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QUESTIONNAIRE ON THE PROVISIONS OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION SELECTED IN THE THIRD ROUND AND FOR FOLLOW-UP ON THE RECOMMENDATIONS FORMULATED IN THE PREVIOUS ROUNDS

INTRODUCTION

The Report of Buenos Aires and the Rules of Procedure and Other Provisions of the Committee of Experts on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption (hereinafter, as applicable, *Report of Buenos Aires*, *Rules*, *Committee*, *Mechanism*, and *Convention*) provide that the Committee shall adopt a questionnaire on the selected provisions to be reviewed in each round.

At its thirteenth meeting, held from June 23 to 27, 2008, the Committee decided that during the third round it would review implementation by States Parties of the following provisions of the Convention: Article III, paragraphs 7 and 10; and Articles VIII, IX, X, and XIII.

Furthermore, the first paragraph of Article 29 of the Rules provides that "At the start of a new round, there shall be included within the questionnaire a section on "Follow-up on Recommendations" to enable the review of progress made in implementing the recommendations included in its country report adopted in previous rounds,' and that 'to that end, each State Party shall submit the appropriate information in the standard format that the Committee shall provide as an Annex to the Questionnaire.' The aforesaid Article also provides in its second paragraph that "with respect to the implementation of recommendations, the State Party shall refer to any difficulties that may have arisen in the process," and that, "should it deem it to be appropriate, the State Party may also identify the domestic agencies that have participated in implementing the recommendations, as well as identify specific technical assistance or other needs connected with the implementation of the recommendations."

In light of the above, this document contains the questions that comprise the questionnaire adopted by the Committee.

The responses given to the questionnaire shall be reviewed in accordance with the methodology adopted by the Committee, which is annexed to this document and may also be consulted on the OAS Webpage at: http://www.oas.org/juridico/english/mesicic_method_IIIround.pdf

In accordance with Article 21 of the Rules, the State Party shall forward the response to the questionnaire through its Permanent Mission to the OAS, in an electronic format, along with the corresponding supporting documents, within the time period established by the Committee.

To this effect, the OAS General Secretariat's e-mail, to which the response to the questionnaire should be sent and to which queries may be addressed in order to clarify any doubts that arise, is the following: LegalCooperation@oas.org.

In completing this questionnaire, States Parties should keep in mind the deadlines set by the Committee in the schedule for the Third Round as well as the recommendation contained therein that responses to the questionnaire not exceed 35 pages.

SECTION I

QUESTIONS ON IMPLEMENTATION OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE THIRD ROUND

CHAPTER ONE

DENIAL OR PREVENTION OF FAVORABLE TAX TREATMENT FOR EXPENDITURES MADE IN VIOLATION OF THE ANTICORRUPTION LAWS (ARTICLE III (7) OF THE CONVENTION)

a) Describe the laws, rules and/or measures that expressly deny or prevent favorable tax treatment for any individual or corporation for expenditures made in violation of the anticorruption laws of your country. Please attach a copy of the relevant provisions and documents.

In general, U.S. tax law imposes federal income tax on a taxpayer's taxable income. In computing taxable income, certain amounts are allowed as a deduction. Generally, a deduction serves to reduce the amount of a taxpayer's taxable income that is subject to taxation. Section 162 of the Internal Revenue Code allows as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Some taxpayers argued that illegal bribes or kickbacks were ordinary and necessary business expenses and, thus were deductible expenses under section 162. However, section 162(c)(1) explicitly disallows the tax deductibility of expenditures made in violation of the anticorruption laws of the United States for all tax purposes:

> *No deduction shall be allowed ... for any payment made, directly or indirectly, to an official or employee of any government, or of any agency or instrumentality of any government, if the payment constitutes an illegal bribe or kickback or, if the payment is to an official or employee of a foreign government, the payment is unlawful under the Foreign Corrupt Practices Act of 1977.*

26 U.S.C. § 162(c)(1). Therefore, a U.S. taxpayer who makes a payment that is an illegal payment under the Foreign Corrupt Practices Act is prohibited from deducting that payment under section 162 of the Internal Revenue Code.

b) Describe the means or mechanisms to enforce the respective laws, rules and/or measures taken to prevent, investigate and/or sanction those who obtain favorable tax treatment for expenditures made in violation of the anticorruption laws of your country.

Publication 525, *Taxable and Nontaxable Income* (found at http://www.irs.gov/pub/irs-pdf/p525.pdf), indicates that illegal bribes and kickbacks are includable in taxable income, there is no guidance specifically dedicated towards informing taxpayers of the implications of this code section. However, case law on the subject is clear and indicates that illegal bribes and kickbacks are not deductible as a trade or business expense.

Both domestic and international tax examiners are trained to consider illegal payments in the course of an audit. For example, the Internal Revenue Manual alerts examiners as to how illegal payments are to be treated in terms of subpart F income.[In conducting a tax audit, in addition to deductions for operating expenses, examiners review components of cost of goods sold and other areas susceptible to concealment, such as returns and allowances. Special attention would be given to the use of foreign bank accounts, or

other indicators of "slush funds" or the use of cash payments. Expense categories requiring special attention might include outside services (*e.g.*, consulting) or items relating to foreign property of questionable use to the taxpayer or its affiliates. Examiners are encouraged to research sources such as other Federal agencies, as well as internal and external audit reports, for indications of illegal payment activity.

The Internal Revenue Service (IRS) has a Criminal Investigation (CI) function to which referrals can be made by the civil division, if it is believed a criminal tax violation has occurred. The deductibility of bribes could be considered a criminal tax violation, thus permitting such a referral. Agents of the IRS often participate in investigations of foreign bribery in cooperation with the Department of Justice (DOJ) and Federal Bureau of Investigations (FBI), and may both refer such cases and receive referrals.

IRS Criminal Investigation may also be invited to participate in ongoing DOJ investigations involving bribery to pursue both tax and non-tax criminal violations.

Tax and Related Crimes:

Felony tax offenses are generally sentenced using the total tax loss attributable to the defendant's conduct. For more general information on sentencing ranges for tax offenses, please see http://www.irs.gov/compliance/enforcement/article/0,,id=106790,00.html.

Persons convicted of a misdemeanor tax offense may be sentenced to a maximum one (1) year imprisonment. Of the crimes listed below, only 26 U.S.C. §7203 is a misdemeanor.

26 U.S.C. §7201 – Attempt to Evade or Defeat Tax.

All income is taxable regardless of the source from which it is derived. The government must prove some affirmative act constituting an attempt to evade taxation. An attempt to evade taxation can be met by any affirmative act with a tax evasion motive, regardless of whether or not a false return has been filed (Spies)[1].

Attempts to evade the payment of tax usually involve some form of concealment of the subject's ability to pay tax due, or the removal of assets from the reach of the IRS. Examples: 1) using nominees to show ownership of assets, the receipt of income or payment of debt, 2) using the accounts of others to transact business or conceal ownership, or 3) dealing extensively or exclusively in currency. An additional tax must be due and owing. Each year is considered to be a separate offense. Tax due and owing should be substantial.

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[1] Failure to file a return coupled with an affirmative act of tax evasion is commonly referred to as a "*Spies* evasion." Passive failure to file tax returns is not tax evasion. If the taxpayer failed to file a return, an evasion case can be maintained only if the taxpayer engaged in an affirmative act to conceal or mislead. *Spies v. United States*, 317 U.S. 492, 498-99 (1943). By way of illustration, and not by way of limitation, the Supreme Court in *Spies* set out examples of conduct which can constitute affirmative acts of evasion:

(A) Keeping a double set of books.
(B) Making false or altered entries.
(C) Making false invoices.
(D) Destruction of records.
(E) Concealing sources of income.
(F) Handling transactions to avoid usual records.
(G) Any other conduct likely to conceal or mislead.

To establish tax evasion there must be a voluntary, intentional violation of a known legal duty determined by a subjective standard.

Examples include but are not limited to: 1) consistent pattern of underreporting large amounts of income, 2) withholding information, or supplying false information to the subject's accountant, 3) keeping a double set of books, 4) destroying evidence, 5) creating false documents, or a pattern of using nominees, 6) extensive use of currency and cashier's checks, 7) bank accounts held in fictitious names, or 8) adopting a unorthodox method of accounting with deceptive results.

26 U.S.C. §7206(1) – Subscribing to a False Tax Return.

Often companies or individuals paying bribes claim false deductions for these payments, and hide them in the books and records, and on the tax return, by mislabeling them as otherwise deductible expenses, such as consulting fees or bad debts. To establish a violation of Section 7206(1), the following elements must be proved:

The subject made and subscribed a return, statement, or other document, which was false as to a material matter. This applies to any return, statement, or other document signed under penalties of perjury. A completed document does not become a "return" until the form is filed with the IRS. The act of subscribing (signing) the return is a necessary element of the offense. Thus, an unsigned return, although filed, cannot form the basis of a 7206(1) charge. The subject does not have to personally sign the return if it can be shown that the subject authorized the filing of the return with his/her name subscribed to it. The return, statement, or document must contain a written declaration that it was made under the penalties of perjury. A signature plus the declaration is sufficient; the document need not be witnessed or notarized.

Tax loss is the material matter considered by the court, and not a question of fact for the jury. However, tax loss is not a necessary element in a Section 7206(1) case. The standard is whether an item on the return would be necessary for the correct computation of tax, or whether a false item would influence or impede IRS in verifying or auditing the returns of the subject. The government must prove that the fraudulent return was willfully prepared and intentionally in violation of a known legal duty. The government is not required to show intent to evade tax, or any act of concealment.

