



2013 TRACE Forum Report

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2013 TRACE Forum Report

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PREFACE

Each year the TRACE Forum gives member companies the opportunity to meet in one location, discuss mutual challenges and recalibrate their compliance efforts. This year, the 9th annual TRACE Forum took place at the St. Regis Hotel in Washington, DC from March 20-21. Although reconvened because of inclement weather due to Hurricane Sandy in the Fall, the Forum saw its biggest turnout ever, with 100 member companies in attendance.

It was also one of our liveliest Forums. As usual, we had a mix of panelists ranging from government prosecutors to in-house counsel, ethics and compliance officers and international marketing managers. Panel discussions ranged from demand side anti-bribery schemes in India to DOJ and SEC enforcement trends in the United States. The success of the Forum is due entirely, however, to the participation of member companies. Throughout every panel, participants not only asked questions, but openly contributed their opinions and shared their experiences. While the aim of this report was not to replicate these discussions word-for-word, we hope that it will provide readers with a sense of the rich, animated dialogue generated by the TRACE Forum this year.



During the Forum, member companies also partook in a benchmarking survey via anonymous polling equipment. This technology allows companies to instantaneously measure their compliance programs against other member companies and see trends in the anti-bribery compliance world. The results from the 2013 survey are attached at the end of this report, and all benchmarking surveys as well as surveys from past years, can be found online on the TRACE Resource Center.

Finally, it should be noted that the TRACE Forum is held pursuant to the Chatham House Rules with the aim of providing anonymity to speakers and to encourage openness and the sharing of information. As a result, the identity of some of the speakers at the Forum have been omitted from this report in order to comply with these rules.

Sincerely,



Alexandra Wrage
President

Day 1: March 20, 2013

The 2013 TRACE Forum began with opening remarks from TRACE President Alexandra Wrage, who welcomed all attending members and reminded participants that the aim of the Forum is to be as interactive as possible. Members were encouraged not only to ask questions of panelists, but also to speak to one another and compare notes on compliance strategies. Wrage reminded attendees that Forum discussions often result in the development of new products and services, specifically designed to meet the needs of members and reduce the cost of compliance.

Panel 1: A Roundtable Discussion with US DOJ and SEC: Anti-Corruption Enforcement Trends and FCPA Guidance Takeaways

The Forum's first panel provided an opportunity to hear remarks directly from the Department of Justice (DOJ) and Securities & Exchange Commission (SEC) – the two US enforcement agencies responsible for implementing the Foreign Corrupt Practices Act (FCPA). Panel moderator Mark Mendelsohn, himself a former deputy chief of the Fraud Section of the Criminal Division of the DOJ, probed the government panelists – Charles Duross from the DOJ and Kara Brockmeyer from the SEC – on trends in current FCPA enforcement. He also asked them to further clarify their positions in the recently published *Resource Guide to the FCPA*.

When asked about the modest dip in FCPA cases brought in 2012, the panelists reaffirmed that enforcement would continue to be a priority in 2013. Both the DOJ and SEC said that it was more useful to look at the trend over the last several years than to rely only on 2012 statistics. We should expect “more of the same” in the coming months, said Duross, with a mix of small and large companies being prosecuted under the Act, as well as continued enforcement actions brought against individuals.

The panelists were also asked about “industry sweeps” – a term used to describe the practice of going after several companies in the same industry at once. Both agencies said that targeting an entire industry was not common practice and that what may seem like an industry sweep was usually in reality the result of following an investigation to see where it would lead. The SEC mentioned, for example, that often a foreign agent who was involved in making corrupt payments on behalf of one U.S. issuer would be questioned about possible payments it had made on behalf of other U.S. issuers as well. In instances where it did target an industry, the SEC stated that this was only done where the Commission believed that such a tactic was efficient and not overly burdensome on the companies being investigated.

Regarding gift-giving and entertainment, the government emphasized that such activities were only problematic should they become systematic in a company or where employees were forging documents. When asked if the DOJ or SEC would ever give a company a declination if the company did not self-report first, the government responded that such a



determination would have to be made on a case-by-case basis, and that self-reporting was only one factor under the 2001 *Seaboard Report*. As for successor liability stemming from a merger or acquisition, the panelists reiterated that liability would only extend should the target company already have fallen under the jurisdiction of the FCPA prior to the merger.

In discussing the DOJ and SEC *Resource Guide to the FCPA*, released after much anticipation last November, the DOJ and SEC said that they had felt the need to write the *Guide* in response to a Phase Three Recommendation from the Organisation for Economic Co-operation and Development (OECD) in October 2010. The panelists expressed their hope that the *Guide* had provided clarity as to the US Government's positions on various issues regarding the FCPA.

Finally DOJ and SEC were also questioned about the composition of their FCPA enforcement teams. The DOJ replied that it has 24 full-time lawyers working on FCPA enforcement, many of whom were former prosecutors, and three assistant chiefs who supervise and coordinate the most sensitive and complicated litigation matters. The SEC said that it has a staff of roughly three dozen, including two forensic accountants. Both agencies agreed that FCPA cases did at times arise outside of their immediate divisions, and that investigations were often coordinated alongside other enforcement counterparts, including the Federal Bureau of Investigations (FBI), the criminal division of the Internal Revenue Service (IRS) and Immigration & Customs Enforcement (ICE).

Panel 2: Communication and Employee Engagement: When Best Practices Meet Government Expectations

In keeping with the theme of direct feedback from the Department of Justice, the second panel of the day featured James Koukios, Assistant Chief in the Justice Department's Foreign Corrupt Practices Act unit, as well as John Sardar, Chief Compliance Officer at Noble Energy. The two panelists offered a lively back-and-forth comparing accepted "best practices" in private industry alongside what the government's expectations can be during a typical FCPA investigation.

Echoing what was heard from the government panelists earlier in the morning, Mr. Koukios reiterated that there was no single correct approach to compliance, only that a company compliance program should be fair, effective, risk-based and rational. When asked by an audience member whether it was better to have a sprinkling of compliance across all departments, or whether a company would be better off targeting certain departments that are at higher risk, the government reiterated that it recognized that there is no one-size-fits-all approach to compliance. Targeted training and due diligence may make sense for one company, but not another. Again, the government made clear that no compliance program could be perfect, and that the government only expected that it be rationally defensible.

Regarding the topic of codes of conduct and company policies, the panelists both agreed that this was a deceptively tricky area that could easily be handled incorrectly. New employees should be introduced to the company's codes and policies on their first day, said Sardar, to ensure that the right message is given to them immediately. Koukios agreed, saying that a company's code of conduct should be "a living document". Mr. Koukios made mention of a recent enforcement action against Orthofix International as an example of how the company had gotten this wrong by failing to properly translate its policies into Spanish for its Mexican subsidiary. The policies should be translated into all local languages where the company operates.

2013 TRACE Benchmarking Results:

78.26% of
TRACE member
companies’
code of conduct
is translated
into more than
one language.

31.89% of
TRACE member
companies’
code of conduct
is translated
into over 10
different
languages.

The panelists also emphasized the importance of good training. Training should be part of all new employees’ onboarding process, and that applies just as equally in the context of a merger or acquisition. A company should also maintain records of all employees who have received training. In the recent declination against Morgan Stanley, Koukios pointed out that the investigation revealed that the company had trained various groups of Asia-based personnel on anti-corruption policies 54 times between 2002 and 2008, and had specifically trained the “rogue employee” in question seven times on matters pertaining specifically to the FCPA.

One audience member asked the panelists how compliance officers could effectively reach their employees given that many simply perceived compliance emails as yet another piece of SPAM in their inbox. Shaking their heads in unison, both panelists indicated that this was an issue. But email is only one form of communication, said Sardar, and a good compliance program must speak to employees through a variety of different mediums, including online forums and in-person trainings. “I always try to make my events fun and to serve good food at training events,” concluded Sardar. One TRACE member later stressed the importance of focusing on the “message from the middle” and the need to get middle managers to believe in compliance as well.

Another way to reach employees is to publicly reward good behavior. At Noble Energy, Sardar described how his team recognizes five employees at company retreats as “Champions of Compliance” to affirm the company’s commitment to ethical behavior. By the same token, the panelists agreed that it was just as important to discipline bad behavior and to publicize the results to all employees to show that the company actually follows through on its code of conduct in such situations.

Panel 3: Baseline Due Diligence and Screening for the Supply Chain: Why TRAC?

In our first afternoon panel, Alexandra Wrage, TRACE President, introduced TRAC, an innovative due diligence tool that allows companies to reach an entire supply chain very quickly over the web. The panel also featured Jonathan Drimmer, Vice President, Assistant General Counsel at Barrick Gold Corporation, whose company has been using TRAC over the past year.

In introducing TRAC, Wrage described it as “a more secure and confidential Facebook or LinkedIn” for your company’s due diligence needs. To apply for TRAC, the third party intermediary pays an \$80 annual fee, answers a basic questionnaire and then uploads its documentation; that information is then screened by a TRAC analyst, who will verify business registrations, screen entity and individual names against international watch lists and collect

information about any beneficial owners of the company. The entire process takes typically 48 hours, after which time the third party is given a unique, universal twelve-digit TRAC number and has a profile appear on TRAC's web-based platform. The third party TRAC holder then can share their profile information with as many business associates as they so choose.

Participants were asked what was their number one anti-bribery compliance challenge. A 58% majority responded that their biggest concern is third party due diligence; the second largest response, 18%, responded that their number one concern is supply and marketing chain compliance. It's clear from these results that companies are continuing to worry about third party liability in their supply chains. We also know that due diligence continues to be the best way to screen against such problems.

"TRAC is the beginning of the new wave of due diligence," said Drimmer, whose company, which has some 50,000 companies in its supply chain, uses TRAC in its initial onboarding. Prior to using TRAC, Drimmer described the huge, laborious process of having to screen all of their third parties themselves, or worse, options of employing an expensive outside vendor to do it for them. Drimmer applauded the "collective action approach to due diligence" offered by TRAC, which he said allowed multinational companies who share suppliers to also share due diligence information about those suppliers. "Rather than have multiple companies sending out slightly different and highly overlapping questionnaires," Drimmer said, "TRAC allows the third party to do it all at once."

