Anti-Corruption Compliance: Dealing with Regulators When a Company is Under Investigation

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Combating Corruption When Doing Business Globally: Corporate Compliance Programs and the FCPA
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Summary

• About Aon
• The insurance industry
• Aon’s settlement with the UK Financial Services Authority
• Aon’s enhanced anti-corruption compliance program
• Lessons learned for global compliance programs and dealing with anti-corruption investigations
About Aon
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• Aon is the world’s largest insurance and reinsurance broker, and provides human capital consulting
  – Insurance brokers assist companies in designing insurance programs, obtaining quotes from insurers, and placing coverage with insurers
  – Reinsurance brokers assist insurers in obtaining reinsurance for all or part of their risks
• 35,000 employees, approximately half outside the US
• 500 offices in 120 countries
• Approximately $9 billion in annual revenue
The Insurance Industry
The Insurance Industry

- Nature of insurance markets raises unique anti-corruption issues
  - London insurance market has global clients in fields such as energy, aviation, shipping, and insurance
  - Many countries are at high risk for corruption
  - Particularly in developing countries, high risks include government entities, local insurance companies, energy companies, airlines
  - Various actors = Multi-Layered Transactions
    - Client insureds
    - Co-Brokers
    - Sub-Brokers
    - Managing General Agents
    - Insurers
    - Consultants
    - Introducers
Aon’s Settlement with the FSA
2002-2009 (To Date) FCPA Activity
US Department of Justice

New Investigations
Ongoing Investigations
Monitor Appointments - DOJ / SEC
Aon’s Settlement with the FSA

• Aon largely concluded investigation at end of 2008
• In January 2009, Aon Ltd agreed to pay £5.25 million fine
  – Fine was for failings in risk assessment and systems and controls associated with non-FSA authorized third parties outside the UK, principally in aviation and energy sectors
  – FSA found that Aon Ltd’s conduct was not deliberate nor reckless
  – FSA did not find that Aon Ltd made corrupt payments, but instead found that Aon Ltd’s failings in processes prevented Aon Ltd from adequately protecting against risk of such payments being made
Aon’s Settlement with the FSA (Cont.)

• Specific failings by Aon Ltd identified by FSA included:
  – Lack of sufficient due diligence before hiring third parties
  – Failure to monitor third parties once hired
  – Insufficient training on corruption risks for those operating in high-risk practices or geographies; Code of Conduct alone not enough
  – Failure of Aon Ltd committees to gather information to assess management of corruption risks

• Overall, these failings caused Aon Ltd personnel not to sufficiently question nature and purpose of some potentially inappropriate payments
Aon’s Settlement with the FSA (Cont.)

• Imposed “higher fines” for “credible deterrence” of others
  – Indication that UK authorities are stepping up enforcement in wake of BAE and other matters
• Fine also reflected Aon’s cooperation in investigation
  – 30% reduction for timely cooperation and resolution
  – Hiring of independent law firms and other advisers
  – Prompt voluntary reporting to FSA and other relevant authorities
  – Comprehensive Past Payment Review
  – Aon Corporation global anti-corruption program
  – Disciplinary actions against involved employees
Aon’s Settlement with the FSA (Cont.)

• Model compliance program
  – “Since the discovery of its failings in 2007, Aon Ltd and its current management have fully cooperated with the FSA’s investigation and have demonstrated to the FSA that they treat this matter with the utmost seriousness. The FSA considers that the pro-active determination of Aon Ltd’s current senior management to identify past issues and improve Aon Ltd’s systems and controls in this area is a model of best practice for other firms to adopt.” Final Notice ¶ 26.
Aon’s Enhanced Anti-Corruption Compliance Program
Aon’s Enhanced Anti-Corruption Program

• Global FCPA Compliance Director and staff
• Enhanced Anti-Corruption Policy and Code of Conduct
• Enhanced array of training programs
  – Online training in 11 languages for all employees worldwide
  – Not “off-the-shelf” – customized with scenarios unique to the insurance industry
  – In-person training for high-risk areas and geographies
• Stricter client entertainment policy, with low limits and special rules applicable to government clients
Aon’s Enhanced Anti-Corruption Program (Cont.)

• New controls over client seminars and events
• New FCPA/anti-corruption due diligence protocols for acquisitions and joint ventures
• Employee performance evaluations include compliance
• Aon has implemented a comprehensive new risk-based policy limiting and governing Aon’s hiring and use of third parties to obtain or retain business
Aon’s Enhanced Anti-Corruption Program (Cont.)

- Seven Regional Working Groups (“RWGs”) throughout the world perform due diligence on proposed parties
  - Each RWG contains representatives from business, legal, compliance, finance, and outside counsel; nearly 200 employees worldwide serve on RWGs
  - RWGs gather information on proposed third parties from business sponsors, perform independent due diligence, and approve or reject third parties
  - RWGs require third parties to sign anti-corruption covenants and to take mandatory training
  - No third party can be engaged or paid unless approved unanimously by an RWG
Lessons Learned for Global Compliance Programs and Dealing with Anti-Corruption Investigations
Lessons Learned

• Review your policies and procedures in light of recent enforcement actions and settlements
  – What you might view as adequate policies and procedures may not be viewed as adequate by regulators in the new environment
  – Get expert assistance, because conclusions can be counterintuitive
    • In the FCPA world, definition of “government” broader than you think
    • Threshold for what might be considered “bribery” or “corruption” lower than you think
    • Think creatively about scenarios in which potentially corrupt activities could arise; scenarios go well beyond suitcases filled with cash
    • Even if no bribery (13), can still have books and records/internal control problem (30)
Lessons Learned (Cont.)

• Engage business leaders as partners in anti-corruption compliance
  – Compliance cannot be viewed as “external” to business objectives; must be viewed as integral to objectives
  – Business leaders must:
    • Ensure that compliance policies are integrated into business systems (e.g., CFO, head of procurement)
    • Demonstrate that compliance is as important as revenue (e.g., business unit leader – tone at the top)
    • Show that non-compliance has consequences (e.g., business unit leaders and head of HR)
    • Incentivize good compliance
Lessons Learned (Cont.)

• If you discover a potential issue, be active, not passive, in investigating and disclosing to regulators
  – Assure any alleged misconduct has been terminated, and any alleged persons involved have been disabled
  – Assure that investigation is independent and thorough
  – Utilize outside firms or independent resources, if appropriate to demonstrate independence
  – Regulators expect and reward voluntary disclosure and do not like surprises
Questions or Comments?
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