The government must also prove that the subject did not believe the return, statement or other document was true and correct as to every matter and the subject falsely subscribed to the return, statement, or other document willfully, with the specific intent to violate the law.

26 U.S.C. §7206(2), Aiding and Assisting in the Preparation of a False Return.

This statute is not limited to accountants and return preparers. Anyone who causes a false return to be filed or furnishes information that leads to the filing of a false return can be guilty of violating Section 7206(2). The subject need not sign or file the document. The knowledge, consent, or complicity of the taxpayer is not relevant to the liability of the subject. Both a subject supplying false information to an innocent taxpayer, and a subject who supplies false information is guilty of violating this section. The document must be false as to a material matter. The proof of tax deficiency is not necessary. The falsity of the material matter is the crime, not the tax consequences of the falsehood. The act of the subject must be willful. Uncertainty of tax law regarding a tax avoidance scheme is not a bar to willfulness if it can be shown that the subject's behavior went beyond advocacy, i.e. he/she clearly provided assistance and engaged in prohibited conduct.

26 U.S.C. §7203, Failure to File Return, Supply Information, or Pay Tax

It should be noted that this charge constitutes a misdemeanor offense (punishable by no more than one year imprisonment). To establish a violation of Section 7203, the following must be proven (1) The subject must be a person required to file a return; (2) The return was not filed at the time required by law. (3) The failure to file was willful. There must be a showing that the subject deliberately failed to file returns and that he/she knew the returns should be filed.

There is no requirement that a tax liability be proven, as long as it is clearly established that the subject had gross income necessary to trigger the filing requirement. Returns that would generate a refund do not negate willfulness.

18 U.S.C. §371 -- Conspiracy (Klein-type). *Klein* conspiracy, which is named for the lead case.

The criminal tax statutes in Title 26 of the United States Code do not include a statute for the crime of conspiracy. As a result, tax related conspiracies are generally prosecuted under 18 U.S.C. § 371, the general conspiracy statute (two or more persons conspire either to commit and offense against the United States). Conspiracy to defraud the government is a very broad concept. It is not limited to efforts to obtain money or property, but includes conspiracies where the object of the conspiracy is to obstruct, impair, interfere, impede or defeat the legitimate functioning of the government (the Internal Revenue Service) through fraudulent or dishonest means. The foremost case of interfering with the proper operation of the Internal Revenue Service is *United States v. Klein*, hence the term "Klein-type" conspiracy. The harm to the government is the agreement to impede and impair the IRS and it is not necessary to establish tax harm.

In addition to tax charges, these payments are also investigated by the Internal Revenue Service and charged, using the Foreign Corrupt Practices Act as a specified unlawful activity.

18 U.S.C. §1956(a)(2)(A) – International Transportation of Monetary Instruments or Funds

Using this criminal statute, the government must prove that the subject transported, transmitted or transferred (or attempted to do so) a monetary instrument or funds from the United States to or through a place outside the Unites States; or to a place in the United States from or through a place outside the United States with the specific intent to promote a specified unlawful activity (SUA). This provision does not require the government to prove that the monetary instrument or funds were, in fact, the proceeds of an SUA. Therefore, offenses under this section can involve legally derived funds used to promote an SUA. Under this section, the movement of funds does not include tax evasion. Tax evasion is not an SUA and intent to evade tax is not an enumerated intent of the transportation offense.

c) Briefly mention the objective results that have been obtained in applying the respective laws, rules and/or measures, providing any relevant statistical data available in your country, if possible for the last two years.

Applying the applicable laws, rules and measures, the following statistical data relates to criminal investigations only:

- 31 criminal investigations were initiated
- 21 individuals were indicted for crimes related to the Foreign Corrupt Practices Act, 15 USC §78M. Two of the indictments were for (1) 26 USC §7201 and (2) 26 USC §7201(1). The remaining indictments included violations of 18 USC §371 and various 18 USC §1956 sub-sections with 15 USC §78M as a specified unlawful activity
- 4 Corporations pled guilty to 18 USC §371 and violating 15 USC §78M and paid civil fines.

- 3 individuals pled guilty to 18 USC §1956a(1)(b)(i) – but have not been sentenced
- 4 individuals have been sentenced. Months to serve upon sentencing ranged from 6 to 262 months.

The IRS is unable to provide statistical information related to civil tax enforcement.

CHAPTER TWO

PREVENTION OF BRIBERY OF DOMESTIC AND FOREIGN GOVERNMENT OFFICIALS (ARTICLE III (10) OF THE CONVENTION)

a) Are there laws and/or other measures in your country to deter or impede bribery of domestic and foreign government officials, such as mechanisms to ensure that publicly held companies and other types of associations maintain books and records which, in reasonable detail, accurately reflect the acquisition and disposition of assets, and have sufficient internal accounting controls to enable their officers to detect corrupt acts? If so, please specify what they are, briefly describe them, and list and attach a copy of the related provisions and documents, referring in particular to the following aspects:

i. Publicly held companies and other types of associations required to maintain accounting records of their operations in accordance with the accounting standards in force in your country.

Since 1977, the FCPA and regulations issued by the U.S. Securities and Exchange Commission (SEC) have required all public companies to, among other things, maintain books and records that, in reasonable detail, accurately reflect the companies' transactions.[2] Further, public companies must maintain a system of internal accounting controls sufficient to provide reasonable assurance that all transactions take place in accordance with management's authorization and are recorded in a manner that permits the preparation of financial statements in conformity with generally accepted accounting principles (GAAP).[3]

U.S. GAAP, issued primarily by the Financial Accounting Standards Board (FASB), under the oversight of the Securities and Exchange Commission (SEC), comprise a comprehensive body of accounting standards. U.S. GAAP require an accounting of all assets, liabilities, revenue and expenses; accordingly, proper application of U.S. GAAP would require that all payments – including bribes – are properly accounted for. Two of the many requirements of financial statements issued under U.S. GAAP are those of completeness and representational faithfulness, as set forth in Statement of Financial Accounting Concepts No. 2, paragraphs 63-80. U.S. GAAP also requires extensive disclosures concerning the operations and financial condition of companies.

Although private companies are not covered by the books and records and internal control provisions of the FCPA and do not fall within the SEC's jurisdiction, such companies generally are required by federal and state tax laws and state corporation laws to maintain accurate books and records sufficient to properly calculate taxes owed.[4] Further, in order to comply with financial institutions' lending requirements, many larger private companies maintain their books and records to facilitate the preparation of financial statements in conformity with GAAP.

Internal control requirements

2 See 15 U.S.C. 78m.

3 See 15 U.S.C. § 78m(b)(2); Rules 13b2-1 and 13b2-2, 17 C.F.R. §§ 240.13b2-1, 240.13b2-2.

4 See, e.g., Ala. Code § 40-2A-7 (requiring corporations and individuals to keep "accurate" and "complete" records for tax purposes); Cal. Corp. Code § 1500 (requiring corporations to keep "adequate and correct books and records of account"); Fla. Stat. § 607.1601(2) (requiring corporations to maintain "accurate accounting records"); Ind. Code § 23-1-52-1(b) (requiring corporations to maintain "appropriate accounting records"); Minn. Stat. § 300.32 (requiring all stock corporations to maintain "accurate and complete records" of all corporate proceedings and "proper" records of all business transactions).

As directed by Section 404 of the Sarbanes-Oxley Act ("SOX"),[5] the SEC adopted rules in 2003 to require issuers and their independent auditors to report to the public on the effectiveness of the company's internal control over financial reporting.[6] Internal control over financial reporting includes controls related to preventing and detecting illegal acts and fraud, including acts of bribery that result in a material misstatement of the financial statements. The rules requiring issuers and their auditors to report on the effectiveness of internal control over financial reporting took effect in 2004 for those issuers that met the definition of large accelerated filer or accelerated filer. The rules requiring smaller issuers (those that did not meet the definition of a large accelerated filer or accelerated filer, and which generally have a public float below $75 million) to evaluate the effectiveness of their internal control over financial reporting became effective in 2007.[7]

The SEC also issued interpretive guidance for management in 2007 regarding its evaluation and assessment of internal control over financial reporting. The guidance sets forth an approach by which management can conduct a top-down risk-based evaluation of internal controls. This guidance includes direction for management in identifying financial reporting risks and controls and evaluating evidence of the operating effectiveness of internal control over financial reporting. Further, the guidance contains information to assist management in developing disclosures about their internal control over financial reporting, including disclosures about material weaknesses that may be identified.

In 2005, the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") issued *Guidance for Smaller Public Companies Reporting on Internal Control over Financial Reporting* to supplement COSO's *Internal Control - Integrated Framework*, originally published in 1992. The guidance focuses on the needs of smaller organizations in regard to compliance with Section 404 of SOX, and outlines fundamental principles associated with the five key components of internal control: control environment; risk assessment; control activities; information and communication; and monitoring. Also, in 2009, COSO issued *Guidance on Monitoring Internal Control Systems* to help companies to better monitor the effectiveness of their internal control systems and to take timely corrective actions if needed.

Additionally, the SEC adopted rules required by Section 406 of SOX to require each issuer, together with periodic reports required pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934, to disclose whether such issuer has adopted a code of ethics for senior financial officers and if not, the reasons why it has not done so.[8] "Code of ethics" includes such standards as are reasonably necessary to promote compliance with applicable governmental rules and regulations, and the prompt internal reporting of violations of the code.[9] Issuers are also

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5 15 U.S.C. 7201 et seq.

6 Exchange Act Rules 13a-15 and 15d-15; Item 308 of Regulation S-K; and Item 15 of Form 20-F and General Instruction (B) to Form 40-F (for foreign private issuers).

