



2016 FCPA Year-End Report

BakerHostetler

Dear Clients and Friends:

2016 was a record-setting year for Foreign Corrupt Practices Act (“FCPA”) enforcement, as both the U.S. Department of Justice (“DOJ”) and the U.S. Securities and Exchange Commission (“SEC”) recovered well over \$2 billion in penalties in over 50 combined actions. The SEC and DOJ also made new policy pronouncements about corporate cooperation and individual accountability, and the SEC entered into its first ever Deferred Prosecution Agreement (“DPA”) with an individual. Corporate monitors were imposed in a number of cases where companies did not voluntarily self report or timely remediate, a link noted this year by the SEC FCPA Unit Chief, Kara Brockmeyer.¹ While the focus of a new administration in 2017 will be closely followed, it is expected that aggressive enforcement of FCPA violations will continue unabated.

Our annual update tracks major developments in FCPA enforcement trends, as well as enforcement actions, settlements, prosecutions and declinations. With over 900 lawyers and a seasoned core FCPA practice team that has handled cases on every continent, we understand the unique challenges facing companies operating in high risk environments. Accordingly, we are pleased to offer this update to help educate your company on the latest FCPA developments. We look forward to answering any questions or concerns you have about these significant developments in FCPA enforcement, compliance and defense.

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Many of BakerHostetler’s partners have served in key government or regulatory positions and their experience adds to the depth and quality of our advice. We regularly advise on a broad range of matters, including antitrust and competition, anti-money laundering and export controls, government contracts, securities regulation and tax. Our interdisciplinary Financial Investigations, Restatement and Accounting team combines the resources of seasoned financial litigators, the SEC defense counsel and corporate disclosure and governance professionals to help companies navigate accounting-related special investigations, government inquiries and, when necessary, financial restatements.

1 See [FCPA Chief Touts Record High Enforcement Actions – Links Avoiding a Monitor to Early Remediation of FCPA Issues](#), BakerHostetler Alert (Oct. 17, 2016).



Part 1:
Introduction

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The FCPA

The FCPA proscribes certain businesses and individuals from bribing foreign public officials and is enforced criminally by the DOJ and civilly by the SEC. It also contains provisions addressing books and records and internal controls requirements (the “accounting provisions”).²

The anti-bribery provisions prohibit direct or indirect bribe payments to foreign officials for the purpose of obtaining or retaining business.³ Jurisdiction extends to (i) “issuers,” which are companies registered with the SEC and/or companies whose stocks are listed on a U.S. stock exchange; (ii) “domestic concerns,” which are U.S. citizens or corporations incorporated domestically or with their principal place of business in the U.S.; and (iii) foreign nationals or businesses that directly or indirectly engage in acts in furtherance of an improper payment while in the U.S. Fines and penalties under the FCPA can be significant. Individuals face up to five-years imprisonment and/or fines up to \$100,000 per violation; corporations face up to \$2 million per violation or twice the financial gain resulting from the improper payment.⁴ Beyond statutory penalties, FCPA violations have potentially drastic consequences on reputation and business operations.

The accounting provisions of the FCPA apply only to public companies. The “books and records” provision requires issuers “make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.”⁵ Companies are also required to keep and maintain adequate internal controls.⁶ Critically, there is no materiality requirement. Unlike the anti-bribery provisions, the accounting provisions apply only to companies registered with the SEC, though both individuals and entities may be held liable.⁷ Violations of the accounting provisions may result in a fine of up to \$5 million and 20-year imprisonment for individuals and \$25 million for companies.⁸ Actions under the accounting provisions of the FCPA may be brought regardless of whether anti-bribery charges are alleged.

Internal control problems have been prominently featured in recent enforcement cases we have brought in the financial reporting area, even in cases without accompanying charges of fraud. This reflects our view that adequate internal controls are the building blocks for accurate financial reporting and can prevent fraudulent activity.

- Andrew Ceresney, Director, Division of Enforcement, [FCPA, Disclosure, and Internal Controls Issues Arising in the Pharmaceutical Industry](#) (Mar. 3, 2015)

2 [Foreign Corrupt Practices Act of 1977](#), 15 U.S.C. §§ 78dd-1, et seq.

3 *Id.* §§ 78dd-1, 78dd-2, 78dd-3.

4 *Id.* § 78ff.

5 For example, individuals can be held liable for willfully violating internal controls or falsifying books and records. Securities Exchange Act (“Exchange Act”) § 13(b)(2)(A) (15 U.S.C. § 78m(b)(2)(A)).

6 *Id.* § 13(b)(2)(B) (15 U.S.C. § 78m(b)(2)(B)).

7 *See id.* § 13(b)(5) (15 U.S.C. § 78m(b)(5)), and Exchange Act Rule 13b2-1.

8 15 U.S.C. § 78ff.

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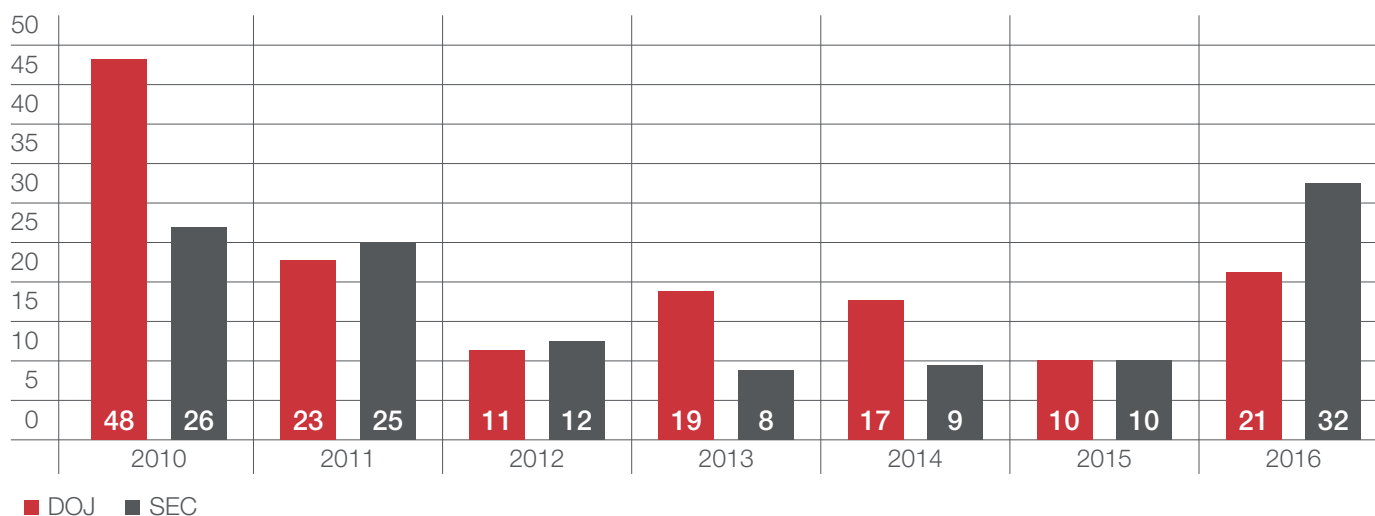
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Overview: 2016 Developments

2016 was one of the more active years for FCPA enforcement, as the SEC and DOJ brought 53 FCPA actions against both individuals and corporations and recovered a total of nearly \$2.5 billion in monetary penalties. Four of the 10 highest penalty amounts were levied in 2016 and are shown in the chart below.

COMPANY	INDUSTRY	COUNTRY	DATE	AMOUNT
Teva Pharmaceutical	Pharmaceutical	Israel	12/22/2016	\$519 million
Odebrecht S.A. and Braskem S.A.	Construction/ Petrochemical	Brazil	12/21/2016	\$419.8 million
Och-Ziff	Finance	U.S.	9/29/2016	\$412 million
Vimpelcom Ltd.	Telecommunications	Netherlands	2/18/2016	\$397.6 million

In 2016, the DOJ brought 21 enforcement actions and the SEC brought 32. This total of 53 actions included many against individuals, including CFOs, CEOs and a Senior Vice President of Sales. The SEC also entered into its first DPA ever in an FCPA matter. The following table shows the enforcement statistics for the past six years:



While both the DOJ and the SEC investigated FCPA activity around the globe, many cases focused on activity of foreign subsidiaries and employees in Southeast Asia, and in China in particular. For example, all four of the targeted pharmaceutical companies were charged with foreign bribery in China. Two technology companies, Qualcomm and PTC, were fined for activities related to Chinese officials and their relatives. In 2016, as noted by Kara Brockmeyer at the Securities Docket conference, FCPA violations involving Latin America were an enforcement focus, evidenced by the recent settlements with Embraer S.A. (“Embraer”), Odebrecht S.A. (“Odebrecht”) and Braskem S.A. (“Braskem”). As for the industry focus, health care/pharmaceuticals, financial and construction topped the list.

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Another key enforcement focus in 2016 concerned so-called “Sons and Daughters” programs, whereby entities provide employment to family and friends of foreign officials. Both Qualcomm and JPMorgan settled charges with the SEC and DOJ, paying fines totaling over \$271 million.

Increase in Resources

The DOJ Criminal Division’s Fraud Section and the SEC’s FCPA Unit in the Division of Enforcement are specialized units tasked with investigating and enforcing the FCPA. Demonstrating its increasing focus on detection and deterrence of FCPA violations, the DOJ substantially increased its FCPA resources this past year. Specifically, the DOJ Fraud Section in Washington, D.C. has been hiring more prosecutors with the goal of raising their numbers by 50 percent. The FBI created three squads in New York, Los Angeles and Washington, D.C. devoted to FCPA investigations.

International Cooperation

Cooperation with foreign counterparts continues to be a critical aspect of the DOJ and SEC’s enforcement agenda.⁹ In March 2016, Assistant Attorney General Leslie Caldwell stated that the DOJ is “forging deep coalitions with [] international enforcement and regulatory partners.”¹⁰ Seemingly as part of this cooperation, the DOJ has advertised for an attorney to be stationed at the UK Serious Fraud Office and the Financial Conduct Authority to work on “serious and complex fraud and corruption cases.”¹¹

Consequently, as explained in Part 2 below, more enforcement actions have resulted from international cooperation. For example, the settlement with Odebrecht and Braskem resulted in a \$3.5 billion recovery by the DOJ and the SEC, as well as by Brazilian and Swedish regulators and criminal prosecutors. Similarly, the DOJ, the SEC and Dutch regulators and criminal prosecutors recovered nearly \$800 million from VimpelCom. Assistant Attorney General Leslie Caldwell, in announcing the VimpelCom settlement, stated that “[t]he FCPA resolution in this case is also one of the most significant coordinated international and multi-agency resolutions in the history of the FCPA.”¹² These actions are discussed in depth below.

