Foreign Corrupt Practices Act
2015 Year-End Update

BakerHostetler

Dear Clients and Friends:

Both the United States Department of Justice (DOJ) and the United States Securities and Exchange Commission (SEC) have continued their focus on anticorruption enforcement in 2015. Although there was a decline in enforcement actions by both DOJ and the SEC under the Foreign Corrupt Practices Act (FCPA) from 2014, recent actions and announcements have made it clear that FCPA enforcement will remain a priority in 2016. Over the course of 2015, the DOJ and the SEC initiated a total of 12 corporate enforcement actions, with the SEC responsible for 10 of the 12.

The DOJ entered into two corporate FCPA resolutions in 2015: a non-prosecution agreement with Florida-based IAP Worldwide Services and a deferred-prosecution agreement with New Jersey-based Louis Berger International. These two resolutions involved approximately $24 million in penalties. As for individual enforcement actions, the SEC and DOJ have pursued FCPA charges in seven different enforcement actions. This is somewhat lower than the total number of individual enforcement actions last year, but should not be interpreted as showing a downward trend in either prosecutions under or resources devoted to the FCPA.

Also this year, the DOJ's announcement of the Yates Memo, though not a substantive change to DOJ policy, reinforces the DOJ's focus on holding individual corporate wrongdoers accountable by conditioning cooperation credit on delivering information about individual wrongdoers. And the DOJ hired 10 new FCPA prosecutors in 2015, further showing that the DOJ is strongly committed to FCPA enforcement.

In a speech given on November 17, 2015 at the American Conference Institute's 32nd Annual International Conference on the Foreign Corrupt Practices Act, Assistant Attorney General Leslie R. Caldwell described the DOJ's "increasing attention to the investigation and prosecution of international corruption under the FCPA." She focused her remarks on the expectations of transparency and disclosure that the DOJ has in corporate investigations, explaining that "voluntary disclosure does provide a tangible benefit when it comes time to make a charging decision." Caldwell also discussed the hiring of Hui Chen, previously the Global Head for Anti-Bribery and Corruption at Standard Charted Bank, as "Compliance Counsel" for the DOJ. In that role, Chen will assist DOJ prosecutors in determining if a company's compliance program is "truly . . . thoughtfully designed and sufficiently resourced to address the company's compliance risks."

As to the SEC's work, in a speech also given on November 17, 2015, at the FCPA conference, Andrew Ceresney, the Director of the SEC's Division of Enforcement, discussed the active work of the SEC's specialized FCPA unit. He said that, looking ahead, he "expect[s] FY 2016 will be another active year for FCPA cases." He continued by focusing on what he viewed as the main priorities for the SEC's FCPA program: self-reporting and cooperation,

individual accountably, cooperation with foreign regulators and "ongoing efforts to ensure that the FCPA is enforced to its fullest extent."

Notable legal developments in 2015 included a federal judge's dismissal of a conspiracy count in the DOJ's indictment against Lawrence Hoskins, the former senior vice president for the Asia region for Alstom SA. Kinross Gold Corporation disclosed it was under investigation by the SEC and DOJ in connection with its West African mining operations. Alexion Pharmaceuticals also disclosed that it is under investigation by the DOJ, although details of the investigation were not provided. Three officers from Direct Access Partners were sentenced to two to three years in prison for FCPA violations.

Included below are summaries of the major enforcement actions, settlements, prosecutions, and declinations from the second half of 2015. We are pleased to offer this update and look forward to answering any questions or concerns you have about these significant developments in FCPA enforcement, compliance and defense.

Spotlight: Self-Reporting and International Cooperation

Self-Reporting and International Cooperation in FCPA Investigations, With a Look Toward 2016

FCPA actions continue to be a priority for law enforcement agencies and regulators, and a couple of key developments in 2015 should be noted in anticipation of the regulatory and enforcement environment in 2016. In 2015, the SEC filed nine FCPA actions against entities, including pharmaceutical and investment companies, and collected over $215 million in remedies. The SEC refined its policy, requiring a company to self-report FCPA violations in order to be considered for a deferred prosecution agreement (DPA) or a non-prosecution agreement (NPA). While the U.S. DOJ brought only two enforcement actions in 2015, recent activity has shown an increase in resources for FCPA prosecutions and a focus on self-reporting and cooperation.

International cooperation has also been highlighted by both the DOJ and the SEC in the last quarter of 2015, in part in connection with self-reporting considerations. The first-ever DPA of the UK's Serious Fraud Office's (SFO) with Standard Bank in December 2015 provides additional insight into the increasing global cooperation in FCPA investigations. These policy developments and investigatory processes are particularly noteworthy as companies consider regulatory and enforcement priorities.

Self-Reporting and Cooperation

Both the DOJ and the SEC highlighted the importance of cooperation and self-reporting in criminal and civil FCPA investigations. The chief of the Criminal Division, Leslie Caldwell, spoke of the importance of transparency in FCPA activities as well as ways companies can "mitigate" their FCPA exposure. For the SEC, self-reporting is a necessary step if a company wants to be considered for a DPA or NPA. The DOJ's and SEC's approaches to FCPA cooperation are addressed in turn.

The DOJ reinforced that self-reporting and cooperation are important in FCPA investigations, though not required. The key to getting credit in an FCPA case is "mitigation." Mitigation consists of (1) voluntary self-disclosure, (2) full cooperation and (3) timely and appropriate remediation.[1] This provides the government with information to determine whether to prosecute, enter into a DPA or NPA, or issue a declination letter. For example, in June 2015, certain officials of PetroTiger Ltd., a British Virgin Islands oil company, pleaded guilty to conspiring to bribe foreign government officials in Colombia. According to a DOJ press release, however, the DOJ declined to prosecute PetroTiger because "[t]he case was brought to the attention of the department through a voluntary disclosure by PetroTiger, which fully cooperated with the department's investigation."[2] In contrast, Alstom S.A., the French power company, pleaded guilty to FCPA violations involving paying bribes to foreign officials and falsifying books and records in connection with projects for state-owned entities in countries including Egypt, Saudi Arabia and the Bahamas.[3] Alstom paid $772 million in connection with its settlement.

