

THE FOREIGN CORRUPT PRACTICES ACT  
AND ITS DEVELOPMENT

An Honors Thesis (ID 499)

By

Rhonda J. Grafe

Thesis Director

A handwritten signature in cursive script, reading "Joseph W. Jackson", is written over a horizontal line.

Ball State University

Muncie, Indiana

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Before the Foreign Corrupt Practices Act, businesses were basically controlled by the level of standards held by each company's management. Payments made in order to facilitate operations were not unusual. American companies made payments to officials of the United States and to officials of foreign countries so that they could maintain or improve their own business position. These payments often were not reflected in the financial statements of the companies. Because these payments were not disclosed to the public, investors and the Securities and Exchange Commission could not know if particular companies were making questionable payments and how much these payments amounted to. As a result of the discovery of the extent of these payments, Congress saw the need for legislation concerning corrupt practices. Out of this need came the Foreign Corrupt Practices Act. Although this act was a reaction to an immediate need, it was the culmination of years of consideration and of other legislation.

Although payments for corrupt purposes were not illegal prior to the passage of the Foreign Corrupt Practices Act, they usually have been perceived as morally or ethically wrong. With its passage in 1977 though, the Foreign Corrupt Practices Act prohibited any corporation registered with the Securities And Exchange Commission or anyone acting as an agent of any such registrant from offering a bribe to a

foreign official. According to the Act, a bribe consists of "an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to" any foreign official, any foreign political party, any candidate for foreign political office, or anyone who knows that all or some of the payment will be given to any of these foreign individuals.<sup>1</sup> This change in law effected a change in the business operations of corporations.

Before the Foreign Corrupt Practices Act, for many companies bribery was just another part of doing business. These payments were an accepted and, in many cases, an expected practice. The payments often were to public officials and to others involved in making or forming public policy. By giving payments to those who had the ability to alter drastically a company's profitability, those involved in the company hoped to entice them to push for policies favorable to the company. The companies felt that these bribes would facilitate doing business. By encouraging favorable policies, companies anticipated improving or at least retaining their respective market shares.

In addition to influencing government officials and thus policies, the payments were intended to aid the companies in conducting business. In some foreign countries, making payments to government officials and officials and company executives was and is an expected part of business transactions. Without the ability to give payment for "services" given, many

companies would lose the ability to compete effectively in foreign lands.

Because of the Foreign Corrupt Practices Act, American corporations must disclose to the public their foreign payments. In part, this is to protect the overseas interests of the United States' government. The government must know about payments abroad. These payments by corporations may involve foreign policy or may concern foreign arms sales. Payments involving foreign policy could have international implications. Because of Defense Department regulations concerning agent fees in foreign arms sales, secret payoffs could be illegal.<sup>2</sup> If information pertaining to these payments is not given to the Defense Department or to other government agencies or is false or misleading, criminal prosecution could result.<sup>3</sup> This is to ensure that negotiations and treaties among the United States and other countries are not undermined by American corporations. These provisions are to ensure also that, should any under-the-table payments be discovered, the United States, any other countries, and representatives of any of these countries would not be embarrassed by being publicized as having participated in payments of a questionable nature.

In addition to giving gifts abroad in order to further their own interests, some American companies had been paying government officials of the United States. Whereas giving to foreign individuals or business entities could not be controlled by United States law prior to the Foreign Corrupt

Practices Act, making contributions to political campaigns had been against the law since 1907. In that year, the Corrupt Practices Act, also known as the Tillman Act, was passed.<sup>4</sup>

Enforcement of the Corrupt Practices Act disclosed a need for financial statements to reflect to the Securities and Exchange Commission and the public the corporations' actual transactions. This resulted from the discovery of contributions by American corporations to the 1972 Nixon presidential campaign.<sup>5</sup> Because of the Corrupt Practices Act, these contributions were illegal. Upon discovery of the unlawful campaign contributions, the SEC suggested that any corporations that had made illegal political contributions disclose the fact in their 8-K or 10-K reports. This disclosure would allow the SEC and investors to know where company earnings were going. Also, it would allow them to determine the integrity of the companies. The statement was made in the SEC Securities Release Act Number 33-5466 which came out March 8, 1974.<sup>6</sup> The Securities Release Act started the voluntary disclosure program. In the year following the issuance of the Securities Release Act, 360 businesses had reported to the SEC questionable payments.<sup>7</sup> These payments were both domestic and foreign.