Corporate Cooperation and Individual Accountability

As further discussed below in Part 4, on April 5, 2016, the DOJ Fraud Section issued a new memorandum regarding FCPA enforcement titled “The Fraud Section’s Foreign Corrupt Practices Act Enforcement Plan and Guidance.” This memorandum establishes a one-year FCPA enforcement pilot program, which seeks to promote greater individual and corporate accountability by incentivizing corporate self-disclosure and cooperation and, when appropriate, remediation of compliance failures. Just two months after announcing the program, the DOJ announced its first two dispositions under the pilot program, both declinations of prosecution.

9 See BakerHostetler’s [2015 FCPA Year-End Update](#), Spotlight Article: Self-Reporting and International Cooperation.

10 Leslie Caldwell, Assistant Attorney General, U.S. Department of Justice, [Remarks at ABA’s 30th Annual National Institute on White Collar Crime](#) (Mar. 4, 2016).

11 See Job Overview, [Trial Attorney – London](#).

12 [VimpelCom Limited and Unitel LLC Enter into Global Foreign Bribery Resolution of More than \\$795 Million; United States Seeks \\$850 Million Forfeiture in Corrupt Proceeds of Bribery Scheme](#), DOJ Press Release No. 16-194 (Feb. 18, 2016).

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Both the DOJ and the SEC continue to focus on individual accountability in line with the DOJ's Yates Memo and the SEC's cooperation program.¹³ The Yates Memo signified an increased focus on individual liability for corporate actions. One of the enforcement principles announced in the memorandum was that corporations, to receive cooperation credit, must provide the DOJ with relevant facts regarding the individuals responsible for the FCPA misconduct.

Deputy AG Sally Yates, in a November 2016 speech, said in the context of the impact of the Yates Memo that she is "pleased with what [the DOJ has] accomplished. Across the department ... prosecutors and civil attorneys are focusing more concretely on individuals and doing so earlier in the investigation."¹⁴

Seven enforcement actions in the past year involved individuals... Although cases against individuals have challenges, including jurisdictional and statute of limitations issues, pursuing individual accountability is a critical part of deterrence and, as these cases show, the Division of Enforcement will continue to do everything we can to hold individuals accountable.

- Andrew Ceresney, Director of Enforcement, [Keynote Speech, ACI's 33rd International Conference on the FCPA](#) (Nov. 30, 2016)

The DOJ and the SEC leadership have indicated that the Yates Memo and the general policy of investigating individuals does not mean that there will necessarily be an exponential rise in individual cases.¹⁵ However, individual liability appears to still be a strong focus for the SEC and the DOJ and corporations and individuals should monitor developing policy.

SEC's Whistleblower Program

Whistleblowers appear to have an increasingly important role in the SEC's enforcement agenda and, according to the Chief Office of the Whistleblower, 2016 was a "historic" year.¹⁶ Notable events in 2016 include the highest annual payout amount for whistleblowers, at more than \$57 million, and the largest number of tips yet, at more than 4,200.¹⁷ Since the program's inception, there have been more than 14,000 tips and more than \$100 million in awards for tips relating to corporate disclosures, insider trading, the FCPA and others.¹⁸

In a September 2016 speech, Andrew Ceresney noted that FCPA actions are a class of cases where "whistleblower tips can be helpful" because "[m]ost of the activity in these cases is usually overseas, where we have less access to evidence."¹⁹ In 2016, tips relating to alleged FCPA violations increased 62 percent from 2013.²⁰

13 Andrew Ceresney, Director, Division of Enforcement, U.S. Securities and Exchange Commission, [The SEC's Cooperation Program: Reflections on Five Years of Experience](#) (May 13, 2015) ("Some government officials have reemphasized recently the need for companies to share information on individual wrongdoers ... I wholeheartedly agree.").

14 Sally Q. Yates, Deputy Attorney General, U.S. Department of Justice, [Remarks at 33rd Annual International Conference on Foreign Corrupt Practices Act](#) (Nov. 30, 2016).

15 *Id.* (noting that "[t]he purpose of the Memo was never to increase individual prosecutions by a certain number or percentage, or to instruct our prosecutors to bring us the heads of certain corporate executives. From the beginning, our goal was to develop and institutionalize mechanisms to ensure that, across the department, we consistently investigate and prosecute corporate cases as effectively as possible.").

16 U.S. Securities and Exchange Commission, [2016 Annual Report to Congress on the Dodd-Frank Whistleblower Program](#), at 1 ("2016 Whistleblower Program Report").

17 *Id.*

18 *Id.*; [SEC Whistleblower Program Surpasses \\$100 Million in Awards](#), SEC Press Release No. 2016-173 (Aug. 30, 2016).

19 Andrew Ceresney, Director, Division of Enforcement, U.S. Securities and Exchange Commission, [The SEC's Whistleblower Program: The Successful Early Years](#) (Sept. 14, 2016).

20 2016 Whistleblower Program Report at Appendix A.

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Ceresney also stated that even “international whistleblowers can add great value to ... investigations” and “the fact that a whistleblower is a foreign resident does not prevent an award when the whistleblower’s information led to a successful Commission enforcement action brought in the United States concerning violations of U.S. Securities laws.”²¹ Eight individuals in foreign countries have received whistleblower awards, including one individual who received a \$30 million award, the largest to date.²² U.S. companies, therefore, must be vigilant about activity at their foreign subsidiaries or by foreign employees or agents.

In 2016, individuals in 67 countries reported tips to the SEC as reflected in the following map²³:



With an increased reliance on whistleblowers to foster enhanced enforcement and the expansion of the program, there is no sign that investigations sparked by whistleblower tips will subside in 2017.

21 Andrew Ceresney, Director, Division of Enforcement, U.S. Securities and Exchange Commission, [The SEC's Whistleblower Program: The Successful Early Years](#) (Sept. 14, 2016).

22 2016 Whistleblower Program Report at 18.

23 *Id.* at 26.



Part 2:

Enforcement Actions And Resolutions – Corporations

Part 2: Enforcement Actions And Resolutions – Corporations

In 2016, the DOJ and the SEC aggressively pursued corporate FCPA violations and showed investigative priorities in the health care/pharmaceutical, construction and financial industries. Critical developments in 2016 are discussed below and a chart of 2016 enforcement actions and resolutions is included in Part 5.

Construction/Petrochemical Industry

Odebrecht S.A. and Braskem S.A.

On December 21, 2016, Odebrecht, a Brazilian construction conglomerate, and Braskem, a Brazilian petrochemical company, settled charges brought by the DOJ, the SEC, Brazilian authorities and Swedish authorities. The companies paid a combined total penalty of \$3.5 billion, making this the largest foreign bribery resolution in history. Former executives of the two companies authorized approximately \$788 million in bribes to government officials in 12 countries in Latin America and Africa.

According to the criminal information, Odebrecht paid bribes to secure projects using a complex network of shell companies, off-book transactions and off-shore bank accounts.²⁴ Odebrecht created a secret financial structure within the company to disburse the bribe payments. The DOJ characterized this structure, formally called the Division of Structured Operations, as a “stand-alone bribe department.”²⁵ A separate communications system was used within this department to hide the bribe payments. Odebrecht used off-shore entities to funnel money to foreign officials.

Odebrecht pleaded guilty to conspiracy to violate the anti-bribery provisions of the FCPA and agreed that the appropriate criminal penalty was \$4.5 billion, subject to an inability to pay analysis due to Odebrecht’s representation that it would be able to pay only \$2.6 billion. Odebrecht also settled with Brazilian and Swiss authorities. The U.S. and Switzerland each will receive 10 percent of the total criminal penalty, and Brazil will receive 80 percent. Odebrecht received a 25 percent discount for cooperating with the investigation. Odebrecht must retain an independent compliance monitor for three years.

Braskem, 50.1 percent of the voting shares of which are owned by Odebrecht, admitted to authorizing Odebrecht’s Division of Structured Operations to pay bribes to government officials in Brazil to help Braskem maintain a joint venture contract with Petrobras, Brazil’s state-owned oil company.²⁶ Braskem also received reduced pricing for raw materials purchased from Petrobras and reduced tax liabilities. Braskem paid approximately \$250 million to the Division of Structured Operations.

Braskem pleaded guilty to conspiracy to violate the anti-bribery provisions of the FCPA. Braskem agreed to pay a \$632 million criminal penalty. Braskem also settled with the SEC, agreeing to pay \$325 million in disgorgement.²⁷ Brazilian authorities will receive 70 percent of the disgorgement, and Swiss authorities will receive 15 percent. The U.S. will receive approximately \$94.8 million. Braskem must also retain an independent compliance monitor for three years.

²⁴ [United States v. Odebrecht S.A.](#), Cr. No. 16-643 (RJD) (E.D.N.Y. Dec. 19, 2016).

²⁵ [Petrochemical Manufacturer Braskem S.A. to Pay \\$957 Million to Settle FCPA Charges](#), SEC Press Release No. 2016-271 (Dec. 21, 2016).

²⁶ [United States v. Braskem S.A.](#), Cr. No. 16-644 (RJD) (E.D.N.Y. Dec. 19, 2016).

²⁷ [Petrochemical Manufacturer Braskem S.A. to Pay \\$957 Million to Settle FCPA Charges](#), SEC Press Release No. 2016-271 (Dec. 21, 2016).

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Financial Industry

Och-Ziff Capital Management Group

Och-Ziff Capital Management Group (“Och-Ziff”), its wholly owned subsidiary, OZ Africa Management GP LLC (“OZ Africa”), and OZ Management LP (“OZ Management”) agreed to settle FCPA charges brought by the DOJ and the SEC on September 29, 2016. Och-Ziff entered into a DPA with the DOJ after the hedge fund was charged with conspiracy to violate the anti-bribery provisions of the FCPA, falsifying books and records and failing to implement adequate internal controls. Och-Ziff agreed to pay a criminal penalty of \$213,055,689, to retain a compliance monitor for three years and to implement rigorous internal controls.²⁸ OZ Africa pleaded guilty to one charge of conspiracy to violate the anti-bribery provisions. The SEC’s order found that Och-Ziff and OZ Management violated the anti-bribery, books and records and internal controls provisions of the FCPA. Och-Ziff and its affiliated investment adviser, OZ Management, agreed to pay \$173,186,178 in disgorgement and \$25,858,989 in prejudgment interest. The combined settlement is the sixth largest FCPA enforcement resolution to date.

Notably, this is the first time FCPA charges were brought against a hedge fund. Och-Ziff admitted to paying bribes to foreign officials in Libya, Democratic Republic of the Congo (“DRC”), Zimbabwe, Chad and Niger. The SEC said its investigation started while examining how Och-Ziff obtained investments from sovereign wealth funds overseas.

