

No.: 08-02

Date: June 13, 2008

Foreign Corrupt Practices Act Review

Opinion Procedure Release

The Department has reviewed the Foreign Corrupt Practices Act ("FCPA") Opinion Procedure request of Halliburton Company and its controlled subsidiaries ("Halliburton"), a U.S. issuer, which is currently considering making an additional bid to acquire the entire share capital of a company based in the United Kingdom ("Target"). Target is traded on the London Stock Exchange, has approximately 4,000 employees, and operates in over fifty countries, including throughout Africa, the Middle East, Asia, the former Soviet Union, South America, Europe, and North America. Target is involved in well flow management and provides specialized products and services in the upstream oil and gas industry. Target has a number of national oil companies as customers. A company formed by a consortium of primarily foreign investors ("Competitor") is also bidding to acquire Target. Competitor submitted the first, and more recently the highest, bid, which is unconditional.

Halliburton has submitted a request for an opinion regarding the Department's present intention to take enforcement action under the circumstances here, specifically posing the following three questions: (1) whether the proposed acquisition transaction itself would violate the FCPA; (2) whether through the proposed acquisition of Target, Halliburton would "inherit" any FCPA liabilities of Target for pre-acquisition unlawful conduct; and (3) whether Halliburton would be held criminally liable for any post-acquisition unlawful conduct by Target prior to Halliburton's completion of its FCPA and anti-corruption due diligence, where such conduct is identified and disclosed to the Department within 180 days of closing.

Circumstances of the Request

The circumstances of the request are as follows: Halliburton represents that, as a result of U.K. legal restrictions inherent in the bidding process for a public U.K. company, it has had insufficient time and inadequate access to information to complete appropriate FCPA and anti-corruption due diligence and that it can only complete such due diligence post-closing. Pursuant to the U.K. bidding process, given that Target's board has already recommended to its shareholders the acceptance of Competitor's bid, Target is legally obliged to provide to Halliburton the same information given to Competitor, but it is not required either to (1) provide any additional information to Halliburton, or (2) agree to entertain an offer by Halliburton that is subject to any condition that has not already been imposed upon Competitor.

Thus, if Halliburton wanted to condition the making of its bid on the satisfactory completion of FCPA and anti-corruption diligence or on the pre-closing completion of

remediation to its satisfaction, Target would be under no legal obligation to agree to any such terms, and might well reject a conditional, higher bid by Halliburton in favor of the lower, but unconditional bid of Competitor.

While in connection with the bidding process Halliburton has had access to a data room with certain information concerning Target, under the terms of a confidentiality agreement entered into between Halliburton and Target, Halliburton is not permitted to discuss with the Department whether any specific FCPA, corruption, or related internal controls or accounting issues have arisen, and if so, the nature and extent of such issues, except as required by applicable law.(1)

Halliburton represents that, in light of the above restrictions, if it makes an additional bid which is successful and thus acquires Target, it intends to implement the following post-closing plan:

Immediately following the closing, Halliburton will meet with the Department to disclose whether the information made available to Halliburton or otherwise learned by Halliburton pre-closing suggests that any FCPA, corruption, or related internal controls or accounting issues exist or existed at Target and, if so, will disclose such information to the Department.

Within ten business days of the closing, Halliburton will present to the Department a comprehensive, risk-based FCPA and anti-corruption due diligence work plan which will address, among other things, the use of agents and other third parties; commercial dealings with state-owned customers; any joint venture, teaming or consortium arrangements; customs and immigration matters; tax matters; and any government licenses and permits. Such work plan will organize the due diligence effort into high risk, medium risk, and lowest risk elements. Halliburton shall consult with the Department regarding the work plan. Over time, the work plan shall be reviewed and, if necessary, revised as the plan is implemented and more information is learned.

Within 90 days of the closing, Halliburton will report to the Department the results to date of its high risk due diligence. Halliburton will provide the Department periodic progress reports over the course of the 90 days, and thereafter as appropriate.

Within 120 days of the closing, Halliburton will report to the Department the results to date of its medium risk due diligence. Halliburton will provide the Department periodic progress reports over the course of the 120 days, and thereafter as appropriate.