The decision to require disclosure of the foreign payments rather than to make the payments themselves illegal did not go through Congress undebated. Legislation that would make illegal the payments to foreign officials was preferred by many. However, this legislation would have

caused some problems. Foremost, Congress would have been imposing U.S. law upon other countries by making criminal under U.S. law an act which took place outside of the United States.<sup>8</sup> Investigation of the payment and enforcement of the law would have been difficult. By attempting to enforce the law overseas, the United States may have offended some other countries.<sup>9</sup> The recipients of the bribes and their countries might have felt as though they also were being accused. This could lead to some problems in the governments of the countries and some tension in their relations with the United States.

Congress favored the disclosure of the payments over the criminalization of the payments for positive reasons also. Requiring disclosure of questionable payments would possibly prevent American business from being forced to give gifts in order to operate in foreign lands. If the business had to report any bribes and name the recipients, they probably would be less likely to be victims of extortion.<sup>10</sup> Anyone who received "gifts" for illegal purposes from an American would open himself up to the risk of pressure that the disclosure might bring.

In addition, disclosure laws would be easier to enforce than would antibribery laws. With disclosure legislation, obtaining evidence against violators of the law would be facilitated. Unlike enforcement of laws criminalizing the bribes themselves, enforcement of reporting laws makes unnecessary the need to prove who the recipients of the

payments were, that the motives for the payments were corrupt, or that the purposes of the payments were prohibited.<sup>11</sup>

While Congress was kind to American business by not making the giving of payments to foreign officials a crime, it did keep some control over the corporations. It did not give any specific limitations concerning payments. Rather, the size and number of payments were left open to interpretation. Stanley Sporkin, Director of Enforcement at the Securities and Exchange Commission, felt that "ambiguity in laws and regulations is one of the most potent weapons in governments' armory. In taxes, antitrust, and other regulatory spheres, companies prefer certainty in the rules to permit business planning."<sup>12</sup> By not giving companies a dividing line between acceptable and unacceptable behavior, the Securities and Exchange Commission precluded companies going to the limit in giving payments.

To determine whether or not disclosure was necessary, corporations were given some standards to use. If the payments were large, they had to be disclosed. Another of the criteria was that if the payments themselves were not necessarily large, but the transactions were large or the deals were important parts of the firms' total operations, the SEC must be given details.<sup>13</sup> Corporations were to report to the SEC if an additional criterion was met also. This criterion was much more controversial than the others, because it did not pertain to the financial or economic impact of the transactions. It stated that the SEC must be told about payments if they

reflected lack of integrity of the management, especially top management, of the companies.<sup>14</sup> These standards gave the Securities and Exchange Commission room to interpret them as it wished and kept the members of the corporate world not knowing how far they could go and still not risk having their payments made public.

In the years following the use of the Voluntary Disclosure Program, it became apparent that these undisclosed payments were quite a serious matter. In response to the need for more information concerning the quantity and size of the payments, on February 10, 1976 ~~then~~ President Ford asked for investigation into the matter by government agencies.<sup>15</sup> President Ford requested this help in order to determine more clearly if the illegal and questionable payments were common. He also wished to know how much these payments amounted to. Because of the number of payments found, a more intense investigation was needed. This prompted Ford to appoint a cabinet-level task force to continue the investigations. The Cabinet Task Force on Questionable Corporate Payments Abroad consisted of ten members: The Secretaries of State, Treasury, Defense, and Commerce, the Attorney General, the director of the Office of Management and Budget, the assistants to the President for Economic Affairs and National Security Affairs, a special representative for trade negotiations, and the executive director of the Council on Economic Policy.<sup>16</sup> The task force was under the jurisdiction of the Justice Department and the Securities and Exchange