Och-Ziff used a third-party agent, which had contacts within the Libyan government, to pay bribes to Libyan government officials. Och-Ziff was looking to secure an investment from the Libyan Investment Authority, a sovereign wealth fund created by the Libyan government. Och-Ziff agreed to pay a finder’s fee to the third-party agent knowing that the fee would be used to pay bribes to government officials. In 2007, Och-Ziff entered into a partnership with a businessman operating in the DRC. Och-Ziff used this businessman to pay high-ranking DRC officials to get investment opportunities in the mining industry. The SEC order also found that “[w]hen due diligence on agents and business partners disclosed significant red flags, the company proceeded with the relationship without imposing sufficient limitations on the way the agents and business partners conducted business or used funds provided by Och-Ziff.”²⁹

JPMorgan Chase & Co.

JPMorgan Chase & Co.’s subsidiary, JPMorgan Securities (Asia Pacific) Limited, settled FCPA charges related to improper hiring practices brought by the DOJ and the SEC on November 17, 2016. JPMorgan entered into a DPA with the DOJ, paid a \$72 million criminal penalty and agreed to report to the DOJ on the implementation of its enhanced compliance program. The SEC’s order found that JPMorgan violated the anti-bribery, books and records and internal controls provisions of the FCPA. JPMorgan agreed to pay \$105,507,668 in disgorgement and \$25,083,737 in prejudgment interest. The SEC stated it considered remedial acts and cooperation by JPMorgan in considering the settlement.³⁰

²⁸ [Och-Ziff Capital Management Admits to Role in Africa Bribery Conspiracies and Agrees to Pay \\$213 Million Criminal Fine](#), DOJ Press Release No. 16-1130 (Sept. 29, 2016).

²⁹ [Och-Ziff Capital Management Group LLC, OZ Management LP, Daniel S. Och, and Joel M. Frank](#), Exchange Act Release No. 78989 (Sept. 29, 2016).

³⁰ [JPMorgan’s Investment Bank in Hong Agrees to Pay \\$72 Million Penalty for Corrupt Hiring Scheme in China](#), DOJ Press Release No. 16-1343 (Nov. 17, 2016).

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The DOJ and the SEC investigation was centered on JPMorgan's "Son's and Daughter's Program" in Asia. According to the DOJ, the program was designed to hire unqualified individuals for banking positions in order to gain business opportunities for the bank. JPMorgan admitted in the criminal proceeding that compliance questionnaires were used to "paper over corrupt business arrangements" and that candidates hired through this program were typically given the same title and pay as entry-level investment bankers even though these candidates typically performed only administrative duties.³¹ Many of these candidates were referred by foreign government officials at more than 20 Chinese state-owned entities.

In announcing the settlement, Assistant Director in Charge William F. Sweeney Jr. of the FBI stated the following:

Creating a barter system in which jobs are awarded to applicants in exchange for lucrative business deals is a corrupt scheme in and of itself. . . [b]ut when foreign officials are among those involved in the bribe, the international free market system and our national security are among the major threats we face.

Sweeney also noted that the FBI has established three international corruption squads to combat this type of bribery.³²

Aviation Industry

LATAM Airlines Group (S.A.)

LATAM Airlines Group S.A. ("LATAM"), a commercial airline company based in Chile, resolved criminal and civil actions brought by the DOJ and the SEC on July 25, 2016. According to the SEC order, LATAM's predecessor-in-interest, LAN Airlines S.A. ("LAN") paid bribes to union officials through a third-party consultant in Argentina to settle wage disputes between LAN and its employees.³³ LAN entered into a consulting agreement with an adviser in the Argentinian Department of Transportation and paid \$1.15 million in payments to the consultant with the knowledge that some of this money would be passed on to union officials in Argentina. The union officials subsequently agreed to lower wages.

LATAM entered into a three-year DPA with the DOJ and agreed to pay a \$12.75 million criminal penalty. LATAM also agreed to retain an independent corporate compliance monitor for at least 27 months. The DOJ stated that LATAM did not receive a discount in the settlement because it did not voluntarily disclose and failed to discipline the employees responsible.³⁴ LATAM agreed to pay \$6.74 million in disgorgement and \$2.7 million in prejudgment interest to settle SEC charges that LATAM violated books and records and internal controls provisions of the FCPA.

Embraer S.A.

On October 24, 2016, Embraer entered into a global settlement with the DOJ, the SEC and Brazilian authorities, paying a total of \$97 million in disgorgement. Embraer, a Brazilian aircraft

³¹ *Id.*

³² *Id.*

³³ [LAN Airlines S.A.](#), Exchange Act Release No. 78402 (July 25, 2016).

³⁴ [LATAM Airlines Group Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay \\$12.75 Million Criminal Penalty](#), DOJ Press Release No. 16-862 (July 25, 2016).

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manufacturer, admitted that executives and employees paid bribes in various countries to increase aircraft sales.³⁵ Embraer paid bribes to Dominican Republic, Saudi Arabian, Mozambique and Indian government officials through false agency agreements to secure contracts to sell Embraer aircraft. Embraer earned almost \$84 million in aircraft sales as a result of the payments.

Embraer entered into a three-year DPA agreeing to pay a criminal penalty of \$107,285,090 and to retain an independent corporate compliance monitor for three years. Under the SEC settlement, Embraer paid \$83.8 million in disgorgement and \$14.4 million in prejudgment interest. Embraer reached a settlement with Brazilian authorities to pay \$20 million in disgorgement and the SEC agreed to credit up to this \$20 million in disgorgement. Embraer did not voluntarily disclose but did cooperate with the investigation.

Pharmaceutical Industry

GlaxoSmithKline plc

On September 30, 2016, GlaxoSmithKline plc (“GSK”) settled charges brought by the SEC that it violated the FCPA. The SEC found that GSK and its subsidiaries operating in Asia paid \$482 million in bribes to government officials, including healthcare professionals, to increase sales through increased prescriptions.³⁶ The bribes included gifts, travel and entertainment, shopping excursions, family and home visits and cash. The SEC also found that speaker fees were used to improperly influence healthcare professionals. GSK agreed to pay a \$20 million civil penalty and to provide status reports to the SEC for the next two years for violations of internal controls and books and records provisions of the FCPA.

Prior to the SEC settlement, GSK announced on September 19, 2016 that a Chinese court found GSK’s Chinese subsidiary guilty of bribery and fined GSK almost \$500 million. Numerous executives at the subsidiary were also prosecuted by Chinese officials.

Teva Pharmaceutical Industries Ltd.

On December 22, 2016, Teva Pharmaceutical Industries Ltd. (“Teva”), the world’s largest manufacturer of generic pharmaceutical products, and its wholly-owned Russian subsidiary Teva LLC (“Teva Russia”), agreed to pay the largest criminal fine ever imposed on a pharmaceutical company for violations of the FCPA. Teva admitted that Teva and Teva Russia paid bribes to a high-ranking government official in the Russian Federation to influence the Russian government to purchase prescription drugs from Teva.³⁷ The payments were made through a repackaging and distribution company owned by the government official. Teva earned more than \$200 million in profits and the Russian official earned approximately \$65 million. The company also admitted that it paid bribes in Ukraine to get government approval of Teva drug registrations and paid bribes to government doctors in Mexico.

Teva entered into a DPA with the DOJ agreeing to pay a criminal penalty of \$283,177,348 and to retain a corporate compliance monitor for three years. Teva was charged with conspiracy to violate the anti-bribery provisions of the FCPA and failing to implement internal controls. Teva Russia

³⁵ [Embraer Agrees to Pay More than \\$107 Million to Resolve Foreign Corrupt Practices Act Charges](#), DOJ Press Release No. 16-1240 (Oct. 24, 2016).

³⁶ [GlaxoSmithKline plc](#), Exchange Act Release No. 79005 (Sept. 30, 2016).

³⁷ [Teva Pharmaceutical Ltd. Agrees to Pay More Than \\$283 Million to Resolve Foreign Corrupt Practices Act Charges](#), DOJ Press Release No. 16-1522 (Dec. 22, 2016).

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pleaded guilty to conspiracy to violate the anti-bribery provisions of the FCPA. The plea agreement is awaiting court approval. Teva also settled civil charges brought by the SEC and agreed to pay \$236 in disgorgement. Teva did not timely voluntarily self-disclose but did cooperate with the investigation.

Nu Skin Enterprises, Inc.

Nu Skin Enterprises, Inc. (“Nu Skin”) and its subsidiary, Nu Skin (China) Daily Use & Health Products Co. Ltd. (“Nu Skin China”), was the second company in FCPA history to be charged with FCPA violations based on a charitable contribution. The SEC alleged that a \$154,000 charitable contribution made by Nu Skin China constituted an improper payment to a foreign official.³⁸ Nu Skin China was under investigation by a Chinese provincial agency for sales violations. The SEC alleged that Nu Skin China requested that a government official intervene in the investigation after Nu Skin China made a donation to a charity of the official’s choice. Nu Skin China was neither charged nor fined by the Chinese provincial agency.

Without admitting or denying the SEC’s findings, Nu Skin agreed to pay \$431,088 in disgorgement, \$34,600 in prejudgment interest and a \$300,000 civil penalty. The SEC order found that Nu Skin violated the books and records and internal controls provisions of the FCPA.

Telecommunications Industry

VimpelCom Ltd.

On February 18, 2016, VimpelCom Ltd. (“VimpelCom”) and its wholly-owned Uzbek subsidiary Unitel LLC (“Unitel”) settled FCPA charges brought by the DOJ and the SEC. The combined settlement ranks as the eighth largest FCPA settlement to date. VimpelCom and Unitel admitted that, through employees and executives, bribes were paid to an Uzbek government official who had influence over the Uzbek governmental body that regulated the telecommunications industry.³⁹ The companies attempted to hide the bribes by making the payments through shell companies owned by the foreign official. The bribes were paid so that VimpelCom could enter the Uzbek market and Unitel could gain telecommunication assets. More than \$800 million in bribes were paid.

VimpelCom entered into a DPA and agreed to pay a criminal penalty of \$230,326,398.⁴⁰, which includes \$40 million in forfeiture. VimpelCom also agreed to retain a compliance monitor for three years. The company also agreed to pay a total of \$375 million in disgorgement and prejudgment interest in a settlement with the SEC, which was divided between the SEC and the Public Prosecution Service of the Netherlands (“OM”). The DOJ agreed to credit a \$230 million criminal penalty paid to the OM and the SEC agreed to credit the forfeiture paid the DOJ. The combined total amount of the U.S. and Dutch settlement was \$795,326,398.40.

38 [Nu Skin Enterprises, Inc.](#), Exchange Act Release No. 78884 (Sept. 20, 2016).

39 [United States v. VimpelCom Ltd.](#), 16 Crim 137 (S.D.N.Y. Feb. 18, 2016).



