

Foreign Corrupt Practices Act Alert

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LITIGATION/CONTROVERSY

Global Anti-Bribery Year-in-Review: 2014 Developments and Predictions for 2015

The year 2014 saw significant anti-bribery developments, despite an overall decline in the number of FCPA actions commenced. The year brought the biggest single criminal penalty and second-highest total aggregate monetary penalty in the history of FCPA enforcement and, as we predicted in last year's review, included three "blockbuster" corporate resolutions—against Alstom, Alcoa, and Avon. This year also had the first circuit court ruling on what constitutes an "instrumentality" of a foreign government under the FCPA. A number of other developments are affecting the way that companies and individuals confront compliance with the FCPA and related internal and governmental investigations.

This annual review analyzes the noteworthy developments from 2014 related to FCPA and anti-bribery enforcement. Section I highlights enforcement trends and what they suggest about the priorities of the US Department of Justice ("DOJ") and Securities and Exchange Commission ("SEC"). Section II focuses on notable features of the year's corporate resolutions. Section III analyzes important developments related to enforcement efforts against individuals. Section IV examines how enforcement agencies and courts are interpreting and applying the FCPA, while Section V focuses on how those agencies investigate alleged violations. Section VI assesses developments in collateral areas of the law related to FCPA enforcement. In our last section, we note developments in key foreign jurisdictions.

I. Introduction: Enforcement Trends and Priorities

Undoubtedly among the most significant trends from 2014 was the steep rise in aggregate monetary penalties imposed through resolved actions. The DOJ and SEC imposed approximately \$1.565 billion in penalties on various defendants in 2014. This total represents the second-highest aggregate dollar value of penalties ever imposed (\$1.8 billion was collected in 2010) and is well more than double what the DOJ and SEC secured in 2013.

The size of 2014's monetary penalties was significantly affected by the announcement of three major settlements, two of which were among the six largest settlements in the history of FCPA enforcement. As discussed below, the DOJ and SEC started the year with a \$384 million resolution with Alcoa in January and ended the year in December with resolutions with Avon for \$135 million and with Alstom for \$772 million, which was the largest criminal penalty and second-highest total FCPA settlement in history.

Despite the dramatic penalties in this handful of cases, the number of known enforcement actions initiated actually dropped between 2013 and 2014, from a total of 29 actions in 2013 to only 20 in 2014.¹ In more detail:

- The DOJ initiated ten fewer actions this year than last, filing charges against seven groups of corporate defendants (the same number as in 2013) but only two individuals (down from 12 in 2013).
- The SEC initiated slightly more enforcement actions this year, bringing charges against fewer corporate defendants (seven, as opposed to nine in 2013) but against more individual defendants (four, as opposed to only one last year).
- The total number of enforcement actions brought against corporate defendants by either agency decreased slightly from 16 in 2013 to 14 in 2014.
- The total number of enforcement actions initiated against individuals decreased sharply, from 13 in 2013 to six in 2014. (Note that additional actions may have been initiated but may still be under seal.)

This aggregate number, while lower than the previous year, does not, in our opinion, reflect a decrease in overall enforcement activity at the DOJ or SEC. Both agencies have indicated—and our experience confirms—that the pipeline of active investigations remains full. Aside from the sheer numbers of cases that the DOJ and SEC are actively pursuing, the robustness of enforcement activity is evidenced by the nature of their investigations, which have over the past few years pushed into industries and regions not traditionally considered to be especially high risk. For example, as discussed at more length in Sections II and III, over the past year we saw the initiation and resolution of enforcement actions against a direct sales company (Avon) and several employees of a broker-dealer (Direct Access Partners defendants). Evidence of aggressive enforcement theories can be seen in the continuation of the “connected hiring” investigations, most of which reportedly targeted financial institutions for their alleged hiring of relatives of government officials. As discussed in Section IV below, these investigations represent a significant expansion in the scope of FCPA enforcement.

Additionally, the lower number of enforcement actions in 2014 should be considered in the context of several other factors. First, as noted above and discussed further in Section II below, several of the corporate enforcement actions initiated in 2014 constituted major cases which required more agency resources to resolve. Second, as discussed at more length in Section III, both the DOJ and SEC resolved during 2014 a handful of enforcement actions that had been initiated in previous years—for example, in July 2014, the SEC settled a case originally initiated in February 2012 against Mark Jackson and James Ruehlen just before the trial was scheduled to begin. These cases are not reflected in this year’s aggregate count of newly initiated enforcement actions, but they, too, undoubtedly consumed agency resources. Finally, the DOJ’s FCPA lawyers are preparing for at least two trials scheduled in 2015. All things considered, it appears to us that FCPA enforcement is as active now as it has ever been.

Aside from numerical enforcement trends, a few developments deserve note at the outset. First, although the lion’s share of the corporate cases initiated in 2014 involved misconduct with third parties, there was a moderate resurgence in enforcement actions focused on improper travel, gifts, and entertainment, as discussed in Section II below. Second, it is also worth noting *how* some of these corporate cases were resolved, at least by the SEC. All but one of the SEC’s corporate resolutions were settled administratively; only the Avon resolution involved the filing of a complaint in a US District Court. As discussed below, SEC officials have indicated that this may be the “new normal” for SEC actions.

2014 also saw a number of developments that impact how we understand the FCPA and how it is applied, most notably the Eleventh Circuit’s *Esquenazi* decision, which we discuss in Section IV below. The increasing level of coordination between the DOJ and SEC and foreign law enforcement agencies was another continued, and perhaps accelerated, development. We discuss this trend, along with others, in Section V below. Another significant trend relates to the DOJ’s and SEC’s ever-increasing expectations of cooperating companies, including the government’s focus on collecting evidence against culpable employees. In terms of collateral legal issues, which are discussed in Section VI, at least two notable recent decisions addressed the protections afforded to investigation-related materials. Finally, foreign enforcement activity continues to pick up steam, particularly in China, the UK, Canada, and Brazil, as discussed in Section VII below.

II. Notable Features of Corporate Resolutions and Significant Ongoing Investigations

In the past year, the DOJ and SEC brought FCPA charges against 14 sets of corporate defendants and concluded investigations involving at least nine other corporations that acknowledged receipt of declinations. Below, we provide an overview of these cases and highlight some important trends in the types of facts that gave rise to the enforcement actions and the ways in which those actions were resolved. In Section IV, below, we discuss some of these resolutions in more detail as we draw out a few of the year's significant legal developments.

A. This Year's Cases Illustrate the Continued Importance of Due Diligence and Active Monitoring of Third Parties, Including Channel Partners and Agents

As in years past, the use—or misuse—of third parties was a common theme among this year's enforcement actions. Indeed, *all but one* of the 2014 resolutions in some way involved allegations concerning third parties. This emphasis on third parties once again underscores the critical importance of conducting thorough due diligence prior to initiating a relationship, monitoring and auditing third parties post-retention, and fully investigating and resolving any red flags in third-party relationships.

Third-party consultants were prominently featured in the most significant resolution of the year, the DOJ's resolution with Alstom S.A., the French power generation and transportation company, which agreed to pay over \$772 million to settle allegations that it and three of its subsidiaries bribed officials in Indonesia, Saudi Arabia, Egypt, the Bahamas, and Taiwan and falsified books and records to conceal the bribes.² The statement of facts admitted to by Alstom S.A. identified nine consultants used to pay bribes to officials in connection with power, grid, and transport projects in the five countries.³ As part of the alleged scheme, Alstom S.A. "created consultancy agreements that provided for legitimate services to be rendered by [each] consultant, and included a provision prohibiting unlawful payments, even though the Alstom executives and employees involved knew that at times the consultants were using all or a portion of their consultancy fees [paid by Alstom] to bribe foreign officials."⁴ In violation of Alstom S.A.'s policies, Alstom S.A. and certain subsidiaries' employees also purportedly changed payment amounts and terms for consultants so that Alstom S.A. could pay the consultants more money within shorter timeframes.⁵ Moreover, according to the government's papers, Alstom S.A. used consultants who were not based in the United States, using bank accounts outside the United States in currencies other than US dollars—all as part of "an unwritten policy" to discourage consultancy arrangements that would subject Alstom S.A. to US jurisdiction.⁶ The court documents also noted that Alstom submitted false certifications to USAID and other regulatory entities untruthfully asserting that Alstom was not using consultants on particular projects and dishonestly asserting that no unlawful payments were being made in connection with projects.⁷

According to the government's papers, all told, Alstom S.A. paid approximately \$75 million in consultancy fees while knowing that the money would be used in whole or in part to provide payments or other things of value to government officials to secure approximately \$4 billion in projects in multiple countries. These projects yielded a gain to Alstom S.A. of approximately \$296 million.⁸ Alstom S.A., the parent company, pleaded guilty to a two-count criminal information charging the company with violating the FCPA by falsifying its books and records and failing to implement adequate internal controls. Notably, Alstom S.A. settled a books and records charge even though (1) the company had not been an issuer for more than ten years and (2) the SEC did not bring a case. Additionally, three Alstom subsidiaries were involved in the resolution: Connecticut-based Alstom Power, Inc. and New Jersey-based Alstom Grid, Inc. both entered into three-year deferred prosecution agreements ("DPAs") and admitted that they conspired to violate the anti-bribery provisions of the FCPA, while Swiss subsidiary Alstom Network Schweiz AG pleaded guilty to a criminal information charging the subsidiary with conspiracy to violate the anti-bribery provisions of the FCPA.⁹

The second-largest settlement of 2014 also focused on a bribery scheme that involved a third party. In January 2014, Alcoa, Inc. ("Alcoa") and its subsidiary, Alcoa World Alumina ("AWA"), settled charges with both the SEC and DOJ, agreeing to pay a total of \$384 million in civil and criminal penalties. The charges stemmed from AWA's use of a London-based middleman to supply alumina to Bahrain's state-owned Aluminium Bahrain ("Alba"). According to the government's papers, the middleman (identified in various court documents as Victor Dahdaleh, whose prosecution by UK authorities is discussed below in Section VII), who had close ties to the Bahraini royal family, used a scheme involving sham commissions and

inflated mark-ups on alumina to amass a pool of money that was eventually passed along as bribes to Bahraini officials. When an Alcoa in-house attorney questioned the role of the distributor, an AWA senior sales and marketing executive told the attorney that the “[d]istributorship role is something the Bahrain Government wants” and that Alcoa “shouldn’t get too involved with how the Distributor and the Government interact.”¹⁰ The attorney eventually recommended terminating the consultancy agreement with the middleman but relented when the executive advised that the agreement should not be terminated until after Alcoa had secured a new agreement with Alba.¹¹

Ultimately, AWA pleaded guilty to one count of violating the anti-bribery provisions of the FCPA, and Alcoa agreed to the institution of a cease-and-desist order by the SEC charging anti-bribery, books and records and internal controls violations. The DOJ charging papers highlight the “conscious disregard” by AWA’s executive of the sham distributorship, and the SEC order faults the Alcoa attorney for approving the “arrangement without conducting any due diligence or otherwise determining whether there was a legitimate business purpose for the use of a third-party intermediary” despite the existence of “red flags.”¹² Alcoa was not charged in the DOJ case, but, as the majority owner of AWA, it was required under the plea agreement to take on various obligations, including compliance obligations relating to third parties.¹³

Another long-running investigation was brought to a close in the waning days of 2014 with the announcement of the DOJ’s and SEC’s resolutions with beauty products manufacturer Avon Products Inc. (“Avon”). On December 17, the DOJ and SEC announced that Avon and its wholly owned subsidiary, Avon Products (China) Co. Ltd. (“Avon China”), would pay a combined \$135 million to resolve allegations relating to Avon China’s provision of more than \$8 million in cash, gifts, travel, meals, and entertainment to Chinese officials between 2004 and September 2008, along with efforts to conceal the scheme. According to the government’s papers, Avon China provided the illicit payments, gifts and other things of value at the center of the scheme for the purpose of obtaining and retaining a direct sales license that would allow the company to engage in direct door-to-door selling—Avon’s primary sales method—in China.¹⁴ One example of Avon China’s attempt to maintain a “good business reputation”—a prerequisite for the direct sales license—was its use of a third-party consultant to pay employees at state-owned media companies for publishing positive news or suppressing negative news stories.¹⁵ The third-party consultant who helped effectuate these payments was purportedly retained to manage public relations with the government and other media matters, but Avon China conducted no due diligence on the consulting company and did not contractually bind the consultant to comply with the FCPA.¹⁶ Moreover, the government alleged that Avon China made payments to the consultant—between \$2,000 and \$7,000 per month plus expenses—despite knowing that the consultant’s invoices were often false and that the consultant had not provided any legitimate services.¹⁷

Avon China pleaded guilty to conspiring to violate the accounting provisions of the FCPA, and Avon entered a three-year DPA for conspiracy to violate the FCPA’s accounting provisions and violations of the internal controls provisions. In total, the Avon entities paid \$67.6 million in criminal penalties. Notably, despite the acknowledgement by Avon that it was “routine practice”¹⁸ for Avon China to provide things of value to Chinese government officials, neither Avon nor Avon China was charged with violating the anti-bribery provisions of the FCPA. The SEC filed a civil complaint against Avon in the US District Court for the Southern District of New York, claiming that Avon failed to maintain adequate internal controls to detect and prevent payments to Chinese officials from 2004 to 2008 and that its books and records failed to accurately reflect the details and purpose of the payments.¹⁹ Avon agreed to pay \$52.8 million in disgorgement plus \$14.5 million in prejudgment interest to resolve the SEC charges.²⁰ Although the monetary penalties paid by Avon are unquestionably significant, the investigation costs reportedly incurred by Avon (approximately \$300 million according to news accounts) were much higher than the penalties.²¹

Intermediaries similarly played a significant role in the allegations that gave rise to the April 2014 resolution with Hewlett-Packard (“HP”) and three of its international subsidiaries: HP Russia, HP Mexico, and HP Poland.²² HP and its subsidiaries ultimately paid \$108 million in DOJ and SEC penalties. HP Russia pleaded guilty to a four-count information charging conspiracy to violate the FCPA and substantive anti-bribery, books and records, and internal controls charges. HP Poland entered into a DPA with the DOJ, while HP Mexico entered into a non-prosecution agreement (“NPA”) with the DOJ. In total, the three HP subsidiaries paid \$76.7 million in criminal penalties and forfeiture. HP Co., the parent

company and issuer, itself consented to the entry of a cease-and-desist order from the SEC, which charged HP with internal controls and books and records violations, paying \$31.4 million in disgorgement and prejudgment interest.

