

Red Notice

A Monthly Update on Global Investigations and Prosecutions



March 2016

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ANTICORRUPTION DEVELOPMENTS

Olympus to Pay \$646 Million for Anti-Kickback and FCPA Violations

Early this month, Olympus Corp. of the Americas (OCA) settled government investigations related to violations of the U.S. Anti-Kickback Statute (AKS) and the Foreign Corrupt Practices Act (FCPA). OCA will pay \$623 million to settle criminal and civil allegations of AKS violations, and the company's Latin American subsidiary (OLA) will pay \$22.8 million to settle allegations of FCPA violations. OLA entered into a three-year Deferred Prosecution Agreement (DPA) with the Department of Justice (DOJ) Fraud Section under which it agreed to hire a compliance monitor and to implement various compliance enhancements. OCA entered into a separate DPA related to the AKS violations and agreed to hire the same monitor. According to the DOJ, OCA obtained more than \$600 million in sales as a result of kickbacks paid to doctors and hospitals in the United States and more than \$7 million in sales from bribes that OLA paid to health care practitioners at government-owned facilities in Central and South America. In addition to cash payments, OLA also paid for personal travel and provided heavily discounted equipment to physicians working for government facilities.

The case was initiated by OCA's former compliance officer, who filed a *qui tam* complaint in the District of New Jersey under the False Claims Act. The former employee will receive more than \$50 million from the civil settlement. To learn more read OCA's [press release](#) and coverage from [Bloomberg BNA](#) and [Forbes](#).

Qualcomm Settles Securities and Exchange Commission Charges Without Admission of Wrongdoing

On March 1, 2016, Qualcomm, Inc. agreed to [settle](#) allegations by the Securities and Exchange Commission (SEC) that the company hired relatives of Chinese government officials in exchange for winning business, and provided gifts, travel and entertainment to influence officials responsible for awarding contracts at government-owned telecommunication companies. According to the SEC, Qualcomm lacked the required internal controls to prevent the misrepresentations in the company's books and records that fraudulently portrayed these exchanges as legitimate business expenses. Qualcomm agreed to pay the \$7.5 million without admitting or denying the SEC's findings. The company also agreed to provide the SEC with annual reports and certifications of its FCPA compliance for the next two years. Read more at [StreetInsider](#) and [Forbes](#).

Businessman Pleads Guilty in Connection With Venezuelan Bribery Probe

On March 22, Jose Shiera Bastidas (Shiera), a Miami-area businessman who owns multiple U.S. energy companies, [pleaded](#) guilty to one count of conspiracy to violate the FCPA and to commit wire fraud, as well as to one substantive count of violating the FCPA. Shiera admitted that, beginning in 2009, he made improper payments through U.S. banks to officials of Petroleos de Venezuela S.A. (PDVSA), the state-owned oil company of Venezuela, in order to secure PDVSA contracts. Shiera's sentencing is set for July 8, 2016. On the same day as his guilty plea, the judge in Shiera's case also unsealed four other guilty pleas that had been entered previously in connection with the same investigation. This includes Shiera's former employee, who pleaded guilty to one count of conspiracy to violate the FCPA, and three former PDVSA employees who all pleaded guilty to one count of conspiracy to commit money laundering. Also charged in the case is Roberto Enrique Rincon Fernandez of Texas, whose trial is scheduled to begin on April 25, 2016.

According to news reports, U.S. authorities in multiple jurisdictions are currently conducting a wide-ranging investigation into possible drug trafficking, money laundering, and other crimes by members of the Venezuelan government and public-sector employees, including current and former employees of PDVSA. Learn more at the [FCPA Blog](#) and the [WSJ](#).

Novartis to Pay \$25 Million to Settle China Bribery Case

On March 23, Novartis AG agreed to pay a \$2 million penalty and \$23 million in disgorgement and interest to resolve allegations that employees and agents doing business in China violated the books and records and internal controls provisions of the FCPA. According to the SEC's cease-and-desist [order](#), between 2009 and 2013, employees of two Chinese Novartis subsidiaries, Sandoz China and Beijing Novartis Pharma Co Ltd. ("Novartis China"), boosted sales and prescriptions of their products by providing travel, entertainment, gifts and other improper forms of payment to doctors and healthcare professionals. They also used third-party travel and event planning vendors to facilitate the payments and fraudulently recorded these bribes as legitimate expenses. According to news sources citing an email statement from a Novartis spokesman, the allegations "largely pre-date[d] many of the compliance-related measures introduced by Novartis across its global organization in recent years." The SEC said that Novartis also conducted its own comprehensive investigation into these matters and implemented accompanying remedial measures. See more information at [Reuters](#) and [Bloomberg](#).