Part 3:

Enforcement Actions And Resolutions – Individuals

Part 3: Enforcement Actions And Resolutions – Individuals

As with corporate actions, 2016 saw some unique cases and some firsts for actions against individuals. These include the SEC's first DPA with an individual and a charge brought against a CFO but not the employer company. The chart in Part 5 summarizes a number of these actions, but several noteworthy cases are also highlighted below.

Yu Kai Yuan

On February 16, 2016, the SEC announced a settlement with Massachusetts-based technology company, PTC Inc., and its Chinese subsidiaries for more than \$28 million involving violations of the FCPA.⁴⁰ The SEC investigation found that two Chinese subsidiaries of PTC Inc. provided non-business related travel and other improper payments to various Chinese government officials in an effort to score business. PTC agreed to pay \$11.858 million in disgorgement and \$1.764 million in prejudgment interest and its two Chinese subsidiaries agreed to pay a \$14.54 million fine in a Non-Prosecution Agreement ("NPA") with the DOJ.

Notably, the SEC also announced its first ever DPA with an individual in an FCPA case, Yu Kai Yuan. Per the agreement, FCPA charges were deferred for three years against Yuan, a Chinese citizen and former employee at one of PTC's Chinese subsidiaries, as a result of the significant cooperation he provided during the SEC's investigation.⁴¹ The allegations against Yuan include causing books and records and internal controls violations. Without admitting or denying the allegations, Yuan agreed to accept full responsibility for his conduct and to not contest or contradict the factual statements as expressed by the SEC in the DPA in any future enforcement action in the event Yuan breaches the agreement.

Moises Abraham Millan Escobar

On March 23, 2016, details of a case brought against Moises Abraham Millan Escobar ("Millan") and several others were unsealed. The DOJ charged Millan in January and he pleaded guilty shortly thereafter relating to a scheme to corruptly secure energy contracts from Venezuela's state-owned and state-controlled energy company, Petroleos de Venezuela S.A. (PDVSA). Millan was an employee of Abraham Jose Shiera Bastidas ("Shiera"), who pleaded guilty in March to foreign bribery and fraud charges for his role in the scheme.⁴² Shiera worked with Roberto Enrique Rincon Fernandez ("Rincon") to submit bids to provide equipment and services to PDVSA through their various companies. Shiera and Rincon agreed to pay bribes and other items of value to PDVSA purchasing analysts to ensure that their companies were placed on PDVSA bidding panels, which would enable the companies to win lucrative energy contracts. Shiera also made bribe payments to other PDVSA officials to ensure his companies were placed on the PDVSA-approved vendor lists and given payment priority so they would get paid ahead of other PDVSA vendors. Like Shiera, Rincon also pleaded guilty in June. Sentencing is currently set for all three individuals in July 2017.

40 [SEC: Tech Company Briber Chinese Officials](#), SEC Press Release No. 2016-29 (Feb. 16, 2016).

41 [See Deferred Prosecution Agreement](#), Exchange Act Release No. 77145 (Feb. 16, 2016).

42 [Miami Businessman Pleads Guilty to Foreign Bribery and Fraud Charges in Connection with Venezuela Bribery Scheme](#), DOJ Press Release No. 16-334 (Mar. 23, 2016).

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In addition to Millan, Shiera and Rincon, three former PDVSA officials were charged in connection with the scheme. Jose Luis Ramos Castillo (“Ramos”), Christian Javier Maldonado Barillas (“Maldonado”) and Alfonso Eliezer Gravina Munoz (“Gravina”) each pleaded guilty under seal to conspiracy to commit money laundering in December 2015 and their pleas were unsealed in March. As part of their pleas, Ramos, Maldonado and Gravina admitted that while employed by PDVSA or one of its wholly-owned subsidiaries or affiliates, they accepted bribes from Shiera and Rincon in exchange for taking certain actions to assist companies owned by Shiera and Rincon in winning the sought-after energy contracts. The three former officials also pleaded guilty to conspiring to launder the proceeds of the bribery scheme. Gravina also pleaded guilty to making false statements on his tax return by failing to report the income received from the bribes. All three agreed to forfeit the proceeds from their criminal activity. Sentencing is currently set in July 2017 for these defendants as well.

Och-Ziff: Daniel S. Och, Joel M. Frank and Samuel Mebiame

Along with Och-Ziff Capital Management Group, discussed above, Daniel S. Och, CEO, also settled charges with the SEC in September.⁴³ The SEC alleged that as CEO, Och had final decision-making authority for all private investments by Och-Ziff, including the transactions at issue, and he personally approved the expenditure of funds in two transactions in the DRC in which bribes were paid.⁴⁴ Those bribes were then inaccurately recorded as investments or loans on the books rather than as bribe payments. Despite Och’s awareness of the high risk of corruption in transactions with Och-Ziff’s DRC partner, Och approved Och-Ziff to enter into these corrupt transactions. As a result, though he did not necessarily know bribes would be paid, Och allegedly caused Och-Ziff’s books and records violations.

Joel M. Frank, CFO of Och-Ziff, also settled charges with the SEC. Frank was responsible for maintaining the accuracy of the books and records and for devising and maintaining Och Ziff’s system of internal controls. In this role, Frank approved the expenditure of Och-Ziff funds in transactions in which bribes were paid. Like Och, Frank was aware of the high risk of corruption in transactions with the DRC and despite these risks, Frank authorized Och-Ziff to enter into these transactions. Frank also deferred to Och as the final decision maker and executed payment on a 2008 convertible loan and on a 2010-2011 margin loan in the DRC. Though Frank, like Och, did not necessarily know bribes would be paid, he caused the company’s books and records and internal controls violations in connection with the DRC transactions and a transaction with the Libyan Investment Authority.

Och agreed to pay disgorgement of \$1.9 million, reflecting his estimated share of gain resulting from the corrupt transactions, and prejudgment interest of \$273,718 for a total payment of \$2,173,718. A penalty against Frank is to be assessed at a future date. Och and Frank consented to the SEC’s order without admitting or denying the findings.

In a related action, Samuel Mebiame, son of a former Prime Minister of Gabon, pleaded guilty on December 9, 2016 to conspiring to make corrupt payments to government officials in Africa in violation of the FCPA.⁴⁵ Mebiame, a Gabonese national, worked as a consultant to a mining

⁴³ [Och-Ziff Hedge Fund Settles FCPA Charges; Och-Ziff Executives Also Settle Charges](#), SEC Press Release No. 2016-203 (Sept. 29, 2016).

⁴⁴ [Och-Ziff Capital Management Group LLC, OZ Management LP, Daniel S. Och, and Joel M. Frank](#), Exchange Act Release No. 78989 (Sept. 29, 2016).

⁴⁵ [Gabonese National Pleads Guilty to Foreign Bribery Scheme](#), DOJ Press Release No. 16-1145 (Dec. 9, 2016).

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company that was owned by a joint venture between Och-Ziff and an entity incorporated in the Turks and Caicos. According to the allegations, Mebiame worked as a “fixer” for the joint venture and conspired with others to pay bribes to high-level government officials in Chad and Niger to obtain business opportunities and mining rights for the joint venture in those countries. Mebiame also allegedly paid bribes to high-level government officials in Guinea as an agent of the Turks and Caicos entity to obtain business opportunities and mining rights in that country. The charges against Och-Ziff relating to its conduct in Chad and Niger were connected to Mebiame’s conduct in those countries. Sentencing is currently set for April 2017.

Jun Ping Zhang

On September 12, 2016, the SEC announced that Jun Ping Zhang, a former executive at an international communications and information technology company, agreed to settle charges that he violated the FCPA by facilitating a bribery scheme in which illegal payments were made to Chinese government officials to obtain or retain business.⁴⁶ The SEC investigation found that Ping, chairman and CEO of Harris Corporation’s Chinese subsidiary, Hunan CareFx Information Technology, LLC, authorized and facilitated a practice of giving gifts to officials at state-owned hospitals in China. The subsidiary’s sales staff used fake expense receipts to generate cash for the gifts and then Ping and the supervisors he managed would authorize the false expense claims, knowing that they were fictitious and that the funds were actually used to buy gifts for the government officials to influence them to purchase the subsidiary’s products and services. These false expenses were improperly recorded in the subsidiary’s books and records as legitimate expenses. Because the subsidiary’s financials were consolidated into Harris Corporation’s books and records, the SEC alleged Ping caused Harris’s failure to make and keep accurate books and records. Ping thus violated, and caused Harris Corporation to violate, the books and records provisions of the FCPA by knowingly allowing and facilitating the entry of false information in the subsidiary’s books and records and thereby circumventing internal controls.

The SEC’s order found that Ping violated the anti-bribery, books and records and internal controls provisions of the FCPA.⁴⁷ Ping consented to the order and agreed to pay a \$46,000 civil penalty. Notably, the SEC decided not to charge Harris Corporation due to the company’s efforts at self-policing that led to the discovery of Ping’s misconduct, prompt self-reporting, thorough remediation and cooperation with the SEC’s investigation.

James McClung and Richard Hirsch

On October 31, 2016, James McClung, a former Louis Berger International Inc. executive, self-surrendered to the Bureau of Prisons to begin his year and a day sentence for violations of the FCPA.⁴⁸ McClung, the Senior Vice President for the New Jersey-based construction management firm, was responsible for the company’s operations in India and later in Vietnam. McClung and another former Louis Berger executive, Richard Hirsch, pleaded guilty in June 2015 to FCPA charges in connection with a scheme to bribe foreign officials in India and Vietnam to secure their

46 [SEC Charges Former Information Technology Executive with FCPA Violations; Former Employer Not Charged Due to Cooperation with SEC](#), Administrative Proceeding File No. 3-17535 (Sept. 12, 2016).

47 [Jun Ping Zhang](#), Exchange Act Release No. 78825 (Sept. 13, 2016).

48 Order, *United States v. James McClung*, 3:15-cr-00357-MPC (D.N.J. Oct. 14, 2016).

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assistance in awarding business to the company.⁴⁹ Hirsch previously served as the Senior Vice President responsible for the company's operations in Indonesia, Thailand, the Philippines and prior to McClung, Vietnam. The company and its employees, including Hirsch and McClung, orchestrated \$3.9 million in bribe payments to foreign officials in various countries to secure government contracts. To conceal the true nature of the payments, they were identified as "commitment fees," "counterpart per diems" and other payments to third-party vendors. Both men are U.S. citizens though McClung resided in Dubai, United Arab Emirates and Hirsch in Makaati, Phillipines.

McClung and Hirsch were sentenced in July in New Jersey federal court by District Judge Mary L. Cooper.⁵⁰ McClung received his year and a day sentence and Hirsch received two years' probation and a fine of \$10,000.

