The Foreign Corrupt Practices Act

A Look Back at 2012 and 2013

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Over the last two years, enforcement of the Foreign Corrupt Practices Act ("FCPA") has remained a priority of the U.S. Department of Justice ("DOJ") and Securities and Exchange Commission ("SEC"). That emphasis is likely to continue through 2014 and beyond. On November 19, 2013, at an annual FCPA conference held outside of Washington D.C., the deputy chief of DOJ's FCPA unit, Charles Duross, said that he anticipates DOJ will bring "very significant, top-10-quality type cases" next year and that the government has increased its investment in the FCPA enforcement program. At the same conference, Kara Brockmeyer, chief of the SEC's FCPA unit, told the audience, "You're going to see us working with…counterparts that we haven't necessarily worked with before."

In short, the FCPA enforcement boom that started around 2005 was not a short-lived change in enforcement priorities, but rather a substantial shift in the way DOJ views foreign corruption. That shift has led to more prosecutions and greater resources being devoted to the Department's anticorruption efforts. Companies should expect the federal government and, increasingly, foreign authorities to continue to devote significant resources to investigating and punishing FCPA violations. In this alert, we discuss a number of notable developments in FCPA enforcement over the past two years. We have also provided brief summaries of the FCPA resolutions entered by corporations in 2012 and 2013 and a chart summarizing key information from each resolution.

The Rise of Self-Monitoring and Self-Reporting

Although DOJ may be requiring fewer companies to retain external compliance monitors as a condition of entering a deferred prosecution agreement ("DPA") or nonprosecution agreement ("NPA"), both DOJ and the SEC are now requiring most companies without an external monitor to self-monitor *and* report periodically on the progress of their remediation and implementation of enhanced compliance measures. Of the 22 corporate settlements entered between January 1, 2012, and November 30, 2013, ***eight*** required the company to retain an independent compliance monitor for part or all of the term of the agreement, and ***nine*** required the company to self-monitor and periodically report to DOJ and/or the SEC regarding its compliance measures.

The companies that were required to retain an independent monitor for only half of their three-year DPA terms (Biomet Inc., Smith & Nephew, Inc., Diebold Inc., Weatherford International, and Bilfinger SE) were required to self-monitor for the remainder of the deferred prosecution period. Of the five companies that were required neither to retain a compliance monitor nor to self-report, one was a German company (Allianz SE) that stopped trading its securities on U.S. exchanges in 2009, and one (Wyeth LLC) has since been acquired by another company (Pfizer Inc.), which agreed to self-report as part of its own unrelated settlement with the SEC.

Thus, self-monitoring (including periodic reporting) has become a nearly universal alternative in instances where an external monitor is not imposed. Companies that settle FCPA allegations with DOJ and the SEC in the future likely can expect an external monitor, self-reporting, or both—it is rare

that a company today settles FCPA charges without some continuing obligation to report on its compliance program.

SEC Enters Its First NPA Related to FCPA Allegations

The SEC began using DPAs and NPAs in 2010 as part of its Cooperation Initiative. Although hailed as an alternative option that could be used to reward a company or individual for cooperation, the SEC has used DPAs and NPAs far less frequently than DOJ has, entering only seven to date. Of those, two related to FCPA allegations: the SEC's DPA with Tenaris S.A. in 2011, and its NPA with Ralph Lauren Corporation, announced in April 2013. Ralph Lauren, which simultaneously entered an NPA with DOJ, paid a total of approximately $1.6 million to resolve allegations that its subsidiary in Argentina made $593,000 in payments to a customs broker, knowing that some or all of those payments were being passed to local customs officials to ensure the successful import of Ralph Lauren products into Argentina.

The SEC praised Ralph Lauren's response to its learning of the bribes through its compliance program and portrayed the NPA as the company's reward for both having an effective compliance program and taking thorough steps to quickly disclose and remediate the violations detected through that program. Ralph Lauren discovered the violations when employees in Argentina raised concerns about the customs broker in response to new FCPA policies and training that the company had implemented. Ralph Lauren disclosed the payments to DOJ and the SEC within two weeks of discovering them, undertook a worldwide FCPA compliance review of its operations, and began winding down all of its operations in Argentina. Kara Brockmeyer, the SEC's FCPA Unit Chief, said of the resolution:

> This NPA shows the benefit of implementing an effective compliance program. Ralph Lauren Corporation discovered this problem after it put in place an enhanced compliance program and began training its employees. That level of self-policing along with its self-reporting and cooperation led to this resolution.

Companies can indeed look to the Ralph Lauren settlement as demonstrative of the benefits to be gained from a thorough and effective compliance program, swift and voluntary disclosure of FCPA violations, and strong remedial measures. However, it is also worth noting that the SEC has set a high bar with its first NPA. Voluntary disclosure within two weeks of discovering misconduct and a complete exit from doing business in the country where the misconduct occurred go beyond the measures taken by most companies that have achieved NPAs, or even declinations, from DOJ. In fact, making a report within two weeks of discovering potential violations, while commended by the SEC in the Ralph Lauren case, is in most cases not an effective way to remediate a problem. Moving too quickly to disclose increases the risk that inaccurate information will unintentionally be provided to enforcement authorities in the initial disclosure. Providing inaccurate information can in turn lead to

adverse consequences for the disclosing company, thus defeating the very purpose of making the early report.

Judicial Scrutiny of SEC Settlements

Although we have yet to see whether it will become a trend across the federal judiciary, in the Tyco and IBM cases, Judge Richard Leon of the D.C. District Court clearly signaled his intent not to rubber-stamp the SEC's settlements of FCPA complaints filed in his court. IBM settled FCPA charges against IBM on March 18, 2011, but Judge Leon refused to simply sign his approval to the settlement, as has been the norm with other judges. At a hearing on December 20, 2012, it became clear that Judge Leon wanted to increase IBM's reporting obligations beyond what was required in its settlement with the SEC. In particular, he wanted IBM to report annually to the court on any future FCPA violations, including any books-and-records inaccuracies, regardless of whether they were related to improper payments. IBM balked at reporting every inaccuracy in its records, citing the burden such a requirement would impose. Judge Leon required IBM to produce evidence supporting its burdensomeness argument.

On July 25, 2013, Judge Leon finally approved IBM's settlement with the SEC, issuing a final judgment that required IBM, for two years, to submit annual reports to the SEC and the court "describing its efforts to comply with the [FCPA]." IBM was further required to report "immediately" upon learning that "it is reasonably likely that IBM has violated the FCPA in connection with either (1) any improper payment to foreign officials to obtain or retain business or (2) any fraudulent books and records entry." Finally, IBM was required to report to the court and the SEC within 60 days of learning it is "the subject of any investigation or enforcement proceeding by any federal government agency," including DOJ, or a party to a major federal administrative proceeding or major civil litigation in the United States.[1]

Tyco International's September 25, 2012 settlement of FCPA charges with the SEC faced similar scrutiny from Judge Leon and was finally approved on June 17, 2013, with reporting requirements similar to IBM's.[2] If other federal judges follow Judge Leon's example, companies defending civil FCPA charges in the future can expect at least the possibility that their continuing compliance efforts will be evaluated by not only the SEC but also a federal court. Additionally, they may be required to disclose future criminal investigations or administrative enforcement actions in under-seal court filings.

[1] *SEC v. Int'l Bus. Machines Corp.*, Case No. 1:11-cv-00563-RJL (D.D.C. July 25, 2013).
[2] *SEC v. Tyco Int'l Ltd.*, Case No. 1:12-cv-01583-RJL (D.D.C. June 17, 2013).

Continued Enforcement in the Healthcare Industry

Over the past two years, DOJ and the SEC have continued to bring enforcement actions against participants in the healthcare industry. In 2012 and 2013, four medical device makers and three pharmaceutical companies settled FCPA enforcement actions with DOJ, the SEC, or both. Companies that sell drugs, medical technology, or other products to hospitals overseas must have strong FCPA policies and training and be vigilant regarding the conduct of their subsidiaries, distributors, and third-party agents. Many of the countries that are hot spots for bribery and corruption also have large networks of state-owned hospitals (the employees of which, including physicians, are considered by enforcement agencies to be "foreign officials" for purposes of the FCPA) and/or state agencies that approve drugs for sale in the country.

