

To: Our Clients and Friends

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## **Foreign Corrupt Practices Act Enforcement**

It is no surprise to anyone who follows the news that FCPA enforcement activity is growing.

The question is what to do about it.

Maintaining good books and records about business development expenditures is important as a first line of defense.

Equally important are detailed books and records, including back-up documents, that describe what the business development expenditures were actually for and why they were made, including payments to agents or others hired to get business.

Were they because the customer wanted to go to Las Vegas or Disneyland? Or were they because the customer really wanted to see how things are made and who is involved?

Of critical importance is the question of whose expenses were actually covered: the customer's or the employee's.

Of equal importance is the question of what an agent proposes to do and actually does to get the business if an agent is involved.

Records of what transpired because of a supplier-financed trip can be a gold-mine for prosecutors and defense counsel alike.

Important, too, in the case of an agent, is what the agent was expected to do and whether what he says he proposed to do and what he actually did was evaluated by the company that hired him.

In the end, facts matter. It's not really esoteric. If the facts are on your side, theory doesn't matter. So make sure the facts you think are on your side can be seen by others in a similar light.

Also make sure that they can be substantiated.

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Prepared by: Stanley J. Marcuss  
Direct Dial: 202-508-6074  
[sjmarcuss@bryancave.com](mailto:sjmarcuss@bryancave.com)

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\*Non-legal professionals

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