7 [Assumes legislation is finalized:] The Dodd-Frank Act amended the provisions of Section 404 of the SOX, such that small issuers are permanently exempt from the requirements for an auditor's attestation on management's report on internal control over financial reporting; however, the requirement for management to assess internal controls was retained.

8 Item 406(c)(2) and Item 601(b)(14) of Regulation S-K.

9 Item 406(b) of Regulation S-K.

required to immediately disclose any change in or waiver of the code of ethics.[10] Each company listed on the New York Stock Exchange must make its code of business conduct and ethics available on or through its website.[11]

Each company listed on the New York Stock Exchange must also comply with other corporate governance standards, including maintaining an internal audit function.[12] The purpose of the internal audit function is to provide management and the audit committee with assessments of the company's risk management processes and system of internal control.

Audit requirements

An auditor's report must accompany the annual financial statements submitted by a public company with the SEC. Section 10A of the Securities Exchange Act of 1934 ("Section 10A") requires audits of issuers[13] to include procedures designed to provide reasonable assurance of detecting illegal acts, including acts of bribery that meet the definition of an illegal act in Section 10A, that would have a direct and material effect on the financial statements of the company.[14] U.S. auditing standard AU section 317, *Illegal Acts by Clients* ("AU section 317") establishes requirements and responsibilities for auditors regarding illegal acts, including acts of bribery, and is found in the auditing standards prescribed both by the Public Company Accounting Oversight Board (PCAOB) for audits of issuers and by the American Institute of Certified Public Accountant's Auditing Standards Board for audits of non-issuers.[15] These standards establish requirements for auditors that are consistent with the requirements in Section 10A. In addition, AU section 316, *Consideration of Fraud in a Financial Statement Audit*, of U.S. auditing standards for audits of both issuers and non-issuers establish requirements for auditors to detect fraud, including acts of bribery, which would result in a material misstatement of the financial statements.

Section 10A requires that if, during the course of conducting an audit, a registered public accounting firm (the "firm") detects or otherwise becomes aware of information indicating that an illegal act has or may have occurred (whether or not perceived to have a material effect on the financial statements of the issuer), the firm shall first determine whether it is likely that an illegal act has occurred and, if so, determine and consider the possible effect of the illegal act on the financial statements of the issuer. The firm must also, as soon as practicable, inform the appropriate level of the management of the issuer and assure that the audit committee of the

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10 Item 406(d) of Regulation S-K.

11 Section 303A.10 of the NYSE Listed Company Manual.

12 Section 303A.07(c) of the NYSE Listed Company Manual.

13 Section 2(a)(7) of the Sarbanes-Oxley Act of 2002 defines the term "issuer" as an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)), the securities of which are registered under section 12 of that Act (15 U.S.C. 781), or that is required to file reports under section 15(d) (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn.

14 15 U.S.C. 78j-1.

15 PCAOB standards are available at http://pcaobus.org/Standards/Auditing/Pages/default.aspx and AICPA standards are available at http://www.aicpa.org/Professional+Resources/Accounting+and+Auditing/Audit+and+Attest+Standards/Authoritative+Standards+and+Related+Guidance+for+Non-Issuers/auditing_standards.htm.

issuer, or the board of directors of the issuer in the absence of such a committee, is adequately informed unless the illegal act is clearly inconsequential.

Section 10A further requires that if, after determining that the audit committee of the board of directors of the issuer, or the board of directors of the issuer in the absence of an audit committee, is adequately informed, the firm concludes that (1) the illegal act has a material effect on the financial statements of the issuer; (2) the senior management has not taken, and the board of directors has not caused senior management to take, timely and appropriate remedial actions; and (3) the failure to take remedial action is reasonably expected to warrant departure from a standard report of the auditor or warrant resignation from the audit engagement, then the firm shall, as soon as practicable, directly report its conclusions to the board of directors.

If a board of directors receives a report of such conclusions, then the issuer shall inform the SEC by notice not later than one business day after the receipt of such report and shall furnish the firm making such report with a copy of the notice furnished to the SEC. If the firm fails to receive a copy of the notice before the expiration of the required 1-business-day period, the firm shall either resign from the engagement or furnish to the SEC a copy of its report (or the documentation of any oral report given) not later than one business day following such failure to receive notice.

If a firm resigns from an engagement due to failure to receive a copy of the notice required to be furnished to the SEC, the firm shall, not later than one business day following the failure by the issuer to notify the SEC, furnish to the SEC a copy of its report (or the documentation of any oral report given).

Section 10A provides that no firm shall be liable in a private action for any finding, conclusion, or statement expressed in a report described above. However, if a firm does not receive a copy of the notice required to be furnished to the SEC by the issuer and does not either resign from the engagement and furnish to the SEC a copy of the report or furnish a copy of the report to the SEC while remaining on the engagement, the SEC may impose a civil penalty against the firm and any other person that the SEC finds was a cause of such violation.

AU section 317 of U.S. auditing standards applicable to audits of both issuers and non-issuers provides direction beyond the requirements in Section 10A with respect to the obligation of auditors to determine the effect an illegal act may have on the auditor's report. Depending upon the circumstances encountered and the effect of the illegal act on the financial statements and the auditor's ability to obtain sufficient evidential matter, this guidance directs the auditor to express a qualified or an adverse opinion and even to disclaim an opinion or withdraw from the engagement.[16]

The PCAOB recently published for public comment a proposed auditing standard on communications with audit committees, to establish requirements for the auditor regarding certain matters related to the conduct of an audit that are communicated to a company's audit committee in connection with an audit.[17] The proposed standard specifies that the auditor is to communicate to the audit committee matters arising from the audit that are significant to the oversight of the financial reporting process, including when the auditor is aware of complaints or concerns regarding accounting or auditing matters.

16 See paragraphs 18-21 of AU section 317.

17 See PCAOB Release No. 2010-001, *Proposed Auditing Standard on Communications with Audit Committees*, available at http://pcaobus.org/Rules/Rulemaking/Docket030/Release_No_2010-001.pdf.

In addition to the various reporting responsibilities of companies and auditors, companies are required to maintain compliance with U.S. laws and regulations in the conduct of their affairs. Therefore, companies receiving information indicating an illegal act, including acts of bribery, may have occurred, whether received via communications from their auditor or otherwise, have a responsibility to investigate the matter and determine the appropriate actions necessary in the circumstances. The requirements for auditors to report to the SEC instances where management or the board of directors fails to take appropriate action provides a strong incentive for companies to act on information concerning illegal acts.

"Whistleblower" protections

Certain provisions of U.S. Federal laws protect persons willing to report suspected breaches of the law or professional standards. Two examples are the "whistleblower protections" provided by the SOX [18] and the reporting responsibilities and protections for auditors in Section 10A.

SOX contained various provisions to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to U.S. securities laws and also included specific provisions related to corporate and criminal fraud accountability. Specifically, Section 806 of SOX prohibits public companies or their officers, employees, contractors, subcontractors, or agents from discharging, demoting, suspending, threatening, harassing, or otherwise discriminating against an employee because of any lawful act done by the employee to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee believes constitutes a violation of any rule or regulation of the SEC or any provision of U.S. Federal law relating to fraud against shareholders. Moreover, Section 301 of SOX amended Section 10A to require the audit committee of any listed issuer to be independent, and it must establish procedures for the receipt, retention and treatment of complaints received by the company regarding accounting, internal accounting controls, or auditing matters and must also establish procedures for the confidential, anonymous submission by employees of the company of concerns regarding questionable accounting or auditing matters.

Under Section 302 of SOX, an issuer's principal executive officer and principal financial officer is each required to certify, among other things, that he or she has disclosed to the issuer's auditors and audit committee any fraud, whether or not material, involving employees of the issuer who have a significant role in the issuer's internal controls. The SEC adopted rules requiring that the certifications be included in the issuer's periodic reports filed with the SEC.[19]

ii. Rules regarding how these accounting records are to be maintained, indicating what length of time they must be kept; if they must be kept in books of account or any other medium that affords suitable protection for their contents; if said records are required to state all cash or in-kind expenditure, payments, or contributions, as well as specify their reason or purpose, and precisely identify their recipients; and if they must be substantiated with supporting documents containing the necessary information to confirm their veracity.

As above, the FCPA and regulations issued by the SEC require all public companies to maintain books and records that, in reasonable detail, accurately reflect the companies' transactions.[20]

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18 15 U.S.C. 7201 et seq.

19 See Release No. 33-8124 (August 28, 2002) [67 FR 57276].

20 See 15 U.S.C. 78m.

Further, public companies must maintain a system of internal accounting controls sufficient to provide reasonable assurance that all transactions take place in accordance with management's authorization and are recorded in a manner that permits the preparation of financial statements in conformity with GAAP.

More specifically, the FCPA's books and records provisions require all issuers to:

a) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and
b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that—
    i. transactions are executed in accordance with management's general or specific authorization;
    ii. transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;
    iii. access to assets is permitted only in accordance with management's general or specific authorization; and
    iv. the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

iii. Mechanisms to enforce the respective laws and/or other measures, such as the prohibitions against the establishment of accounts or operations without recording them on the books; registration of fictional expenditures or misstatement of the purpose thereof; adulteration of accounting records; use of false documents to support accounting records, and destruction of accounting documents before their prescribed custody period expires; as well as criminal, financial, or other penalties for those who infringe these prohibitions, and organs and agencies responsible for prevention and/or investigation of their violation and for imposing the appropriate punishment.