Separately, on March 30, [Reuters](#) reported that an anonymous whistleblower sent an email to Novartis leadership alleging that throughout 2013 and 2014, Novartis paid \$290,000 in bribes via a consulting firm to procure \$85 million in business benefits in Turkey. Novartis is investigating these claims, according to the news coverage.

FinCEN Assesses \$4 Million AML Penalty Against Florida Bank

On February 25, 2016, the Financial Crimes Enforcement Network (FinCEN) [announced](#) a \$4 million civil penalty against the Gibraltar Private Bank and Trust Company of Coral Gables, Florida, for willful violations of the Bank Secrecy Act. FinCEN found that Gibraltar failed to timely file at least 120 suspicious activity reports (SARs) related to \$558 million worth of transactions between 2009 and 2013. According to FinCEN, the failure to file SARs may have prevented the detection of transactions related to a \$1.2 billion Ponzi scheme orchestrated by attorney and Gibraltar bank investor Scott Rothstein. According to regulators, Gibraltar's SAR system returned an overwhelming number of false positives, making identification of true risks unmanageable. Gibraltar failed to act after it was first notified of its reporting deficiencies in 2010—the same year that Rothstein was convicted of the massive Ponzi scheme and sentenced to 50 years in federal prison. Gibraltar will pay \$1.5 million to FinCEN and \$2.5 million to the Office of the Comptroller of the Currency to settle penalties with both agencies. Learn more at [Miami Herald](#).

Various Companies Disclose FCPA-Related Investigations in Recent Filings

With 2015 annual reports recently filed, several companies disclosed information about new or ongoing FCPA-related investigations.

In a development demonstrating the anticorruption risks associated with M&A activity, Platform Specialty Products Corp., a Florida-based chemical company, [reported](#) that it is investigating possible FCPA violations by its subsidiary Arysta, which the company acquired in February 2015. Platform discovered the potential issues when implementing post-acquisition internal controls at Arysta. The company is conducting an internal investigation focusing on payments that Arysta made to third-party agents related to its tender business in West Africa. The company stated that it voluntarily disclosed the investigation to the DOJ and the SEC, and is cooperating with authorities. Read more at the [FCPA Blog](#) and the [WSJ](#).

In its most recent [annual report](#), Rhode Island-based industrial products company Nortek Inc. reported that it spent \$2.3 million in 2015 for legal and other professional services related to an FCPA investigation that involves “certain questionable hospitality, gift and payment practices, and other expenses” by Linear Electronics Co. Ltd., a China-based subsidiary. The company initially disclosed the investigation to the DOJ and SEC in January 2015. Nortek announced that it expects to incur additional investigation-related costs in 2016. Learn more at the [FCPA Blog](#) and the [WSJ](#).

Akamai Technologies, Inc., a Massachusetts-based cloud services provider, [stated](#) that its internal investigation involving sales practices in an unnamed foreign country remains ongoing. As reported in the [March 2015](#) edition of *Red Notice*, Akamai initially disclosed the investigation, which includes a review of FCPA compliance requirements, in its 2014 Form 10-K. The company has also stated that it is cooperating with the DOJ and the SEC in the investigation. See more information at the [FCPA Blog](#).

Alere Inc., a global diagnostics and service provider based in Massachusetts, disclosed in a recent [Form 8-K filing](#) that, on March 11, 2016, it received a grand jury subpoena from the DOJ in connection with FCPA-related issues in Africa, Asia and Latin America. The subpoena requests documents related to “sales practices and dealings with third parties (including distributors and foreign governmental officials).” Alere says that it is responding to the subpoena and plans to cooperate with the DOJ’s investigation. Read more at the [WSJ](#).