The first factor of mitigation, voluntary disclosure, requires a company to disclose relevant facts "within a reasonably prompt time after becoming aware of an FCPA violation" and before an investigation "is underway or imminent."[4]

The second factor, full cooperation, requires companies to disclose facts about corporate and individual misconduct. "Cooperation" for mitigation purposes extends to providing documents and making employees available, particularly where those documents and employees are located abroad. This factor also references the policies set forth in the "Yates Memorandum," issued by Deputy Attorney General Sally Quillian Yates on September

1 Speech, "Assistant Attorney General Leslie R. Caldwell Delivers Remarks at American Conference Institute's 32nd Annual International Conference on Foreign Corrupt Practices Act" (Nov. 17, 2015), http://www.justice.gov/opa/speech/assistant-attorney-general-leslie-r-caldwell-delivers-remarks-american-conference ("Caldwell Speech").

2 Release, "Former Chief Executive Officer of Oil Services Company Pleads Guilty to Foreign Bribery Charge" (June 15, 2015), http://www.justice.gov/opa/pr/former-chief-executive-officer-oil-services-company-pleads-guilty-foreign-bribery-charge.

3 Release, "Alstom Pleads Guilty and Agrees to Pay $772 Million Criminal Penalty to Resolve Foreign Bribery Charges" (Dec. 22, 2014), http://www.justice.gov/opa/pr/alstom-pleads-guilty-and-agrees-pay-772-million-criminal-penalty-resolve-foreign-bribery.

4 Caldwell Speech.

9, 2015.[5] As background, the Yates Memo – a much-discussed development in 2015 – does not relate specifically to FCPA actions but pertains to the DOJ's efforts to "strengthen [its] pursuit of individual corporate wrongdoing" in both criminal and civil corporate investigations. The Yates Memo contains six directives and requires that "for a company to receive any consideration for cooperation under the Principles of Federal Prosecution of Business Organizations, the company must completely disclose to the Department all relevant facts about individual misconduct. Companies cannot pick and choose what facts to disclose."[6]

The third factor of mitigation is remediation, where the company's compliance program and culture are key. The DOJ will look at the company's "overall compliance program" and "disciplinary efforts related to the specific wrongdoing at issue."[7] On November 3, 2015, the DOJ hired a compliance expert, Hui Chen, who will provide guidance to DOJ's Fraud Section prosecutors in their evaluation of compliance and remediation measures. Thus, in light of these developments, it is critical for corporations to have in place robust compliance programs, with appropriate resources and independent personnel.

The SEC has also focused on self-reporting and cooperation as an important part of its FCPA mandate, and has now refined its policy by requiring a company to self-report in order to be considered for a DPA or NPA. On November 17, 2015, SEC Director of the Division of Enforcement Andrew Ceresney noted the "significant and tangible" benefits for companies that self-report and cooperate.[8] Ceresney stated that in order to "incentivize" and "encourage" companies to self-report, the SEC will now require a company to "self-report misconduct in order to be eligible for the Division to recommend a DPA or NPA to the Commission in an FCPA case."[9] And self-reporting is not enough. In order to determine whether a company is eligible for a DPA or NPA, the Commission will consider the factors set forth in the Seaboard Report, which include the "corporation's self-policing, remediation and cooperation."[10]

While the SEC has taken a firm stance on requiring a company to self-report prior to consideration for a DPA or NPA, this requirement is in line with the SEC's practice. Ceresney noted that "[i]n each FCPA case where the SEC entered into a DPA or NPA, the company involved self-reported the violations, and then provided significant cooperation throughout the investigation."[11] For example, in May 2011, Tenaris S.A., a global steel manufacturer, entered into the first DPA with the SEC and paid $5.4 million in connection with bribery payments to Uzbekistan government officials in order to obtain government contracts. The SEC noted that Tenaris conducted an internal review of its operations and controls, identified and reported FCPA violations by personnel in Uzbekistan, and "significantly enhanced its anti-corruption policies and practices" following its review.[12] Similar findings of cooperation and disclosure were present in the other DPAs that the SEC entered into with other corporations.

The DOJ's and SEC's guidance on FCPA investigations provides a useful road map for companies, and it is critical to keep these guidelines in mind when reviewing compliance programs and conducting periodic testing and auditing of these programs. For individual accountability, while the extent to which the Yates Memo provides new guidance or memorializes existing practices is debatable, it is a policy of the DOJ and one of which companies should be aware. In light of the Yates Memo, companies should look at their compliance programs and internal review processes and make sure they adequately take individual misconduct into account.

International Cooperation

The cooperation between U.S. and international law enforcement and regulatory agencies was highlighted in 2015 and is expected to continue into 2016. The SEC noted that a key to its success in FCPA actions is the "effective coordination with international regulators and law enforcement" as FCPA investigations

5 Memo, "Individual Accountability for Corporate Wrongdoing," Sally Quillian Yates (Sept. 9, 2015), http://www.justice.gov/dag/file/769036/download ("Yates Memo").

6 Yates Memo, at 3.

7 Caldwell Speech.

8 Speech, SEC Director of the Division of Enforcement Andrew Ceresney, "ACI's 32nd FCPA Conference Keynote Address" (Nov. 17, 2015), http://www.sec.gov/news/speech/ceresney-fcpa-keynote-11-17-15.html ("Ceresney Speech").

9 Ceresney Speech.

10 Ceresney Speech.

11 Ceresney Speech.

12 Release No. 2011-112, "Tenaris to Pay $5.4 Million in SEC's First-Ever Deferred Prosecution Agreement" (May 17, 2011), http://www.sec.gov/news/press/2011/2011-112.htm.

"routinely rely on evidence obtained from foreign jurisdictions, and often are conducted in parallel with foreign governments."[13]

Ceresney cited the recent settlement with Hitachi, Ltd. as an example of successful international cooperation. In that case, the Tokyo-based corporation Hitachi was charged with failing to account for improper payments on its books and records made to a front for the African National Congress political party in South Africa. Hitachi made the payments to gain influence in order to obtain government contracts to construct two power plants.[14] The SEC received assistance in its investigation from the Integrity and Anti-Corruption Department of the African Development Bank, as well as the South African Financial Services Board. Nearly three months after the $19 million settlement with the SEC, Hitachi settled with the African Development Bank Group.

