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Objectives of This Program

- Describe the background history and environment that led to the passing of the Foreign Corrupt Practices Act
- Identify and describe the anti-bribery provisions of the Foreign Corrupt Practices Act
- Identify and describe the accounting provisions of the Foreign Corrupt Practices Act
- Identify and describe the major compliance requirements of the Foreign Corrupt Practices Act

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Program Topics

- Historical background – FCPA
- Anti-Bribery provisions
- Accounting provisions including recordkeeping, internal controls, reporting, and scope
- Compliance requirements
- Whistleblower provisions and protections
- Recent SEC enforcement actions
- Conclusion

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United States Senate - 1977

- Corporate bribery is bad business
- In our free market system, it is basic that the sale of products should take place on the basis of price, quality, and service
- Foreign corporate bribes also affect our domestic climate when domestic firms engage in such practices as a substitute for healthy competition for foreign business

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Historical Background

- Congress enacted the U.S. Foreign Corrupt Practices Act (FCPA) in 1977 in response to revelations of widespread bribery of **foreign officials** by U.S. companies
- The FCPA is U.S. federal law which prohibits any payout to foreign officials of **anything of value** with the intention to acquire or retain business
- The SEC discovered that in the mid-70's, more than 400 U.S. companies had paid hundreds of millions of dollars in bribes to foreign government officials to secure business overseas

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Historical Background

- The SEC further reported that companies were using secret “slush funds” to make illegal campaign contributions and **corrupt payments** to foreign officials and were falsifying their corporate financial statements to conceal the payments
- The FCPA is administered jointly by the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC)

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Historical Background

Foreign Official

Any officer or employee of a foreign government or any department, agency, or instrumentality, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization

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Historical Background

Anything of Value

Any unfair benefits, either directly or indirectly, through cash, gifts, entertainment, charitable donations, offers of employment, forgiveness of debt, personal favors, etc. offered or paid to any foreign official with a view to influence his/her discretion or decision

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Historical Background

Corrupt Payments

The word corrupt is used in order to make clear that the offer, payment, promise, or gift, must be intended (intent) to induce the recipient to misuse his/her official position: for example, wrongfully to direct business to the payor or his/her client, to obtain preferential legislation or regulations, or to induce a foreign official to fail to perform an official function



Historical Background

Corrupt Payments (cont'd)

Persons or companies are guilty of violating the FCPA if the DOJ/SEC can prove the following:

- The existence of a payment, offer, authorization, or promise to pay anything of value
- To a foreign official or to any other person, knowing that the payment or promise will be passed on to a foreign official
- A corrupt motive exists



Historical Background

Corrupt Payments (cont'd)

Persons or companies are guilty of violating the FCPA if the DOJ/SEC can prove the following (cont'd):

- Payment or promise is for the purpose of influencing any act or decisions of the foreign official, such as inducing the foreign official to do or omit any action in violation of his/her lawful duty, or securing an improper advantage, or inducing the foreign official to use his/her influence to affect an official act or decision
- Payment or promise is made in order to assist the individual or company in obtaining or retaining business

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Historical Background

- In 1988, Congress amended the FCPA to add two affirmative defenses to avoid unnecessary inflexibility:
 1. The local law defense – the payment was lawful under the written laws of the foreign country
 2. The reasonable and bona fide business expenditure defense – the money was spent as part of demonstrating a product or performing a contractual obligation

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Historical Background

- In 1998, the FCPA was again amended by the International Anti-Bribery Act of 1998 – This Act expanded the scope of the FCPA by:
 1. Including payments made to secure an improper advantage
 2. Reaching certain foreign persons who commit an act in furtherance of a foreign bribe while in the United States
 3. Covering public international organization in the definition of foreign official
 4. Adding an alternative basis for jurisdiction based on nationality – even if actions take place outside of the U.S.
 5. Applying criminal penalties to foreign nationals employed by or acting as agents of U.S. Companies

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Historical Background

The Yates Memorandum

- In 2015, Deputy Attorney General Sally Yates issued a memo titled *Individual Accountability for Corporate Wrongdoing* to all DOJ attorneys
- The memo begins with the following: “Fighting corporate fraud and other misconduct is a top priority of the Department of Justice”
- Purpose was to identify new priorities for pursuing, punishing, and deterring individual corrupt practices
- Included six key steps of instruction for DOJ attorneys

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Historical Background

The Yates Memorandum – Six Key Steps

1. In order to qualify for any cooperation credit, corporations must provide to the DOJ all relevant facts relating to the individuals responsible for the misconduct
2. Criminal and civil corporate investigations should focus on individuals from the inception of the investigation (focus on individual liability)
3. Criminal and civil attorneys handling corporate investigations should be in routine communication with each other (coordination)
4. Absent extraordinary circumstances or approved department policy, the DOJ will not release culpable individuals from civil or criminal liability when resolving a matter with a corporation

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Historical Background

The Yates Memorandum – Six Key Steps (cont'd)

