


SCCE's 7th Annual
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**Overcoming Challenges to Implementing
an FCPA Compliance Program**

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The Hour

- First, a quick disclaimer
- Level Setting
- The FCPA in a Nutshell
- Where is Your Risk
- What is an Effective Compliance Program
- Translating Opinion Releases into Reality
- Where do Companies Go Wrong
- Best Practices
- Questions. And Hopefully, Answers



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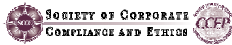


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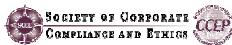
Level Setting

- How much do you know about the FCPA?
- I'm an expert on the FCPA and anti-corruption generally
- I deal with the FCPA regularly, but I'm not an expert
- I handle some FCPA issues every once in a while
- What's the FCPA?



The FCPA in a Nutshell

- What is the FCPA?
 - The FCPA is the Foreign Corrupt Practices Act. Passed in 1977, the Act prohibits US companies and individuals from using payments---usually of money but sometimes of other items of value---to secure undeserved benefits from government officials
 - The Act also requires generally that companies keep accurate accounting books and records because bribes are often hidden in acceptable-type payments like consulting agreements.
 - The anti-bribery sections are enforced generally by the Department of Justice; the books-and-records provisions are enforced generally by the Securities & Exchange Commission
 - The Act was passed in the wake of Watergate and the Lockheed investigation
 - Virtually no case law: the only sources of information are Opinion Releases, DPAs and other settlements, conferences, and benchmarking



Where Is Your FCPA Risk?

- Payments Directly to Government Officials
 - Meals, gifts, travel, entertainment
 - Incentive programs
 - Signing bonus for government clients
 - Government clients generally
 - *Any* benefit (at AXP: MR Points, Balance forgiveness)
 - Overpaying government suppliers
- Payments to 3rd Parties
 - Overpaying 3rd-party suppliers
 - Watch the Red Flags
 - Who referred the agent?
 - Big, round numbers combined with unspecific invoices
 - Expertise gaps
 - Where are you?

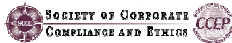


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What Is An Effective Compliance Program for FCPA?

- Sentencing Guidelines
- Metcalf & Eddy
- Opinion Release 04-02 (Vetco Gray)
 - Clearly articulated corporate policy
 - Assignment of senior corporate officials to oversee
 - Regular and effective training
 - Helpline
 - Disciplinary procedures
 - Third-party due diligence procedures
 - "Clearly articulated corporate procedures designed to assure that all necessary and prudent precautions are taken to cause [the Company] to form business relationships with reputable and qualified Business Partners"
 - "Extensive pre-retention due diligence...of all Agents and Business Partners...."
 - Due care in delegating discretionary payment authority
 - A 3rd party retention risk committee
 - FCPA language in all contracts, including audits and termination rights
 - Strong internal accounting controls
 - Independent audits by outside counsel and auditors, at least ever 3-years



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Translating Opinion Releases Into Reality

- The new minimum?
- The key factors:
 - 3rd Party Due diligence
 - Payment monitoring
 - Policies and procedures
 - Training
 - Tone at the Top
- Opinion Release 08-01
 - Report by international investigative firm
 - Retention of business consultant in-country for advice on possible due diligence procedures
 - Obtained international company profile from US Commerce Department
 - Searched all relevant persons and entities through various services and databases to determine no barred or prohibited parties
 - Met with representatives of US Embassy in-country
 - Retained outside counsel to prepare independent due diligence
 - Retained outside forensic accounting firm to prepare due diligence report
 - Retained a *second* law firm to review all the diligence reports

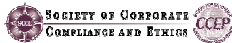


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Where Do Companies Go Wrong?

- An added responsibility
- We can handle it, part I
- We don't have this problem; I haven't heard anything
- We can handle it, part II
- Below the radar
- We can handle it, part III
- See, we have a policy
- Lawyers can't write



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Best Practices

- Engage senior management: without a sponsor, you're not going anywhere
- Engage the business: identify *all* stakeholders
- Be prepared for change
 - Resistance to change: SLAs are your friend
 - Give it time
- Train, Train, Train
- Go Away
- It's better to rent than to build

•Questions?