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# A Global Battle: Combating Fraud, Waste and Abuse

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# FCPA: Global Business Partner Screening

- Foreign Corrupt Practices Act (FCPA) was enacted in 1977 to prevent bribery of foreign government officials for commercial advantage
  
- FCPA compliance is not optional
  - Increased focus requires organizations to perform their own internal investigations and self-report suspected FCPA violations
  
- The Justice Department is just getting started
  - Post 9/11 creation of a new national security division freed up more resources for criminal division and its fraud section

# Crucial Issue: Introducing FCPA

## ■ Anti-Bribery Provisions

- Unlawful to make a corrupt payment to a foreign official (official, political party, political official, or candidate for political office) for the purpose of obtaining business, retaining business, or directing business to any person
- Includes ordering, authorizing, or assisting others to violate or conspire to violate these provisions
- More than just a successful corrupt payment—the offer or promise of such payment can also cause violation

## ■ Accounting Provisions (aka Books and Records Provisions).

- Must make and keep books and records that accurately and fairly reflect the transactions of the corporation
- Must devise and maintain an adequate system of internal accounting controls

# Media attention is on Anti-Bribery, but don't be fooled

- Accounting provisions are equally important

“The SEC has, in fact, used the FCPA in several cases to prosecute wrongdoers who have not engaged in bribery of foreign officials, but whose actions technically violate the Act's accounting requirements.”

*ACFE International Bribery Course*

# Why Care? Enforcement has Teeth

- Criminal penalties
  - Corporate fines of up to \$2M/violation
  - Imprisonment and personal fines of officers, directors, stockholders, employees, and agents
- Civil actions may also be imposed against the firm or individuals within the firm
- Loss of right to receive export licenses
- Indictment alone can lead to suspension of the right to do business with the Federal government
- Exposure to competitor litigation under the RICO act (treble damages)

# Impacting Global Leaders

- DOJ has a list of over 100 companies subject to ongoing and unresolved FCPA investigations, including:
  - » Accenture plc
  - » Avon
  - » Bio-Rad Laboratories Inc.
  - » China Northeast Petroleum Corp
  - » GlaxoSmithKlein plc
  - » Hewlett Packard
  - » Johnson & Johnson
  - » Morgan Stanley
  - » Sun Microsystems Inc.
  - » Tyco Electronics LTD

# Top 10 FCPA Settlements

- 8 of 10 largest settlements for FCPA violations occurred in 2010

	Penalty (in \$ mil.)	Company	Company's headquarters	Year penalty was assessed
1.	\$800	Siemens	Germany	2008
2.	\$579	KBR/Halliburton	United States	2009
3.	\$400	BAE Systems	United Kingdom	2010
4.	\$365	ENI S.p.A/Snamprogetti Netherlands B.V.	Italy/Holland	2010
5.	\$338	Technip S.A.	France	2010
6.	\$185	Daimler AG	Germany	2010
7.	\$137	Alcatel-Lucent	France	2010
8.	\$82	Panalpina	Switzerland	2010
9.	\$58	ABB Ltd.	Switzerland	2010
10.	\$56	Pride International	United States	2010

Source: Hogan Lovells

# FCPA as a “Deal-Breaker”

- Deloitte survey: Increased enforcement has corporate buyers wary of doing business in foreign markets
  - Nearly 80% of North American corporate buyers have ended or renegotiated business deals in past 3 years
  
- Acquire a company and you assume its FCPA risks as well
  - GE acquired 2 subsidiaries and ended up owing \$23.4 million to the SEC because of FCPA violations that occurred *before* the acquisition
  
- Increased premerger due diligence
  - Increased scrutiny when entering deals involving overseas companies
  - Examination of company’s internal controls, recordkeeping practices, ties to third parties

## In addition to FCPA:

- Related multi-lateral treaties have also been passed recently in South America:
  - **OECD Convention** (Convention on Combating Bribery of Foreign Public Officials in International Business Transactions)
    - » 38 signatories throughout Latin America
    - » Member states obligated to establish criminal offenses of aiding and abetting foreign bribery
  - **IA Convention** (Inter-American Convention Against Corruption)
    - » 34 signatories throughout Latin America
    - » Requires criminalization of broad range of corruption, including bribery of foreign public officials

# Recent FCPA Enforcement Globally:

- KBR/Halliburton
  - Former units bribed Nigerian officials during the construction of a gas plant
  - Highest FCPA penalty for U.S. company at \$559 million
  - Former executives charged with 10 counts of violating FCPA and face up to 55 years in prison
  
- Innospec
  - Specialty chemical maker based in Delaware
  - Bribed officials in Iraq and Indonesia with millions to continue using tetra ethyl lead, despite its health hazards
  - Reached \$40.2 global settlement, but voluntary reporting of misconduct helped avoid fine of more than \$200 million

# Recent FCPA Enforcement in Latin America:

- **Pride International Corp**
  - Houston-based, one of world's largest offshore drilling companies
  - paid \$800,000 in bribes directly and indirectly to government officials in Venezuela and Mexico
  - Discovered bribery allegation during routine audit
  - Paid \$56.1 million settlement
  
- **Helmerich & Payne**
  - Oklahoma-based oil drilling company
  - Improper payments to government officials in Argentina and Brazil to clear imports of drilling equipment
  - Paid \$1 million criminal penalty to DOJ
  - Entered two-year deferred prosecution agreement to settle FCPA violations

# “Internal Auditors Can Ease Compliance Pain”- FCPA Blog

- Internal audit departments uniquely positioned to navigate FCPA risks
- Data analysis techniques can raise visibility of potential violations and help management focus on the right places
- Comprehensive monitoring program proven to help reduce fines if violation slips through the cracks

## The FCPA Blog

News And Views About The United States Foreign Corrupt Practices Act



World-Check helps you understand who you are really doing business with



MAIN | BALL CORPORATION RESOLVES SEC CHARGES »

### Internal Auditors Can Ease Compliance Pain

Monday, March 28, 2011 At 7:28AM



By Steve Biskie

Internal audit departments are uniquely positioned to help business leaders understand and navigate the risks of FCPA across the organization. A technology-enabled strategy using audit analytics is a cornerstone of an effective and efficient FCPA compliance program.

It's risky to rely on "policies" alone – companies need to actively monitor transactions to ensure compliance with those policies. This, among other things, can help assure any business that they are operating according FCPA requirements.

Effective data analysis techniques utilized by internal audit departments raise visibility around potential violations and can help management

# ACL – Role of Audit Analytics in FCPA

- Anti-bribery.

- Look for ‘red flags’
- Develop an early warning system

*Creating a culture where employees know they will be questioned is a proven method for strengthening internal compliance*

- Accounting Provisions (aka Books and Records Provisions).

- 100% transaction testing to validate completeness and accuracy of books and records
- Continuous monitoring of key internal accounting controls

*Over time, use of ACL may itself become a control and provide evidence of compliance with the accounting provision*

# Use ACL to Identify...

- High volume of cash transactions
- Payments sent outside the country of operation
- Multiple gifts to a single individual
- Entertainment of government customers
- Bonuses of unusual quantity or timing
- Attempts to circumvent detection
  - Multiple changes to vendor payment details in a short period of time
  - Duplicate active vendors
  - Payroll employees matching address/phone details of government officials
- Charitable contributions to organizations affiliated with the government

# What does this all mean?

- Choosing to ignore the potential problem is not longer an acceptable option
- Stakes are high, and getting higher
- Having a state-of-the art compliance and monitoring program in place can both help ensure compliance, while also providing a helpful negotiating position if violations do occur
- Failure to demonstrate a sound compliance program can be disastrous to your organization