

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 57933 / June 5, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2836 / June 5, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13059

In the Matter of	:	ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934
Faro Technologies, Inc.	:	
Respondent.	:	
	:	
	:	
	:	

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Faro Technologies, Inc. (“Faro” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

III.

On the basis of the Order and Respondent's Offer, the Commission finds that¹:

A. SUMMARY

This matter involves Faro's violations of the anti-bribery, books and records, and internal controls provisions of the Foreign Corrupt Practices Act ("FCPA") through over twenty improper payments made to Chinese government officials by Faro's wholly-owned Chinese subsidiary, Faro Shanghai Co., Ltd. ("Faro-China"). From 2004 through 2006, Faro-China paid a total of \$444,492 in bribes to employees of numerous Chinese state-owned companies in order to obtain sales contracts. The improper payments, which were authorized by a Faro executive, generated approximately \$4.5 million in sales, from which Faro realized a net profit of \$1,411,306. None of these improper payments were accurately reflected in Faro's books and records. Additionally, Faro's system of internal accounting controls failed to prevent or detect the payments.

B. RESPONDENT

1. **Faro Technologies, Inc.** is a software development and manufacturing company with its headquarters in Lake Mary, Florida. Faro conducts operations in a number of foreign jurisdictions, including China. Faro operates in China through its wholly-owned subsidiary, Faro Shanghai Co., Ltd. Faro's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act, and is listed on the NASDAQ.

C. FACTS

1. **Faro Hired a Country Sales Manager for Faro-China, Despite His Request to "Do Business the Chinese Way"**

In early 2003, Faro established Faro-China to sell its products in China. Previously, Faro relied on a Chinese distributor to sell Faro products to Chinese customers. Shortly after establishing Faro-China, Faro promoted its Vice-President of Sales for the Asia-Pacific region to the post of Director of Asia-Pacific Sales ("Sales Director"). In this capacity, the Sales Director had oversight responsibility for sales at Faro-China, as well as other Faro subsidiaries and distributors in the region.

The Sales Director recommended a former employee of Faro's Chinese distributor for the new Country Sales Manager position ("Country Manager") at Faro-China, and in May 2003, Faro offered that individual an employment contract. After receiving the proposed employment contract, the Country Manager communicated to three Faro officers, including the Sales Director, requesting permission to "do business [on behalf of Faro] the Chinese way." After receiving that request, the Sales Director explained to the

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

other two Faro officers that the Country Manager was requesting permission to pay kickbacks or other things of value to potential customers in order to obtain sales contracts with those customers.

After learning of the Country Manager's request to do business "the Chinese way," certain Faro officers sought a legal opinion from Faro's Chinese counsel as to whether such payments to customers violated Chinese law. Members of Faro management, including the Sales Director, learned that such payments to customers likely violated China's anti-bribery laws, particularly where Faro-China's customers were Chinese state-owned companies. After receiving this legal advice that noted the prevalence of state-owned companies in China, the same Faro officers orally directed both the Sales Director and the Country Manager not to make any such payments.

2. Faro, through its Sales Director, Authorized Improper Payments to Chinese State-Owned Customers in Exchange for Sales Contracts

Soon after beginning Faro-China's operations, the Sales Director authorized the Country Manager to make illegal cash payments, termed "referral fees," to employees of Chinese state-owned companies in order to obtain contracts. For example, in a November 2004 e-mail to the Sales Director, the Country Manager requested permission to give a \$13,300 payment to an employee of a state-owned company. In the same e-mail, the Country Manager reiterated that "to have a good relationship with customers in China" you have to give them "money." The Country Manager explained that taking customers to dinner or giving them travel opportunities was not enough to promote a good relationship with the potential customer in China. Instead, employees of companies, including state-owned companies, wanted cash in order "to cooperate with [Faro] and help [Faro] get the order." The Sales Director responded to the Country Manager by e-mail, saying that he has "always understood" that this is how business was done in China, and approving the improper payment.