According to the plea documents, HP Russia entered into buy-back deal involving an intermediary distributor in order to create a fund totaling several millions of dollars.²³ At least a portion of the money was allegedly used to pay Russian government officials in connection with a \$100 million telecommunications contract. Court documents noted that little due diligence was performed on the distributor by HP.²⁴

According to the government documents, HP Mexico also allegedly paid money through a third party—in this case, a consultant with connections to senior government officials²⁵—in order to win a contract with Mexico’s state-owned petroleum company, Pemex. According to the HP Mexico NPA, HP Mexico skirted the company’s internal controls by using another, approved intermediary in the transaction which received money from HP Mexico, deducted a fee, and then passed payments to the unapproved consultant.²⁶

Marubeni Corporation, a Japan-based non-issuer, found itself in the DOJ’s crosshairs for a second time due to its improper use of third-party consultants. In March 2014, Marubeni pleaded guilty to an eight-count information charging one count of conspiracy to violate the FCPA and seven counts of violating the anti-bribery provisions of the FCPA; the company also agreed to pay an \$88 million criminal penalty. Court filings describe a scheme by Marubeni to use two consultants to pay bribes to high-ranking Indonesian officials to secure a \$118 million power project contract.²⁷ E-mails showed that Marubeni and its consortium partner—unnamed, but reported to be Alstom S.A.²⁸—had retained the first consultant for the sole purpose of effecting a bribe payment.²⁹ The second consultant was retained after the first apparently failed to sufficiently influence Indonesian officials.³⁰ Payments were ultimately made to both consultants for the purpose of paying bribes to Indonesian officials.³¹

Third-party agents—and the failure to effectively monitor them—also featured prominently in the SEC’s actions against Smith & Wesson Holding Corporation and Layne Christensen Company. In July, Smith & Wesson resolved SEC charges that, from 2007 through early 2010, it used third-party brokering agents in Pakistan, Indonesia, and Turkey to provide money and weapons to police and military officials in order to obtain contracts. Smith & Wesson’s Vice President of International Sales and its Regional Director of International Sales, among others, had authorized the payment of commissions to agents, even though at least one of the agents had indicated that he “would be providing guns and part of his commissions” to foreign officials.³² The SEC also faulted the company for failing to perform adequate due diligence “regardless of the perceived level of corruption in the country” in which Smith & Wesson was seeking to do business.³³ Ultimately, Smith & Wesson paid \$2 million and agreed to the institution of a cease-and-desist order charging the company with violations of the FCPA’s anti-bribery, books and records, and internal controls provisions.

In October, Layne Christensen resolved SEC charges that Layne’s wholly owned African and Australian subsidiaries made more than \$1 million in improper payments to government officials in a number of African countries between 2005 and 2010. The payments, all made through third-party agents, were allegedly made in order to obtain favorable tax treatment, customs clearances, and work permits, and to avoid related penalties. According to the SEC, the president of Layne’s Mineral Exploration Division (“MinEx”) had knowledge of and in some instances authorized the direct and indirect payment of bribes through third-party agents.³⁴ For example, the MinEx president was made aware that an agent had been able to reduce a Layne subsidiary’s tax liabilities to less than half of the original assessment, yet the MinEx president “did not question how the tax savings were achieved” or why an agent was used to achieve the savings.³⁵ The SEC’s cease-and-desist order charged Layne with violating the anti-bribery, recordkeeping, and internal controls provisions of the FCPA, and Layne ultimately paid just over \$5 million in disgorgement, prejudgment interest, and penalties. Notably, as discussed at more length below, Layne received a declination from the DOJ.

Several different third-party agents also were involved in the November enforcement action against Bio-Rad Laboratories, in which Bio-Rad agreed to pay \$55 million to settle DOJ and SEC allegations that the company’s subsidiaries made unlawful payments in Russia, Vietnam, and Thailand. First, a French subsidiary (“Bio-Rad SNC”) retained an agent and its related companies to help with sales in Russia

without either Bio-Rad or Bio-Rad SNC “conducting any due diligence on the [i]ntermediary [c]ompanies”³⁶ and paid the intermediary companies despite the fact that the companies lacked the ability to perform the contractually defined services³⁷ and “were not performing the services for which they were being paid.”³⁸ Notably, Bio-Rad Russia won 100% of its government contracts during the period in which the agent was used by the company—and then lost its first major Russian government contract after terminating the agent in 2010.³⁹ Ultimately, Bio-Rad entered into an NPA with the DOJ, agreeing to pay a \$14.35 million criminal penalty. It is notable that the NPA did not contain any explicit allegation that the money paid to the intermediary was used to affect a bribe; rather, it focused on the circumstantial evidence discussed above and merely referenced “possible corrupt payments.”

According to the SEC’s papers, Bio-Rad also was involved in allegedly improper conduct in Vietnam. Between 2005 and 2009, the country manager allegedly authorized the payment of bribes and directed sales representatives to make cash payments to government officials.⁴⁰ When it was explained to the country manager that such payments were prohibited by the Bio-Rad Business Ethics Policy, the country manager suggested that the company begin employing a middleman, which it subsequently did.⁴¹ Thereafter, a distributor received Bio-Rad products at a deep discount, sold them to government customers at full price, and passed through a portion of the margin as bribes to the officials.⁴² Both the Bio-Rad regional sales manager and the Bio-Rad Asia Pacific General Manager were aware of the improper payment scheme and permitted it to continue.⁴³

Finally, the SEC alleged that in Thailand, Bio-Rad permitted payments to be made to government customers by paying Thai sales agents an inflated commission.⁴⁴ The same Bio-Rad Asia Pacific General Manager uncovered the improper payments but allowed them to continue.⁴⁵ The SEC settlement consisted of a cease-and-desist order against Bio-Rad, finding that the company violated the FCPA’s anti-bribery provisions, lacked sufficient internal controls to prevent or detect bribes paid, and improperly recorded the payments in the company’s books and records. The company agreed to pay \$40.7 million in disgorgement and prejudgment interest to the SEC.

The misuse of agents also gave rise to a December DOJ settlement with Dallas Airmotive Inc. (“DAI”), an aircraft engine maintenance, repair, and overhaul firm based in Texas. DAI entered into a three-year DPA to resolve allegations that it used front companies and third-party agents to pass “commissions” and “consulting fees” to officials in the Brazilian and Peruvian Air Forces and to other state officials in Brazil and Argentina.⁴⁶ The agreed statement of facts details e-mails exchanged by DAI and Dallas Airmotive do Brazil (“DAB”) personnel regarding the use of a “third-party commercial representative” to pay an “end user.”⁴⁷ Senior-level personnel at DAI allegedly instructed DAB employees that “there would be no problem” making payments to the front companies so long as the government official who would ultimately receive the payment under discussion was not on the “bylaws” or the owner of a particular front company.⁴⁸ Pursuant to its DPA, DAI paid a \$14 million criminal penalty.

In addition to cases that were resolved in 2014, given the allegations at issue in two of the most high-profile ongoing investigations, it is likely that third parties will continue to factor prominently in forthcoming resolutions. In the first, a British pharmaceutical company has faced allegations of improper payments in China since 2013, with allegations emerging since then relating to possible improper payments in other countries in Europe and the Middle East.⁴⁹ Press reports indicate that certain employees may have used travel agents as intermediaries to make payments in exchange for prescriptions and to build up funds for improper payments. In September 2014, Chinese authorities imposed a \$489 million fine on the company, which is still under investigation in the United States and elsewhere.⁵⁰

A second major ongoing investigation also involves allegations that center on payments to third parties. Petroleo Brasileiro S.A. (“Petrobras”), the state-owned Brazilian oil giant, has been under investigation by Brazilian federal police and prosecutors; the investigation is apparently one of the country’s biggest corruption cases in history. Prosecutors in Brazil are investigating whether Petrobras granted projects to members of an alleged cartel of Brazilian construction companies that systematically inflated their costs by as much as 20% and then used part of the proceeds to pay kickbacks to politicians.⁵¹ The investigation reportedly also is looking into acquisitions by the company—for example, Brazilian investigators are reportedly paying close attention to the purchase of a refinery by Petrobras in the United States. In November 2014, it was also reported that US authorities are investigating whether Petrobras or its employees were paid bribes in violation of the FCPA. The investigation reportedly extends to the

middlemen and contractors used by Petrobras.⁵² We discuss this development further in Section VII below.

These cases and ongoing investigations continue to exemplify the risks posed by third parties, even those third parties (such as travel agents) that may not traditionally have been considered as presenting heightened corruption risk. We expect that in the near future, we will continue to see enforcement actions that illustrate the potential for misuse of ordinary suppliers and service providers, and multinationals would be well-advised to consider such risks in assessing their compliance programs.

B. The Resurgence of Travel and Entertainment Cases Signals an Area of Continued Risk

While recent years witnessed a slowdown in cases concerning improper travel and entertainment, the year 2014 saw a number of cases where at least some of the violations were caused by the provision of improper travel and entertainment. These cases indicate that travel and entertainment remain a perennial area of risk (and headache) for companies, despite the fact that many companies have well-developed compliance procedures focused on these longstanding areas of concern.

The SEC's December settlement with Bruker Corporation involved allegations that employees from four Bruker subsidiaries in China made payments—primarily in the form of reimbursements for “leisure travel”—to obtain or retain business from state-owned entities. Specifically, according to the SEC, all of the Bruker China offices provided non-business-related travel to Chinese government officials employed at state-owned entities, and one Bruker China office also allegedly paid Chinese government officials under “research cooperation” ventures and “collaboration” agreements for which there was no legitimate business purpose.⁵³ The leisure travel involved visits to the United States, the Czech Republic, Norway, Sweden, France, Germany, Switzerland, and Italy.⁵⁴ All told, from 2005 through 2011, the Bruker China offices paid approximately \$120,000 to fund 17 trips for Chinese government officials that were for the most part unrelated to business purposes.⁵⁵

While the SEC did not charge Bruker with violations of the anti-bribery provisions (possibly because, at least from the papers, there appeared to be no jurisdictional nexus to the United States), the SEC instead charged the company with books and records and internal controls violations. More specifically, the SEC's administrative cease-and-desist order noted that Bruker did not translate into local languages (including Mandarin) its training presentations on FCPA, ethics, or compliance or its code of conduct, which contained the company's gift and entertainment policies.⁵⁶ Further, senior employees at the Bruker China offices “had unsupervised control over the compliance process” insofar as Bruker failed to adequately monitor and supervise those employees, and the China offices lacked independent compliance staff or an internal audit function.⁵⁷ Bruker agreed to pay \$2.4 million to settle these charges with the SEC.

Gifts, travel, and entertainment figured into several other 2014 resolutions. In the Smith & Wesson resolution, a third-party agent employed by the company provided guns valued at over \$11,000—as well as cash payments—to Pakistani police officials.⁵⁸ The contract secured by the agent resulted in \$107,852 in profits for Smith & Wesson.⁵⁹ The SEC also sanctioned two Dubai employees of FLIR Systems, Inc., who provided expensive watches and a “world tour” to Saudi Arabian officials, as described further below in Section III.⁶⁰ The defendants allegedly used an agent to provide false records and invoices to cover up the conduct when FLIR's accounting department questioned the expenses.⁶¹ It is especially notable that the entirety of the misconduct alleged against the FLIR defendants related to their provision of improper travel and entertainment; there was not, as was the case in several other “travel and entertainment” cases, any allegation that the defendants also undertook other bribery-related misconduct.⁶² Avon China employees allegedly provided Chinese officials with \$1 million in travel, \$1.65 million in meals and entertainment, \$1.7 million worth of Avon products, and \$400,000 in gifts over a four year period.⁶³ And DAI's Brazilian subsidiary funded a vacation for a foreign official and his spouse.⁶⁴

HP Russia and HP Poland similarly settled charges involving gifts, travel, and entertainment. The DOJ alleged that HP Russia provided Russian officials with a host of gifts, including expensive jewelry and luxury vehicles,⁶⁵ and the SEC noted in its order against HP that HP Russia and other European subsidiaries paid travel and entertainment expenses of officials attending a World Cup marketing event.⁶⁶ HP Poland employees allegedly provided electronics and other items to an official at the Polish National

Police⁶⁷ and paid for the official's expenses to attend a technology-industry conference.⁶⁸ HP Poland employees paid for the official's dinners and sightseeing the weekend prior to the conference, and, during the conference, took the official on a side trip to Las Vegas that lacked a legitimate business purpose.⁶⁹

While most cases involving travel and entertainment historically have involved other allegedly corrupt conduct, it was notable this year that travel and entertainment was the focus of the conduct in some cases. As mentioned above, this suggests that travel and entertainment should continue to be a focus of corporate compliance programs. Unfortunately, the settled cases give little guidance as to some of the gray areas that challenge compliance officers, such as the appropriate dollar amounts for business meals, or how much ancillary leisure activity is acceptable in the context of a business event. Perhaps most interesting about the recent cases is that the government's charging papers in some cases seem to lack any direct evidence that the benefits provided were provided as a quid pro quo to obtain a specific favorable decision from the official. The cases seem to simply conclude that if there were benefits provided to a government decision maker, the benefits must have been improper. Whether such allegations would be sufficient to satisfy the FCPA's "corruptly" standard in litigation remains to be seen.

C. Settlement Amounts Varied Considerably, Possibly Because of Differences in Disclosure, Cooperation, and Remediation

In DOJ resolutions, fines are generally determined by the US Sentencing Guidelines according to a complex formula intended to assure that similarly situated defendants confronting similar criminal allegations receive similar penalties. The Sentencing Guidelines are discretionary, and they allow the court to depart from that formula.⁷⁰ In addition, the DOJ may provide discounts off the calculated range in settled cases where certain factors are present. In corporate FCPA settlements, the DOJ typically has provided discounts for a corporate defendant's voluntary disclosure, cooperation, remediation, and implementation or enhancement of compliance programs. More rarely, other factors, such as a defendant's inability to pay, cooperation in the prosecution of others, and the penalties imposed by other enforcement and regulatory agencies, have been cited by the DOJ in explaining discounts and/or departures from the Sentencing Guidelines. In 2014, these considerations continued to play an important role in determining the fines imposed on corporate defendants, as well as in determining the types of resolutions involved. The majority of companies entering into resolutions with the DOJ in 2014 received discounts ranging from approximately 8.6% to 53% off the bottom of the Sentencing Guidelines range, due to various combinations of factors, most commonly cooperation and remediation. In contrast, the fines imposed on two other defendants—Marubeni and Alstom—were high relative to the range suggested by the Sentencing Guidelines, most likely due to the failure of those companies, at least initially, to cooperate with the DOJ.