The FCPA risks for healthcare companies are truly global. In 2012 and 2013 alone, healthcare companies settled FCPA allegations related to improper payments in Argentina, Brazil, Bulgaria, China, Croatia, Greece, Indonesia, Kazakhstan, Mexico, Pakistan, Poland, Romania, Russia, and Saudi Arabia.

FCPA Enforcement in the Financial Services Industry

One major industry that has not seen much FCPA enforcement activity thus far is the global financial services industry. That may be changing. Between May and June 2013, three employees, including a managing partner, of New York broker-dealer Direct Access Partners LLP ("DAP") were arrested along with a senior official from Venezuela's state economic development bank, Banco de Desarrollo Económico y Social de Venezuela ("BANDES"). According to the filed documents, Maria de Los Angeles Gonzalez de Hernandez, the BANDES official who was responsible for the bank's overseas trading activity, directed substantial trading business to DAP, much of which had no purpose except to create revenue for DAP, in return for a portion of DAP's profits.

On November 18, 2013, Gonzalez admitted to accepting $5 million in kickbacks from DAP in return for directing BANDES trading business to DAP. She pleaded guilty to conspiracy to violate the Travel Act and commit money laundering and to substantive Travel Act and money laundering counts. Gonzalez agreed to cooperate with prosecutors investigating the DAP bribery scheme, which allegedly extended beyond BANDES to at least one other Venezuelan state economic development bank, Banfoandes.

The three DAP employees, Ernesto Lujan, Jose Alejandro Hurtado, and Tomas Alberto Clarke Bethancourt, pleaded guilty in August 2013 to conspiring to violate the FCPA and the Travel Act and commit money laundering as well as substantive counts of those offenses. They are scheduled to be sentenced in early 2014. The charges arose from a standard broker-dealer examination by the SEC.

The SEC has filed a separate civil complaint against Bethancourt, Hurtado, and two others.[3] DAP reportedly shut down in the wake of the May 2013 arrests.

The government's interest in potential FCPA violations by financial industry participants extends beyond the DAP scheme. In January 2011, the SEC sent letters of inquiry to banks and private equity firms, probing their involvement with sovereign-wealth funds (*i.e.*, investment funds owned and/or operated by foreign governments).[4] Sovereign-wealth funds, which are likely to be considered "instrumentalities" of foreign governments under the FCPA, often invest in both large investment banks and private equity firms. Although there has not yet been an FCPA enforcement action resulting from the SEC investigation that began in 2011, it is too early to say that the SEC and DOJ will not ultimately bring actions in relation to sovereign-wealth fund activity.

Private equity firms face unique risks and need to be aware of DOJ and SEC guidance regarding due diligence prior to an acquisition. Acquiring an investment with FCPA problems can lead to successor liability for the investor, particularly if the investor did not perform thorough anticorruption due diligence. Depending on the structure of the investment and the way the portfolio asset is managed, FCPA violations that occur post-acquisition can also create liability for the asset-holder based on agency principles. In short, financial industry participants that hold private equity portfolios should have FCPA compliance programs and policies in place to mitigate the risk of acquiring an asset with FCPA issues.

Use of Accounting Provisions in Connection with Commercial Bribery

The government has continued to show its willingness to use the books-and-records and internal controls provisions of the FCPA in cases in which there is no evidence of bribery of a foreign official. In October 2013, Diebold, Inc., an ATM manufacturer, settled civil and criminal allegations that it violated the books-and-records provisions by failing to accurately record bribe payments to employees of *private* banks in Russia. Likewise, the civil charges settled by Weatherford International in November 2013 included allegations that Weatherford used a third-party agent to funnel bribes to a commercial customer in Congo and improperly recorded those payments as legitimate expenses.

In 2012, Oracle Corporation, a software company, settled charges brought by the SEC alleging that its Indian subsidiary created a slush fund. Although the SEC alleged no facts showing that the funds were used to bribe foreign officials, it noted that "Oracle India's parked funds created *a risk* that they *potentially* could be used for illicit means, *such as* bribery or embezzlement."[5] According to the SEC's complaint, Oracle violated the books-and-records provision by maintaining an off-books slush

[3] *SEC v. Clarke Bethancourt, Hurtado, Pabon, and Bethancourt*, Case No. 13-cv-3074 (S.D.N.Y. May 7, 2013).
[4] *See* Dionne Searcey & Randall Smith, *SEC Probes Banks, Buyout Shops Over Dealings with Sovereign Funds*, WALL ST. J. (Jan. 14, 2011) (*available at* http://online.wsj.com/news/articles/SB10001424052748704307404576080403625366100).
[5] *SEC v. Oracle Corp.*, Case No. 3:12-cv-04310-CRB, Complaint, at *4 (N.D. Cal. Aug. 16, 2012) (emphasis added).

fund and violated the internal controls provision by lacking the "proper controls to prevent its employees at Oracle India from creating and misusing the parked funds."[6]

Although the Oracle complaint does allege that Oracle sold products and services to Indian government end users, that fact is essentially irrelevant to the alleged violations. If the allegations in the complaint are true (Oracle did not admit to them when settling with the SEC), then Oracle would have violated the books-and-records and internal controls provisions even if its conduct created only a risk of commercial bribery, embezzlement, or other illegal activity that does not violate the FCPA's antibribery provision.

The SEC is candid about its willingness to charge accounting provision violations in connection with commercial bribery. At a conference on November 18, 2013, the SEC's FCPA Unit Chief, Kara Brockmeyer, warned companies that the SEC is pursuing administrative and civil actions over alleged violations of the accounting provisions, and noted that the SEC will charge accounting violations in connection with commercial bribery. "If we find them when we're investigating foreign bribery, we are going to be charging those accounting violations as well," she stated.

Companies therefore need to ensure that their internal controls and anticorruption compliance programs are not solely geared toward foreign-official bribery, but are designed to catch commercial bribery (and the accounting inaccuracies that facilitate such bribery) as well.

Continued Importance of Maintaining a First-Rate Compliance Program

Recent FCPA enforcement actions highlight the continued importance of having a serious and thorough anticorruption compliance program and system of internal controls. Now more than ever—with aggressive FCPA enforcement having been on everyone's radar for several years—government enforcers will not be swayed to lenience by a paper compliance program. In the Oracle case, the SEC complaint alleged that Oracle "did not properly account" for money in a side fund created by its subsidiary's employees because the employees "concealed the existence of the side fund" from Oracle.[7] Far from the clandestine activity of its employees being a reason to let Oracle off the hook, the SEC premised its charges on the fact that Oracle lacked the internal controls to detect and prevent the creation of a multimillion-dollar slush fund in a high-risk country.

By contrast, DOJ and the SEC did not bring charges against Morgan Stanley for the conduct of its employee, Garth Peterson, who circumvented the company's internal controls to bribe a Chinese official in connection with a real estate transaction. Peterson headed Morgan Stanley's real estate group's office in Shanghai. To purchase a certain building, Morgan Stanley required the approval of a particular Chinese official. To evade Morgan Stanley's internal controls, Peterson represented to

[6] *Id.* at *5.
[7] *SEC v. Oracle Corp.*, Case No. 3:12-cv-04310-CRB, Complaint, at *3 (N.D. Cal. Aug. 16, 2012).

Morgan Stanley that the state-owned company for which the Chinese official worked was buying an interest in the building. In fact, Peterson ensured that the interest was sold to a shell company controlled by himself, the Chinese official, and a Canadian lawyer. When the real estate appreciated two years later, the official made millions in profit.