In light of the discussion about self-reporting above, the DOJ notes that international cooperation is an important consideration for companies that consider mitigation. AAG Caldwell stated that "voluntary self-disclosure in the FCPA context does have a particular value to the department" in part because of the challenges posed by the international nature of the crimes. Caldwell warned: "As time passes and the world continues to shrink, we have more and more sources of information about FCPA violations, ranging from whistleblowers, to law enforcement, to competitors, to current and former employees, the foreign media, and others. So if you discover an FCPA violation that you opt not to self-report, you are taking a very real risk that we will one day find out, or that we already know, and you will not be eligible for the full range of potential mitigation credit."[15]

An interesting development in international cooperation and DPAs abroad is the Standard Bank matter. On November 30, 2015, the UK's Serious Fraud Office announced its first-ever DPA, with Standard Bank.[16] London-based Standard Bank was charged with violating Section 7 of the UK's Bribery Act of 2010. In its Statement of Facts, Standard Bank admitted that between June 1, 2012, and March 31, 2013, it and its subsidiary in Tanzania, Stanbic Bank Tanzania Ltd., made improper bribery payments. Standard Bank acted as lead manager for a sovereign debt offering for the government of Tanzania. In connection with its attempt to secure the mandate to raise the funds, Stanbic Bank made a $6 million payment to Enterprise Growth Markets Advisors (EGMA) Limited, a Tanzanian firm whose shareholders included government members, in order to induce members of the Tanzanian government to give the opportunity to Standard Bank and Stanbic. The SFO also noted the failings in Stanbic's anti-money laundering and anti-corruption procedures. Standard Bank paid nearly $33 million in penalties in connection with its DPA.

In its announcement, the SFO stated that it "has worked with the DOJ and Securities and Exchange Commission SEC throughout this process."[17] On November 30, 2015, the SEC announced it had settled with Standard Bank for $4.2 million for failure to conduct adequate diligence on EGMA and disclose payments in connection with debt issued.[18] The SEC noted that it did not have jurisdiction to bring FCPA charges against Standard Bank because Standard was not an "issuer" as defined under the FCPA.

Conclusion

The statements by law enforcement and regulators provide guidance for companies on the state of FCPA actions. The focus on self-reporting, particularly as a requirement by the Commission as a first step to any DPA or NPA consideration, is an important policy change going forward. It is also an important consideration for companies, as cooperation and self-reporting have both benefits and costs on a business level. Moreover, companies should be mindful of the development of international cooperation – particularly the UK SFO's usage of DPAs – in FCPA investigations. Regarding ongoing compliance responsibilities, companies should periodically review their compliance programs with a risk-based approach and ensure that they adequately take individual and corporate activity into account.

13 Ceresney Speech.

14 Release, 2015-212, "SEC Charges Hitachi with FCPA Violations" (Sept. 28, 2015), http://www.sec.gov/news/pressrelease/2015-212.html.

15 Caldwell Speech.

16 In 2013, the United Kingdom enacted s. 45 and Schedule 17 of the Crime and Courts Act of 2013, allowing for the use of DPAs between a prosecutor and company for alleged economic or financial misconduct.

17 News Release, "SFO Agrees First UK DPA With Standard Bank" (Nov. 30, 2015), https://www.sfo.gov.uk/2015/11/30/sfo-agrees-first-uk-dpa-with-standard-bank/

18 Release No. 2015-268, "Standard Bank to Pay $4.2 Million to Settle SEC Charges: Bank Agrees to $36.9 Million Global Settlement with the SEC and the UK's Serious Fraud Office" (Nov. 30, 2015), https://www.sec.gov/news/pressrelease/2015-268.html.

Legal Developments and New and Ongoing Investigations

Olympus DOJ Investigation

Beginning in 2012, Japan-based Olympus Corp., a manufacturer of scientific cameras and imagining equipment, has been under FCPA scrutiny for irregularities relating to its subsidiaries' medical business in Brazil. Olympus' indirect subsidiary, Olympus Latin America, Inc. (OLA) and OLA's Brazilian subsidiary, Olympus Optical do Brasil, Ltda. (OBL) were involved in the alleged misconduct. The U.S. subsidiary, and parent company of OLA, self-reported the conduct to the DOJ. Without specifying the status of the investigation itself, in August 2015 the company recorded a loss of approximately $19 million for the first quarter fiscal year ending March 31, 2016, and issued a news release, "Notice of Recognition of Extraordinary Loss Due to the Investigation by the U.S. Department of Justice Against Subsidiaries Relating to the Foreign Corrupt Practices Act" (the "Notice").

In the Notice, the company admitted that it was "currently continuing discussions with the DOJ towards a resolution, but in view of the progress" of the investigation, it would need to record the loss.

PTC Potential SEC and DOJ Settlement

PTC Inc., a Massachusetts-based computer software company, announced in its 10-K for fiscal year ending September 30, 2015 that it reserved a total of $28.2 million for a potential settlement with both the DOJ and SEC regarding alleged FCPA offenses in China. According to the filing, PTC Inc. said that it had reached an agreement in principle to settle the investigation into expenditures in China, "including for travel and entertainment, that apparently benefited employees of customers regarded as state owned enterprises in China."

The company stated in its 10-K, that there "can be no assurance that we will enter into final settlements on the agreed terms with these agencies . . . ." But even with this language, it is likely that the company will soon come to a final settlement with both agencies.

Hoskins (Alstom) Motion to Dismiss

A recent decision in the case against a former senior executive of Alstom Power, Inc. for alleged FCPA violations sheds further light on accomplice liability in FCPA cases. As background, there has been ongoing litigation regarding Alstom Power's alleged scheme between 2002 to 2009 to bribe foreign officials in Indonesia in order to secure a $118 million contract to build power stations for a state-owned and state-controlled electric company. Hoskins, a former senior vice president for the Asia Region employed by Alstom UK, was allegedly in charge of hiring consultants to assist with obtaining contracts, including the power station project in Indonesia.