McClung is one of many individuals over recent years sentenced to prison for violations of the FCPA. For more information on individuals' prison sentences in FPCA actions, see [FCPA and Jail – Are Corporate Officers Really at Risk?](#)

UN Bribery Scheme: John W. Ashe, Francis Lorenzo, Ng Lap Seng, Jeff C. Yin, Shiwei Yan and Heidi Hong Piao

In October 2015, charges were brought against the former UN General Assembly President and five others in a \$1.3 million bribery scheme.⁵¹ The bribery scheme was designed to pay bribes to John W. Ashe, the former UN ambassador for Antigua and Barbuda and President of the UN General Assembly, in exchange for official actions in support of Chinese business interests. Francis Lorenzo, Deputy UN Ambassador for the Dominican Republic, Ng Lap Seng, Jeff C. Yin, Shiwei Yan and Heidi Hong Piao were all charged with multiple bribery-related counts for their roles in facilitating the bribes. In describing the case, U.S. Attorney Preet Bharara said: "United in greed, the defendants allegedly formed a corrupt alliance of business and government, converting the UN into a platform for profit."⁵² During the course of the scheme, Ashe received bribes in various forms, including cash and payments to third parties to cover his personal expenses, such as a family vacation and construction of a private basketball court at his home. Ashe also transferred the money to his personal bank accounts and used the money for additional personal expenses such as mortgage payments, lease payments for his BMW and for the purchase of certain luxury items. Ashe failed to report this income to the IRS and was also charged with tax fraud.

In 2016, developments occurred in the case for all six defendants. On November 22, a superseding indictment was filed against Seng and Yin including new charges that both men violated the FCPA.⁵³ The new indictment also included tax-related charges against Yin, alleging that he took steps to evade paying income taxes and helped the Dominican Ambassador conceal portions of his income from the IRS. Seng was the head of a real estate development company based in Macau, China and also helped to found a non-governmental organization based in New York. Yin acted as an assistant to Seng, communicating on his behalf, making travel plans, and

49 [Louis Berger International Resolves Foreign Bribery Charges; Two Former Company Executives Plead Guilty to Participating in Bribery Scheme](#), DOJ Press Release No. 15-903 (July 17, 2015).

50 [Two Former Executives of Louis Berger International Sentenced in Foreign Bribery Scheme](#), DOJ Press Release No. 16-201 (July 8, 2016).

51 [Former UN General Assembly President and Five Others Charges in \\$1.3 Million Bribery Scheme](#), DOJ Press Release No. 12-256 (Oct. 6, 2015).

52 *Id.*

53 [Superseding Indictment](#), *United States v. Ng Lap Seng & Jeff C. Yin*, 1:15-cr-00706-VSB (S.D.N.Y. Nov. 22, 2016).

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attending meetings, among other responsibilities. Seng and Yin's role in the bribery scheme was primarily to benefit Seng and his real estate company. Specifically, Seng hoped to obtain official action from the UN for a multi-billion dollar conference center that Seng hoped to build in Macau, using his real estate company. Trial is currently set for May 2017.

On July 29, Shiwei Yan, the co-founder and former CEO of the Global Sustainability Foundation, was sentenced to 20 months in prison for paying more than \$800,000 in bribes to Ashe to further certain Chinese business interests.⁵⁴ Yan, along with Piao, arranged for the bribes to be paid to Ashe in exchange for official actions to benefit several Chinese businessmen. During the scheme, Yan and Piao also arranged for Ashe to receive tens of thousands of dollars in custom clothes and suits. Piao also pleaded guilty in January 2016 and her sentencing is currently set for April 2017. Like Yan and Piao, Lorenzo pleaded guilty in March and his sentencing is set for June 2017. The charges against Ashe were dismissed in July after his death in June.

Mahmoud Thiam

Mahmoud Thiam, former Minister of Mines and Geology of the Republic of Guinea, was arrested and charged on December 13, 2016 with laundering proceeds from bribes that he allegedly received from two Chinese companies that are part of a Chinese conglomerate, in exchange for official actions he took to secure valuable mining rights for the conglomerate.⁵⁵ U.S. Attorney Preet Bharara explained that Thiam, a U.S. citizen and “former high-ranking official of Guinea, allegedly used his position to accept millions in bribes from a Chinese conglomerate and laundered the money through New York” and he “will now face justice in a federal court.”⁵⁶ The Complaint alleges that Thiam took part in a scheme to launder, into the U.S. and elsewhere, approximately \$8.5 million in bribes he received from senior representatives of a Chinese conglomerate and in exchange for these bribes, he allegedly used his position in the Guinean government to enable affiliates of the conglomerate to obtain exclusive and highly-valuable investment rights in a range of sectors in the Guinean economy. To conceal the bribes, Thiam allegedly opened a bank account in Hong Kong and misreported his occupation to hide his status as a government official. He then transferred millions of dollars in proceeds into the U.S., where he allegedly lied to two U.S. banks about the nature of his position and the source of the money. He allegedly spent the money on, among other things, construction work on his estate in upstate New York.

Thiam is not the only individual to raise suspicions regarding the bribery of Guinean government officials. Beny Steimetz, an Israeli billionaire who made his fortunes in the diamond trade, is currently under house arrest in Israel after being detained on suspicion of bribing Guinean government officials.⁵⁷ Israeli police arrested a second person as well, named in court documents as Asher Avidan. Steimetz and other Israelis who live abroad are suspected of giving tens of millions of dollars in bribes to senior public sector employees in Guinea.

⁵⁴ [Former Head of Foundation Sentenced to 20 Months in Prison for Bribing Then-Ambassador and President of United Nations General Assembly](#), DOJ Press Release No. 16-212 (July 29, 2016).

⁵⁵ [Former Guinean Minister of Mines Charged with Receiving and Laundering \\$8.5 Million in Bribes from Chinese Companies](#), DOJ Press Release No. 16-1465 (Dec. 13, 2016).

⁵⁶ *Id.*

⁵⁷ Jesse Riseborough, Thomas Biesheuvel, and Franz Wild, [Billionaire Steinmetz Under House Arrest on Bribe Suspicion](#), BLOOMBERG (Dec. 20, 2016).



Part 4:

Plotting The Course: Key Developments From 2016
Will Have Lasting Impacts In The Years To Come

Part 4: Plotting The Course: Key Developments From 2016 Will Have Lasting Impacts In The Years To Come

As discussed above (see Introduction; Part 1), 2016 was a record year for FCPA enforcement with an increase in dedicated resources and enforcement activity. Absent a wholesale reversal by the incoming administration, there is no reason to expect these FCPA enforcement trends to abate in 2017 and beyond. While the FCPA continues to be a high priority in both DOJ and the SEC enforcement regimes, it also continues to be highly dynamic with sometimes minor changes triggering reverberating effects. Below, we examine some of the key developments from the past year and offer insight into what, if any, effect should be anticipated going forward.

The Justice Department's FCPA Enforcement Pilot Program

The April 5, 2016 announcement by the DOJ of its one-year “pilot program” represents one of the most significant recent FCPA developments impacting corporate actors. The program, announced by Assistant Attorney General Leslie Caldwell, aims to encourage voluntary self-disclosure of FCPA-related misconduct as well as cooperation with Fraud Section investigations. When announcing the program, Ms. Caldwell specifically noted that the pilot program builds on the Individual Accountability memorandum issued by Deputy Attorney General Yates in September 2015. The formal structure of the program is outlined in part of a nine-page memorandum issued by Fraud Section Chief Andrew Weissmann titled *Foreign Corrupt Practices Act Enforcement Plan and Guidance*.⁵⁸

Per Weissmann’s memorandum, the “principal goal” of the pilot program is “to promote greater accountability for individuals and companies” by motivating “companies to voluntarily self-disclose FCPA-related misconduct, fully cooperate with the Fraud Section, and, where appropriate, remediate flaws in their controls and compliance programs.”⁵⁹ Under the program, if those three elements⁶⁰ are met by the company to the satisfaction of the DOJ — i.e., voluntary self-disclosure in a timely manner, cooperation with the DOJ during the investigation and remediation if necessary — and if a criminal resolution is warranted, then a company (i) may receive up to a 50 percent reduction off the bottom end of the Sentencing Guidelines fine range and (ii) *generally* will not be required to appoint a monitor. In addition, the Fraud Section’s FCPA Unit will *consider* a declination of prosecution. The pilot program also provides that if a company does not self-disclose, but otherwise cooperates and undertakes remediation if necessary, then up to a 25 percent reduction from the bottom end of the Sentencing Guidelines fine range may be warranted.

To some extent, the pilot program is merely an official recognition of long-standing DOJ practice, namely rewards such as lower fines or declinations in exchange for voluntary disclosures and/or cooperation. For instance, recent major FCPA cases such as VimpelCom (discussed in Part 2 above), Alcoa and Hewlett-Packard Russia saw cooperation-based discounts of 45 percent, 33 percent and 53 percent respectively, even in the absence of self-disclosure.

Following its announcement, the pilot program received significant attention from FCPA practitioners and, generally speaking, it was not well-received. Common criticism came along the lines of: (i) flexibility in interpreting the requirements and qualification of the available benefits (e.g., “may”) does not provide sufficient predictability or certainty to companies considering disclosure; (ii) much of the program merely memorializes existing policy rather than providing

58 U.S. Department of Justice, [The Fraud Section's Foreign Corrupt Practices Act Enforcement Plan and Guidance](#) (Apr. 5, 2016).

59 *Id.* at 2.

60 Eligibility for any mitigation credit is also contingent on disgorgement of all profits from the FCPA misconduct at issue. *Id.* at 9 n.6.

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anything new; and (iii) the emphasis on timeliness puts in conflict the competing interests of full information, obtained through a thorough internal investigation and early disclosure to the DOJ despite imperfect or incomplete information. These early commentaries frequently questioned the effectiveness of the program and suggested an uncertain future. Indeed, three-quarters of the way through the program's inaugural year, a clear picture of the program's future has yet to emerge.

To date, the DOJ claims five declinations related to the pilot program.⁶¹ In each, the DOJ pointed to common factors supporting the declination decisions, including prompt voluntary self-disclosure, a thorough investigation by the company, fulsome cooperation including identification of responsible or involved individuals, agreement by the company to cooperate in the future during investigations of individuals, remediation including termination or discipline of the employees involved and full disgorgement of profits related to the misconduct.

From the five declinations explicitly attached to the pilot program, it is clear that:

- Disgorgement is key, whether paid to the SEC in the case of an issuer or to the Treasury in the case of a private company and will be a prerequisite for a declination;
- The DOJ can be expected to make pilot program declination letters public, and such letters will contain meaningful details about the underlying misconduct; and
- The Yates Memorandum's emphasis on prosecutions of individuals continues in full, and the pilot program bolsters the incentives for companies to identify responsible individuals.
- The declinations, however, do not provide insight into the DOJ's views of the pilot program, generally.