When asked what some of the difficulties were of using TRAC, Drimmer mentioned that because Barrick Gold sometimes uses local procurement in its more remote locations, those third parties did not always have offices or computers with which to enter into the TRAC system. Those companies are therefore being excluded from TRAC for the time being, explained Drimmer, with the goal of ultimately getting them on board down the road. Others at the Forum who are TRAC users said that they did not always immediately know who all of their suppliers were or had difficulty obtaining emails and points of contact from them. Overall, Drimmer said that these setbacks were often temporary and were easily compensated by the fact that TRAC offered a highly efficient and speedy due diligence tool.

To learn more about TRAC visit www.tracnumber.com/FAQs and to discuss TRAC or schedule a personal, web-based demo, please email TRACE at info@tracnumber.com.

Panel 4: Compliance Program Best Practices Post-Guidance

In our fourth panel of the day, the focus turned to how the DOJ and SEC *Guidance on the FCPA* – released last November – has affected the manner in which compliance officers approach FCPA compliance at their companies. Moderated by Eileen Radford, TRACE Director of Advisory Services, the panel featured important insight from Garrison Phillips, Associate General Counsel of Ethics and Compliance at United Airlines and Michael A. Pass, Senior Counsel for Compliance at Freeport-McMoRan Copper & Gold.

The overwhelming consensus was that the *Guidance*, while somewhat helpful, had not changed in any significant sense the way in which member companies have been approaching FCPA compliance. In fact, when asked to rank on a scale of 1 to 5 “how much the FCPA Guidance had changed your company’s approach to FCPA compliance,” 88.4% of TRACE member companies replied with either a 1 or a 2, indicating that the *Guidance* had changed either nothing or very little of how they approached FCPA compliance. An overwhelming 95.5% said that it had not changed the company’s approach at all to its gifts and hospitality procedures and 89.6% said that it made them no more likely to self-disclose a potential FCPA violation to the SEC or DOJ.

The *Guidance* had, however, proved useful to some compliance officers who appreciated that the booklet could be used as a tool to communicate with business. If not earthshattering, the *Guidance* had at least compiled the varied sources of FCPA material into a single document. “It’s been a conversation piece,” said one panelist.

Some were less positive though, and one participant plainly described portions of the *Guidance* as “very disappointing.” “It’s helped me sleep a little better but it hasn’t changed our policy,” said another, summing up the overall mood by other member companies.

Panel 5: How to Prevent and Detect Complex Demand Side Corruption Schemes in Challenging Markets

“Demand side corruption” is a term used to identify the request by a government official for a bribe. To others, demand side corruption is known simply as extortion and it represents a major obstacle to doing business internationally. Companies are now encountering government actors who are implementing increasingly sophisticated bribery schemes, including setting up fake companies, passing improper laws that favor individuals and creating informal ownership structures. Although these schemes vary from country to country, they share in common that they are indirect, complex and often rely on government apparatuses to put the scheme into action.

In our fifth panel, Lina Braude, Partner at the law firm of Baker & McKenzie and Jeffrey Clark, Partner at Willkie Farr & Gallagher, dove into the world of complex demand side corruption schemes, providing needed insight into what due diligence companies can do in order to avoid falling victim to one of these schemes. Both panelists agreed that the growing trend is that international demand side corruption is becoming more sophisticated as world-wide enforcement has become more focused.

Mr. Clark began by highlighting three ways in which companies typically face demand side corruption in Africa: (i) by receiving pressure to contract or partner with third parties owned by government officials, (ii) by being asked to contribute to fraudulent charitable and social programs, and (iii) by improper use of per diems. Mr. Clark suggested that companies facing these challenges must renew their commitments to doing external due diligence and, whenever possible, make transparent payments directly to government entities or individuals rather than indirectly through third parties.

Mr. Clark also discussed fraudulent schemes involving travel, typically encountered in China. The most common of these is the fictitious business trip. What is supposed to be a modest, two-day visit to inspect an overseas factory can often turn into a week-long vacation with a stop-over in Disney World, Mr. Clark explained. Officials have been known to use travel agencies to fraudulently inflate business costs or create entirely fictional events to mask their activities.

Ms. Braude provided her insight as to complex bribery schemes commonly found in India and Russia. In both countries she described the practice of government officials pressuring companies to use intermediary third parties that are in fact owned indirectly by the government officials themselves. These entities are sometimes registered in foreign places which allow for more lax ownership structures, Ms. Braude explained, and she stressed that the best strategy for companies to avoid getting involved with these kinds of organizations is to conduct proper due diligence of all third parties. “If it doesn’t make sense to you, ask questions,” said Ms. Braude. “Don’t walk away thinking ‘this is just how business is done here.’”

One question asked by an audience member was what options a company might have to walk away from a transaction should a government, for example, dictate that the company could only work through a single procurement agent. The panelists agreed that the company would have to do high-level due diligence on the procurement agent to ensure that the agent did not pose a risk. If the due diligence showed that there were real risks, the panelists agreed that the company might have to walk away from the deal

Panel 6: FCPA Industry Sweeps: What Companies in the Crosshairs of an Industry Investigation Must Consider

Industry sweeps are targeted bribery investigations by an enforcement agency into an entire industry. Most recently, the DOJ and SEC have conducted FCPA industry sweeps of the pharmaceutical and medical device industry as well as the financial services and the Hollywood entertainment industries. Generally, it is the SEC that will initiate an industry-wide investigation, as it has broader investigative and oversight authority than the DOJ. For a company finding itself in the midst of an FCPA industry sweep, negotiations with either the DOJ or SEC will often be decidedly different than during a normal bribery investigation.

In our last panel of the day, Kathryn Cameron Atkinson, Chair of the International Department at Miller & Chevalier Chartered and Eduardo Busó, Director of Member Services at TRACE, offered some practical advice to companies managing negotiations with the SEC or DOJ during an industry-wide sweep.

The first interaction that a company will usually have with the SEC or DOJ during an industry sweep is a letter from the enforcement agency requesting the company to come meet with them and discuss potential bribery risks in their industry. Unlike a normal bribery investigation where a company may be asked to present exculpatory evidence, here, the initial encounter with the enforcement agency will often involve a lengthy presentation by the enforcement agency itself focusing on a broad set of practices of misconduct in the industry. In fact, at this initial meeting, the DOJ or SEC may have no factual evidence at all that the company has been involved in any acts of bribery. As one panelist described these meetings, the agency may simply be “pulling at strings to see where they lead.”

Afterwards, the agency will usually require the company to fill out a matrix or checklist to determine what the company’s level of risk is. Busó, who prior to joining TRACE was Chief Compliance Officer at a pharmaceutical company during one such investigation, described his experience: “You want to show the government that you don’t fit their pattern,” he said, recounting the long checklist that his company had to run through with the government.



Atkinson stressed that companies need not necessarily launch into a full-scale investigation however. Companies should try to have an open conversation with the DOJ or SEC about what makes most sense for them, with the understanding that most companies do not end up having to do everything under the sun to fulfill the agencies' expectations.

Companies may also wish to negotiate the length of the investigation, said Atkinson. Typically, industry-wide sweeps may remain dormant for a period of time and then reappear at some future point. That means

that the SEC or DOJ may keep the company on notice of an ongoing investigation for several years while it continues to gather evidence of wrongdoing in the industry. It's normal in these situations to ask "when do we go to pencils down?" said Atkinson, although she also pointed out that the SEC had yet to agree on a formal path for graduating a company out of an industry sweep.

Other unanswered questions raised during the panel included whether there is an obligation to keep the agencies informed of any developments regarding issues they have previously inquired about. Both panelists agreed in the end that despite these unknowns, industry sweeps are likely to continue to be part of the SEC's and DOJ's enforcement arsenal for the foreseeable future.

Day 2: March 21, 2013

Panel 1: Third Party Intermediaries: Due Diligence Screening and Monitoring Strategies for High Risk Suppliers, Vendors, Agents, Distributors and Joint Venture Partners

Risk mitigation for third parties is one of the key focus areas for anti-corruption compliance. In this panel, we heard from Susan Frank, Senior Corporate Vice President and Assistant General Counsel for Ethics & Compliance at AECOM, Rebecca "Riv" Goldman, Vice President of Commercial Law at Rockwell Automation, Inc. and Geoff Bell, Chief Risk and Compliance Officer at Innovia Security Pty. Ltd.

In speaking about their experiences, all three panelists agreed on the importance of conducting greater due diligence of third party business partners. Specifically, the panel discussed a 4-step approach to conducting due diligence of third parties:

Step 1: Identify all third parties accurately. A company may have a wider network of business parties than it may initially realize, including vendors, resellers, subcontractors, sales agents, consultants, suppliers, joint venture partners, M&A targets as well as classic third-party agents. Even outside counsel may qualify under the scope of a third party intermediary. Also, the third parties themselves may subcontract their work out to other third parties, extending the chain of possible liability even further. A company's understanding of who are its third parties should therefore be an "evolving process," said one panelist.

Step 2: Maintain an up-to-date database of information on all third parties. Figuring out very basic information about your third party is the next step of the due diligence process. Where is the company located? Who is the point of contact with that third party? How may they be contacted? Information such as this should be stored in a database and properly maintained over time.

Step 3: Rank the initial risk posed by each third party. Based on the information already available to it, a company should be able to make an initial risk determination of its business partners. For instance, one panelist described how third parties in Libya, which is a country that poses a high risk for corruption, would likely be flagged for further due diligence review. Other metrics for evaluating risk may depend on what service the third party is providing. The bottom line, said one panelist, is to use a “common sense approach” that fits the characteristics of the company.

Step 4: Conduct risk mitigation to evaluate each third party. After ranking the third parties for risk, the company should have a better understanding of which companies require further review. At AECOM, for example, Susan Frank explained that all non-technical third parties (eg. business development, public relations, lobbying) were automatically put through a higher due diligence process. Third parties that provided purely technical services (eg. architecture and engineering firms) would typically fall under a lower level of due diligence and were put through the baseline TRAC tool offered by TRACE. Every company will have a different appetite for risk in its dealings with third parties, said Frank, and will have to configure its own due diligence accordingly.

In discussing a merger or acquisition situation, the panelists agreed that the company should not only conduct due diligence on the target company, but also on key individuals of the target prior to the execution of the share purchase agreement. One panelist said that at their company, for higher risk targets, they would even conduct interviews of sales and marketing employees to determine whether their business practices met the company’s standards; those employees that did not meet the company’s standards were terminated prior to the closing.

