

FOREIGN CORRUPT PRACTICES ACT:

A HYPOTHETICAL

TO ENCOURAGE "TALKING"

PART I

"Talk To Me, Inc." is listed on the New York Stock Exchange and operates globally. It is a Delaware corporation headquartered in Newark, New Jersey. It is one of the world's leading providers of wireless communications and cell phone usage equipment via its substantial technical capacity to extend Radio Frequency (RF) energy and its front line position in the Global Positioning System (GPS) market.

After a period during which Talk To Me's stock out-performed the market, certain analysts have downgraded it lately. In addition, some large pension and other money managers have been quite vocal with management about the company's failure to bid successfully to pick up the account to provide service in Manchester, England that would have accounted for 20% of the cell phone traffic used in Great Britain.

In its recent investor relations materials and its public filings, Talk To Me has emphasized its ability to meet its service demands in existing contracts with the cities of New York, Washington DC, and Paris, along with other smaller cities around the world. The company has acknowledged a software glitch in the system for the radio frequency energy, however, but has reported that it is negotiating to acquire rights to the safer use of higher radio frequency levels which will significantly expand its service capacity. In its



most recent annual report, the company highlighted its new “Smooth Talk,” a lighter phone with higher radio frequency levels, but nonetheless still safe to users. The higher Radio Frequency service is still awaiting FCC approval. Internally, however, Talk To Me’s CEO has mandated that all proposed investments will be scrutinized to ensure that none are made except those that clearly contribute to the company’s bottom line.

For many years, Barcelona, Spain has been moving toward improving its wireless communications capability. In anticipation of hosting its annual Barcelona Bridal Week Fashion Show, Spain is accelerating its plans to expand communications services, including installation of high radio wave frequency units to expand coverage. For this new system, the city has requested proposals for the delivery of higher capacity, but still safe units and a wider access/service cell phone. Julien Reyes, a top Spanish engineer, is advising Spain in planning for the upgrade and will be involved in reviewing the wireless service provider proposals.

Talk To Me has submitted its proposal and is waiting to hear the results. Its senior management team has decided to invite Mr. Reyes to Newark to demonstrate the service. The company has also invited Madelena Solo, Spain’s former first lady and a member of its volunteer Bridal Week Fashion Show Committee. In addition to those invitations, Talk To Me’s VP of Corporate Relations has authorized \$1 million donations to each of the Barcelona Architectural Foundation, a not for profit historical landmark, on which Mr. Reyes sits on the board of directors, and to “Barcelona Reads,” a foundation that funds and supports increased student reading, and at which Ms. Solo is now employed as chief executive officer. Because of her position as former first lady, Solo maintains a great friendship with Spain’s current president and speaks with him often.

Talk To Me flies Ms. Solo and Mr. Reyes to Newark via New York on the company's jet and puts them up at the Waldorf Astoria. The two are then brought by limousine service to Newark. In a four (4) hour meeting with the company's senior management team at the downtown headquarters, the two Spaniards are shown models of the new Smooth Talk phone service and the range that the enhanced Radio Frequency energy allows. After the meeting, they are driven also by limousine back to New York City to the Museum of Modern Art for a private viewing of an acclaimed Picasso exhibition. That exhibition highlights the fact that Picasso, although regarded by many to be a French Artist, was actually born in Malaga, Spain and was the son of a Spanish artist named Jose Ruiz. The visit to the museum is followed by dinner at a five star restaurant with Talk To Me's CEO, CFO and VP of Corporate Relations – where they are joined by Maiya Real. Ms. Real is deemed an independent member of Talk To Me's board of directors. She is also a native Spaniard and the recently elected CEO of the Barcelona Architectural Foundation, a little known fact that she neglected to disclose to Talk To Me management.

Questions: Should the company have invited Mr. Reyes to Newark? What about Ms. Solo? Should there be concerns about the accommodations and travel? Are there any issues with the donation to the Barcelona Architectural Foundation? What about to Barcelona Reads? Does Ms. Real's role with the Barcelona Architectural Foundation present any issues?

PART II

Despite its best efforts, Talk To Me is not awarded the contract by the city of Barcelona. Indeed, it discovers that certain events worked against it. The city of

Barcelona has launched an investigation into whether any laws were violated with respect to payments made by Talk To Me as well as the role of its board member, Ms. Real. It is at this time that Talk To Me learns that Ms. Real is CEO of the Barcelona Architectural Foundation. Ms. Real decides not to stand for reelection to the board of Talk To Me. Shortly thereafter, the Talk To Me board of directors amends the company's By-laws to eliminate indemnification for former board members, including (but not limited to) the advancement of legal fees and expenses. Talk To Me's stock declines some 25% upon news of the failure to win the Barcelona contract, coupled with the investigation into corruption that has been initiated by the city of Barcelona. Not surprisingly, a stockholder derivative suit is filed against the directors, including Ms. Real, on behalf of the company. Plaintiff expressly alleges that he did not first demand that Talk To Me pursue action against those responsible as it would have been futile.

Questions: Must the company defend Ms. Real as a former director? What are the odds that the derivative case will withstand a motion to dismiss and why? Should the company conduct an internal investigation at this stage? What about contact with outside counsel?

PART III

Over the next several weeks, the press is relentless in its negative coverage of Talk To Me. Further, there are many public postings calling for the resignation of the company's management. Talk To Me also receives a shareholder communication demanding that at the earliest possible time it permit an advisory shareholder vote on executive compensation. The company engages counsel and a public relations firm.

Questions: Can Talk To Me simply ignore the press and shareholder, hoping that things will quiet down? What does Talk To Me need to produce to support its argument that it is an upstanding corporate citizen and has not violated the FCPA?