SEC Resolves Investigation with First Use of Non-Prosecution Agreement

Date: 02/11/11

The SEC recently announced that for the first time in its history, it had signed a company to a nonprosecution agreement rather than bringing an enforcement action. The company, Atlanta-based children's clothing giant Carter's, Inc. ("Carter's" or the "Company") had reported inflated net income for several quarters as a result of a multi-million dollar accounting fraud and insider trading scheme executed by a sales executive. While the Commission's six-count Complaint against the sales executive makes clear that it could also have brought an enforcement action against Carter's, the Company avoided this by detecting, investigating and reporting the fraud, and by taking extensive remedial measures, including disclosing the overstatement to the investing public and restating its income for the affected periods. The Carter's story demonstrates the importance, in the current regulatory environment, of responding promptly and responsibly to red flags, and proactively cooperating with authorities when serious employee misconduct is discovered.

Attorney

- Anirudh Bansal