Member companies in the audience also had an opportunity at the end of the panel to share some of their experience in vetting third parties. One company said that at their company, any red flag was looked at by their compliance team and documented, with typically at least one lawyer reviewing the file. Another said that all high-level review at their company was done by in-house counsel and required executive approval. It was also pointed out how important it is to bring “near miss collisions” to the attention of management. At one member company, the compliance officer would meet with the global finance team periodically to discuss any near misses over the past few months and ask what the company could have done differently.

Panel 2: Best Practices for Conducting FCPA Compliance Audits and Assessments

Twenty-five years ago, few if any companies self-evaluated their FCPA compliance programs. It is a sign of how far the compliance field has come that risk assessments and compliance audits are no longer a foreign concept to most compliance officers. In our second panel, Timothy Dickinson, a Partner at Paul Hastings LLP provided his expertise on best practices for conducting FCPA risk assessments. Tina Crouch, Chief Compliance Officer at ENSCO, also shared her background with conducting FCPA compliance audits at her company.

Most companies will assess their FCPA practices in-house, and in an informal pole at the Forum, only about 25% of TRACE members said that they relied on an outside party to do help them conduct an FCPA risk assessment. There are three primary reasons why an FCPA risk assessments is useful, Dickinson explained: (i) they can be used to benchmark the company’s compliance program against best practices; (ii) they can be used to measure the evolution of a company’s compliance program and culture over time; and (iii) they can be used to assess employee understanding and commitment to compliance.

In evaluating a company's level of risk, Dickinson discussed various considerations, including where the company is geographically organized, how often it interacts with government officials, its level of involvement in joint venture arrangements and the volume of its goods that must clear through customs and immigration. It is important during this initial stage, Dickinson explained, to identify changes to the company, such as any new products that the company may be promoting or new territories where it is conducting business.

2013 TRACE Benchmarking Results: Over 70% of TRACE member companies conduct both audits of their company's anti-bribery compliance program and formal risk assessments as a function of their internal auditing procedures.

Next, companies should assess how their current compliance program addresses those perceived risks. A successful compliance assessment will identify any gaps between the compliance program and the identified risks. If the company is conducting a lot of business in places where gifts and hospitality are a problem, for example, is the company at least tracking those gifts? The company should also periodically benchmark its existing compliance policies and procedures against established best practices. "Every company has to develop a risk assessment methodology for their company, and that needs to be renewed every year," said Dickinson.

A company's internal auditors should also routinely be testing a company's books and records to ensure that its FCPA compliance procedures are working properly. At ENSCO, Crouch said that her company paired internal auditors with lawyers during an FCPA audit, to reflect the fact that internal audits for anticorruption should be both a legal and accounting function.

Training was also a key factor to a successful audit program. Internal accountants should be trained in detecting ledger entries that typically indicate anti-bribery compliance concerns. The legal team may assist the auditors in this process, explaining how improper facilitation payments or gifts work, for example. One TRACE member participant added that, when conducting an audit, it was important that internal auditors were speaking to the right people in the field. Like risk assessments, FCPA auditing should be renewed continuously as well. "You should always be asking yourself, 'What are we not looking at?'" remarked Crouch.

Panel 3: Gifts, Travel, Entertainment and Hospitality: How to Minimize Risk Exposure across Global Operations

Navigating the maze of complex cultural norms and expectations surrounding gifts, hospitality and travel abroad has long been a thorn in the side for many compliance officers. While the FCPA does not prohibit gift-giving outright, it does prohibit the giving of "anything of value" to influence the actions of a foreign official in order to gain a business advantage. In practice, member companies have expressed frustration in knowing when gifts, which may be customary in local cultures, fall under the statute. In our third panel, Randi Roberts, Vice President of Compliance at NBC Universal and Richard T. Boehne, Senior Director of International Programs at Merrick & Co. discussed what their companies were doing to address the complexities of gifts, travel, entertainment and hospitality. The panel was moderated by Julie Coleman, Senior Director of Advisory Services at TRACE.

Coleman began the panel by providing an overview of recent enforcement actions in 2012 and 2013 where the DOJ and SEC has said that lavish gift-giving and travel – particularly when pleasure exceeds business – violated the FCPA. She noted, however, that small gifts, by themselves, have never formed the basis of a DOJ or SEC investigation. A company will usually only be indicted under the FCPA, she explained, if their gift-giving is systematic and intended to influence the government's behavior. Coleman also noted that multinational companies should be aware of local laws that may include additional prohibitions on gift-giving. In Brazil, for instance, gifts to federal officials cannot exceed \$50 USD in value.

When asked whether their companies had a maximum threshold for gifts, both Roberts and Boehne said that they did, although the dollar amount for each varied. For expenses higher than the threshold amount, NBC employees must receive pre-approval from their superiors, explained Roberts. Both panelists said that because their companies operate in different time-zones, though, getting pre-approval for a spur-of-the moment invitation to dinner or lunch can at times be nearly impossible. Boehne stressed the importance in such instances to have implemented a strong training program for sales and marketing employees operating in the field to know how to handle the situation.

At NBC, Roberts said that her company regularly trains employees, especially around holiday times, regarding its gifts and hospitality policies. It's important that employees know, for example, how broadly the definition of a "foreign official" is interpreted under the FCPA, she said. In addition, NBC conducts regular due diligence and implements contractual safeguards with regard to third parties, maintains detailed financial recordkeeping of all gift-related expenses and periodically monitors and audits its compliance procedures.

Compliance programs should also be flexible enough to bend according to the local culture, stressed Boehne. When explaining gifts and hospitality practices and procedures with third parties, for example, it's important to communicate in their language. In many instances, a local agent may respond better to a casual conversation over a cup of coffee than to a formal PowerPoint presentation, he noted.

Companies must also be prepared to deal with the inevitable situation where they are on the receiving end of an expensive gift that they cannot, for whatever reason, comfortably return. At her company, Roberts said that employees were told to share gifts whenever possible, especially perishable foods and the like. In one instance, the company received several free flat screen TVs, which it promptly installed in a conference room to be used by anyone. Other gifts could be raffled off at auction for charity, Roberts said.

Still, there remain many unanswered questions when it comes to gifts and hospitality. Boehne said that he did not believe, for example, that assisting a potential customer fill out a school application violated anti-bribery laws, although he openly admitted that not all compliance officers would necessarily agree with him. Other areas generating controversy included whether to allow family members to join on business trips, the dollar threshold amount before having to seek pre-approval from a compliance officer or the appropriate contractual rate for a per diem.

Member companies wishing to learn more about local gifts and hospitality laws are invited to visit the TRACE Online Resource Center, where they can access free Gifts & Hospitality Guidelines detailing rules from over 100 different countries. TRACE also provides an online Gifts and Hospitality Tracking Software and several online training modules which are both free to member companies. Find out more by visiting the TRACE website.

Panel 4: Meet the TRACE Due Diligence Team

For the last panel of every TRACE Forum, we provide an opportunity for member companies to meet in person TRACE's due diligence team and ask any questions that they may have regarding what due diligence solutions are offered by TRACE. In addition to its member services, TRACE offers a range of due diligence tools to assist both members and non-members in their compliance with the FCPA, UK Bribery Act and other anti-corruption laws. This year, TRACE introduced two new due diligence tools:

1. **TRACEsort** helps organizations to determine the risk tier for an intermediary and the appropriate level of due diligence. The company is given a risk tier based on a score generated from a custom-built questionnaire as well as an objective, external determination if a customer requires escalation or de-escalation of risk tiers.
2. **TRACecertification**, like TRAC, is a portable due diligence solution which allows third parties to own their verified due diligence reports. The candidate is required to complete a mandatory anti-bribery training course, adopt an anti-bribery code of conduct, and update their due diligence information annually. A review that reaches completion will result in the certification of the third party by TRACE.

According to this year's TRACE Forum benchmarking survey, two-thirds of member companies said that they tailored their due diligence based on the risk posed by the third party relationship. This trend mirrors the expectations of the DOJ and SEC, which have said in the *Resource Guide to the FCPA* that "assessment of risk is fundamental to developing a strong compliance program." To learn more about TRACEsort, please contact info@traceinternational.org. TRACEsort allows companies to rank third parties by risk and more effectively adopt an appropriate due diligence response.

Member companies also showed significant interest in **TRAC**, which is an online due diligence tool introduced by TRACE last year. More than 60% of member companies this year said that they do not screen third parties against international government watch lists more than once a year. TRAC, on the other hand, captures, assesses and shares baseline due diligence information on organizations and individuals across the supply chain on a daily basis. Companies interested in using TRAC should visit the TRAC website at www.tracnumber.com or email TRACE at info@tracnumber.com.

"It was important for us that we also registered for a TRAC number, so that when third parties asked, 'Why should we do this?' we could say, 'Well, we do it too.'"

- Comment by TRACE Member Company



2013 TRACE Forum Highlights:

- More than 100 member companies in attendance
- 10 dynamic panel discussions featuring government prosecutors, in-house counsel, ethics and compliance officers and international marketing managers
- Instantaneous, anonymous polling to facilitate benchmarking among members
- Actionable insights from industry leaders
- Introduction of new compliance and due diligence tools

“Every year we are delighted to host the TRACE Forum. It gives us a chance to meet with our member companies and, more importantly, for our member companies to meet each other. Not only do we get to share best practices, but the Forum is a great launching pad for new ideas.”

