

## **What is your FCPA Investigation Protocol?**

Speaking at the IQPC 2010 Internal and Regulatory Investigations in Oil and Gas Conference, Dominic Sheils, Compliance Counsel for John Wood Group PLC, and James W. Noe, Senior Vice President, General Counsel and Compliance Officer for Hercules Offshore, Inc., discussed two different approaches to internal investigation protocols and how these different approaches work for their respective companies. The presentations of Sheils and Noe highlighted the different approaches taken by many companies in the United States and abroad when dealing with the issue of whether to have a written procedure outlining the steps to be taken when a claim which may constitute a bribery or corruption is reported to the company.

Compliance Counsel Dominic Sheils indicated that the John Wood Group has a detailed written procedure for handling any such complaint or allegation of bribery or corruption, regardless of the means through which it is communicated. The mechanism could include the internal company hot-line, anonymous tips, or a report directly from the business unit involved. In the John Wood Group the decision on whether or not to investigate is made by the internal Compliance Department, with possible consultation with the Audit Committee of the Board of Directors. The head of the business unit in which the claim arose is notified that such an allegation has been made and that the Compliance Department will be handling the matter on a go-forward basis.

The John Wood Group uses this detailed written procedure to ensure there is complete transparency on the rights and obligations of all parties once an allegation is made. This allows the Compliance Department to have not only the flexibility but also the responsibility to deal with such matters. The Compliance Department believes that this mandated responsibility gives it the role in which it can best assess and then make a decision on how to manage the matter.

The previous approach is contrasted by that of Hercules Offshore, Inc. General Counsel James Noe stated that Hercules has no written protocol for the handling of investigations of allegations of corruption or bribery. He initially noted that he, as General Counsel, makes the final decision on whether a matter is to be investigated. He believes that it is important for the General Counsel to maintain maximum flexibility to deal with the issues involved around any such allegations.

Mr. Noe stated that each investigation depends on the underlying facts presented. He is concerned that if there is a written protocol mandating the procedure it might impinge on the flexibility of the company to proceed. He used the phrase "Sometimes small streams can become big rivers", indicating that when a matter is thoroughly investigated flexibility is required. Additionally, at Hercules, there is no set person(s) or personnel who are required to be notified when bribery and corruption allegations are put forward. The scope of the decision on to whom and how to make the notification can be influenced by a myriad of factors including statutorily mandated reporting requirements of US public companies, so no one protocol can respond to every scenario.

Both John Wood Group and Hercules Offshore, Inc. have robust Foreign Corrupt Practices Act (FCPA) compliance and ethics programs. Their respective compliance programs differ on the mechanism by which the decisions on investigation protocols and notification are to be made, after an allegation of bribery and corruption comes forward. However both these company's have made their approaches work for them.

To see a video of their presentation, [click here](#).

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