

# Johnson Controls, Inc. Pays \$14.4 Million to Settle SEC's China-Related FCPA Allegations; DOJ Declines Criminal Prosecution

## 江森自控有限公司支付 1,440 万美元

## 和解美国证交会 FCPA 指控；美司法部拒绝刑事检控

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Anti-Corruption 反腐败

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On July 11, 2016, Johnson Controls, Inc. (“JCI”) agreed to pay \$14.4 million to settle allegations by the U.S. Securities and Exchange Commission (“SEC”) that JCI, through its subsidiaries in China, violated the books and records and internal controls provisions of the U.S. Foreign Corrupt Practices Act (“FCPA”). The SEC alleged that, from 2007 to 2013, nearly all of the employees of JCI’s Chinese subsidiaries engaged in a scheme by which they made improper payments of approximately \$4.9 million to employees of Chinese government-owned shipyards, ship owners, and others.

2016 年 7 月 11 日，江森自控有限公司（“江森自控”）同意支付 1,440 万美元以和解美国证券交易委员会（“证交会”）对其通过在中国的子公司违反了美国《反海外腐败法》（“FCPA”）的账簿和记录以及内部控制的规定。证交会指控称，从 2007 年至 2013 年，江森自控中国子公司的几乎所有员工均参与了向中国国有造船厂、船舶所有人及其他人支付约 490 万美元的不当款项的行为。

On the same day, the U.S. Department of Justice (“DOJ”) publicly released a [letter of declination](#), consistent with its FCPA Pilot Program and in light of the SEC settlement, closing its related inquiry into JCI.

同一天，基于其 FCPA 试点计划及证交会的和解，美国司法部（“司法部”）公布了一份拒绝起诉书，并结束了对江森自控的相关调查。

## Background and Alleged Misconduct

### 背景及所指控的不当行为

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JCI is a Wisconsin-based global provider of automatic temperature control systems for buildings, industrial facilities, and ships. JCI conducts business in China through two wholly-owned subsidiaries, to which the SEC jointly referred as China Marine. In 2005, JCI acquired York International (“York”), a global provider of heating, ventilating, air-conditioning and refrigeration equipment and services. At the time of the acquisition, the SEC was investigating one of York’s existing subsidiaries, which now operates as one of the two China Marine entities, for making improper payments through agents for the purpose of obtaining business in China during the period from 2004 to 2006. York paid \$12 million to [settle the investigation in 2007](#).

江森自控是一家总部位于美国威斯康星州的自动温控系统全球供应商，其系统被运用于建筑、工业设施和船舶。江森自控在中国通过两家全资子公司经营业务，证监会将这两家公司合称为 China Marine。2005 年，江森自控收购了制暖、通风、空调和冷藏设备和服务全球供应商约克国际（“约克”）。在收购之时，证监会正在调查约克的一家子公司——该子公司当前是 China Marine 的两家实体公司之一。该子公司被指于 2004 年至 2006 年期间通过代理商进行不当付款以获取中国业务。约克于 2007 年支付了 1,200 万美元和解该项调查。

According to the [SEC's Cease and Desist Order](#), JCI took steps after it acquired York to improve China Marine’s compliance program, including by firing the employees who engaged in the misconduct, hiring a new managing director to oversee China Marine’s business, and requiring that all of China Marine’s sales be made through its internal China-based sales team rather than agents. JCI also trained its China Marine employees on the FCPA and audited China Marine’s records.

根据证监会的[终止及禁止令](#)，江森自控在收购约克后采取措施改善了 China Marine 的合规方案，包括解雇参与不当行为的员工、聘请新的常务董事负责监督 China Marine 的业务以及要求 China Marine 的所有销售通过其在中国的内部销售团队（而非代理商）进行。江森自控还对 China Marine 的员工进行了 FCPA 培训并对 China Marine 的账目进行了审计。

The SEC alleged that China Marine’s employees, including its newly-hired managing director, devised a similarly corrupt scheme to circumvent JCI’s increased compliance measures and create a slush fund to continue the flow of improper payments. Rather than routing such payments through agents, China Marine created and submitted fake purchase orders to sham vendors, some of which were owned by China Marine employees. The money paid to the sham vendors was subsequently transferred to China Marine employees’ personal bank accounts for their own benefit or for use as bribes.