- Alexandra Wrage, President of TRACE





Wednesday, March 20

8:00 – 8:45 a.m. Continental Breakfast and Registration

8:45 – 9:00 a.m. Introductions and Forum Overview

Alexandra Wrage, President, TRACE

**9:00 – 10:15 a.m. A Roundtable Discussion with US DOJ and SEC:
Anti-Corruption Enforcement Trends and FCPA
Guidance Takeaways**

*Charles Duross, Deputy Chief, Fraud Section, Criminal Division,
U.S. Department of Justice (Washington, DC)*

*Kara Brockmeyer, Chief, FCPA Unit, Division of Enforcement,
U.S. Securities and Exchange Commission (Washington, DC)*

Panel Moderator - *Mark Mendelsohn, Partner, Paul, Weiss, Rifkind,
Wharton & Garrison LLP (Washington, DC)*

10:15 – 10:30 a.m. Coffee Break

2013 TRACE Forum

- 10:30 – 11:30 a.m.** **Communication and Employee Engagement: When Best Practices Meet Government Expectations**
James Koukios, Assistant Chief, Fraud Section, Criminal Division, U.S. Department of Justice (Washington, DC)
John Sardar, Chief Compliance Officer, Noble Energy (Houston, TX)
- 11:30 – 12:15 p.m.** **Compliance Benchmarking with Polling Devices (Part I)**
Topics: compliance policies and procedures; UK Bribery Act; reporting systems; supply and marketing chain compliance; commission rates
- 12:15 – 1:45 p.m.** **Networking Luncheon**
- 1:45 – 2:30 p.m.** **Baseline Due Diligence and Screening for the Supply Chain: Why TRAC?**
Jonathan Drimmer, Vice President, Assistant General Counsel, Barrick Gold Corporation (Washington, DC)
Alexandra Wrage, President, TRACE
- 2:30 – 3:15 p.m.** **Compliance Program Best Practices Post-Guidance**
Garrison Phillips, Associate General Counsel Ethics and Compliance, United Airlines (Chicago, IL)
Michael A. Pass, Senior Counsel, Compliance, Freeport-McMoRan Copper & Gold (Phoenix, AZ)
Panel Moderator - *Eileen Radford, Director, Advisory Services, TRACE*
- 3:15 – 3:30 p.m.** **Coffee Break**

2013 TRACE Forum

3:30 – 4:30 p.m. How to Prevent and Detect Complex Demand Side Corruption Schemes in Challenging Markets

Lina Braude, Partner, Baker & McKenzie (Washington, DC)

Jeffrey Clark, Partner, Willkie Farr & Gallagher LLP (Washington, DC)

4:30 – 5:15 p.m. FCPA Industry Sweeps: What Companies in the Crosshairs of an Industry Investigation Must Consider

Kathryn Cameron Atkinson, Chair, International Department, Miller & Chevalier Chartered (Washington, DC)

Eduardo Busó, Director, Member Services, TRACE

5:15 – 6:30 p.m. Reception and Light Buffet

Thursday, March 21

8:30 – 9:00 a.m. Continental Breakfast

9:00 – 10:00 a.m. Third Party Intermediaries: Due Diligence Screening and Monitoring Strategies for High Risk Suppliers, Vendors, Agents, Distributors and Joint Venture Partners

Susan Frank, Senior Corporate Vice President and Assistant General Counsel for Ethics & Compliance, AECOM (Washington, DC)

Rebecca (Riv) Goldman, Vice President, Commercial Law, Rockwell Automation, Inc. (Milwaukee, WI)

Geoff Bell, Chief Risk and Compliance Officer, Innovia Security Pty. Ltd. (Craigieburn, Australia)

Panel Moderator - *Pia Vining, Director, Due Diligence, TRACE*

10:00 – 10:30 a.m. Compliance Benchmarking with Polling Devices (Part II)

Topics: anti-bribery training; investigations; internal audit function

2013 TRACE Forum

10:30 – 10:45 a.m. Coffee Break

10:45 – 11:45 a.m. Best Practices for Conducting FCPA Compliance Audits and Assessments

Tina Crouch, Chief Compliance Officer, ENSCO(Houston, TX)

Timothy Dickinson, Partner, Paul Hastings LLP (Washington, DC)

11:45 – 12:30 p.m. Gifts, Travel, Entertainment and Hospitality: How to Minimize Risk Exposure across Global Operations

Randi Roberts, Vice President, Compliance, NBC Universal (New York, NY)

Richard T. Boehne, Senior Director, International Programs, Merrick & Company (Washington, DC)

Panel Moderator - *Julie Coleman, Senior Director, Advisory Services, TRACE*

12:30 – 1:00 p.m. Discussion of Recent Benchmarking Surveys

Julie Coleman, Senior Director, Advisory Services, TRACE

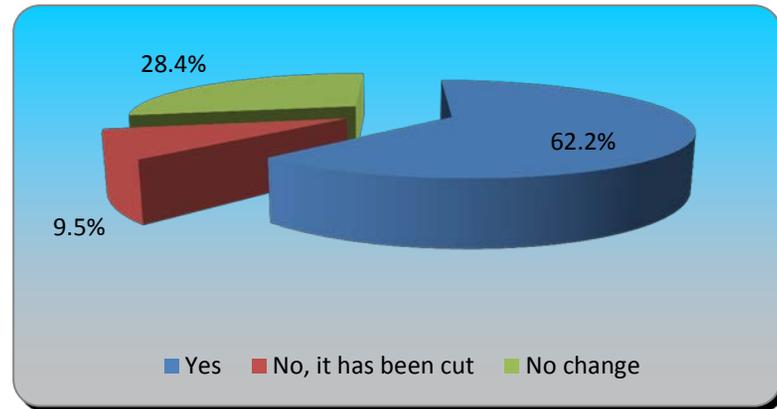
1:00 – 2:00 p.m. Lunch and Networking

2:00 – 3:00 p.m. Meet the Due Diligence Team and Ask Questions

2013 TRACE Forum Appendix 2 – Benchmarking Results

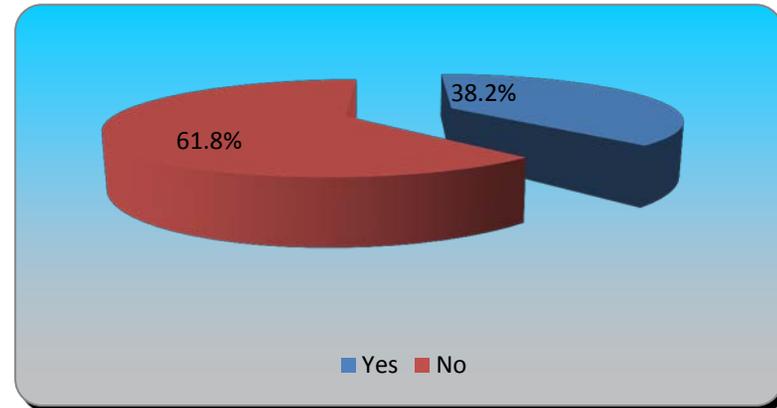
1.) Has your company's annual budget for its anti-bribery compliance program increased over the course of last two years? (multiple choice)

	Responses
Yes	62.16%
No, it has been cut	9.46%
No change	28.38%
Totals	100%



2.) Has your company increased the number of employees allocated specifically to anti-bribery program management in the last year? (multiple choice)

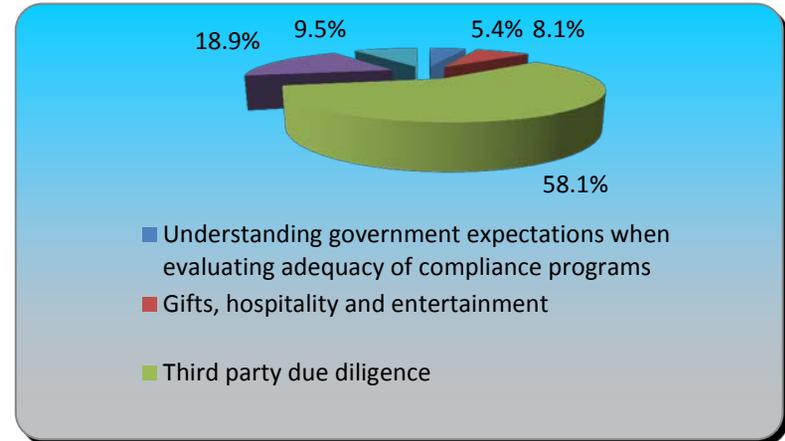
	Responses
Yes	38.16%
No	61.84%
Totals	100%



2013 TRACE Forum Appendix 2 – Benchmarking Results

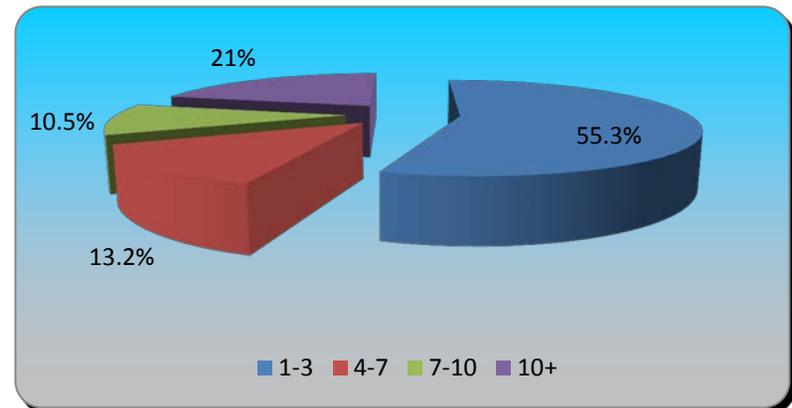
3.) What do you view as your company's most significant anti-bribery compliance challenge? (multiple choice) **Responses**

Understanding government expectations when evaluating adequacy of compliance programs	5.41%
Gifts, hospitality and entertainment	8.11%
Third party due diligence	58.11%
Supply and marketing chain compliance	18.92%
Dealing with state-owned enterprises	9.46%
Totals	100%



4.) How many employees does your company have allocated specifically to your anti-bribery program? (multiple choice) **Responses**

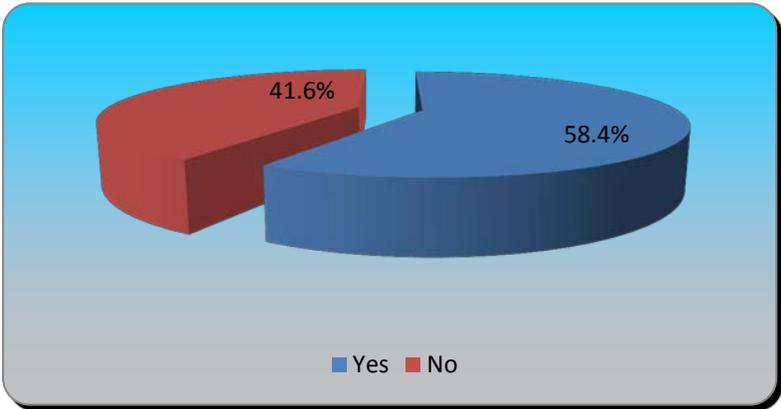
1-3	55.26%
4-7	13.16%
7-10	10.53%
10+	21.05%
Totals	100%



**2013 TRACE Forum
Appendix 2 – Benchmarking Results**

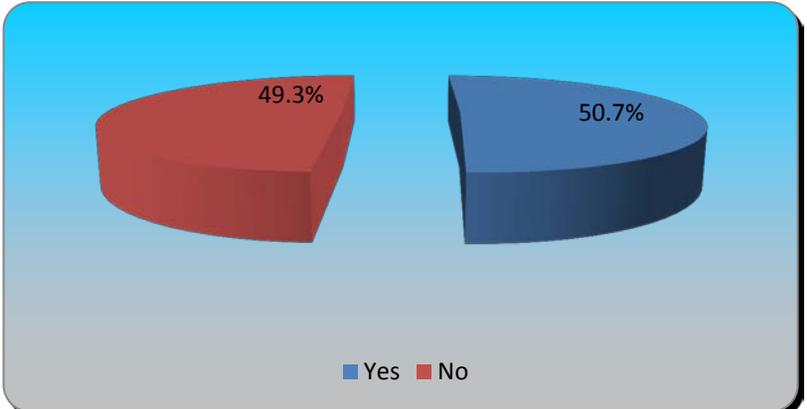
5.) Does your company have an annual statement of compliance for employees?

