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Cobalt International Energy: Oil, Angola and Corruption

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The US oil company Cobalt International Energy Inc. [has been issued](#) with a [Wells Notice](#) by the [U.S. Securities and Exchange Commission](#) in relation to its operations in Angola. The Wells Notice [formally warns](#) Cobalt that it may face enforcement action for breaches of “certain federal securities laws”:

“ In connection with such investigation, on the evening of August 4, 2014, the Company received a “Wells Notice” from the Staff of the SEC stating that the Staff has made a preliminary determination to recommend that the SEC institute an enforcement action against the Company, alleging violations of certain federal securities laws. In connection with the contemplated action, the Staff may recommend that the SEC seek remedies that could include an injunction, a cease-and-desist order, disgorgement, pre-judgment interest and civil money penalties. The Wells Notice is neither a formal allegation nor a finding of wrongdoing. It allows the Company the opportunity to provide its reasons of law, policy or fact as to why the proposed enforcement action should not be filed and to address the issues raised by the Staff before any decision is made by the SEC on whether to authorize the commencement of an enforcement proceeding. The Company intends to respond to the Wells Notice in the form of a “Wells Submission” in due course.

It is thought that the laws breached include the [Foreign Corrupt Practices Act](#) (FCPA).

Cobalt’s exploration in Angolan offshore waters started in 2008, in partnership with the state-owned oil company [Sonangol](#) and two other local companies, Alper Oil and Nazaki Oil & Gas. The SEC [commenced investigation](#) into Cobalt’s Angolan operations in 2011 following claims by an investigative journalist, [Rafael Marques de Morais](#), that Nazaki was secretly owned by government officials. In 2012, the three officials concerned [confirmed to the Financial Times](#) that they had indeed owned shares in Nazaki via another company at the time that Cobalt’s involvement started. The intermediate company has now been dissolved, though that does not necessarily mean the officials themselves have disposed of their indirect holdings.



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“Kopelipa”); and General Leopoldino Fragoso do Nascimento, known as Dino. All three are senior figures in the Angolan Government. [Manuel Vicente](#), currently Vice-President, is favorite to succeed Eduardo dos Santos as President.

Now where have we heard those names before? Recently I wrote about the failure of [Banco Espirito Santo Angola](#) in a [web of corruption](#) involving loans to unknown figures thought to be connected to the government. And I noted that indirectly the “triumvirate” of Vicente, Kopelipa and Dino appeared to own or control a minority interest in BESA. It seems it is not just banks in which this unholy trinity have an interest.



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Cobalt ‘s management claim that they had no say over Nazaki’s involvement. They say that Cobalt was assigned to a contractor group including Nazaki by the [Angolan government](#) via its state-owned oil company Sonangol, and did not find out about the involvement of the government officials until 2010.

The Angolan state-owned oil company Sonangol issues all licenses for oil exploration and receives license payments (rents) and taxes from foreign oil companies, supposedly channeling those revenues to the Angolan government – although the IMF [notes that](#) the timing of the transfers is unpredictable and there are unexplained differences between the payments recorded by Sonangol, the Ministry for Petroleum and the Finance Ministry. It is not possible for foreign oil companies to explore Angolan waters without Sonangol’s involvement. Sonangol has close (though opaque) links with the Presidential elite, including the President’s daughter who has a significant shareholding in Sonangol. Direct ownership of state and private enterprises by Angolan politicians is outlawed under Angolan law – but beneficial ownership via friends and family is not. It is difficult to see therefore how any oil company could operate in Angola without in some way being complicit in Angolan conflicts of interest and even outright corruption.