Within 180 days of the closing, Halliburton will report to the Department the results to date of its lowest risk due diligence. Halliburton will provide the Department periodic progress reports over the course of the 180 days, and thereafter as appropriate.

To the extent that issues identified during Halliburton's due diligence require further examination beyond the 180-day period, Halliburton will complete such remaining due diligence expeditiously and provide periodic reports thereof to the Department until concluded.

In any event, Halliburton will complete its due diligence and remediation related to Target, including completing its investigation of any issues that are identified within the 180-day period, by no later than one year from the date of closing.

Halliburton will retain external counsel and third-party consultants, including forensic accountants, as well as utilize internal resources, as appropriate, to conduct the FCPA and anti-corruption due diligence. The due diligence process shall include, under all appropriate circumstances and in all appropriate locations, examination of relevant Target records, including e-mail review and review of company financial and accounting records, as well as interviews of relevant Target personnel and other individuals.

All agents and other third parties associated with Target who are expected to continue to work for Target post-closing, and as to whom there are no compliance issues to be resolved, will as soon as commercially reasonable be required to sign new contracts (rather than contract modifications or extensions) with Halliburton that incorporate appropriate FCPA and anti-corruption representations and warranties, anti-corruption provisions, and audit rights, as provided for under Halliburton's Code of Business Conduct and related policies and procedures. Agents and other third parties who will not continue to work for Target post-closing will be terminated as expeditiously as possible. Based on the results of its due diligence efforts, Halliburton will take appropriate remedial action in the event it discovers any FCPA or corruption-related problems, including suspending or terminating any agents and other third parties and taking appropriate remedial action regarding relevant employees.

Upon closing, Halliburton will immediately impose its own Code of Business Conduct and specific FCPA and anti-corruption policies and procedures on Target, including effectively communicating the same to all Target employees. Within 60 days of the closing, Halliburton will provide FCPA and anti-corruption training to all Target officers and all Target employees whose positions or job responsibilities warrant such training on an expedited basis, including all employees in management, sales, accounting, and financial control positions. Halliburton shall provide all other appropriate Target employees with such training within 90 days of closing.

Halliburton will disclose to the Department all FCPA, corruption, and related internal controls and accounting issues that it uncovers during the course of its 180-day due diligence. Halliburton will complete any additional steps the Department deems necessary to complete the due diligence and remediation plan.

Halliburton further represents that post-closing, it will maintain Target as a wholly-owned subsidiary for so long as the Department is investigating any conduct by Target or any of its officers, directors, employees, agents, subsidiaries, and affiliates. Halliburton

expressly acknowledges and agrees that Target, and all Target subsidiaries and affiliates, retain their liability for past and future violations of the FCPA, if any.

Analysis and Conclusion

Based upon all the facts and circumstances as represented, and assuming Halliburton satisfactorily completes each of the steps detailed herein, the Department does not presently intend to take any enforcement action against Halliburton for: (1) the acquisition of Target in and of itself; (2) any pre-acquisition unlawful conduct by Target disclosed to the Department within 180 days of the closing; and (3) any post-acquisition conduct by Target disclosed to the Department within 180 days of the closing, and which does not continue beyond the 180-day period or, if in the judgment of the Department the alleged conduct cannot be fully investigated within the 180-day period, which does not continue beyond such time as the conduct can reasonably be stopped. In issuing this Opinion Release, the Department specifically notes the particular circumstances of this transaction, including the foreign legal impediments to robust pre-acquisition due diligence. In the view of the Department, for the reasons set forth below, the issuance of this Opinion Release advances the interests of the Department in enforcing the FCPA and promoting FCPA due diligence in connection with corporate transactions, and permits the Requestor to proceed with an additional bid for Target with the benefit of the protections afforded by the Opinion Release procedure.