Throughout 2004 and 2005, the Sales Director approved additional corrupt payments to employees of state-owned or state-controlled businesses in China in order to obtain sales contracts. The Sales Director never instructed the Country Manager to cease the payments. Instead, the Sales Director merely expressed concern that they would be caught making the payments. In the same November 2004 e-mail, the Sales Director stated that the 20-30% "referral fee" is "a lot of money in China and someone will notice that one day and we may all be in trouble." The Sales Director instructed the Country Manager to "be careful" when making the improper payments, but to make the improper payments when he "really needed to do it."

3. The Sales Director Instructed Faro-China Staff to Alter Accounts and Conceal the True Nature of the Improper Payments and Approved the Use of Third-Party Intermediaries to Avoid Detection

The Sales Director further instructed Faro-China's staff to alter account entries in order to delete the actual recipient of the improper payments. In an April 2004 e-mail, the Sales Director instructed Faro-China staff: "please do not use the words 'customer referral fee' but only 'referral fee'" when describing the improper payments in the company's books and records. In the same e-mail, the Sales Director explained that the reason for his instruction was that he "did not want to end up in jail" as a result of "this bribery."

In February 2005, a new Faro officer e-mailed a news article to all international business units describing the prosecution of another U.S. company for payment of bribes in China, and stated that the article highlighted the fact that Faro must take precautions to "observe U.S. law" in their dealings in China. The Faro officer specifically forwarded the e-mail to the Sales Director and instructed him to have it translated for Faro-China's staff. After reading the translated e-mail, the Country Manager e-mailed the Sales Director and requested authorization to continue making the improper payments, albeit through third-party intermediaries or "distributors." In a February 16, 2005 e-mail response, the Sales Director approved the Country Manager's proposed use of an intermediary to funnel payments to customers, including state-owned customers, in order "to avoid exposure." Faro-China funneled cash payments through these intermediaries for nearly one year, from early 2005 until early 2006.

The bribes continued until early 2006. In total, from 2004 through 2006, Faro made \$444,492 in improper corrupt payments to Chinese state-owned customers through Faro-China in order to obtain and retain contracts from which it realized a net profit of \$1,411,306. Faro lacked a system of internal accounting controls sufficient to provide reasonable assurances that the transactions were executed in accordance with management's authorization, and the corrupt payments were improperly recorded as legitimate "selling expenses" in Faro's books and records. During the period of the improper payments described above, Faro provided no training or education to any of its employees, agents, or subsidiaries regarding the requirements of the FCPA. Faro also failed to establish a program to monitor its employees, agents, and subsidiaries for compliance with the FCPA.

D. VIOLATIONS

The FCPA, enacted in 1977, added Section 30A of the Exchange Act to prohibit issuers, and certain other persons including agents of issuers, from, among other things, making improper payments to foreign officials for the purpose of influencing their decisions in order to obtain or retain business. The FCPA also added Exchange Act Section 13(b)(2)(A) to require public companies to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and

dispositions of the assets of the issuer. The FCPA also added Exchange Act Section 13(b)(2)(B) to require such companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorization; and (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements and to maintain accountability for assets.

The Sales Director, a Faro executive, explicitly directed and authorized the illegal payments made through Faro-China. Throughout the relevant period, employees of the Chinese state-owned companies were foreign officials within the meaning of the FCPA. Accordingly, Faro violated the anti-bribery provisions of Section 30A of the Exchange Act.

Moreover, in connection with these improper payments to Chinese government officials, Faro failed to make and keep accurate books, records, and accounts as required by Section 13(b)(2)(A) of the Exchange Act. Further, as evidenced by the extent and duration of improper payments to Chinese government officials, and the improper recording of these payments in its subsidiary's books and records, Faro failed to devise and maintain an effective system of internal controls sufficient to prevent violations of the FCPA, as required by Section 13(b)(2)(B) of the Exchange Act. As a result of the conduct described above, Faro violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

Faro's Remedial Efforts and Cooperation

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

IV.

