ABA SIL INTERNATIONAL ANTI-CORRUPTION COMMITTEE
MINUTES OF GENERAL MEMBERSHIP MEETING

THURSDAY, OCTOBER 18, 2018

Committee Co-Chairs:

Frank Fariello
Severin Wirz

Vice Chairs:

YIR: Marc Bohn
Programs: Leslie Benton
Programs: Nancy Boswell
Communications: Kristin Bone
Publications: Anne-Marie Zell
Newsletter: Stéphane de Navacelle
Jessica Tillipman

Senior Advisors:

Corinne Lammers
Roberto Bauzá
John Coogan
Mikhail Reider-Gordon
Pascale Dubois
Elena Helmer

Mr. Severin Wirz called the telephone call to order and chaired. Mr. Scott Jansen recorded the minutes.

1. Introduction

The meeting was open (via telephone) to Committee members who wished to participate. The Chair requested members who are on the telephone call to identify themselves.
2. Committee Notes and Upcoming Events

a) October 19: Deadline for submissions for the Fall Anti-Corruption Committee newsletter. Send article submissions to deborah.siegel@comcast.net or severin.wirz@tiaa.org.

b) October 23: The ABA Section of State and Local Government Law's International Law Committee will host a webinar on Anti-Poaching Legislative Reform in Namibia at 12 PM (EST). This event, which is being co-sponsored by the Anti-Corruption Committee, will center on the current state of wildlife poaching in Namibia.

c) October 24: The Committee is planning a panel discussion entitled Doing Business in Eastern Europe and Western Asia: A Look at Corruption and Enforcement Trends and Developments in the Region. It will be hosted at the Washington D.C. office of Miller & Chevalier from 6:00-8:00 pm with happy hour preceding the panel.

d) November 6-9, the ABA, Section of International Law, will host a conference in Mexico City, Mexico. On November 7, the Anti-Corruption Committee is co-hosting a panel with the Mexico Committee entitled “The New Compliance Landscape in Latin America, and Its Practical Impact.” Marc Bohn and Jose Martin, both Anti-Corruption Committee members, will participate on the panel. The panel will discuss increased anti-corruption enforcement across Latin America, with specific emphasis on Mexico, Argentina, Brazil, Colombia and Peru, particularly key industry sectors as energy, infrastructure, real estate and tourism.

e) November 7: CJS Global Anti-Corruption Committee will host Charles Duchaine, Director of the French Anti-Corruption Agency, at George Washington University Law School from 12:00pm – 1:15 pm (EST). RSVP to crimjustice@americanbar.org. This event is being co-sponsored by the Anti-Corruption Committee.

3. Commercial Bribery Presentation

a. Bill Steinman, senior partner at Steinman & Rodgers LLP, provided a presentation on recent trends in enforcement and internal compliance efforts related to commercial bribery laws. Commercial bribery is often done to obtain business (typically a contract), obtain inside information (often related to a contract formation), or to have the employer ignore bad performance (often related to a contract performance).

b. The discussion began with an overview of US federal law. Unlike many other countries, the United States does not have a federal commercial bribery law. The United States federal government addresses commercial bribery through prosecution of related federal statutes, such as the Travel Act, FCPA, Money Laundering, Wire/Mail Fraud, and tax law.

c. Mr. Steinman continued the discussion as it pertained to state law. 37 states (including NY, NJ, DE, CA, TX, FL, and IL) have general commercial bribery statutes that law
practitioners should be aware of. A typical state commercial bribery statute provides the following criminal elements:

i. solicitation or acceptance of a thing of value (ex. money, trips, memberships) by an employee from an individual other than the employee’s employer;

ii. the thing of value is given to induce the employee to take an action; and

iii. that violates the employee’s duty to his/her employer.

d. Mr. Steinman noted that his law firm has recently received more questions about commercial bribery, in part because the UK Bribery Act, which is increasingly being enforced, contains a commercial bribery provision. Additionally, he noted that more companies are paying attention to commercial bribery as a corporate compliance matter.

e. Mr. Steinman’s presentation also briefly explained commercial bribery laws in the UK (Section 1 of the UK Bribery Act), Canada (Part X, Fraudulent Transactions Related to Contracts and Trade, Section 426), and China (Anti-unfair Competition Law (ACL)). In China, business operators may provide discounts or commissions, but they must be properly recorded in business records. There has been increased prosecution and crackdowns on corruption in China in recent years, but one of the difficulties is understanding whether such actions are done for all the right reasons, namely to eliminate bribes from the economy, or whether there is a mix of political reasons in the specific targets of the anti-corruption related prosecutions.

f. During the Q&A, Mr. Wirz asked about commercial bribery cases that have been brought under Federal antitrust statutes. [Chair side-note: for more on that, see NL Industries, Inc. v. Gulf & Western Industries, 650 F. Supp. 1115 (D. Kan. 1986) (finding that plaintiff failed to state a claim under section 2(c) of the Robinson-Patman Act for commercial bribery) and PHILIP MORRIS, INCORP. v. Grinnell Lithographic Co., 67 F. Supp. 2d 126 (E.D.N.Y. 1999) (finding that commercial bribery could qualify as an “antitrust injury” under the Robinson-Patman Act and therefore plaintiff could bring suit for treble damages).]

4. Other Business.

a) No other business was discussed. The Committee will send out a calendar invite for the November monthly phone call (typically Thursday) in the coming weeks.

b) Members are asked to direct any questions to the Committee Co-Chairs.

c) The phone call meeting was then adjourned.
25 members participated in the phone call meeting, including:

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