Peterson ultimately pleaded guilty on April 25, 2012, to a one-count information alleging that he conspired to evade Morgan Stanley's internal controls. In August 2012, he was sentenced to nine months imprisonment and three years supervised release. In a separate action brought by the SEC, Peterson was ordered to disgorge approximately $3.82 million. In the criminal information, DOJ described at length Morgan Stanley's thorough FCPA compliance program and "substantial system of controls to detect and prevent improper payments," as well as the extensive training that Peterson himself underwent with regard to FCPA compliance.[8]

A comparison of the Oracle and Peterson cases demonstrates that when culpable employees truly go "rogue" in evading a thorough compliance program that could reasonably be expected to detect and prevent violations, then there is a good chance the government will not hold the company responsible. However, when employees commit violations that were not detected because of the lack of an effective compliance program—even though the violation occurred without the knowledge of the company—then the government will consider the company to be liable.

Speaking at an Ethics Resource Center summit in February 2013, DOJ Fraud Section Chief Jeffrey H. Knox made this point explicitly: "In many cases where companies come in with an FCPA violation or other issues but they have strong compliance programs at the time that, for no lack of trying, just didn't detect criminal conduct, they often walk out the door with declinations." On the other hand, when a compliance program looks good only "on paper" and the company "fail[s] to comply through the end, you won't get as much credit for it. And you shouldn't."[9]

The Weatherford and Orthofix settlements further demonstrated DOJ's willingness to hold companies responsible for compliance programs that were not strong in practice. The documents filed in connection with Weatherford's $252.7 million settlement with DOJ and the SEC describe myriad compliance program and controls deficiencies that existed at the company prior to 2008, including lack of dedicated compliance personnel, failure to conduct anticorruption training, failure to translate the company's anticorruption policy into languages other than English, lack of protocol to follow up on complaints raised by employees through the company's "ethics questionnaires," actual failure to investigate such complaints, and failure to conduct anticorruption due diligence on third-party agents, distributors, and joint venture partners.

[8] *U.S. v. Peterson*, Case No. 1:12-cr-00224-JBW, Information (E.D.N.Y. Apr. 25, 2012).

[9] Ethics Resource Center, "Improving Corporate Conduct Through Pro-Compliance Enforcement Practice: A One-Day Summit" (Feb. 12, 2013).

In noting the deficiencies, the government emphasized that Weatherford, an oil equipment and services provider, operated in an industry with a high-corruption risk profile and expanded its global footprint primarily through acquisitions of local companies, many in high-risk countries.

In the criminal information DOJ filed against medical device maker Orthofix alleging FCPA violations by its Mexican subsidiary Promeca S.A. de C.V., DOJ noted that Orthofix had an anticorruption policy but did not translate it into Spanish, implement it at Promeca, or train many corporate personnel, including senior officers, on the policy.[10] Orthofix paid $7.42 million to DOJ and the SEC under a DPA and civil settlement.

The Value of Voluntary Disclosure

Government enforcement agencies have long touted the benefits of voluntary disclosure in achieving a favorable resolution to FCPA (or other corporate criminal) charges. Recent settlements demonstrate that in some cases, companies that voluntarily disclose FCPA violations can reap valuable rewards. Ralph Lauren, which disclosed violations to the government within two weeks of discovering them, secured NPAs with both DOJ and the SEC—the first and (thus far) only NPA that the SEC has entered to resolve FCPA allegations.

However, Diebold voluntarily disclosed its violations and received a DPA *and* the obligation to retain an external compliance monitor. This is not to say that Diebold did not benefit from its voluntary disclosure—the amount of its settlement, the extent of the charged conduct, and any number of other terms may have been favorably influenced by the voluntary disclosure. Certainly a company will never be in a worse settlement position because it chose to make a disclosure. However, it is clear that there is no rule of thumb for the results of a voluntary disclosure. A company that self-reports can reasonably assume it will receive some benefit, and voluntary disclosure will increase the odds of an extremely favorable resolution, but there is no guarantee that a company that discloses will get a declination or an NPA or will not be subject to an external monitor. Each case will be evaluated on its own unique facts.

Dodd-Frank Whistleblower Program

Andrew Ceresney, co-director of the SEC's enforcement division, said on November 20, 2013, that he believes FCPA violations will be "increasingly fertile ground" for the SEC's whistleblower program.[11] According to Ceresney, the benefits a company will see from voluntary self-disclosure can be swiftly reduced if a whistleblower reports the violations to the SEC first. The bounty payments offered by the SEC whistleblower program and the anti-retaliation protections Dodd-Frank extends to

[10] *U.S. v. Orthofix Int'l, N.V.*, Case No. 4:12-cr-00150-RAS (E.D. Tex. 2012).

[11] American Conference Institute, 30th International Conference on the Foreign Corrupt Practices Act (Nov. 20, 2013). In 2013, 149 complaints made through the SEC's whistleblower program were characterized as FCPA-related by the persons reporting. U.S. Securities and Exchange Commission, 2013 Annual Report to Congress on the Dodd-Frank Whistleblower Program (Nov. 15, 2013).

FCPA whistleblowers (who are not covered by the anti-retaliation provisions in Section 806 of the Sarbanes-Oxley Act) provide incentives for employees to report suspected violations to the SEC before or at the same time that they report internally, if they report internally at all. The possibility of a whistleblower means companies that wish to self-disclose and reap the attendant benefits cannot afford to wait too long before making a disclosure.

The reach of the Dodd-Frank anti-retaliation protections is not limitless, however. On October 21, 2013, Judge William H. Pauley, III, of the Southern District of New York dismissed a whistleblower retaliation suit against Siemens A.G. by Meng-Lin Liu, a former compliance officer for the healthcare division of Siemens' Chinese subsidiary ("Siemens China"). Liu claimed that he was terminated for repeatedly raising concerns that Siemens China was paying kickbacks, through third-party intermediaries, to Chinese officials who accepted Siemens China's bids to sell medical equipment.

In dismissing Liu's complaint, the court held that the Dodd-Frank anti-retaliation provisions do not apply extraterritorially. Liu was a Taiwanese resident bringing suit against a German company for retaliation by its Chinese subsidiary in response to his allegations of misconduct in China and North Korea. The only connection to the United States was that Siemens ADRs are traded on an American exchange. Judge Pauley found that to be insufficient.[12]

Although Liu was unable to claim the protection of the anti-retaliation provisions, he likely would be eligible for a whistleblower award should his report to the SEC result in a successful enforcement action garnering more than $1 million in sanctions.[13]

Coordination with Foreign Authorities

As governments around the world step up their anticorruption enforcement efforts, we can expect to see increasing cooperation between foreign authorities and American prosecutors and regulators investigating FCPA violations. In May 2013, the joint settlement reached by DOJ and the SEC with French oil and gas company Total S.A. represented what Acting Assistant Attorney General Mythili Raman called "the first coordinated action by French and U.S. law enforcement in a major foreign bribery case." At the same time that the U.S. settlement was announced, French authorities announced their request that Total and its CEO stand trial in France on related charges under French law.

In a March 14, 2012 press release announcing its DPA with BizJet International Sales and Support Inc. and NPA with BizJet's parent company, Lufthansa Technik AG, DOJ acknowledged its close coordination with law enforcement authorities in Mexico and Panama.

[12] *Liu v. Siemens A.G.*, Case No. 13-cv-00317-WHP, ~ F. Supp. 2d ~, 2013 WL 5692504, at *4 (S.D.N.Y. Oct. 21, 2013).
[13] *Id.* at *3.

Increased enforcement activity by foreign countries can also alert DOJ and the SEC to potential FCPA violations or encourage a company to voluntarily disclose violations it has uncovered internally. Koninklijke Philips Electronics N.V. ("Philips") self-disclosed potential violations to DOJ and the SEC following an internal investigation prompted by the indictment in Poland of 23 individuals, including three former employees of Philips' Polish subsidiary, for violating public tender laws relating to medical device sales to public hospitals. Ultimately, Philips settled administrative charges by the SEC and agreed to disgorge approximately $4.5 million.