First, consistent with precedent, the Department believes that the execution of the transaction here would not, in and of itself, create FCPA liability for Halliburton. In FCPA Opinion Procedure Release 2001-01 (May 24, 2001), the Department addressed whether funds a corporation contributes as part of a corporate combination transaction may be considered a "payment" that is "in furtherance of" a bribe within the meaning of 15 U.S.C. § 78dd-1. The Department discussed the risk that funds contributed to a joint venture by Corporation A might be used to make payments to an agent under pre-existing unlawful contracts that Corporation B contributed to the joint venture. Those issues, however, do not appear to be present here. Target is a public company listed on a major exchange, and at least 65% of its shares are held by large, institutional investors. Any amounts Halliburton pays to acquire Target will go to shareholders and not to Target itself. It is unlikely that any Target shareholders were corruptly given their shares such that the purchase of Target by Halliburton would improperly enrich such shareholders. Moreover, as a practical matter, it is impossible for any acquirer of a substantial public company to determine the identity of all shareholders and investigate how such shares were acquired.

Second, in light of the facts presented here and the particular restrictions in U.K. law regarding the bidding process, the Department does not presently intend to take any enforcement action with respect to any pre-acquisition conduct by Target disclosed to the Department during the 180-day period following the closing, provided Halliburton satisfactorily proceeds in accordance with the post-closing plan and remediation detailed above.

Third, the Department notes that an acquiring company may be held liable as a matter of law for any unlawful payments made by an acquired company or its personnel after the date of acquisition. In that regard, in a prior Opinion Release, which related to an acquiring corporation's potential FCPA liability based on the target's pre-acquisition conduct, the Department did not provide assurances with respect to unlawful "payments made after the date of acquisition." Release No. 2003-01 (January 15, 2003). Under the circumstances here, however, there is insufficient time and inadequate access to complete appropriate pre-acquisition FCPA due diligence and remediation. As represented by Halliburton, under the application of the U.K. Takeover Code, it has no legal ability to require a specified level of due diligence or to insist upon remedial measures until after the acquisition is completed. As a result, Halliburton's ability to take action to prevent unlawful payments by Target or its personnel during the period immediately after the closing has been severely compromised. Assuming that Halliburton, in the judgment of the Department, satisfactorily implements the post-closing plan and remediation detailed above, and assuming that no Halliburton employee or agent knowingly plays a role in approving or making any improper payment by Target, the Department does not presently intend to take any enforcement action against Halliburton for any post-acquisition violations of the antibribery provisions of the FCPA committed by Target during the 180-day period after closing provided that Halliburton: (a) discloses such conduct to the Department within 180 days of closing; (b) stops and remediates such conduct within 180 days of closing, or, if the alleged conduct, in the judgment of the Department, cannot be fully investigated within the 180-day period, stops and remediates such conduct as soon as it can reasonably be stopped; and (c) completes its due diligence and remediation, including completing its investigation of any issues that are identified within the 180-day period, by no later than one year from the date of closing.

The Department reserves the right, however, to take enforcement action against Halliburton with respect to: (a) any FCPA violations committed by Target during the 180-day period that are not disclosed to the Department during this same time period; (b) any FCPA violations committed by Target at any time where any Halliburton employee or agent knowingly participates in the unlawful conduct; and (c) any issues identified within the 180-day period which are not investigated to conclusion within one year of closing. In no event does this Opinion Release provide any protection for any conduct which occurs after the 180-day period. The Department further reserves the right to prosecute or take enforcement action against Target and any of its subsidiaries and affiliates for any and all violations of the FCPA or any other federal criminal statute either pre- or post-acquisition, whether disclosed to the Department or not. The Department notes, however, that any unlawful conduct by Target disclosed to the Department by Halliburton pursuant to the post-closing plan and this Opinion Request would qualify as a "voluntary disclosure" under the Department's Principles of Federal Prosecution of Business Organizations, Section VII, and such disclosure may be considered by the Department as a factor in any determination whether to charge Target.

This FCPA Opinion Release applies to the Requestor, Halliburton, only, has no binding application to any party which did not join in the request, and can be relied upon by Halliburton only to the extent that the disclosure of facts and circumstances in this

request is accurate and complete and continues to accurately and completely reflect such facts and circumstances.

(1) While the Department accepts the representation that in order to be a viable bidder for Target, Halliburton had to enter into the confidentiality agreement, the Department discourages companies wishing to receive an FCPA Opinion Release in the future from entering into agreements which limit the information that may be provided to the Department.