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RISK & COMPLIANCE JOURNAL.

Global Anti-Bribery Efforts Have Grown Since Clayton Paper

By **SAMUEL RUBENFELD**

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Previous comments on anti-bribery enforcement endorsed by Jay Clayton, chosen by President-elect Donald Trump to lead the Securities and Exchange Commission, have stirred up speculation about whether he might change the U.S. approach once in office.

But greater worldwide anti-bribery enforcement in the years since the comments

endorsed by Mr. Clayton put those questions in a different perspective. Mr. Clayton was the lead signatory to a 2011 research paper that criticized what it said was the unreasonable cost of anti-bribery efforts on U.S. companies and called for stronger international efforts. Experts had already expressed some concern upon Mr. Trump's election about the future of U.S. enforcement of its foreign-bribery law.

There has been stronger international action against bribery in the years since the paper's release, though the U.S. continues to lead the way.

"Asymmetry still exists and there's still an unevenness, but it's lessened and it continues to lessen over time," said John Chesley, a partner in the Washington, D.C., office of Gibson Dunn & Crutcher LLP.

The picture has become more nuanced, he said.

"It was fair for [Mr.] Clayton, and the authors of that paper, to paint broadly on one side when they wrote the paper, but I think now it's much more nuanced...It's become a country-by-country analysis," said Mr. Chesley.

Mr. Clayton, a partner at the firm Sullivan & Cromwell LLP, didn't respond to a request for comment.

Reviews of anti-bribery enforcement by countries that are parties to the Organization for Economic Cooperation and Development anti-bribery convention show how it has evolved over the years.

The OECD's anti-bribery working group released its first report on global foreign bribery in December 2014, finding then that the U.S. was the lead enforcer. A 2015 review of anti-bribery enforcement by OECD countries by anti-graft group Transparency International found a few countries improving their efforts while noting that the U.S. is among the top enforcers.

Meanwhile, the U.K. Serious Fraud Office has brought a number of bribery cases in recent years and Chinese authorities made a splash with a record \$489 million fine of

GlaxoSmithKline And many of the largest penalties in FCPA cases brought by the U.S. are paid by foreign companies.

Nicola Bonucci, director of legal affairs at the OECD, declined to discuss any specifics about the new U.S. administration, but said generally that while the U.S. still leads the way on bringing foreign-bribery cases, enforcement elsewhere in the last two or three years has increased.

“There is clearly a pick up on the level of enforcement in a number of parties to the [OECD] anti-bribery convention,” said Mr. Bonucci.

Moreover, Mr. Bonucci said, U.S. authorities are increasingly collaborating with other countries not just in investigation and prosecution, but also in terms of enforcement, citing the recent Odebrecht SA case that involved prosecutors from multiple countries.

“This is good in a number of ways, because it shows enforcement is not just coming from the U.S...It also sends a strong signal to companies that [penalties for foreign bribery] can happen pretty much anywhere and by any country,” he said.

In the years since the release of the paper signed by Mr. Clayton, a number of countries passed their own anti-bribery laws, and experts said it usually takes a few years for the new laws to be applied and enforced.

To that point, said Alexandra Wrage, founder and head of the business anti-bribery group TRACE International, said the early days of FCPA enforcement were also slow, but the rise in enforcement began under President George W. Bush and the tide has yet to recede. Ms. Wrage credited bipartisan U.S. diplomatic pressure dating back to Mr. Bush on anti-corruption enforcement for the rise in cases brought by other countries.

“It would be devastating for the international trend of anti-bribery enforcement to see the U.S. pull back,” she said.

According to figures compiled this week by the law firm Shearman & Sterling, 2016 was one of the busiest years for FCPA enforcement in terms of cases brought and penalties collected. U.S. authorities, both in public remarks and in court documents, have emphasized in recent months the role of international collaboration when bringing corruption cases.

“While other countries are rising to the challenge of anti-bribery enforcement, the U.S. will lead the way for the foreseeable future,” said Dan Levy, principal in the New York office of the law firm McKool Smith PC.

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