

No.: 07-02

Date: September 11, 2007

Foreign Corrupt Practices Act Review

Opinion Procedure Release

The Department has reviewed the FCPA Opinion Procedure request of a U.S. insurance company (the "Requestor") that was submitted on August 13, 2007. The company is a "domestic concern" within meaning of the FCPA and therefore is eligible to submit an opinion procedure request.

The Requestor proposes to pay certain domestic expenses for a trip within the United States by approximately six junior to mid-level officials of a foreign government for an educational program at the Requestor's U.S. headquarters. The six officials have been selected by the foreign government, without the involvement of the Requestor, to attend an annual six-week long internship program for foreign insurance regulators sponsored by the National Association of Insurance Commissioners ("NAIC"). After the NAIC program concludes, the Requestor proposes to host the foreign officials attending NAIC for an educational program at the Requestor's U.S. headquarters.

The stated purpose of the trip is to familiarize the officials with the operation of a United States insurance company. The Requestor has no non-routine business pending before the foreign government agency that employs these officials. The sponsored training program will last for approximately six days (five days of training plus travel time) and covered air travel expenses will be limited to domestic economy class air travel to the Requestor's U.S. headquarters. The Requestor also intends to pay for the domestic lodging, local transport, meals and incidental expenses (up to a modest set amount per day upon presentation of a receipt), and a modest four-hour city sightseeing tour for the six officials. The Requestor has asked for a determination of the Department's present enforcement intention under the FCPA.

The Requestor has represented, among other things, that:

- The Requestor will not pay any expenses related to the foreign officials' travel to or from the United States, or their participation in the NAIC internship program.
- The Requestor has no non-routine business under consideration by the relevant foreign government agency.
- The Requestor's routine business before the relevant foreign government agency consists primarily of reporting of operational statistics, reviewing the qualifications of additional agents, and onsite inspections of operations. Such routine business is guided by administrative rules with identified standards.
- The Requestor's only work with other entities within the foreign government consists of collaboration on insurance-related research, studies, and training.

- The Requestor will not select the particular officials who will travel. That decision will be made solely by the foreign government.
- The Requestor will host only the designated officials, and not their spouses or family members.
- The Requestor intends to pay all costs directly to the providers; in the event that an expense requires reimbursement, the Requestor will only do so, up to a modest daily minimum, upon presentation of a written receipt.
- Any souvenirs that the Requestor gives the visiting officials would reflect Requestor's business and/or logo and would be of nominal value, e.g., shirts or tote bags.
- Apart from the expenses identified above, the Requestor will not compensate the foreign government or the officials for their visit, nor will it fund, organize, or host any other entertainment, side trips, or leisure activities for the officials, or provide the officials with any stipend or spending money.
- The training visit will be for a six-day period (five days of training plus travel time), and costs and expenses will be only those necessary and reasonable to educate the visiting officials about the operation of a U.S. company in the Requestor's industry.

Based upon all of the facts and circumstances, as represented by the Requestor, the Department does not presently intend to take any enforcement action with respect to the planned educational program and proposed payments described in this request. This is because, based on the Requestor's representations, consistent with the FCPA's promotional expenses affirmative defense, the expenses contemplated are reasonable under the circumstances and directly relate to "the promotion, demonstration, or explanation of [the Requestor's] products or services." 15 U.S.C. § 78dd-2(c)(2)(A).

The FCPA Opinion Letter referred to herein, and this release, have no binding 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 its request is accurate and complete and continues to accurately and completely reflect such facts and circumstances. Additionally, this Opinion Letter and Release do not purport to endorse the adequacy of the Requestor's anti-corruption policies and procedures.