The Rise of the Prosecutorial Efforts in Foreign Corruption: Lessons Learned from Recent FCPA Cases

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This Essay surveys five notable cases that illustrate the aggressiveness of the U.S. Securities and Exchange Commission (SEC) and the Department of Justice (DOJ) in pursuing (Foreign Corrupt Practices Act) FCPA 1977 violators. These cases are important because they provide indicators of the possible direction that FCPA enforcements can take.

U.S. v. Control Components, Inc shows that although not penalized under the FCPA, the bribery of private parties can also be a criminal act under state law and can be part and parcel of FCPA enforcement in certain instances. *U.S. v. Bourke*, shows that one should be careful of the possibility of being dragged into an FCPA enforcement arising from acts that one did directly do. *SEC v. Siemens Aktiengesellschaft*, highlights the awesome power of the SEC in FCPA enforcement, from its power to enforce disgorgement of profits, to join with foreign regulators in investigating erring companies, and to reach foreign companies whose shares are listed in U.S. exchanges. *In the Matter of Diagnostics Products Corporation*, tells us of the unique FCPA risks of doing business in China. And *In re Faro Technologies*, shows that shareholders also suffer damage in FCPA incidents, often from the plunge of stock prices, and have been making forays into using FCPA-related internal control issues to support securities class action lawsuits.

Taking from the lessons of these individual cases, the Essay concludes with prescriptions on how to upgrade a company's FCPA compliance program so that directors and officers can help their companies avoid FCPA violations and liability in this new era of increased FCPA enforcement.