In August 2015, the U.S. District Court for the District of Connecticut granted in part Hoskins' motion to dismiss the charge of criminal liability for conspiracy to violate the FCPA. The DOJ had charged that Hoskins conspired to violate the FCPA by "acting together with" a domestic concern. The court addressed the issue of "whether a non-resident foreign national could be subject to criminal liability under the FCPA, even where he is not an agent of a domestic concern and does not commit acts while physically present in the territory of the United States, under a theory of conspiracy or aiding and abetting a violation of the FCPA by a person who is within the statute's reach." In granting the partial dismissal, the court noted that it was Congress's intent to exclude non-resident foreign nationals from FCPA liability where they were not subject to direct liability. The court found that the DOJ could not maintain a claim that Hoskins "could be liable for conspiracy even if he is not proved to [be] an agent of a domestic concern." The DOJ could only avoid dismissal if it "proceeds under a theory that Hoskins is an agent of a domestic concern and thus subject to direct liability under the FCPA."

Alexion Investigation

In November 2015, Alexion Pharmaceuticals disclosed in its 10-Q filing that the DOJ has commenced an investigation into its grant-making activities "in various countries" and its compliance with the FCPA. The SEC has been investigating Alexion since May 2015, and in October, the DOJ requested a voluntary production of documents related to that investigation.

In that filing, Alexion discussed the May 2015 SEC subpoena and disclosed the DOJ's interest in the investigation. Unfortunately, as the investigation is still rather new, neither Alexion nor the DOJ

have publicly provided details. Alexion is cooperating fully with the investigations and has reiterated its commitment to operate at the highest level of business ethics.

Kinross Gold Corporation

In October 2015, the world's fifth largest gold producer, Kinross Gold Corporation,[19] disclosed in a press release that it is under investigation by the SEC and DOJ in connection with its West Africa mining operations. The release noted that Kinross retained external counsel in August 2013 to conduct an internal investigation after a whistleblower internally reported allegations of payments made to government officials and certain internal control deficiencies at its West Africa mining operations. The release also noted that Kinross received subpoenas on these alleged payments and internal control deficiencies from the SEC in March 2014, December 2014, and July 2015 and from the DOJ in December 2014. The release noted that Kinross is fully cooperating with these ongoing investigations and that its own ongoing internal investigation at that point "has not identified issues that Kinross believes would have a material adverse effect on the Company's financial position or business operations." It has been reported that the SEC subpoenas seek "records of communications and payments to officials and contractors at Kinross's operations in Mauritania and Ghana."

19 Kinross is based in Canada and maintains a listing on the New York Stock Exchange.

Prosecutions, Sentencings, Settlements and Declinations

Mead Johnson SEC Enforcement Action

In July, Mead Johnson Nutrition Co. agreed to pay just over $12 million to settle civil charges brought by the SEC that it had violated the FCPA. Mead Johnson, which was previously part of Bristol-Meyers Squibb until being spun off in 2009, is the maker of the infant formula Enfamil. The SEC alleged that a Mead Johnson subsidiary in China paid $2 million in bribes to healthcare professionals in Chinese hospitals to recommend its products and provide contact information for new or expectant mothers so it could market its products to these patients.

Through its investigation, the SEC found that Mead Johnson used "distributor allowances" to fund bribes paid by third-party distributors who sold the products, and also that the company failed to account for the improper payments on its books and records.

Without admitting or denying liability, Mead Johnson agreed to pay $7.77 million in disgorgement, $1.26 million in prejudgment interest, and $3 million as a penalty. Of note, this enforcement action not only involved the FCPA's books and records and internal control provisions, but it was also premised on the theory that certain foreign healthcare officials – Chinese healthcare professionals, in this case – are "foreign officials" under the FCPA.

Daren Condrey

In August 2015, the DOJ announced that it had previously entered into a plea agreement with Daren Condrey, a principal of Transport Logistics International in Maryland, for conspiring to violate the FCPA and conspiring to commit wire fraud. The DOJ revealed Condrey's guilty plea while announcing the guilty plea of Vadim Mikerin, a Russian nuclear energy official residing in Maryland, for conspiring to commit money laundering in connection with arranging over $2 million in bribes to secure contracts with TENEX, a subsidiary of Russia's State Atomic Energy Corporation. Court documents indicate that between 2004 and 2014, Condrey, Mikerin and others conspired to secure improper business advantages for U.S. companies that did business with TENEX by transmitting funds to offshore shell company bank accounts in Cyprus, Latvia and Switzerland in connection with consulting agreements to disguise the illicit payments. Condrey is still awaiting sentencing by Judge Theodore D. Chuang of the U.S. District Court for the District of Maryland.

Mikerin (TENEX) Sentencing

Vadim Mikerin, a former director of Russian nuclear energy firm TENEX, was sentenced to 48 months in federal prison in December for taking $2 million in bribes. He was also ordered to forfeit $2.1 million. The bribes were taken in order to award uranium transportation contracts to Transport Logistics International, a Maryland-based firm. From 1996 to 2003, TENEX paid Transport Logistics International $33 million to transport uranium from Russia to the United States as part of a program to remove unsecured nuclear weapons from Russia.

Mikerin, a Maryland resident, had pleaded guilty to a money-laundering conspiracy and said in his plea that "the funds were transmitted with the intent to promote a corrupt payment scheme that violated the Foreign Corrupt Practices Act." The individuals who bribed him were charged and pleaded guilty to conspiracy to violate the FCPA, but Mikerin himself could not be charged with any FCPA offenses, as he was the "foreign official" who took the bribes, not the individual providing the bribes.

Vicente Garcia

In August 2015, the SEC announced a settled order against Vicente Garcia of Florida, the former vice president of global and strategic accounts at the German-based SAP SE, for violating the anti-bribery and internal controls provisions of the FCPA. Garcia was charged with bribing three senior government officials of the Republic of Panama through an intermediary to facilitate $3.7 million worth of software license sales from at least June 2009 through November 2013. In particular, the order described how Garcia and others used false contracts and invoices to disguise the bribes and the kickbacks they received. The order required that Garcia (1) cease and desist from future FCPA violations, (2) pay disgorgement in the amount of $85,965 (the total amount of kickbacks that he received) and prejudgment interest in the amount of $6,430, and (3) cooperate fully with the SEC in any and all investigations, litigations or proceedings relating to the order. The order did not include a civil penalty, likely in consideration of Garcia's agreement to cooperate.