In the Alcoa settlement, the DOJ granted Alcoa's subsidiary, AWA, an approximately 53% discount from the bottom of the Sentencing Guidelines fine range of \$446 million, resulting in a \$209 million criminal fine. The DOJ cited Alcoa's substantial cooperation and subsequent remedial efforts as factors relevant to determining the ultimate penalty. Alcoa conducted an extensive internal investigation; voluntarily made US and foreign employees available for interviews; and collected, analyzed, and organized voluminous data and information. Its Board of Directors also appointed a Special Committee to oversee the internal investigation by independent counsel, and the company later hired new senior legal and ethics and compliance officers as part of its remediation efforts.⁷¹ While the DOJ did not give Alcoa credit under the Sentencing Guidelines for voluntary disclosure, the SEC noted that Alcoa made an initial voluntary disclosure of certain issues to the SEC and DOJ in early 2008.⁷²

Unusually, the DOJ noted that Alcoa's financial condition was a relevant consideration in its calculation of the fine amount.⁷³ Citing Section 8C3.3 of the Sentencing Guidelines ("Reduction of Fine Based on Inability to Pay"), the DOJ noted that the \$209 million fine was an appropriate disposition based, in part, on "the impact of a penalty within the guidelines range on the financial condition of . . . [Alcoa], and its potential to 'substantially jeopardize[e]' Alcoa's ability to compete"⁷⁴ Alcoa's resolution with the SEC also played a role: according to the pleadings, the DOJ considered the "significant remedy" imposed on Alcoa by the SEC in calculating the monetary penalty.⁷⁵ Notably, this was the only 2014 parallel DOJ/SEC settlement where the DOJ expressly stated that it took the SEC remedy into account in determining the appropriate criminal fine. This happens rarely despite the fact that both agencies frequently extract monetary settlements from companies for the same conduct in parallel criminal and civil FCPA

resolutions. Interestingly, neither agency gave Alcoa credit for the \$80 million civil settlement in the related Alba RICO litigation in Pennsylvania. This was particularly notable in the case of the SEC disgorgement remedy, as the settlement with Alba was essentially a payment to the “victim” of the FCPA violation.⁷⁶ It is unclear why the SEC would not credit that amount against the disgorgement figure, as such a payment would seem to be a direct reduction of any profits obtained by Alcoa.

The HP settlement is perhaps more typical of the DOJ’s standard practice in agreeing to a discounted fine. HP Russia and HP Poland were granted substantial discounts in the fine they might otherwise have paid under the Sentencing Guidelines. HP Russia was assessed a \$58.7 million penalty (approximately a 32% discount from the lower end of the Sentencing Guidelines range), and HP Poland agreed to pay a \$15.45 million fine (approximately a 20% discount from the lower end of the Sentencing Guidelines range). In explaining its decision to grant fine reductions to those entities, the DOJ cited the cooperation of each company and its parent, extensive remediation, and commitment to continued cooperation with the US and foreign authorities.⁷⁷ This credit was given despite the fact that, according to the DOJ, HP did not voluntarily disclose the issues in Russia.

Similarly, in the settlement with Avon and its Chinese subsidiary, the DOJ assessed a \$67.648 million criminal penalty, which constituted an approximately 8.6% discount off the bottom of the Sentencing Guidelines range. The DOJ did not elaborate on the factors taken into account in determining the appropriate fine in this case, but court filings generally acknowledged Avon’s “cooperation with the department, including conducting an extensive internal investigation, voluntarily making US and foreign employees available for interviews, and collecting, analyzing, translating, and organizing voluminous evidence.”⁷⁸ Likewise, the DOJ assessed a \$14 million fine against Dallas Airmotive that included a 20% discount off the bottom of the Sentencing Guidelines range, which the DOJ noted was appropriate “given the facts and circumstances of this case, including the cooperation”⁷⁹ provided by Dallas Airmotive in the matter.

These resolutions contrast starkly with the fines imposed on Marubeni and Alstom. In both cases, the DOJ declined to grant a discount from the Sentencing Guidelines range and recommended fines (\$88 million for Marubeni and \$772 million for Alstom) that fell roughly in the middle of the Sentencing Guidelines range, rather than on the lower end of the range, which is more typical in such settlements.

In determining the appropriate fine for Marubeni, the DOJ cited Marubeni’s refusal to cooperate with the DOJ’s investigation, its failure to voluntarily disclose the conduct and properly remediate, its lack of an effective compliance program at the time of the offense, and its history of prior criminal misconduct as relevant considerations in reaching this resolution.⁸⁰ Emphasizing the importance of cooperation with federal prosecutors, Then-Acting Assistant Attorney General Mythili Raman noted that “[Marubeni] refused to play by the rules, then refused to cooperate with the government’s investigation.”⁸¹ Another DOJ official has explained that had Marubeni self-disclosed and cooperated, its calculation under the Sentencing Guidelines could have been as much as 58% lower than the fine Marubeni actually paid.

Similarly, in discussing the appropriate disposition for Alstom, the DOJ noted the company’s failure to self-report, its initial failure to cooperate with the investigation, the nature and seriousness of the offense, and the lack of an effective compliance program at the time of the offense.⁸² In announcing the Alstom resolution, Assistant Attorney General Leslie Caldwell described it as an “emblematic case” in FCPA enforcement and reiterated the DOJ’s expectation that companies “maintain robust compliance programs, . . . voluntarily disclose and eradicate misconduct when it is detected, and . . . cooperate in the government’s investigation.”⁸³ However, the court filings did acknowledge Alstom’s cooperation at the later stages of the investigation, including assistance in prosecuting individuals and other companies (one of the factors listed in the Sentencing Guidelines), as well as the company’s substantial efforts to enhance its compliance program and remediate.⁸⁴

The SEC has emphasized that it took an approach to its resolutions this year that is similar to the DOJ’s approach. In its settlement with Layne Christensen, Kara Brockmeyer, Chief of the SEC’s FCPA Unit, stated that Layne’s self-reporting of the violations, full cooperation with the SEC investigation, and revamping of its compliance program were “credited in determining the appropriate remedy.”⁸⁵ Similarly, in its settlement with Smith & Wesson, the SEC noted that it considered the company’s cooperation and remediation, which included halting the impending international sales transactions before they went

through and terminating its entire international staff, in reaching a settlement with the company.⁸⁶ In its settlements with Layne and Bruker in particular, the SEC explicitly noted that it did not impose a civil penalty in excess of \$375,000 based on the companies' cooperation in the investigations and related enforcement actions.⁸⁷

Indeed, the DOJ and SEC have often emphasized the “tangible benefits” that they believe can flow to a company that discloses, cooperates, and remediates. In November 2014, Assistant Attorney General Caldwell commented: “Put simply, cooperation—and the quality and timeliness of that cooperation—matter. This is a well-established principle that we have applied in criminal cases across the spectrum—from violent and organized crime cases to corporate fraud cases—for decades. If a company works with us, it not only helps the Department, but it helps itself.”⁸⁸ Similarly, Andrew Ceresney, Director of the SEC Division of Enforcement, noted that “the benefits from cooperation are significant and tangible,” that the SEC has “reflected the cooperation in reduced penalties,”⁸⁹ and that “[c]ompanies that cooperate can receive smaller penalties than they otherwise would face, and in some cases of extraordinary cooperation, pay significantly less.”⁹⁰

All that said, there still remains legitimate debate about whether the amount of credit that companies receive for voluntary disclosures is sufficient, especially when compared to companies that cooperate but do not self-report. One important factor that is often left out of the debate on this topic is the “credit” that is not visible in the public settlement documents but is nonetheless often informally received by companies that voluntarily disclose and/or cooperate. While the discussion above focuses on Sentencing Guidelines calculations and percentages of credit off the Sentencing Guidelines ranges, the discussion does not take into account decisions made by the government in settlement discussions that affect the ranges that are *not* seen in the settlement documents. For example, in settlement negotiations, the government might determine not to include certain transactions when calculating the gains obtained by the corporate defendant—perhaps because the evidence might have been weaker, or because jurisdiction might have been questionable, or because the settlement may have focused on transactions from a certain time period, or because of other factors. Thus, while the settlement documents might suggest a 20% discount from the bottom of the Sentencing Guidelines range, that range could have been higher had other transactions been included. These determinations are not transparent, but, anecdotally, there is some basis to believe that companies that voluntarily disclose and/or cooperate are more likely to get the benefit of the doubt as the sausage is being made. Given the lack of transparency in this area, the debates on this topic are likely to continue for a long time.

D. The SEC Relied Heavily upon Administrative Resolutions

In 2014, the SEC resolved all but one (Avon) of its corporate FCPA enforcement actions—against Alcoa, HP, Smith & Wesson, Layne Christensen, Bio-Rad, and Bruker Corporation—through administrative proceedings. These resolutions are indicative of a continued trend in the SEC's approach to FCPA enforcement.⁹¹ Indeed, in October 2014, SEC FCPA Chief Brockmeyer declared that “[i]t's fair to say [the use of administrative proceedings is] the new normal.”⁹² This strategy aligns with the SEC's increasing reliance on administrative proceedings for all types of SEC violations, not just FCPA offenses.⁹³ SEC Enforcement Director Ceresney has explained that the agency is “using administrative proceedings more extensively because they offer a streamlined process with sophisticated fact finders.”⁹⁴ Given that disgorgement in the six FCPA-related administrative resolutions in 2014 ranged from \$1.7 million (Bruker) to \$161 million (Alcoa—the third highest FCPA-related disgorgement ever),⁹⁵ the SEC has now demonstrated its willingness to proceed administratively in addressing FCPA cases of various magnitudes.

The exclusive use of administrative proceedings for recent SEC resolutions is not entirely surprising. The agency has tended to have better success before administrative law judges than before federal court judges in contested matters,⁹⁶ and the SEC has faced federal court scrutiny when attempting to settle cases.⁹⁷ The SEC has, however, faced criticism of this approach in some quarters. US District Court Judge Jed Rakoff, for example, recently stated that he thought this approach would stunt the development of FCPA case law.⁹⁸

Despite these criticisms, SEC Enforcement Director Ceresney recently reiterated that: “[O]ur use of the administrative forum is eminently proper, appropriate, and fair to respondents.”⁹⁹ Interestingly, while the

SEC has increased its use of the administrative process in settled FCPA cases, we are not aware of any contested FCPA cases that the SEC has brought administratively. It remains to be seen whether the SEC will proceed administratively in contested FCPA matters, where, among other limitations, there is no ability for litigants to obtain foreign discovery.¹⁰⁰

E. The Trend Away from Full Monitorships Continues

The trend away from the use of external compliance monitors continued in 2014. Only one resolution last year—the DOJ’s and SEC’s settlement with Avon—contained a monitor requirement. Both the DOJ and SEC required Avon to retain an independent compliance monitor for 18 months, with the SEC also requiring that the monitorship be followed by an 18-month period of reporting directly to the SEC on Avon’s compliance efforts.¹⁰¹

Neither agency imposed a monitor or any reporting requirements on Alcoa or AWA in their respective settlements; similarly, Bruker was not required to retain a monitor or to provide ongoing reports to the SEC as part of its resolution. Even in the DOJ resolution with Marubeni, no monitor was required and no ongoing reporting requirement was imposed.¹⁰² Going forward, Marubeni was required only to cooperate with the DOJ’s ongoing investigation and to implement and maintain a comprehensive anti-corruption compliance program.¹⁰³ The company pleaded guilty to an eight-count criminal information, had previously entered into a DPA in 2012 for FCPA violations, and failed to voluntarily disclose the violations, cooperate with the investigation, or remediate properly.¹⁰⁴ The decision not to impose a monitor may relate to the fact that Marubeni previously entered into a DPA with the DOJ involving violations by Marubeni relating to Bonny Island; this earlier agreement required Marubeni to implement a monitor, an obligation that Marubeni fully discharged prior to the 2014 settlement.¹⁰⁵ Because the conduct subject to this year’s resolution pre-dated the misconduct related to Bonny Island, the DOJ also may have simply felt that Marubeni had already sufficiently remediated any compliance-related shortcomings during the monitorship already imposed.

The remainder of the 2014 resolutions required companies to report on their post-settlement efforts. In the HP and Bio-Rad resolutions, both the DOJ and SEC allowed the companies to file their own reports detailing their efforts to implement remedial measures and compliance program improvements outlined in their respective resolutions. Bio-Rad’s reporting requirement runs for two years,¹⁰⁶ while the HP entities—both the US parent and its foreign subsidiaries—must submit reports for three years.¹⁰⁷ In both the Smith & Wesson and Layne Christensen settlements, the SEC imposed two-year reporting requirements.¹⁰⁸ In its December settlement with Dallas Airmotive, the DOJ required the company to report annually during the three-year DPA regarding its remediation and implementation of the compliance measures.¹⁰⁹ The criminal resolution with Alstom had an interesting contingent twist to the reporting obligation. In that matter, the DOJ required the parent and its settling subsidiaries to report periodically, at no less than 12-month intervals, regarding the remediation and implementation of their compliance program and internal controls. However, the Department also noted that if the ongoing monitoring requirements of Alstom’s 2012 World Bank resolution were not satisfied, the company would be required to retain an independent compliance monitor for a period of three years.¹¹⁰ It is also relevant that the US subsidiaries involved in the resolution are being sold to General Electric (“GE”); the government’s papers note that GE will take responsibility for fully integrating its compliance program into those subsidiaries.¹¹¹

F. Common Elements of Publicly Known Declinations Reinforce Benefits of Voluntary Disclosure and Cooperation

As we predicted last year, publicly announced declinations were a continued trend in 2014. Again this year, voluntary disclosure and cooperation were common themes in at least a handful of the nine publicly announced declinations. Four of these known declinations involved companies—Image Sensing, LyondellBassell, Layne Christensen, and SBM Offshore—that had reportedly self-disclosed possible FCPA violations.¹¹² While it is impossible to say for certain given the limited amount of information publicly available, it seems likely that the voluntary disclosures—along with the companies’ likely follow-on cooperation with government investigations—were factors in these companies receiving declinations. For example, Layne’s counsel explained that while the DOJ investigation had unearthed “pervasive criminal conduct,” the DOJ had declined to prosecute because of the company’s “self-disclosure, exemplary

cooperation, and significant remediation.”¹¹³ Another possible factor in the DOJ’s declination may have been the company’s settlement with the SEC, described in detail above.¹¹⁴

Relatedly, remediation efforts likely factored into several publicly announced declinations. For example, Smith & Wesson, which received a declination from the DOJ despite settling with the SEC, closed some foreign offices, fired its entire international sales staff, and implemented “significant measures” to improve its FCPA compliance procedures and internal controls.¹¹⁵ Medical device company Baxter International disciplined those involved in its alleged FCPA violations, conducted FCPA training, enhanced its controls, and enhanced monitoring of its interactions with third-party business partners.¹¹⁶ Other companies did not disclose specific measures taken but acknowledged enhancing internal controls and compliance measures.¹¹⁷

One area worth watching is whether companies’ settlements with foreign governments may increase the likelihood of declinations. In the recent case of SBM Offshore, the Netherlands-based company settled with Dutch authorities for \$240 million over allegations that it bribed government officials in Brazil, Angola, and Equatorial Guinea.¹¹⁸ The company self-reported, cooperated with investigations by Dutch authorities and the DOJ, and took extensive remedial measures.¹¹⁹ The same day SBM Offshore announced its settlement in the Netherlands, the company also announced that the DOJ had closed its investigation into the bribery allegations.¹²⁰ As international coordination between the DOJ and SEC and their foreign counterparts increases—a development which we discuss in more detail in Section V below—we may see an increased willingness by DOJ to defer to its international counterparts under certain circumstances.

