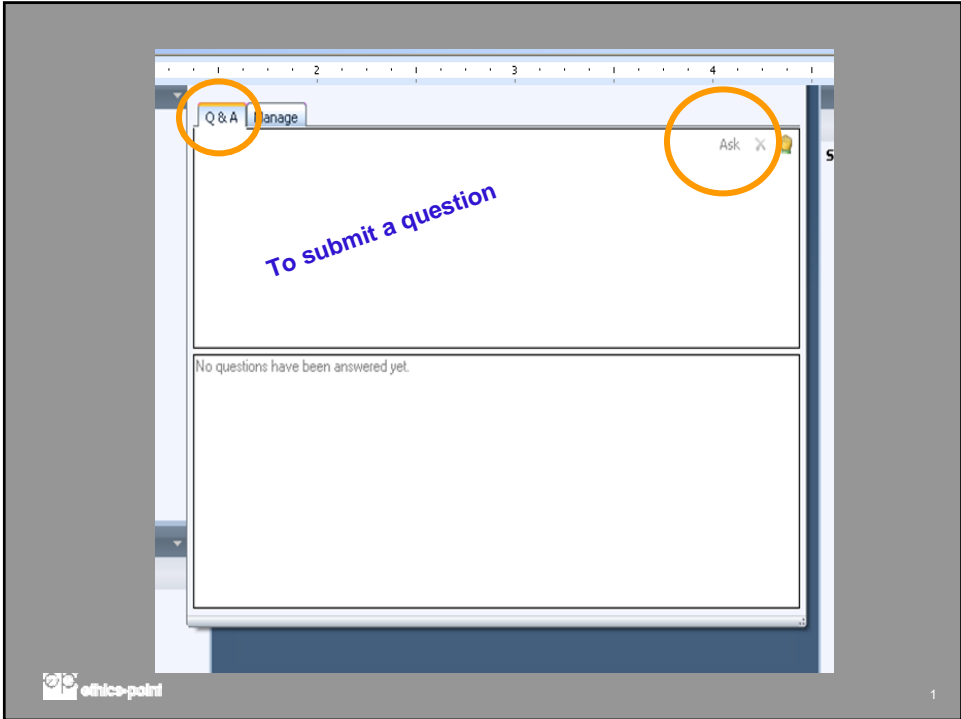
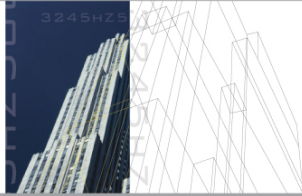


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## FCPA Compliance & Investigative Due Diligence

Ellen Zimiles  
Chief Executive Officer  
Daylight Forensic & Advisory

March 31, 2009

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Presenter

**Ellen Zimiles**  
Chief Executive Officer  
Daylight Forensic & Advisory

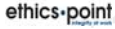


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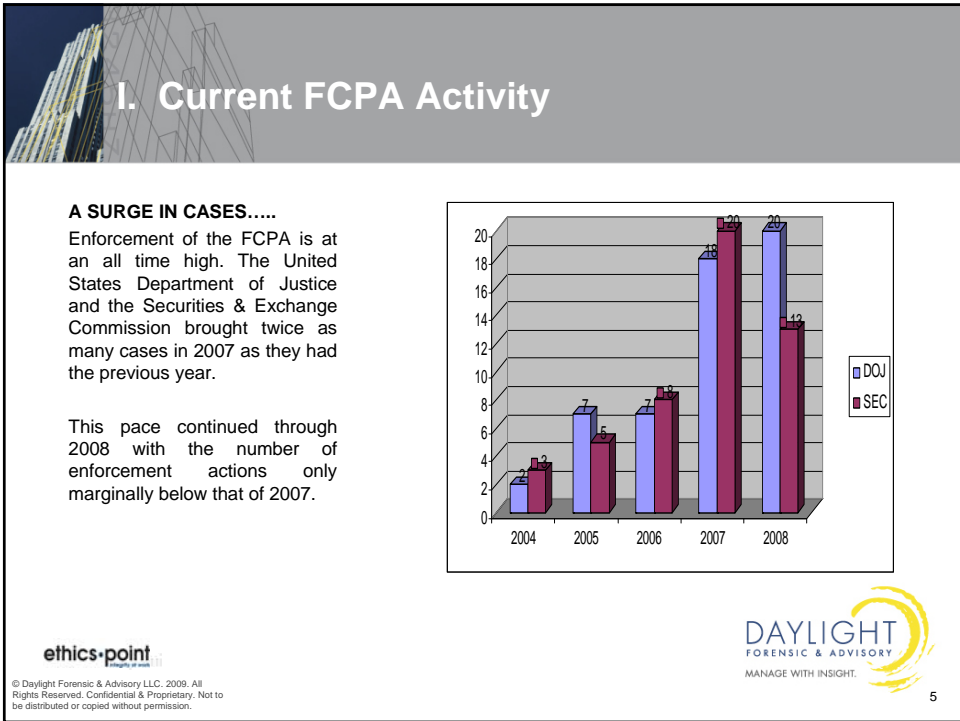


