

Documentation Can Provide Credibility in a FCPA Investigation

I am privileged to speak across the country on current Foreign Corrupt Practices Act (FCPA) best practices with Stephen Martin, General Counsel of Corpedia. The FCPA Tour is sponsored by World-Check. For those of you who do not know Stephen Martin, he is a former prosecutor in the Department of Justice (DOJ) and has worked at some of America's largest corporations while handling significant compliance matters. This background allows him to bring a substantial white collar prosecution and defense perspective to our presentations as I have only practiced on the civil side.

All companies which come before the DOJ when an incident or investigation arises claim that they have the best compliance program that they can afford in place. However, if a company cannot demonstrate the 'robustness' of its program it might as well be for naught. I have written several posts on three of the most important components of a FCPA *best practices* compliance program; which are: documentation, documentation and documentation. I believe that it is true that the only manner in which to gage the overall effectiveness of your compliance program is through documentation. Put another way, if you don't document it, you cannot measure it and if you cannot measure it, you cannot refine it. Nevertheless, there is one more important aspect to documentation. It is through the access of this documentation that a company put forward support that its compliance program is robust.

One of the points which Stephen emphasizes is that when dealing with prosecutors, whether from the DOJ; Securities and Exchange Commission (SEC) or state prosecutors, you and your company's credibility are paramount. This means more than simply self-disclosure and cooperation. Stephen drives home this point when discussing your company's documentation of its compliance program. In addition to your documentation, documentation, documentation; your company must be able to access your documentation and then be able to produce it in a reasonable time upon request. This means that if it takes your company four weeks to produce a list of agents, distributors and other sales representatives; you will lose credibility with a DOJ prosecutor because the lengthy time it takes to round up such information is a clear sign that a company does not have robust books and records.

Whether your company is a multi-billion dollar entity or one with \$250 million annual sales, you must be able to access the documentation of your FCPA compliance system. It certainly helps if your database is computerized and you can access it via several different search parameters. However, if your company keeps all its agents, distributors and sales agent due diligence in a binder, tabbed and indexed on a shelf of the office of the General Counsel or Chief Compliance Officer, that should enable you to quickly and efficiently produce the information. As I have heard Mike Volkov say, "companies are usually not penalized under the FCPA for the quality of their due diligence but for the lack of doing any due diligence." So if you can produce your results you will go quite a long way towards establishing credibility with a DOJ prosecutor.

Want to hear more from Thomas Fox, add these webinars and World-Check FCPA Road Show events to your calendar:

I. Webinars

Thursday, April 28 at 12 EDT, I am co-hosting a webinar with Mary Shaddock Jones, Assistant General Counsel and Director of Compliance at Global Industries, Ltd., on “Current FCPA Compliance Program Best Practices: Lessons Learned from Recent DPAs”. For information and registration details click [here](#).

Thursday May 12 at 11 AM EDT, I am a co-panelist with Scott Moritz, Managing Director of Navigant, on a webinar hosted by Dow Jones, entitled, “Risk Assessment: The First Step in Any Compliance Program”. For information and registration details click [here](#).

II. World-Check FCPA Road Shows.

Co-presenting with Stephen Martin, General Counsel of Corpedia, on “Anti-Corruption/FCPA Developments & Best Practices”

Tuesday, May 3 from 8-10 AM PDT at McCormick & Schmick’s Seafood Restaurant, in Phoenix, AZ. For information and registration details click [here](#).

Wednesday, May 4 from 8-10 AM PDT at San Diego Marriott Del Mar: Santa Fe Ballroom, in San Diego, CA. For information and registration details click [here](#).

I hope you can attend the webinars, and if you are in Phoenix or San Diego, come out to hear and meet to myself and Stephen Martin.

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