5. DOJ attorneys should not resolve matters with a corporation without a clear plan to resolve related individual cases and should memorialize any refusal as to individuals in such cases
6. Civil attorneys should consistently focus on individuals as well as the company and evaluate whether to bring suit against an individual based on considerations beyond that individual's ability to pay

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Anti-Bribery Provisions

- Bribery raises the risks of doing business, putting a company's bottom line and reputation in jeopardy
- Companies that pay bribes to win business ultimately undermine their own long-term interests and the best interests of their investors

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Anti-Bribery Provisions

Scope

1. Issuers and their officers, directors, employees, agents, and shareholders
2. Domestic concerns and their officers, directors, employees, agents, and shareholders
 - Domestic concern covers any company that has its primary place of business within the United States
3. Certain persons and entities, other than issuers and domestic concerns, acting while in the territory of the United States

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Anti-Bribery Provisions

- The anti-bribery provisions of the FCPA prohibit U.S. persons and businesses, U.S. and foreign public companies listed on stock exchanges in the United States or which are required to file periodic reports with the SEC, and certain foreign persons and businesses acting while in the territory of the United States from making corrupt payments (anything of value) to **foreign officials** to obtain or retain business
- Violations of the FCPA can lead to civil and criminal penalties, sanctions, and remedies, including fines, disgorgement (pay back monies that have been made in an illegal way), and/or imprisonment

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Anti-Bribery Provisions

Who is a Foreign Official?

The FCPA's Anti-Bribery Provisions Apply to Corrupt Payments Made to:

1. Any foreign official
2. Any foreign political party or official
3. Any candidate for foreign political office
4. Any person, while knowing that all or a portion of the payment will be offered, given, or promised to an individual falling within one of the above three categories

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Anti-Bribery Provisions

Who is a Foreign Official? Payments to Third Parties

Common Red Flags Associated with Third Party Payments Include:

- Excessive commissions
- Unreasonable large discounts to distributors
- Consulting agreements that include only vaguely described services
- Third party is in a different line of business than that for which it has been engaged
- Third party is related to or closely associated with the foreign official

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Anti-Bribery Provisions

Who is a Foreign Official? Payments to Third Parties (cont'd)

Common Red Flags Associated with Third Party Payments Include (cont'd):

- The third party became part of the transaction at the express request or insistence of the foreign official
- The third party is merely a shell company incorporated in an offshore jurisdiction
- The third party requests payment to off shore bank accounts
- A history of corruption in the country

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Anti-Bribery Provisions

Who is a Foreign Official? (cont'd)

- As noted previously, foreign officials include officers or employees of a department, agency, or **instrumentality** of a foreign government
- The term “instrumentality” is broad and can include state-owned or state-controlled entities
- Whether a particular entity constitutes an **instrumentality** under FCPA requires a fact-specific analysis of an entity's ownership, control, status, and function

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Anti-Bribery Provisions

Instrumentality – Factors to be Considered

- The foreign state's extent of ownership of the entity
- The foreign state's degree of control over the entity
- The foreign state's characterization of the entity and its employees
- The circumstances surrounding the entity's creation
- The purpose of the entity's activities
- The entity's obligations and privileges under the foreign state's law

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Anti-Bribery Provisions

Instrumentality – Factors to be Considered (cont'd)

- The exclusive or controlling power vested in the entity to administer its designed functions
- The level of financial support by the foreign state
- The entity's provision of services to the jurisdictions' residents
- Whether the governmental end or purpose sought to be achieved is expressed in the policies of the foreign government
- The general perception that the entity is performing official or governmental functions

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Anti-Bribery Provisions

- The FCPA also prohibits bribes made to any person (indirect bribes) while knowing that some or all of the payments will be used by the person, directly or indirectly, to bribe foreign officials or other prohibited recipients
- In this context, knowing includes willful blindness to the high probability of bribery



Anti-Bribery Provisions

Business Purpose Test

- Payments intended to induce or influence a foreign official to use his/her position in order to assist in obtaining or retaining business for or with, or directing business to, any person
- This test also prohibits bribes in the conduct of business or to gain a business advantage



Anti-Bribery Provisions

Business Purpose Test (cont'd)

- Examples of Actions Taken to Obtain or Retain Business Within the Scope of the Business Purpose Test Include:
 - Winning a contract
 - Influencing the procurement process
 - Gaining access to non-public bid tender information
 - Evading taxes or penalties
 - Obtaining exemptions to regulations
 - Avoiding contract termination

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Anti-Bribery Provisions

Business Purpose Test (cont'd)

- Other Examples Include Paying Bribes to Customs Officials:
 - Evading customs duties on imported goods
 - Improperly expediting the importation of goods and equipment
 - Extending drilling contracts and lowering tax assessments
 - Obtaining false documentation related to temporary import payments

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Anti-Bribery Provisions

Principles of Corporate Liability for Anti-Bribery Violations

- General principles of corporate liability apply to the FCPA
- A company is liable when its directors, officers, employees, or agents, acting within the scope of their employment, commit FCPA violations intended, at least in part, to benefit the company
- Similarly, as with any other federal statute, the DOJ and the SEC look to principles of parent-subsidary and successor liability in evaluating corporate liability

