

## FCPA Powerhouse: Cahill Gordon & Reindel

By **Brian Mahoney**

*Law360, New York (May 28, 2013, 1:56 PM ET)* -- Cahill Gordon & Reindel LLP's heavy roster of past and current Foreign Corrupt Practices Act clients — including Diageo PLC, Pride International Inc. and Wal-Mart Stores Inc. — has made it the envy of the legal industry, but the firm's strategy for attracting corporate audit committees is really quite simple: recruit top legal talent and keep client relations personal.

When audit committees for major corporate clients approach Cahill with an FCPA concern, they know that the matter will be handled by the firm's four top FCPA partners: Anirudh Bansal, Bart Friedman, David Kelley and Brian Markley.

"We're a big firm but we're one of the smallest of the big firms and we have a model that clients like," said Kelley, former U.S. Attorney for the Southern District of New York. "We staff very economically and effectively. That is a model that works really well for us because partners at Cahill work very hard."

Cahill, one of Law360's FCPA Powerhouse Firms, has an FCPA group of four partners with a wide range of specialties and expertise — from securities litigation to white collar defense — allowing the firm to meet all of a clients' FCPA concerns while ensuring close ties with company board members and audit committee leaders.

"When we get an assignment on behalf of a company, the chair of the audit committee is very interested in who's working on this," Friedman told Law360. "They want individuals that they know and trust. It's very, very important."

Close relations with a company board and audit committee are especially essential in FCPA investigations, Friedman said, and Cahill's firm structure, which eschews practice leaders and the practice group model of most firms, ultimately benefits companies seeking individualized approaches to unique, complex investigations.

The four top partners' diversity of experience also means they can tackle FCPA investigations from a variety of perspectives.

Friedman, for example, has over 30 years experience in corporate governance advisory, while also serving multiple roles on the Council on Foreign Relations and the Brookings Institution. Those posts have helped him better understand how to navigate international investigations, which often involves difficult international discovery.

“My involvement at the Council on Foreign Relations and Brookings made me more acutely sensitive and knowledgeable and helps me and my colleagues navigate what are extraordinarily difficult challenges in getting information,” Friedman said.

Meanwhile Kelley and Bansal are two former top prosecutors from the Southern District of New York, with Kelley serving as U.S. Attorney from 2003 to 2005 and Bansal heading the district’s Complex Frauds Unit before leaving the post for Cahill in 2011.

“Having credentials brings immediate credibility,” Kelley said. “Company boards give an awful lot of deference because of our past experience. We can really oversee in-house investigations: from how to conduct interviews to drawing up and designing investigative plans.”

Markley is the young gun of the group, having joined Cahill right out of New York University Law School in 2000. He made partner in 2009 and has since been among the firm’s most valued securities litigators.

In keeping with the firm’s focus on tight attorney-client relationships, Friedman said Markley is also a “natural” in the boardroom, saying his ability to pass easily from the courtroom to the boardroom was a rare and “extraordinary” trait for an attorney.

“I have a broad based litigation background,” Markley said. “I’ve handled securities cases, general commercial litigation and First Amendment matters. That civil litigation background is often useful in our investigations.”

The combination of deep, varied backgrounds and personal client relationships has reaped powerful results for Cahill’s FCPA clients; it has also attracted some of the world’s largest companies to the firm’s New York office, where the four top partners are headquartered.

Major cases include Cahill’s representation of the Pride and Diageo audit committees in two separate FCPA probes over alleged bribery. Both cases highlight how Cahill handles FCPA investigations, rigorously investigating the allegations and, if necessary, reforming the company’s corporate governance controls, the firm said.

In the Pride matter, the company admitted in 2010 that it paid about \$800,000 in bribes directly and indirectly to government officials in Venezuela, India, Mexico, Kazakhstan, Nigeria, Saudi Arabia, the Republic of the Congo, and Libya. The company was ordered to pay about \$56 million in fines and disgorgement. Pride also hammered out a deferred prosecution agreement, which waived charges against the company.

Importantly, the government declined to impose an independent monitor in the case, thanks in large part to the company’s response to remediating the allegations; those steps included developing anti-corruption compliance and training programs.

And, in an unprecedented move, the U.S. Department of Justice in 2012 agreed to end the deferred-prosecution agreement one year early because of the success of Pride’s compliance program, a testament to Cahill’s ability to construct compliance programs that meet government standards.

Granting Pride an early exit from deferred prosecution was also among the first times the agency agreed to cut short the deferred-prosecution period, according to the firm.

In 2011, Cahill also represented the audit committee of London-based Diageo in investigations by the DOJ and the U.S. Securities and Exchange Commission arising from potential FCPA violations in South Korea, Thailand and India.

Diageo allegedly paid more than \$2.7 million through its subsidiaries for sales and tax benefits related to its Johnnie Walker and Windsor Scotch whiskys, the government had said.

Diageo eventually agreed to pay more than \$16 million to settle charges with the SEC. But the agency declined to file a civil action against the company — choosing only an administrative action — in part because of the company's robust compliance response in the wake of the investigation.

Kelley said that developing the Pride and Diageo programs in tandem with the company's larger defense of the bribery allegations gave the companies a much-needed boost in government settlement discussions.

"I think the approach in cases like Pride and Diageo is to try to really preempt the government, if you will." Kelley told Law360. "You want to get a head start and say, 'We're going to conduct a very thorough and complete investigation, one that anticipates what the government wants to do.'"

"What you really need to do is look at the company's compliance programs and be proactive and remodel the company to the extent that it's needed," Kelley added. "So by the time you get to the negotiating table you've addressed a host of corporate governance issues and you've remediated."

While the firm couldn't comment in detail on the ongoing Wal-Mart investigation, the government's investigation into allegations that the retail giant bribed officials in Mexico, Brazil and elsewhere will undoubtedly be as challenging as the Pride and Diageo cases.

But Cahill is prepared, the firm said. As in Pride and Diageo, the firm is representing the company's audit committee and says it will be assisting in the company's voluntary global review of its policies and in strengthening its global anti-corruption compliance programs through remedial actions.

--Editing by John Quinn.