Commission and was to discover if any violations of federal law had occurred that required prosecution.<sup>17</sup>

Ford's main purpose for the task force was to have it put together a basis for legislation to prevent the occurrence of illegal payments. The president wanted legislation requiring all corporations to disclose the fact if they had made any foreign payments for the purpose of influencing foreign government officials.<sup>18</sup> He felt that the American people had rightfully lost faith in the free enterprise system. For citizens of the United States and of foreign countries to respect the American system was important for Ford. Ford thought that this respect could be restored if corporations were made to be accountable to stockholders for their actions. He did not wish to blame anyone; he only wished to give the corporations guidelines. As Ford said, "'The purpose of this task force is not to punish American corporations but to ensure that the United States has a clear policy.'"<sup>19</sup>

Other countries also were concerned about the payments. If American corporations were making payments to officials of the foreign countries, those countries wanted to know about them. The countries certainly did not benefit from the bribes. Allowing government officials to accept payment in exchange for giving preferential treatment resulted in consumers paying higher prices, receiving inferior products, or both. Because the countries could not always watch over their local officials yet wanted to know about any unethical payments, they also favored international rulings on the subject.<sup>20</sup>

Guidelines concerning the actions of multinational enterprises were adopted June 21, 1976.<sup>21</sup> These guidelines were a reaction to the discovery of the bribes and the illegal commissions given in relation to the international sale of aerospace equipment.<sup>22</sup> Although the guidelines were felt to be necessary, compliance with them was voluntary. The twenty-four nation Organization for Economic Cooperation and Development wrote these guidelines. This organization was concerned with the activities of companies as they related to host countries. The guidelines reflected this concern. They included requiring participating businesses to consider the policy objectives (such as economic and social progress) of the affected countries. The companies were also to heed any legal obligations pertaining to information required by the host countries and to supply any additional information that the host countries requested. In addition, the organization asked that bribes or other improper benefits not be given to public servants or public office holders and that, unless these are legal, contributions not be made to political candidates, parties, or organizations.<sup>23</sup>

Eventually, an act to make disclosure mandatory was proposed. President Ford sent the Foreign Payments Disclosure Act to Congress early in August 1976. This act required that all payments made with the intent to influence foreign government officials and the names of the recipients of these payments were to be disclosed to the Secretary of Commerce. Unless matters of foreign policy precluded public

disclosure, these payments would then be made public after one year.<sup>24</sup> To ensure compliance with this act, a civil penalty of not more than \$100,000 would be levied against those who failed to disclose their foreign payments. A more severe criminal fine would be imposed if the report contained information deliberately falsified or omitted.<sup>25</sup> This criminal fine would be \$500,000 for legal entities and not more than \$100,000 and imprisonment of not more than three years for individuals. By making reporting mandatory, the Foreign Payments Disclosure Act encouraged more companies to tell the public why the money was spent overseas.

These various programs led to the eventual passage of the Foreign Corrupt Practices Act. Something more than disclosure was needed, and the Act was the response to the problem. Included in the Act are some provisions that seem to be unnecessarily put into writing. Apparently, however, some corporations must have the rules spelled out for them. The Foreign Corrupt Practices Act says that each SEC registrant is to make entries and keep books that accurately show the company's transactions. The Act also declares that registrants must keep adequate internal accounting controls. The controls are necessary to ensure that transactions are executed only with the proper authorization of management. Also, they need to assure that transactions are recorded properly to prepare financial statements that conform to generally accepted accounting principles and to account accurately for assets. The act also specifies that access to

assets be limited through the use of internal controls.<sup>26</sup>

If the proper channels are used, assets can be acquired or disposed of only with the authorization of management. Sufficient internal controls are needed to ensure also that recorded assets are comparable with existing assets. The requirement of adequate internal accounting controls allows the Securities and Exchange Commission to place upon the corporations the burden of watching for irregularities in transactions.