With many countries enacting or strengthening existing anti-corruption statutes in recent years, including Brazil, Canada, Mexico, Russia, and the United Kingdom, cross-border enforcement activity is likely to increase even more. Companies doing business abroad need to consider not only the FCPA, but also the relevant anti-corruption statutes in the jurisdictions where they operate, when they design their compliance programs.

DOJ/SEC FCPA Resource Guide

On November 14, 2012, DOJ and the SEC released *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, their long-anticipated guidance regarding compliance with and enforcement of the FCPA. Although most of the information in the hefty guide is familiar to experienced FCPA attorneys, the guide provides a helpful compendium of the agencies' views regarding the FCPA. It is a valuable resource for corporate counsel and compliance officers seeking to understand the FCPA and to ensure that their internal compliance programs appropriately address the risks of doing business abroad.

Corporate FCPA Resolutions – 2012

Marubeni Corporation

Marubeni Corporation ("Marubeni"), a Japanese trading company, was an agent of a four-company joint venture that bribed Nigerian officials in order to obtain contracts to build liquefied natural gas facilities on Bonny Island, Nigeria. From at least 1994 to 2004, the joint venture hired Marubeni to bribe Nigerian government officials and transferred $51 million to Marubeni's bank account intending the money to be used in part to pay the bribes.

A criminal information filed by DOJ against Marubeni on January 17, 2012, alleged one count of conspiring to violate the FCPA and one count of aiding and abetting violations of the FCPA.[14] Marubeni entered a two-year DPA under which it agreed to pay a $54.6 million penalty and retain an independent compliance consultant to evaluate its compliance program with respect to the FCPA and Japanese anti-corruption laws. Marubeni also agreed to cooperate with DOJ's investigation of the

[14] *U.S. v. Marubeni Corp.*, Case No. 4:12-cr-000022 (S.D. Tex. Jan. 17, 2012).

Bonny Island bribery scheme, subject to any limitations imposed by applicable Japanese laws and regulations.

Smith & Nephew, Inc.

Smith & Nephew, Inc., incorporated in Delaware and headquartered in Tennessee, manufactures and supplies orthopedic medical devices. From 1998 to approximately 2008, Smith & Nephew, Inc., utilized shell companies created by its Greek distributor to make improper payments to health care providers employed by publicly-owned Greek hospitals. The purpose of the payments was to induce the health care providers to buy Smith & Nephew products. The payments were inaccurately recorded in the books of Smith & Nephew, Inc., as "discounts" or payments for "marketing services."

A criminal information filed against Smith & Nephew, Inc., in the District Court for the District of Columbia alleged conspiracy to violate the antibribery and books-and-records provisions of the FCPA, substantive violations of the antibribery provisions, and aiding and abetting violations of the books and records provisions.[15] On February 6, 2012, Smith & Nephew, Inc., entered a three-year DPA under which it agreed to pay a penalty of $16.8 million, retain an independent compliance monitor for 18 months, and self-monitor and report for the remainder of the deferred prosecution period. Smith & Nephew, plc (parent company of Smith & Nephew, Inc.) entered a settlement with the SEC under which it agreed to pay $5.43 million in disgorgement and prejudgment interest and retain an independent compliance monitor for 18 months.[16]

BizJet International Sales and Support, Inc., and Lufthansa Technik AG

BizJet International Sales and Support, Inc. ("BizJet") is an Oklahoma-based provider of aircraft maintenance, repair, and overhaul ("MRO") services. It is a subsidiary of Lufthansa Technik AG, a German aircraft service provider. From 2004 to 2010, BizJet paid bribes to government officials in Mexico and Panama who were employed by the Mexican Federal Police, the Mexican president's air fleet, the air fleet of the governor of the Mexican state of Sinaloa, and the Panama Aviation Authority in order to obtain and retain MRO service contracts with those government customers.

The improper payments were planned and authorized by BizJet executives.[17] On March 14, 2012, BizJet entered a three-year DPA under which it agreed to pay a penalty of $11.8 million, self-monitor, and report to DOJ regarding its remediation and improvement of its compliance program and internal controls. DOJ cited BizJet's voluntary disclosure and "extraordinary" cooperation as considerations underlying the department's decision to defer prosecution. Lufthansa Technik, BizJet's

[15] *U.S. v. Smith & Nephew, Inc.*, Case No. 1:12-cr-00030-RBW (D.D.C. Feb. 6, 2012).
[16] *SEC v. Smith & Nephew plc*, Case No. 1:12-cv-00187-GK (D.D.C. Feb. 6, 2012).
[17] *U.S. v. BizJet International Sales and Support, Inc.*, Case No. 4:12-cr-00061-GFK (N.D. Okla. Mar. 14, 2012).

parent company, entered an NPA related to the same conduct, under which it was required to self-monitor and report to DOJ but did not pay any monetary penalty.

Indictments against four former BizJet executives were unsealed in the Northern District of Oklahoma on April 5, 2013. Two of the executives, Peter DuBois and Neal Uhl, pleaded guilty. Based on DuBois and Uhl's "substantial cooperation," DOJ filed 5K1.1 motions to reduce their sentences and they received sentences of five years' probation, including eight months of home detention. DuBois was also required to forfeit approximately $160,000, and Uhl was required to pay a $10,000 criminal fine. The other two indicted former executives, Jald Jensen and Bernd Kowalewski, are believed by DOJ to remain abroad and have not appeared before the court.

Biomet, Inc.

On March 26, 2012, DOJ filed a criminal information[18] and the SEC filed a civil complaint[19] against Biomet, Inc. ("Biomet"), an orthopedic medical device manufacturer. The information alleged violations of the antibribery and books-and-records provisions of the FCPA, and the civil complaint alleged violations of the books-and-records and internal controls provisions.

Biomet and its subsidiaries made payments, based on a percentage of sales, to doctors at state-owned hospitals in Argentina, Brazil, and China to influence the purchase of Biomet products. In China, Biomet also provided entertainment and international travel for doctors. Biomet entered a three-year DPA under which it agreed to pay a $17.28 million penalty, retain an independent compliance monitor for at least 18 months, and self-monitor and report for the remainder of the DPA period. Biomet resolved the SEC's civil allegations by agreeing to pay $5.57 million in disgorgement and prejudgment interest, retain an independent compliance monitor for 18 months, and self-monitor and report to the SEC for an additional 18 months.

Data Systems & Solutions LLC

On June 18, 2012, Data Systems & Solutions LLC ("DSS"), a company headquartered in Virginia that designs, installs, and maintains controls systems at nuclear and fossil fuel power plants, entered a two-year DPA under which it agreed to pay $8.82 million, remediate flaws in its compliance program, and self-monitor by periodically reporting to DOJ on its remedial efforts.

According to a criminal information filed by DOJ in the Eastern District of Virginia, DSS bribed officials of the Ignalina Nuclear Power Plant, a state-owned plant in Lithuania, to provide contracts to DSS.[20] DSS funneled cash payments to the Ignalina officials through third-party

[18] *U.S. v. Biomet, Inc.*, Case No. 1:12-cr-00080-RBW (D.D.C. Mar. 26, 2012).
[19] *SEC v. Biomet, Inc.*, Case No. 1:12-cv-00454-RMC (D.D.C. Mar. 26, 2012).
[20] *U.S. v. Data Systems & Solutions LLC*, Case No. 1:12-cr-00262-LO (E.D. Va. June 18, 2012).

subcontractors and also provided the officials with travel and other gifts. The information alleged one count of conspiracy to violate and one count of violating the antibribery provisions of the FCPA. DOJ cited DSS's "extraordinary" cooperation and extensive remedial actions following receipt of subpoenas from the government as a basis for deferring prosecution.

Orthofix International, N.V.

