

FOCI Industry Working Group Meeting

Meeting Questions with Answers from the Defense Security Service

August 10, 2011

DSS representatives were invited to speak on July 26, 2011, to a group of Outside Directors and Proxy Holders from cleared companies currently operating under DSS FOCI mitigation. The following questions were posed to DSS during that meeting. The answers have been prepared by DSS based on current industrial security policy and practices, and are being posted to the DSS public web site for the information of all companies participating in the National Industrial Security Program, particularly those that are cleared under foreign ownership, control or influence mitigation measures. Questions or concerns about this document should be addressed to focihq@dss.mil.

Question: Many current restrictions on the access to data that the parent may have seem to be more folklore rather than written policy. One is the requirement to have the Government Security Committee (GSC) approve any financial data before it is released to the parent as long as no classified information or classified customer information is included in the financial data. Is it a requirement to get GSC or DSS approval prior to release to the parent, and if so why?

Answer: *The Special Security Agreement template in use by DSS for some time does not specifically address specific controls on releases of financial data by the cleared company to the parent. The current DSS Proxy Agreement template expressly permits the cleared company to provide financial data to the parent company, subject to prior review and acceptance of the format of the report by DSS.. DSS looks to the GSC to institute controls and processes that will prevent the cleared company from providing unauthorized access to classified information, export controlled unclassified information, or any other information that is subject to an OPSEC requirement in a government contract, when financial information is passed to the parent company. DSS is also available for consultation if a Government Security Committee has questions regarding the releasability of information to the parent company.*

Question: Is there any restriction to allowing the parent to have access to unclassified contracts as long as customer requirements are met? The parent has a fiduciary responsibility to understand the terms and conditions in order to understand financial risk to the corporation, so sometimes this is necessary.

Answer *There is no restriction on a cleared company providing its parent access to a government contract so long as the access is does not violate customer requirements relating to classified information, export controlled information and OPSECs. The GSC should*

contact their government customer if there is any concern regarding allowing the parent to access a contract.

The GSC needs to ensure that the parent has no ability to influence participation or performance of the classified contracts, to include unclassified portions of the classified contracts.

Question: Mitigating interactions (visits, phone calls, etc) between multiple U.S. cleared contractors (many with their own SSA or Proxy). Is there a plan in the works to help ease the reporting burden between cleared companies, especially those operating with an approved FOCI mitigation agreement?

Answer: *DSS is willing to relax the visitation requirements on like mitigated companies within a family of companies on a case-by-case basis. Companies should contact their cognizant FOCI Operations Division Action Officer to discuss their business requirements.*

Question: Is there OD/PH training to include legal, fiduciary and business education in the works?

Answer: *DSS training is available only with respect to the NISPOM and industrial security policies and procedures. DSS has no plans to train directors on their legal, fiduciary or business responsibilities and DSS does not evaluate a nominee's business acumen or judgment when it reviews nominations for these positions. At present, DSS provides a "Guidelines for Trustees, Proxy Holders and Outside Directors" document that outlines the roles and responsibilities of these positions. Additionally, DSS staff members discuss with the appointed individuals their specific duties in regard to the mitigation agreement during the Initial Meeting. A general "FOCI Basics" course is being developed by the DSS Center for Development of Security Excellence (CDSE). This web-based course will be available to all parties, including Outside Directors and Proxy Holders. The CDSE course is scheduled for delivery in Fiscal Year 2011.*

Question: Is the decision regarding the definition of a teleconference as an in-person meeting still being considered?

Answer: *An updated ECP is currently being socialized with a group of Outside Directors and Proxy Holders. In this updated ECP, teleconferences will be treated as a phone call. Video teleconferences will be treated as a visit.*

Question: Is the possibility of Facility Security Officer (FSO)-only approval for 'routine' visits for a Proxy Agreement still being considered?

Answer: *Proxy agreements do not allow for categories of routine business visits and Proxy Holders approve all visits. If a proxy company can provide a compelling business need for FSO-approval, DSS may consider this under certain circumstances.*

Question: Electronic communications monitoring tools are commercially available, and affordable. Why does DSS continue to allow FOCI-mitigated companies to use paper logs, which are unreliable and un-auditable?

Answer: *This is a best practice issue. As long as the company complies with the agreement, DSS will not dictate the method of collection.*

Question: Why is the Outside Director/Proxy Holder Collaboration Site so hard to access?

Answer: *As a DSS sponsored site, and due to the sensitive nature of the content, we are required to ensure a secured site; thus the use of Director of National Intelligence (DNI)'s Intelink which requires 2 sets of passwords to gain access if entered via a non-government network. DSS is looking at possible migration of the site to a more easily accessible location.*