The SEC's Division of Enforcement investigates possible violations of securities laws, including books and records and internal controls violations. The Division recommends Commission action when appropriate, either in a federal court or before an administrative law judge, and negotiates settlements on behalf of the Commission. While the SEC has civil enforcement authority only, it works closely with various criminal law enforcement agencies throughout the country to develop and bring criminal cases when the misconduct warrants more severe action. As noted above, in addition to the threat of administrative and civil enforcement action by the SEC, willful violations of the books and records provisions subject the company and its officers to criminal prosecution. See also Chapter Three for a description of criminalization of transnational bribery under the FCPA.

b) In relation to question a), briefly mention the objective results that have been obtained in enforcing the respective laws and/or other measures to which it refers, such as steps taken to prevent or investigate their infringement and penalties imposed in that regard, providing any relevant statistical data available in your country, if possible for the last two years.

Data on the number of SEC enforcement cases involving books and records and internal controls requirements are included as Appendix [A]. In all foreign bribery-related cases brought by the SEC, the SEC has charged violations of accounting and internal controls provisions. In addition,

the SEC has filed several bribery-related cases in which the SEC charged stand-alone books and records and internal controls cases with no formal bribery charge. In those cases, the SEC sought civil penalties and disgorgement of profits. Recent examples include the *Oil for Food* cases and *SEC v. ITT Corporation* [ref]. In all instances, the SEC files its cases in civil court and must show, with a preponderance of the evidence, that the defendant more likely than not engaged in the alleged misconduct. If the matter is settled, the defendant neither admits nor denies in civil court the misconduct.

Like the SEC, the Department of Justice generally includes books and records violations when it charges substantive FCPA violations, and may also charge books and records violations where there is no jurisdiction over the substantive foreign bribery misconduct. Criminal internal controls charges are less common.

c) If there are no laws and/or other measures such as those mentioned in question a), briefly indicate how your State has considered the applicability within your own institutional system of the provisions contained in Article III (10) of the Convention.

Not applicable.

CHAPTER THREE

TRANSNATIONAL BRIBERY (ARTICLE VIII OF THE CONVENTION)

1. Criminalization of transnational bribery

a) Does your State prohibit and punish, subject to its Constitution and the fundamental principles of its legal system, the offering or granting, directly or indirectly, by its nationals, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another State, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage, in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions? If so, please indicate if in your country it is considered an act of corruption for the purposes of the Convention, and describe briefly the laws and/or other measures regarding them, indicating what penalties they provide, and attach a copy of them.

A copy of the Foreign Corrupt Practices Act of 1977 as amended (the FCPA), 15 U.S.C. 78dd-1 *et seq.*, is attached. The FCPA requires all publicly-traded corporations to maintain transparent books and records and prohibits *all* U.S. companies and nationals from making any payment or gift, or offering to do so, to a broad range of foreign public officials. Specifically, the FCPA prohibits:

1. The use of the mails or other means or instrumentality of interstate commerce

2. corruptly

3. in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value

4. to any foreign official, foreign political party, foreign political party official, or any other person knowing that all or a portion of such gift will be offered, given or promised, directly or indirectly, to such persons

5. for the purpose of influencing any act or decision of such officials, inducing such officials to do or omit to do any act in violation of the lawful duty of such officials, obtaining an improper advantage, or inducing such officials to use their influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality

6. to assist the payer of such payment or gift in obtaining or retaining business for or with, or directing any business to, any person.

In addition to criminal penalties, the FCPA provides for significant civil and penal remedies, including injunctions, fines, and imprisonment. Civil enforcement responsibility over public companies is entrusted to the United States Securities and Exchange Commission (the "SEC"), and criminal enforcement over all companies and individuals, as well as civil enforcement over non-public companies, is entrusted to the Department of Justice.21

b) If your State has criminalized transnational bribery, briefly mention the objective results that have been obtained in that regard, such as judicial proceedings undertaken and their outcome. The above information should refer, as far as possible, to the last five years.

In the past five years, the United States has achieved the following results:

Year	Criminal Actions, Legal Persons	Criminal Actions, Natural Persons	Civil Actions, Legal Persons	Civil Actions, Natural Persons	Total
2010[22]	6	2	2	4	**14**
2009	7	44	10	3	**64**
2008	16	12	11	6	**45**
2007	15	9	18	8	**50**
2006	2	4	4	8	**18**
2005	4	5	6	1	**16**
Total	50	76	51	30	**207**

21 For a detailed review of the FCPA, please see the October 30, 1998 U.S. Response to the OECD Working Group on Bribery's Phase 1 Questionnaire, available at http://www.justice.gov/criminal/fraud/fcpa/docs/response1.pdf.

22 As of June 30, 2010.

In that time, the United States has secured more than $2 billion in criminal penalties. Information on the sentences levied against natural and legal persons is included in the charts found in the annex.

In addition to subjecting American companies to criminal and civil prosecutions, the passage of the FCPA encouraged American businesses engaged in international business to develop comprehensive corporate compliance programs, in which corporations establish procedures to prevent the payment of bribes, conduct internal investigations when allegations of bribery are brought to management's attention, and voluntarily disclose to the government any bribery uncovered as a result of their investigation. The combination of vigilant enforcement by the government and voluntary compliance programs by the private sector, in our view, has significantly reduced the payment of bribes by American businesses.

c) If your State has not criminalized transnational bribery, briefly mention if your country has taken any steps to do so.

This question is inapplicable to the United States.

2. Assistance and cooperation in the case of States Parties that have not criminalized transnational bribery

a) If your State has not criminalized transnational bribery, does it, insofar as its laws permit, provide assistance and cooperation with respect to this offense as provided in the Convention.

b) If so, briefly mention the objective results that have been obtained in that regard. The above information should refer, as far as possible, to the last five years.

Not applicable.

CHAPTER FOUR

ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)

1. Criminalization of illicit enrichment

a) Has your State established as an offense, subject to its Constitution and the fundamental principles of its legal system, a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions? If so, please indicate if in your country it is considered an act of corruption for the purposes of the Convention, and describe briefly the laws and/or other measures regarding them, indicating what sanctions they provide, and attach a copy of them.

b) If your State has criminalized illicit enrichment, briefly mention the objective results that have been obtained in that regard, such as judicial proceedings undertaken and their outcome. The above information should refer, as far as possible, to the last five years.

c) If your State has not criminalized illicit enrichment, briefly mention if your country has taken any steps to do so.

The United States has taken a reservation with regard to the provision on illicit enrichment, due to the fact that our Constitution contains a presumption of innocence for the accused. The United States of America intends to assist and cooperate with other States Parties pursuant to paragraph 3 of Article IX of the Convention to the extent permitted by its domestic law. The United States recognizes the importance of combating improper financial gains by public officials, and has

criminal statutes to deter or punish such conduct. These statutes obligate senior-level officials in the federal government to file truthful financial disclosure statements, subject to criminal penalties. They also permit prosecution of federal public officials who evade taxes on wealth that is acquired illicitly. Moreover, evidence of unexplained wealth can, and often is, introduced at trial as circumstantial evidence supporting other charges of public corruption. The offense of illicit enrichment as set forth in Article IX of the Convention, however, places the burden of proof on the defendant, which is inconsistent with the United States Constitution and fundamental principles of the United States legal system. Therefore, the United States understands that it is not obligated to establish a new criminal offense of illicit enrichment under Article IX of the Convention.

2. Assistance and cooperation in the case of States Parties that have not criminalized illicit enrichment

a) If your State has not criminalized illicit enrichment, does it, insofar as its laws permit, provide assistance and cooperation with respect to this offense as provided in the Convention.

Yes.

b) If so, briefly mention the objective results that have been obtained in that regard. The above information should refer, as far as possible, to the last five years.

As noted in the Unites States' reservation to the Convention at the time of ratification, the U.S. does not prosecute illicit enrichment as defined in the Convention, but does "recognize[] the importance of combating improper financial gains by public officials, and has criminal statutes to deter or punish such conduct." We do prosecute evading taxes on wealth acquired illicitly as well as improper financial gains by public officials.

The Central Authority for the United States in mutual legal assistance in criminal matters is DOJ's Office of International Affairs (OIA) in the Criminal Division. OIA maintains records of more than 50,000 mutual legal assistance matters , over 40,000 of which are completed and closed. Many codes in the system could encompass bribery of a public official and illicit enrichment, and it is not clear from the database which cases specifically address those offenses covered under the corruption provisions of the Convention. Those offenses could be coded as bribery, embezzlement, tax evasion, official corruption, foreign corrupt public officials, and the Foreign Corrupt Practices Act.

The SEC obtains and provides evidence and other information located outside the United States in transnational bribery investigations through various mechanisms, including pursuant to multilateral and bilateral agreements as well as on an ad hoc basis. Multilateral and bilateral information sharing arrangements operate on the basis of memoranda of understanding (MOU) between securities authorities. Such MOUs delineate the terms of information-sharing between and among MOU signatories and create a framework for regular and predictable cooperation in securities law enforcement. Multilateral and bilateral MOUs detail the scope and terms of information-sharing among securities regulators.

The United States has an active mutual legal assistance relationship with our approximately 80 bilateral treaty partners, as well as any states with whom we do not have a treaty relationship but who seek our assistance under a letter rogatory, letter of request, or multilateral treaty. With regard to incoming requests, since July 2002, the United States has opened and closed 330 cases under the categories of "bribery" and "official corruption". A typical request asks for banking, corporate or Internet-related records. As a point of information, the United States does not need to receive requests under a treaty in order to

execute them, and is able to execute letters rogatory and letters of request from Ministries of Justice as well.

With regard to outgoing MLA requests, since July 2002, the United States has sent requests to 57 countries in bribery-related matters. The vast majority have been granted, while some are still pending.