In addition to providing rules dictating what the corporations need to do to assure that their books and their financial statements fairly represent their transactions and their financial positions, the Foreign Corrupt Practices Act specifies also that being deceptive to an external auditor is illegal. The Act states that making any false or misleading statement pertaining to an audit is prohibited. Furthermore, the Act forbids corporations from omitting any material statement that could make other statements misleading.<sup>27</sup> By including this condition, the SEC hoped to prevent corporations from supplying information that complied with generally accepted accounting principles but, at the same time, did not represent the actual transactions that occurred.

Although the Foreign Corrupt Practices Act was originally to affect only those corporations that conducted business unethically outside of the United States, it ended up affecting all those who are required to register with the Securities and Exchange Commission. The Foreign Corrupt Practices Act was

seen by Congress as a means of preventing foreign corrupt practices.<sup>28</sup> However, rather than add the Act intact to the Securities Exchange Act of 1934, it was inserted throughout the 1934 Act. As a result, all SEC registrants, instead of just those companies that operate in foreign lands, must comply with the terms outlined in the FCPA.<sup>29</sup> As the chairman of the SEC stated in his testimony before a committee of the House of Representatives in February 1978, the Foreign Corrupt Practices Act "requires every issuer of securities registered under (the 1934 Act) to comply with certain accounting standards."<sup>30</sup> This application of the Act has been tried and upheld in federal court. The first case that the SEC won concerning the accounting provisions of the Act was SEC v. World-Wide Coin Investments, Ltd. The corporation had violated the antifraud, reporting, accurate books and records, internal accounting controls, ownership, tender offer and proxy solicitations requirements of the 1934 act.<sup>31</sup>

A purpose of the Securities and Exchange Commission is to ensure that corporations are honest and accountable to the public.<sup>32</sup> This was the basis for the proposal of the Foreign Corrupt Practices Act. The SEC hoped to restore public faith in the corporate system by stimulating corporations to be honest with the public and to use integrity in their business dealings. The intention of Congress and the SEC was that the FCPA, as Senator Proxmire said, "...will make clear once and for all that bribery by U.S. companies is not an acceptable way of doing business. It ...

will provide the enforcement machinery to make certain that management neither approves bribes nor looks the other way to prevent subsidiaries to pay bribes.'"<sup>33</sup> The SEC hoped that the Act would help to further the purposes of the Commission. It saw the Act as a way to improve relations between each corporation's management and its stockholders. The SEC hoped that relations between corporate management and the outside directors, auditors, and legal counsel also would be bettered by the Act.

The Securities and Exchange Commission has only one responsibility. It has been given the duty of protecting investors.<sup>34</sup> This includes ensuring that the investor has access to all the information he needs to make a knowledgeable decision. The investor also has the right to information that is complete and correct. Because of its responsibility, the SEC has governance over the nondisclosure of payments of corporations. The Commission has some freedom in its enforcement of the Foreign Corrupt Practices Act. Unlike the President and the Congress of the United States, the Securities and Exchange Commission does not deal directly with foreign governments or their agencies. As a result, the SEC does not need to feel constrained in its actions; it does not need to be concerned about possible foreign policy implications.<sup>35</sup> Because the Commission does not have to worry about disrupting any foreign relations, it is at liberty to enforce the Foreign Corrupt Practices Act in any manner that it thinks would be the most beneficial.

Together with the Securities and Exchange Commission, the Justice Department has jurisdiction over corporations that violate the Foreign Corrupt Practices Act.<sup>36</sup> If these government agencies find that a corporation or anyone acting on the behalf of the corporation is guilty of any wrongful activity as outlined in the Act, the offender is subject to the same penalties as anyone who violates any other part of the 1934 Act. Therefore, anyone convicted of willfully violating any terms of the 1934 Act will be given a penalty consisting of a fine of not more than \$10,000 imprisonment of not more than five years, or both.<sup>37</sup>

Although the Justice Department and the Securities and Exchange Commission together enforce the Foreign Corrupt Practices Act, they have had disagreements on the amount of help to give corporations before enforcement is necessary. The Justice Department originally wanted to give businesses procedures for finding out whether or not a payment was allowable. It felt that if a payment was illegal, the corporation had a right to know that before it was accused of a crime. The Securities and Exchange Commission did not agree. It saw no reason why guidelines should be given to criminals. The SEC later reversed its position when an amendment to the Act seemed imminent. This changed the previous contention of the Commission that a decision by the Justice Department that a payment was allowed was not binding upon the SEC and that the SEC could initiate an investigation.<sup>38</sup> As a result, corporations were given the opportunity to have evaluated any payments that might be considered illegal.