	Responses
Yes	58.44%
No	41.56%
Totals	100%



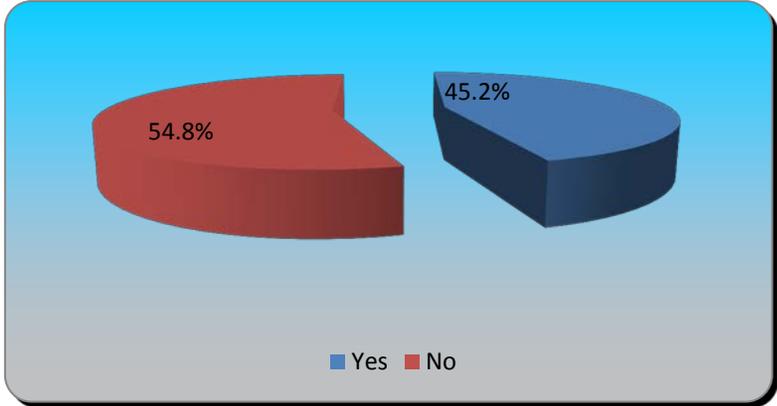
6.) Does your company have an annual statement of compliance for managers? (multiple choice)

	Responses
Yes	50.67%
No	49.33%
Totals	100%

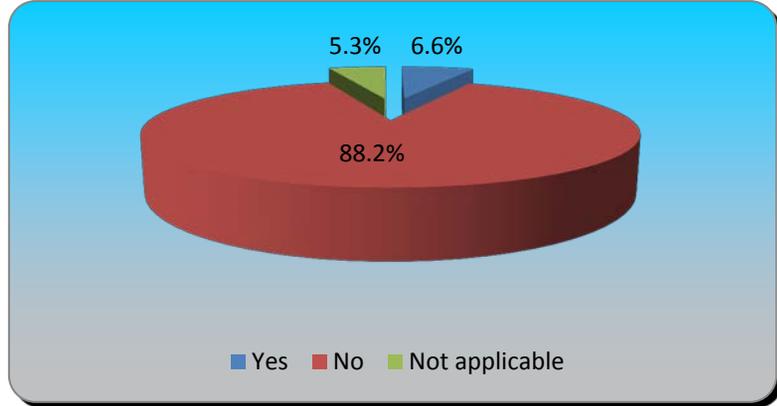


**2013 TRACE Forum
Appendix 2 – Benchmarking Results**

7.) Is your company concerned about a UK action being brought against your organization? (multiple choice)	Responses
Yes	45.21%
No	54.79%
Totals	100%



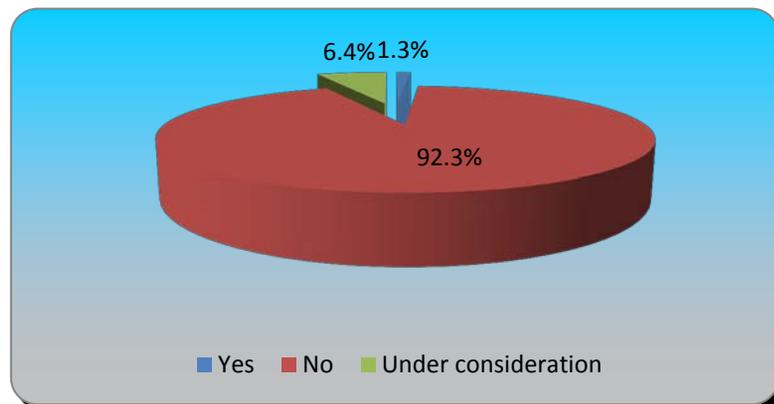
8.) Has your company made a voluntary disclosure regarding potential UK Anti-Bribery Act violations to the SFO? (multiple choice)	Responses
Yes	6.58%
No	88.16%
Not applicable	5.26%
Totals	100%



2013 TRACE Forum Appendix 2 – Benchmarking Results

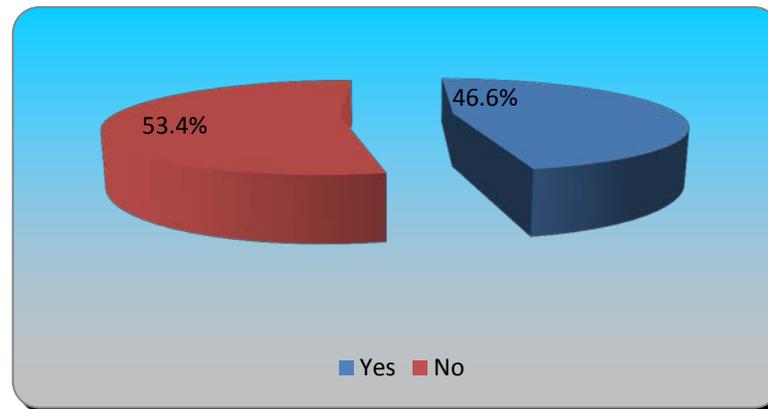
9.) Does your company offer a monetary payment/bounty for whistle-blowers who come forward internally? (multiple choice)

	Responses
Yes	1.28%
No	92.31%
Under consideration	6.41%
Totals	100%



10.) Has your company updated its internal compliance and reporting system in light of Dodd-Frank? (multiple choice)

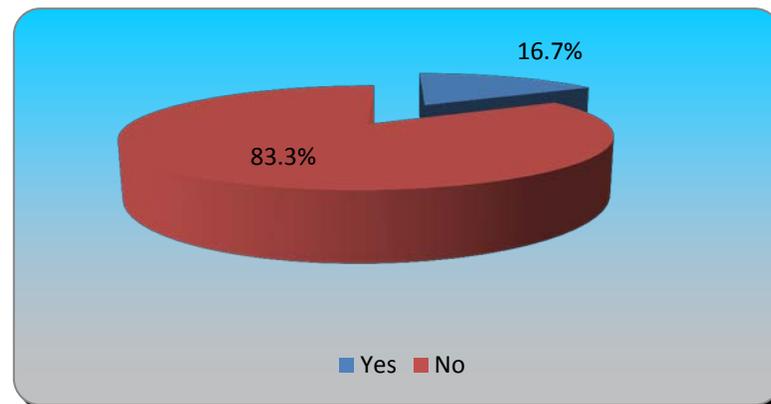
	Responses
Yes	46.58%
No	53.42%
Totals	100%



2013 TRACE Forum Appendix 2 – Benchmarking Results

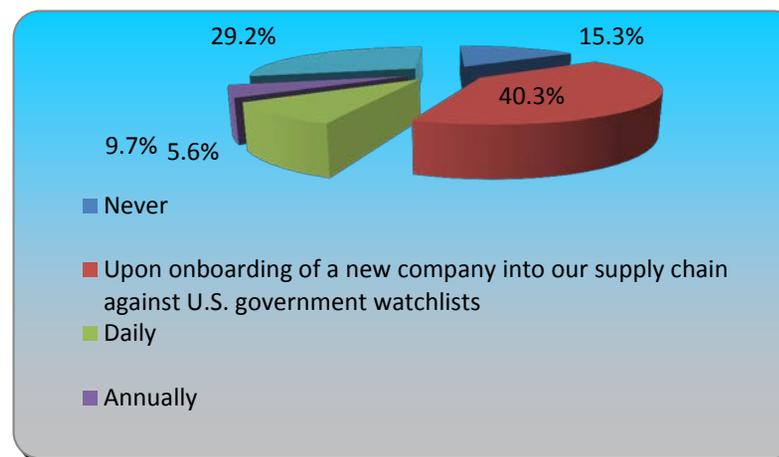
11.) Has your company changed any practices in reporting to the Board in light of Dodd-Frank whistleblower requirements? (multiple choice)

	Responses
Yes	16.67%
No	83.33%
Totals	100%



12.) How often do you search your supply chain against international (non-US) government watchlists? (multiple choice)

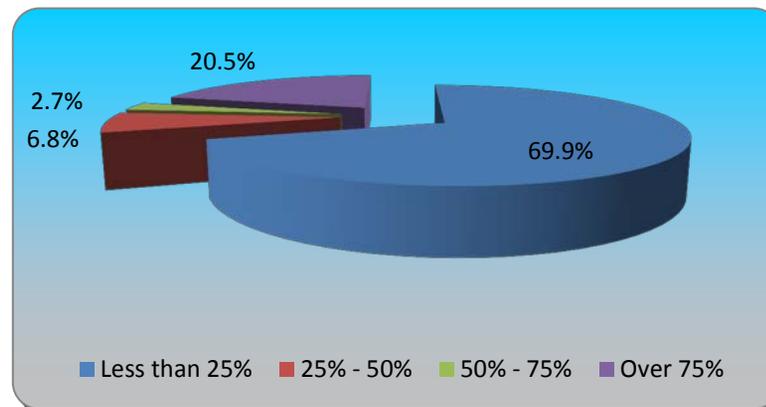
	Responses
Never	15.28%
Upon onboarding of a new company into our supply chain against U.S. government watchlists	40.28%
Daily	9.72%
Annually	5.56%
Other	29.17%
Totals	100%