CHAPTER FIVE

NOTIFICATION OF CRIMINALIZATION OF TRANSNATIONAL BRIBERY AND ILLICIT ENRICHMENT (ARTICLE X OF THE CONVENTION)

If, subsequent to its ratification of the Convention, your State has criminalized transnational bribery and/or illicit enrichment, as provided at Articles VIII (1) and IX (1) of said Convention, please indicate if it has notified the Secretary General of the OAS.

Not applicable.

CHAPTER SIX

EXTRADITION (ARTICLE XIII OF THE CONVENTION)

a) Bearing in mind the provisions contained in Article XIII (1, 2, 3, and 4) of the Convention, under your country's legal framework, may this Convention be considered the legal basis for extradition in connection with the offenses it has criminalized in accordance therewith? If so, briefly describe any existing laws and/or other measures that allow as much, and attach a copy thereof.

The United States may only seek extradition from a foreign country, or provide for extradition, under a bilateral extradition treaty, except in extremely rare circumstances. As such, the Inter-American Convention Against Corruption is not a basis for extradition absent a bilateral treaty. That said, the Convention allows the corruption offenses it covers to be the basis for extradition as supplemental offenses to existing bilateral extradition treaties that are list-based. With regard to parties to the Convention, the United States has bilateral treaties with all parties to the Convention, some dating back to the 1800's and early 1900's. With regard to such older, list-based treaties, the offenses covered by the Convention, including bribery of public officials, solicitation of bribes by public officials, financial gain, official corruption, and having a role in those offenses, would now be extraditable offenses under extant bilateral extradition treaties if not already covered in the list of offenses.

b) If your State may refuse extradition for the above offenses solely on the basis of the nationality of the person sought, or because it deems that it has jurisdiction over the offense, please indicate, when this occurs, if it submits the case to the competent authorities for the purpose of prosecution and reports the final outcome to the requesting State in due course. If so, briefly describe the existing laws and/or other measures in that regard and attach a copy thereof.

The United States extradites its nationals and does not deny extradition on the basis of nationality. See Title 18, United States Code, Section 3196 (attached). Because the US

does not deny extradition based on nationality, it does not seek transfer of prosecution to the US in light of denial based on nationality.

c) Please indicate if, subject to the provisions of its domestic law and its extradition treaties, your State, upon being satisfied that the circumstances so warrant and are urgent, and at the request of another State Party to the Convention, takes into custody the person whose extradition is sought and who is present in its territory, or takes other appropriate measures to ensure their presence at extradition proceedings. If so, briefly describe the existing laws and/or other measures in that regard and attach a copy thereof.

Extradition proceedings are governed by Chapter 209 of the United States Code (specifically, Title 18, United States Code, Sections 3181 to 3196 (attached)). The possibility of provisional arrest in cases of urgency is governed by bilateral treaty provisions, and most if not all treaties provide for it. The United States as a matter of policy seeks detention of fugitives who are arrested pursuant to a treaty request, whether for provisional arrest or extradition. Most requests for detention of fugitives are granted, and as developed in case law, only in "special circumstances" are fugitives released from custody. Even if released, the United States seeks bail or other measures to ensure appearance throughout extradition proceedings.

d) Briefly state the objective results that have been obtained in enforcing the existing rules and/or other measures on extradition for the aforementioned offenses, such as extradition requests made to other States Parties for the purpose of investigating or prosecuting those offenses and procedures initiated by your State to attend to requests received by it from other States Parties with the same purpose, as well as the results thereof. The above information should refer, as far as possible, to the last five years.

The United States has a robust extradition practice with our more than 110 extradition treaty partners. The older treaties are list-based and the newer ones rely upon dual criminality as the basis for offenses being extraditable. At any given time, there are approximately 3,500 extradition matters pending in the Office of International Affairs, Criminal Division, US Department of Justice, which performs a central coordinating function within the US for such requests. That said, between 2005 and 2010, there have only been a handful of corruption offenses as the basis for extradition with other parties to the Convention. (As noted above under question 2(b) in chapter 3, please note that corruption offenses can be coded in OIA's electronic case management system as bribery, embezzlement, tax evasion, official corruption, foreign corrupt public official, and Foreign Corrupt Practices Act cases. The universe of corruption offenses handled by OIA may be larger than the statistics included herein indicate, because the cases may be coded as fraud, of which there are more than 800 pending extradition cases.)

With regard to corruption offenses, it does not appear that any extradition requests, either incoming or outgoing, cited to the Convention as a basis for making the offenses extraditable. As an example, a request from the Dominican Republic to the United States in 2005 for crimes including falsifying public documents, misappropriation of government funds, embezzlement, coercion, bribery, aggravated fraud, and criminal association was made under the 1909 bilateral treaty, and did not cite to the Convention. (That request was ultimately denied by US courts, for reasons unrelated to the types of offenses charged.) Since 2005, the US has sent requests to five parties to the Convention for corruption

offenses, such as the bribery of a US immigration official to provide visas to unqualified candidates, fraud related to rigging bids to obtain building contracts for an airport, and money laundering linked to embezzlement of public funds. The US has received corruption requests from three other parties to the Convention since 2005. One case with a Convention party has resulted in an extradition – in 2008 -- although some cases remain pending.

With regard to all extraditions, not just with Convention parties, since 2005, 13 fugitives have been extradited to the US for corruption offenses, and the US has extradited 6. For instance, several European countries have extradited fugitives to the US to face corruption charges – notably under the Foreign Corrupt Practices Act. As of July 2010, there are 10 pending outgoing extraditions and 7 pending incoming extraditions for corruption offenses.

SECTION II

STRUCTURE OF COUNTRY REPORTS IN THE FIRST ROUND

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

1.1. Standards of conduct intended to prevent conflicts of interest and enforcement mechanisms

I. RECOMMENDATION: Continue to improve the provisions, measures and mechanisms for enforcement relating to conflicts of interest.

The U.S. Office of Government Ethics (OGE) published the 2008 Conflict of Interest Prosecution Survey. The survey contains summaries of cases involving conflict of interest violations prosecuted by U.S. Attorneys' offices and the Public Integrity Section of the Department of Justice's Criminal Division. http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2009/do09029.html

OGE published a final post-employment rule, effective July 25, 2008. This rule constitutes the first comprehensive post-employment guidance in regulation form since 18 U.S.C. § 207 was substantially revised in 1989. The new guidance is codified at part 2641 of title 5 of the Code of Federal Regulations. The final rule also revokes part 2637 of title 5. These regulations are issued pursuant to Executive Order 12731, which provides that the Office of Government Ethics "shall be responsible for . . . promulgating, with the concurrence of the Attorney General, regulations interpreting the provisions of the post-employment statute, section 207 of title 18." E.O. 12731, § 201(c). OGE has obtained the concurrence of the Department of Justice and also has consulted with the Office of Personnel Management, as provided in the Ethics in Government Act of 1978, 5 U.S.C. app. § 402(b). 73 Federal Register 36168 (June 25, 2008), available at http://edocket.access.gpo.gov/2008/pdf/E8-13394.pdf and http://edocket.access.gpo.gov/2008/E8-13394.htm.

A) Measures to Implement:

- Continue the process of periodic review and appropriate updating of the provisions, measures and mechanisms for enforcement related to conflicts of interest.

  - OGE released an interactive web-based training tutorial designed for employees of the offices of Inspectors General who conduct conflict of interest investigations. In this course Inspector General (IG) investigators are introduced to the two main ways in which OGE and the ethics community can support a criminal conflicts of interest investigation. After participating in this brief course, IG investigators are able to more efficiently and thoroughly complete a criminal

conflicts of interest investigation.
http://www.usoge.gov/training/module_files/investcoi_wbt_10/invest_coi.html

- Continue to carry out periodic evaluations, by means such as the surveys conducted by OGE, or by other means that are considered appropriate, with respect to the effectiveness of the provisions, measures and enforcement mechanisms related to conflicts of interest; and continue to promote or adopt appropriate decisions based on the results of evaluations designed to improve those provisions, measures and mechanisms.

  - Presidential Executive Order 13490, "Ethics Commitments by Executive Branch Personnel" was issued January 21, 2009. The Order requires every covered appointee to sign a pledge upon assuming office. The pledge includes provisions on gifts from lobbyists and certain restrictions on appointees and lobbyists entering and leaving government. Pursuant to this Executive Order, OGE assessed agency compliance with the Ethics Pledge requirement. The findings were published on the OGE website:
    http://www.usoge.gov/directors_corner/reports/rpt_exorder13490.pdf

  - OGE continues to monitor and review the implementation of executive branch agency ethics programs through on-site program reviews carried out by its Program Review Division. The reviews are accomplished in accordance with detailed review guidelines. Good practices identified during these reviews are shared with the executive branch ethics community via OGE's website.

  - OGE continues annually to administer a survey to ethics officials throughout executive branch departments and agencies in order to assess the effectiveness of the services and support provided by OGE.

  - OGE continues to encourage agencies to use, and assists them in the development of, self-assessment tools to evaluate employees' perceptions of their agencies' ethical culture and ethics program. For example, one of the training courses offered to ethics officials is entitled, "How to Conduct a Self Assessment with Surveys".

1.2. Standards of conduct to ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions and enforcement mechanisms

I. RECOMMENDATION: Continue to strengthen the implementation of the standards of conduct in order to ensure the conservation and proper use of the resources entrusted to public officials in the performance of their functions.

OGE continues to offer training courses to executive branch agency ethics official on the standards of conduct, which includes sections specific to misuse of government resources

1.3. Standards of conduct and mechanisms concerning measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware

I. RECOMMENDATION: Continue to strengthen the mechanisms related to the existing measures and systems requiring public officials to report acts of corruption in the performance of public functions of which they are aware to the appropriate authorities

A) Measures to Implement:

- Continue to implement measures that allow timely consideration by the U.S. Special Counsel's Office of those cases related to protecting employees, ex-employees, and those seeking Federal employment ("whistleblowers"), as provided for by law, and thus, *inter alia*, facilitate compliance with the requirement that officers and employees report acts of corruption in the performance of public functions of which they are aware to the appropriate authorities.