That same day, the DOJ announced that Garcia pleaded guilty to

conspiracy to violate the FCPA. The criminal information accompanying Garcia's guilty plea indicated that the DOJ knows the identity of Garcia's co-conspirators, including Advisor, Consultant A, Consultant B, and Partner. In December 2015, Judge Charles R. Breyer of the U.S. District Court for the Northern District of California sentenced Garcia to 22 months in prison, which is less than half of the five-year sentence that could have been handed down.

NCR Corp. SEC Declination

After a three-year investigation of its compliance with the FCPA, NCR Corp. announced in August that it was informed by the "staff of the Securities and Exchange Commission that it does not intend to recommend an enforcement action." Atlanta-based NCR, a manufacturer of ATMs and self-service kiosks, received anonymous tips in 2012 from a whistleblower regarding its business practices in China, the Middle East and Africa. The company retained outside counsel to conduct an internal investigation, and informed both the DOJ and the SEC about the whistleblower's FCPA allegations. The SEC sent subpoenas to NCR and the DOJ asked for certain documents related to the allegations.

Lujan, Hurtado, Clarke (Direct Access Partners) Sentencing

Three employees of Direct Access Partners, a now defunct broker-dealer, were sentenced to prison in December. On December 4, 2015, Ernesto Lujan, the former managing partner of Direct Access Partners, was sentenced to two years in prison and three years of supervised release, and was ordered to forfeit $18.5 million. Lujan pleaded guilty in mid-2013 to conspiracy, money laundering and violating the FCPA.

Lujan and other Direct Access employees paid at least $5 million in bribes to Maria Hernandez, a vice president at Banco de Desarrollo Angeles Economico y Social de Venezuela (BANDES). The Venezuelan government was a majority owner of the bank and the bank allegedly acted as the financial agent of the state to finance economic development projects. In exchange for the bribes, Hernandez directed bond trading business to Direct Access. Direct Access had offices in Miami and New York and made more than $60 million in revenue from its business with BANDES. Direct Access filed for bankruptcy in 2013.

Thomas Clarke, the former senior vice president, was sentenced on December 8, 2015, to two years in prison. Clarke was also ordered to forfeit almost $5.8 million. Clarke pleaded guilty in 2013 to conspiracy, money laundering and violating the FCPA. Jose Hurtado, a former broker for Direct Access, was sentenced to three years in prison and ordered to forfeit almost $11.9 million. Hurtado pleaded guilty in 2013 to conspiracy and violations of the FCPA, the Travel Act and money laundering laws. Hurtado was the "middleman" and introduced Hernandez to Direct Access Partners.

Hyperdynamics SEC Enforcement Action and Settlement

On September 29, 2015, Hyperdynamics Corp. announced that it settled with the SEC regarding alleged FCPA violations. The SEC alleged that Hyperdynamics violated the books and records and internal controls provisions of the FCPA. Hyperdynamics agreed to pay a $75,000 fine and did not admit or deny the SEC's allegations. The SEC acknowledged remedial measures taken by Hyperdynamics, such as replacing the entire board.

The allegations arose from Hyperdynamics' operations in the Republic of Guinea. From 2007 to 2008, a subsidiary of Hyperdynamics paid two entities $130,000 for lobbying and public relation services. Hyperdynamics subsequently found out that the two entities were owned by a Guinean-based employee, and it was unclear whether any services were actually provided. Hyperdynamics did not update its books and records after learning this information.

Louis Berger International DOJ Enforcement Action

On July 17, 2015, Louis Berger International, Inc., entered into a DPA with the DOJ. Louis Berger, a construction management company, admitted to violating the FCPA and agreed to pay a $17.1 million criminal penalty. The company also agreed to improve its internal controls and retain a compliance monitor for at least three years. The DOJ agreed to a DPA because the company self-reported the FCPA violations, collected and organized evidence, and took remedial measures.

The DOJ alleged that Louis Berger paid $3.9 million in bribes to foreign officials in India, Indonesia, Kuwait and Vietnam in order to win construction management contracts. The payments were recorded as "commitment fees," "counterpart

per diems," and "field operation expenses."

Hitachi, Ltd.

In September 2015, the SEC filed a settled complaint in the U.S. District Court for the District of Columbia against the Tokyo-based conglomerate Hitachi, Ltd.,[20] alleging violations of the books and records and internal accounting controls provisions of the FCPA for inaccurately recording payments to South Africa's ruling political party in connection with contracts to build two multibillion-dollar power plants. In particular, the complaint alleged that Hitachi sold 25 percent of the stock of its South African subsidiary to a local South African company, Chancellor House Holdings (Pty) Ltd., which it allegedly knew was acting as a front for the African National Congress (ANC). This arrangement allegedly allowed the ANC to share in the profits from any power station contracts secured by Hitachi in South Africa through dividend payments of more than $5 million to Chancellor and the repurchase of Chancellor's shares for a profit of approximately $4.2 million. The complaint also alleged that Hitachi entered into an undisclosed success fee arrangement with Chancellor disguised as consulting expenses whereby approximately $1 million was paid to this company. According to the complaint, Hitachi did not conduct any FCPA-specific compliance training during the relevant time period and failed to conduct adequate due diligence of Chancellor prior to the stock sale. Without admitting or denying the allegations, Hitachi agreed to the settlement in which it is required to pay a $19 million civil penalty and to be permanently enjoined from future FCPA violations.

20 The complaint alleged that Hitachi is a multinational conglomerate headquartered in Tokyo that, during the time of the violations, had American Depository Shares registered with the SEC and listed on the New York Stock Exchange.

Analogic FCPA Settlement

Analogic, the maker of airport security scanners and ultrasound and other imaging equipment, initially disclosed an investigation involving Danish subsidiary BK Medical ApS and some of its foreign distributors in 2011. The company stated that its distributors paid BK Medical amounts in excess of amounts owed and that BK Medical transferred the excess to third parties identified by the distributors. However, the company was not able to determine the purpose for the payments. Analogic had voluntarily disclosed this matter to the Danish government, the DOJ and the SEC and is continuing to cooperate with all authorities.

Recently in its 10-Q, Analogic said that the SEC and DOJ made separate settlement proposals to end the ongoing FCPA investigation. The settlement amounts would total approximately $15 million.