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Anti-Bribery Provisions

Penalties for Violating the Anti-Bribery Provisions of the FCPA May Include:

- Fines of up to \$2,000,000 per violation against the U.S. company
- Prison terms of up to five years and fines of up to \$250,000 per violation for individuals found guilty
- The SEC can pursue further civil penalties

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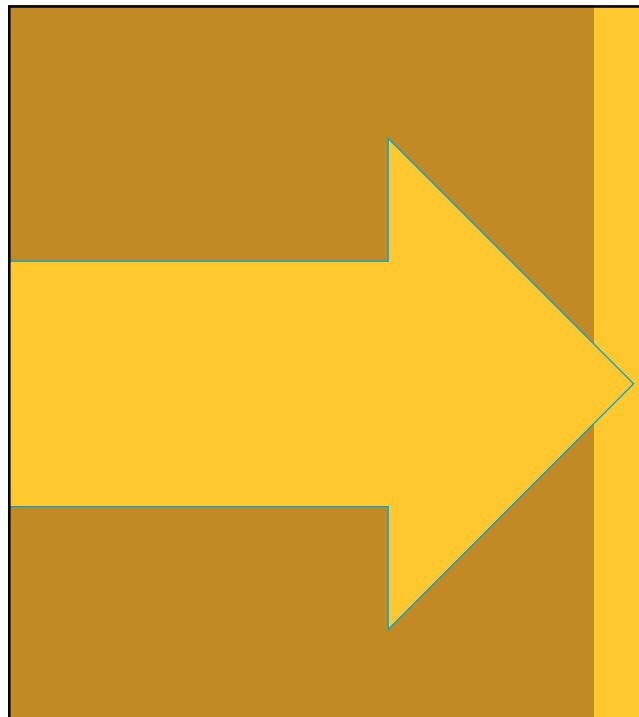
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Anti-Bribery Provisions

Statute of Limitations

- Generally five years for criminal or civil violations of the FCPA



Accounting Provisions





Accounting Provisions

- The accounting provisions require issuers to make and keep **accurate books and records** and to devise and maintain an **adequate system of internal controls**
- The accounting provisions also prohibit individuals and businesses from knowingly falsifying books and records or knowingly circumventing or failing to implement a system of internal controls
- The accounting provisions are designed to strengthen the accuracy of the corporate books and records as well as the reliability of the audit process which constitutes the foundations of our system of corporate disclosure

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Accounting Provisions

- Violations of the FCPA can lead to civil and criminal penalties, sanctions, and remedies, including fines, disgorgement (pay back monies that have been made in an illegal way), and/or imprisonment

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Accounting Provisions

Books and Records Provisions

- Securities Exchange Act of 1934 includes the books and records provision which requires issuers to make and keep books, records, and accounts in reasonable detail, accurately, and reflecting the transactions and dispositions of the assets of the issuer
- The phrase “reasonable detail” is intended to make clear that the issuer’s records should reflect transactions in conformity with accepted methods of recording economic events and effectively prevent off-the-books slush funds and payments of bribes



Accounting Provisions

Books and Records Provisions (cont’d)

- Bribes are often concealed under the guise of legitimate payments, such as commissions or consulting fees
- Consistent with the FCPA’s approach to prohibiting payments of any value that are made with a corrupt purpose, there is no materiality threshold under the books and records provision



Accounting Provisions

Books and Records Provisions (cont'd)

Bribes Have Been Mischaracterized in Books and Records As:

- Commissions or royalties
- Consulting fees
- Sales and marketing expenses
- Travel and entertainment expenses
- Rebates or discounts
- Miscellaneous expenses
- Write-offs

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Accounting Provisions

Books and Records Provisions (cont'd)

Common Red Flags for FCPA Books and Recordkeeping Violations:

- Vague and unclear journal entry descriptions of payments made
- Payment descriptions that do not relate to the account where the transaction was recorded
- Significant fluctuations in miscellaneous expense or promotional expense accounts
- False invoicing
- Unrecorded transactions
- Submission of false or inaccurate expense reports
- Incorrect payees for payments made

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Accounting Provisions

Internal Control Provision

- The payment of bribes often occurs in companies that have weak internal control systems
- Internal controls over financial reporting are the processes used by companies to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements



Accounting Provisions

Internal Control Provision (cont'd)

Note: Internal Controls are Defined in the COSO Framework As:

Internal control is a process, effected by an entity's board of directors, management, and other personnel, designed to provide reasonable assurance regarding the achievement of objectives, related to operations, reporting, and compliance



Accounting Provisions

Internal Control Provision (cont'd)

An Effective System of Internal Control:

- Reduces, to an acceptable level, the risk of not achieving an entity objective related to operations, reporting, and compliance
- An effective system of internal control requires that each of the **five components** identified in the COSO Framework are present and functioning and that the five components are operating together in an integrated manner

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Accounting Provisions

Internal Control Provision (cont'd)

Five Components of Internal Control:

1. Control environment
2. Risk assessment
3. **Control activities**
4. Information and communication
5. Monitoring

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Accounting Provisions

Internal Control Provision (cont'd)