Recent comments by DOJ officials do shed some light on the program's future. When discussing the program at the ABA Southwestern White Collar Crime Institute in September, Principal Deputy Assistant Attorney General David Bitkower described the program as centering around "a sophisticated and realistic approach to encouraging corporations and individuals to self-disclose wrongdoing and cooperate with our investigations."⁶² After describing the intended effect of the pilot program on DOJ transparency, Mr. Bitkower concluded his discussion on that topic by noting that "this kind of testing, even on a pilot basis, of a systematic and defined approach to motivating companies to promote accountability, is squarely aligned with the department's larger individual accountability initiative."⁶³

Assistant Attorney General Caldwell, who announced the program in April, also provided her thoughts when speaking at the George Washington University Law School in November: "And what we're seeking is that the pilot program is having an effect. Although I can't share precise figures, anecdotally we've seen an uptick in the number of companies coming in to voluntarily disclose potential FCPA violations."⁶⁴ It is therefore clear that the pilot program is thought of, within the DOJ, as consistent with the DOJ's long-term enforcement policies and direction.

61 The DOJ Fraud Section maintains a site of Pilot Program Declinations [here](#).

62 Remarks by Principal Deputy Assistant Attorney General David Bitkower at the [American Bar Association Southeastern White Collar Crime Institute](#) (Sept. 8, 2016).

63 *Id.*

64 Leslie Caldwell, Assistant Attorney General, [Remarks Highlighting Foreign Corrupt Practices Act Enforcement at the George Washington University Law School](#) (Nov. 3, 2016).

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Conclusion

A new administration enters the White House and, as a result, the pilot program could be subject to early termination, expiration in April, or even extension. Whatever the outcome, it is anticipated that the key lessons from the pilot program will have a lasting effect both on corporate actors and within the DOJ, specifically emphasis on voluntary self-disclosure, credit for cooperation, and individual prosecutions, even if these items are not memorialized in an official extension of the program. In any event, the pilot program was largely an official recognition of existing DOJ practice that will continue with or without formal edict.

FCPA Reform and Private Rights of Action

Citing recent reports of corruption such as the Panama Papers and the Unaoil investigation, on June 15, 2016 (and for the third time since 2008) Congressman Ed Perlmutter of Colorado introduced legislation that would expand the FCPA and give individuals and companies the ability to take legal action against corporations that violate the FCPA's anti-bribery provisions.⁶⁵ Rep. Perlmutter's repeated attempts at this particular reform reflect the fact that courts have routinely rejected arguments for an FCPA private right of action under the statute as written.⁶⁶ In essence, the proposed reform would permit those who lose business due to a competitor's violations to recover treble damages plus attorney's fees. There is nothing to suggest that the recent reform attempt will fare any differently than past efforts and the bill is unlikely to make it out of committee.

Disgorgement

VimpelCom's \$397.6 million FCPA settlement, which included the third-highest ever FCPA-related corporate disgorgement (\$167.5 million),⁶⁷ highlights the continued importance of, and emphasis on, disgorgement in FCPA resolutions. With now six FCPA-related corporate disgorgements in excess of \$100 million (and two more in the \$90s), disgorgement remains a critical consideration and point of negotiation when crafting resolutions. Two developments in this area over the past year lay the groundwork for a potential changing treatment of disgorgement in future resolutions.

IRS: Tax Deductions For Disgorgement Are Not Allowed

Earlier this year, the IRS tackled the question of whether Section 162(f) of the Internal Revenue Code "prohibits a deduction for an amount paid as disgorgement" to the SEC for FCPA violations.⁶⁸ Under the Internal Revenue Code, deductions for business expenses are typically allowed but, under Section 162(f), deductions are not allowed for any fine or similar penalty paid to a government for the violation of any law. Ultimately, the Chief Counsel Advice Memorandum — while not binding precedent — concluded that in light of the particular circumstances under consideration, a deduction for the FCPA disgorgement payment was prohibited in that the disgorgement was "primarily punitive . . . serv[ing] primarily to prevent wrongdoers from profiting from their illegal conduct and deter[ring] subsequent illegal conduct."⁶⁹

65 Press Release, [Legislation Seeks to Hold Corporations Accountable for Violating Foreign Corrupt Practices Act](#) (June 9, 2016).

66 See, e.g., *Republic of Iraq v. ABB*, 768 F.3d 145, 171 (2d Cir. 2015) ("We conclude that there is no private right of action under the antibribery provisions of the FCPA.").

67 Discussed in Part 2 above.

68 Office of Chief Counsel, Internal Revenue Service, [Memorandum No. 201619008](#) (May 6, 2016).

69 *Id.* at 9.

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This conclusion casts doubt on long-standing corporate practice of claiming deductions for the portion of FCPA settlements designated as disgorgement (as opposed to non-deductible fines or penalties). While it remains to be seen whether the position in this memorandum is adopted by the courts (it is consistent with *Graham*, discussed below) the IRS's position has the potential to significantly increase the effective cost of FCPA settlements by removing a corporate tax benefit. The corollary may be that companies are less willing to settle FCPA cases or push back harder against the SEC's disgorgement calculations when negotiating resolutions.

Statute of Limitations: SEC v. Graham

While not an FCPA case, the Eleventh Circuit's May 26, 2016 decision in *SEC v. Graham*⁷⁰ may prove significant for FCPA enforcement cases brought by the SEC. In short, *Graham* is significant because it is the first time that a Circuit Court has applied 28 U.S.C. § 2462, the five-year statute of limitations governing SEC enforcement actions seeking civil fines, penalties and forfeiture, to claims for declaratory relief and disgorgement.⁷¹

Graham began with a civil enforcement action filed by the SEC in January 2013 alleging violations of federal securities laws between November 2004 and July 2008, and which requested that the District Court: (1) declare that defendants violated federal securities laws; (2) permanently enjoin the defendants from violating federal securities laws in the future; (3) direct defendants to disgorge all profits; (4) order defendants to repatriate any funds held outside the District Court's jurisdiction; and (5) require three defendants to pay civil penalties. The District Court, however, found that the SEC's claims were time-barred under section 2462 and dismissed the case.

The Eleventh Circuit, affirming in part, found that disgorgement of ill-gotten gains is a kind of forfeiture and therefore expressly covered by 28 U.S.C. § 2462. In so-holding, the Eleventh Circuit rejected the SEC's position that disgorgement and forfeiture are functionally different. Interestingly, with respect to disgorgement, *Graham* creates a circuit split as other courts have held that section 2462 does not apply to disgorgement. Conversely, the holding in *Graham* is consistent with the IRS's decision (discussed above), that held that disgorgement payments for FCPA violations are not tax-deductible because the payment is "primarily punitive."⁷²

In light of the *Graham* decision, defendants' exposure for conduct older than five years may be significantly curtailed or eliminated. This may prove to be of significant consequence in FCPA cases as investigations in this area are notoriously slow. *Graham* adds pressure on the SEC to conduct investigations with more urgency than in the past and potentially to file actions sooner, lest it lose potential disgorgement for FCPA violations more than five years old.

70 823 F.3d 1357 (2016).

71 See Jimmy Fokas & Bari R. Nadworny, [Graham and the Continuing Rejection of Limitless SEC Actions](#), BLOOMBERG BNA SECURITIES REGULATION & LAW REPORT (Oct. 31, 2016).

72 Office of Chief Counsel, Internal Revenue Service, [Memorandum No. 201619008](#) (May 6, 2016).



Part 5:

Select 2016 Enforcement Actions And Resolutions

Entity/ Individual	Allegations	Resolution/Status	Alleged FCPA Violations	Geographic Region/ Country	Industry	Date
Maria de Los Angeles Gonzalez de Hernandez	Bribery scheme in which she directed trading business she controlled at Banco de Desarrollo Económico y Social de Venezuela (BANDES) to NY broker-dealer, Direct Access Partners and, in return, agents and employees of the broker-dealer shared revenue broker-dealer generated from this trading business with Gonzalez	DOJ : Sentenced to time served and ordered to forfeit \$8,347,849	Conspiracy to violate the Travel Act and to commit money laundering and substantive counts of these offenses	Venezuela	Financial	1/15/2016
Moises Abraham Millan Escobar	Scheme to corruptly secure energy contracts from Venezuela's state-owned and state-controlled energy company, Petroleos de Venezuela S.A. (PDVSA).	DOJ : Guilty plea	Conspiracy to violate the FCPA	Venezuela	Energy	1/19/2016 (case announced on 3/23/2016)
Abraham Jose Shiera Bastidas		DOJ : Guilty plea	Conspiracy to violate the FCPA and commit wire fraud and violating the FCPA			3/22/16 (case announced on 3/23/2016)
Roberto Enrique Rincon Fernandez		DOJ : Guilty plea	Conspiracy to violate the FCPA, violating the FCPA, making false statements on his 2010 federal income tax return			6/16/2016
Jose Luis Ramos Castillo	Three former PDVSA officials, while employed by PDVSA or its wholly owned subsidiaries or affiliates, accepted bribes from Shiera and Rincon in exchange for taking certain actions to assist companies owned by Shiera and Rincon in winning energy contracts with PDVSA	DOJ : Guilty plea	Conspiracy to commit money laundering	Venezuela	Energy	12/3/2015 (case announced on 3/23/2016)
Christian Javier Maldonado Barillas		DOJ : Guilty plea	Conspiracy to commit money laundering			12/3/2015 (case announced on 3/23/2016)
Alfonzo Eliezer Gravina Munoz		DOJ : Guilty plea	Conspiracy to commit money laundering and making false statements on his 2010 federal income tax return			12/10/2015 (case announced on 3/23/2016)

Entity/ Individual	Allegations	Resolution/Status	Alleged FCPA Violations	Geographic Region/ Country	Industry	Date
SAP SE	Software was discounted to finance payment of bribes to government official to secure government sales contracts	SEC : \$3.7M disgorgement and \$188,896 interest	Books and Records Internal Controls	Central America	Software	2/1/2016
SciClone	Employees of subsidiaries gave money and gifts to foreign officials, including healthcare professionals, to obtain sales of pharmaceutical products	SEC : \$9.426M disgorgement, \$900,000 prejudgment interest and \$2.5M penalty	Anti-Bribery Books and Records Internal Controls	China	Pharmaceutical	2/4/2016
PTC Inc.	Two Chinese subsidiaries of PTC Inc. provided non-business related travel and other improper payments to various Chinese government officials in an effort to win business	DOJ : NPA; \$14.54M penalty SEC : \$11.858M disgorgement and \$1.764M prejudgment interest	Anti-Bribery Books and Records Internal Controls	China	Software	2/16/2016
Yu Kai Yuan		SEC : DPA	Causing Books and Records Causing Internal Controls			
VimpelCom Ltd.	Paid bribes to an Uzbek government official who had influence over the entity that regulates the telecom industry	DOJ : DPA \$230,326,398.40 penalty, compliance monitor 3 years SEC : \$167.5M penalty Netherlands Authority for the Financial Markets: \$397.5M (credit given by DOJ and SEC)	Conspiracy to violate Anti-Bribery and Books and Records Internal Controls	Central Asia	Telecomm	2/18/2016
Qualcomm Incorporated	Provided full-time employment and paid internships to foreign officials' family members to obtain or retain business	SEC : \$7.5M penalty and self-report to SEC for two years	Anti-Bribery Books and Records Internal Controls	China	Telecom	3/1/2016
Olympus Latin America, Inc.	Provided payments to health care professionals at government-owned hospitals to increase medical equipment sales; payments delivered through training centers	DOJ : 3-year DPA; \$22.8M penalty and compliance monitor for 3 yrs	Conspiracy to violate Anti-Bribery Anti-Bribery	Central and South America	Medical Device	3/1/2016