Argentina

The former chief financial officer of a foreign-based company in Argentina pleaded guilty on September 30, 2015, in New York City to conspiring to pay tens of millions of dollars in bribes to Argentinean government officials in connection with a $1 billion contract to create national identity cards. The officer pleaded guilty to conspiracy to violate the FCPA and to wire fraud.

The officer admitted that he engaged in a scheme spanning several years to pay the bribes to the Argentinean government. He and his co-conspirators used shell companies and intermediaries to launder money. Along with being involved in these bribes, he also admitted to paying $1 million to the Argentinean Ministry of Justice.

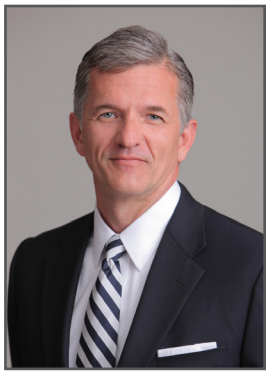
The government does not yet have a sentencing recommendation.

Bristol-Myers Squibb

On October 5, 2015, the SEC and Bristol-Myers Squibb (BMS) agreed to an FCPA settlement on charges that its joint venture in China made cash payments and provided other benefits to healthcare providers at state-owned and state-controlled hospitals in exchange for prescription sales. BMS will pay more than $14 million to settle the charges that the company earned more than $11 million from the improper payments in China.

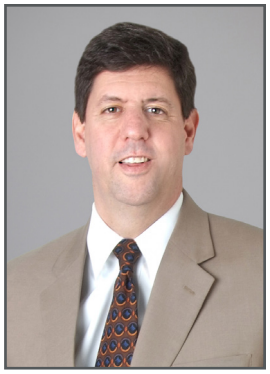
The SEC alleged that between 2009 and 2014, BMS sales representatives tried to increase business by giving healthcare providers cash, jewelry, meals, travel, entertainment and sponsorships for conferences and meetings. These expenses were inaccurately reported on the books and records as legitimate spending. Ultimately, the SEC's order noted that BMS violated the FCPA's internal controls and recordkeeping provisions.

The findings in the order include failing to respond to red flags about the bribes, failing to investigate claims of improper invoicing by employees, and failing to properly remediate gaps in internal controls. Without admitting or denying, BMS consented to the order.



John J. Carney, Partner

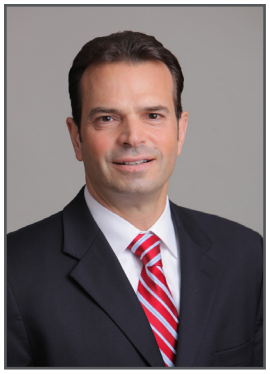
John J. Carney, a former securities fraud chief, assistant United States attorney, U.S. Securities and Exchange Commission senior counsel, and practicing CPA, serves as co-leader of the firm's national White Collar Defense and Corporate Investigations team. He focuses his practice on advising and defending corporations and senior officers on FCPA compliance, investigation and defense. His significant experience in conducting investigations of possible FCPA violations and other potentially improper foreign, country-based financial transactions has included working on major matters in the key BRIC countries (Brazil, Russia, India and China). Mr. Carney's "hands on," detail-oriented approach to client advocacy has earned him recognition from both Chambers USA and Securities Docket as one of the country's top white collar and securities regulatory defense attorneys.



Steven M. Dettelbach, Partner

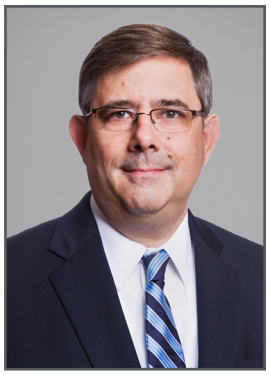
Steven M. Dettelbach is a seasoned litigator and counselor who serves as co-leader of BakerHostetler's national White Collar Defense and Corporate Investigations team. He returned to the firm in 2016, after spending almost seven years as the presidentially appointed United States Attorney for the Northern District of Ohio. As U.S. Attorney, Mr. Dettelbach ran high-profile investigations and both supervised and personally handled large scale, crisis-level litigations, many of which involved intense public and media scrutiny. He also supervised a broad docket of complex, civil matters, representing both defendants and plaintiffs. He has worked closely with and led selection processes for independent monitors when required.

Mr. Dettelbach brings a depth of experience in managing crisis level commercial, regulatory and criminal matters, as well as in advising clients on how to structure compliance programs so as to help avoid such problems. He has served in senior policy roles at the Department of Justice, having been appointed by two Attorneys General to the prestigious Attorney General's Advisory Committee, where he worked closely with other senior leaders at the department. Prior to his appointment, Mr. Dettelbach served for almost two decades as a federal prosecutor at Main Justice and in three different United States Attorneys' Offices, as counsel in the United States Senate and as a litigator in private practice. He has represented companies and individuals in high stakes criminal, civil internal and Congressional investigations. He has tried more than 30 cases to verdict and been involved in criminal matters in more than 20 states and the District of Columbia. Mr. Dettelbach has never lost a federal criminal trial.



George A. Stamboulidis, Partner

George A. Stamboulidis serves as co-leader of BakerHostetler's national White Collar Defense and Corporate Investigations team. Mr. Stamboulidis is the former chief of the Long Island Division of the U.S. Attorney's Office for the Eastern District of New York and lead prosecutor in several significant high-profile cases, has been selected as an independent monitor on five separate occasions, more than any other attorney. He applied and refined his deep knowledge of the FCPA while reviewing policies and procedures for the various institutions as part of these monitorships. Additionally, he regularly conducts internal investigations, evaluates financial transaction controls, and makes recommendations for changes to ensure that adequate internal review procedures exist for clients' organizations. Mr. Stamboulidis was quoted in the Best Practices section in *Managing Independent Monitors in Foreign Corrupt Practices Act Compliance Guidebook—Protecting Your Organization from Bribery and Corruption* by Martin and Daniel Biegelman. He received the DOJ's coveted Director's Award for Superior Performance three times and was named a Fellow of the Litigation Counsel of America, a trial lawyer honorary society composed of experienced and effective litigators throughout the U.S.