Control Activities:

- Approvals
- Authorizations
- Reconciliations
- Segregation of Duties



Accounting Provisions

Internal Control Provision (cont'd)

- Good and effective internal controls can prevent not only FCPA violations, but also other illegal or unethical conduct by the company, its subsidiaries, and its employees



Accounting Provisions

Sarbanes-Oxley Act of 2002

- All issuers must comply with Sarbanes-Oxley's requirements that strengthened accounting requirements for issuers
- Several Sarbanes-Oxley requirements have FCPA implications

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Accounting Provisions

Sarbanes-Oxley Act of 2002 (cont'd)

- Title III – Section 302 – *Responsibility of Corporate Officers for the Accuracy and Validity of Corporate Financial Reports*
- Title IV – Section 404 – *Reporting on the State of a Company's Internal Controls over Financial Reporting*
- Title VIII – Section 802 – *Criminal Penalties for Altering Documents*

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Accounting Provisions

Principles of Corporate Liability for Accounting Violations

- General principles of corporate liability apply to the FCPA
- A company is liable when its directors, officers, employees, or agents, acting within the scope of their employment, commit FCPA violations intended, at least in part, to benefit the company
- Similarly, as with any other federal statute, the DOJ and the SEC look to principles of parent-subsidiary and successor liability in evaluating corporate liability

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Accounting Provisions

Penalties for Violating the Accounting Provisions of the FCPA May Include:

- Fines of up to \$25,000,000 per violation against the U.S. company
- Prison terms of up to 20 years and fines of up to \$5,000,000 per violation for individuals found guilty
- The SEC can pursue further civil penalties

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Compliance Requirements

- An effective compliance program is a critical component of an issuer's internal controls
- The design of a company's internal controls must take into account the operational realities and risks related to the company's business, such as:
 - Nature of the company's products or services
 - How the products or services go to market
 - The nature of the company's work force
 - The degree of regulation
 - The extent of its government interaction
 - The degree the company has operations in countries with a high risk of corruption

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Compliance Requirements

- A company's compliance program should be tailored to the operational realities and risks identified on the previous slide

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Compliance Requirements

As Part of An Effective Compliance Program, Managers and Employees Should Know

- It is illegal to give or authorize bribes to foreign officials
- It is illegal to offer, promise to pay, or get into an arrangement to compensate foreign officials with anything of value with an intention to influence the foreign officials decision making
- It is illegal to hide or manipulate payments made to third parties that have, may have, or likely to be used to bribe a foreign official
- Accounting records should be accurate and reflect the actual reasons for payments
- Internal accounting controls should be adequate to prevent or identify violations of the FCPA

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Compliance Requirements

An Effective FCPA Compliance Program Should Contain the Following Elements

- A policy or code of business conduct that prohibits corrupt payments to foreign officials – create a culture of compliance
- A commitment by senior management to comply with all laws and regulations and take appropriate actions against any manager or employee who violates any laws or regulations including the FCPA

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Compliance Requirements

An Effective FCPA Compliance Program Should Contain the Following Elements (cont'd)

- Strong company-wide risk assessment practices in the area of compliance with the FCPA:
 - Accounting
 - Bank accounts
 - Cash payments
 - Procurement and vendor approvals
 - Contracts and agreements
 - Hospitality and gifts

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Compliance Requirements

An Effective FCPA Compliance Program Should Contain the Following Elements (cont'd)

- Detailed procedures, standards, and guidance to address specific issues that might come up in the course of a company's operations
- Compliance program policies and procedures that detail effective internal controls, internal audit practices, and documentation policies
- Communicate the compliance program policies and procedures to all managers and employees



Compliance Requirements

An Effective FCPA Compliance Program Should Contain the Following Elements (cont'd)

- Identify all third parties the company uses in operations outside the U.S. and perform due diligence to evaluate their compliance with laws and regulations as well as the effectiveness of their internal controls to prevent or identify bribery activities – Third parties include:
 - Agency relationships
 - Distributors
 - Franchisees
 - Commercial contracts
 - Acquisition targets
 - Joint venture partners



Compliance Requirements

An Effective FCPA Compliance Program Should Contain the Following Elements (cont'd)

- Supervisory employees in charge of FCPA compliance monitoring should report to the board of directors, not management, and have sufficient resources to accomplish the objectives of the FCPA compliance program
- Require the insertion of FCPA compliance language in all international contracts



Compliance Requirements

An Effective FCPA Compliance Program Should Contain the Following Elements (cont'd)

- Training programs designed to provide the appropriate education to each manager and employee on the basis of seniority, job responsibilities, geographic location, and line of business
- Systems to detect and investigate suspected violations, to monitor the effectiveness of the program, and to remedy violations



Compliance Requirements

An Effective FCPA Compliance Program Should Contain the Following Elements (cont'd)

- FCPA violations whistleblower program should be installed with confidentiality assured and investigation guaranteed
- Consistent follow up - constantly review and update the compliance program as necessary