证交会指控称，为了继续支付不当付款，China Marine 的员工，包括其新聘请的常务董事，制定了与约克调查中类似的腐败方案以规避江森自控更为严格的合规措施并建立了一个行贿基金。China Marine 没有通过代理人进行该等付款，而是向虚假供应商提交了虚假采购订单，并且，其中有些虚假供应商由 China Marine 员工所拥有。付给虚假供应商的款项后被转入 China Marine 员工的个人银行账户，作为其私有财产或被用于行贿。

The SEC alleged that the China Marine employees were able to operate this scheme without detection for more than five years for several reasons. First, JCI relied heavily on its newly hired managing director, a Chinese national and resident, “to self-police his business operations.” Second, China Marine’s employees actively attempted to avoid oversight from JCI, including by destroying vendor payment documentation. Third, the sham vendor payments averaged only \$3,400, which was below the threshold for scrutiny from the JCI office that oversaw China Marine. Fourth, the JCI employees responsible for oversight did not have sufficient understanding of China Marine’s operations to distinguish between legitimate and illegitimate expenses.

证交会指控称，China Marine 员工在五年多的时间里持续该等不当行为而没被发现有几个原因。首先，江森自控非常依赖新聘请的常务董事（该常务董事为中国公民及居民）“自主管理其业务运营”。其次，China Marine 的员工积极地试图规避江森自控的监督，其手段包括销毁供应商的付款文件。第三，虚假供应商的付款平均金额仅为 3,400 美元，低于江森自控审核 China Marine 交易的最低金额。第四，负责监督 China Marine 的江森自控员工对于 China Marine 的运营缺乏足够的了解，因而无法分辨合法与非非法的费用。

The SEC alleged that the resulting lack of scrutiny created “a culture of impunity” in China Marine’s offices. The scheme remained undetected by JCI until it received an anonymous hotline report in December 2012. From 2007 to 2013, China Marine employees diverted a total of approximately \$4.9 million through sham vendor payments for the purposes of bribing foreign officials, making other improper payments, and enriching China Marine employees. In total, China Marine obtained \$11.8 million in profits as a result of these sham vendors payments.

证交会指控称，基于上述原因造成的审核缺失在 China Marine 的办公室里形成“一种免于惩罚的文化”。该等不当行为一直未被江森自控发现，直至江森自控于 2012 年 12 月收到一份匿名热线举报。2007 年至 2013 年，China Marine 员工通过虚假供应商付款转移了总计约 490 万美元的款项，这些款项被用于贿赂外国官员、进行其他不当付款以及被 China Marine 员工中饱私囊。China Marine 因这些虚假供应商付款总计获得 1,180 万美元的利益。

## Cooperation and Remedial Efforts

### 配合和补救措施

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The SEC noted that it considered JCI's cooperation and remedial efforts when accepting JCI's offer of settlement. According to the [Cease-and-Desist Order](#), JCI self-reported China Marine's potential FCPA violations to the SEC and DOJ within seven months of first receiving the hotline report, and it retained outside counsel and initiated an internal investigation during the same period of time. JCI "provided thorough, complete, and timely cooperation throughout the investigation," including: routine report of the progress of its internal investigation; all documentation requested by the SEC; English translations of numerous documents and emails; making employees (including foreign employees) available for interview, and taking immediate action to preserve evidence when it discovered a Chinese employee shredding documents. The SEC noted that "JCI's timely self-report as well as thorough productions allowed the staff to initiate and complete its investigation quickly."

