

Mitigating Exposure in Government Investigations: Cooperation Can Be the Key for Energy Companies

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Very often an investigation by the Department of Justice (“DOJ”) will be accompanied by an investigation conducted by a federal regulatory agency. The reverse is also true and the two investigations may not occur in the parallel.

This is the situation in which Houston based Hyperdynamics Corporation (“Hyperdynamics”) found itself. In September 2013, Hyperdynamics received subpoenas from the DOJ pertaining to potential violations of the Foreign Corrupt Practices Act (“FCPA”). Later, the Securities and Exchange Commission issued subpoenas regarding the same subject matter. Additionally, private class action litigation was instituted against Hyperdynamics.

The factual basis for the concerns grew out of Hyperdynamics search for oil and gas offshore of Guinea. Hyperdynamics discovered that payments made for public relations and lobbying work in Guinea had in fact gone to firms controlled by one of its Guinean employees. The company failed properly to account for the funds and failed properly to vet the third party vendors.

Ultimately, the DOJ investigation resulted in no charges and the related securities class action was dismissed by a federal court in Houston. However, the SEC investigation did bring about a civil settlement resulting in the company paying a monetary penalty. In a letter sent to the company the DOJ made special mention of the company’s cooperation with the investigation. The letter stated: “You have provided certain information to the department and have described the results of the company’s internal investigation into this matter.” It added: “As you know, the department values cooperation with investigations such as shown here.”

There are two important takeaways from this example. First, companies uncovering potential violations of criminal law should prepare for not only potential criminal repercussions but also costly and protracted civil litigation. Second, when there is real wrongdoing, getting out in front of the government’s investigation, performing a thorough internal investigation and cooperating in the governmental investigation can often insulate a company from severe sanctions or at least mitigate them.