Whistleblower protections were a subject under review under Round II, and the functions of the Office of the Special Counsel (OSC) were reviewed at that time in detail. Given that the committee gave the United States no recommendations after reviewing its whistleblower protections, we consider this recommendation accomplished and have no further information to report.

2. SYSTEMS FOR REGISTERING INCOME, ASSETS, AND LIABILITIES (ARTICLE III, PARAGRAPH 4, OF THE CONVENTION)

I. RECOMMENDATION: Continue to strengthen the systems for registering income, assets and liabilities.

A) Measures to Implement:

- Continue the process of periodic review and appropriate updating of the system of financial disclosure.

OGE authorized agencies to allow digital signatures on the electronically fillable PDF version of the confidential financial disclosure form (OGE Form 450) as long as the agency's Chief Information Officer (CIO) approves a digital signature process. See http://www.oge.gov/ethics_guidance/daeograms/dgr_files/2009/do09004.pdf

During the 2008 presidential transition OGE implemented a series of measures related to the financial disclosure system, including new reporting policies related to the disclosure of senate-confirmed officials leaving office

and additional guidance to agency ethics official regarding the need to review financial disclosure forms of career officials temporarily filling in political positions. See the following:
http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2008/do08021.pdf
http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2008/do08040.pdf

3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4, AND 11, OF THE CONVENTION)

I. RECOMMENDATION: Consider strengthening the cooperation and coordination relationships among the deferral oversight bodies regarding the functions they carry out with respect to the provisions of paragraphs 1, 2, 4, and 11 of the Convention.

OGE continues to build close ties between the executive branch Inspector General and ethics official communities. OGE released an interactive web-based training tutorial designed for employees of the offices of Inspectors General who conduct conflict of interest investigations.
http://www.usoge.gov/training/module_files/investcoi_wbt_10/invest_coi.html

4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11 OF THE CONVENTION)

4.1. General participation mechanisms

I. RECOMMENDATION: No recommendations were formulated by the Committee in this section.

4.2. Mechanisms for access to information

I. RECOMMENDATION: Continue to strengthen the mechanisms for access to public information.

A) Measures to Implement:

- Continue the process of evaluating and perfecting implementation of the Freedom of Information Act, as amended by the 1996 Electronic Freedom of Information Act Amendments.

  - Upon taking office in January 2009, President Obama issued his first Memorandum to heads of executive departments and agencies regarding Transparency and Open Government. A copy of the memorandum can be found at http://www.whitehouse.gov/the_press_office/Transparency_and_Open_Government/. The memorandum directs the Director of the Office of Management and Budget (OMB) to develop a directive for all

executive branch departments and agencies on how to make each agency's operations more transparent, participatory, and collaborative, with the emphasis being on providing government info in forms that the public can readily find and use. The Director of OMB issued the directive on December 8, 2009. The directive establishes deadlines for action, emphasizes a "presumption of openness," and directs departments and agencies to publish government information online. The directive notes that information should be in an open format that can be "retrieved, downloaded, indexed, and searched by commonly used web search applications" with a view to create an unprecedented and sustained level of openness and accountability. In addition to the steps delineated in the directive, Attorney General Eric Holder issued new guidelines for agencies with regard to the Freedom of Information Act (FOIA). http://www.usdoj.gov/ag/foia-memo-march2009.pdf. With those guidelines, the Attorney General reinforced the principle that openness is the Federal Government's default position for FOIA issues. More information about the Initiative can be found at The Open Government website http://www.whitehouse.gov/open/around#, which provides an "Open Government Dashboard" to track agencies implementation of their plans – including a fact sheet with agency-by-agency information.

4.3. Mechanisms for consultation

I. RECOMMENDATION: Continue to perfect the Advisory Committees' role as a mechanism for consultation.

A) Measures to Implement:

- Continue the periodic evaluation of the functioning of the Advisory Committees, and taking into account the results thereof, adopt the pertinent measures to ensure the fulfillment of the objectives of the mechanisms, and *inter alia*, contribute to the fulfillment of the purposes of the Convention.

- Consider, where appropriate, the creation and use of the advisory committees by agencies which do not currently utilize them.

The Committee Management Secretariat of the General Services Administration (GSA) is charged with a number of responsibilities designed to improve the management and accountability of advisory committees. These responsibilities include: conducting an Annual Comprehensive Review covering the performance of, and need for, existing advisory committees; issuing regulations, guidelines, and management controls of government-wide applicability; and assuring that advisory committees are established in accordance with the Federal Advisory Committee Act's requirements. The Secretariat also maintains data on advisory committees and confirms that the committees are fulfilling the purpose for which they were established. Today, advisory committees are used by over 50 Executive departments and agencies to address issues that reflect the complex mandates undertaken by the Government. During fiscal year 2009, over 80,000

committee members served on nearly 1,000 committees and provided advice and recommendations on such matters as the safety of the nation's blood supply, protection of childrens' health, steps needed to address the management of natural resources, economic recovery and fiscal reform, the study of bioethics, and the country's national defense strategies.

Additionally, in response to Government Accountability Office Reports issued in 2002 and 2004, the Office of Government Ethics updated its guidance to agencies regarding appointments to federal advisory committees and focused increased attention on advisory committee appointment matters in agency program reviews. See http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2005/do05012.html

4.4. Mechanisms to encourage participation in public administration

I. RECOMMENDATION: Continue to strengthen the mechanisms to encourage civil society and nongovernmental organizations in public administration.

A) Measures to Implement:

- Perform periodic evaluations of the existing mechanisms to encourage civil society and nongovernmental participation in public administration, in order to, *inter alia*, determine the strengths of the mechanisms and identify those areas where improvements are needed, and based on the results of those evaluations, adopt the pertinent measures to ensure the fulfillment of the purposes of the Convention.

In addition to the Open Government Initiative mentioned above, the Executive Branch consistently explores new mechanisms to facilitate participation in public administration. In order to promote public participation in U.S. Government decision-making process, the National Archives constantly revises two websites with links to all federal agency public comment websites. (See http://www.archives.gov/federal-register/public-participation/rulemaking-sites.html and http://www.regulations.gov/fdmspublic/component/main.) These websites provide the text of proposed rules and regulations, opportunities for filing comments electronically, and updates on the status of rules once public comment periods have closed. These websites provide an easy method for all members of the public to submit comments to government agencies as they develop new rules and regulations.

Additionally, the U.S. Congress provides internet access to information on the legislative process, legislation, hearing schedules, hearing transcripts, laws, members' offices, etc., in order to facilitate citizen participation. More can be found at http://www.house.gov/, http://www.senate.gov/index.htm, and http://thomas.loc.gov/. Finally, a cable television network called C-SPAN (http://www.cspan.org/) provides television coverage of Congressional proceedings, including a comprehensive website that provides in-depth coverage of prominent legislative and other governmental issues.

4.5. Mechanisms for participation in the follow up of public administration

I. RECOMMENDATION: Continue to strengthen the mechanisms for participation in the follow-up of public administration.

A) Measures to Implement:

- Perform periodic evaluations of the existing mechanisms to encourage civil society and nongovernmental participation in the follow-up of public administration, in order to, *inter alia*, determine the strengths of the mechanisms and identify those areas where improvements are needed, and based on the results of those evaluations, adopt the pertinent measures to ensure the fulfillment of the objectives of the mechanisms and *inter alia*, contribute to the fulfillment of the purposes of the Convention.

The websites mentioned above also provide citizens with the opportunity to follow-up on decision-making processes.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)

I. RECOMMENDATION:

- Continue to consider the offering the technical cooperation requested by other States Parties, in order to support implementation of the Convention and of the recommendations made to that effect by the Committee in the respective country reports.

- Continue to consider participating in and supporting mutual technical cooperation initiatives, through the exchange of information within the framework of the networks of competent government authorities, in areas related to the Convention.

- Consider entering into mutual legal assistance treaties with OAS Member States with which the US does not have an existing Mutual Legal Assistance Treaty in the areas covered under the Convention.

- OGE, at the request of the U.S. State Department and the Department of Justice continues to provide technical assistance briefings to international visitors interested in learning about the executive branch ethics program. In fiscal year 2009 OGE briefed government representatives from OAS countries including Argentina, Belize, Barbados, Brazil, Canada, Colombia, Costa Rica, Mexico, Paraguay, and Trinidad & Tobago, regarding U.S. corruption prevention measures, including our codes of conduct, ethics training and counseling, and financial disclosure systems.

At its 17th National Government Ethics Conference in Chicago in Illinois, May 10-14, 2010, OGE hosted several government representatives from foreign governments, including Argentina. The conference topics included: Program Management, “Beyond Ethics”, Leadership, Core Advisory Issues,

Introductory Issues, Advanced Issues, and Education and Communication. There were approximately 650 participants, primarily executive branch agency ethics officials, some representatives of the Inspectors General community, and a handful of representatives from state and local ethics bodies.

The U.S. co-sponsored an Asia-Pacific Economic Cooperation (APEC) Anti-Corruption workshop on *Applying APEC Anti-Corruption Principles and Preventing Conflicts of Interest* in Beijing, China, October 14-16, 2009. This conference was attended by representatives from the following OAS countries: Chile, Canada, Mexico, and Peru.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

I. RECOMMENDATION: No recommendations were formulated by the Committee in this section.

7. GENERAL RECOMMENDATIONS

I. RECOMMENDATION:

- Design and implement, as appropriate, programs to provide training for public officials responsible for implementing the systems, standards, measures and mechanisms considered in this report, in order to ensure that they are adequately understood, managed and implemented.

