

Export Violations, Investigations And Compliance: What Do You Tell The Audit Committee



PATTON BOGGS LLP
www.pattonboggs.com

November 18, 2009

Giovanna M. Cinelli
703-744-8075 (direct dial)
gcinelli@pattonboggs.com



COMPANY OBLIGATIONS

- * Vary depending upon public or private nature of the entity
- * Vary depending upon nature of the business:
 - ◆ Markets
 - ◆ Employee base
 - ◆ Products/technology
 - ◆ Company locations



COMPANY OBLIGATIONS

- * Reports are routinely provided to management
- * Reports are routinely provided to legal counsel
- * Reports are provided to the Board:
 - ◆ As needed and deemed appropriate by management
 - ◆ Quarterly; or
 - ◆ When criminal matters arise



STANDARDS

- * Sarbanes – Oxley duties
- * Materiality requirements
- * Investor requirements



STANDARDS

* Sarbanes – Oxley

- ◆ Materiality issues may affect the scope of disclosure
- ◆ Attorney obligations depending upon the type of issues that exist

* Investor Requirements

- ◆ Material issues affecting the value of the investment
- ◆ Representations affecting the monies received



STANDARDS

- * Export issues can affect the definition of “materiality” for purposes of disclosure
 - ◆ “Materiality” can be affected by what generally impacts the business
 - ◆ International operations and form of businesses – *e.g.*, JVs, teaming arrangements, subsidiaries
 - ◆ The parties who discovered the violations
 - ◆ Whether issues arose at foreign or U.S. facilities



STANDARDS

- * Issues that should be raised with the Board
 - ◆ Laws that apply to the business
 - ◆ Status of the Company's compliance program
 - ◆ History of compliance
 - * Disclosures
 - * Violations scope -- and type
 - * Resolution of any investigations
 - * Parties who conducted the investigations



STANDARDS

* Issues that should be raised with the Audit Committee

- ◆ Any government investigations
- ◆ Parties involved in any investigations
- ◆ Whether criminal issues exist
- ◆ How often the issues arose
- ◆ Actions taken
- ◆ Any information that allows the Audit Committee to determine whether it needs or wants to conduct an independent review



RATIONALE

- * Board and Audit Committees need to be sufficiently apprised of company activities to assess whether additional actions are required



ISSUES

* Select Scenarios of Concern

- ◆ Business Development activities that implicate FCPA, Part 130, antiboycott requirements
- ◆ Classification and misclassification
- ◆ Candor in U.S. Government submissions



QUESTIONS??

E-mail: erc@pattonboggs.com

**Also, please visit our
Export Resource Center:
www.pattonboggserc.com**