

# New Liability Under the FCPA: Control Person Liability

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The SEC charged Nature's Sunshine Products Inc. with violating the Foreign Corrupt Practices Act after its Brazilian subsidiary made cash payments to customs officials to get their products imported into the country. The SEC also included two officers of the company in those charges. That part of the case was fairly standard.

What was new was that the officers were not accused of being directly involved in creating the false books and records or authorizing the payment of the bribes. Instead, the SEC used Section [20\(a\) of the Exchange Act](#), which provides for control person liability.

Every person who, directly or indirectly, controls any person liable under any provision of this title or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

It sounds like the SEC really wanted to get these two officers but did not have enough evidence to show their direct involvement in the bad acts. It really shows the SEC's willingness to use all the tools at its disposal to hold individuals liable for acts within a company. They want corporate officers to know that there is personal liability associated with their bad acts.

This case may foreshadow broader SEC enforcement against corporate officers who fail to adequately supervise employees.

## References:

- [SEC Charges Control Person Liability in Settled FCPA Action](#) by Melissa Klein Aguilar for The Filing Cabinet
- [SEC Trots Out a New Weapon: Control Person Liability](#) by Amanda Bronstad for The National Law Journal
- [FCPA Liability Keep Growing](#) by Richard Cassin for The FCPA Blog
- [SEC Litigation Release regarding Nature's Sunshine](#)
- [SEC Complaint against Nature's Sunshine](#)

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