Jonathan R. Barr, Partner

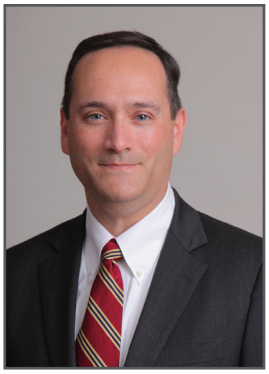
Jonathan R. Barr, a former U.S. Department of Justice Fraud Section trial attorney, assistant United States attorney in the District of Columbia, and a former senior counsel at the U.S. Securities and Exchange Commission's Division of Enforcement, focuses a significant portion of his practice on conducting internal investigations for public and non-public corporations, defending corporations and individuals in FCPA criminal and civil enforcement investigations, and advising corporations on FCPA compliance. He has significant experience representing corporations making voluntary disclosures to the U.S. government. He has represented clients in FCPA investigations relating to Eastern Europe, Southeast Asia, Brazil and China, and has advised public and nonpublic corporations on creating and implementing FCPA compliance programs.

Lauren J. Resnick, Partner

Lauren J. Resnick, former assistant United States attorney, has conducted numerous internal investigations on behalf of international companies in the financial services, pharmaceutical, healthcare and oil and natural gas industries regarding FCPA violations, accounting irregularities and conflicts of interest. She has considerable investigatory experience conducting due diligence for clients seeking overseas joint ventures, and has led internal FCPA investigations for clients in countries such as Nigeria, China and Spain. She regularly advises corporate clients on optimizing internal controls and corporate governance, revising business codes of conduct, and designing policies and procedures to enhance statutory and regulatory compliance. She has extensive experience advising clients on FCPA compliance issues and has remediated numerous books and records violations. Additionally, Ms. Resnick has supervised numerous monitorships in connection with the firm's appointment by the DOJ and other governmental agencies to assess compliance procedures, including FCPA policies and procedures. She was recognized among The Best Lawyers in America®2013 and as a New York "Super Lawyer" since 2011 and twice received the DOJ's prestigious Director's Award for Superior Performance.

Jimmy Fokas, Partner

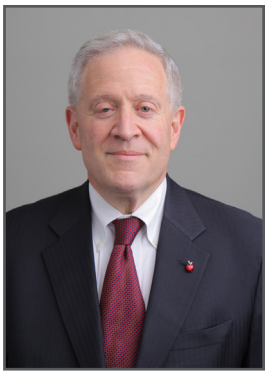
Jimmy Fokas, a former senior counsel in the Division of Enforcement in the New York Regional Office of the SEC, has extensive FCPA investigatory experience. He has reviewed compliance policies and recommended remedial measures regarding books, records and internal controls violations for numerous clients. He conducted an investigation of possible bribes to government officials involving a supplier and a subcontractor in India, reviewed compliance policies and recommended remedial measures. He also managed a legal team in connection with the firm's appointment as independent monitor of a non-prosecution agreement between the DOJ and Mellon Bank, N.A., which involved assessment of the bank's global compliance and employee training programs. He subsequently made recommendations for enhancements to policies and procedures for data privacy, government contracting, FCPA and other compliance programs.



Jonathan B. New, Partner

Jonathan B. New, former assistant United States attorney, handled international money-laundering cases, public corruption issues and financial fraud while serving in a variety of frontline positions in the DOJ.
He has considerable FCPA compliance and investigatory experience and has spoken and written extensively on these issues. He has advised clients on legal and regulatory compliance issues and has represented individuals, companies, and professionals in connection with criminal investigations conducted by the DOJ, the FBI and the IRS.

He successfully defended the U.S. in landmark NAFTA litigation, was lead counsel for the Overseas Private Investment Corporation in claims against the Islamic Republic of Iran, and has defended numerous federal agencies in a wide range of lawsuits. Mr. New received a special commendation award for outstanding service in the Civil Division of the DOJ.



John W. Moscow, Partner

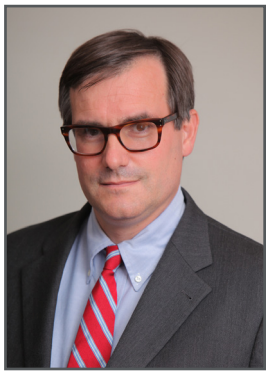
John W. Moscow has spearheaded investigations into some of the most complex fraud cases of the past 25 years. He has led investigations and conducted prosecutions involving money laundering and fraud at Bank of Credit and Commerce International; bank fraud in Caracas, Venezuela; the corrupt A.R. Baron & Co., Inc., stock brokerage; the Beacon Hill money-laundering case in New York; and theft by top Tyco, Inc., executives.
He spent 30 years with the New York County District Attorney's Office, where he served as the chief of the Frauds Bureau and deputy chief of the Investigations Division. While there, he investigated and prosecuted cases involving international bank and tax fraud, securities fraud, theft, fraud on governmental entities and fraud in money transfer systems.

Mr. Moscow works frequently with bank and securities regulators at the state and federal levels and abroad. He has extensive experience in the international tracing of assets and is a leading authority on international corruption matters.

John J. Burke, Partner

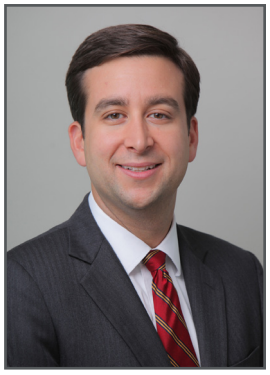
John J. Burke has advised clients on FCPA compliance issues, particularly with respect to their dealings with India, China and the Middle East, and has developed FCPA compliance programs for multinational companies with operations around the world. He has developed clauses in distribution agreements for U.S. companies to reduce their exposure to FCPA liability through the actions of their foreign distributors. Additionally, he has conducted FCPA and anti-corruption due diligence on companies being acquired by clients and has assisted companies in revising their FCPA compliance policies to incorporate requirements of the British Bribery Act 2010.

Mr. Burke has held numerous in-house FCPA compliance seminars for clients, which include financial institutions, healthcare companies, data processing companies, defense contractors and consumer product companies.