G. Resolutions at Risk: Potential Violations of Previous Settlement Agreements

In 2014, at least two companies—Orthofix International, N.V., and Biomet Inc., both medical device manufacturers—disclosed potential violations of their respective DPAs.

Biomet entered into a three-year DPA with the DOJ in March 2012 related to bribes paid to healthcare workers in Argentina, Brazil, and China.¹²¹ Similarly, in July 2012, Orthofix also entered into a three-year DPA as a result of bribes given to officials in a Mexican government-owned health care and social services institution.¹²² Both DPAs, as is customary, required the companies to disclose evidence of any other possible FCPA violations.¹²³

Consistent with this requirement, both companies have disclosed possible additional FCPA violations of which they recently became aware. In particular, Orthofix reported that it had disclosed to the DOJ and SEC “certain allegations involving potential improper payments with respect to [the company’s] Brazilian subsidiary” of which it became aware in August 2013.¹²⁴ It further stated that it has hired outside counsel to conduct an investigation, which was still on-going, into these new allegations.¹²⁵ Similarly, Biomet reported that it had disclosed to the DOJ and SEC in April 2014 “certain alleged improprieties regarding its operations in Brazil and Mexico” of which it became aware in October 2013.¹²⁶ As recently reported in *The New York Times*, these alleged improprieties had been brought to light by an anonymous whistleblower who claimed that Biomet continued to hire three “offshoots” of a distributor in Brazil at issue in Biomet’s 2012 resolution.¹²⁷ Biomet has previously stated that the company conducted an independent investigation into the misconduct, ultimately terminated or otherwise disciplined the involved employees and officers, and responded to SEC subpoenas for documents relating to the misconduct.¹²⁸

Under the terms of the DPAs, the DOJ has “sole discretion” to determine whether the companies have committed a federal felony or otherwise breached the agreement.¹²⁹ If the DOJ does exercise its discretion in that regard, depending on the facts, Biomet and Orthofix could face the possibility of an extended DPA, the re-opening of the underlying prosecution previously deferred, or a separate enforcement action based on the newly disclosed allegations.¹³⁰

III. Notable Aspects of Individual Resolutions

The DOJ and SEC have for the past few years been actively signaling—through both their public statements and enforcement actions—that they are increasingly focused on the prosecutions of culpable individuals, including corporate executives.¹³¹ As Assistant Attorney General Caldwell remarked in October 2014: “In all but a few cases, an individual or group of individuals is responsible for the corporation’s criminal conduct. The prosecution of culpable individuals—including corporate executives—for their criminal wrongdoing continues to be a high priority for the Department. For a company to receive full cooperation credit following a self-report, it must root out the misconduct and identify the individuals responsible, even if they are senior executives.”¹³² This year saw both a number of new cases involving individuals and a number of developments in cases initiated in previous years.

A. Resolutions Against Individuals Alone, Without a Corporate Resolution

This year, there were a number of resolutions where the DOJ and SEC brought enforcement actions against individuals without bringing a parallel corporate resolution. Generally, the government does not provide information as to why it has pursued individuals and not the relevant company. In some cases, it could be a matter of timing, with corporate charges to come later, or a view that the company had an adequate compliance program such that the responsibility lies with the individual. It will be interesting to watch these cases over the coming years to see if any pattern develops or any policy approach is announced by the enforcement authorities.

For example, the DOJ unsealed charges, originally filed in 2013, against the former general counsel of PetroTiger Ltd, Gregory Weisman, along with two former co-CEOs, Joseph Sigelman and Knut Hammarskjold, alleging substantive and conspiracy FCPA counts and honest services fraud.¹³³ These charges were issued in connection with four payments totaling more than \$330,000 made to an official of Ecopetrol S.A., a Colombian state-owned petroleum company, in exchange for the approval of a \$40 million oil services contract for PetroTiger.¹³⁴

Weisman and Hammarskjold pleaded guilty to conspiracy to violate the FCPA and to commit wire fraud on November 8, 2013 and February 18, 2014, respectively.¹³⁵ Weisman and Hammarskjold are cooperating with the government,¹³⁶ and their sentencing has been stayed pending the outcome of Sigelman’s trial,¹³⁷ which is set for January 2015.¹³⁸ For the DOJ, the charges may have been as much about the position of the defendants as about the substantive violations; the press release bluntly noted that the case “should be a reminder to CEOs and other executives who seek to corrupt the system at the expense of honest businesses: we are not going away.”¹³⁹ Notably, no charges have been filed to date against PetroTiger itself.

In April, the DOJ indicted two additional employees¹⁴⁰ of broker-dealer Direct Access Partners (“DAP”) who allegedly were connected to a scheme to bribe an executive at the state-owned Banco de Desarrollo Economico y Social de Venezuela (“Bandes”). Specifically, DAP CEO and Managing Partner Benito Chinaea and Joseph DeMeneses were accused of paying and laundering bribes to Maria de los Angeles Gonzalez de Hernandez, a senior official at Bandes, in exchange for her directing Bandes’ trading business to DAP.¹⁴¹ Gonzalez, together with Tomas Alberto Clarke Bethancourt (a former senior vice president at DAP), Ernesto Lujan (a former DAP managing partner), and Jose Alejandro Hurtado (a DAP employee), had previously been charged with money laundering and violations of the FCPA and Travel Act in May 2013.¹⁴² DAP shut down in May 2013 after allegations about the bribery scheme first surfaced.¹⁴³

The 16-count indictment against Chinaea and DeMeneses included five substantive FCPA counts and one conspiracy count, as well as obstruction of justice, money laundering, and Travel Act charges.¹⁴⁴ The SEC has instituted parallel civil proceedings seeking disgorgement and civil penalties.¹⁴⁵ In December, both pleaded guilty to conspiracy to violate the Travel Act and commit money laundering, in addition to two substantive counts of the offenses. As part of their plea agreement, Chinaea and DeMeneses agreed to forfeit the amounts the DOJ claimed they earned from the bribery scheme—\$3.6 million and \$2.7 million, respectively. They are scheduled to be sentenced in March 2015.¹⁴⁶ Bethancourt, Lujan, and Hurtado previously pleaded guilty to Travel Act and FCPA violations in August 2013, and Gonzalez, the Bandes official, pleaded guilty in November 2013 to money laundering and Travel Act charges.¹⁴⁷ Hurtado

is due to be sentenced on March 3, 2015; sentencing dates for Bethancourt, Lujan, and Gonzalez have not yet been scheduled.

The SEC also focused in 2014 on individuals in the defense industry, which has been a perennial focus of FCPA scrutiny. In November, the SEC filed actions against two former employees of FLIR Systems Inc., an Oregon-based defense contractor. Stephen Timms and Yasser Ramahi, US citizens who had worked out of FLIR's Dubai regional office, settled allegations that they had sent Saudi Arabian government officials on a lavish 20-night "world tour," which included stops in Paris, New York City, and Dubai, to help secure and retain sales contracts of thermal binoculars and security cameras.¹⁴⁸ In addition, Timms had also provided (with Ramahi's knowledge) expensive watches to several Saudi officials prior to the trip.¹⁴⁹ The SEC also alleged that Timms and Ramahi falsified records to try and hide their misconduct.¹⁵⁰ In settling the case against them, Timms was ordered to pay a fine of \$50,000 and Ramahi to pay a fine of \$20,000.¹⁵¹ Neither defendant admitted or denied the allegations.¹⁵²

B. Cases Against Individuals Alleged to Have Accepted Improper Payments

Another noteworthy development in the prosecution of individuals, although technically outside of the scope of FCPA enforcement, is the DOJ's decision to aggressively pursue foreign bribe-takers such as Banderes official Gonzalez. In February, the DOJ also charged Dr. Asem Elgawhary with mail fraud, wire fraud and conspiracy to launder money, as well as violations of federal tax laws.¹⁵³ Between 2003 and 2011, Elgawhary, a dual Egyptian and US citizen, allegedly used his position at a joint venture between his employer and the Egyptian state-owned electricity company ("EEHC") to provide preferential treatment to three power companies attempting to secure projects with EEHC.¹⁵⁴ In exchange, Elgawhary was allegedly given more than \$5 million in kickbacks from those companies and their third-party consultants in connection with awarding subcontracts on power projects.¹⁵⁵ The contracts to which the bribes related were worth more than \$2 billion. Elgawhary allegedly attempted to conceal the kickback scheme and his proceeds by falsely representing to both his own company and the joint venture's board of directors that he had no knowledge of any fraud or suspected fraud involving the joint venture, and that there were no material violations of law to disclose in the joint venture's financial statements.¹⁵⁶ On December 4, Elgawhary pleaded guilty to three of eight counts, including mail fraud, conspiracy to launder money, and impeding the administration of federal tax laws. He also agreed to forfeit \$5.259 million. He faces a sentence of 42 months imprisonment and will be formally sentenced in March 2015.¹⁵⁷

The DOJ pursued another alleged bribe taker in the Group DF case involving India, which is discussed in more detail in the next sub-section.

The DOJ has also pursued bribe takers by filing civil asset forfeiture claims, and by, in at least one notable instance, returning the proceeds to the victims of corruption. Specifically, this year the DOJ settled an action initiated in 2011 against Teodoro Nguema Obiang Mangue, the Second Vice President of the Republic of Equatorial Guinea (and son of its President). In that action, the DOJ sought to recover \$70.8 million in US-based real and personal property that was purchased by Obiang during a "corruption-fueled spending spree."¹⁵⁸ The DOJ alleged that Obiang had used his government position to siphon the West African country's oil wealth into his own pocket through corruption and money laundering, resulting in the purchase by Obiang of more than \$300 million in assets between 2004 and 2011.¹⁵⁹

On October 10, the DOJ reached a settlement agreement with Obiang to forfeit and divest more than \$30 million of those assets, including a Malibu mansion, a Ferrari, and life-size Michael Jackson statues, as well as paying for assets already removed from the United States.¹⁶⁰ Although the DOJ retrieved less than half of the amount it initially sought to recover, the case represents a significant step in its anti-corruption efforts because the target of the forfeiture, Obiang, is still in power. Of the proceeds recovered, \$20 million will be donated to a charitable organization for the benefit of the people of Equatorial Guinea, and another \$10.3 million will be forfeited to the US government and "and will be used for the benefit of the people of Equatorial Guinea to the extent permitted by law."¹⁶¹

C. Non-US Citizens Continue to Face Charges

The DOJ and SEC initiated and advanced a number of actions this year against non-US citizens, a trend that is related to the DOJ's continued development of cooperative relationships with foreign law enforcement agencies "to better access evidence and individuals located overseas."¹⁶²

One such action involved the plea of a French citizen, Frederic Cilins, in March 2014 to charges of witness tampering, obstruction, and falsification of records charges in connection with a Guinean investigation into improper payments made by mining company BSG Resources ("BSGR") to win lucrative mining rights in Guinea.¹⁶³ Cilins, who had previously acted as an agent for BSGR, had allegedly offered to pay up to \$5 million to a widow of former Guinean President Lansana Conte in exchange for her destruction of documents and agreement to remain silent regarding improper payments made by BSGR.¹⁶⁴ Unbeknownst to Cilins, Conte was working as a confidential witness and recorded her conversations with him.¹⁶⁵ Cilins, whose case has been discussed as an example of DOJ's recent successes in using traditional law-enforcement techniques in white-collar cases,¹⁶⁶ was sentenced to 24 months in prison followed by three years of supervised release, ordered to pay a \$75,000 fine, and ordered to forfeit \$20,000.¹⁶⁷

German and Argentine citizens were the subject of a second notable set of resolutions against non-US citizens from the past year. In February 2014, the SEC settled its case against dual German-Argentine citizen Andres Truppel relating to 2008-era allegations against Siemens for a bribery scheme to obtain a \$1 billion contract to produce national identity cards for Argentine citizens. Truppel, the former CFO of Siemens Argentina,¹⁶⁸ settled the charges without admitting or denying liability, was permanently enjoined against future violations, and was ordered to pay \$80,000.¹⁶⁹ The SEC had based its subject matter jurisdiction on Truppel's presence at meetings in the United States during which illicit payments were promised.¹⁷⁰

Related SEC proceedings against Ulrich Bock and Stephan Signer, who were both senior Siemens managers based in Germany, ended in default judgments. Bock and Signer had been charged with violations of the anti-bribery and accounting provisions of the FCPA based on payments to foreign government officials through US bank accounts.¹⁷¹ Bock allegedly also received payments in exchange for providing false testimony on behalf of Siemens during arbitration proceedings in Washington, DC and Zurich.¹⁷² The judgment against Bock ordered him to pay a total of \$937,957,¹⁷³ while Signer was fined \$524,000.¹⁷⁴ These monetary penalties were the largest assessed against individuals in an FCPA case to date.¹⁷⁵ The DOJ's criminal cases against these three defendants, as well as others involved in the same conduct, are pending.¹⁷⁶

In another example of the expanded geographic scope of enforcement against individuals, in April, the DOJ made public its indictment of six Indian foreign nationals—five heads of Group DF Limited¹⁷⁷ and one Indian Member of Parliament—in connection with a scheme to offer \$18.5 million in bribes to Indian state and federal officials in exchange for mining licenses in the Indian state of Andhra Pradesh.¹⁷⁸ The DOJ made clear that its decision to charge all six—only one of whom is also a US permanent resident—was intended to "send the unmistakable message that we will root out and attack foreign bribery and bring to justice those who improperly influence foreign officials, wherever we find them."¹⁷⁹

The five Group DF defendants were charged with one count each of racketeering conspiracy and money laundering conspiracy, two counts of interstate travel in aid of racketeering, and one count of conspiracy to violate the FCPA. The Member of Parliament who allegedly received some of the bribes faces charges including racketeering conspiracy and money laundering. The DOJ based its jurisdictional allegations over the defendants on their use of US bank accounts, travel within the United States, use of e-mail accounts hosted on computer servers located within the United States, and use of cell phones operating on interstate networks—although, as discussed in more detail below in Section IV, not all of the defendants traveled to the United States.¹⁸⁰ Dmitri Firtash,¹⁸¹ who controlled Group DF and allegedly oversaw the bribery scheme, was arrested in Austria in March 2014; the other five defendants remain at large.