The World Bank Announces Multiple Debarments

After two quiet months, March came in like a lion as the World Bank announced the debarment of three companies. All three qualify for cross-debarment with other Multilateral Development Banks pursuant to the Agreement of Mutual Recognition of Debarments, dated April 2010.

The World Bank has [debarred](#) Schneider Electric Pakistan Pvt. Limited (“Schneider Pakistan”) for 25 months because of the company’s collusive conduct related to its role as a member of a switchgear manufacturing cartel in connection with a Bank-financed project in Pakistan. According to the World Bank, cartel member companies predetermined which companies would win specific contracts by setting the prices quoted in certain tenders. This debarment is part of a Negotiated Resolution Agreement (NRA) between the Bank and Schneider Pakistan’s parent company, Schneider Electric Industries SAS, who accepted ultimate responsibility for the wrongdoing and has committed to ensuring that Schneider Pakistan will implement corporate compliance measures identified by the Bank in the NRA.

The World Bank has also [debarred](#) South African company Voestalpine VAE SA (Pty) Ltd, including all of its controlled entities and affiliates, for 27 months as a result of the company’s failure to disclose the name and commission of an agent during the bidding process for a Bank-financed transportation contract in Congo. The debarment is part of an NRA, and compliance with the World Bank’s Integrity Guidelines is required prior to release from the debarment list.

Finally, the World Bank has [debarred](#) Damen Shipyards Gorinchem for 18 months after an Integrity Vice Presidency (INT) investigation revealed that Damen engaged in fraudulent practices by failing to disclose the identity and commission of an agent in connection with its bid for a Bank-financed project in Sierra Leone. In announcing the debarment and associated NRA, the Bank noted that it reduced Damen’s debarment period due to its cooperation with the Bank and related improvements to the company’s compliance program.

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EXPORT CONTROL AND SANCTIONS ENFORCEMENT

OFAC Finding of Violation for MasterCard International Incorporated Related to Violations of the Reporting, Procedures and Penalties Regulations

Earlier this month, the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) issued a Finding of Violation to MasterCard International Incorporated (“MasterCard”) related to the Reporting, Procedures and Penalties Regulations (RPPR). The RPPR require U.S. persons to report to OFAC when they hold property blocked under U.S. sanctions laws (e.g., the blocked property of persons on OFAC’s Specially Designated Nationals (SDN) List). MasterCard held accounts in which two Iranian banks (the “Banks”) had an interest at the time OFAC added the Banks to the SDN List. MasterCard had already restricted the accounts prior to the SDN designations due to broader U.S. sanctions targeting Iran, and the accounts had become dormant. Nonetheless,

the assets in the accounts remained with MasterCard, but MasterCard did not report the blocked accounts to OFAC following the SDN designations as required under the RPPR.

MasterCard was not penalized for the violations. In reaching this resolution, OFAC considered certain aggravating factors, including that (1) MasterCard had reason to know about the funds in the accounts associated with the designated Banks, (2) MasterCard is a large sophisticated corporation that deals primarily with financial institutions, (3) the failure to report resulted in OFAC making incomplete reports to Congress, and (4) MasterCard's compliance program was inadequate to prevent or timely identify the violations. OFAC also considered the following as mitigating factors: (1) MasterCard personnel did not have actual knowledge of the conduct leading to the violations, (2) the Banks were not able to access the blocked funds, (3) MasterCard had no similar sanctions enforcement history in the previous five years, and (4) MasterCard substantially cooperated with OFAC in the investigation.

For additional information, see the OFAC enforcement [notice](#) and [Bloomberg](#) reporting.

Energy Companies Agree to \$304K Settlement with OFAC in Connection with Alleged Violations of Cuba Sanctions

Late last month, Halliburton Atlantic Limited (HAL) agreed to pay \$304,706 to OFAC to settle potential liability for apparent violations of the Cuban Assets Control Regulations (CACR) on behalf of itself and affiliate Halliburton Overseas Limited (HOL). Both companies are incorporated in the Cayman Islands and are subsidiaries of U.S.-based Halliburton Energy Services, Inc. The alleged violations stem from HAL and HOL transactions involving the export of goods and services to support oil and gas exploration and drilling within an oil concession in Angola (the "Concession") in which Cuba Petróleo, a state-owned Cuban company, had an interest. Specifically, Cuba Petróleo had a 5 percent interest in an oil and gas consortium and corresponding interests in the Concession and any oil or gas procured in it. HAL issued invoices related to the export of goods and services to the Angolan consortium operator in the amount of \$1.19 million. HOL primarily performed the invoiced services.

