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## U.S. targeting execs in bribe probes

*Feds' push to investigate companies for corrupt practices overseas increasingly includes management*

By Andrew Osterland

**T**HE DEPARTMENT OF JUSTICE'S CRACKDOWN on bribes of foreign government officials is producing more results by getting more personal for corporate executives, not to mention U.S. congressmen.

Last year, 10 individuals were criminally charged for violations of the Foreign Corrupt Practices Act (FCPA), including sitting congressman William Jefferson (D-La.), who allegedly offered bribes to Nigerian government officials to advance his own business interests. That compares to 10 individual indictments over the previous three years.

The focus on individuals, as opposed to the companies they work for, appears to be improving the level of compliance and self-disclosure of bribes paid by both U.S. and foreign corporations.

"People are going to jail for this," said Danforth Newcomb, a lawyer with Shearman Sterling who tracks FCPA trends. "The deterrent effect is particularly strong when people realize that."

The greater willingness of the DOJ to indict individuals who pay bribes to foreign officials may deflect complaints from European critics that U.S. payers of bribes get off easy. But it doesn't represent any change in DOJ policy, said William Jacobson, assistant chief of the criminal division's fraud section.

"There have been more individual charges brought in the last few years because the facts of cases have enabled that," Mr. Jacobson said. "Individuals are

always a focus for us when we have enough evidence and we have jurisdiction over the person."

Whether a change in policy or not, the trend underscores the high priority that both the DOJ and the Securities and Exchange Commission have been placing lately on prosecuting companies and individuals for bribing government officials to secure business contracts.

Over the last three years, 45 U.S. corporations and 23 foreign corporations have disclosed FCPA investigations by either one or both agencies, according to research into SEC filings by Mr. Newcomb. The number of prosecutions has also risen, from a combined average of five per year between 1998 and 2002 to 15 per year since 2003.

The penalties have also gotten stiffer. Last February, three subsidiaries of oil services company Vetco International paid a combined \$26 million for bribes paid to Nigerian government officials—the largest criminal fine ever in an FCPA prosecution. Until April, when Houston-based oil services company Baker Hughes agreed to pay a total of \$44 million in fines and disgorgement of profits for FCPA violations in Kazakhstan.

"Baker Hughes won't hold the record for long," predicted Scott Moritz, an executive director at consulting firm Daylight Forensics.

The Justice Department hasn't weighed in yet on Siemens, which was slapped with a nearly \$300 million fine by German regulators last October. The industrial conglomerate made some 1.3

billion euros in suspicious payments across 65 countries over a seven-year period, according to the company's internal investigation.

There's also British defense contractor BAE Systems. It allegedly paid Saudi Arabia's Prince Bandar bin Sultan an estimated \$2 billion over 10 years to secure contracts. Britain's Tony Blair ended U.K. investigations of the company in late 2006, but analysts expect the DOJ, which opened its own probe last June, won't be as forgiving.

The increase in the number of FCPA investigations and prosecutions is in large part a function of the greater resources devoted to the area. Mr. Jacobson said five DOJ attorneys now spend almost all their time pursuing FCPA cases, and another 10 to 12 have foreign corruption cases on their docket.

Having "specialists" increased the ability to see trends and tie cases together. "More and more," he said, "one investigation leads to successive investigations of companies in the same sector and/or the same country."

For example, the Vetco case, involving payments to Nigerian officials made through a freight-forwarding company, has spawned other investigations of oil companies doing business in Nigeria, according to various legal blogs.

It helps too that companies are now more likely to disclose problems when they find them—almost to the point of straining resources at the DOJ and SEC, said Mr. Newcomb. His research shows that 18 of the 29 new FCPA investigations

announced by companies last year were disclosed voluntarily. The heightened level of cooperation—spurred by new treaties that made it easier for the DOJ and others to prosecute—has not only increased the number of cases brought to authorities, but has also improved their ability to press them.

“In the old days, a lot of FCPA cases floundered because prosecutors couldn’t get enough proof,” said Mr. Newcomb. The proof very often is located in other jurisdictions. “A corporation cooperating in a government investigation can usually move evidence from one juris-

diction to another.”

The benefits of cooperation are substantial. In many cases, companies can get off with a non-prosecution or deferred-prosecution agreement if the DOJ is satisfied with the level of cooperation.

Westinghouse Air Brakes Technology, for example, signed an agreement with the DOJ on Feb. 14 relating to payments it made to officials of the Indian Railway Board. The company voluntarily disclosed the payments and investigated the matter itself. It paid a \$300,000 fine and agreed to adopt more rigorous internal controls in return for a three-year

deferred-prosecution agreement.

Lucent Technologies (now part of Alcatel) entered a similar agreement last December that concluded a multiyear investigation of “sightseeing” trips by Chinese government officials paid for by the company. Lucent agreed to \$2.5 million in fines.

Mr. Moritz said more and more individuals may face similar scenarios: “If someone has no choice but to pay the bribe or lose the business, they have to make the hard choice and walk away.” **FW**