Entity/ Individual	Allegations	Resolution/Status	Alleged FCPA Violations	Geographic Region/ Country	Industry	Date
Nordion Inc.	Lacking internal accounting controls to detect and prevent scheme to bribe Russian officials to receive approval to sell products	SEC : \$375,000 civil penalty	Books and Records Internal Controls	Russia	Health Science	3/3/2016
Mikhail Gourevitch	Scheming to bribe Russian government officials and obtain drug approvals while secretly enriching himself	SEC : \$100,000 disgorgement, \$12,950 prejudgment interest, and \$66,000 penalty	Books and Records Internal Controls False Records			
Iuri Rodolfo Bethancourt, Benito China, Tomas Alberto Clarke Bethancourt, Joseph DeMeneses, Jose Alejandro Hurtado, Ernesto Lujan, Haydee Leticia Pabon	Global markets group at NY broker-dealer Direct Access Partners executed fixed-income trades for customers in foreign sovereign debt. DAP Global generated more than \$66 million in revenue for DAP from transaction fees - in the form of markups and markdowns - on riskless principal trade executions in Venezuelan sovereign or state-sponsored bonds for Banco de Desarrollo Económico y Social de Venezuela (BANDES)	SEC : Final Judgments permanently enjoining all defendants from violating Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and ordered defendants China, Clarke, DeMeneses, Hurtado, and Lujan to pay \$42,506,171 in disgorgement and prejudgment interest	Following sentences from DOJ for several of respondents for FCPA violations	Venezuela	Financial	4/6-7/2016
Las Vegas Sands Corp.	Payments made to third-party consultants were not properly recorded or authorized; used consultant to hide company's role in certain purchases in China	SEC : \$9M penalty; independent consultant for two years	Books and Records Internal Controls	Asia	Hospitality	4/7/2016
Dmitrij Harder	Bribing an official at the European Bank for Reconstruction and Development (EBRD)	DOJ : Guilty plea	Conspiracy to violate the FCPA, violating the FCPA, violating Travel Act, conspiracy to commit international money laundering, money laundering	England	Finance	4/20/2016

Entity/ Individual	Allegations	Resolution/Status	Alleged FCPA Violations	Geographic Region/ Country	Industry	Date
Akamai Technologies, Inc.	Subsidiary arranged \$40,000 in payments to government officials to pay for more services than actually needed	SEC : NPA; \$652,452 disgorgement and \$19,433 prejudgment interest	N/A	China	Information Technology	6/7/2016
Nortek, Inc.	\$290,000 in improper payments and gifts made to Chinese officials to receive preferential treatment and reduced taxes and fees	SEC : NPA; \$291,403 disgorgement and \$30,655 prejudgment interest	N/A	China	Industrial	6/7/2016
Ericsson Group	Unknown	U.S. Authorities : Received voluntary request from U.S. officials to answer a number of questions	Unknown	China	Telecom	6/17/2016
Analogic Corp.	Paid nearly \$20M to third parties that went to doctors employed by Russian state-owned entities	DOJ : NPA; \$3.4M penalty	Books and Records	Russia, Ghana	Medical	6/21/2016
Lars Frost		SEC : \$7.7M disgorgement and \$3.8M prejudgment interest	Internal Controls	Israel Kazakhstan		
		SEC : \$20,000 penalty		Ukraine Vietnam		
James McClung	Bribery schemes in Indonesia, Vietnam, India, and Kuwait to secure contracts with government agencies and instrumentalities	DOJ : Sentenced to one year and one day in prison	Conspiracy to violate the FCPA and violating the FCPA	Indonesia, Vietnam, India, and Kuwait	Infrastructure and Development	7/7/2016
Richard Hirsch		DOJ : 2 years' probation and \$10,000 fine				7/8/2016
Johnson Controls	Wholly owned subsidiary, China Marine, made sham payments to employees of government owned shipyards, ship-owners and others to obtain and retain business	DOJ : Declination letter SEC : \$11.8M disgorgement, \$1.4M prejudgment interest and \$1.18M penalty	Books and Records Internal Controls	China	Industrial	7/11/2016
LATAM Airlines Group (S.A.)	Signed \$1.15M phony consulting agreement with a government advisor who funneled money to labor union officials during negotiations	DOJ : DPA, \$12.75M penalty	Books and Records	South America	Aviation	7/25/2016
Ignacio Cueto Plaza		SEC : Internal Administrative Order, \$6.74M disgorgement and \$2.7M prejudgment interest SEC : \$75,000 penalty; must certify compliance by attending anti-corruption training	Books and Records Internal Controls False Records			

Entity/ Individual	Allegations	Resolution/Status	Alleged FCPA Violations	Geographic Region/ Country	Industry	Date
Key Energy Services, Inc.	Through a consulting firm, subsidiary paid employee of Mexican state-owned gas company for inside information and help acquiring contracts	DOJ : Declination SEC : \$5 million disgorgement	Books and Records Internal Controls	Mexico	Energy	8/11/2016
AstraZeneca PLC	Wholly owned subsidiaries made payments to doctors at state-owned hospitals as incentives to purchase or proscribe products	SEC : \$4.325 million disgorgement, \$822,000 prejudgment interest and \$375,000 civil penalty	Books and Records Internal Controls	China and Russia	Pharmaceutical	8/30/2016
Jun Ping Zhang	Authorized and facilitated practice of giving gifts to officials at state-owned hospitals	SEC : \$46,000 penalty	Anti-Bribery Books and Records Internal Controls	China	Information Technology	9/13/2016
Nu Skin Enterprises, Inc.	Chinese subsidiary made \$150,000 donation to a charity so that a government official would intervene in a provincial agency investigation	SEC : \$431,088 disgorgement, \$300,000 civil penalty and \$34,600 prejudgment interest	Books and Records Internal Controls	China	Medical	9/20/2016
NCH Corp.	Employees provided Chinese officials with cash and gifts to influence the officials' purchasing decisions	DOJ : Declination and \$335,000 disgorgement	No charges brought	China	Industrial	9/28/2016
Misonix, Inc.	Company had knowledge of certain business practices of an independent Chinese entity that distributes its products in China	Self-disclosed certain business practices to the DOJ and SEC	Potential FCPA violations	China	Medical Device	9/28/2016
Och-Ziff Capital Management Group	Used intermediaries, agents and business partners to bribe high-level government officials so they would invest in the funds and the secure mining rights	DOJ : \$213M penalty	Anti-Bribery	Africa	Financial	9/29/2016
Daniel S. Och		SEC : \$173.2 disgorgement and \$25.8 prejudgment interest; compliance monitor for 3 years	Books and Records Internal Controls			
Joel M. Frank		SEC : \$1.9M disgorgement and \$273,718 prejudgment interest	Causing Books and Records			
		SEC : Settlement with penalties to be assessed at later date				

Entity/ Individual	Allegations	Resolution/Status	Alleged FCPA Violations	Geographic Region/ Country	Industry	Date
Grifols S.A.	Sales practices by Talexris Biotherapeutics in potential violation of the FCPA	DOJ : Declination letter		Europe, South America, Asia		9/29/2016
GlaxoSmithKline	Transfer of money, gifts and other things of value to health care professionals which led to increased sales of pharmaceutical products to China's state health institutions	DOJ : Declination letter SEC : \$20M civil penalty	Books and Records Internal Controls	China	Medical	9/30/2016
Cognizant Technology Solutions Corp.	Certain payments relating to company-owned facilities	Internal investigation pending	Potential FCPA violations	India	Information Technology	9/30/2016
Lennox International Inc.	Payment of \$475 to Russian customs broker or official to release a shipment of goods being held by customs officials	Self-reported to DOJ/SEC after investigation by Audit Committee	Potential FCPA violations	Russia	General Building Materials	10/17/2016
Telia	Bribes paid to a relative of the president of Uzbekistan to win business when the company entered the market	U.S./Dutch : Company recorded a provision of \$1.45 billion as a best estimate of financial sanction to reach a global settlement; received settlement proposal in Sept.		Uzbekistan	Telecom	10/21/2016
Embraer S.A.	U.S.-based subsidiary bribed officials through third-party agents to win contracts to build aircrafts	DOJ : DPA; \$107M penalty SEC : \$83.8M disgorgement and \$14.4M in prejudgment interest Brazil: \$20M disgorgement	Conspiracy to violate Anti-Bribery and Books and Records Willful failure to implement Internal Controls	Dominican Republic Saudi Arabia India Mozambique	Aviation	10/24/2016
Douglas Ray	Schemes to bribe Mexican officials in order to secure aircraft maintenance and repair contracts with government-owned and controlled entities	DOJ : Guilty plea	Conspiracy to violate the FCPA and conspiracy to commit wire fraud	Mexico	Aviation	10/28/2016 (case announced 12/27/2016)
Victor Hugo Valdez Pinon		DOJ : Guilty plea	Conspiracy to violate the FCPA and conspiracy to commit wire fraud			10/26/2016 (case announced 12/27/2016)
Kamta Ramnarine		DOJ : Guilty plea	Conspiracy to violate the FCPA			11/2/2016 (case announced 12/27/2016)
Daniel Perez		DOJ : Guilty plea	Conspiracy to violate the FCPA			11/2/2016 (case announced 12/27/2016)

