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FCPA Opinion Procedure Release 2003-01

The Requestor is a U.S. issuer. Requestor intends to purchase the stock of Company A, another U.S. company which has both U.S. and foreign subsidiaries, and thereafter operate it as a subsidiary. During its due diligence efforts, Requestor learned that officers of a foreign subsidiary, including officers located within the United States, authorized and made payments to individuals employed by foreign state-owned entities to obtain or retain business. Requestor notified Company A of its findings, and both companies commenced parallel investigations of Company A's operations throughout the world. The companies then disclosed the results of their investigations to the Department of Justice and the staff of the U.S. Securities and Exchange Commission (the "SEC").

With Requestor's encouragement and approval, Company A has taken certain remedial actions, including making appropriate disclosures to the investing public, issuing instructions to each of its foreign subsidiaries to cease all payments to foreign officials, and suspending the most senior officers and employees implicated in the payments pending the conclusion of its investigation.

Both Requestor and Company A wish to proceed with the acquisition. Requestor, however, is concerned that by acquiring Company A it is also acquiring potential criminal and civil liability under the FCPA for the past acts of Company A's employees.

Requestor undertakes to do the following once the transaction closes and it becomes the owner of Company A:

1. Requestor will continue to cooperate with the Department and the SEC in their respective investigations of the past payments and will similarly cooperate with foreign law enforcement authorities;
2. Requestor will ensure that any employees or officers of Company A found to have made or authorized unlawful payments to foreign officials are appropriately disciplined;
3. Requestor will disclose to the Department any additional pre-acquisition payments to foreign officials made by Company A or its subsidiaries that it discovers after the acquisition;
4. Requestor will extend to Company A its existing compliance program. Such compliance program will, if necessary, be modified to insure that it is reasonably designed to detect and deter, through training and reporting, violations of the FCPA and foreign bribery laws; and
5. Requestor will ensure that Company A implements a system of internal controls and makes and keeps accurate books and records.

Based on all the facts and circumstances, as represented by the Requestor, the Department does not presently intend to take any enforcement action against the Requestor for the pre-acquisition conduct of described in its request of companies that will be wholly-owned subsidiaries following the acquisition. This statement of intent does not, of course, apply to any payments made after the date of acquisition, nor does it apply to individuals involved in making or authorizing the payments.

This FCPA Opinion Release has no application to any party which did not join in the request, and can be relied upon by the Requestor only to the extent that the disclosure of facts and circumstances in the request is accurate and complete and continues to accurately and completely reflect such facts and circumstances.