2013 TRACE Forum Appendix 2 – Benchmarking Results

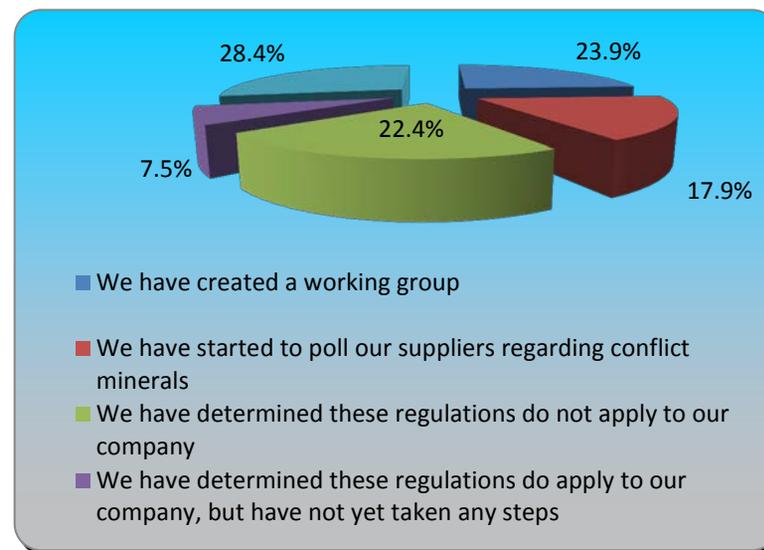
13.) What percentage of your suppliers do you put through due diligence? (multiple choice)

	Responses
Less than 25%	69.86%
25% - 50%	6.85%
50% - 75%	2.74%
Over 75%	20.55%
Totals	100%



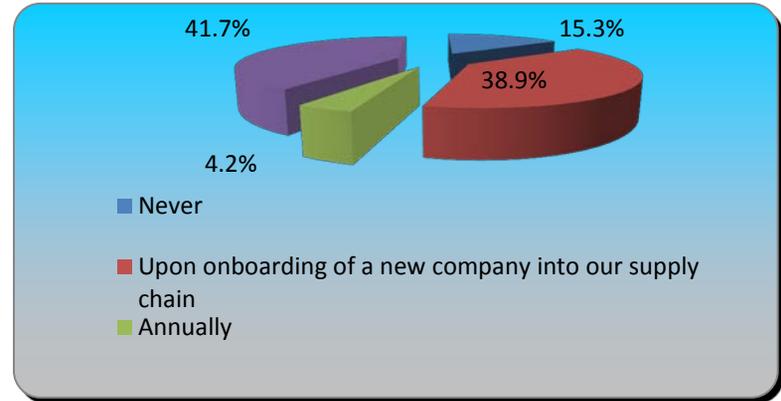
14.) At what stage is your company in its response to the new Conflict Minerals regulations? (multiple choice)

	Responses
We have created a working group	23.88%
We have started to poll our suppliers regarding conflict minerals	17.91%
We have determined these regulations do not apply to our company	22.39%
We have determined these regulations do apply to our company, but have not yet taken any steps	7.46%
Irrelevant	28.36%
Totals	100%

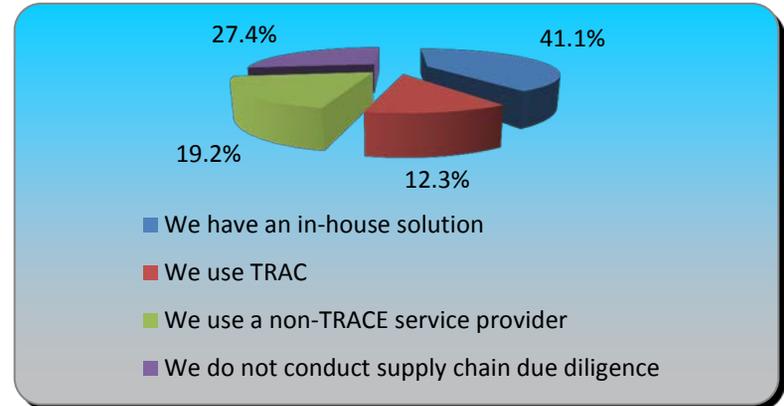


2013 TRACE Forum Appendix 2 – Benchmarking Results

<u>How often do you search your supply chain against U.S. government watchlists? (multiple choice)</u>	<u>Responses</u>
Never	15.28%
Upon onboarding of a new company into our supply chain	38.89%
Annually	4.17%
Other	41.67%
Totals	100%



<u>16.) How do you conduct your supply chain due diligence? (multiple choice)</u>	<u>Responses</u>
We have an in-house solution	41.10%
We use TRAC	12.33%
We use a non-TRACE service provider	19.18%
We do not conduct supply chain due diligence	27.40%
Totals	100%

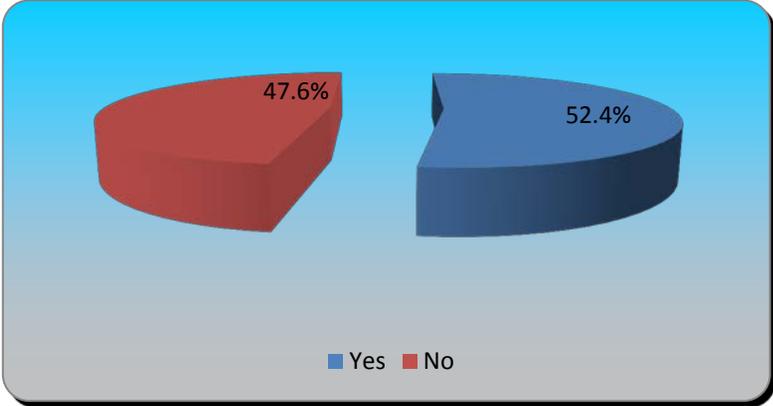


2013 TRACE Forum

Appendix 2 – Benchmarking Results

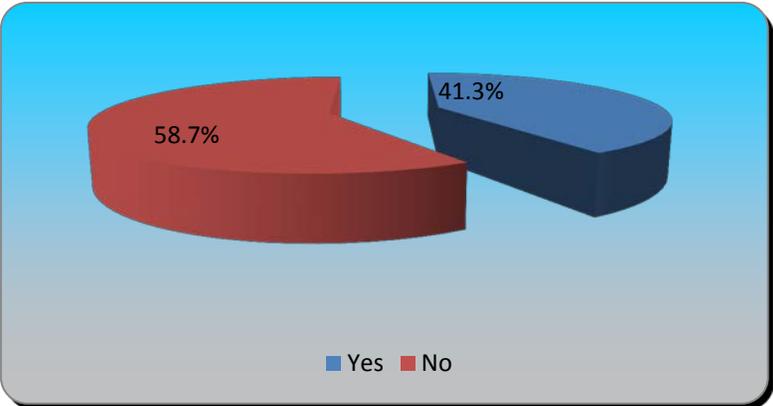
17.) Does your company consider national/regional variables when determining commission rates, such as inflation, cost of money, taxing schemes and import/regulatory climate? (multiple choice)

	Responses
Yes	52.38%
No	47.62%
Totals	100%



18.) Does your company consider the cost of living in a region when determining commission rates? (multiple choice)

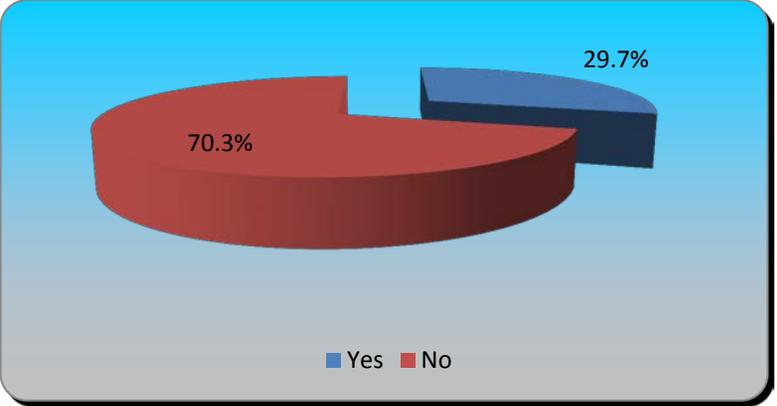
	Responses
Yes	41.27%
No	58.73%
Totals	100%



**2013 TRACE Forum
Appendix 2 – Benchmarking Results**

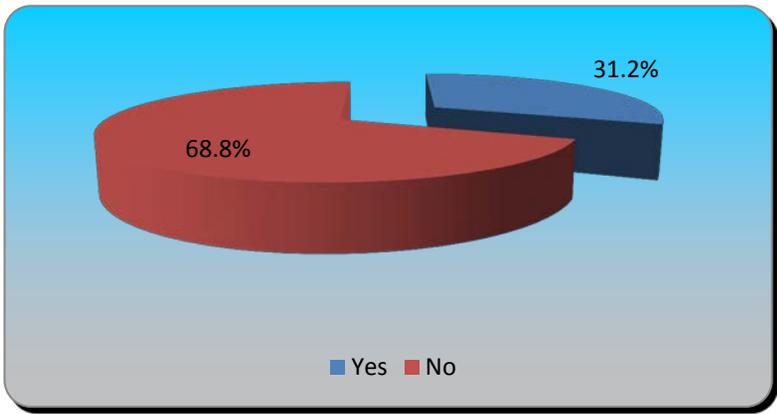
19.) Does your company require benchmarking of third party commission rates prior to approving specific commission rates? (multiple choice)

	Responses
Yes	29.69%
No	70.31%
Totals	100%



20.) Does your company impose a cap on the total amount of commission a third party can receive? (multiple choice)