It is also noteworthy that Lawrence Hoskins, a UK citizen who formerly served as senior Vice President for Alstom's Asia business and was charged in July 2013 as an agent of a domestic concern, filed a

motion to dismiss these charges in the United States District Court for the Southern District of Connecticut on July 31, 2014.¹⁸² He argued that his indictment should be dismissed, among other reasons, because 15 U.S.C. § 78dd-2 does not apply to the extraterritorial activities of foreign nationals.¹⁸³ The Court denied Hoskins' motion on December 29, 2014, finding that 15 U.S.C. § 78dd-2 applies to agents of domestic concerns, like Hoskins, who use a manner or means of interstate commerce to carry out the acts for which they are being charged, regardless of whether the acts took place in the United States or of whether the agent is a US national.¹⁸⁴ Hoskins is scheduled to go to trial in June 2015.¹⁸⁵

D. Other Resolutions Against Individuals Involved in Corporate Resolutions

During the past year, the DOJ and SEC also resolved previously initiated cases against four individuals involved in misconduct that was the subject of previous or anticipated corporate resolutions.

One of the more notable resolutions involved SEC charges, originally brought in February 2012, against two executives of the Noble Corporation and its subsidiary, Noble Drilling (Nigeria) Ltd. Mark Jackson, former CEO of Noble Corporation, and James Ruehlen, director of Noble Drilling (Nigeria), were accused of having violated the anti-bribery and accounting provisions of the FCPA by paying hundreds of thousands of dollars to illegally obtain import permits and extensions thereof from Nigerian customs.¹⁸⁶ A third executive, Thomas O'Rourke, had previously settled the claims against him.¹⁸⁷ The SEC settled with Jackson and Ruehlen on July 2, 2014, less than a week before trial was set to begin and after extensive briefing on dismissal motions and summary judgment.¹⁸⁸ Jackson and Ruehlen were enjoined from any future violations of the books and records provisions of the FCPA, but no monetary penalty or disgorgement was imposed, they were not required to admit liability, and the bribery charges against them were not addressed in the settlement.¹⁸⁹ The resolution of this matter, after the SEC brought contested charges, suggests that the SEC encountered various hurdles during the litigation.

Although the summary judgment motions of both sides were ultimately denied, the arguments raised shed some light on what may have been at issue had the trial gone forward. Jackson and Ruehlen argued that the payments were "facilitating or expediting payment[s] . . . to expedite or to secure the performance of a routine governmental action"¹⁹⁰ and that because they believed these payments were legal under the FCPA, they lacked any corrupt intent when the payments were made. They also maintained that they lacked sufficient "actual knowledge" of an FCPA violation, citing their adherence to Noble's compliance program and reliance on opinions from local and outside counsel and independent auditors that concluded that the payments would not implicate anti-corruption laws.¹⁹¹ The SEC countered that the extension of a customs permit was always a discretionary decision by a customs official and therefore was not a "routine" government action.¹⁹² Moreover, Noble had exceeded the number of import permit extensions allowed under Nigerian law,¹⁹³ so the SEC contended that the payments for those permits were, by definition, illegal. Under the SEC's theory, corrupt intent could be inferred from the act of making the payment itself, thus obviating the need for the SEC to provide further evidence of the actor's intent in making the payment.¹⁹⁴ The SEC further challenged the "actual knowledge" standard and asserted that there was virtually no evidence that actual advice regarding these particular payments had ever been received, outside of the testimony of interested parties.¹⁹⁵ The SEC's aggressive arguments on the issue of corrupt intent in this case suggest that it will continue to follow a broad interpretation of the scienter requirement, and to aggressively pursue individual defendants.

The two other noteworthy settlements relating to individuals involved criminal charges. In July, William Pomponi, former vice president of regional sales at a Connecticut-based subsidiary of French power and transportation company Alstom S.A., pleaded guilty to charges of conspiracy to pay bribes in violation of the FCPA.¹⁹⁶ Pomponi is the third Alstom executive, and fourth defendant, to plead guilty in connection with the award of the \$118 million Tarahan power project in Indonesia. The allegations that gave rise to the plea are similar to the ones highlighted above in the discussion of the Marubeni settlement.¹⁹⁷ Pomponi's sentencing has been postponed until after the trial of the remaining defendant—Lawrence Hoskins, the former senior vice president for the Asia region for Alstom—whose trial is scheduled to begin in June 2015 (discussed above).¹⁹⁸

On July 24, 2014, the DOJ announced another settlement, this time with Bernd Kowalewski, a former aircraft maintenance company president and CEO. Kowalewski pleaded guilty to conspiracy to pay bribes to Mexican and Panamanian aviation and police officials in exchange for assistance securing aircraft

maintenance contracts. The indictment alleged that Kowalewski and others paid these officials through a shell company¹⁹⁹ and that when Kowalewski learned that his employer's parent company was auditing its "incentive payments," he apparently "caused deletion software to be installed and run on his computer that erased content from his computer."²⁰⁰ Notably, Kowalewski had been indicted under seal in 2012 and was arrested in Amsterdam in March 2014; he waived extradition to the United States in June 2014.²⁰¹ Kowalewski was sentenced to time served, which was four and a half months in custody, and three months electronic monitoring, and ordered to pay a \$15,000 fine.²⁰² This case, like the ones highlighted in the preceding section, also highlights the DOJ's willingness to reach across international borders to hold corporate executives accountable for wrongdoing.

IV. Key Legal Developments and Observations

As is apparent from the above discussion, this year's enforcement actions and settlements reveal a number of significant enforcement trends. In this section, we focus on a few aspects of both the enforcement actions and other matters that were particularly noteworthy in terms of how they impact the application of the FCPA: (1) the DOJ's continued willingness to use conspiracy charges to target at least one notable group of defendants otherwise arguably beyond the reach of the US government and (2) an expanded definition by the US government of "things of value" under the FCPA. We also discuss a federal circuit court decision on the definition of a "government instrumentality" under the FCPA and two new Opinion Procedure Releases.

A. DOJ Continues to Target Defendants Who Are Otherwise Arguably Beyond Their Jurisdictional Reach Through Aggressive Use of Conspiracy Charges

The charges brought against the Group DF defendants, discussed in detail above in Section III, highlight a development worth noting (and watching): the willingness of the DOJ to reach foreign defendants who might not otherwise be subject to the FCPA by using conspiracy charges. As we noted in last year's review, the government continues to take aggressive positions regarding the boundaries of the FCPA, including on jurisdiction. In *United States v. Firtash*,²⁰³ the DOJ indicted the six Group DF individuals for conspiracy to violate the FCPA by bribing Indian officials, and alleged that one of them, as a permanent US resident, was a "domestic concern."²⁰⁴ The other foreign co-conspirators were described as "persons" under § 78dd-3, but in support of this claim, the indictment stated only that the territorial jurisdiction requirement was satisfied for all defendants by the transmission of funds through the United States and by US travel engaged in by only two of the defendants. Notwithstanding those allegations, the indictment seems to make clear that the illegal conduct alleged occurred almost entirely outside the United States.²⁰⁵ It appears that several of the co-conspirators were neither issuers nor domestic concerns, and took no actions within US territory. Nonetheless, the DOJ, through its use of conspiracy charges, brought an anti-bribery criminal indictment against all six foreign national defendants.

Although it is not entirely out of the ordinary for the government to bring charges against foreign citizens (as discussed in Section III above), the attenuated nature of the ties between the defendants and the United States is worth noting. It will be interesting to see whether the government continues to bring charges against foreign co-conspirators with minimal, if any, US contacts.

B. The List of "Things of Value" Relied on by the Enforcement Authorities Continues to Grow

As discussed in Section II above, the list of "things of value" that gave rise to FCPA charges in 2014 continued to include perennial favorites such as lavish gifts, travel, and entertainment. An especially notable (and ongoing) development may add another "thing of value" to the growing list: employment and internships.

This new "area" of FCPA liability is best illustrated by the government's reportedly continuing investigations into the hiring practices of several large banks in Asia, which was first reported in *The New York Times* in August 2013. The premise of these investigations appears to be that hiring a qualified candidate connected to a government official can constitute providing a thing of value to that official.

However, the SEC, which is leading the investigation into the financial industry, has not yet publicly confirmed that this is the case. SEC Enforcement Director Ceresney said in a recent speech that the SEC “should and will continue to pursue a broad interpretation of the FCPA that precludes bribery in all forms” including “employment of the family and friends of foreign officials.”²⁰⁶ However, in the one employment-related case specifically mentioned by Ceresney, the “employment” offered to the government officials’ relatives were “no-show jobs to the spouses of foreign officials who were responsible for certifying the company’s products for export.”²⁰⁷ No-show jobs or sham contracts (highlighted in other actions) are thinly disguised vehicles for passing money on to government officials—a classic third-party arrangement that violates the FCPA. The types of cases, however, appear to be based on a significantly more clear-cut legal theory than the one off of which the SEC now appears to be working in the as-yet uncharged financial industry cases. The media reports describing those cases suggest that the SEC’s theory is that the employment for the relative is not a pass-through of value but rather the thing of value itself for the official. Whether this theory is enunciated by the SEC will be an enforcement development that will be worth watching in 2015.

C. Eleventh Circuit Addresses the “Instrumentality” Question: *Esquenazi* Decision

Another legal development this year involved the first circuit-level pronouncement on the meaning of government “instrumentality.” In May 2014, in the much-anticipated opinion in *United States v. Esquenazi*,²⁰⁸ the Eleventh Circuit affirmed a broad definition of “instrumentality” under the FCPA. Defendants Joel Esquenazi and Carlos Rodriguez, who were found guilty of bribing officials at the state-owned Telecommunications D’Haiti between November 2001 and March 2005, had challenged their convictions under the FCPA arguing that “instrumentality” should be read narrowly to include only entities that serve a core governmental function. Whether an entity is determined to be an instrumentality in turn determines whether its employees are “foreign officials” under the FCPA.

In affirming the convictions and sentences, the Eleventh Circuit provided a two-part definition of “instrumentality,” defining it as (1) “an entity controlled by the government of a foreign country” that (2) “performs a function the controlling government treats as its own.”²⁰⁹ The court also laid out a non-exhaustive list of factors to consider in applying each part of the test.²¹⁰

First, the opinion states that courts and juries should determine whether the government “controls” the entity, by considering the following factors:

- the foreign government’s formal designation of that entity;
- whether the foreign government has a majority interest in the entity;
- the foreign government’s ability to hire and fire the entity’s principals;
- the extent to which the government profits from or subsidizes the entity; and
- the length of time that these indicia have existed.²¹¹

Second, courts and juries should assess whether “the entity performs a function the government treats as its own” by examining the following factors:

- whether the entity has a monopoly over the function it exists to carry out;
- whether the government subsidizes the costs associated with the entity providing services;
- whether the entity provides services to the public at large; and
- whether the public and government generally perceive the entity to be performing a governmental function.²¹²

The court went on to say that “it will be relatively easy to decide what functions a government treats as its own” by looking at objective factors, including “control, exclusivity, governmental authority to hire and fire, subsidization, and whether an entity’s finances are treated as part of the public fisc.”²¹³ Applying these principles, the court held that Teleco was an “instrumentality” of Haiti.

The Eleventh Circuit unambiguously rejected the defendants’ argument that a foreign government entity can only be considered an instrumentality if the entity performs “traditional, core government functions,”²¹⁴ explaining that because “a government-controlled entity provides a commercial service does not automatically mean that it is not an instrumentality. In fact, the statute expressly contemplates that in some instances it would.”²¹⁵

Whether the *Esquenazi* opinion settles the issue on what qualifies as an “instrumentality” of a foreign government remains to be seen. But for the time being, *Esquenazi* is the sole circuit case opinion on this issue; the Supreme Court denied a certiorari petition on October 6, 2014. Whether or not the *Esquenazi* opinion is the last word on the subject, there is still room under *Esquenazi* to argue that various entities with government connections do not rise to the level of an instrumentality. The *Esquenazi* case has already been a focus of the legal defense of former PetroTiger executive Joseph Sigelman, who recently filed a motion to dismiss FCPA charges, relying in part on *Esquenazi*.²¹⁶ However, the court denied Sigelman’s motion after a hearing on the matter.²¹⁷

D. Opinion Procedure Releases

The DOJ’s first Opinion Procedure Release of the year, issued on March 17, 2014, dealt with a share purchase agreement.²¹⁸ The request for the release came from a US financial services company and investment bank, which was seeking to purchase the minority interest of a foreign financial services company of which it was already the majority shareholder. The minority shareholder (who had, in the past, served as Chairman and later Chief Executive Officer of the foreign company) had, prior to the time of the proposed share purchase, been appointed to serve as a high-level official at the foreign country’s central monetary and banking agency.²¹⁹ The parties mitigated the risk of making a payment to the now-government official by, among other things, retaining an independent global accounting firm to determine the value of the shares.²²⁰ Although the DOJ stated that it did not intend to take enforcement action under the disclosed circumstances, it did not foreclose future enforcement action should facts indicate that there was a corrupt intent behind the purchase—for example, where there was an implied understanding that the foreign shareholder would direct business to the company.²²¹

The second Opinion Procedure Release, issued on November 7, 2014, concerned a US consumer products company’s acquisition of a foreign consumer products company and its wholly owned subsidiary.²²² During pre-acquisition diligence, the US consumer products company, an issuer under the FCPA, identified a number of likely improper payments by the foreign company to foreign government officials as well as substantial weaknesses in the foreign company’s accounting and recordkeeping. It was noted that none of the improper payments had a discernable jurisdictional nexus to the United States.²²³ The DOJ stated that it did not intend to take enforcement action under the circumstances, noting that successor liability does not create liability where none existed before. Based on the US company’s representations, none of the potentially improper pre-acquisition payments by the foreign company were subject to the jurisdiction of the United States and thus the DOJ would lack jurisdiction under the FCPA to prosecute the US company or the target foreign company.²²⁴ Notably, however, the DOJ’s opinion noted a representation by the buyer that the buyer would not derive any benefit from any contracts or other assets that had been the fruits of the bribery. It is not entirely clear whether the DOJ intended to signal that the accrual of future benefits from the tainted contracts would have changed its opinion; but it is noteworthy, nonetheless, that the DOJ included this representation in the release. While many practitioners have doubts that a charge could be brought under such a factual scenario, the government appears to want to keep the door open to the possibility. It is unclear why the US company sought the DOJ opinion, where the target foreign company was clearly not subject to the FCPA.

