Specialty Chemical Company Agrees to Pay $40.2 Million for FCPA, OFAC, and UK Violations

On March 18, 2010, Innospec, Inc. ("Innospec"), a specialty chemical company incorporated in Delaware with principal offices in the United States and the United Kingdom, was charged by the Securities and Exchange Commission ("SEC"), the Department of Justice ("DOJ"), the Department of Treasury's Office of Foreign Assets Control ("OFAC") and the United Kingdom's Serious Fraud Office ("SFO") with numerous violations of law and agreed to pay a total of $40.2 million in fines and penalties for such violations. The SEC civil complaint charges Innospec with violations of the Foreign Corrupt Practices Act ("FCPA"); the DOJ criminal information charges Innospec with defrauding the United Nations ("UN") in connection with UN Oil-for-Food Program ("Program") and violating the FCPA; and OFAC announced that Innospec agreed to pay $2.2 million in settlement of allegations of violations of the regulations implementing the U.S. embargo of Cuba. Separately, Innospec pleaded guilty and agreed to pay a $12.7 million fine in connection with the United Kingdom's SFO criminal case alleging corrupt payments to secure contracts in Indonesia.

In connection with the DOJ plea agreement, Innospec agreed to pay a $14.1 million criminal fine and to retain an independent compliance monitor for a minimum of three years to oversee development of a robust anti-corruption and export control compliance program and to file periodic reports with the Department of Justice. According to court documents, Innospec admitted to agreeing to pay at least $4 million in kickbacks to the former Iraqi Ministry of Oil under the Program in order to secure contracts. In addition, Innospec admitted paying and promising to pay more than $1.5 million in bribes (both in cash and travel) to officials of the Iraqi Ministry of Oil to secure sales of tetraethyl lead from 2004 to 2008.

The SEC alleges (and the UK SFO charges) that Innospec engaged in several schemes to bribe Indonesian government officials to win contracts, including financing over $2.8 million in bribes through an Indonesian agent. The SEC complaint alleges that Innospec's internal controls failed to detect the illicit conduct which took place from 2000 to 2007. Innospec consented to the entry of a permanent injunction against future violations of the anti-bribery, books and records, and internal controls provisions of the FCPA[1], and agreed to pay $11.2 million in disgorgement to the SEC. [2]

OFAC's enforcement release specifies the conduct that forms the basis for the violations as well as the method used to calculate penalties under its current Enforcement Guidelines.[3] The OFAC violations resulted from Innospec's acquisition, through a U.K. subsidiary, of a foreign entity that conducted business in Cuba through a sales office there and that entered into contracts with Cuban power companies and held bank accounts with financial institutions in Cuba. OFAC concluded that the "base penalty" amount was $4,447,878; however, since OFAC first received information concerning these violations when Innospec disclosed them to OFAC, the violations were "voluntarily self-disclosed". OFAC also concluded that the matter is not an "egregious" case, and that Innospec is entitled to mitigation based on its agreeing to a statute of limitations tolling agreement and taking "remedial" measures by selling the foreign subsidiary with operations in Cuba to a non-U.S. third party and by enhancing its compliance program. In light of all of these factors, the settlement provides for Innospec to pay a $2.2 million penalty to OFAC.

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[1] Sections 30A, 13(b)(2)(A) and 13 (b)(2)(B) of the Securities Exchange Act of 1934, respectively.

[2] SEC Litigation Release No. 21454 (March 18, 2010).

[3] These guidelines can be found at http://www.treas.gov/offices/enforcement/ofac/civpen.

According to the DOJ press release, the DOJ, the SEC and the SFO worked together to reach this $40.2 million global settlement.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email David Kelley at 212.701.3050 or dkelley@cahill.com; Jon Mark at 212.701.3100 or jmark@cahill.com; John Schuster at 212.701.3323 or jschuster@cahill.com; or Kathy Strom at 202.862.8944 or stromk@cgrdc.com.