Another problem with the Act is the lack of clarity in the text itself. Because the Act was written quickly, its terms were not written explicitly enough to avoid interpretation.<sup>39</sup> Many terms thus are undefined or ambiguous. As a result of this ambiguity, literal understanding of the Act is hampered. The Securities and Exchange Commission, its registrants, and the Justice Department are not given enough clear definitions to decide whether or not a payment is a bribe or if it is a facilitating payment, which is allowable.<sup>40</sup> No guidelines are given in the Act to determine if records are accurate or presented fairly. In addition, even if the books are found to be presented fairly in accordance with generally accepted accounting principles, they might contain deficiencies which could be considered a violation of the Act. The Foreign Corrupt Practices Act also does not contain criteria to be used to determine if a specific deficiency in record keeping or weakness in internal control violates any provision of the Act.<sup>41</sup> This vagueness has contributed to the ineffectiveness of the Foreign Corrupt Practices Act. Congress passed the Act without debating enough to define sufficiently the unclear phrases. As a result, the Act has not been as effective as Congress had hoped.

To remedy these problems, Congress has revised the Act. In 1980, the Senate passed the Business Accounting and Foreign Trade Simplification Act. This act was an attempt to remove some of the ambiguities in the FCPA. It removed

the provision of the FCPA that companies could be prosecuted if they had reason to know that a payment might be made by an agent of the company. Instead, the company could be prosecuted only if it directed or authorized a payment "expressly or by a course of conduct." This term bothered members of the House of Representatives who did not wish to replace ambiguous terms in the FCPA with different ambiguous terms. Senator John Heinz of the Senate Banking Committee explained that the term "course of conduct" referred to "situations 'where a company through its words or course of conduct, has intended that a corrupt payment be made.'" Eventually, in May 1983, the House also passed the bill.<sup>42</sup> Because of the passage of this act, the Foreign Corrupt Practices Act has been made more effective in achieving its purpose of prohibiting the bribery of foreign officials.

Although the Foreign Corrupt Practices Act has not increased the integrity of American corporations to the level desired, it has made progress. It was originally intended to prevent American corporations from bribing foreign officials. However, it has also succeeded in improving the record keeping of companies in this country. It went through many phases and degrees of coverage before it was passed in its final state. Although it has led to some problems in its enforcement, the Foreign Corrupt Practices Act has served its purpose.

## TITLE I--FOREIGN CORRUPT PRACTICES

## SHORT TITLE

Sec. 101. This title may be cited as the "Foreign Corrupt Practices Act of 1977".

## ACCOUNTING STANDARDS

Sec. 102. Section 13(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(b)) is amended by inserting "(1)" after "(b)" and by adding at the end thereof the following:

"(2) Every issuer which has a class of securities registered pursuant to section 12 of this title and every issuer which is required to file reports pursuant to section 15(d) of this title shall--

"(A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and

"(B) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that--

"(i) transactions are executed in accordance with management's general or specific authorization;

"(ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;

"(iii) access to assets is permitted only in accordance with management's general or specific authorization; and

"(iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

"(3) (A) With respect to matters concerning the national security of the United States, no duty or liability under paragraph (2) of this subsection shall be imposed upon any person acting in cooperation with the head of any Federal department

or agency responsible for such matters if such act in cooperation with such head of a department or agency was done upon the specific, written directive of the head of such department or agency pursuant to Presidential authority to issue such directives. Each directive issued under this paragraph shall set forth the specific facts and circumstances with respect to which the provisions of this paragraph are to be invoked. Each such directive shall, unless renewed in writing, expire one year after the date of issuance.

