

No. 84-01

Date: August 16, 1984

Review Procedure Releases

The Department has reviewed a review request from an American firm which seeks to engage a foreign firm ("Marketing Representative") as its marketing representative in a foreign country. The Marketing Representative's principals are related to the head of state of the foreign country. Moreover, one of the Marketing Representative's principals personally manages certain of the head of state's private business affairs and investments.

This proposed contractual relationship has raised concerns about the application of the FCPA, and the American firm has requested a determination of the Department's present enforcement intention under the Act.

The requester has made the following representations, among others, with respect to its proposed contractual relationship with the Marketing Representative:

The Marketing Representative will represent that it will not pay or agree to pay, directly or indirectly, any funds or anything of value, on behalf of the American firm, to any public official in the foreign country for the purpose of influencing the official's official acts, or to induce the official to use his influence to the Marketing Representative's benefit. The Marketing Representative will also represent that no owner, partner, officer, director, or employee is or will become an official of the foreign government during the term of the agreement.

2. The proposed agency agreement provides that if the Marketing Representative directly or indirectly offers, pays, promises, gives or authorizes payment of any money or anything of value to any government or public official for the purpose of influencing any act or decision of such official in his official capacity, or inducing him to use his influence with the foreign government to influence the government's decision concerning retention of the American firm, the agreement will automatically be rendered void *ab initio* and the Marketing Representative will automatically surrender any claim for any payment under the agreement even for sales previously concluded or sales previously rendered. Either party may terminate the agreement without cause upon 30 days' notice. The agreement is governed by the law of the state in which the American firm has its principal place of business.

3. The Marketing Representative will be solely responsible for all of its costs and expenses incurred in connection with its representation of the American firm, unless the latter expressly assumes responsibility in writing in advance for specified expenses. Any claim for reimbursement of expenses specifically assumed in advance by the American firm must be accompanied by a detailed itemization of expenses claimed and a copy of the American firm's written authorization of the expenditure. All purchase orders must be in writing. The American firm will pay commissions only in U.S. dollars and only in the foreign country in which the Marketing Representative has its principal place of business.

The Marketing Representative will have no right to assign any portion of its rights under the agreement to any third party without the prior written consent of the American firm. Likewise, the Marketing Representative will not obligate the American firm to third parties without the latter's prior written consent.

5. The Marketing Representative will make, when required, full disclosure to the United States government and the foreign government of its identity and the amount of commission applicable to a specific contract.

It has also been represented that the American firm considered several factors in selecting the Marketing Representative. Among these were considered: (1) the number of years the Marketing Representative has been in operation; (2) the Marketing Representative's successful representation of several large U.S. and foreign corporations; (3) the qualifications of the Marketing Representative's principals; and (4) the Marketing Representative's reputation among businessmen and bankers both in the U.S. and abroad.

Based upon all of the facts and circumstances, as presented by the requester, the Department does not presently intend to take any enforcement action premised upon its proposed contractual relationship with Marketing Representative.

The FCPA Review Letter and this Release have no binding application to any party which did not join in the request and can be relied upon by the requesting party only to the extent that the disclosure of facts and circumstances in the request is accurate and complete and continues to accurately and completely reflect such facts and circumstances.