	Responses
Yes	31.15%
No	68.85%
Totals	100%

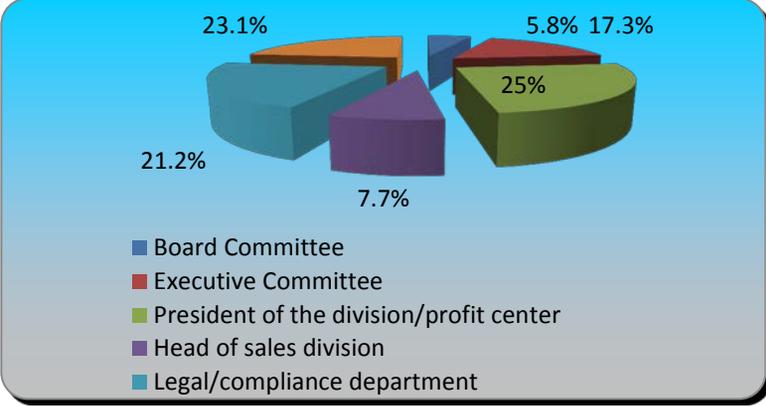


2013 TRACE Forum

Appendix 2 – Benchmarking Results

21.) If your company has a tiered commission rate structure, who approves the highest tier commission rates for your company? (multiple choice)

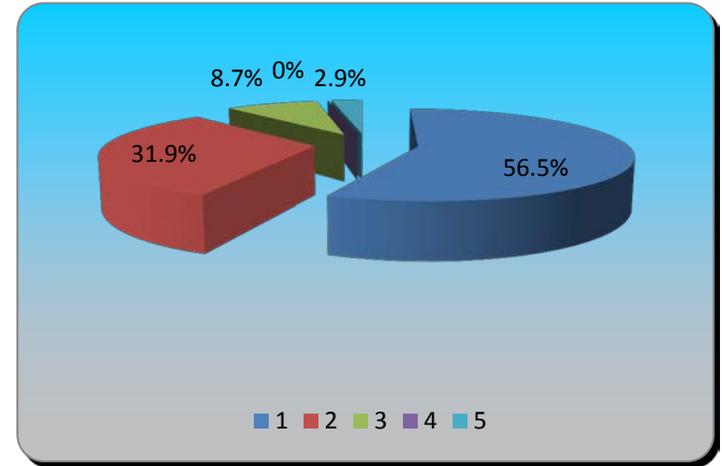
	Responses
Board Committee	5.77%
Executive Committee	17.31%
President of the division/profit center	25%
Head of sales division	7.69%
Legal/compliance department	21.15%
other	23.08%
Totals	100%



**2013 TRACE Forum
Appendix 3 – Benchmarking DOJ/SEC Guidance on the FCPA**

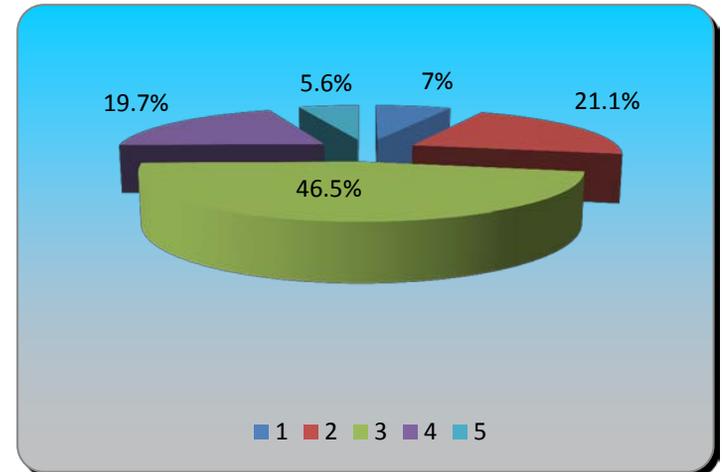
1.) On a scale of one to five (with one being not at all, and five being very much), how much has the FCPA Guidance changed your company's approach to FCPA Compliance? (multiple choice)

	Responses
1	56.52%
2	31.88%
3	8.70%
4	0%
5	2.90%
Totals	100%



2.) On a scale of one to five (with one being not at all, and five being very much), how helpful did you find the FCPA Guidance? (multiple choice)

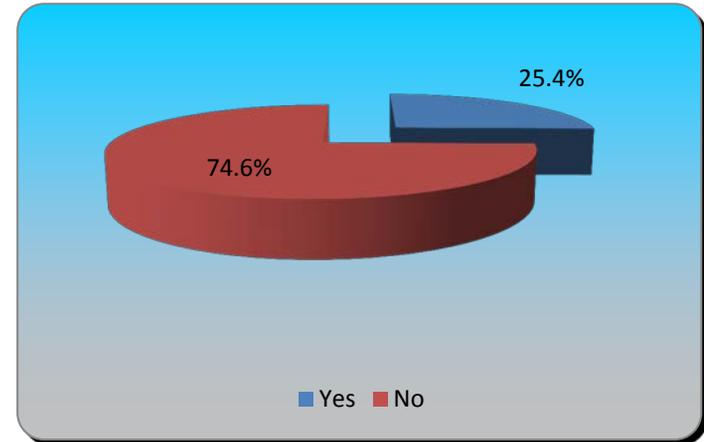
	Responses
1	7.04%
2	21.13%
3	46.48%
4	19.72%
5	5.63%
Totals	100%



2013 TRACE Forum
Appendix 3 – Benchmarking DOJ/SEC Guidance on the FCPA

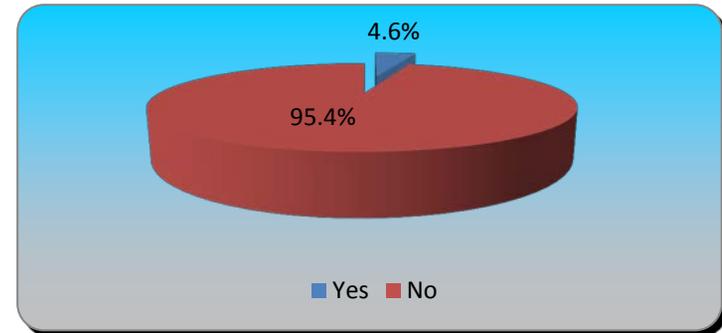
3.) Has the Guidance enabled you to gain more buy-in from management on FCPA compliance? (multiple choice)

	Responses
Yes	25.37%
No	74.63%
Totals	100%



4.) Did your company change its gifts & hospitality policy, including any limitations on gifts & hospitality, based on the FCPA Guidance? (multiple choice)

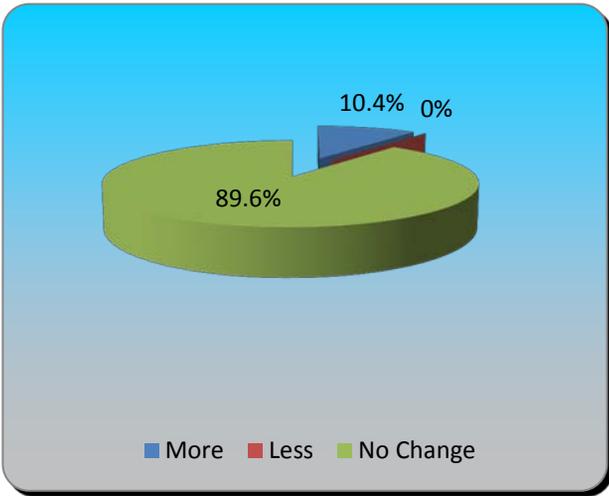
	Responses
Yes	4.55%
No	95.45%
Totals	100%



2013 TRACE Forum
Appendix 3 – Benchmarking DOJ/SEC Guidance on the FCPA

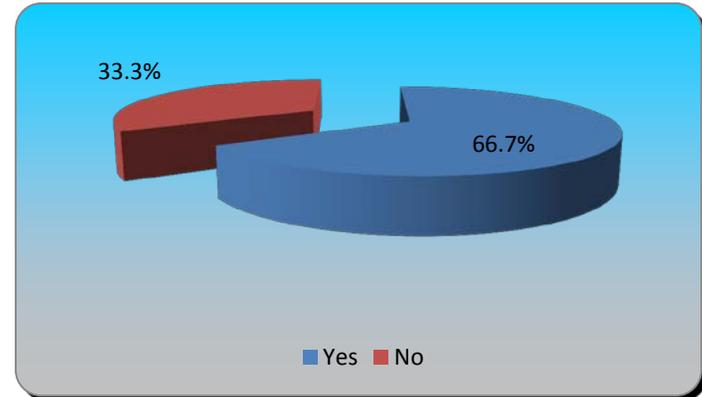
5.) Based on the FCPA Guidance, would your company be more or less inclined to voluntarily self-disclose potential FCPA violations? (multiple choice)

	Responses
More	10.45%
Less	0%
No Change	89.55%
Totals	100%

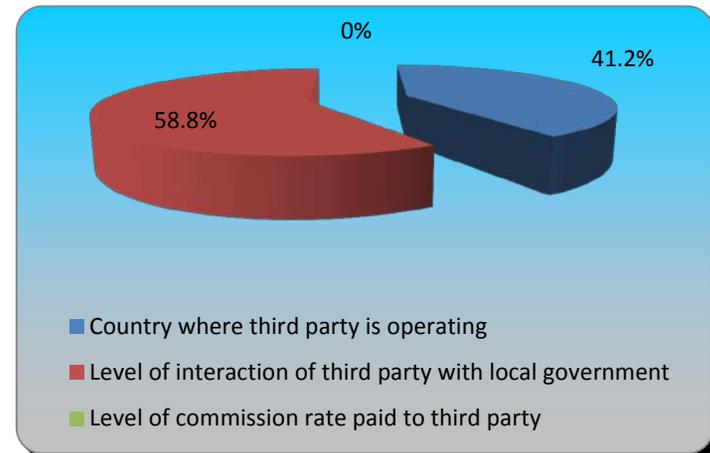


TRACE 2013 Forum
Appendix 4 - Benchmarking Third Party Due Diligence

1.) Does your company tailor its due diligence based on the risk posed by the third party relationship? (multiple choice)	Responses
Yes	66.67%
No	33.33%
Totals	100%