"(B) Each head of a Federal department or agency of the United States who issues a directive pursuant to this paragraph shall maintain a complete file of all such directives and shall, on October 1 of each year, transmit a summary of matters covered by such directives in force at any time during the previous year to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate."

#### FOREIGN CORRUPT PRACTICES BY ISSUERS

Sec. 103. (a) The Securities Exchange Act of 1934 is amended by inserting after section 30 the following new section:

#### "FOREIGN CORRUPT PRACTICES BY ISSUERS

"Sec. 30A. (a) It shall be unlawful for any issuer which has a class of securities registered pursuant to section 12 of this title or which is required to file reports under section 15(d) of this title, or for any officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to--

"(1) any foreign official for purposes of--

"(A) influencing any act or decision of such foreign official in his official capacity, including a decision to

fail to perform his official functions; or

"(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person;

"(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of--

"(A) influencing any act or decision of such party, official, or candidate in its or his official capacity, including a decision to fail to perform its or his official functions; or

"(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person; or

"(3) any person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of--

"(A) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or

"(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person.

"(b) As used in this section, the term 'foreign official' means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of such government or department, agency, or instrumentality. Such term does not include any employee of a foreign government or any department, agency, or instrumentality thereof whose duties are essentially ministerial or clerical."

(b) (1) Section 32(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78ff(a)) is amended by inserting "(other than section 30A)" immediately after "title" the first place it appears.

(2) Section 32 of the Securities Exchange Act of 1934 (15 U.S.C. 78ff) is amended by adding at the end thereof the following new subsection:

"(c) (1) Any issuer which violates section 30A (a) of this title shall, upon conviction, be fined not more than \$1,000,000.

"(2) Any officer or director of an issuer, or any stockholder acting on behalf of such issuer, who willfully violates section 30A (a) of this title shall, upon conviction, be fined not more than \$10,000, or imprisoned not more than five years, or both.

"(3) Whenever an issuer is found to have violated section 30A (a) of this title, any employee or agent of such issuer who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder of such issuer), and who willfully carried out the act or practice constituting such violation shall, upon conviction, be fined not more than \$10,000, or imprisoned not more than five years, or both.

"(4) Whenever a fine is imposed under paragraph (2) or (3) of this subsection upon any officer, director, stockholder, employee, or agent of an issuer, such fine shall not be paid, directly or indirectly, by such issuer."

#### FOREIGN CORRUPT PRACTICES BY DOMESTIC CONCERNS

Sec. 104. (a) It shall be unlawful for any domestic concern, other than an issuer which is subject to section 30A of the

Securities Exchange Act of 1934, or any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to--

(1) any foreign official for purposes of--

(A) influencing any act or decision of such foreign official in his official capacity, including a decision to fail to perform his official functions; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of--

(A) influencing any act or decision of such party, official, or candidate in its or his official capacity, including a decision to fail to perform its or his official functions; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to any person; or

(3) any person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of--

(A) influencing any act or decision of such foreign

official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person.

(b) (1) (A) Except as provided in subparagraph (B), any domestic concern which violates subsection (a) shall, upon conviction, be fined not more than \$1,000,000.

(B) Any individual who is a domestic concern and who willfully violates subsection (a) shall, upon conviction, be fined not more than \$10,000, or imprisoned not more than five years, or both.

(2) Any officer or director of a domestic concern, or stockholder acting on behalf of such domestic concern, who willfully violates subsection (a) shall, upon conviction, be fined not more than \$10,000, or imprisoned not more than five years, or both.

(3) Whenever a domestic concern is found to have violated subsection (a) of this section, any employee or agent of such domestic concern who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such domestic concern), and who willfully carried out the act or practice constituting such violation shall, upon conviction, be fined not more than \$10,000, or imprisoned not more than five years, or both.

(4) Whenever a fine is imposed under paragraph (2) or (3) of this subsection upon any officer, director, stockholder, employee, or agent of a domestic concern, such fine shall not be paid, directly or indirectly, by such domestic concern.