Respondent Faro Technologies, Inc. has undertaken to:

1. Retain, through Faro's Board of Directors, within 60 days after the entry of this order, an independent consultant ("Independent Consultant"), not unacceptable to the staff of the Commission for a period of two (2) years to review and evaluate Faro's internal controls, record-keeping, and financial reporting policies and procedures as they relate to its compliance with the anti-bribery, books and records, and internal accounting controls of the FCPA, codified at Sections 30A, 13(b)(2)(A), 13(b)(2)(B) of the Exchange Act. Faro shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to its files, books, records, and personnel as reasonably requested for review;

2. Require that the Independent Consultant issue a report, within one hundred twenty (120) days after being retained, summarizing the review and recommending policies and procedures reasonably designed to ensure compliance with the federal securities laws as they related to the FCPA. Simultaneously with providing

that report to Faro's Board of Directors, the Independent Consultant shall transmit a copy to Charles E. Cain, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549;

3. Adopt all recommendations in the report of the Independent Consultant; provided, however, that within sixty (60) days after the Independent Consultant serves that report, Faro shall advise the Independent Consultant and the Commission in writing of any recommendations that it considers to be unduly burdensome, impractical, or costly. With respect to any recommendations that Faro considers unduly burdensome, impractical, or costly, Faro need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose. As to any recommendation on which Faro and the Independent Consultant do not agree, such parties shall attempt in good faith to reach an agreement within sixty days after Faro serves the written advice. In the event that Faro and the Independent Consultant are unable to agree on an alternative proposal, Faro will abide by the determinations of the Independent Consultant;

4. Require the Independent Consultant to undertake a review, which shall be completed within one year of the entry of this order, of Faro's policies and procedures regarding compliance with the federal securities laws as they related to the FCPA. During the review of Faro's compliance program, the Independent Consultant shall (i) certify that Faro's policies and procedures are appropriately designed to accomplish their goals, (ii) monitor Faro's implementation and compliance with the policies and procedures, and (iii) report on the Independent Consultant's findings as to the effectiveness of the policies and procedures to Faro's Audit Committee. Should the Independent Consultant, during this period, determine that there is a reasonable likelihood that corrupt payments have been offered, promised, paid, or authorized by any Faro entity, including agents, consultants, and joint ventures, shareholders acting on Faro's behalf, and contractors and sub-contractors working directly or indirectly for Faro, the Consultant shall promptly report such payments to Faro's Audit Committee, and Faro shall then be obligated to promptly report the same to the staff of the Commission at the address listed above. Further, the Independent Consultant shall disclose to the staff of the Commission in the event that Faro, or its officers, employees, agents, consultants, and joint ventures, or shareholders acting on Faro's behalf, or contractors and sub-contractors working directly or indirectly for Faro, refuse to provide information necessary for the performance of the Independent Consultant's responsibilities. Faro agrees that it will not take any action to retaliate against the Independent Consultant for such disclosures. During the period, Faro shall immediately disclose to the staff of the Commission, at the address listed above, any information of which it learns that suggests there is a reasonable likelihood that corrupt payments were offered, promised, paid, or authorized by any Faro entity, including agents, consultants, and joint ventures, or shareholders acting on Faro's behalf, or contractors and sub-contractors working directly or indirectly for Faro; and

5. Require the Independent Consultant to enter into an agreement with Faro which provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any

employment, consultant, attorney-client, auditing or other professional relationship with Faro, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which she/he is affiliated or of which she/he is a member, and any person engaged to assist the Independent Consultant in performance of her/his duties under this Order shall not, without prior written consent of the Securities and Exchange Commission's Division of Enforcement, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Faro, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

6. These undertakings shall be binding upon any acquirer or successor in interest to Faro or substantially all of Faro's assets and liabilities or business. For good cause shown, the Commission's staff may extend any of the procedural dates set forth above.

V.

Accordingly, IT IS HEREBY ORDERED, pursuant to Section 21C of the Exchange Act, that:

- (i) Respondent Faro will cease and desist from committing or causing any violations and any future violations of Exchange Act Sections 30A, 13(b)(2)(A), and 13(b)(2)(B);
- (ii) Respondent shall comply with the undertakings enumerated in Section IV above;
- (iii) IT IS FURTHER ORDERED that Respondent shall, within ten days of the entry of this Order, pay disgorgement of \$1,411,306 and prejudgment interest of \$439,637.32 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Faro Technologies, Inc. as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Christopher Conte, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, D.C. 20549.

By the Commission.

Florence E. Harmon
Acting Secretary