In determining the settlement amount, OFAC considered among the aggravating factors that HAL and HOL (1) should have known when they exported the goods and services that they were dealing in property in which Cuba had an interest because, among other reasons, they had documentation showing the Cuban interest in the Consortium; (2) did not conduct reasonable due diligence on the transactions and therefore acted with reckless disregard for U.S. sanctions; and (3) had inadequate sanctions screening procedures, because they did not screen all Consortium members. The settlement, a reduction from the base penalty of \$423,202, reflects, among other mitigating factors, OFAC's determination that (1) HAL and HOL voluntarily disclosed the apparent violations, (2) HAL and HOL had no prior sanctions history in the previous five years, and (3) Cuba Petróleo's 5 percent interest in the Concession reduced the extent of economic benefit to Cuba.

For more information, see OFAC's enforcement [notice](#).

Kentucky Man Sentenced for AECA and Money Laundering Violations Involving Illegal Technology Equipment Exports to China

In early March, the U.S. District Court for the Eastern District of Kentucky sentenced Louis Brothers of Kentucky to nearly eight years in prison and required that he forfeit \$1.1 million in net proceeds from the illegal activities. Brothers, the former president and CEO of Valley Forge Composite Technologies, pleaded guilty in July 2015 to money laundering violations and violations of the Arms Export Control Act (AECA) in connection with the illegal export to China of microcircuits controlled by the International Traffic in Arms Regulations. Because these items, which can be used in military satellites and nuclear reactors, are controlled defense articles, they require authorization from the U.S. Department of State for export from the United States. Brothers intentionally avoided obtaining authorization for, or otherwise notifying the State Department of, these transactions. He also concealed his activities by falsely labeling the shipments and falsifying paperwork to make it appear that the proceeds of the illicit transactions were from a different source.

For additional information, see the DOJ [press release](#) and local media reports [here](#) and [here](#).

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EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

Obama Administration Further Eases Cuba-Related Sanctions and Export Controls

On March 16, 2016, ahead of President's Obama's visit to Cuba, OFAC and the U.S. Department of Commerce's Bureau of Industry and Security (BIS) implemented amendments to the CACR and Export Administration Regulations (EAR) that further ease the U.S. sanctions and export controls targeting Cuba, particularly related to financial transactions, travel and certain trade-related activities.

The latest relaxation of sanctions provides greater opportunities for certain U.S. businesses to engage with Cuba. U.S. exporters of authorized or exempt goods, entities providing mail or parcel transmission services or cargo

transportation services, and providers of carrier and travel services are now able to establish a business presence, such as a joint venture, in Cuba to facilitate authorized transactions. The changes also ease restrictions on cargo shipping by allowing cargo vessels from the United States to transit through Cuban territory en route to other countries without obtaining a specific license. In addition, the changes expand Cuban access to U.S. financial institutions by authorizing U.S. banks to process "U-turn" payments and U.S. dollar monetary instruments for transactions involving Cuban persons.

Finally, U.S. persons may now travel to Cuba independently pursuant to a general license for authorized "people-to-people" educational trips that are intended to enhance contact with the Cuban people.

For additional information, see the [BIS](#) and [OFAC](#) press releases and Akin Gump's [Trade Alert](#). For information on the previous easing of Cuba sanctions in the last year, see *Red Notice* issues for [January 2015](#), [September 2015](#) and [January 2016](#).

Executive Order Imposes Comprehensive Sanctions on North Korea

On March 15, 2016, in response to North Korea's ongoing pursuit of nuclear and missile programs, including its recent nuclear test in January and ballistic missile launch in February, President Obama issued a new Executive Order (EO), declaring North Korea's actions to be a threat to the national security of the United States. The new EO tightens existing sanctions against North Korea, which have included an import ban, SDN listings and specific sanctions related to watercraft vessels. With the new EO, U.S. sanctions against North Korea now also include a ban on exports and new investment. In addition, the EO expands the categories of persons subject to designation on the SDN list. The EO follows legislation signed by President Obama last month to strengthen and expand sanctions.