According to a criminal information filed by DOJ on July 10, 2012,[21] from approximately 2003 to 2008, Promeca S.A. de C.V. ("Promeca"), a wholly-owned Mexican subsidiary of Orthofix International, N.V. ("Orthofix"), made cash payments to employees of government-owned hospitals in Mexico in exchange for agreements to purchase Orthofix's medical supplies and devices. These cash payments represented a percentage of Promeca's collected sales to the government-owned hospitals and were referred to by Promeca employees as "chocolates." In 2008 and 2009, Promeca agreed to make payments to officials of a Mexican government agency in return for medical device contracts owned and controlled by that agency. The agency officials used fictitious invoices to collect the promised payments from Promeca.

According to the information, the Orthofix officer who was responsible for Orthofix's sales operations in Latin America until 2008 knew about the improper payments being made by Promeca but failed to stop or report the scheme. The information alleged that Orthofix violated the FCPA's internal controls provision, in part by failing to provide any FCPA training to many of its personnel, including the officer who knew of the Promeca scheme but did nothing to stop it. The information noted that Orthofix had an anticorruption policy but neither translated the policy into Spanish nor implemented it at Promeca.

Orthofix voluntarily disclosed the misconduct to DOJ and the SEC and entered a three-year DPA under which it agreed to pay $2.22 million, improve its compliance plan, and engage in self-monitoring and periodic reporting. In a related settlement with the SEC, Orthofix agreed to pay approximately $5.2 million in disgorgement and prejudgment interest.

The NORDAM Group, Inc.

On July 17, 2012, the NORDAM Group ("NORDAM"), a Delaware corporation that manufactures aircraft parts and provides aircraft maintenance services, entered a three-year NPA under which it agreed to pay a penalty of $2 million. NORDAM allegedly bribed employees of Chinese government-owned airlines in order to win contracts to perform maintenance services for those airlines. The bribes were falsely characterized as "commissions" or "facilitator fees" and were disguised through fictitious sales representation agreements. Although the value of the alleged bribes was $1.5

[21] *U.S. v. Orthofix Int'l, N.V.*, Case No. 4:12-cr-00150-RAS (E.D. Tex. 2012).

million, DOJ agreed to a fine of only $2 million because NORDAM demonstrated that a larger penalty would jeopardize its ability to remain in business.

Pfizer Inc. and Pfizer H.C.P. Corporation

Pfizer Inc. subsidiary Pfizer H.C.P. Corporation ("Pfizer HCP") provided cash payments, travel benefits, and other things of value to doctors at state-owned hospitals in Bulgaria, Croatia, and Russia to influence the doctors to purchase or prescribe Pfizer products. Pfizer HCP also entered bogus contracts believing that those contracts would be provided to government officials in Croatia and Kazakhstan in order to obtain registration of Pfizer products in those countries.

On August 7, 2012, Pfizer HCP entered a two-year DPA under which it agreed to pay a $15 million penalty, enhance its compliance program, and self-report to DOJ regarding its remediation and compliance measures. The same month, Pfizer Inc. reached a settlement with the SEC under which it agreed to pay $26.34 million in disgorgement and prejudgment interest and report periodically to the SEC regarding its remediation and compliance measures.

Tyco International, Ltd., and Tyco Valves & Controls Middle East, Inc.

Tyco Valves & Controls Middle East ("TVC"), a subsidiary of Swiss company Tyco International, Ltd. ("Tyco"), bribed employees of foreign government customers in order to win business and obtain approvals of its products. TVC falsely described the bribes in its books and records as legitimate "consultancy costs," "equipment costs," and "commissions." On September 20, 2012, Tyco entered an NPA under which it agreed to pay $13.68 million for books-and-records violations. Four days later, TVC pleaded guilty to one count of conspiracy to violate the FCPA's antibribery provisions.[22] TVC was sentenced to a $2.1 million fine, which was included in the penalty paid by Tyco.

Tyco also reached a settlement with the SEC in September 2012, under which it agreed to pay $13.13 million in disgorgement and prejudgment interest. However, the settlement was not approved by U.S. District Court Judge Richard Leon until June 2013. Under the agreement approved by Judge Leon, Tyco is required to submit annual reports for two years to both the SEC and the court "describing its efforts to comply with the [FCPA]."[23] Tyco is also required to report to the SEC and the court "upon learning it is reasonably likely" that Tyco violated the FCPA or upon learning that the company is a party to a major federal administrative proceeding or major civil litigation within the United States or subject to any criminal investigation by DOJ.[24]

[22] *U.S. v. Tyco Valves & Controls Middle East, Inc.*, Case No. 1:12-cr-00418 (E.D. Va. 2012).
[23] *SEC v. Tyco Int'l Ltd.*, Case No. 1:12-cv-01583-RJL (D.D.C. June 17, 2013).
[24] *Id.*

Corporate Civil-Only Settlements—2012

Wyeth LLC

On August 7, 2012, the SEC filed a civil complaint against Wyeth LLC (now a wholly owned subsidiary of Pfizer) alleging violations of the FCPA's books-and-records and internal controls provisions.[25] According to the complaint, between 2005 and 2010, Wyeth subsidiaries in China, Indonesia, and Pakistan provided cash payments, gifts, travel, and other things of value to doctors and other employees at state-owned hospitals to influence the doctors to recommend Wyeth nutritional products to their patients.

In 2007, Wyeth's local distributor in Saudi Arabia allegedly paid a cash bribe to a Saudi Arabian customs official to secure the release of Wyeth promotional items that were being held because of Wyeth's failure to obtain a required certificate. Wyeth reimbursed the distributor for the payment and recorded it as a "facilitation expense" in Wyeth's books and records. Wyeth consented to entry of a final judgment requiring it to pay approximately $18.88 million in disgorgement and prejudgment interest. Because of Wyeth's "exemplary cooperation," it did not pay a civil penalty.

Oracle Corporation

Oracle Corporation ("Oracle") is a publicly traded company headquartered in Redwood Shores, California, that provides enterprise software and computer hardware products and services. According to a complaint filed by the SEC in August 2012, between 2005 and 2007, employees at Oracle's wholly owned Indian subsidiary created an off-books "side fund" by maintaining an excess margin between its end user price and its price to its distributors.[26] Oracle's subsidiary then directed the distributor to "park" the extra money in the side fund. Because the subsidiary's employees hid the existence of the side fund from Oracle, Oracle did not properly account for the money in the side fund, and there was a risk that the side fund could be used to bribe foreign officials.

According to the SEC, Oracle did not have the proper controls to prevent the creation and misuse of the side fund. Following an internal investigation, Oracle terminated culpable employees and improved its FCPA compliance program. Without admitting or denying the allegations, Oracle consented to a final judgment on August 16, 2012, under which it paid a civil penalty of $2 million.

Allianz SE

Allianz SE, a German company, agreed with the SEC to pay more than $12.3 million to settle administrative charges by the SEC, including a civil penalty of approximately $5.3 million and

[25] *SEC v. Wyeth LLC*, Case No. 1:12-cv-01304-ABJ (D.D.C. Aug. 7, 2012).
[26] *SEC v. Oracle Corp.*, Case No. 3:12-cv-04310 (N.D. Cal. Aug. 16, 2012).

approximately $7.1 million in disgorgement and prejudgment interest. According to a cease-and-desist order filed by the SEC on December 17, 2012, Allianz's subsidiary in Indonesia made improper payments to employees of government-owned entities to secure 295 insurance contracts for Allianz. In 2005, Allianz was alerted to potential unsupported payments, and a subsequent audit revealed the improper payments, but the payments continued. In 2009, another complaint was made to Allianz's outside auditor. Allianz again conducted an internal investigation and discovered illicit payments but did not voluntarily disclose the misconduct. The SEC's order found that Allianz violated the books-and-records and internal controls provisions of the FCPA. Allianz did not admit or deny the findings when settling with the SEC.