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Compliance Requirements

If Uncovered Possible Violations of the FCPA

- Perform an internal investigation
- Promptly self-report the findings of the internal investigation to the DOJ/SEC
- Provide timely updates to the DOJ/SEC of the possible violations
- Make company personnel available for DOJ/SEC interviews
- Extend internal investigation to risk assessment possibilities of additional violations in other parts of the company

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Compliance Requirements

Note

The DOJ has identified timely and voluntary disclosure of wrongdoing as a key factor to be considered in deciding whether or not to prosecute a company

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Other Compliance Requirements

Travel Act

- The 1952 Travel Act prohibits travel in interstate or foreign commerce, or using the mail or any facility in interstate or foreign commerce, with the intent to distribute the proceeds of any unlawful activity or to promote, manage, establish, or carry on any **unlawful activity**
- Unlawful activity includes violations of not only the FCPA, but also state commercial bribery laws
- Bribery between private commercial enterprises, not a foreign official, may in some circumstances be covered by the Travel Act

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Other Compliance Requirements

Money Laundering

- Many FCPA cases also involve violations of anti-money laundering statutes
- Common examples are when individuals participate in activities that are in violation of the FCPA and money laundering laws by conducting financial transactions involving proceeds of unlawful activities (violations of the FCPA) in order to conceal and disguise these proceeds (money laundering)

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Other Compliance Requirements

Money Laundering (cont'd)

Common Red Flags for Money Laundering Risk Include:

- Third party is vague or unclear about the source of funds for a given transaction
- Third party uses incomplete, false, or misleading business contact information
- Third party has large amounts of cash available but no apparent business to generate that cash
- Third party is located in a country with a history of corruption

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Other Compliance Requirements

Money Laundering (cont'd)

Common Red Flags for Money Laundering Risk Include (cont'd):

- Third party's books and records are not accurately maintained, and large inflows and outflows cannot be accounted for
- Third party's business structure is complicated with businesses having little relationships to each other
- Third party has been the subject of law enforcement for law and regulations violations including fraud, narcotics, trafficking, or organized crime activities

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Other Compliance Requirements

Mail and Wire Fraud

- Similar to money laundering, mail and wire fraud statutes exist to prevent the use of mail or wire fraud schemes to transfer monies obtained through unlawful activities
- Often, these unlawful activities violate both FCPA and the mail and wire fraud statutes
- Examples involve overbilling customers and using part of the overcharged money to pay kickbacks to customers' employees or illegal commission payments disguised as refunds, commissions, or other seemingly legitimate expenses

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Other Compliance Requirements

Certification and Reporting Violations

- Licensing, certification, and reporting requirements imposed by the U.S. government can fall within the general concept of foreign bribery schemes
- For example, the Export-Import Bank of the United States, as a condition of its facilitation of direct loans and loan guarantees to a foreign purchaser of U.S. Goods and services, requires the U.S. supplier to make certifications concerning commissions, fees, or other payments paid in connection with the financial assistance and that it has not and will not violate the FCPA

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Other Compliance Requirements

Certification and Reporting Violations (cont'd)

- Also, manufacturers, exporters, and brokers of certain defense articles and services are subject to registration, licensing, and reporting requirements under the Arms Exports Control Act and the International Traffic in Arms Regulations
- The sales of defense articles and services valued at \$500,000 or more triggers disclosure requirements concerning fees and commissions, including bribes, in an aggregate amount of \$100,000 or more

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Other Compliance Requirements

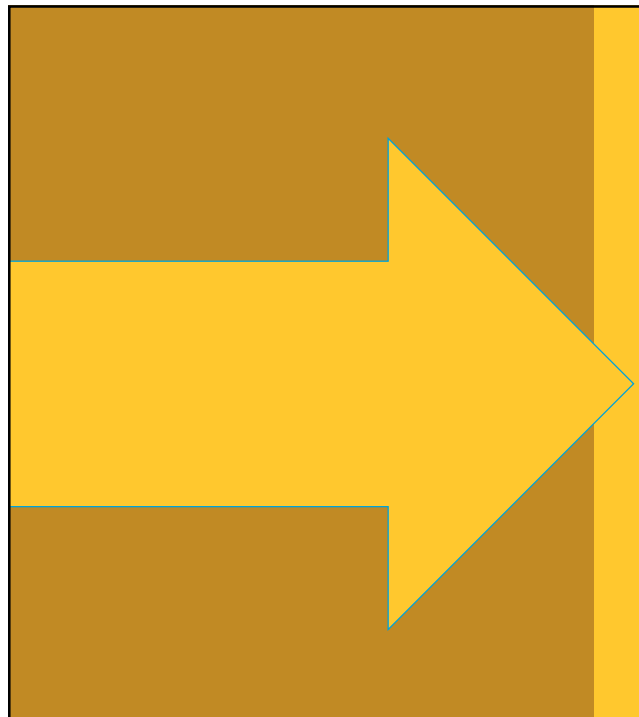
Tax Violations

- Individuals and companies who violate the FCPA may also violate U.S. tax law, which explicitly prohibits tax deductions for bribes, such as false sales commissions deductions intended to conceal corrupt payments
- Internal Revenue Service-Criminal Investigation has been involved in a number of FCPA investigations involving tax violations as well as other financial crimes such as money laundering