For more information, see the [EO](#) and [media reporting](#), as well as the February [issue](#) of the *Red Notice*.

Export Restrictions Imposed on Chinese Telecommunications Giant ZTE and Temporary Relief Subsequently Granted

Effective March 8, 2016, BIS issued a final rule adding Zhongxing Telecommunications Equipment Corporation (ZTE) of Shenzhen, China, and the following related companies to its Entity List: Beijing 8Star International Co., located in Beijing, China; ZTE Kangxun Telecommunications Ltd. ("ZTE Kangxun"), located in Shenzhen, China; and ZTE Parsian, located in Tehran, Iran. The Entity List designations stem from BIS allegations that ZTE set up shell companies to circumvent U.S. export controls and sanctions on Iran. BIS cited ZTE documents that explicitly advocate the use of shell companies to hide ZTE's role in transactions with Iran.

The designation prohibits both U.S. and non-U.S. persons from exporting, re-exporting or transferring any items subject to the EAR to entities on the Entity List without obtaining a license from BIS. Generally, a presumption of denial is imposed on such license requests, effectively restricting the access of those on the Entity List to U.S.-origin items and other items subject to the EAR.

On March 24, 2016, acknowledging ZTE and ZTE Kangxun's request to be removed from the Entity List and their related binding commitments made to BIS, BIS published a temporary general license in the Federal Register that has the effect of reversing the Entity List designations as they apply to ZTE and ZTE Kangxun (but not the other ZTE entities). The temporary general license restores the licensing policy and requirements pertaining to ZTE and ZTE Kangxun as they applied prior to the designations to the Entity List. It does not affect other obligations that may apply under the EAR with respect to ZTE and ZTE Kangxun. The temporary general license is valid until June 30, 2016, and is renewable as long as the U.S. government determines that ZTE and ZTE Kangxun are timely fulfilling their binding commitments.

For additional information, see the BIS [press release](#), Akin Gump's International Trade Alerts [here](#) and [here](#), [March 8](#) and [March 24](#) Federal Register Notices, and [media reporting](#) on the temporary license.

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WRITING AND SPEAKING ENGAGEMENTS

On April 4, partners [Davina Garrod](#) and [David Turetsky](#) along with a panel of government officials and in-house lawyers will present on "EU General Data Protection Regulation: Overview of key changes and a discussion of needed preparations" at Akin Gump's Washington, D.C. office. For more information, please contact jstuddard@akingump.com.

On April 4, counsel [Stanley Woodward](#) will participate on the webinar "FCPA Investigation Cooperation: Avoiding Common Corporate Mistakes," hosted by The Knowledge Group. For more information, click [here](#).

On May 3, partner [Jim Benjamin](#) is speaking on "Hypothetical: Ethical Issues" at PLI's The Foreign Corrupt Practices Act and International AntiCorruption Developments 2016. For more information, see [here](#).

On May 5, partner [Shiva Aminian](#) will be speaking on "Building a World Class Trade & Export Compliance Program" at nielsonsmith's EU Trade Controls for U.S. Companies 2016 conference on May 4-5 in Washington, DC. Learn more [here](#).

On May 4, partner [Dan Feldman](#) will speak at the Council on Foreign Relations' symposium "The New Geopolitics of China, India, and Pakistan" in Washington, D.C.

On May 10, partner [Mike Asaro](#) is speaking on the Ethics Panel at Managed Funds Association's annual regulatory and compliance conference 'Compliance 2016.' For more information, see [here](#).

On May 12, partners [Jim Benjamin](#), [Robert Hotz](#) and [Parvin Moyne](#) will present an ethics CLE titled "Internal Investigations Under the Yates Memo: Best Practices and Ethical Considerations" at Akin Gump's New York office. For more information, please contact jstuddard@akingump.com.

If you would like to invite Akin Gump lawyers to speak at your company or to your group about anticorruption law, compliance, cybersecurity, enforcement and policy or other international investigation and compliance topics, please contact Mandy Warfield at mwarfield@akingump.com or +1 202.887.4464.

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The "Export Control and Sanctions Developments and Enforcement" sections are edited by [Annie Schlappizzi](#).

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