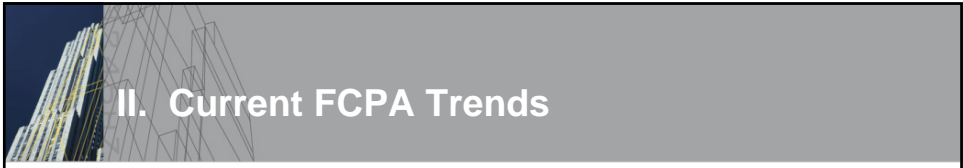
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## II. Current FCPA Trends

**A. Globalization of Anti-Corruption Enforcement**

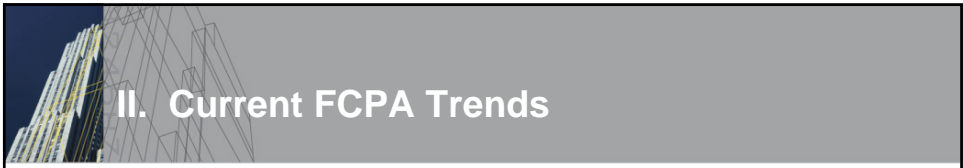
1. FCPA prosecutions have increasingly involved non-US companies e.g. Siemens and Fiat SpA
2. One investigation can “trigger” others in separate jurisdictions
3. Increased coordination and collaboration between foreign enforcement agencies
4. DOJ sent 48 letters of request for MLAT’s in 2008 and is involved in multiple multi-jurisdictional investigations with anti-corruption officials across Europe and Asia

**B. Escalating Penalties**

1. Penalties and disgorgements have increased
  - a. Baker Hughes Inc (2007) - \$44.1 million
  - b. Siemens (2008) - \$1.9 billion (US & German fines)
  - c. Kellogg Brown & Root LLC (2009) - \$579 million
2. Significant legal, consulting and remediation fees
  - a. Siemens – more than \$1 billion in investigative and remediation costs

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## II. Current FCPA Trends

**C. Increased Focus on Individual Prosecutions**

1. 60% of FCPA defendants in 2008 were individuals
2. Deliberate deterrent by U.S. Department of Justice and SEC

**D. Private FCPA Litigation**

1. Post government enforcement, entities may face further legal challenges and compensation claims through private class action litigation
2. No private right of action under FCPA – need to find relief under other courses of action e.g. RICO, common law fraud or securities law violations

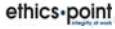
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## III. Elements of an Effective FCPA Compliance Program

**A. The FCPA Risk Assessment**

1. Assessing your organization's exposure to bribery and corruption requires an in-depth risk assessment of your business, focusing on:
  - a. Products and Services
    - i. "high risk" industries e.g. defense, medical equipment, oil and energy, communications, large infrastructure projects
    - ii. Serving government or multi-lateral agency programs
  - b. Customers
    - i. Foreign governments or agencies
  - c. Geography
    - i. "high risk" FCPA (bribery and corruption) jurisdictions
  - d. Distribution Channels
    - i. Intermediaries
    - ii. Consultants
2. Periodic reassessment



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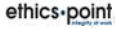
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## III. Elements of an Effective FCPA Compliance Program (cont'd)

**B. Establish and Document an FCPA Compliance Policy**

1. Tone at the Top
  - a. The FCPA Compliance Policy must be fully supported and endorsed by the Board of Directors and Senior Management
  - b. Policy should be supported by procedures
2. Clearly Documented and Understood
  - a. All relevant employees must adopt and understand the policy
  - b. Should include all overseas intermediaries, agents, consultants and other third parties
  - c. Obtain written representations
3. Develop before FCPA issues arise
  - a. A proactive and documented compliance program will be taken into consideration by regulators in the advent of a subsequent FCPA investigation



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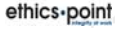

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### III. Elements of an Effective FCPA Compliance Program (cont'd)

**C. Designated FCPA Compliance Officer**

1. Expertise
  - a. Dedicated Person to coordinate FCPA compliance activities
  - b. Sufficient management authority and support from Senior Executive/Board of Directors
2. Reporting Lines
  - a. Reporting line to Chief of Compliance and Board of Directors
  - b. Coordinate with all parts of the business e.g. Internal Audit, MLRO
  - c. Should not be "confined" to head office; must be seen. Sufficient oversight over high risk jurisdictions

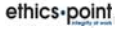

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### III. Elements of an Effective FCPA Compliance Program (cont'd)

**D. Internal Accounting Controls**

1. FCPA is not limited to "anti-bribery" provisions. Contains "books and records" provisions
2. FCPA policies and procedures should include reference to controls over accounting and general ledger maintenance, expense claim management, bid and tendering etc.
  - a. Clearly reference what is/what is not acceptable
  - b. Provide illustrative examples
  - c. Focus on "grey areas" e.g. facilitation payments
    - i. Facilitation payment exception within the FCPA
    - ii. DOJ/SEC do not necessarily consider facilitation payments good business practice

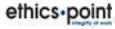

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### III. Elements of an Effective FCPA Compliance Program (cont'd)