Eli Lilly and Company

On December 20, 2012, the SEC filed a civil complaint against Eli Lilly and Company ("Eli Lilly") alleging violations of the antibribery, books-and-records, and internal controls provisions of the FCPA in connection with the activities of its subsidiaries in Brazil, China, Poland, and Russia.[27] According to the complaint, between 2006 and 2009, Eli Lilly's Chinese subsidiary falsified expense reports to facilitate the provision of cash and gifts to Chinese government-employed doctors. In 2007, Eli Lilly allegedly gave a third-party distributor in Brazil a large discount on a pharmaceutical product, intending some of the excess money to be used to bribe officials from a Brazilian state to ensure that the state purchased the Eli Lilly drug.

Eli Lilly's subsidiary in Poland allegedly made eight payments between 2000 and 2003 to a small charity founded by a regional government health authority official; at the same time, the subsidiary sought the official's support for including Eli Lilly drugs on the government's reimbursement list. Finally, Eli Lilly's subsidiary in Russia allegedly made millions of dollars in payments between 1994 and 2005 to offshore companies for "services" that were not actually provided, some of which payments may have been funneled to Russian government officials in order to influence the purchase of Eli Lilly drugs. Eli Lilly agreed to pay a civil penalty of $8.7 million and approximately $20.7 million in disgorgement and prejudgment interest and to retain an independent compliance consultant.

Corporate FCPA Resolutions – 2013

Parker Drilling Company

DOJ's investigation of Parker Drilling Company ("Parker"), a drilling services company based in Texas, stemmed from its wide-ranging investigation of Panalpina World Transport (Nigeria) Limited ("Panalpina"). Parker operated drilling rigs in Nigeria; around 2001, it retained Panalpina to obtain temporary import permits ("TIP"s) or TIP extensions on its behalf so that it could continue to operate

[27] *SEC v. Eli Lilly and Company*, Case No. 1:12-cv-02045-BAH (D.D.C. Dec. 20, 2012).

its rigs in Nigeria without paying hefty customs duties. Panalpina submitted false documentation on Parker's behalf to secure the TIPs.

In May 2004, a Nigerian government commission imposed a $3.8 million fine against Parker in connection with the TIPs. In January 2004, Parker had hired a Nigerian agent to help resolve the issues before the Nigerian government commission and transferred, through its outside counsel, $1.25 million to that agent, some of which the agent reported using to entertain Nigerian officials. The commission reduced the fine imposed on Parker from $3.8 million to $750,000.[28] On April 16, 2013, DOJ announced that Parker had agreed to a three-year DPA under which it will pay a penalty of $11.76 million and self-monitor and report for the duration of the DPA period. Parker also reached a settlement with the SEC under which it agreed to disgorge $3.05 million and pay $1.04 million in prejudgment interest.

Ralph Lauren Corporation

Ralph Lauren Corporation's settlement with the SEC, announced on April 22, 2013, marked the first occasion the SEC has resolved FCPA allegations through an NPA. Ralph Lauren also entered an NPA with DOJ. Under the settlements, Ralph Lauren agreed to pay a criminal penalty of $882,000 and $734,846 in disgorgement and prejudgment interest and to self-monitor and periodically report to DOJ regarding its compliance program for two years.

According to the NPAs, from around 2005 to 2009, employees of Ralph Lauren's Argentine subsidiary, including the subsidiary's general manager, approved bribe payments totaling $568,000 to Argentine customs officials to ensure that Ralph Lauren products would clear customs upon import into Argentina. The bribes were funneled through a third-party customs broker.

Ralph Lauren learned about the improper payments in 2010, when in response to a new FCPA policy adopted by the company's board of directors, employees of the Argentine subsidiary raised concerns about the customs broker. The steps taken by Ralph Lauren upon discovering the misconduct have been touted by the government as exemplary. Among other things, Ralph Lauren voluntary disclosed the improper payments within two weeks of discovering them through an internal investigation, conducted a worldwide FCPA risk-assessment, and discontinued its operations in Argentina.

Total, S.A.

In May 2013, Total S.A., a French oil and gas exploration company, settled FCPA allegations with DOJ and the SEC, agreeing to pay a penalty of $245.2 million and an additional $153 million in disgorgement and prejudgment interest. Under the three-year DPA it entered with DOJ, Total also

[28] *U.S. v. Parker Drilling Company*, Case No. 1:12-cr-00176-GBL (E.D. Va. Apr. 16, 2013).

agreed to retain an independent compliance monitor for the three-year term of the agreement. According to DOJ's press release, the Total investigation and enforcement represented the "first coordinated action by French and U.S. law enforcement in a major foreign bribery case." French prosecutors have also charged Total with violations of French law, but Total is contesting those charges.

According to the criminal information filed by DOJ,[29] from 1995 to 2004, Total made approximately $60 million in unlawful payments to an Iranian government official, through intermediaries designated by the official, to induce the official to use his influence to help Total secure the rights to develop oil and gas fields in Iran. Total inaccurately characterized the payments as "business development expenses" in its books and records.

Diebold Inc.

Diebold Inc. ("Diebold") is an Ohio company that provides ATMs and other services to private and public customers around the world. According to an information filed in the Northern District of Ohio on October 22, 2013,[30] Diebold provided payments, gifts, and non-business travel to employees of state-owned banks in China and Indonesia over a five-year period in order to obtain and retain business with the banks. In addition, Diebold used a third-party distributor to funnel bribes to employees of privately owned banks in Russia. The bribes were facilitated through the use of false contracts for services that the distributor did not in fact perform.

The information charged Diebold with one count of conspiracy to violate the antibribery and books-and-records provisions of the FCPA in connection with the alleged conduct in Asia and one count of violating the books-and-records provision in connection with the commercial bribery in Russia. Diebold entered a three-year DPA under which it agreed to pay a fine of $25.2 million, retain an independent compliance monitor for 18 months, and self-monitor and report regarding its compliance measures for the remainder of the DPA period.

In a related settlement with the SEC, Diebold agreed to pay approximately $22.97 million in disgorgement and prejudgment interest to resolve allegations that it violated the antibribery, books-and-records, and internal controls provisions of the FCPA.[31] Diebold voluntarily disclosed its misconduct to the government.

Weatherford International Ltd.

On November 26, 2013, DOJ and the SEC announced that Weatherford International Ltd. ("Weatherford"), an international oil field equipment and services company, had settled FCPA and

[29] *U.S. v. Total, S.A.*, Case No. 1:13-cr-00239-LO (E.D. Va. May 29, 2013).
[30] *U.S. v. Diebold, Inc.*, Case No. 5:13-cr-00464-SO (N.D. Ohio Oct. 22, 2013).
[31] *SEC v. Diebold, Inc.*, Case No. 1:13-cv-01609 (D.D.C. Oct. 22, 2013).

export-controls-related charges. A Weatherford subsidiary, Weatherford Services, Ltd. ("WSL"), pleaded guilty to one count of violating the antibribery provision of the FCPA,[32] and Weatherford entered a DPA under which it consented to the filing of a one-count criminal information charging it with violating the internal controls provision.[33] In announcing the DPA, DOJ acknowledged Weatherford's cooperation, "including conducting a thorough internal investigation into bribery and related misconduct" as well as the company's "extensive remediation and compliance improvement efforts."

Pursuant to the three-year DPA, Weatherford agreed to pay a penalty of $87,178,256 to retain a corporate compliance monitor for 18 months and self-monitor and report for the remainder of the DPA period. Weatherford also agreed to pay an additional $63,737,360 in disgorgement and prejudgment interest under its settlement with the SEC as well as a civil penalty of $1,875,000 that, according to the SEC's press release, was "assessed in part for lack of cooperation early in the investigation."[34] Altogether, Weatherford agreed to pay $152,790,616 to resolve its FCPA liability, making its settlement one of the 10 largest in the history of FCPA enforcement.[35]

According to the filed documents, between 2004 and 2008, WSL provided around $826,896 to local entities controlled by Angolan officials or their family members through joint ventures formed with those entities. In return, the officials awarded WSL lucrative contracts to provide well screens in Angola, provided WSL bid information from WSL's competitors, and in at least one instance took a contract away from a WSL competitor and awarded it to WSL. In a second scheme in Angola, WSL used a Swiss freight forwarding agent to funnel bribes to an Angolan official whose approval was necessary for WSL to secure the award of an oil services contract. The original draft contract with the agent contained an FCPA clause, but WSL agreed to remove the clause at the agent's request.

