

FCPA/Anti-Corruption Compliance Update: Recent Cases

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Agenda

- M&A due diligence: Goodyear
- Pushing the bounds of FCPA jurisdiction: Alcoa
- Charitable Contributions: Eli Lilly and Alstom
- “Sons and Daughters” Investigations

FCPA M&A Due Diligence: Goodyear

Legal Background: FCPA M&A Due Diligence

- *“A company that does not perform adequate FCPA due diligence prior to a merger or acquisition may face both legal and business risks. Perhaps most commonly, inadequate due diligence can allow a course of bribery to continue—with all the attendant harms to a business's profitability and reputation, as well as potential civil and criminal liability.” – DOJ/SEC Resource Guide to the U.S. Foreign Corrupt Practices Act*
- Transactional FCPA due diligence guards against legal and business risks:
 - Successor liability
 - Liability for continuing or new improper conduct post-acquisition
 - FCPA issues and associated costs can affect deal value
- Need to integrate the target into the company's compliance program and conduct monitoring
- The failure to conduct transactional due diligence itself may be considered an internal controls failure
- FCPA due diligence in M&A transactions has led to numerous enforcement actions

Historical Perspective: Titan/Lockheed Martin

- Titan engaged in a multi-year bribery scheme in connection with a contract with the government of Benin.
 - Titan paid more than \$3 million in consulting fees to an agent, hired without due diligence, who was closely connected to the President of Benin. Titan made improper payments to a presidential campaign, purchased diamond earrings for the President's wife, and paid certain travel expenses for an official to secure a fee increase.
- Lockheed discovered Titan's FCPA issues during pre-transaction due diligence.
 - Titan had represented in the merger agreement that it had not taken any action in violation of the FCPA.
 - Titan and Lockheed Martin jointly disclosed to the DOJ and SEC.
 - Lockheed first lowered the transaction price by \$200 million to \$2.2 billion.
 - Nine months after entering into merger discussions, Lockheed terminated the merger agreement.
 - Titan later settled an FCPA action with the DOJ and SEC for what were then record penalties.

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Historical Perspective: eLandia/Latin Node

- eLandia acquired Latin Node, a telecommunications company, which had been paying bribes to officials in the Honduran state-owned telecommunications company and to Yemeni officials.
 - The bribes continued after a purchase agreement was signed but ceased at about the time the deal was closed.
 - After closing, Latin Node discovered the payments, conducted an internal investigation, terminated the tainted contracts, and voluntarily disclosed the potential FCPA violations to the DOJ and SEC.
- The DOJ brought an FCPA action against Latin Node, despite eLandia's disclosure and cooperation.
 - Latin Node pled guilty to a criminal FCPA violation and paid a \$2 million fine. Three Latin Node executives were convicted of FCPA-related offenses.
- Latin Node was wound down, nearly all its employees terminated, and eLandia's investment was wiped out.
 - eLandia spent in excess of \$18 million investigating and resolving the matter after paying \$20 million to acquire Latin Node.

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