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Our FCPA practice, which involves over 25 of our attorneys, includes creating and implementing compliance programs for clients, counseling clients on compliance issues that arise from international sales and marketing activities, conducting internal investigations and defending clients in the course of SEC and DOJ proceedings. Our clients in this area include Fortune 100 and 500 companies in the pharmaceutical, healthcare, defense, aerospace, energy, transportation, advertising, telecommunications, insurance, food products and manufacturing industries, leading investment banks and other financial institutions.

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## FCPA Enforcement Trends During 2007 Signal Heightened Scrutiny and Continued Vigorous Enforcement by the DOJ and SEC

In 2007, the Foreign Corrupt Practices Act (FCPA) celebrated its 30th anniversary with a record-breaking year. The number of FCPA cases filed by the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) continued to increase, and five notable trends of 2007 illustrate that government enforcement of the FCPA will continue to send the message that “bribery is bad for business.” In a year characterized by record fines, punishment of individuals, increased international enforcement and cooperation, industry-sweep investigations, and investigations arising from transactional activity, the DOJ and SEC made an aggressive push to curb violations of the FCPA on all fronts.

### Record Fines

Perhaps the most eye-opening example of the increased aggressiveness of government enforcement of the FCPA were the record-setting fines and penalties imposed in 2007.

In February of 2007, three subsidiaries of Vetco International, Inc. pled guilty to violating the FCPA and agreed to pay a criminal fine of US \$26 million. Vetco admitted to making payments of over US \$2 million to Nigerian government officials in conjunction with Vetco’s oil drilling project. At the time, the US \$26 million fine imposed was the largest criminal penalty the DOJ had ever obtained for a violation of the FCPA. See [http://www.usdoj.gov/opa/pr/2007/February/07\\_crm\\_075.html](http://www.usdoj.gov/opa/pr/2007/February/07_crm_075.html)

In April of 2007, Baker Hughes Incorporated agreed to pay a total of US \$44 million for their FCPA violations. Baker Hughes pled guilty to making payments to the state-owned oil company of Kazakhstan in order to obtain a contract for developing and operating an oil field in Kazakhstan. Baker Hughes agreed to a criminal fine of US \$11 million and a civil penalty and disgorgement of profits of approximately US \$33 million. See [http://www.usdoj.gov/opa/pr/2007/April/07\\_crm\\_296.html](http://www.usdoj.gov/opa/pr/2007/April/07_crm_296.html)

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Notably, the government had previously sanctioned the predecessor of Vetco International (ABB Ltd.) and Baker Hughes for FCPA violations. The size of the government's penalties in the recent actions against these companies demonstrates that the government will come down especially hard on repeat offenders and will not tolerate recidivist behavior.

### **Prosecution of Individuals**

Not only were corporations the focus of aggressive government enforcement of FCPA violations, but 2007 also saw an emerging number of actions brought against individuals for their roles in bribery schemes.

Sitting U.S. Congressman William Jefferson was charged with offering bribes to a high-ranking Nigerian official to induce the official to assist Jefferson in obtaining commitments from the government-controlled telecommunications service provider in Nigeria. Jefferson pled not guilty to all charges and is presently scheduled to go to trial. *See* [http://www.usdoj.gov/opa/pr/2007/June/07\\_crm\\_402.html](http://www.usdoj.gov/opa/pr/2007/June/07_crm_402.html)

Si Chan Wooh, former Executive Vice President of Schnitzer Steel Industries, pled guilty to conspiracy to violate the FCPA and entered into a cooperation agreement with the DOJ. Wooh also settled with the SEC and agreed to pay a US \$41,000 civil penalty. Wooh admitted that he conspired with Schnitzer Steel to make payments to nearly all of Schnitzer Steel's government-owned customers in China. *See* [http://www.usdoj.gov/opa/pr/2007/June/07\\_crm\\_474.html](http://www.usdoj.gov/opa/pr/2007/June/07_crm_474.html)

A decision by the U.S. Court of Appeals for the Fifth Circuit in 2007 served as a reminder that individuals can face not only significant fines, but also lengthy jail sentences. In October of 2007, the Fifth Circuit upheld the convictions of defendants David Kay and Douglas Murphy, two former executives of American Rice, Inc. (ARI). Kay and Murphy were convicted of making various payments to Haitian government officials to induce them to assess lower taxes and duties on ARI's imports of rice into Haiti. Kay was

sentenced to 37 months in federal prison and Murphy was sentenced to 62 months.