In the Middle East, between 2005 and 2011, another Weatherford subsidiary awarded more than $11.8 million in improper "volume discounts" to a distributor that supplied Weatherford products to a state-owned oil company, believing that the discounts were used to create a slush fund from which to pay bribes to officials at the state oil company. In 2002, the same subsidiary paid approximately $1.5 million in improper "after-sales service fees" and "inland transportation fees" to Iraqi ministries to obtain contracts under the U.N. Oil-for-Food Program.

The SEC's complaint alleged additional conduct not charged in the criminal filings, including (1) from 2005 to 2008, the provision of non-business travel and entertainment to officials of Sonatrach, an Algerian state-owned company; (2) between 2001 and 2006, the misappropriation of more than $200,000 by a Weatherford Italian subsidiary, of which $41,000 was used to bribe Albanian tax

[32] *U.S. v. Weatherford Services, Ltd.*, Case No. 4:13-cr-00734 (S.D. Tex. Nov. 26, 2013).
[33] *U.S. v. Weatherford Int'l Ltd.*, Case No. 4:13-cr-00733 (S.D. Tex. Nov. 26, 2013).
[34] *SEC v. Weatherford Int'l Ltd.*, Case No. 4:13-cv-03500 (S.D. Tex. Nov. 26, 2013).
[35] The total amount Weatherford agreed to pay to settle both FCPA and export-controls-related liability was $252,690,360.

auditors; and (3) between 2002 and 2008, more than $500,000 in bribe payments to a *commercial* customer in Congo, funneled by WSL through the Swiss freight-forwarding agent and mischaracterized as legitimate expenses on WSL's books and records.

The government filings describe significant deficiencies that existed in Weatherford's compliance program and internal controls prior to 2008, including: lack of a dedicated compliance officer or compliance personnel, despite operating in an industry with a "substantial corruption risk profile"; lack of effective internal accounting controls for travel, gifts, and entertainment; failure to conduct due diligence on third-party agents, distributors, and joint venture partners; failure to translate the company's anticorruption policy into languages other than English; failure to provide anticorruption training; the removal of the FCPA clause from the Swiss agent's contract at the agent's request; lack of a protocol to investigate complaints of ethics violations by employees; and actual failure to follow up on such complaints (such as a report by a Weatherford area manager on his 2006 ethics questionnaire that Weatherford personnel were making payments to government officials in Angola and elsewhere).

The government acknowledged significant remediation and improvements made to Weatherford's compliance program starting in 2008, including appointment of a Compliance Officer who is a member of the company's executive board, establishment of a compliance office that now has a staff of approximately 38 full-time compliance professionals, more than 30 anticorruption compliance reviews conducted worldwide, retention of an ethics and compliance professional to assess the company's anticorruption policies and procedures, and the termination of culpable officers and employees. Despite these improvements, however, Weatherford is obliged to retain an independent compliance monitor under the terms of its DPA.

The SEC's complaint alleged that early in its investigation, there was misconduct by Weatherford involving the "failure to provide the [SEC] staff with complete and accurate information, resulting in significant delay." According to the complaint, Weatherford informed the staff that the Iraq Country Manager involved with the improper Oil-for-Food Program payments was missing or dead when, in fact, he remained employed by Weatherford. In addition, e-mails were deleted prior to computers being imaged, and Weatherford allowed employees who were potentially complicit in the misconduct to collect documents subpoenaed by the SEC. The SEC acknowledged that beginning in 2008, Weatherford's cooperation "greatly improved."

Bilfinger SE

Bilfinger SE ("Bilfinger"), a German engineering company, entered a DPA that DOJ filed along with a two-count criminal information on December 9, 2013.[36] According to the documents, in 2003, Bilfinger engaged in a joint venture with subsidiaries of Willbros International Inc. ("Willbros") to bid on contracts related to Nigeria's Eastern Gas Gathering System ("EGGS") project. Bilfinger and

[36] *U.S. v. Bilfinger SE*, Case No. 4:13-cr-00745 (S.D. Tex. Dec. 9, 2013).

Willbros agreed to inflate the price of the bids by 3% in order to pay bribes to Nigerian officials in return for their assistance in obtaining the contracts.

Under the three-year DPA, Bilfinger agreed to pay $32 million, retain a compliance monitor for at least 18 months, and self-report to DOJ for the remainder of the DPA term. The DPA acknowledged Bilfinger's "cooperation with the Department, albeit at a late date," and the company's remedial efforts to date. DOJ had previously entered a DPA with Willbros related to the same conduct in 2008 and obtained guilty pleas from two former Willbros executives (Jim Bob Brown and Jason Edward Steph) and one former Willbros consultant (Paul Novak). A third former Willbros executive, James Tillery, was indicted in 2008 but remains a fugitive.

Archer Daniels Midland Company and Alfred C. Toepfer International Ukraine Ltd.

On December 20, 2013, DOJ announced that Alfred C. Toepfer International Ukraine Ltd. ("ACTI"), a unit of Archer Daniels Midland Company ("ADM"), had pleaded guilty to one count of conspiracy to violate the antibribery provisions of the FCPA and agreed to pay $17.8 million in criminal fines.[37] ADM entered an NPA that acknowledged ADM's voluntary disclosure and "early and extensive" remedial efforts and required ADM to report annually to DOJ regarding its compliance efforts for three years.

ADM simultaneously reached a settlement with the SEC under which it agreed to pay approximately $36.47 million in disgorgement and prejudgment interest to resolve civil books-and-records and internal controls allegations.[38] According to the filed documents, between 2002 and 2008 ACTI paid approximately $22 million to various third-party vendors so that nearly all of those funds could be passed to Ukrainian officials in exchange for the officials' assistance in helping ACTI obtain VAT refunds from the Ukrainian government.

In addition, the NPA described a failure of ADM's internal controls related to a joint venture between an ADM subsidiary in Latin America and various individuals in Venezuela. According to the NPA, customers paid inflated prices for commodities purchased through the joint venture, and in many instances, the excess amounts were funneled to third-party bank accounts outside Venezuela (often controlled by employees or principals of the customer) rather than directly repaid to the customer.

Although ADM identified this practice as a business risk and instituted a policy to prohibit it, the policy was not immediately formalized and the practice continued from approximately 1999 to 2004. After an audit in 2004, ADM identified certain payments to third-party bank accounts and took some remedial measures. However, it did not take adequate steps to ensure that the payments would not

[37] *U.S. v. Alfred C. Toepher Int'l (Ukraine) Ltd.*, Case No. 2:13-cr-20062 (C.D. Ill. Dec. 20, 2013).
[38] *SEC v. Archer-Daniels-Midland Co.*, Case No. 2:13-cv-02279 (C.D. Ill. Dec. 20, 2013).

continue through other administrative and accounting channels, and such payments did continue until 2009.

Corporate Civil-Only Settlements – 2013

Koninklijke Philips Electronics N.V.

Koninklijke Philips Electronics N.V. ("Philips") settled administrative charges filed by the SEC on April 5, 2013, alleging that Philips violated the books-and-records and internal controls provisions of the FCPA. According to the filing, between 1999 and 2007, employees of Philips' Polish subsidiary made improper payments to employees of public healthcare facilities in Poland. In exchange, the public officials would incorporate the technical specifications of Philips' medical equipment into public tender requirements, making it more likely that Philips would win bids to supply medical equipment to the facilities. Philips also allegedly made payments to government officials who decided to award tenders to Philips. The improper payments were falsely characterized as legitimate expenses in Philips' books and records.