**E. Enterprise Wide Training**

1. All relevant employees should receive training on FCPA (Anti-Bribery & Corruption) compliance  
Key topics should include:
  - a. Code of Conduct
  - b. Anti-Bribery & Corruption Policy
  - c. Policies and Procedures
  - d. Penalties for non-compliance
  - e. Contact Information
  - f. Confidential reporting lines
  - g. Whistleblower protection
2. Training should extend to all new hires
3. Annual refresher training
4. Employee attestation that training was received and understood

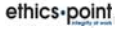

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### III. Elements of an Effective FCPA Compliance Program (cont'd)

**F. Independent Audit**

1. Internal Audit should perform targeted and thematic FCPA compliance reviews
2. Should encompass all aspects of FCPA compliance, including:
  - a. Strength of FCPA Compliance policies and procedures
  - b. Employee training – participation of Senior Management
  - c. Accounting/expense management controls
  - d. Sufficient level of IDD
  - e. Level of reported incidents, level of investigation
3. Trend is to include specialized FCPA compliance personnel within Internal Audit, particularly large multi-nationals operating overseas in high risk jurisdictions

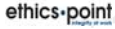

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### III. Elements of an Effective FCPA Compliance Program (cont'd)

**G. "In the event of emergency" plan**

1. Prevention is better than the cure
  - a. FCPA investigations are resource intensive and costly
  - b. Siemens case – over \$1 billion in investigative and remediation costs
  
2. FCPA investigation action plan; points to consider:
  - a. Establish an FCPA Compliance/Investigation Committee
  - b. External law firms and consultants
  - c. Data retention and document discovery plans
  - d. Case management system
  - e. Document translations
  - f. Employee amnesty

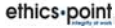

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### IV. Investigative Due Diligence


**A. What is Investigative Due Diligence?**

1. Investigative Due Diligence ("IDD") is the proactive identification of risks not ordinarily apparent from financial or legal reviews.
  - a. Application of exploratory techniques developed by law enforcement agencies
  - b. Analyze large volumes of publically available information
  - c. Identification of red flags
  
2. All parties represent a degree of risk to an organization – employees, customers, business partners etc.
  
3. Identifying and evaluating these risks ensures that they are appropriately addressed and financial, legal or reputational damage is mitigated

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## IV. Investigative Due Diligence

**B. Whom should be subject to Investigative Due Diligence?**


1. Department responsible for FCPA compliance should have appropriate Investigative Due Diligence (IDD) procedures in place
2. IDD should include, for example:
  - a. All (overseas) agents, consultants and other third-parties
  - b. Key customers (be aware of which customers your company is targeting)
  - c. Employees
  - d. Vendors:
    - i. Number
    - ii. Vetting process
    - iii. Reconciliation of size and payment history
    - iv. Physical geography vis-a-vis location of payment

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## IV. Investigative Due Diligence

**C. Who should perform Investigative Due Diligence?**


1. IDD is typically outsourced to specialist providers
  - a. Dedicated resources
  - b. Specialized staff e.g. ex-law enforcement, journalists etc.
  - c. "it's what they do"
2. Basic due diligence can be performed in house
  - a. Google internet searches
  - b. News databases e.g. Lexis-Nexis (negative media, business directory)
3. Typically performed by Legal and Compliance functions
4. IDD will be more difficult in some jurisdictions due to lack of public information e.g. Latin America.

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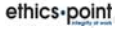

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## IV. Investigative Due Diligence

**D. Tips for maximizing the value of your Investigative Due Diligence provider**

1. Know your IDD provider
  - a. Quality of staff – ask for their resume
  - b. Previous track record
  - c. References
2. Understand their methodology
  - a. Are they using publicly available information? If not, you need to consider the risks
3. Be specific with what you want – it will affect the price. Depending on your requirements, IDD can cost anywhere from several hundred dollars to tens of thousands of dollars.
  - a. Basic due diligence versus enhanced due diligence
  - b. List screening
  - c. Negative media
  - d. Comprehensive background check

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- [Presentation Slides \(PDF\)](#)
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## Any Questions?



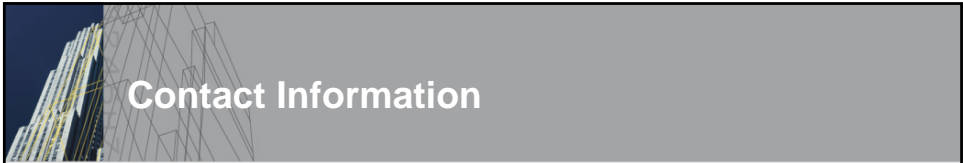
## Upcoming Webinar

- **Developing a Culture of Honesty and Integrity...**

**It's Not Easy!**

Date: April 8th

Presenter: Bob Phillips,  
President and CEO  
RW & Associates, Inc.



## Contact Information

Ellen Zimiles  
Chief Executive Officer  
Daylight Forensic & Advisory LLC

1 Rockefeller Plaza  
18<sup>th</sup> Floor  
New York, NY 10020  
United States of America

+1 (212)-554-2602  
[ezimiles@daylightforensic.com](mailto:ezimiles@daylightforensic.com)



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