

# Under Scrutiny:

## SHB's Government Enforcement & Compliance Update

DECEMBER 16, 2008



### IN THE THICKET AS FCPA AND ANTITRUST ENFORCEMENTS CONVERGE

Recent years have witnessed an explosion of Foreign Corrupt Practices Act (FCPA) enforcement actions brought by the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC). This trend is continuing unabated as aggressive FCPA enforcement converges with antitrust enforcement, facilitated by active parallel investigations in foreign jurisdictions.

An example of this convergence between FCPA and antitrust enforcement is found in a string of enforcement actions in the marine-hose market. Most recently, on December 10, 2008, a Japanese executive, Misao Hioki, entered a guilty plea for his participation in two conspiracies to rig bids and bribe foreign government officials involving the sale of marine hose that his company manufactured. Hioki was sentenced to two years in jail and to pay an \$80,000 criminal fine. Previously, eight other individuals pleaded guilty in the same marine-hose bid-rigging investigation; several of them were also arrested, criminally charged and sentenced for cartel offenses by U.K. authorities.

The marine-hose investigations should promote greater corporate awareness of the potential overlaps between antitrust and FCPA violations. For example, collusive cartel agreements to engage in bid-rigging or price-fixing may also involve payments to foreign officials to ensure that a particular cartel member is awarded a certain contract.

#### GOVERNMENT ENFORCEMENT & COMPLIANCE

Our clients face unprecedented enforcement scrutiny and novel legal theories. Today, government enforcement actions can include civil as well as criminal investigations and litigation. They can involve a host of independent actors including federal and state prosecutors, regulators, whistleblowers and their counsel, and class-action attorneys. These cases must be defended under the watchful eye of investors and the public.

Our Government Enforcement & Compliance Practice consists of former prosecutors -- including a former U.S. Attorney, former Justice Department officials and even former corporate executives -- who counsel and defend companies, their executives and employees in the full range of criminal, civil and regulatory government enforcement actions at the state and federal level. We counsel clients on how to avoid enforcement scrutiny. When investigations do arise, however, we work with our clients to resolve it as efficiently, cost-effectively and quietly as possible.

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The fact of overlapping investigation is important because, unlike FCPA investigations, antitrust authorities provide immunity for the first violator who discloses wrongdoing to the government. As a result, counsel should carefully review a company's decision to engage in a debriefing with the government in a matter involving both antitrust and FCPA concerns.

Analysis prepared by [Jonathan N. Rosen](#).

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