Insights: Alerts

3 Key Takeaways: Foreign Corrupt Practices Act Trends in 2017

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Kilpatrick Townsend partner **Adria Perez** recently presented to the Association of Corporate Counsel (ACC) Georgia Chapter about key 2017 trends concerning the enforcement of **Foreign Corrupt Practices Act ("FCPA")** against companies and individuals.

3 Key 2017 Trends are Emerging:

Utilizing Independent Corporate Monitors.

- Companies that are assuming ongoing compliance obligations in 2017 were required to retain an independent compliance monitor to evaluate and assess the company's internal controls and measures that detect, prevent, and respond to fraud, such as potential FCPA issues. The monitor may review documents and procedures, interview company personnel and agents, and sit in on important meetings. Also, the monitor provides reports to the government during the monitorship period that usually lasts three years and requires a commitment from the company.

FCPA Pilot Program is Changing Internal Corporate Discussions.

Last Spring, the Department of Justice (DOJ) extended the FCPA Pilot Program's ("Program") term indefinitely. The Program:

- allows companies to voluntarily self-disclose to the DOJ any FCPA violations and further cooperate with the DOJ as it investigates;
- provides up to a 50% reduction off the bottom of the Federal Sentencing Guidelines fine range; and
- gives compliance counsel the opportunity to emphasize to executives the importance of actively detecting potential FCPA violations and determining whether disclosure could be advantageous to the company.

Tolling Agreements Will Increase.

In *Kokesh v. SEC*, the U.S. Supreme Court concluded that the five-year statute of limitations period, under 28 U.S.C. § 2462, applies to disgorgement given it is a penalty. Even though *Kokesh* is a securities fraud case, the ruling affects how the Securities & Exchange Commission ("SEC") deals with FCPA matters. Counsels should be ready for the SEC to request tolling agreements. Although the five-year limitation period could be a useful negotiation tool, if the company is seeking to cooperate in order to seek leniency, the government will likely ask the company to waive any limitation period as part of its cooperation.

FCPA enforcement is not going away. A true acceptance of the importance of compliance at every level of the

company is key and must correspond with its culture and resources.