OGE hosted its 17th National Government Ethics Conference in Chicago, Illinois, May 12-14, 2010. Conference topics included Program Management, "Beyond Ethics," Leadership, Core Advisory Issues, Introductory Issues, Advanced Issues, and Education and Communication. There were approximately 650 participants, primarily executive branch agency ethics officials and some representatives of the Inspectors General community. In addition, there were representatives from foreign governments, including Argentina, and a handful of representatives from state and local ethics bodies. The conference was preceded by a two-day New Ethics Official Certification Program. This program was a new initiative designed for ethics officials with no more than three years of ethics experience. Participants received a "Certificate of Completion" after successfully completing an assessment in each of the key areas of instruction.

As part of the ongoing development of training materials for executive branch departments and agencies, OGE released two new web-based training tutorial on how to file a confidential financial disclosure form (OGE Form 450) and how to file the public financial disclosure (SF 278):
http://www.usoge.gov/training/module_files/oge450_wbt_10/filing_oge450.html
http://www.usoge.gov/training/module_files/sf278_wbt_10/filing_sf278.html

OGE released new instructor-led courseware entitled "Are You Vulnerable to Conflicts?" This instructor-led course is designed to increase employees' ability

to identify financial conflict of interest situations.
http://www.usoge.gov/training/training_materials/instructor_course.aspx

OGE also issued new "quick reference guides", which are designed to give a brief overview of ethics issues, statutes and/or regulations. The new quick reference guides cover the following issues:

- Selected Subparts of the Standards of Ethical Conduct for Employees of the Executive Branch 5 CFR Part 2635: A Quick Reference Guide http://www.usoge.gov/training/training_materials/quick_reference/soc_guide2010.pdf
- Select criminal conflict of interest provisions http://www.usoge.gov/training/training_materials/quick_reference/coi_statutes_guide2010.pdf
- Job search remedies http://www.usoge.gov/training/training_materials/quick_reference/summary_remedies.pdf
- Post-employment http://www.usoge.gov/training/training_materials/quick_reference/substant_prohib_chart.pdf

OGE also published new job aids, which are designed to help agency ethics officials counsel employees on specific issues. The new job aids were on:

- Post employment http://www.usoge.gov/training/training_materials/job_aids/post_emp_JobAid.pdf
- Seeking employment http://www.usoge.gov/training/training_materials/job_aids/seeking_emp_JobAid.pdf
- Determining Which Positions Should File A Confidential Financial Disclosure Report http://www.usoge.gov/training/training_materials/job_aids.aspx

OGE published the booklet entitled "To Serve With Honor: A Guide on the Ethics Rules that Apply to Advisory Committee Members Serving as Special Government Employees"
http://www.usoge.gov/training/training_materials/booklets/bkServeHonor.pdf

OGE continues to offer classroom-style classes to agency ethics officials throughout the year. In FY 09 OGE delivered 88 in-person classes to at total number of 1,582 ethics officials. For the latest training schedule visit:
http://www.usoge.gov/training/training_workshops_seminars.aspx

Since June 2008, OGE has also delivered four instructor-led, web-based training courses.

During the 2008 presidential transition OGE implemented a series of measures related to the financial disclosure system, including advanced training for headquarters agency ethics officials who review the financial disclosure reports of presidential nominees for appointments requiring senate confirmation. See: http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2008/dt08029.pdf

Additional, pertinent news (not related specifically to any recommendation):

The Judicial Conference revised its Code of Conduct for United States Judges, which took effect
July 1, 2009. This was the first substantial Code revision since 1992.
http://www.uscourts.gov/Press_Releases/2009/0309JudicialConf.cfm.

- Select and develop procedures and indicators, as appropriate, for verifying follow-up of the recommendations made in this report, and notify the Committee, through the Technical Secretariat, in this regard. For the purposes indicated, the United States could consider taking into account the list of the most widely used indicators, applicable in the Inter-American system that were available for the selection indicated by the country under analysis, which has been published on the OAS website by the Technical Secretariat of the Committee, as well as information derived from the analysis of the mechanisms developed in accordance with the following recommendation.

- Develop, when appropriate and where they do not yet exist, procedure for analyzing the mechanisms mentioned in this report, as well as the recommendations contained herein.

The United States constantly monitors indicators such as citizen input received, website hits, cases prosecuted, compliance with preventive measures, and citizen complaints, in order to fine-tune measures to prevent, detect, and address corruption. These measures are addressed above under the relevant subject matter.

STRUCTURE OF COUNTRY REPORTS IN THE SECOND ROUND

1. SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE III (5) OF THE CONVENTION)

1.1. Government hiring systems

I. RECOMMENDATION: Continue strengthening the systems for the hiring of public servants.

A) Measures to Implement:

- Continue to give the appropriate consideration to the development instruments, such as OPM's Strategic and Operational Plan 2006-2010, in

order to determine and establish measurable goals, advance in their implementation and continuously evaluate the objective results achieved in their fulfillment, with respect to the systems for the hiring of public servants.

The results of the 2006-2010 Strategic Plan for the Office of Personnel Management are published annually in the U.S. Government's "Performance and Accountability Report" or PAR. However the format for reporting agency performance changed in 2008 to the "Annual Performance Report" or APR. These reports are submitted to the President, Congress, and members of the public as a measure of how well we are managing programs and finances.

Accomplishments to ensure fairness and transparency include:

- The number of the 25 President's Management Council agencies that fully implemented a system of internal compliance with merit system principles and laws, rules, and regulations, in accordance with OPM standards (basic system requirements) for agency accountability systems has grown from 2 out of 25 in 2005 to 25 of 25 in 2007-2009.

- 100 % of targeted major agencies, those with a Chief Human Capital Officer, have switched to using the OPM approved standardized Job announcement template and 100% of the same agencies are now using the online USAJOBS® approved standardized resume format and integrating online applications with their assessment systems.

- OPM has determined that 50 percent of hires within designated agency subcomponents or occupations met or exceeded the 80-day timeline, starting from the date a hiring manager communicates to Human Resources that he/she has a budgeted position to fill, through the date the employee enters duty, this improved efficiency substantially exceeding the target of 10 percent of hires

- At the end of FY 2009, OPM completed 80 percent of initial background clearance investigations in an average of 32 days, exceeding the target of completing 80 percent in an average of 90 days.

- By the end of FY 2008, 65 percent of Federal agencies were using Electronic Official Personnel Folders (eOPF) compared to 46 percent the prior year. Additionally, nearly 1 million paper Official Personnel Folders have been converted to electronic format. This includes official personnel records of approximately 55.5 percent of Federal employees. An agency may grant access to the eOPF system so all employees may view their personnel data, which increases employee awareness and accountability.

Each of OPM's annual performance reports, whether under the "Performance and Accountability Report" or the "Annual Performance

Report" can be found for each year at the website:
http://www.opm.gov/gpra/opmgpra/

1.2. Government systems for procurement of goods and services

I. RECOMMENDATION: Continue strengthening the systems for government procurement of goods and services.

A) Measures to Implement:

- Continue to give the appropriate consideration to the relevant measures to improve the acquisition workforce, taking into account the results of studies such as the study by the Advisory Acquisitions Panel and the survey performed Office of Federal Procurement Policy and the Federal Acquisition Institute.

- To ensure that we sustain our acquisition improvement efforts, we are working to build up the capacity and capability of the acquisition workforce. While dollars spent on contracting more than doubled from 2000 to 2008, the size of the workforce responsible for managing federal contracts remained flat. The President's FY2011 Budget requests additional funds for civilian agencies to build the capacity, capability, and effectiveness of the acquisition workforce. Both explicitly in the Budget and throughout our work, we recognize that we need to focus not only on those engaged directly in the contracting process but also on the more broad acquisition workforce, including those who can lay the foundation of successful procurements by helping develop accurate cost estimates, performing thorough market research, and clearly and realistically defining the governments requirements, as well as those who ensure rigorous oversight of contractor performance.

- On October 27, 2009, OMB OFPP issued an Acquisition Workforce Development Strategic Plan for Civilian Agencies for FY2010-2014. The plan included an analysis of both the quantitative and qualitative aspects of the Federal acquisition workforce, to include contracting professionals, acquisition program and project managers, and contracting officer technical representatives. The plan identified a new requirement for all civilian agencies to grow their acquisition workforce by 5% and to complete an annual acquisition human capital plan that analyzes agency mission needs supported by acquisition with the capacity and capability required of an acquisition workforce to support that mission.

- In March, 2010 agencies developed comprehensive human capital plans that provide insight into each agency's current acquisition workforce, a thoughtful analysis of agency acquisition requirements going forward, and specific strategies for improving their acquisition workforce. We are supporting agency efforts by targeting government-wide skill gaps through training and improving certification management tools. We are also reviewing agency plans to determine what programs we can provide government-wide to avoid each agency developing its own programs, and how we can ensure adoption of innovative best practices government-wide. We are

working to update and improve the curriculum for certification training for all acquisition workforce members, ensure certification standards reflect the skills needed in handling real-life procurements, and foster integration of classroom and on-the-job training, as well as the use of rotational assignments and mentoring to expose participants to the different aspects of acquisition.

- Continue to give the appropriate consideration to the relevant measures to implement the Federal Procurement Data System – Next Generation, given that it is the only government-wide system that tracks federal procurement spending.