In 2007, Polish officials arrested two employees of Philips' subsidiary. In response, Philips conducted an audit but failed to find the improper payments. It did, however, discipline and terminate employees and substantially revise its internal controls. In December 2009, a Polish prosecutor indicted 23 people, including three former Philips employees, in connection with tenders for medical equipment. Philips then conducted an internal investigation that uncovered the improper payments. Philips voluntarily disclosed its investigation and findings to the SEC and DOJ in 2010. As part of its resolution with the SEC, Philips agreed to pay disgorgement and prejudgment interest of approximately $4.5 million. In recognition of the company's cooperation, the SEC did not impose a civil penalty.

Stryker Corporation

On October 24, 2013, the SEC announced that Michigan-based medical technology company Stryker Corporation ("Stryker") had agreed to pay a $3.5 million penalty and approximately $9.78 million in disgorgement and prejudgment interest to settle administrative charges that it violated the books-and-records and internal controls provisions of the FCPA.

According to the SEC's cease-and-desist order, Stryker provided improper payments, gifts, and travel to doctors employed by state-owned hospitals in Argentina, Poland, and Romania in order to win business with the public hospitals. In Mexico, Stryker allegedly made payments, through its outside law firm, to foreign officials employed by a Mexican social security agency in order to win bids to sell its products to public hospitals in Mexico. In Greece, Stryker allegedly made a "sizeable and atypical" donation to a Greek university to fund a laboratory that was being established by a Greek public official who was both a professor at the university and the director of two public hospitals in Greece. Stryker understood that in exchange for the donation it would obtain and retain business from the public

hospitals. In settling the SEC's charges, Stryker did not admit to the allegations in the cease-and-desist order.

Corporate FCPA Settlements 2012-2013

Company	Date Settlement Announced	Enforcing Agency	DPA/NPA/Plea	Total Settlement (Approx.)	External / Self Monitor	Location of Misconduct	Industry	Initial Voluntary Disclosure
Marubeni Corporation	Jan. 17, 2012	DOJ	DPA (2-year)	$54.6 million	External Monitor	Nigeria	Oil & Gas (agent of 4-company Bonny Island JV)	No
Smith & Nephew, Inc.; Smith & Nephew, plc (parent)	Feb. 6, 2012	DOJ (Smith & Nephew Inc.) SEC (Smith & Nephew, plc)	DPA (3-year)	$22.23 million	Smith & Nephew Inc.: External Monitor (18 mo.) Self-Monitor (18 mo.) Smith & Nephew, plc: External Monitor (18 mo.)	Greece	Medical Device	No
BizJet International Sales and Support, Inc.; Lufthansa Technik AG (parent)	Mar. 14, 2012	DOJ	BizJet: DPA (3-year) Lufthansa: NPA (3-year)	$11.8 million (BizJet only)	Self-Monitor	Mexico; Panama	Aircraft Services	Yes
Biomet, Inc.	Mar. 26, 2012	DOJ SEC	DPA (3-year)	$22.85 million	External Monitor (18 mo.) Self-Monitor (18 mo.)	Argentina; Brazil; China	Medical Device	Yes (partial)
Data Systems & Solutions LLC	June 18, 2012	DOJ	DPA (2-year)	$8.82 million	Self-Monitor	Lithuania	Oil & Gas (Nuclear and fossil fuel plant	No

Company	Date Settlement Announced	Enforcing Agency	DPA/NPA/Plea	Total Settlement (Approx.)	External / Self Monitor	Location of Misconduct	Industry	Initial Voluntary Disclosure
							control systems)	
Orthofix International, N.V.	July 10, 2012	DOJ SEC	DPA (3-year)	$7.42 million	Self-Monitor	Mexico	Medical Device	Yes
The NORDAM Group, Inc.	July 17, 2012	DOJ	NPA (3-year)	$2 million	Self-Monitor	China	Aircraft Services	Yes
Pfizer H.C.P. Corporation; Pfizer Inc. (parent)	Aug. 7, 2012	DOJ (Pfizer H.C.P.) SEC (Pfizer Inc.)	DPA (2-year)	$41.34 million	Self-Monitor	Bulgaria; Croatia; Kazakhstan; Russia; Czech Republic; Italy; China	Pharmaceutical	Yes
Wyeth LLC	Aug. 7, 2012	SEC	N/A	$18.88 million	None (Parent company Pfizer Inc. required to self-monitor pursuant to DPA)	China; Indonesia; Pakistan; Saudi Arabia	Pharmaceutical	Yes (by Pfizer Inc. following acquisition)
Oracle Corporation	Aug. 16, 2012	SEC	N/A	$2 million	None	India	Computer Systems	Yes
Tyco International, Ltd.; Tyco Valves & Controls Middle East, Inc.	Sept. 20, 2012	DOJ (Tyco Valves & Controls; Tyco Int'l) SEC (Tyco Int'l)	Tyco Int'l: NPA (3-year) Tyco Valves & Controls: Guilty Plea	$26.81 million	Self-Monitor	China; India; Thailand; Laos; Indonesia; Bosnia; Croatia; Serbia;	Industrial	Yes

Company	Date Settlement Announced	Enforcing Agency	DPA/NPA/Plea	Total Settlement (Approx.)	External / Self Monitor	Location of Misconduct	Industry	Initial Voluntary Disclosure
(subsidiary)						Slovenia; Slovakia; Iran; Saudi Arabia; Libya; Syria; UAE; Mauritania; Congo; Niger; Madagascar; Turkey		
Allianz SE	Dec. 17, 2012	SEC	N/A	$12.39 million	None	Indonesia	Insurance	No
Eli Lilly and Company	Dec. 20, 2012	SEC	N/A	$29.4 million	External Monitor	Russia; China; Brazil; Poland	Pharmaceutical	No
Koninklijke Philips Electronics N.V.	Apr. 5, 2013	SEC	N/A	$4.5 million	None	Poland	Medical Device	Yes
Parker Drilling Company	Apr. 16, 2013	DOJ SEC	DPA (3-year)	$15.85 million	Self-Monitor	Nigeria	Oil & Gas (Drilling Services)	No
Ralph Lauren Corporation	Apr. 22, 2013	DOJ SEC	DOJ: NPA (2-year) SEC: NPA	$1.61 million	Self-Monitor	Argentina	Clothing / Retail	Yes

Company	Date Settlement Announced	Enforcing Agency	DPA/NPA/Plea	Total Settlement (Approx.)	External / Self Monitor	Location of Misconduct	Industry	Initial Voluntary Disclosure
Total, S.A.	May 29, 2013	DOJ SEC	DPA (3-year)	$398.2 million	External Monitor	Iran	Oil & Gas	No
Diebold Inc.	Oct. 22, 2013	DOJ SEC	DPA (3-year)	$48.17 million	External Monitor (18 mo.) Self-Monitor (18 mo.)	China; Indonesia; Russia	Automated Teller Machines	Yes
Stryker Corporation	Oct. 24, 2013	SEC	N/A	$13.28 million	None	Argentina; Greece; Mexico; Poland; Romania	Medical Device	No
Weatherford International Ltd.; Weatherford Services Ltd. (subsidiary)	Nov. 26, 2013	DOJ SEC	Weatherford Int'l: DPA (3-year) Weatherford Services: Guilty Plea	$152.79 million (FCPA-related portion of settlement)	External Monitor (18 mo.) Self-Monitor (18 mo.)	Angola; Congo; Algeria; Middle East; Iraq; Albania	Oil & Gas	No
Bilfinger SE	Dec. 9, 2013	DOJ	DPA	$32 million	External Monitor (18 mo.) Self-Monitor (18 mo.)	Nigeria	Oil & Gas	No
Archer Daniels Midland Company; Alfred C. Toepher Int'l Ukraine Ltd. (subsidiary)	Dec. 20, 2013	DOJ SEC	Archer Daniels Midland Co.: NPA (3-year) Alfred C. Toepher Int'l Ukraine Ltd.: Guilty Plea	$54.27 million	Self-Monitor	Ukraine Venezuela	Agriculture	Yes