Entity/ Individual	Allegations	Resolution/Status	Alleged FCPA Violations	Geographic Region/ Country	Industry	Date
Ernesto Hernandez Montemayor	Former officials of Mexican state government entities conspired to launder proceeds of the bribery scheme	DOJ : Guilty plea	Conspiracy to commit money laundering	Mexico	Aviation	12/9/2015 (case announced 12/27/2016)
Ramiro Ascencio Nevarez		DOJ : Sentenced to 15 months in prison	Conspiracy to commit money laundering			5/27/2016 (case announced 12/27/2016)
JPMorgan Chase & Co.	Investment bankers created client referral hiring program to reward job candidates referred by client executives and influential government officials	DOJ : NPA; \$72M penalty Federal Reserve Board : \$61.9M civil penalty SEC : \$105.5M disgorgement and \$25.1M prejudgment interest	Books and Records Internal Controls	Asia	Financial	11/17/2016
Ng Lap Seng & Jeff C. Yin	International bribery and money laundering scheme in which they paid at least hundreds of thousands of dollars to Antiguan Ambassador and Dominican Ambassador in exchange for official action to benefit Ng and his company	DOJ : Superseding indictment filed	Anti-Bribery Money Laundering	China	Real Estate/ Chinese Business Interests	11/22/2016
Shiwei Yan	Multi-year scheme to pay more than \$1.3 million in bribes to John W. Ashe in exchange for official actions in his capacity as UN General Assembly President and Antiguan government official in support of Chinese business interests	DOJ : Sentenced to 20 months in prison, 2 years' supervised release, fined \$12,500, ordered to forfeit \$300,000	Anti-Bribery Money Laundering	China	Chinese Business Interests	7/29/2016
Heidi Hong Piao		DOJ : Guilty plea				1/14/2016
Francis Lorenzo		DOJ : Guilty plea				
John W. Ashe	Soliciting and accepting bribes from various businesspeople in China seeking to influence the actions of the UN and officials in Ashe's home country of Antigua. Solicited and took the bribes at the time when he served as UN Ambassador for Antigua and as the 68th President of the UN General Assembly	DOJ : Charges against Ashe were dismissed following his death in June 2016	Anti-Bribery Tax Fraud			7/7/2016

Entity/ Individual	Allegations	Resolution/Status	Alleged FCPA Violations	Geographic Region/ Country	Industry	Date
MTS Systems	Individuals in leadership positions in China violated company's code of conduct, including associating with an independent business	Initiated internal investigation and delayed filing of company's 10-K for fiscal 2016	Potential FCPA violations	China	Scientific and Technical Instruments	11/29/2016
Samuel Mebiame	Worked as a "fixer" for joint venture between Och-Ziff and Turks and Caicos entity and conspired with others to pay bribes to high-level government officials in Chad and Niger to obtain business opportunities and mining rights for joint venture. Also paid bribes to high-level government officials in Guinea as agent of the Turks and Caicos entity to obtain business opportunities and mining rights in that country	DOJ : Guilty plea	Conspiracy to violate the FCPA	Africa	Financial	12/9/2016
Mahmoud Thiam	Former Minister of Mines and Geology of Republic of Guinea arrested and charged with laundering proceeds from bribes received in exchange for official actions	DOJ : Complaint filed on December 12, 2016	Money Laundering	China	Natural Resources Development	12/13/2016
Laureate Education, Inc.	Affiliate in Turkey made \$18M donation to charity encouraged by Turkish official	Audit committee investigation into whether money was fraudulently diverted or went to government official	Potential FCPA violations	Turkey	Education	12/15/2016
Braskem S.A.	Authorized Odebrecht's payment of bribes to government officials through a secret division of the company; paid approximately \$20M in bribes through Odebrecht	DOJ : \$632M criminal penalty (agreed to pay 70% of criminal penalty to Brazilian authorities and 15% to Swiss authorities; credit given by DOJ) SEC : \$325M disgorgement (\$65M to SEC and \$260M to Brazilian authorities) Corporate monitor for 3 years	Conspiracy to violate Anti-Bribery Books and Records Internal Controls Anti-Bribery	South America	Chemical	12/21/2016

Entity/ Individual	Allegations	Resolution/Status	Alleged FCPA Violations	Geographic Region/ Country	Industry	Date
Odebrecht S.A.	Paid bribes to secure projects using a complex network of shell companies, off-book transactions and off-shore bank accounts	DOJ : \$4.5B criminal penalty subject to ability to pay analysis (Company says it can afford \$2.6 billion); Corporate monitor for 3 years	Conspiracy to violate Anti-Bribery	South America	Construction	12/21/2016
Teva Pharmaceuticals Ltd.	Paid bribes to high ranking government official to influence Russian government's purchase of prescription drugs	DOJ : DPA; \$283,177,348 penalty, monitor for 3 years SEC : \$236M disgorgement	Conspiracy to violate Anti-Bribery	Russia	Pharmaceutical	12/22/2016
Zimmer Biomet Holdings, Inc.	Breach of DPA for failure to implement and maintain a compliance program and for conduct in Brazil and Mexico	Ongoing discussions with DOJ to resolve the DPA breaches without a trial	Breach of DPA	Brazil Mexico	Pharmaceutical	
Cisco Systems Inc.	Investigation of business activities in Russia and CIS countries of certain resellers of Cisco products.	DOJ: Declination letter SEC: Declination letter		Eastern Europe	Information Technology	
General Cable Corporation	Overseas subsidiaries made improper payments to foreign government officials for a dozen years to obtain or retain business	DOJ : NPA; \$20,469,694.80 penalty; self-report FCPA compliance efforts over next 3 years SEC : Disgorgement of \$51,174,237 and prejudgment interest of \$4,107,660 for FCPA violations; \$6.5million penalty for accounting violations	Anti-Bribery Books and Records Internal Controls	Angola, Bangladesh, China, Egypt, Indonesia, and Thailand	Manufacturing	12/29/2016
Karl J. Zimmer	As Senior Vice President responsible for sales in Angola, approved improper commission payments	SEC : \$20,000 penalty	Causing Books and Records Causing Internal Controls Internal Controls			



Part 6:
Resources

2016 FCPA YEAR-END REPORT

Part 6: Resources

U.S. Department of Justice, Fraud Section – [Foreign Corrupt Practices Act Unit](#)

U.S. Securities and Exchange Commission – [FCPA Unit](#)

[Foreign Corrupt Practices Act of 1977](#), 15 U.S.C. §§ 78dd-1, et seq. and [unofficial translations](#)

[Foreign Corrupt Practices Act Resource Guide](#)

[Baker & Hostetler FCPA Practice page](#)

[New French Anti-Corruption Law: Companies Doing Business in France Must Beware](#), BakerHostetler Alert (Nov. 22, 2016)

[FCPA and Jail – Are Corporate Officers Really At Risk?](#) BakerHostetler White Paper (Nov. 17, 2016)

[Graham and the Continuing Rejection of Limitless SEC Actions](#), Bloomberg BNA Securities Regulation & Law Report (Oct. 31, 2016)

[FCPA Chief Touts Record High Enforcement Actions – Links Avoiding a Monitor to Early Remediation of FCPA Issues](#), BakerHostetler Alert (Oct. 17, 2016)

[Recent Government Policies Deputize Companies to Root Out Global Corruption](#), Business Law Today (June 2016)

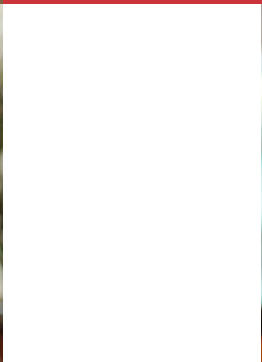
[2016 Mid-Year Cross-Border Government Investigations and Regulatory Enforcement Review](#), BakerHostetler

[Cooperating with the SEC and DOJ in a Post-Yates World](#), Wall Street Lawyer (May 2016)

[DOJ Attempts to Encourage Corporate Self-Disclosures With the Announcement of a One-Year FCPA Pilot Program](#), BakerHostetler Alert (April 13, 2016)

[Foreign Corrupt Practices Act 2015 Year-End Update](#)

[Clean Hands, Smart Deals: A Primer on Complying with Foreign Anti-Bribery Laws](#) (Nov. 2015)



Part 7:
BakerHostetler Attorney Bios



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.



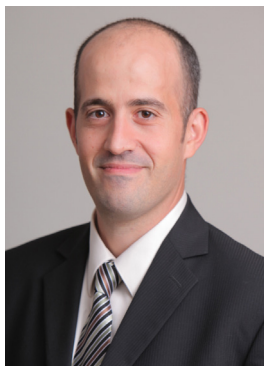
Jonathan R. Barr, Partner

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 non-public 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.



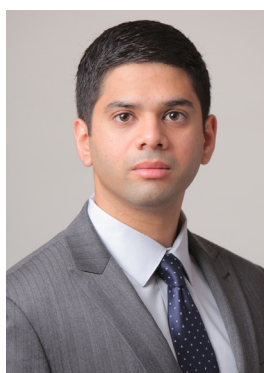
Gregory S. Saikin, Partner

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.



Margaret E. Hirce, Associate

Margaret Hirce focuses her practice on white collar defense and corporate investigations, regulatory enforcement, and complex commercial litigation. Ms. Hirce represents corporations and individuals in regulatory and criminal investigations as well as civil litigation involving allegations of securities fraud. Ms. Hirce has experience advising global corporations and financial institutions on compliance with AML laws and regulations, the FCPA and OFAC sanctions programs. Among other matters, she has worked on a team representing a healthcare technology company in a multimillion-dollar contract dispute in arbitration in London.



Susrut A. Carpenter, Associate

A former prosecutor, Sonny Carpenter has tried several complex jury trials and has led numerous investigations while in the government and as a defense attorney. Focusing his practice in the areas of white collar defense/corporate investigations and commercial litigation, Sonny regularly defends individuals and corporations in federal and state investigations, complex business litigation, and government contract compliance matters. While in the government, he worked closely with the Department of Justice, Department of Homeland Security and Department of Defense. Sonny uses that experience to support clients by advising and defending them in matters involving FCPA compliance, Securities and Exchange Commission (SEC) enforcement, procurement fraud investigations, and various other issues pertaining to compliance measures and enforcement by regulators.



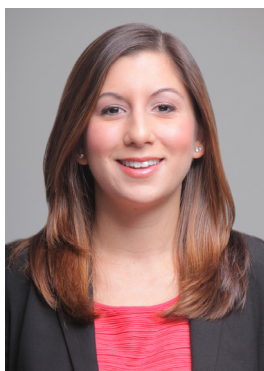
Kendall E. Wangsgard, Associate

Kendall Wangsgard focuses his practice on complex commercial litigation, as well as white collar defense and corporate investigations related to federal criminal and regulatory investigations, securities regulations, and Foreign Corrupt Practices Act (FCPA) compliance. Specifically, Kendall performs extensive representation of corporate and institutional clients with respect to internal investigations, subpoena compliance, and compliance reviews



Lauren P. Berglin, Associate

Lauren Berglin focuses her practice on complex commercial litigation, regulatory enforcement and white collar defense. Ms. Berglin assists individuals and corporations with federal regulatory investigations and compliance matters in the financial industry. Ms. Berglin is able to analyze complex facts and provide thorough analyses while assisting clients.



Bari Nadworny, Associate

Bari Nadworny focuses her practice on white collar criminal defense, regulatory enforcement and complex commercial litigation. She represents individuals in regulatory matters and criminal investigations. Ms. Nadworny efficiently masters complicated facts and provides thorough analyses, making her a valuable member of the teams on which she serves.

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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Recognized as one of the top firms for client service, 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.

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