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Whistleblower Provisions and Protections



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Whistleblower Provisions and Protections

As expressed by the DOJ and SEC:

- *Assistance and information from a whistleblower who knows of possible securities law violations can be among the most powerful weapons in the law enforcement arsenal*
- *Through their knowledge of the circumstances and individuals involved, whistleblowers can help the SEC and DOJ identify potential violations much earlier than might otherwise have been possible*
- *Allowing the SEC and DOJ to minimize the harm to investors, better preserve the integrity of the U.S. capital markets, and more swiftly hold accountable those responsible for unlawful conduct*

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Whistleblower Provisions and Protections

Summary

- The **Sarbanes-Oxley Act of 2002** and the **Dodd-Frank Act of 2010** contain provisions affecting whistleblowers who report FCPA violations
- Sarbanes-Oxley prohibits issuers from retaliating against whistleblowers and provides that employees who are retaliated against for reporting possible securities law violations may file a complaint with the Department of Labor where that could be eligible to receive reinstatement, back pay, and other compensation

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Whistleblower Provisions and Protections

Summary (cont'd)

- Dodd-Frank Act added Section 21F to the Securities and Exchange Act of 1934 addressing whistleblower incentives and protections
- Section 21F authorizes the SEC to provide monetary awards to eligible individuals who voluntarily come forward with high quality, original information that leads to an SEC enforcement action in which over \$1,000,000 in sanctions is ordered
- The awards range is between 10% and 30% of the monetary sanctions recovered by the government
- The Dodd-Frank Act also prohibits employers from retaliating against whistleblowers and creates a private right of action for employees who are retaliated against

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Whistleblower Provisions and Protections

Individuals with information about possible violations of FCPA can submit information to the following (can be anonymous):

SEC Office of the Whistleblower

100 F Street NE, Mail Stop 5971

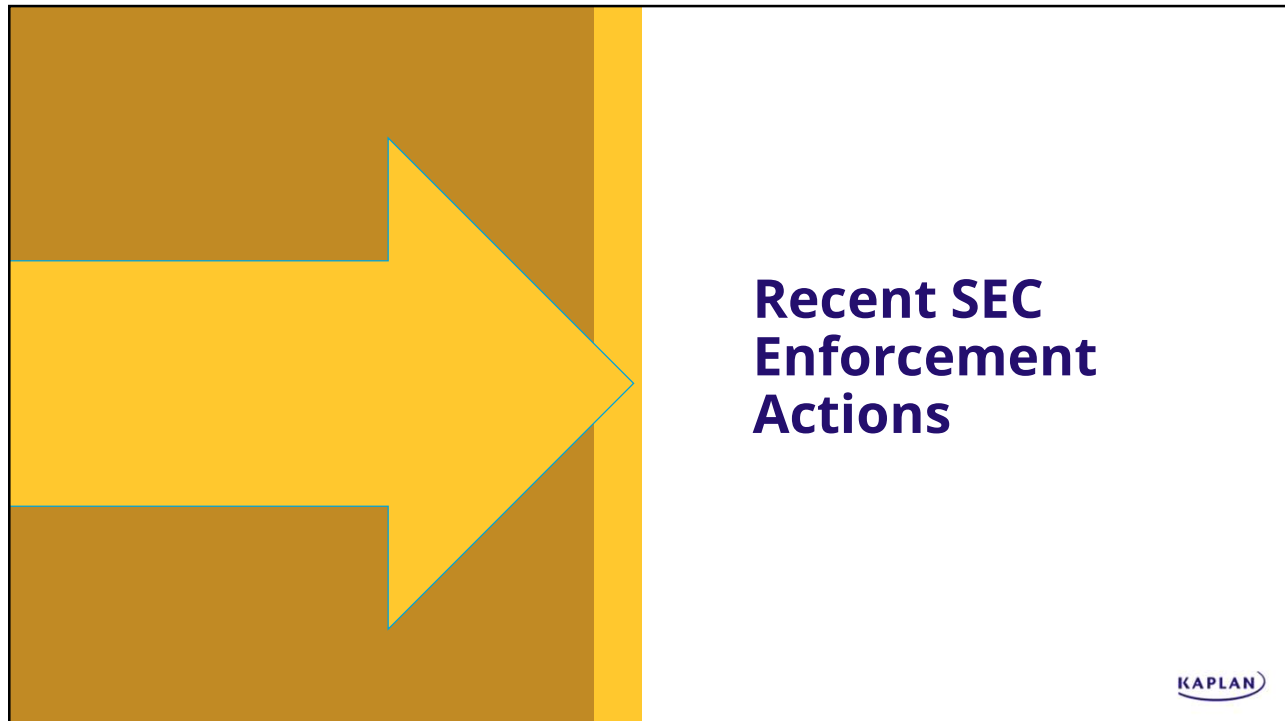
Washington, DC 20549

Fax: (703) 813-9322

Online Report Form: <http://www.sec.gov/whistleblower>

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Recent SEC Enforcement Actions