V. Key Investigation-Related Developments

The resolved cases and new investigations have helped provide insight not only into how the DOJ and SEC understand and apply the law to bribery-related misconduct, but also into how the US government pursues investigations into this type of misconduct. Below, we attempt to distill a few key points about how investigations are conducted and resolved by the government.

A. International Cooperation Between US and Foreign Authorities Continues to Increase

As we predicted in last year's review, US authorities' coordination with foreign law enforcement officials increased in 2014, with regard both to the number of overall cases and the number of countries with which the United States cooperates. Several US enforcement officials have commented on this coordination in recent speeches. For example, in November 2014, Assistant Attorney General Caldwell stated, "we increasingly find ourselves shoulder-to-shoulder with law enforcement and regulatory authorities in other countries. Every day, more countries join in the battle against transnational bribery. And this includes not just our long-time partners, but countries in all corners of the globe."²²⁵ According to Caldwell, this increased international cooperation has dramatically advanced the US government's efforts to root out and punish foreign corruption and signals that the tide has turned against the long-held notion that bribery in international business is simply inevitable.²²⁶

Similarly, in September 2014, the DOJ's Principal Deputy Assistant Attorney General for the Criminal Division Marshall Miller noted that "we have dramatically increased our coordination with foreign partners when they are looking at similar or overlapping criminal conduct—so that when we engage in parallel investigations, they complement, rather than compete with, each other."²²⁷ Echoing Miller's remarks, SEC Chairwoman Mary Jo White stated in an October 2014 speech: "Rarely is there a week when one or more of the cases recommended by the enforcement staff does not involve critical international assistance. In fact, in the last fiscal year, the SEC made more than 900 requests for international assistance and, as a result, we were able to obtain critical evidence that helped us prosecute wrongdoers for a vast array of serious offenses."²²⁸ This multinational and sometimes multilateral assistance is coming not only from the DOJ and SEC's counterparts overseas, but also from a wide array of agencies from tax authorities to immigration agencies.

As noted by White during her October 2014 speech, the Alcoa and HP cases are examples of two significant cases in which US authorities said that foreign authorities provided valuable assistance to their investigations.²²⁹ In its Alcoa investigation, the SEC received assistance from the Australian Federal Police, Ontario Securities Commission, Guernsey Financial Services Commission, Liechtenstein Financial Market Authority, Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime, United Kingdom Financial Conduct Authority, and Office of the Attorney General of Switzerland.²³⁰ In the HP case, the SEC and DOJ worked with the Public Prosecutor's Office in Dresden, Germany, and the DOJ also acknowledged the Polish Anti-Corruption Bureau, the Polish Appellate Prosecutor's Office, and the "contributions of our law enforcement partners in other countries involved in this matter."²³¹ Aside from those two cases, the Bank of Lithuania, the Financial and Capital Market Commission of Latvia, and the British Virgin Islands Financial Services Commission provided assistance to the SEC in its investigation of Bio-Rad,²³² and, in the Marubeni case, the DOJ was aided by law enforcement officials in Indonesia, Switzerland, and the United Kingdom.²³³ In another example, the DOJ received assistance from law enforcement counterparts in Brazil during the Dallas Airmotive investigation.²³⁴

Foreign governments also assisted in cases brought against individual defendants in 2014. In the PetroTiger case, for example, the DOJ said that it received significant assistance from its counterparts in the Republic of Colombia, the Republic of the Philippines (including from its Bureau of Investigation), and the Republic of Panama in its investigation and June 2014 arrest in the Philippines of former co-CEO Joseph Sigelman and the prosecution of the other PetroTiger co-CEO, Knut Hammarskjold.²³⁵ Bernd Kowalewski was arrested by authorities in Amsterdam in March 2014, and the DOJ acknowledged the assistance in that case of officials in the Netherlands, Mexico, Panama, Germany, and Uruguay.²³⁶ In another example, the DOJ received assistance from its law enforcement counterparts in Indonesia, Switzerland, and Singapore in securing a guilty plea from former Alstom employee William Pomponi.²³⁷

The DOJ also acknowledged receiving significant assistance from law enforcement officials in Austria and Hungary in bringing indictments against the Group DF defendants.²³⁸

The coordination between US and Dutch enforcement authorities in a recently completed investigation into alleged misconduct undertaken by SBM Offshore is particularly noteworthy, not only for the coordination of investigation activities but also for the potential coordination regarding the ultimate resolution. The investigation, led by the Netherland's Openbaar Ministerie, the Dutch Fiscal Intelligence and Investigation Service, involved alleged bribery of foreign officials in Equatorial Guinea, Angola and Brazil through sales agents between 2007 through 2011.²³⁹ The bribes allegedly include not only payments, but also the provision of cars, education, insurance benefits, and a building to officials in Equatorial Guinea.²⁴⁰ Upon completing its investigation, the DOJ declined to bring charges, while the Dutch authorities entered into a \$240 million settlement with SBM. While it is not entirely clear why DOJ did not bring charges, it may have been because DOJ was satisfied with the depth and efficacy of the Dutch investigation and resolution.

While international cooperation continues to increase, it should not be taken as a given that cooperation among authorities will occur. For example, US cooperation with China is spotty at best, and, to the extent there may have been any US cooperation with Russian authorities, the current political climate makes such cooperation unlikely. While this does not mean that enforcement by foreign authorities is not itself a risk (indeed, both China and Russia have increased their own enforcement efforts in certain respects), it does mean that companies facing US investigations should carefully consider the ability of US authorities to obtain and use foreign evidence when assessing responses to such investigations and possible settlements.²⁴¹

B. Traditional Law Enforcement Techniques Are Also Becoming a Staple of FCPA Enforcement

The increasing use of “traditional” law enforcement tools such as wiretaps, body wires, surveillance, and cooperating witnesses is another investigative trend that continued to gain momentum in 2014. In Principal Deputy Assistant Attorney General Miller's September 2014 speech, he stated, “Such proactive investigative tools—previously used primarily in organized crime and drug cases—have become a staple in our white collar investigations. I can promise you we will continue to use them.”²⁴²

A prime example of the use of such techniques is the investigation and prosecution of Frederic Cilins, a French citizen who was sentenced to two years in prison for obstructing a criminal investigation into alleged bribes to win mining rights in the Republic of Guinea (as described in more detail above in Section III).²⁴³ According to news reports, Cilins' plea was secured through the effective use of monitored and recorded phone calls and face-to-face meetings with a cooperating witness who was wearing a body wire.²⁴⁴ Then-Acting Assistant Attorney General Raman warned, after the Cilins plea was announced: “Prosecutions like that of Cilins means that those who are committing acts of foreign bribery right now should be acutely aware that the middleman they are engaging could be an undercover agent, that the telephone calls they are making may be being recorded pursuant to a court order, and that the public official they are bribing may be cooperating with US law enforcement.”²⁴⁵

The Cilins prosecution was not the only one that showcased the effective deployment of cooperating witnesses. According to the DOJ, Bernd Kowalewski, whose case is discussed above, pleaded guilty to FCPA-related misconduct following the decision by a member of the conspiring group to cooperate with the government's investigation and secretly record conversations.²⁴⁶ The DOJ also has acknowledged that it used recordings and cooperating witnesses in bringing charges against Marubeni and three Alstom executives.²⁴⁷ The use of these investigative techniques, however, are not without limits. Strict rules govern the FBI's monitoring of live phone calls, and wiretaps require enforcement officials to attest to both probable cause and necessity, which is a standard that enforcement officials have found hard at times to meet when challenged.²⁴⁸

C. Increased Cooperation Expectations

The DOJ sent another important message in 2014 about what, specifically, can be done during the course of an investigation to reduce fines and penalties through cooperation. During his September

speech, Principal Deputy Assistant Attorney General Miller stated that companies that assist US authorities in identifying employees and external actors responsible for misconduct will be rewarded with cooperation credit, if not a declination.²⁴⁹ According to Miller, this was one of the critical factors in the Morgan Stanley declination: Morgan Stanley had identified the individual executive responsible for the alleged criminal conduct and had gathered evidence to hold him criminally responsible.²⁵⁰ More recently, the DOJ has pointed to another example of a company that, likely due to its assistance in identifying culpable individuals, has not faced charges: PetroTiger. In recent comments, regulators have noted the exemplary assistance provided by these companies.²⁵¹

Miller also warned, however, that identifying culpable individuals is not enough if the identification is not timely and/or the company “fails to locate and provide facts and evidence at their disposal that implicate those individuals.”²⁵² Moreover, Miller stated, “If you want full cooperation credit, make your extensive efforts to secure evidence of individual culpability the first thing you talk about when you walk in the door to make your presentation. Make those efforts the last thing you talk about before you walk out. And most importantly, make securing evidence of individual culpability the focus of your investigative efforts so that you have a strong record on which to rely.”²⁵³ Miller stated that lack of such cooperation was what tipped the scales in favor of charges and landmark monetary penalties in two non-FCPA cases against BNP Paribas and Credit Suisse.²⁵⁴

According to remarks made by SEC Enforcement Director Ceresney, cooperation credit can be earned through real-time reports of investigative findings, the production of English translations of foreign language documents, making foreign witnesses available, and sharing summaries of witness interviews and forensic reports.²⁵⁵ Additional cooperation steps specifically listed in DOJ press releases include voluntarily making employees available for interviews; voluntarily producing documents from overseas; making proffers to the government; gathering, analyzing, and organizing voluminous documents; and summarizing the findings of internal investigations.²⁵⁶

Remarks by officials and DOJ press releases also signaled that companies should not wait until the end of an investigation to begin remediation efforts. For example, the DOJ’s Bio-Rad release specified that the DOJ took into consideration Bio-Rad’s significant remedial actions, including enhancing its anti-corruption policies globally, improving its internal controls and compliance functions, developing and implementing additional due diligence and contracting procedures for intermediaries, and conducting extensive anti-corruption training throughout the organization.²⁵⁷ Similarly, the DOJ’s press releases regarding the HP and Alcoa resolutions emphasized that both companies significantly benefited in the resolution of their investigations from the extensive remediation efforts each had taken.²⁵⁸

While remarks by government officials and press releases have provided some guidance on what constitutes cooperation in the FCPA context, one question that remains is just how far a company should reasonably go to earn cooperation credit. One outcome of the emphasis on cooperation has been a continued raising of the bar regarding cooperation generally as companies strive to show how their cooperation is more extraordinary than the last company’s. However, it is unclear whether certain cooperation measures expected by the government are worth the effort, particularly where the amount of credit derived is unclear. For example, in an effort to be cooperative, companies under investigation will often delay (at the government’s request) the termination of employees that may be considered relevant to the investigation, even if those employees would otherwise be terminated for cause or because they are no longer needed. This can result in significant cost to the company as well as morale issues.

VI. Collateral Legal Developments

Every year there is a plethora of somewhat ancillary legal and enforcement developments that bear on companies’ efforts to comply with the FCPA and respond when allegations are leveled. Below, we highlight developments related to five of these ancillary and important areas of the law.

A. Debarment and Suspension Risks

As countries around the globe continue to strengthen their anti-corruption enforcement regimes, the debarment and suspension risks resulting from convictions for bribery are becoming very real. Although we are not aware of any debarments or suspensions instituted in the United States under its debarment regimes as a result of FCPA violations (perhaps because of the way resolutions typically have been structured with US enforcement authorities), the same cannot be said for other countries. For instance, as part of strengthening its anti-corruption enforcement climate, Canada has enacted one of the most stringent debarment regimes in the world. Under its new legislative framework, companies face an automatic ban on future government contracts at the federal level if they or any of their affiliates are convicted of a list of various crimes, such as bribery, even if those crimes occurred outside Canada.²⁵⁹ Canadian officials have reportedly said that they have “no plans to allow disbarred companies to win reinstatement for good behaviour—as the US, the European Union and many other countries do.”²⁶⁰ According to some news outlets, a senior government official, speaking on condition of anonymity, noted that “[w]e [Canada at the federal government level] do apply discretion, but narrowly. Each regime has its own characteristics and benefits. Yes, other countries do it differently.”²⁶¹

While Canadian officials have declined to discuss specific cases in detail, they did confirm that HP’s status as a supplier is currently under review. In September 2014, various news outlets reported that HP is facing a possible 10-year ban on selling products and services to Canada following its criminal conviction in the United States.²⁶² It is noteworthy that although HP itself did not plead guilty to any bribery charges (it entered into a civil resolution with the SEC, but only for alleged books and records and internal controls violations), Canada appears to be aggressively interpreting its policy to debar all corporate affiliates of a charged entity.

There was a second notable development in India, where in early 2014, authorities temporarily suspended Rolls-Royce in connection with an investigation by the Indian authorities into alleged corrupt payments made by the company to Hindustan Aeronautics Limited.²⁶³ The investigation was apparently initiated as a result of the publicized ongoing investigations by the SFO and DOJ into corruption allegations against Rolls-Royce in multiple countries. In September 2014, the ban was lifted after a determination that certain after-market contracts were critical to national defense; however, the Indian government noted that procurement decisions with these entities would still be made on a case-by-case basis in light of the ongoing investigation.²⁶⁴ Like Canada, India appears to be moving toward more vigorous enforcement of its statutory debarment regime—one of the strictest regimes in the world—including suspending companies merely suspected of corrupt conduct from government contracting (as opposed to only those companies that have resolved bribery charges in India or elsewhere).

B. Protection of Investigation-Related Work Product

During the past 13 months we saw at least two noteworthy opinions related to the protection of investigation-related communications and work product the type of which might be generated either during an FCPA investigation or afterwards during a monitorship.

First, in *In re: Kellogg Brown & Root, Inc.*,²⁶⁵ the D.C. Circuit reversed the District Court to affirm that the attorney-client privilege applies to confidential communications between a company’s attorneys and its employees in the context of an internal investigation even absent involvement of an outside law firm, preserving the core holding of *Upjohn Co. v. United States*, 449 U.S. 383 (1981). The District Court had ruled that certain documents prepared by in-house attorneys during a corporate internal investigation were unprotected business records primarily meant to comply with regulatory requirements. The Circuit Court disagreed, reasoning that *Upjohn* does not require hiring outside counsel or using “magic words” to show that a communication or document is attorney-client privileged. The Court articulated a “primary purpose test,” which grants privilege where providing or obtaining legal advice was a primary purpose of the communication. A petition for rehearing *en banc* was denied, but a petition for certiorari was filed on November 25, 2014.