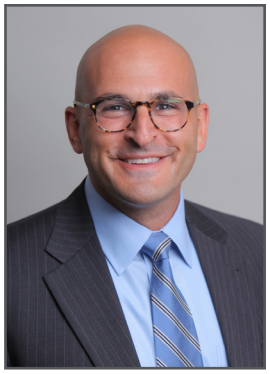
Edmund W. Searby, Partner

Edmund W. Searby is a former federal prosecutor with the DOJ and the Office of the Independent Counsel. He has conducted criminal investigations and internal investigations involving the FCPA, export controls and international money laundering. In particular, he has conducted a number of FCPA investigations arising in the context of due diligence on potential mergers and acquisitions. He has also drafted and implemented FCPA, antitrust and general compliance policies for a number of FORTUNE 500 companies and other corporations. Mr. Searby has spoken and published articles on the FCPA and other anti-bribery issues. In recognition for his work as a federal prosecutor, Mr. Searby received letters of commendation from the attorney general of the United States and the director of the FBI.



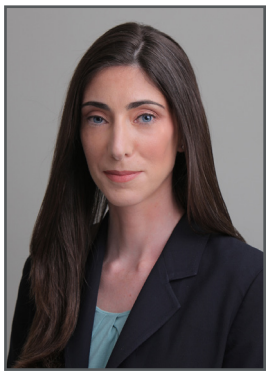
Gregory S. Saikin, Partner

Gregory S. Saikin served as an assistant United States attorney in the Southern District of Texas, investigating and prosecuting individual and corporate targets for a variety of fraud, public corruption, and money-laundering violations. These investigations and prosecutions involved conduct occurring in Mexico, requiring close coordination with the FBI Border Liaison Office and various Mexican law enforcement agencies. Mr. Saikin began his career in large law firms representing corporations, corporate officers, and audit committees in connection with FCPA compliance and enforcement matters. He is an author and speaker on a wide range of white collar topics, including grand jury practice, corporate charging policies, and the federal sentencing guidelines. As a federal prosecutor, he received a number of awards, including the Integrity Award from the inspector general of the U.S. Department of Health and Human Services. He was also recognized by the FBI director for outstanding prosecutorial skills and by the U.S. Secret Service director for superior contributions to law enforcement.



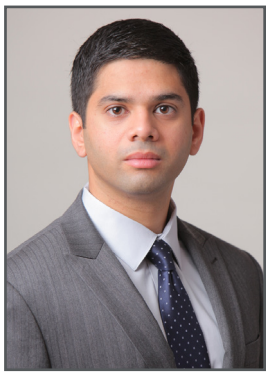
Jonathan A. Forman, Associate

Jonathan A. Forman focuses his practice on corporate internal investigations, government investigations and regulatory examinations, and white collar criminal defense and securities enforcement-related litigation. Mr. Forman also advises clients with respect to their compliance programs as well as FCPA risk in connection with various transactions. During law school, Mr. Forman assisted an independent review board's oversight of a national labor union pursuant to a consent decree, and interned in the Prosecutor's Office at the United Nations International Criminal Tribunal for the Former Yugoslavia and for Judge Donald C. Pogue at the U.S. Court of International Trade.



Francesca M. Harker, Associate

Francesca M. Harker obtained significant FCPA experience while conducting investigatory work in Mexico, China, India and Brazil to assist U.S. clients in ascertaining the nature and extent of alleged bribe payments made to foreign officials by distributors, contractors and subsidiaries. She also has experience structuring and implementing FCPA compliance programs in an effort to help clients avoid potential violations and lessen government sanctions, and has assisted clients in connection with criminal investigations conducted by the DOJ. During law school, Ms. Harker was an associate editor for the *University of Michigan Law Review.*

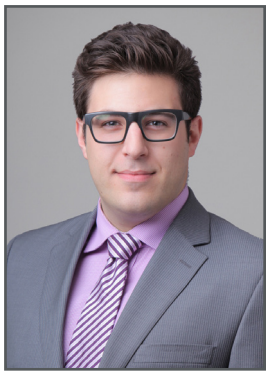


Susrut A. Carpenter, Associate

A former Army prosecutor, Sonny Carpenter represents individuals and corporations in complex commercial litigation as well as white collar and corporate criminal matters. While in the government, he tried numerous bench and jury trials and led complex investigations with the Department of Justice, the Department of Homeland Security, and the Department of Defense. Mr. Carpenter uses that experience to support clients by conducting FCPA and other investigations and by handling various matters for corporations and individuals involving compliance measures and allegations of fraud. His disciplined nature heightens his professional organization and further regiments his thorough approach to client needs.

Margaret E. Hirce, Associate

Margaret E. Hirce focuses her practice on securities litigation, regulatory enforcement and complex commercial litigation. Ms. Hirce has experience conducting FCPA due diligence on companies in connection with potential acquisitions by clients. Among other matters, she has experience representing underwriters of mortgage-backed securities in a multibillion-dollar securities fraud class action before the U.S. District Court for the Southern District of New York and the U.S. Court of Appeals for the Second Circuit, as well as representing a healthcare technology company in a multimillion-dollar contract dispute in arbitration in London.



Samuel M. Light, Associate

Samuel M. Light focuses his practice on white collar criminal defense, corporate investigations and complex commercial litigation. With an educational background in anthropology and economics, Mr. Light's comprehension of a depth of topics and situations provides him with a unique point of view and approach to his practice.

Lauren P. Berglin, Associate

As a member of the BakerHostetler team serving as court-appointed counsel to the Securities Investor Protection Act (SIPA) Trustee for the liquidation of Bernard L. Madoff Investment Securities LLC (BLMIS), Lauren P. Berglin is focusing her developing practice on bankruptcy.

For more information about the Foreign Corrupt Practices Act, or if you have questions about how FCPA may impact your business, please contact the following BakerHostetler attorneys or visit our website bakerlaw.com/FCPA.

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Steven M. Dettelbach

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Celebrating the 100th anniversary of its founding this year, BakerHostetler is a leading national law firm that helps clients around the world to address their most complex and critical business and regulatory issues. With five core national practice groups – Business, Employment, Intellectual Property, Litigation, and Tax – the firm has more than 940 lawyers located in 14 offices coast to coast. For more information, visit bakerlaw.com.