

Sins of the Target

THE DEAL

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By now it is generally expected that corporations subject to the Foreign Corrupt Practices Act will conduct acquisition due diligence, including FCPA-focused due diligence, as part of most business mergers, acquisitions or partnership agreements. While much has been written on why such due diligence is necessary and how it should be conducted, there is less guidance on how companies should respond when potential FCPA violations are discovered in a target company or potential partner. Though FCPA issues discovered during due diligence may, on occasion, rise to such a material level that the acquiring company will find it prudent to walk away from a transaction, such issues need not always scuttle the deal. With planning and forethought, savvy companies can manage potential issues prior to closing in a fashion that will allow the transaction to go forward. In this article, Mark Rochon and Matt Reinhard* discuss some factors and considerations that companies and their counsel should balance when responding to a potential FCPA violation discovered during due diligence.

**Former Miller & Chevalier attorney*