Desist Order; CFO, Controller, and Deputy Controller Charged with Causing Reporting Violations (March 21, 2005), http://sec.gov/litigation/litreleases/lr19147.htm. *See also, e.g.*, Complaint at 18, 34–35, *SEC* v. *John Michael Kelly, et al.*, 08-CV-4612 (S.D.N.Y. May 19, 2008) *available at* http://www.sec.gov/litigation/complaints/2008/comp20586_kelly.pdf (describing the lack of control for advertising purchased via round-trip transactions).

business acquisitions, in which AOL Time Warner increased the price it paid to purchase businesses in exchange for the sellers' purchase of online advertising in the amount of the increase in the purchase price; and (iii) settlements of business disputes, in which AOL Time Warner converted the settlements of business disputes and legal claims into online advertising revenue.[31]

For a company like AOL Time Warner, online advertising revenue was a key balance sheet item, and a significant way in which Wall Street analysts and investors measured the company's financial results.[32] In May 2000, before the merger with Time Warner, Inc. had closed, AOL consented to an SEC cease-and-desist order and a federal court judgment requiring the company to pay a $3.5 million penalty in connection with its accounting for advertising costs in 1995 and 1996. In 2000, however, with the dot-com boom coming to an end, and with AOL's merger with Time Warner pending, AOL's executives were under pressure to meet revenue projections, and in particular, revenue projections for online advertising. It was in response to these pressures that the executives allegedly engineered the scheme to enable AOL (and later, AOL Time Warner) to recognize purported online advertising revenue. In one example of a round-trip vendor transaction, AOL negotiated a $250 million equipment purchase from Sun Microsystems, Inc. ("Sun") as part of which Sun agreed to "buy" $37.5 million in advertising from AOL. The $37.5 million represented the amount of the forgone discount Sun had proposed to offer AOL as part of the equipment purchase. AOL executives improperly recognized the forgone discounts as advertising revenue and, at Sun's insistence, accepted free equipment from Sun in lieu of cash for the advertising. The transaction was documented in two independent

[31] Complaint at 11–12, *SEC* v. *Kelly, et al.*, *supra* note 30.

[32] *See* Litigation Release No. 20586, *supra* note 26.

contracts − an equipment contract and an advertising contract − neither of which reflected the true nature of the transaction. The advertising contract gave AOL nearly complete control over the advertising. Then, as the third quarter was nearing its close, AOL projected an advertising revenue shortfall that prompted the executives to seek Sun's permission to exceed the contractual provision that limited AOL to running $25 million of advertising in any one quarter.

**MULTINATIONAL CORPORATIONS: The Foreign Corrupt Practices Act**

The Foreign Corrupt Practices Act of 1977 (the "FCPA") was enacted to deter U.S. companies from providing improper inducements to foreign officials for the purpose of securing or maintaining a business advantage. Both the U.S. Department of Justice ("DOJ") and the SEC are responsible for enforcement of the FCPA. "The [DOJ] is responsible for all criminal enforcement and for civil enforcement of the anti-bribery provisions with respect to domestic concerns and foreign companies and nationals. The SEC is responsible for civil enforcement of the anti-bribery provisions with respect to issuers."[33] Violations of the FCPA are subject to civil penalties, including disgorgement, as well as criminal fines, and, in severe cases, imprisonment.

The FCPA consists of two parts, one proscriptive and the other prescriptive. First, the statute generally prohibits corrupt payments to any official or employee of a non-U.S. government or governmental entity (a "Foreign Official") for the purpose of obtaining or retaining business or otherwise obtaining favorable treatment in commercial matters.[34] Second,

[33] U.S. Department of Justice, Lay Person's Guide: Foreign Corrupt Practices Act Antibribery Provisions, 2, http://www.justice.gov/criminal/fraud/fcpa/docs/lay-persons-guide.pdf [hereinafter DOJ, FCPA Lay Person's Guide].

[34] *See* 15 U.S.C. §§ 78dd-1(a), 78dd-2(a), 78dd-3(a) (2004). The term "foreign official" is defined in 15 U.S.C. §§ 78dd-1(f)(1)(A), 77dd-2(h)(2)(A), and 78dd-3(f)(2)(A) as "any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of

it requires the maintenance of accurate and detailed books and records and the implementation of effective financial controls.[35]

The anti-bribery provisions prohibit any promise, offer or payment of anything of value to a Foreign Official for the purpose of obtaining or retaining business, or to otherwise influence the official's decisions or actions as a means of gaining a business advantage.[36] Any provision of value to, or for the benefit of, any Foreign Official, including any employee of a government-owned or -controlled business, for the purpose of influencing that individual, could be considered a violation of the anti-bribery provisions.[37] In addition, any payment that a company would be precluded from making directly may not be made indirectly through an agent or representative of that company, or any other intermediary, including any distributor, customs broker, joint venture partner or other third party.[38] The FCPA provides an exception to the anti-bribery provisions for facilitation payments, the purpose of which is to expedite or to secure the performance of a routine governmental action by a Foreign Official, political party, or party official,[39] and affirmative defenses if the payor demonstrates that the payment at issue (i) is legal under the written laws of the country in which it was made; or (ii) was a reasonable and bona

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any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization."

[35] See 15 U.S.C. § 78m (2004).

[36] *See* 15 U.S.C. §§ 78dd-1(a), 78dd-2(a), 78dd-3(a).

[37] *See id*.

[38] *See id*.; DOJ, FCPA Lay Person's Guide at 4.