Another notable opinion came out in late 2013, when a US magistrate judge ordered Weatherford International Ltd. to provide shareholder plaintiffs in a securities litigation case with certain documents referenced during presentations made to the SEC by Weatherford’s outside counsel regarding the

findings of the company's internal investigations into tax accounting issues. Finding that prior case law had established the "rule . . . that information is discoverable if it has been actually disclosed or referenced in such detail that it has been 'effectively produced' to an investigatory government agency,"²⁶⁶ the court required the production of any materials provided to the SEC as well as any "underlying factual material explicitly referenced" in such materials or any oral representations made to the SEC.²⁶⁷ The waiver extended to all factual portions of the partially disclosed documents, so only materials reflecting an attorney's mental impressions or opinions could be redacted from interview summaries.²⁶⁸ Statements in the presentations to the SEC that merely indicated that an interview had taken place did not constitute an explicit reference to interview materials sufficient to cause a waiver.²⁶⁹

C. Whistleblower Developments

Under Section 922 of the 2010 Dodd-Frank Act, whistleblowers who provide "original information" to the SEC that leads to a successful securities law prosecution are entitled to an award²⁷⁰ and to various protections, including protection from retaliation. The whistleblower provisions arguably motivate employees to come forward with knowledge about FCPA violations. During FY 2014, the SEC received 3,620 tips, complaints, or referrals on its whistleblower hotline,²⁷¹ of which 159 were FCPA-related.²⁷² Notably, nine whistleblowers received awards in FY 2014,²⁷³ which is more than twice the number of awards in 2013 (four) and is more than in all prior years combined. Included among these were both the largest-ever award (of more than \$30 million), and the first-ever award given to a whistleblower who worked in an internal audit or compliance function (in the amount of \$300,000).²⁷⁴ Another whistleblower "first" came in June when the SEC brought its first anti-retaliation enforcement action, which the defendants agreed to pay \$2.2 million to settle.²⁷⁵ As of yet, we are aware of no whistleblower awards involving an FCPA case.

As we predicted in last year's review, 2014 also saw developments in legal issues involving whistleblowers, including three significant judicial opinions. First, in *Bussing v. COR Clearing, LLC*, the Nebraska District Court found that a plaintiff qualified as a "whistleblower" even though she had not reported information directly to the SEC.²⁷⁶ The plaintiff had been terminated for cause shortly after elevating to management potential violations of FINRA rules and federal securities regulations, including the anti-money laundering provisions. In deciding to extend whistleblower protections, the court noted the "tension" between the statute's definition of "whistleblower" (which requires disclosure to the SEC) and the anti-retaliation provision (which protects disclosures to non-SEC entities). It ultimately gave the term "whistleblower" its ordinary meaning under the anti-retaliation provision, reasoning that that interpretation was appropriate so as not to render that subsection meaningless.²⁷⁷ In doing so, the court rejected the Fifth Circuit's interpretation from *Asadi v. G.E. Energy (USA) L.L.C.*²⁷⁸ that the anti-retaliation provision applies only to individuals who qualify as whistleblowers under the statutory definition.²⁷⁹ The defendant filed a petition for interlocutory appeal, which the Eighth Circuit denied,²⁸⁰ highlighting a split in the circuits on this issue.

In the second notable opinion, the Second Circuit affirmed the lower court holding in *Liu v. Siemens*²⁸¹ that the anti-retaliation provision does not apply extraterritorially.²⁸² In *Liu*, the plaintiff, who had reported illegal payments to foreign officials, was a non-US citizen employed abroad by a foreign company. Moreover, all events allegedly giving rise to the company's liability occurred outside the United States. In denying the plaintiff recourse to the anti-retaliation provision, the Second Circuit stated that it could find no indication that Congress had intended the provision to apply extraterritorially.²⁸³ Further, it relied upon Supreme Court precedent to conclude that Siemens' listing on a US stock exchange was only a "fleeting" connection that "cannot overcome the presumption against extraterritoriality."²⁸⁴

More recently, the Fifth Circuit affirmed a Department of Labor Administrative Review Board determination that disclosing a whistleblower's identity is a breach of the anti-retaliation provisions of the Sarbanes-Oxley Act.²⁸⁵ In that case, a Halliburton employee had submitted an internal complaint to management from his company e-mail address, and later to the Halliburton Board and the SEC, about potentially "questionable" accounting practices. Shortly after the internal complaint was forwarded to Halliburton's general counsel, the SEC notified the company that it was investigating allegedly improper accounting practices. The general counsel surmised the two were related and instructed employees to retain documents because "the SEC has opened an inquiry into the allegations of [the employee]."²⁸⁶ Following the circulation of this notice, the whistleblower's colleagues ostracized him and he resigned.²⁸⁷

In affirming the award of \$30,000 to the whistleblower, the court rejected Halliburton's arguments that the whistleblower had to prove that the company's adverse actions in disclosing the whistleblower's identity were improperly motivated.²⁸⁸

D. Victims' Lawsuits

Although there is some limited precedent for victims of bribery attempting to recover damages, such suits are rare. But this year, at least three companies took this route, filing suits under the federal RICO statute alleging that the defendants used bribes to their detriment.

In April, Rio Tinto plc, a U.K. metals and mining corporation, sued its Brazilian competitor, Vale S.A.; Vale's business partner, BSGR; and several corporate and individual defendants.²⁸⁹ Rio Tinto alleged that the defendants conspired to obtain its property rights to an iron-ore rich area in southeast Guinea that it had spent many years and hundreds of millions of dollars to develop. The complaint alleges that Vale, through negotiations to purchase the territory rights, obtained Rio Tinto's confidential and proprietary business information about its development of the area under false pretenses, because Vale was also secretly discussing a joint venture with BSGR to exploit the area for its own benefit.²⁹⁰ The complaint further alleges that BSGR paid the former Guinean Minister of Mines, Energy, and Hydraulics and the wife of the former Guinean president bribes worth over \$100 million in total to obtain part of Rio Tinto's territory rights.²⁹¹ Rio Tinto's RICO suit followed closely on the heels of the DOJ's announcement of the Cilins plea and Guinea's revocation of the defendants' rights to the territory.

In the second case, Ideas Interactivas, S.A. de C.V., a Mexican corporation ("Interactivas"), and its holding company filed suit against Yahoo! Inc.; its Mexican subsidiary, Yahoo de Mexico, S.A. de C.V. (collectively, "Yahoo"); and Yahoo's counsel, Baker & McKenzie, in September.²⁹² The complaint alleged that in the early 2000s, a possible joint venture between Yahoo and Interactivas for the development of telephone and digital directories in Mexico fell apart after Yahoo purchased a competitor company in lieu of pursuing the venture with Interactivas. Interactivas then sued and obtained a \$2.7 billion preliminary judgment in Mexican court against Yahoo. The judgment, however, was reduced on appeal to \$172,500. The plaintiffs have alleged that the reduction in the judgment was the result of a conspiracy to corruptly influence the Mexican judge hearing the appeal.

In the third suit filed in early December, Petróleos Mexicanos, a Mexican oil and gas entity, and its subsidiary, Pemex Exploración y Producción (collectively, "Pemex"), sued Hewlett-Packard Company and its Mexican-based subsidiary, Hewlett-Packard Mexico, S de R.L. de C.V. (together, "the HP Defendants").²⁹³ The complaint in that case alleged that the HP Defendants, along with several other entities not named as defendants, engaged in a scheme to bribe Pemex's Chief Operating Officer and its Chief Information Officer to secure contracts to sell software, hardware, and licenses to Pemex. The complaint further alleged that the HP Defendants had inadequate control measures in place to prevent such conduct, citing, as support, the existence of two similar bribery schemes involving HP Russia and HP Poland. Pemex claimed to have discovered the illegal conduct only after the DOJ and SEC announced the HP settlements.

E. Investor Lawsuits

Shareholder derivative and class action suits incident to FCPA investigations continue to be filed. We highlight a few key developments below.

First, a particularly notable securities class action—filed against Avon Products and its former officers and directors for issuing materially false and misleading statements to shareholders about the company's FCPA compliance—was dismissed by a Southern District of New York judge.²⁹⁴ In granting Avon's motion to dismiss, the court ruled that the complaint failed to plead facts sufficient to show that any of the false statements had been made with intent to deceive, manipulate, or defraud.²⁹⁵

Second, there were at least two notable settlements in 2014. In the first settlement, the federal district court for the Northern District of Georgia approved a shareholder derivative settlement involving NCR Corporation.²⁹⁶ NCR agreed to pay attorneys' fees and to improve its risk and compliance program.²⁹⁷ In the second settlement, the federal district court for the Western District of Pennsylvania preliminarily

approved a settlement between shareholders of Alcoa, Inc. and the company's board of directors concerning allegations that Alcoa officers breached their fiduciary duties and wasted corporate assets by allowing the company to engage in bribery in Bahrain.²⁹⁸ Like the NCR deal, the Alcoa settlement also includes attorney's fees and compliance program improvements.²⁹⁹

Additionally, several new derivative and class action suits were filed by shareholders in 2014. An HP shareholder filed suit against the company and several current and former board members alleging, among other things, that the defendants participated in and concealed a widespread bribery scheme, failed to comply with the FCPA's books and records and internal controls provisions, and deceived investors.³⁰⁰ Separately, less than two months after Och-Ziff Capital Management Group revealed that it was under investigation for possible FCPA violations, Och-Ziff and its CEO and CFO were sued in a securities class action regarding its disclosures about its FCPA exposure.³⁰¹ Similarly, three months after Key Energy Services, Inc. disclosed that it was being investigated for possible FCPA violations, two purported class actions were filed alleging that Key Energy misled investors about its financial performance and failed to disclose that its Russia business practices were in violation of the FCPA.³⁰² And Petrobras also found itself the target of various investor class action lawsuits as a result of corruption allegations and investigations by the SEC and DOJ.³⁰³ In one lawsuit, the City of Providence, on behalf of all investors who purchased Petrobras securities, sued Petrobras, Petrobras executives, and Brazilian and international banks that managed the sale of certain securities, for allegedly making false and misleading statements and omissions that artificially inflated the price of Petrobras securities.³⁰⁴

VII. Key International Law Developments

As we predicted last year, the year 2014 saw increased strengthening of anti-corruption legislation and enforcement overseas, as well as continued activity by the World Bank.

A. Overview of International Anti-Bribery Enforcement: The OECD Report

In December, the Organization for Economic Cooperation and Development ("OECD") published an analysis of the 427 known, publicized enforcement actions undertaken by the 41 signatories to the 1999 Anti-Bribery Convention.³⁰⁵ The declared purpose of the OECD report was to reveal trends and commonalities among the foreign bribery cases so that the signatories to the Convention can better understand the challenges they face in combating bribery.³⁰⁶ The report contained several notable findings, a few of which we highlight below.

First, the review found that two-thirds of bribes were paid to government officials of more developed countries.³⁰⁷ In 67% of enforcement actions, the bribes were paid to government officials of countries that rated medium to very high on the UN Human Development Index ("HDI").³⁰⁸ The OECD concluded, on the basis of this finding, that bribery risk may not be as heavily linked to the level of development of a country and geography as may be commonly thought. It recommended that in assessing risk, companies might focus more heavily on industry-specific factors. For example, 59% of all bribes paid related to just four industries: extractive, construction, transportation, and information and communication.³⁰⁹ Those industries may face similar challenges, regardless of geographic location.

Also noteworthy is the finding that in a majority of cases high-level management was found to have been involved in the bribery.³¹⁰ In 41% of cases, corporate managers were aware of and sanctioned the bribery, and in an additional 12% of cases, the CEO was aware of and permitted bribes.³¹¹ The OECD concluded that this finding calls into question the commonly-held view that a "rogue employee" is the primary actor in most foreign bribery cases.

The report also sheds light on the identity of bribe recipients. It finds that officials of state-owned enterprises were the foreign officials who most often accepted bribes in the enforcement actions reviewed by the OECD (representing 27% of all government officials who accepted bribes). Interestingly, these officials received the vast majority of the total value of all bribes featured in the enforcement actions.³¹² The OECD commented that this "could confirm a preconceived notion the more powerful the official, the more s/he receives in bribes."³¹³ Another 24% of cases involved bribes to customs, health, and defense

officials.³¹⁴ In the majority of cases (57%) the bribes were paid in order to get lucrative public contracts, while the remainder of the cases, bribes were paid for such things as customs clearances, favorable tax treatment, licensing, and travel documents.³¹⁵

It bears repeating, of course, that the OECD report was based entirely on information available from public enforcement actions in signatory countries, so its findings are based disproportionately on enforcement activity by US authorities, given the United States' leading role in anti-bribery enforcement. Additionally, the findings of the report are based on cases, the vast majority of which (366 out of 427) came from the last seven-year period. Accordingly, while the report is helpful as an examination of enforcement over the past decade, the data is limited in some respects.

B. UK

Since the UK Bribery Act 2010 came into force in July 2011, it has been tempting to herald each new year as the moment at which the new legislation will show its teeth. Although 2014 did witness convictions of individuals under the Bribery Act, we still await the first significant prosecution by the Serious Fraud Office ("SFO") under the Act. In what can only be described as a year of mixed fortune for the SFO, we have seen it add new tools to assist its pursuit of corruption cases and announce a number of high-profile investigations, but we have also witnessed some notable setbacks for the SFO. The current political landscape in the United Kingdom is such that 2015 may be critical for the SFO, not just in securing future backing, but in ensuring its survival.

Three years after the introduction of the Bribery Act 2010, the SFO has secured its first conviction under this comprehensive anti-corruption regime (although this was not the first conviction under the Bribery Act regime, these earlier convictions were in cases brought by authorities other than SFO).³¹⁶ Three senior personnel at Sustainable AgroEnergy were charged with Bribery Act offenses as part of the broader prosecution of a £23m fraud. Two of these personnel were found guilty of Bribery Act offenses and were sentenced to four and six years of imprisonment, respectively, for the bribery elements of their convictions.³¹⁷ Although this case represents the first Bribery Act prosecution brought by the SFO, it is notable that the case was investigated primarily by one of its fraud divisions rather than one of its bribery teams. Moreover, the focus of the investigation and case were on fraudulent activity; the bribery aspects were ancillary in nature. Accordingly, we are still awaiting the SFO's first significant prosecution under the new Bribery Act regime.

The SFO has, however, been active in investigating and prosecuting cases under the anti-bribery legal regime that was in place prior to the enactment of the Bribery Act. In one notable example, the SFO saw the completion of its first contested case for overseas corruption in June. Four directors of Innospec Limited, which itself had been found guilty of conspiracy to corrupt in March 2010, were found guilty of conspiring to commit corruption and were sentenced to up to three years imprisonment.³¹⁸ The case is an example of the complexity and length of the investigations that the SFO is undertaking: the criminal conduct extended back to 2002, and the investigation had commenced in 2008. The investigation also shows extensive cross-border and inter-agency collaboration: the SFO received cooperation from the City of London Police and Cheshire Police in the United Kingdom; the DOJ and SEC in the United States; and Indonesian, Singaporean, and Swiss authorities. Indeed, the DOJ and SEC entered into FCPA settlements with Innospec in 2010.

