

Under Scrutiny:

SHB's Government Enforcement & Compliance Update

DECEMBER 18, 2008



SIEMENS SETTLES GLOBAL CORRUPTION CASE: LESSONS IN INTERNATIONALIZATION OF FCPA ENFORCEMENT

We cannot place enough emphasis on the recent explosion of Foreign Corrupt Practices Act (FCPA) enforcement actions in the United States coupled with enhanced international cooperation arising from active parallel investigations in foreign jurisdictions based on heightened international anti-bribery standards.

As a result, U.S. companies doing business abroad now face more significant government resources focused on combating bribery since the passage of the FCPA more than 30 years ago. The recently announced enforcement action against Siemens AG is illustrative.

On December 15, 2008, Siemens pleaded guilty in Washington, D.C. before U.S. District Judge Richard Leon to violating the FCPA's internal-controls and books-and-records provisions. The company faces \$800 million in fines and disgorgement penalties. Siemens cooperated extensively with the government during its investigation. Hence, Siemens avoided pleading guilty to fraud and, thereby, steered clear of a more draconian sanction involving debarment from seeking future U.S. government contracts.

The Department of Justice (DOJ) and the Securities and Exchange Commission investigated Siemens for the company's failure to prevent or adequately account for improper payments made to foreign officials. Siemens paid bribes to secure contracts around the world, including Asia, Africa and South America. According to government filings, Siemens made in excess of 4,200 improper payments totaling more than \$1.4 billion, while mischaracterizing the bribes and using improper accounts to conceal the payments from auditors.

The Siemens case demonstrates the need for a strict corporate compliance program and effective communication between the board and compliance office. In 2006, outside auditors reported to Siemens that at least 250 suspicious payments had been made through the parent to companies in foreign jurisdictions. Neither

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 board nor the compliance office made any attempt to investigate the facts or explore whether there were similar instances of wrongdoing.

Siemens also failed to adequately investigate after learning of government inquiries into corruption in Israel, Hungary, Azerbaijan, Taiwan, and China. In addition, Siemens is facing possible charges of public corruption in China, Germany, Greece, Hungary, Indonesia, Israel, Italy, Lichtenstein, Nigeria, Norway, Russia, and Switzerland.

Prevention of fraud and corruption under the FCPA is becoming increasingly internationalized with parallel criminal and civil actions in foreign jurisdictions. In today's global economy, FCPA enforcement is no longer a unitary DOJ process but instead will involve the resources of many nations, thus increasing potential liability for companies engaging in illicit business activities.

The Siemens settlement is almost 20 times larger than any previous penalty under the FCPA. As the government becomes ever more aggressive in its FCPA prosecution, companies faced with an enforcement action should expect increased international cooperation and the potential for the assessment of larger fines. Once an investigation begins, however, providing immediate and extensive cooperation to investigators may limit the company's potential fines and punishment under DOJ's revised Guidelines of Corporate Prosecution.

Companies should, therefore, confer with counsel to consider the benefits and risks of a proactive response to an FCPA enforcement action.

Analysis prepared by [Matthew Benov](#).

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The choice of a lawyer is an important decision and should not be based solely upon advertisements.

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