- Oracle – The multinational information technology company agreed to pay \$23 million to resolve charges that it violated provisions of the FCPA when subsidiaries in Turkey, the United Arab Emirates (UAE) and India created and used slush funds to bribe foreign officials in return for business between 2016 and 2019
- WPP - A British multinational communications, advertising, public relations, technology, and commerce holding company headquartered in London, England has agreed to pay more than \$19 million to resolve charges that it violated the anti-bribery, books and records, and internal accounting controls provisions of the FCPA

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Recent SEC Enforcement Actions

- Goldman Sachs Group, Inc. – The firm agreed to pay more than \$1 billion to settle SEC charges that it violated the anti-bribery, books and records, and internal accounting controls provisions of the FCPA in connection with the 1Malaysia Development Berhad bribe scheme
- Tim Leissner – A former executive of Goldman Sachs Group, Inc. agreed to a settlement with the SEC that includes a permanent bar from the securities industry for violating the FCPA by engaging in a corruption scheme by which he obtained millions of dollars by paying unlawful bribes to various government officials to secure lucrative contracts for Goldman Sachs

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Recent SEC Enforcement Actions

- Herbalife Nutrition, Ltd. – The Los Angeles-based direct selling company agreed to pay more than \$67 million to resolve charges that it violated the books and records and internal accounting controls provisions of the FCPA arising out of a bribery scheme orchestrated by its China subsidiary
- Jerry Li – SEC charged Jerry Li, a Chinese national and former managing director of the Chinese subsidiary of Herbalife Nutrition, Ltd for bribing government officials in China to obtain direct selling licenses made through payments of cash, gifts, travel, meals, and entertainment

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Recent SEC Enforcement Actions

- Alexion Pharmaceuticals – A Boston based pharmaceutical company agreed to pay more than \$21 million to resolve charges that it violated the books and records and internal accounting controls provisions of the FCPA
- Walmart Inc. – SEC charged Walmart with violating the books and records and internal accounting controls provisions of the FCPA by failing to operate a sufficient anti-corruption compliance program for more than a decade as the retailer experienced rapid international growth. Walmart agreed to pay more than \$144 million to settle the SEC's charges and approximately \$138 million to resolve parallel criminal charges by the DOJ for a combined total of more than \$282 million

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Recent SEC Enforcement Actions

- Ericsson – The multinational telecommunications company agreed to pay more than \$1 billion to the SEC and DOJ to resolve charges that it violated the FCPA by engaging in a large-scale bribery scheme involving the use of sham consultants to secretly funnel money to government officials in multiple countries
- Quad/Graphics, Inc. – The marketing solutions and printing service provider agreed to pay nearly \$10 million to resolve charges that it violated the FCPA by engaging in multiple bribery schemes in Peru and China and creating false records to conceal commercial transactions with a state-controlled Cuban telecommunications company that was subject to U.S. sanctions and export control laws

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Recent SEC Enforcement Actions

- Panasonic Corp – The Japan-based company agreed to pay more than \$143 million to resolve FCPA charges involving a lucrative consulting position it offered to a government official at a state-owned airline to induce the official to help its U.S. subsidiary in obtaining and retaining business from the airline
- JPMorgan – The firm agreed to pay \$264 million to the SEC, Justice Department, and Federal Reserve to settle charges that it corruptly influenced government officials and won business in the Asia-Pacific region by giving jobs and internships to their relatives and friends

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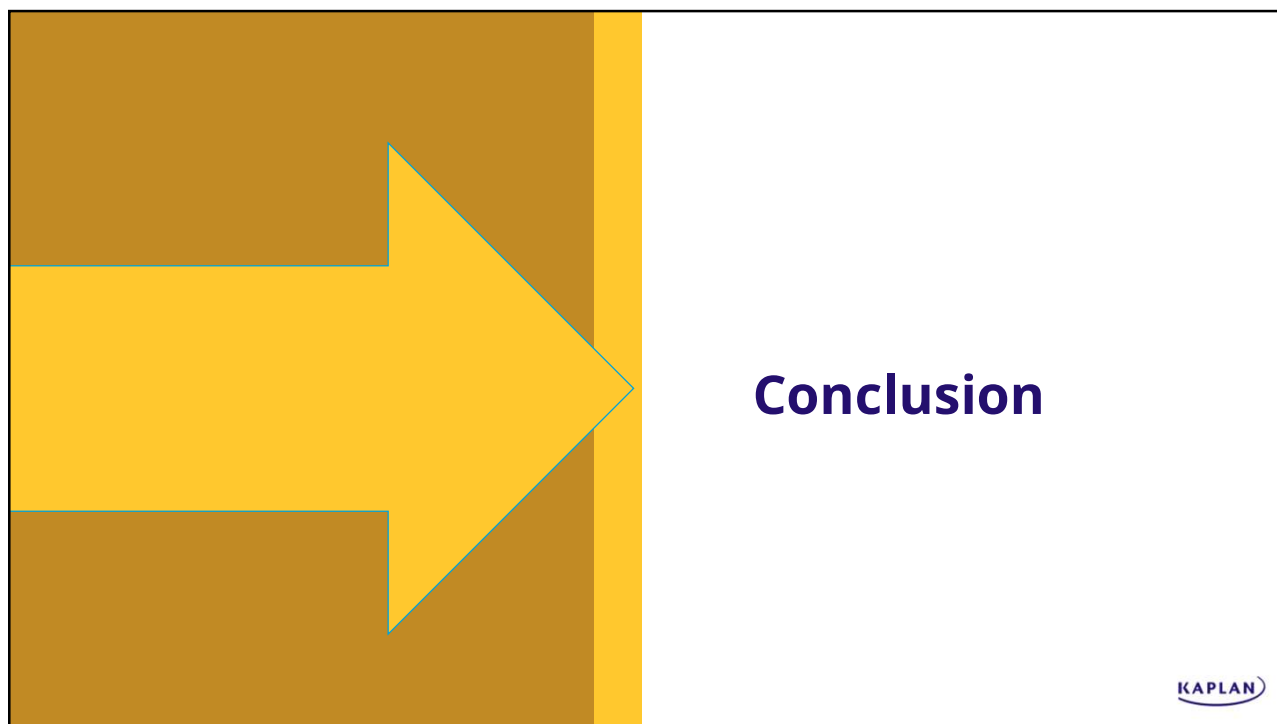