### **International Enforcement**

Government enforcement of the FCPA achieved an increasingly international focus in 2007. Not only have U.S. investigations continued to focus on non-U.S. based corporations, but increased cooperation between the United States and foreign governments has resulted in a number of joint investigations.

Historically, the majority of FCPA investigations centered on U.S.-based corporations. But increasingly, foreign businesses whose stock trades on American exchanges have become the focus of major FCPA investigations. Further, many foreign regulators are aggressively investigating bribes and imposing their own record fines. In October of 2007, a German court imposed a EUR 201 million fine against Siemens AG for an alleged bribe paid by Siemens to win contracts in a number of countries. Siemens also agreed to pay EUR 179 million in back taxes. Munich prosecutors also filed charges against a manager at the company for his participation in the bribery scandal. Reportedly, Siemens is also facing investigations by the governments of China, Greece, Hungary, Indonesia, Italy, Japan, Norway, Switzerland and the United States.

### **Industry-Specific Focus**

The DOJ and SEC undertook several industry-wide investigations in 2007, including cases arising out of the Iraq Oil-for-Food Program (OFFP) and the sales and marketing practices of companies in the medical device industry in Europe. The OFFP was established by the United Nations to enable Iraq to sell oil for humanitarian purposes such as food and medicine. A United Nations Independent Inquiry Committee, commonly known as the Volcker Committee, began to investigate the OFFP and published a report detailing the alleged corruption surrounding the OFFP. The report alleged that the Iraqi government began requiring companies wishing to sell humanitarian goods to government ministries to

pay a kickback. The Volcker report named 2,253 companies worldwide as having made US \$1.8 billion in kickbacks. The DOJ and SEC then initiated investigations against a number of companies. York International Corporation, Ingersoll-Rand Co. Ltd. and Akzo Nobel N.V. all entered into settlements in 2007 regarding their participation in the OFFP. *See* [http://www.usdoj.gov/opa/pr/2007/October/07\\_crm\\_783.html](http://www.usdoj.gov/opa/pr/2007/October/07_crm_783.html); [http://www.usdoj.gov/opa/pr/2007/October/07\\_crm\\_872.html](http://www.usdoj.gov/opa/pr/2007/October/07_crm_872.html); [http://www.usdoj.gov/opa/pr/2007/December/07\\_crm\\_1024.html](http://www.usdoj.gov/opa/pr/2007/December/07_crm_1024.html) Industry-specific investigations allow regulators to better leverage their resources as they identify potential patterns of industry specific behavior and common actors. As a prudential matter, public companies should consider closely examining FCPA risks specific to their industry and making enhancements to their FCPA programs, as appropriate, in order to proactively address potential problem areas.

### Transactional Due Diligence

In 2007, a number of FCPA violations were discovered and disclosed to the government during the course of a merger or acquisition. Acquisition due diligence is an essential component of any effective FCPA compliance program, and the failure to adequately assess potential liabilities can result in serious consequences.

Before acquiring Delta & Pine Land Company, Monsanto Company conducted pre-acquisition due diligence and

discovered several payments to Turkish officials. Monsanto required Delta & Pine to report the conduct to the DOJ and SEC. Delta & Pine was acquired by Monsanto and Delta & Pine entered into a post-closing FCPA settlement of US \$300,000. The SEC did not file any charges against Monsanto. Similarly, York International Corporation settled an FCPA enforcement action after being acquired by Johnson Controls, Inc.. York agreed to pay a US \$10 million penalty to the DOJ, a US \$2 million civil penalty to the SEC and to disgorge US \$10 million in profits. The government did not seek any enforcement action against Johnson Controls. *See* <http://www.sec.gov/litigation/litreleases/2007/lr20214.htm>

### Conclusions

During 2007, FCPA enforcement by the SEC and DOJ was aggressive and far-reaching, trends that will likely continue in 2008 and beyond. As penalty amounts continue to rise and the scope of investigations continues to broaden, the need to proactively address potential FCPA liability has never been more important. Both U.S. and non-U.S. based public companies and other entities involved in international business are well-advised to pause and take a close look at their FCPA compliance programs in order to ensure that they are both comprehensive and sufficiently focused to address FCPA risks present in today's business environment.