(c) Whenever it appears to the Attorney General that any domestic concern, or officer, director, employee, agent, or stockholder thereof, is engaged, or is about to engage, in any act

or practice constituting a violation of subsection (a) of this section, the Attorney General may, in his discretion, bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing a permanent or temporary injunction or a temporary restraining order shall be granted without bond.

(d) As used in this section:

(1) The term "Domestic concern" means (A) any individual who is a citizen, national, or resident of the United States; or (B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship, which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.

(2) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality. Such term does not include any employee of a foreign government or any department, agency, or instrumentality thereof whose duties are essentially ministerial or clerical.

(3) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof. Such term includes the intrastate use of (A) a telephone or other interstate means of communication, or (B) any other interstate instrumentality.

ENDNOTES

<sup>1</sup>Arthur Young & Company, Foreign Corrupt Practices Act of 1977: Toward Compliance with the Accounting Provisions, (New York: Arthur Young & Company, 1978), p. 25.

<sup>2</sup>"Task Force to Probe Payments," Aviation Week & Space Technology, April 5, 1976, p. 20.

<sup>3</sup>Ibid.

<sup>4</sup>George Greanias and Duane Windsor, The Foreign Corrupt Practices Act (Lexington: Lexington Books, 1982), p. 17.

<sup>5</sup>Ibid.

<sup>6</sup>Ibid.

<sup>7</sup>Ibid., p. 19.

<sup>8</sup>"Three-Pronged Attack Organized To Block Questionable Payments," Aviation Week & Space Technology, June 21, 1976, p. 21.

<sup>9</sup>Greanias, p. 53.

<sup>10</sup>Ibid.

<sup>11</sup>Ibid., p. 52.

<sup>12</sup>Richard L. Barovich, "The SEC Unleashes a Foreign Payoffs Storm," Business And Society Review, Fall 1976, p. 49.

<sup>13</sup>Ibid., p. 50.

<sup>14</sup>Ibid.

<sup>15</sup>Greanias, p. 49.

<sup>16</sup>Task Force, p. 20.

<sup>17</sup>Greanias, p. 49.

<sup>18</sup>Three-Pronged, p. 21.

<sup>19</sup>Greanias, p. 50.

<sup>20</sup>U.S. Congress, Senate, Committee on Banking, Housing, and Urban Affairs, Foreign Corrupt Practices and Domestic and Foreign Investment Disclosure (Washington, D.C.: U.S. Government Printing Office), p. 97.

<sup>21</sup>Robert R. Ropelowski, "Payments Spur Multinational Guidelines," Aviation Week & Space Technology, July 5, 1976, p. 67.

<sup>22</sup>Ibid., p. 65.

<sup>23</sup>Ibid., pp. 65,67.

<sup>24</sup>Greanias, p. 52.

<sup>25</sup>Ibid., p. 66.

<sup>26</sup>Young, p. 5.

<sup>27</sup>"Senate Action Expected on Foreign Bribes," Aviation Week & Space Technology, July 19, 1976, p. 235.

<sup>28</sup>Young, p. 9.

<sup>29</sup>Ibid., pp. 9-10.

<sup>30</sup>Ibid., p. 10.

<sup>31</sup>"SEC Wins Litigated Decision Under FCPA's Accounting Provisions," The CPA Letter, May 9, 1983, p. 3.

<sup>32</sup>Barovick, p. 50.

<sup>33</sup>Senate Action, p. 235.

<sup>34</sup>Barovick, p. 50.

<sup>35</sup>Ibid.

<sup>36</sup>Greanias, P. 85.

<sup>37</sup>Young, p. 10.

<sup>38</sup>Greanias, p. 85.

<sup>39</sup>Ibid., p. 96.

<sup>40</sup>Ibid.

<sup>41</sup>Young, p. 6.

<sup>42</sup>Paul Mann, "Divisions Erupt Over Revising Foreign Corrupt Practices Act," Aviation Week & Space Technology, June 14, 1982, p. 28.

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