

U.S. AGENCIES TO BOOST EFFORTS AND REACH OUT TO INTERNATIONAL REGULATORS TO ENSURE MANAGERS AREN'T PAYING OFF LOCAL OFFICIALS.

Hunting Foreign Bribes

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—ENFORCEMENT DIVISION'S SCARBORO

CFOS AND CEOS, who have had to worry in recent years about being held personally liable for financial statements, have a new concern: They could be found liable for bribes that local managers might be paying in foreign countries to promote their companies' business there. Both the Securities and Exchange Commission and the Department of Justice say they are stepping up enforcement of the Foreign Corrupt Practices Act (FPCA), a 1977 law that makes it illegal for U.S. companies to bribe

foreign government officials—a loose term that could be interpreted to mean anyone who works for a state-owned or state-controlled firm overseas.

In testimony to a Senate committee in September, Robert Khuzami, director of the SEC's Enforcement Division, said he

was establishing a special unit to "focus on new and proactive approaches to identifying violations of the Foreign Corrupt Practices Act."

In the past, says Michael Koehler, a law professor at Butler University specializing in the FPCA, most SEC and Justice Department cases were brought to the agencies' attention by company managers anxious to avoid indictment, and settlements have tended to be lenient because of that cooperation. If investigators start ferreting out cases, penalties could be more severe, Koehler suggests.

Cheryl Scarboro, associate director of the SEC's Enforcement Division, says the agency will be making a "coordinated effort to reach out to regulators in other countries, and to use other resources at our disposal to detect potential wrongdoing before it's brought to our attention." Referring to the plans for a dedicated FPCA unit, she adds, "By specializing, we'll be able to do more of it."

Mark Mendelsohn, deputy chief of the Justice Department's Fraud Section, says Justice has been stepping up its FPCA enforcement for "several years," in part by forming FCPA units employing specially trained FBI agents.

Mendelsohn says the goal is to "create positive incentives" for company managers to come forward with evidence of bribery. Cooperation can lead to reduced sentences under federal sentencing guidelines, he adds. "The flip side is, where companies don't cooperate, the penalties can be a lot worse."

A new development, Mendelsohn says, is growing international cooperation on corporate bribery cases. The Siemens case is an example: Brought in both the U.S. and Germany, it led to settlements in both countries. Siemens pleaded guilty to operating a multi-billion-dollar slush fund to win overseas contracts. It paid an \$800-million fine to the Justice Department and SEC and a 395-million euro fine in Germany.



Image by Brad Yeo