- The Office of Management and Budget, in collaboration with the General Services Administration and the Chief Acquisition Officers Council, is continuing to identify and implement improvements to the FPDS-NG. The efforts are part of the OMB focus on Transparency and Open Government and will provide, through the http://www.usaspending.gov/ site, more information to citizens, companies, small businesses, and Federal agencies on Federal contracting. The Transparency and Open Government initiative includes other procurement systems in the Integrated Acquisition Environment that support public reporting of Federal contracting data. A recent addition to the suite of products is the Federal Financial Accountability and Transparency Act (FFATA) Federal Subaward Reporting System (FSRS) and enhancements to the Central Contract Register (CCR). The CCR has been modified to incorporate an interim. Federal Acquisition Regulation that require Federal contractors meeting certain requirements to report compensation for certain executive officers. The FSRS has been stood up to capture subcontracting information for all prime contracts valued at $25,000 or greater. These enhancements, along with continuing changes to the FPDS improve the transparency of Federal contracting information.

2. SYSTEMS FOR PROTECTING PUBLIC SERVANTS AND PRIVATE CITIZENS WHO, IN GOOD FAITH, REPORT ACTS OF CORRUPTION (ARTICLE III (8) OF THE CONVENTION)
    I. RECOMMENDATION: No recommendations were formulated by the Committee in this Section.

3. ACTS OF CORRUPTION (ARTICLE VI OF THE CONVENTION)
    I. RECOMMENDATION: No recommendations were formulated by the Committee in this Section.

ANNEX

CHART 1
SENTENCES OF NATURAL PERSONS FOR FCPA VIOLATIONS CHARGED SINCE 2005

	DEFENDANT	CASE NUMBER	SENTENCE REDUCTION FOR COOPERATION	AMOUNT OF BRIBES	SENTENCE (excluding monetary penalties)
1	**John Webster Warwick** (President)	United States v. Warwick 09-CR-449 (E.D. Va. 2009)	NO	~ 200K	37 months' imprisonment
2	**Charles Jumet** (Vice President and President)	United States v. Jumet 09-CR-397 (E.D. Va. 2009)	NO	~ 200K	87 months' imprisonment
3	**William Jefferson** (Congressperson)	United States v. Jefferson, 07-CR-209 (E.D. Va. 2007)	NO	~ 500K + Equities	13 years' imprisonment
4	**Frederick Bourke, Jr.** (Investor)	United States v. Kozeny, et al, 05-CR-518 (S.D.N.Y. 2005)	NO	~ Millions	1 year and 1 day's imprisonment
5	**Yaw Osei Amoako** (Regional Director)	United States v. Amoako, 06-CR-702 (D. N.J. 2006)	YES	~ 267K	18 months' imprisonment
6	**Roger Michael Young** (Managing Director)	United States v. Young, 07-CR-609 (D. N.J. 2007)	YES	~ 267K	3 months' home confinement; 5 years' probation
7	**Christian Sapsizian** (Vice President)	United States v. Sapsizian, et al, 06-CR-20797 (S.D. Fla. 2006)	YES	~ 2.4M	30 months' imprisonment
8	**Steven Lynwood Head** (Program Manager)	United States v. Head, 06-CR-1380 (S.D. Cal. 2006)	YES	~ 2M	6 months' imprisonment
9	**Richard John Novak** (Employee)	United States v. Randock, et al, 05-CR-180 (E.D. Wash. 2005)	YES	~ 30K-70K	3 years' probation
10	**Faheem Mousa Salam** (Translator/Contractor)	United States v. Salam, 06-CR-157 (D.D.C. 2006)	YES	~ 60K	36 months' imprisonment
11	**Richard G. Pitchford** (Vice President; Country Manager)	United States v. Pitchford, 02-CR-365 (D.D.C. 2002)	YES	~ 400K	1 year and 1 day's imprisonment

12	**Gautam Sengupta** (Task Manager)	United States v. Sengupta, 02-CR-040 (D.D.C. 2002)	YES	~ 50K	2 months' imprisonment; 4 months' home confinement
13	**Albert Jackson "Jack" Stanley** (Officer/Director)	United States v. Stanley, 08-CR-597 (S.D. Tex. 2008)	--	~ 10.8M	84 months' imprisonment; Rule 11(c)(1)(C)

A number of individuals charged since 2005 have not yet been sentenced.

CHART 2

SANCTIONS IMPOSED UPON LEGAL PERSONS FOR FCPA VIOLATIONS SINCE 2005

CORPORATE ENTITY	DATE OF DISPOSITION	DISPOSITION			CRIMINAL MONETARY PENALTIES	LENGTH OF CORPORATE COMPLIANCE MONITOR	OTHER MONETARY PENALTIES
		GUILTY PLEA	DPA	NPA			
Snamprogetti Netherlands BV	7/7/2010		1		$240,000,000	2 Years	$125,000,000 (disgorgement)
Technip SA	6/28/2010		1		$240,000,000	2 Years	$98,000,000 (disgorgement)
Daimler AG (and three subsidiaries)	04/01/2010	2	2		$93,600,000	3 Years	$91,432,867 (disgorgement)
Innospec Inc.	03/18/2010	1			$14,100,000	3 Years	$11,200,000 (disgorgement); $2,200,000 (civil penalty -OFAC)
Nexus Technologies Inc.	03/16/2010	1			--	--	--
BAE Systems plc	03/01/2010	1			$400,000,000	3 Years	--
UTStarcom Inc.	12/31/2009			1	$1,500,000	--	$1,500,000 (civil penalty)
AGCO Corp. (and one subsidiary)	09/30/2009		1		$1,600,000	--	$2,400,000 (civil penalty); $16,000,000 (disgorgemen

							t)
Control Components, Inc.	07/31/2009	1			$18,200,000	3 Years	--
Helmerich & Payne, Inc.	07/30/2009			1	$1,000,000	--	$375,000 (disgorgement)
Novo Nordisk A/S	05/11/2009		1		$9,000,000	--	$3,025,066 (civil penalty); $6,005,079 (disgorgement)
Latin Node Inc.	04/07/2009	1			$2,000,000	--	--
Kellogg Brown & Root LLC	02/11/2009	1			$402,000,000	3 Years	$177,000,000 (disgorgement)
Fiat S.p.A. (and three subsidiaries)	12/22/2008		1		$7,000,000	--	$3,600,000 (civil penalty); $7,209,142 (disgorgement)
Siemens AG (and three subsidiaries)	12/15/2008	4			$450,000,000	4 Years	$350,000,000 (disgorgement)
Aibel Group Limited	11/21/2008	1			$4,200,000	2 Years	--
Faro Technologies, Inc.	06/05/2008			1	$1,100,000	2 Years	$1,850,000 (disgorgement)
AGA Medical Corporation	06/03/2008		1		$2,000,000	3 Years	--

Willbros Group Inc. (and one subsidiary)	05/14/2008		2		$22,000,000	3 Years	$10,300,000 (disgorgement)
AB Volvo (and two subsidiaries)	03/20/2008		1		$7,000,000	--	$4,000,000 (civil penalty); $8,600,000 (disgorgement)
Flowserve Corporation (and one subsidiary)	02/21/2008		1		$4,000,000		$3,000,000 (civil penalty); $3,500,000 (disgorgement)
Westinghouse Air Brake Technologies Corporation	02/14/2008			1	$300,000	--	$89,000 (civil penalty); $288,000 (disgorgement)
Lucent Technologies Inc.	12/21/2007			1	$1,000,000	--	$1,500,000 (civil penalty)
Akzo Nobel N.V.	**12/20/2007**			**1**	**$800,000 (contingent upon Dutch disposition)**	--	**$750,000 (civil penalty); $2,200,000 (disgorgement)**
Chevron Corporation	11/14/2007		1		$20,000,000 (forfeiture); $5,000,000 (to NYC District Attorney's	--	$3,000,000 (civil penalty-SEC) $2,000,000 (civil penalty-OFAC)

					Office)		
Ingersoll-Rand Company Ltd. (and two subsidiaries)	10/31/2007		1		$2,500,000	--	$1,950,000 (civil penalty); $2,270,000 (disgorgement)
York International Corporation	10/01/2007		1		$10,000,000	3 Years	$2,000,000 (civil penalty); $10,000,000 (disgorgement)
Paradigm B.V.	09/24/2007			1	$1,000,000	18 Months	--
Textron Inc.	08/23/2007			1	$1,150,000	--	$800,000 (civil penalty); $2,735,040.68 (disgorgement)
Omega Advisors, Inc.	07/06/2007			1	--	--	$500,000 (civil forfeiture)
Baker Hughes Incorporated (and one subsidiary)	**04/26/2007**	**1**	**1**		**$11,000,000**	**3 Years**	**$10,000,000 (civil penalty); $24,000,000 (disgorgement)**
El Paso Corporation	02/07/2007			1	$5,482,363 (forfeiture)	--	$2,250,000 (civil penalty)
Vetco Gray Inc. (and three related subsidiaries)	02/06/2007	3	1		$26,000,000	3 Years	--

Schnitzer Steel Industries, Inc. (and one subsidiary)	10/16/2006	1	1		$7,500,000	3 Years	$7,700,000 (disgorgement)
Statoil, ASA	10/13/2006		1		$10,500,000	3 Years	$10,500,000 (disgorgement)
DPC (Tianjin) Co. Ltd.	05/20/2005	1			$2,000,000	3 Years	$2,800,000 (disgorgement)
Micrus Corporation	03/02/2005			1	$450,000	3 Years	--
Titan Corporation	03/01/2005	1			$13,000,000	3 Years	$15,479,000 (disgorgement)
Monsanto Company	01/06/2005		1		$1,000,000	3 Years	$500,000 (civil penalty)