

In the Matter of Herbalife Nutrition, Ltd. (2020)

Nature of the Business.

Herbalife Nutrition, Ltd. ("Herbalife") is a direct sales company headquartered in the United States and incorporated in the Cayman Islands. Herbalife maintains common stock publicly traded on the NYSE and registered with the SEC pursuant to Section 12(b) of the Exchange Act.

Herbalife operates a wholly-owned subsidiary in China ("Herbalife China"), whose financial statements are consolidated into Herbalife's reported financial statements.

Influence to be Obtained.

According to the SEC, Herbalife, through the actions of Herbalife China, violated the FCPA's internal accounting controls and recordkeeping provisions from 2006 through 2017. According to the SEC, Herbalife China provided "improper benefits, including payments," meals, and gifts to various government officials to "facilitate [government] approval of its [direct selling] license application." Herbalife China, through its then-Managing Director and External Affairs Director, allegedly provided Chinese government officials with direct monetary payments, and allegedly "influenced government officials through lavish meals and gifts." According to the SEC, Herbalife had an internal policy limiting dinners with Chinese officials to six per year, however Herbalife China violated this policy through falsification of receipts and expense reimbursements. Herbalife China allegedly provided similar payments and benefits to other Chinese government officials in connection with "government investigations of Herbalife China [in an attempt to curtail the investigations,] and to prevent or reduce fines" issued by the government. Allegedly, Herbalife China failed to accurately record such payments on its books and records.

The SEC alleged that Herbalife China similarly provided improper benefits and payments to two state-owned media outlets to influence them to "delete negative media coverage of Herbalife China" or, in another instance, to influence them to stop its negative coverage of the company.

The SEC also alleged that Herbalife executives received internal audit reports which incorporated the Chinese internal audits showing "large expenses and [which] identified violations of Herbalife China's internal policies regarding" FCPA compliance. However, despite this, and despite certain Herbalife Board members raising concerns, the SEC alleged that that Herbalife's Director of Internal Audit dismissed the concerns in noting that such issues are "typical" and "within 'tolerance.'"

Enforcement.

On August 28, 2020, the SEC settled its enforcement action against Herbalife, recognizing Herbalife's remedial efforts, which included terminating employees involved in the scheme, and cooperating with the SEC, among other actions. Herbalife was also required to pay disgorgement of about \$58.6 million, and prejudgment interest of \$8.6 million.

Relatedly, the DOJ entered into a deferred prosecution agreement with Herbalife, pursuant to which the company agreed to pay a criminal monetary penalty of \$55,743,093.

Key Facts

Citation. *In the Matter of Herbalife Nutrition, Ltd.*, Admin. Proc. File No. 3-19948 (August 28, 2020).

Date Filed. August 28, 2020.

Country. China.

Date of Conduct. 2006 - 2017.

Amount of the Value. Not stated.

Amount of Business Related to the Payment. Not stated.

Intermediary. Third-party agents.

Foreign Official. Unnamed government officials and employees of state-owned news outlets.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. About \$67 million.

Compliance Monitor/Reporting Requirements. Three-year reporting requirement.

Related Enforcement Actions. *United States v. Herbalife Nutrition Ltd.*, 20 Cr. 00443 (GHW).

Total Combined Sanction. About \$122 million.