What is the Cost of FCPA Compliance? Or what is the cost of non-compliance?

How do you measure the cost of poor performance? In the baseball world how do you measure the cost of the Houston Astros abysmal April and equally poor start to May, which is projected to lead to a 50-108 season record? One measure is the number of people who pay to come out to the ballpark. As reported in the May 2nd edition of the Houston Chronicle, the Astros home attendance is down 2,640 which translates into a per game revenue loss of up to $660,000. That works out to a full season loss of revenue of up to $5,436,000. This, of course, assumes that the drop in attendance is based directly on poor performance and not other factors such as the drop in disposable income due to the economy or some other factor. But is this the sole measure of the Astros loss?

In the Foreign Corrupt Practices Act (FCPA) world, there can be a more direct relationship of the costs to a violation or even an investigation. For instance, a former investigation into a Nigerian bribery case involving bribe payments of up to $132 million led to fines and disgorgement penalties of more than ***$1.2 billion***. (For a more complete discussion, see blog posting here.) These fines and penalties do *not* include any costs for investigations, legal or accounting fees, other professional fees or drop in stock value associated with an investigation.

All of this brings us to '*Ding Dong Avon Calling'* and the bribery probe of its China operations. As reported by Aruna Viswanatha, in MainJustice, on April 30 and Ellen Byron, in the Wall Street Journal, print edition, on May 1, Avon has reported its costs for the alleged scandal which has engulfed the company. The investigation has now expanded from China to four other (unidentified) business units. CEO Andrea Jung is reported as saying, in an April 30 conference call with investors, "No conclusions can be drawn at this time," regarding the investigations. However, what Avon did report is some of its FCPA investigative costs to date, anticipated FCPA investigative costs, loss of revenue in China and loss in first-quarter earnings.

The expenses, both anticipated and occurred to date, and their earnings loss box score is as follows (to-date):

Investigate Cost, Revenue or Earnings Loss	
Investigative Cost (2009)	**$35 Million**
Investigative Cost (anticipated-2010)	**$95 Million**
Drop in Q1 Earnings	**$74.8 Million**
Loss in Revenue from China Operations	**$10 Million**
Total	**$214.8 Million**

While the amount of the alleged bribery, or other corruption, has not yet been reported, MainJustice reported that the investigation is looking into "travel, entertainment, and gift expenses". It is difficult to believe that the $$ value of the bribes are anywhere close to the above mentioned investigation cost, revenue or earnings loss. The WSJ reported that Avon will overhaul its approach to sales in China, moving towards a direct selling approach, over the next 18 months. This certainly sounds like Avon is moving away from agents and distributors, the bane of many other US companies doing business abroad.

The WSJ also reported that the Avon investigation has expanded into its business practices in countries "selected to represent" each of its overseas regions. With slightly less than three-quarters of Avon's overall company revenue coming from outside the US, it may well be that the Department of Justice (DOJ) will want a more comprehensive review of the company's business practices worldwide, rather than simply "selected" business practices in "selected" countries. If I were Avon, I know I would want to do so, if not for the DOJ, but for my company.

How do you measure the cost of FCPA compliance? Put another way, can your company afford not to be FCPA compliant? What will the costs be if there are allegations of bribery and corruption in your company? Will the investigative costs exceed $100 million as they may well do in Avon's case? Will your fine, penalty and any profit disgorgement exceed $550 million as happened with Halliburton or simply be in the $330-$340 million range as with its former Joint Venture partners from the Nigerian bribery case? If you agree to a Corporate Monitor what will be that cost? As reported by Chris Matthews, in MainJustice on March 18, 2010, US District Judge Ellen Segal Huvelle raised the following spectre regarding Corporate Monitors during the Innospec Deferred Prosecution Agreement (DPA) and guilty plea hearing:

> It's an outrage, that people get $50 million to be a monitor," Huvelle said during a hearing in Washington, D.C., to approve a guilty plea for Innospec Inc., an international specialty chemicals company with nearly 1,000 employees. "I'm not comfortable, frankly, signing off on something that becomes a vehicle for someone to make lots of money."

This could lead to an Avon Box Score of costs which could read:

Cost	**Amount**
Pre-DPA Investigative Costs	***$95 million???***
Pre-DPA Revenue and Earnings Loss	***$84 million???***
Penalty and Profit Disgorgement	***$100 million???***
Monitor Cost	***$50 million???***
Total	***How Many Hundreds of $$$ Millions?***

So will the Astros lose 108 this year or is there something they can do about it. Equally important, what will be the cost to your company for FCPA (non) compliance and are you willing to risk it…or are you willing to do something to prevent it.