

**EFFECTIVE FCPA COMPLIANCE PROGRAMS**  
**The U.S. Government's Perspective**

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# Why?

- “In a global marketplace, an effective compliance program is a critical component of a company’s internal controls and is essential to detecting and preventing FCPA violations.”

# New Guidance from the USG Published 11/4/12

- “Resource Guide” to the FCPA
- Prepared Jointly By DOJ and SEC
- Gives us the government’s perspective on what an effective FCPA compliance program looks like
- The concepts announced in this Guide are now the “standard of care” and will be expected of all companies subject to the FCPA

# Who Needs an FCPA Compliance Program? – U.S. Companies

## ■ Issuers

- Any company with a class of securities listed on a national securities exchange in the U.S.
- Any company with a class of securities quoted in the over-the-counter market in the U.S. and required to file periodic reports with the SEC

## ■ Domestic Concerns

- Any corporation, partnership, association, joint-stock company, business trust, unincorporated organization or sole proprietorship that:
  - Is organized under U.S. law, OR
  - Has its principal place of business in the U.S.

# Who Needs an FCPA Compliance Program? – Non U.S. Companies

- Non-U.S. companies that do business in the U.S. or with U.S. companies
- Why?
- Foreign non-issuer entities that, either directly or through an agent, engage in any act in furtherance of a corrupt payment (or an offer, promise, or authorization to pay) while in the territory of the U.S. have violated the FCPA and can be prosecuted by the U.S. government
- 9 of the top 10 FCPA settlement fines of all time were levied against non-U.S. companies

# Business Reasons:

- 1) Protects company's reputation in the marketplace and increases value as a potential business partner
- 2) Ensures investor value & confidence
- 3) Reduces uncertainty in transactions
- 4) Secures assets

# Legal Reasons

The quality of a company's compliance program will materially affect the government's response to a violation:

- Influences the government's charging and resolution decisions (i.e., Deferred or Non Prosecution Agreement, or corporate probation)
- Affects penalty
  - Monetary fine
  - Prison sentence
  - Need for monitor or self-reporting

# Big Picture Questions

When evaluating a compliance program, the government will ask:

- Is the program well-designed?
  - Must be tailored to the company's specific business and to the risks associated with that business
- Is it being applied in good faith?
- Does it work?

# How do we scale the effort?

- No “one size fits all”
- Government recognizes that small and medium-size enterprises likely will have different compliance programs from large multi-national corporations
- Gold standard is NOT necessary for everyone

# Hallmarks of Effective Compliance Programs:

- 1) Commitment from Senior Management and a Clearly Articulated Policy Against Corruption
- 2) Code of Conduct and Compliance Policies and Procedures
- 3) Oversight, Autonomy, and Resources
- 4) Risk Assessment

# Hallmarks of Effective Compliance Programs, cont.

- 5) Training and Continuing Advice
- 6) Incentives and Disciplinary Measures
- 7) Third-Party Due Diligence
- 8) Confidential Reporting and Internal Investigation

# Hallmarks of Effective Compliance Programs, cont.

- 9) Continuous Improvement through Periodic Testing and Review
  
- 10) Mergers and Acquisitions:  
Pre-Acquisition Due Diligence and  
Post-Acquisition Integration