[39] 15 U.S.C. §§ 78dd-1(b), 78dd-2(b), 78dd-3(b).

fide expenditure related to actual contracts or other business of the covered person with or in the country involved.[40]

The second component of the FCPA consists of a series of accounting and record-keeping requirements (collectively, the "books and records" provisions). Together, those provisions create an affirmative duty on the part of an issuer of securities listed in the United States and its employees and majority-owned subsidiaries to keep accurate books and records and maintain a system of effective internal controls.[41] To prove a violation of the books and records provisions, it is not necessary to prove that the improperly recorded transaction was a bribe or even material; merely proving that a transaction was improperly recorded could suffice.[42] Nor do the provisions require proof of any wrongful intent on behalf of the alleged wrongdoer in order to impose civil sanctions.[43] The FCPA also provides for criminal prosecution for knowing and/or willful violations of the books and records provisions.[44]

In October 2011, the SEC began investigating Avon Products, Inc. ("Avon") after the company's three-year internal investigation of possible FCPA violations by its employees in China, Brazil, Mexico, Argentina, India and Japan.[45] In its Form 10-Q filed for the quarter

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[40] 15 U.S.C. §§ 78dd-1(c), 78dd-2(c), 78dd-3(c).

[41] *See* 15 U.S.C. § 78m(b); U.S. Department of Justice, Foreign Corrupt Practices Act: An Overview, http://www.justice.gov/criminal/fraud/fcpa/ (last visited February 27, 2012).

[42] *See* 15 U.S.C. § 78m(b); *see e.g.*, *S.E.C.* v. *World-Wide Coin Investments, Ltd.*, 567 F. Supp. 724, 745–51 (N.D. Ga. 1983) (discussing the legislative history of the FCPA).

[43] *See e.g.*, *S.E.C.* v. *World-Wide Coin Investments, Ltd.*, 567 F. Supp. at 749.

[44] 15 U.S.C. § 78m(b)(4), (5).

[45] Joe Palazzolo, Law Blog FCPA Watch: Avon Products Discloses SEC Probe, Law Blog, Wall Street Journal (Oct. 27, 2011, 12:23 PM), http://blogs.wsj.com/law/2011/10/27/law-blog-fcpa-watch-avon-products-discloses-sec-probe/. As a result of its internal investigation, Avon fired four executives: S.K. Kao, the former general manager of Avon's Chinese unit; Jimmy Beh, the

ending March 31, 2011, Avon noted that its investigation "focused on reviewing certain expenses and books and records processes, including, but not limited to, travel, entertainment, gifts, use of third party vendors and consultants and related due diligence, joint ventures and acquisitions . . . ."[46] The SEC's investigation is focused on whether Avon violated the FCPA and whether the company improperly disclosed material information to analysts under Regulation FD in 2010 and 2011.[47]

In addition to the SEC investigation, DOJ prosecutors empanelled a grand jury in February 2012 to focus on a 2005 internal audit report that concluded that Avon employees in China may have been bribing foreign government officials, and whether Avon executives took steps to actively conceal the report's findings and the underlying conduct.[48] At the time of the audit report, Avon was in the process of trying to procure licenses to engage in door-to-door

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Chief Financial Officer of Avon China; C.Q. Sun, the former head of Corporate Affairs for China; and Ian Rossetter, the former head of Global Internal Audit and Security. Matthew Boyle and Joel Rosenblatt, Avon Products Says It Fired Four Executives Over Bribes to China Officials, Bloomberg (May 5, 2011, 5:43 AM), http://www.bloomberg.com/news/2011-05-04/avon-says-it-fired-four-executives-in-china-over-bribes.html.

[46] Avon Products, Inc., Quarterly Report (Form 10-Q) (May 3, 2011), *available at* http://www.sec.gov/Archives/edgar/data/8868/000119312511122805/d10q.htm#tx171218_14.

[47] Jessica Wohl, Avon Under Fire from Feds and Wall Street, Reuters (Oct. 27, 2011, 3:38 PM), http://www.reuters.com/article/2011/10/27/us-avon-idUSTRE79Q3Y720111027. Regulation FD "provides that when an issuer discloses material nonpublic information to certain individuals or entities . . . the issuer must make public disclosure of that information." U.S. Securities and Exchange Commission, Fair Disclosure, Regulation FD, http://www.sec.gov/answers/regfd.htm.

[48] Joe Palazzolo and Emily Glazer, Foreign Bribe Case at Avon Presented to Grand Jury, Wall Street Journal, Feb. 13, 2012, http://online.wsj.com/article/SB10001424052970203315804577209443264460570.html.

sales in China. Avon was successful in becoming the first non-Chinese company to receive such a license in 2006.[49]

In the wake of these allegations, in December 2011 Avon announced that its CEO, Andrea Jung, would transition to the role of Chairman. The company is currently searching for a new CEO.[50]

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As we think of ways to prevent and detect accounting fraud, we should not lose sight of the forest for the trees. The cases above demonstrate that even in the post Sarbanes-Oxley age of heightened vigilance, the SEC still routinely uncovers the existence of fraudulent accounting practices that affect the very core of a company's business—often ruining careers and causing the downfall of the enterprise itself. It is therefore imperative that the systems of checks and balances within a company's accounting, finance and reporting functions follow a well thought out strategy that is based on an assessment of not only the risks associated with a particular business unit, but also the business as a whole. These checks and balances should be reviewed periodically, and adjusted accordingly, to reflect changes in the company's business. Doing so will this help to ensure more efficient and effective controls, and also will signal to regulators and prosecutors the company's good-faith efforts to remain complaint with governing rules and regulations.

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[49] *Id.*

[50] Abram Brown, Avon Posts Q4 Loss Amid CEO Search and Bribery Investigation, Forbes, Feb. 14, 2012, http://www.forbes.com/sites/abrambrown/2012/02/14/avon-posts-q4-loss-amid-ceo-search-and-bribery-investigation/.