证交会指出，其在接受江森自控的和解要约时考虑了江森自控的配合和补救措施。根据禁止令，江森自控在首次收到热线举报后的七个月内主动向证交会和司法部报告了 China Marine 可能违反 FCPA 的情况。江森自控“在整个调查期间提供了彻底、完整和及时的配合”，包括：定期报告其内部调查进展；提交证交会要求的所有文件；提供许多文件和电子邮件的英文翻译；安排员工（包括外国员工）参加面谈，并在其发现一名中国员工销毁文件时立即采取行动保留证据。证交会指出：“江森自控及时主动的报告以及彻底的文件提供使证交会能够快速启动和完成其调查”。

The SEC also took notice of JCI's remedial measures, including: terminating or separating 16 implicated employees; suspending the use of the sham vendors involved in the scheme; closing down China Marine offices and relocated all remaining employees to other offices. The managing director resigned before JCI learned about the misconduct. JCI also enhanced its compliance program to reevaluate vendors used in JCI business worldwide and implemented random site audits to test purchase orders.

证交会还注意到江森自控的补救措施，包括：解雇或停职 16 名相关的员工；暂停使用参与了该等不当行为的虚假供应商；关闭 China Marine 办公室并将剩余员工调往其他办公室。涉事常务董事在江森自控得知不当行为之前已经离职。江森自控还改善了其合规方案以在全球范围内重新评估其业务中所使用的供应商，并随机对采购订单进行了现场抽查。

In its declination letter, DOJ cited, among other factors, JCI's voluntary self-disclosure and full cooperation, and "the fact that JCI will be disgorging to the SEC the full amount of disgorgement as determined by the SEC, as well as paying a civil penalty to the SEC."

在其拒绝起诉函中，司法部援引了江森自控的主动自我披露和充分配合等主要考虑因素，以及“江森自控将按证交会决定向证交会交出全部非法所得，并向证交会支付民事罚金”等事实。

## Consequences

### 后果

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To settle the SEC's claims that it violated the FCPA's books and records and internal controls provisions, JCI agreed to disgorge \$11.8 million dollars, and pay \$1.38 million in prejudgment interest and a civil penalty of \$1.18 million. JCI was also ordered to report to the SEC at least twice during a one-year term concerning the status of its remediation and compliance measures implementation.

为和解证交会关于其违反 FCPA 账簿和记录以及内部控制规定的指控，江森自控同意上缴 1,180 万美元的非法所得，并支付 138 万美元的判决前利息以及 118 万美元的民事罚金。江森自控还被命令在一年内就其补救和合规措施的执行状况向证交会提供至少两次报告。

## Observations and Lessons Learned

### 观察结论和所获得的教训

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This settlement reinforces lessons learned from other anti-corruption cases, including the need to:

本次和解进一步印证了我们从其他反腐败案例中获得的教训，包括采取以下措施的必要性：

- **Develop and implement effective internal controls designed to verify payments to third parties, including repeated low-value transactions.**  
制定和实施有效的内部控制，以核实对第三方的付款，包括重复的低值交易。
- **Adopt robust, risk-based control and audit procedures sufficient to ensure that all company policies are strictly complied with and that management override of controls are closely monitored and prohibited.**  
采用健全的、基于风险的控制和审计流程，以确保所有的公司政策都得到严格遵守以及管理层对控制措施的干预受到严密监控和禁止。
- **Acquire sufficient knowledge of the local and customized practices of subsidiaries to ensure adequate oversight of the foreign business activities, particularly in**

**businesses and countries with a history of corruption or related issues.**

充分了解外国子公司当地和惯常的做法，确保对外国业务活动实施充分监督，对那些在有腐败历史或相关问题的国家和行业中进行的业务活动尤其应如此。

- **Timely investigate and remediate reports or findings of improper activity, broadening the scope of an internal investigation as necessary if signs show more systemic misconduct.**  
及时调查和补救关于不当活动的报告或发现，如果有迹象显示更多的系统性不当行为，可视需要扩大内部调查的范围。

If you have any questions concerning the material discussed in this document, please contact any of the following members of our **Global Anti-Corruption Practice**:

如果您对本客户通讯中讨论的内容有任何疑问，请联系我们全球反腐败业务组中主要从事中国业务的下列成员。

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