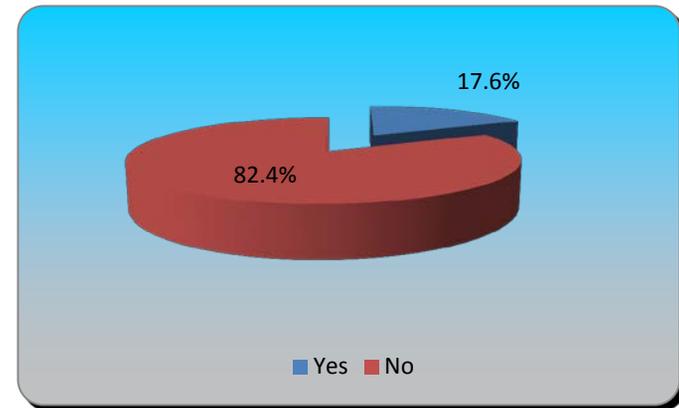
2.) Which of the following factors weigh most heavily in determining the risk posed by a third party? (multiple choice)	Responses
Country where third party is operating	41.18%
Level of interaction of third party with local government	58.82%
Level of commission rate paid to third party	0%
Totals	100%



TRACE 2013 Forum
Appendix 4 - Benchmarking Third Party Due Diligence

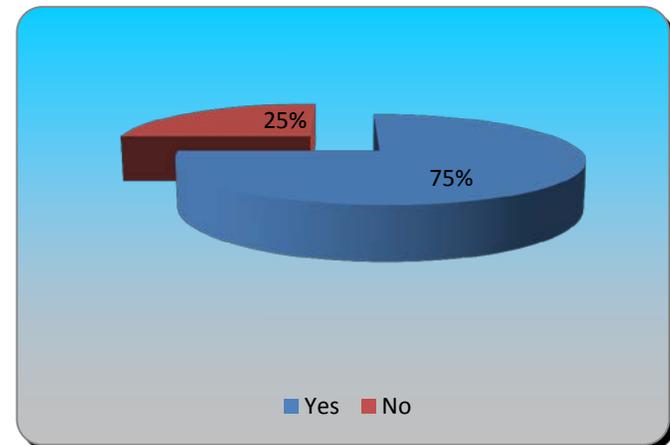
3.) Does your company put domestic third parties through the same level of due diligence as non-domestic third parties? (multiple choice)

	Responses
Yes	17.65%
No	82.35%
Totals	100%



4.) Does your company mandate due diligence for third parties that are not sales or commission agents? (multiple choice)

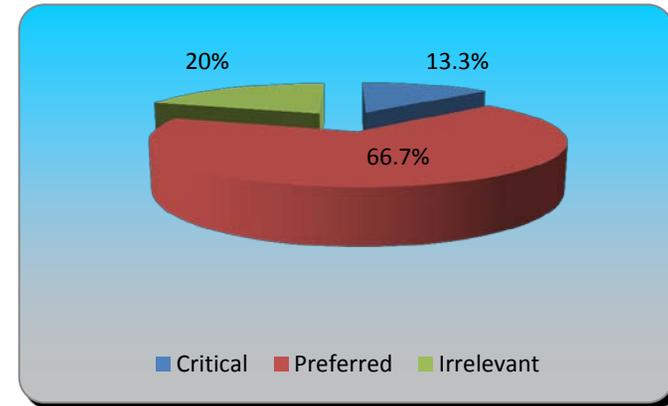
	Responses
Yes	75%
No	25%
Totals	100%



TRACE 2013 Forum
Appendix 4 - Benchmarking Third Party Due Diligence

**5.) With respect to due diligence, business references are:
(multiple choice)**

	Responses
Critical	13.33%
Preferred	66.67%
Irrelevant	20%
Totals	100%



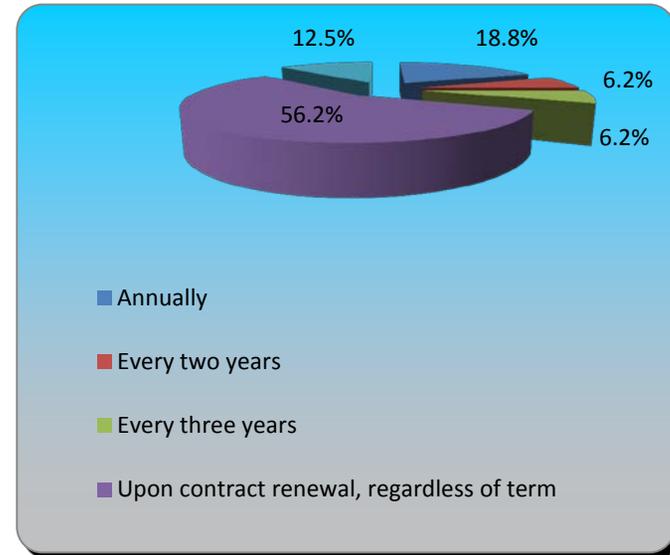
6.) Does your company have a tiered approval process for approval of engagements (e.g. tier determined by potential commission that might be earned)? If so, who has final approval for a third party? (multiple choice)

	Responses
Board Committee	0%
Executive Committee	7.69%
President of the division/profit center	15.38%
Head of sales division	0%
Legal/compliance department	30.77%
We don't use a tiered approach	46.15%
Totals	100%

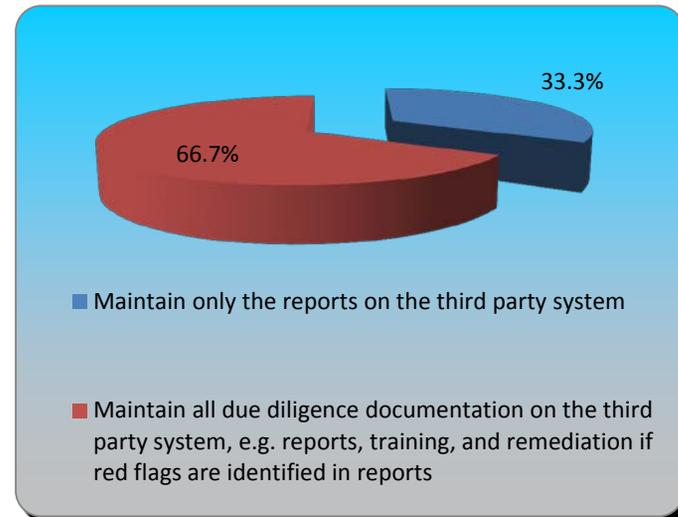


TRACE 2013 Forum
Appendix 4 - Benchmarking Third Party Due Diligence

7.) How frequently does your company conduct due diligence for distributors? (multiple choice)	Responses
Annually	18.75%
Every two years	6.25%
Every three years	6.25%
Upon contract renewal, regardless of term	56.25%
Only when issues are brought to the attention of the compliance team	12.50%
Totals	100%



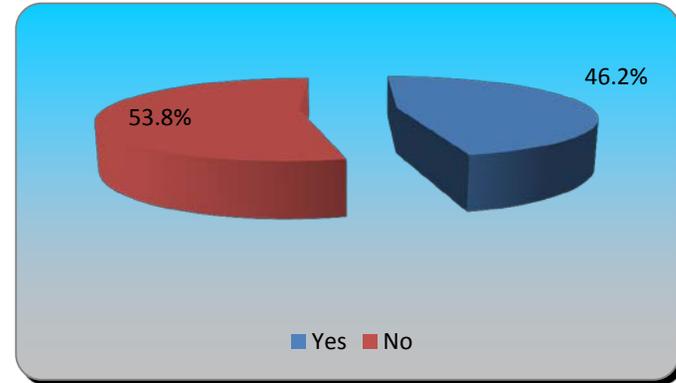
8.) If you use a third party company to conduct due diligence background checks, do you: (multiple choice)	Responses
Maintain only the reports on the third party system	33.33%
Maintain all due diligence documentation on the third party system, e.g. reports, training, and remediation if red flags are identified in reports	66.67%
Totals	100%



TRACE 2013 Forum
Appendix 4 - Benchmarking Third Party Due Diligence

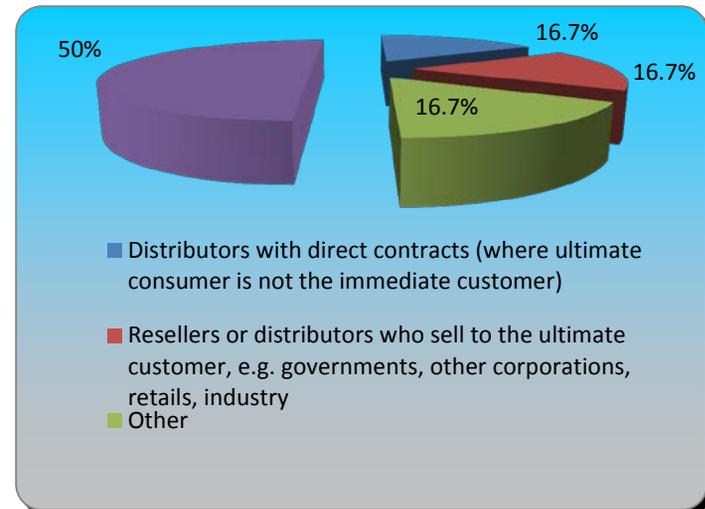
Does your company use an automated system for keeping track of third party agreements, renewals, etc.?

	Responses
Yes	46.15%
No	53.85%
Totals	100%



10.) For companies with distribution channels, how far into the distribution chain does your company conduct due diligence? (multiple choice)

	Responses
Distributors with direct contracts (where ultimate consumer is not the immediate customer)	16.67%
Resellers or distributors who sell to the ultimate customer, e.g. governments, other corporations, retails, industry	16.67%
Other	16.67%
Irrelevant	50%
Totals	100%



Acknowledgements

We would like to thank the panelists, speakers, and all those who engaged in the discussions, without whom the exchange of ideas that has become a hallmark of the TRACE Forum would not have been possible. TRACE would also like to extend a special thank you to Virna Di Palma, Lynn Baker, Abby Hancock, Sara Kilmon, and all the other members of the TRACE team that helped organize the event and make it such a success this year.

About Us

TRACE International is a non-profit membership organization that pools resources to provide practical and cost-effective anti-bribery compliance solutions for multinational companies and their commercial intermediaries. By continually developing new technologies and solutions that are easy to implement, TRACE helps companies conduct business ethically and in compliance with anti-bribery regulations, all while remaining competitive. TRACE Membership offers a cost-effective alternative to increasingly expensive and time-consuming corporate compliance.

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