DORSEY
DORSEY + WHITNEY LLP

Facilitating FCPA Enforcement Through International Cooperation

SEC Chairman Jay Clayton called for greater international cooperation in the enforcement of anti-corruption statutes such as the Foreign Corrupt Practices Act in remarks delivered before the Economic Club of New York on September 9, 2019 (here). The comments followed a review of initiatives taken by the Commission under his tenure to aid the main street investor, a key focus of the agency under Chairman Clayton.

The FCPA, spawned from corruption uncovered in the now infamous Watergate Hearings was written into law through SEC enforcement efforts that began as a lonely crusade for the United States. When the Act was written in the late 1970s, the country was well aware that it was largely going it alone in its effort to stem corruption in international business transactions. Nevertheless, then Enforcement Chief Stanley Sporkin, Senator William Proxmire and others championed the legislation which began with a narrow focus that has expanded over the years.

While enforcement was sporadic in the years immediately following the passage of the legislation, the creation of the OCED in the late 1990s lead to increased recognition of the need for such laws and more enforcement. Today many countries have passed anti-corruption laws similar to the FCPA. Nevertheless, Chairman Clayton is clear correct that the U.S remains the leader when it comes to enforcement efforts.

The Chairman is also correct in stating that increased international efforts are the best enforcement strategy. Illustrating the point through the use of economic game theory, Mr. Clayton posited that when everyone is enforcing FCPA type statutes, the rogue country may have an incentive to change its unethical conduct. On the other hand, when the enforcer is something of a lone wolf, there may be incentives to not implement anti-corruption laws. Indeed, common sense suggests such a result – it may be easier to ignore ethical standards and “cheat” as the Chairman said, than act in accord with anti-corruption laws under such circumstances.

What all of this suggests, as Mr. Clayton stated, is that more enforcement efforts are

Related Capabilities

- Securities & Financial Services Litigation & Enforcement needed around the globe. That “more,” however, must come from other countries and institutions that are willing to work with the SEC, DOJ, OECD, and countries such as the U.K., Canada that have stepped-up enforcement.

Such efforts can begin with the SEC and DOJ streamlining enforcement with quicker, more focused, inquiries that hold accountable those who violate the FCPA. Those efforts can continue by increasing working arrangements and efforts with international organizations and other countries to ensure the kind of world-wide efforts the Chairman envisioned. A good place to start may be the Congressional budget hearings that will be held next month – the SEC and DOJ will each need additional resources to engage in the kind of efforts that the Chairman envisioned.