Cracking Open The FCPA's Secrets

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The FCPA Blog in AB Volvo, Akzo Nobel, Bristow Group Inc., Faro Technologies, Fiat, Flowserve, Ingersoll Rand, Oil For Food, Siemens, Westinghouse, Willbros, York International

Washington, D.C.-based law firm **Hughes Hubbard & Reed**, a sponsor of the FCPA Blog, has released its **FCPA/Anti-Bribery Mid-Year Alert 2010**.

The authors say it's both a quick desk reference and -- at 241 pages -- an authoritative collection of FCPA resources. They're right.

There's exhaustive enforcement-related information -- DOJ and SEC actions, DOJ opinion procedure releases, civil suits and related litigation, and domestic and foreign investigations. There's also plenty of high-level analysis of what's going on with enforcement and compliance. (The "Lessons Learned" section is particularly strong.)

Kevin Abikoff, one of the partners responsible for the Alert, said: "We developed it originally as a comprehensive internal resource for our lawyers and clients. On reflection, we decided to open-source it to the compliance community and beyond. We hope people will find it useful. And we're happy to be able to make a contribution."

Here, for example, is what it says about a subject we've never covered -- management changes:

> In certain circumstances, regulators may use enforcement actions as a tool to force a change in management where the regulators believe management is insufficiently attuned to FCPA concerns. Regulators may also reward companies that change management in response to findings of misconduct or seek lesser penalties where management changed before the misconduct came to light. For example, the DOJ praised Siemens for its remedial efforts, including that it “replaced nearly all of its top leadership.” Similarly, in the case of Bristow, the misconduct was discovered by the company’s newly-appointed CEO, and the SEC imposed no monetary penalty on the company. (*See, e.g.*, *Technip*, *Siemens*, *Schnitzer*, *Bristow*)

On the puzzle of FCPA jurisdiction it says:

> As the Siemens settlement (among others) confirms, U.S. regulators continue to take an expansive jurisdictional view as to the applicability of the FCPA. The charging

> documents applicable to Siemens Venezuela, Siemens Bangladesh, and Siemens Argentina detail connections, but not particularly close or ongoing connections, between the alleged improper conduct and the United States. Similarly, the United States government has continued to seek the extradition of Jeffrey Tesler and Wojciech Chodan, both United Kingdom citizens who were indicted for their involvement in the Bonny Island, Nigeria bribery scheme and who are described in the charging documents as "agents" of a domestic concern. Clearly, regulators in what they deem to be appropriate circumstances, will look carefully for hooks to establish U.S. jurisdiction over perceived violations of anti-corruption legislation.

And on parent-company liability for foreign subsidiaries, it says:

> The U.S. Government will prosecute parent companies based on the conduct of even far-removed foreign subsidiaries and even in the absence of alleged knowledge or direct participation of the parent company in the improper conduct. As a result, as the Willbros Group and several Oil-for-Food settlements make clear, companies must ensure that their anti-corruption compliance policies and procedures are implemented throughout the corporate structure and are extended quickly to newly acquired subsidiaries. (*See, e.g., Fiat*, *Faro*, *Willbros Group*, *AB Volvo*, *Flowserve*, *Westinghouse*, *Akzo Nobel*, *Ingersoll-Rand*, *York*, *Bristow*, *Paradigm*, *Textron*, *Delta & Pine*, *Dow*).

The **FCPA/Anti-Bribery Mid-Year Alert 2010** was written by Hughes Hubbard & Reed partners **Kevin T. Abikoff**, **John F. Wood**, and **Gregory M. Williams**.