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So Cobalt's partnership with Sonangol, Alper and Nazaki was dictated by Sonangol. Cobalt is arguing that it could not reasonably have asked for, and expected to receive, information on the ownership structures of the companies with which it was required to partner. As Cobalt is the lead company in the consortium, it would be reasonable to expect it to conduct due diligence on its prospective partners as it would in an acquisition, including identifying beneficial owners. But in this case the government officials' shareholding was via a third company; could due diligence reveal arms'-length relationships of this kind without the co-operation of the company concerned? At that time, Manuel Vicente, one of the ultimate owners of Nazaki, was also [CEO](#) of Sonangol – an obvious conflict of interest and probably illegal under both Angolan and international law. It seems highly unlikely that Cobalt would have been given this information willingly. It is therefore unclear whether due diligence on the part of Cobalt would have disclosed this conflict of interest. And it is even less clear whether, had this conflict of interest been disclosed, it would have deterred Cobalt from going ahead with the deal. I suspect not.

Litigation costs, regulatory fines and reputational damage are business risks that companies assess when considering potentially lucrative business ventures in countries where there are known to be high levels of corruption or other obstacles to legitimate business. Cobalt must have known that involvement of state



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members of the ruling elite – the dos Santos family, its close associates and senior military figures. I would guess that Cobalt decided the potential returns from the oil exploration venture outweighed the risk of potential fines, litigation costs and reputational damage arising from breaches of the FCPA. If the only way a company can develop business links with a country is by means of bribery and corruption, then if the potential returns are large enough, bribery and corruption is what the company will do.

Nor is Cobalt the only oil exploration company that appears to have connived at Angolan corruption for business reasons. In 2011, the giant Texan oil and gas company Halliburton [announced](#) an internal investigation into possible breaches of the FCPA following similar allegations from a whistleblower: for Halliburton this was particularly embarrassing, occurring not long after it received a [record fine](#) for bribery and conspiracy in relation to its Nigerian operations. And there are [allegations](#) about Chevron's operations in Angola too, though so far no action against it by regulatory bodies.

There also remains an open question regarding how much of this is known to Goldman Sachs, which finances Cobalt's Angolan operations. Just as I find it hard to believe that Cobalt did not know a complex opaque partnership deal arranged by a corrupt government would probably channel money to members of that government, so I find it hard to believe that Goldman knew nothing, and asked no questions, about the purposes for which its money was being used. The Angolan venture has been exceedingly lucrative for Goldman and its financing partners, even though [according to the Financial Times](#) it has “not produced a single drop of crude”. It seems Goldman's pecuniary interests trump business ethics, as usual.

In [this report](#) from 2011 into Angola's oil industry, the Open Source Initiative observed that oil companies are more interested in their own profits than the political and social consequences of doing business with corrupt governments, though they indulge in window-dressing to conceal this:

- “ Multinational oil companies do not address governance or transparency issues in Angola. The companies' continued transactions with the government – without calling the terms of the transactions into question – have facilitated patronage problems, rent seeking and exacerbated the resource curse. Some exceptions exist, but these rare efforts are not industry wide. Companies tout their CSR projects, but these projects often lack community input, and never address transparency and human rights issues. In relation to the mitigation of impacts, multinationals get almost a free pass. There have been some efforts to hold multinationals to account, particularly through home-country anti-corruption instruments and civil society advocacy, but these need to be ramped up.





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by a US regulator into a company's foreign operations. In that respect it is similar to the [recent fine](#) imposed on BNP Paribas by US regulators for money-laundering – though Cobalt is a US company and therefore should be subject to US regulation in all its operations. But just as the long reach of US regulation in the BNP Paribas case should help to ensure that companies in future comply with sanctions against countries with appalling human rights records and/or involved in international terrorism and warfare, so action by the SEC against Cobalt should encourage international oil companies to behave more responsibly towards countries with poor records on corruption, exploitation and environmental damage.

Cobalt [says it will fight](#) any enforcement action on the grounds that it did not know about Angolan government officials' involvement in Nazaki. Ignorance is indeed a legitimate defense in this case. But naivety is not. Cobalt knew the risks and chose to take them. The SEC should throw the book at it.



Cobalt drilling rig offshore Angola. Photo credit: Offshore Energy Today

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