Recent SEC Enforcement Actions

- Johnson & Johnson – Greek division was fined \$6.9 million for unlawful activity in Greece. J&J paid millions in kickbacks to Greek health officials and physicians and listed these payments in accounting records as “Professional Education”

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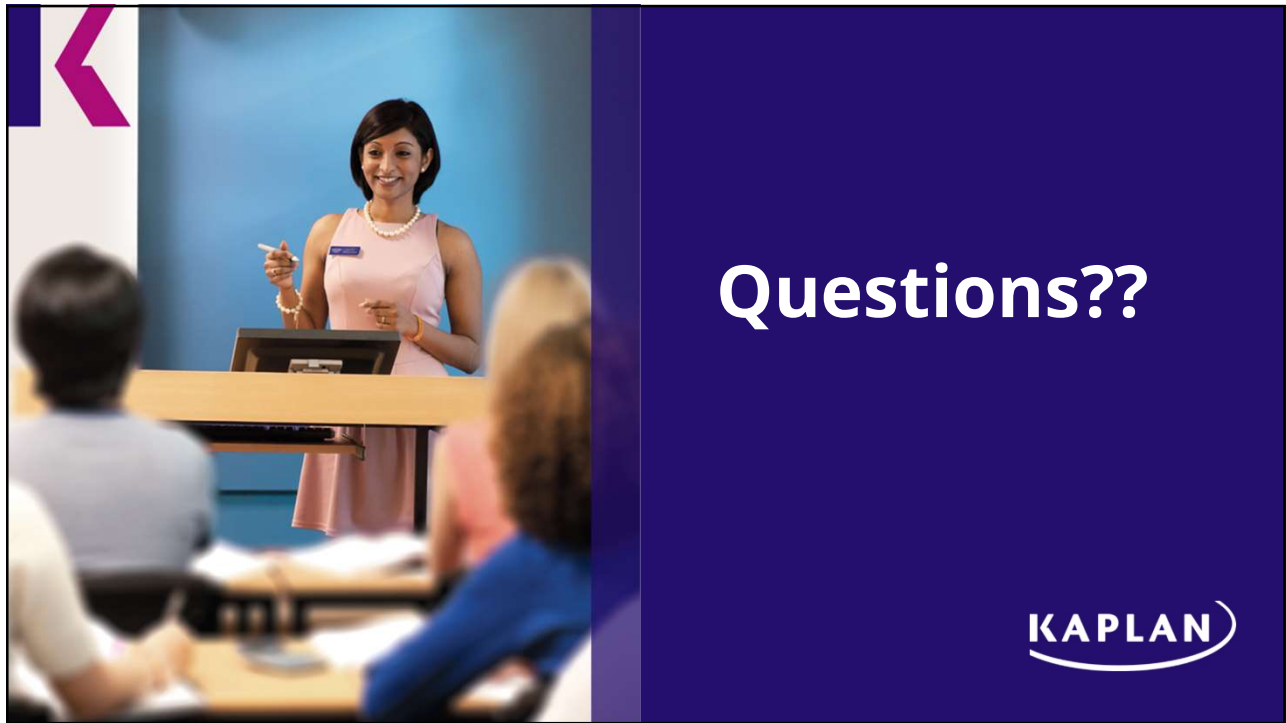
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K Conclusion

- The FCPA was designed to prevent corrupt practices, protect investors, and provide a fair playing field for those honest companies trying to win business based on quality and price rather than bribes
- For businesses desiring to compete fairly in foreign markets, the goal of the FCPA is to maximize those businesses' ability to compete in the most effective and efficient way suitable to their business and the markets in which they operate

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Reminders

☐ **Post event evaluation:** Please complete the course evaluation that will be viewable once the session ends. We welcome your feedback!

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