In another notable development, the first hearings have taken place following the SFO's five-year investigation into Alstom Network UK, a UK subsidiary of the French engineering company.³¹⁹ Alstom is accused of using its UK subsidiary to make illicit payments to officials in various foreign jurisdictions between 2000 and 2006. SFO investigations reportedly continue into the conduct of a British pharmaceutical company in China and in other overseas locations; Sweett Group's activities in the United Arab Emirates; ENRC's mining operations in the Democratic Republic of the Congo; GPT's use of agents in their work for the Saudi Arabian National Guard; and various allegations about payments made by Rolls-Royce.³²⁰ These cases reflect SFO Director David Green's continuing commitment to using the SFO's unique structure—in which investigators and prosecutors work side-by-side—to address the top tier of fraud and bribery activities. In his third report to the Cambridge symposium as the Director of the SFO, he emphasized the unique challenges of this work and the unique skills required on the part of the SFO in order to meet these challenges.³²¹

Amidst this enforcement activity, the SFO has been forced to respond to a series of setbacks this year, at least three of which are particularly notable. First, in July, it settled for £4.5 million a damages claim by Robert and Vincent Tchenguiz that arose out of the SFO's raids on the brothers in 2011 (prior to Director Green's arrival).³²² The High Court had previously declared that the search warrants used for the raids were unlawful, and the SFO had openly admitted that serious mistakes had been made in the applications for the search warrants.³²³ Then in November, a prosecution launched by Director Green himself came to a very public end when a senior judge refused to allow the SFO to re-indict six suspects in a fraud case. The original trial of those six had been halted nine months earlier, in February, after the SFO had altered the entire presentation of its case. Finally, the SFO has been heavily criticized by a Crown Court judge over the collapse of the trial of Victor Dahdaleh in December 2013. The judge focused on the SFO's over-reliance on an external law firm to conduct its investigation and apparent lack of attention to issues of independence and privilege.³²⁴ Director Green and Alun Munford, General Counsel to the SFO, have responded that the SFO will not rely on investigations conducted under the instructions of the suspect company and will "drill down into its evidence and conclusions,"³²⁵ although it remains to be seen how the SFO will accomplish this given that it lacks the personnel and resources to conduct many of these investigations alone.

With the Bribery Act still in its infancy, there has been little development regarding legal doctrine. We will be watching, especially, for the first prosecution under Section 7 of that Act, which makes it a criminal offense for a corporation to fail to prevent bribery. A defense is available to a corporation that can demonstrate that it had adequate procedures in place to prevent bribery. In part because of this provision, there has been a rapid and widespread implementation of anti-bribery policies across UK corporate entities and their subsidiaries.

One additional issue worth following relates to UK prosecutors' newfound ability to enter into DPAs with corporate bodies (although not with individuals) being investigated for economic crimes.³²⁶ No DPA has yet been entered into, but Director Green views them as a useful tool to encourage cooperation and avoid the collateral damage caused by a full prosecution, including damage to employees, shareholders, and pensioners.³²⁷ Notably, DPAs require judicial oversight and approval throughout the process, and the prosecutor must convince the supervising judge that disposal by way of a DPA is in the interests of justice. Before a DPA is entered into there will be a final hearing held in open court, and so entering into a DPA will always be a public event for the company involved. Director Green has said that the SFO has investigations that may be suitable for the first DPA.

Finally, it is worth noting that the General Election to be held in the United Kingdom in May 2015 will likely impact the future of the UK's fraud and corruption policing and may also bring pressure to expedite key charging and investigation decisions, including for particularly high-profile matters.

C. Germany

Germany has seen another busy year of anti-bribery enforcement activities.

Enforcement

On the enforcement side, the Munich Public Prosecutor's Office led the field once again. It charged Bernie Ecclestone for paying millions of dollars in bribes to a German government official employed by a state-owned bank in order to obtain the release and sale of shares in the Formula 1 business to an investor allegedly close to Ecclestone. Facing the risk of several years in criminal custody in Germany, Ecclestone accepted a record fine of \$100 million in return for the termination of the trial.

In another case led by the Munich Public Prosecutor's Office, the premises of several subsidiaries of Airbus Group (formerly European Aeronautic Defence and Space Company—EADS) were searched. The searches related to allegations that employees of Airbus had bribed government officials in Saudi Arabia and Romania in order to obtain contracts. Moreover, the Munich prosecutors disclosed that they were conducting investigations regarding a Greek arms deal involving the German defense contractor Krauss-Maffei Wegmann GmbH & Co. KG. Allegedly, two members of the German parliament accepted payments from Krauss-Maffei Wegmann and passed parts of those payments on to a Greek government

official. While the underlying bribery offenses are time-barred, the current charges are based on tax evasion because the payments were allegedly wrongly declared as being tax deductible.

Another investigation related to Greece came to an end when Rheinmetall Defence Electronics GmbH, a subsidiary of German defense contractor Rheinmetall AG, settled a foreign bribery investigation with the Bremen Public Prosecutor's Office and agreed to pay a \$46 million fine and disgorgement order. The investigation was based on allegations that a company representative had made unauthorized payments relating to an arms deal in Greece.

Legislation

The German statutory framework of anti-bribery enforcement saw one major amendment in 2014, and more important changes are on the horizon.

In September 2014, providing advantages to members of Parliamentary assemblies became subject to much stricter regulation. Previously, only "buying or selling a vote for an election or ballot" in a Parliamentary assembly in Germany or in the European Parliament was criminalized. This narrow wording left significant gaps in the statutory framework and prevented Germany from ratifying the United Nations Convention Against Corruption, which, among other things, sets standards regarding anti-corruption legislation applicable to members of parliamentary assemblies. The new law passed in September (Section 108e para. 2 of the German Criminal Code) finally allowed Germany to ratify the Convention by broadening the existing law to make it a criminal act to offer, promise, or give an undue advantage to a member of the German Federal Parliament (Bundestag), a state parliament, a municipal representative body, the European Parliament, the parliamentary assembly of international organizations, or the legislature of a foreign country, in order that such a member should act or abstain from acting according to an order or instruction. Donations permissible under statutory law should, in general, not constitute criminal conduct, but since there is currently no case law applying the new law, caution and strict compliance controls should govern any activity in that field.

More anti-corruption-related legislative changes are under discussion in Germany. One proposed bill would dramatically change the German legal landscape, as it would formally introduce criminal liability for corporations. Under the current system, corporations cannot be prosecuted, charged, or convicted for a criminal offense in Germany. Instead, there is a sophisticated web of regulations and administrative sanctions making it possible to penalize corporations in circumstances where compliance failings have been exposed by the discovery of criminal offenses committed by the corporation's officers and employees. A draft bill introduced by the government of North Rhine Westphalia (the largest of Germany's 16 states), proposes far-reaching changes to the German system of corporate criminal liability and accountability, including (1) direct liability for corporations, (2) severe limitations on the discretion of prosecuting authorities, (3) increased fines against corporations, (4) ancillary measures against corporations such as exclusion from public tenders or subsidies, and (5) statutory defenses for corporations which could escape sanctions if they had implemented adequate procedures or voluntarily disclosed the wrongdoing. The legal profession and business community have been critical of the draft bill, and alternative proposals for regulation have been suggested.

The Federal Minister of Justice, Heiko Maas, has not yet adopted a final position regarding the draft bill. However, Maas argued at a conference organized by Transparency International in Berlin in December 2014 that changes were needed, either through a new statute that would formally establish corporate criminal liability, or through a revision of the existing administrative system. In the same speech, Maas stated that the statute penalizing commercial bribery would be tightened in order to encompass any bribes paid to an employee of a commercial enterprise.

D. EU

In February 2014, the EU Commissioner for Home Affairs released the EU Anti-Corruption Report (the "Report"). It is the first of its kind and will be issued every two years as part of an ongoing monitoring and assessment mechanism of the anti-corruption efforts in the 28 EU Member States. The Report is the follow-up to the EU Commission's 2011 Communication on "Fighting Corruption in the EU," in which the EU Commission announced its decision to set up a mechanism to regularly monitor and assess Member

States' efforts against corruption. The goal of the Commission's report is to "stimulate" the necessary political will of the Member States to fight corruption and implement the recommended measures.

The most troubling results of the Report were that corruption costs the European Union some €120 billion every year, which is almost the equivalent of the EU budget, and that three quarters (76%) of Europeans think that corruption is widespread while more than half of them (56%) think that over the last three years, corruption in their country has increased.

A significant part of the Report focuses on the "corruption environment" and provides analysis and discussion of what the Commission considers to be key conditions to effectively prevent or at least limit and control corruption. The Report discusses the existence and enforcement of preventive policies, political accountability, and the effectiveness of existing anti-corruption enforcement agencies, among other things, for each EU Member State. The Report highlights problems in each of the 28 Member States but also identifies good practices that could serve as a model for other countries.

The Report also identifies a number of specific industry sectors that are seen as particularly vulnerable to corruption. These include: urban development and construction, healthcare, and the financial sector. The Report also contains an in-depth discussion of the corruption risks in public procurement.

For a company operating in Europe, the Report provides important considerations for structuring a compliance program, in particular where to expect red flags and how to plan for the sustainability of a company compliance program. A company doing business in Europe may wish to carefully review the Report's analyses of the specific countries in which the company does business in order to assess whether its compliance procedures are sufficiently robust to withstand scrutiny in a toughening enforcement climate.

In November, EU Directive 2014/95 was published, which will require large "public interest" companies with more than 500 employees to publish details of their anti-corruption programs, beginning in 2017. "Public interest" companies include companies listed in the EU, credit and insurance institutions, and other companies that a Member State has designated to be of significant public relevance. Companies so designated will be required to provide a description of their business model and their anti-corruption/anti-bribery policies, including implemented due diligence processes, among other things. Any company covered by the law that does not have an anti-corruption/anti-bribery policy will be required to provide a clear explanation for not having one.

E. Canada

As reported in our 2013 Year in Review, in 2013 Canada significantly strengthened its equivalent of the FCPA, the Corruption of Foreign Public Officials Act ("CFPOA")³²⁸ by expanding jurisdiction to cover conduct by Canadian companies and individuals worldwide, prohibiting facilitation payments and bringing into effect a "books and records" offense. The year 2014 has seen a significant uptick in enforcement activity under the CFPOA, which until its recent amendments was rarely enforced.

In 2014, the primary Canadian anti-bribery enforcement agency, the Royal Canadian Mounted Police ("RCMP") continued to increase its enforcement activity. In February, the RCMP arrested seven people in relation to allegations of corruption of Canada Revenue Agency ("CRA") officials. These arrests were the result of an investigation that was initiated in 2008 and has so far resulted in the arrest of 15 individuals, including eight former CRA officials, and in the laying of 142 counts of indictment.

In May, the first prison sentence under the CFPOA was handed down when Nazir Karigar, a Canadian citizen and former third-party agent for Cryptometrics Canada, a subsidiary of the US-based Cryptometrics Corporation, was sentenced to three years in prison for conspiracy to bribe foreign public officials. Karigar—who was convicted in August 2013 for his leading role in a conspiracy to bribe officials of Air India and an Indian Cabinet Minister—was the first individual prosecuted under the CFPOA.

Following the conviction and sentencing of Karigar, the RCMP announced two more charges in a related case against two US nationals (understood to be the former CEO and CFO of Cryptometrics Canada) and a UK national (understood to be a former agent of the company).³²⁹ The RCMP alleged that in 2006,

Cryptometrics Canada worked with Karigar, who served as an agent, to pay millions of dollars in bribes to secure a contract with Air India for a Biometric Passenger Security System valued at approximately \$100 million.

The year 2014 also saw additional prosecutions stemming from the massive SNC-Lavalin investigation by the RCMP and provincial authorities. In September, the RCMP charged a former SNC-Lavalin Executive Vice President with obstructing justice and another individual with extortion and obstructing justice. These alleged criminal acts surfaced as part of the ongoing criminal investigation of former SNC-Lavalin employees for their involvement in corruption of foreign public officials.³³⁰ The investigation initially focused on corruption in Bangladesh—for which SNC-Lavalin was debarred by the World Bank in 2013—but has now expanded to include alleged corruption in Cambodia, Libya, and Algeria, including allegations that SNC-Lavalin put the wife of a son of Moammar Gadhafi on its payroll during Libya's 2011 civil war, in addition to providing millions of dollars in cash payments, luxury gifts, and lavish travel and entertainment to the Gadhafi family.³³¹

In April, in another matter related to the SNC Lavalin investigation, a Canadian court rejected jurisdiction over a resident of Bangladesh.³³² The Canadian prosecutor had alleged that Abul Hasan Chowdhury, acting as an agent for SNC Lavalin Group Inc., a Canadian corporation, offered bribes to foreign public officials in Bangladesh. The question for the court was whether the CFPOA extended Canada's jurisdiction to a foreign national for the purpose of charging him with an offense under the CFPOA. The accused was a Bangladeshi citizen and resident of Bangladesh. Chowdhury was not, and never had been, a Canadian citizen or resident; he had never been to Canada; and all of the conduct in furtherance of the alleged bribery scheme occurred in Bangladesh. On those facts, the court held that the mere fact that the applicant was party to an offense was not sufficient to give Canada jurisdiction over an individual unless and until the applicant was either physically in Canada or could be extradited to Canada from Bangladesh. Given that the Chowdhury decision involved a case where the defendant had essentially no ties with Canada, it will be interesting to see how Canadian courts apply the jurisdictional provisions of the CFPOA to foreign citizens who have closer contacts with Canada.

Both the Cryptometrics-related cases and the prosecution of Chowdhury in an SNC Lavalin-related case indicate that Canada, for the first time, is beginning to flex its anti-bribery muscles. Canadian officials are using the newly strengthened CFPOA—as well as a new RCMP unit exclusively focused on international corruption—to pursue bribery violations by Canadian and non-Canadian citizens and companies alike. US and other companies with operations or offices in Canada need to be aware of this enforcement trend, as well as differences between the CFPOA and FCPA, including that the CFPOA does not contain a facilitating payment exception.

F. China

The year 2014 was a year of major anti-corruption efforts in China, with a broader anti-corruption push occurring throughout state-owned entities, particularly in the natural resources and energy sectors, and also within the military, and within the Communist Party itself.³³³ Indeed, anti-corruption is a signature issue for President Xi Jinping, who is using the issue more broadly both to discipline the Party leadership and to consolidate his own power. The anti-corruption probes have been so far-reaching that even a former Politburo Standing Committee member, Zhou Yongkang, was indicted for corruption—a move whose political significance has been compared to indicting the Vice President of the United States.³³⁴ Shockwaves have been felt throughout the ranks of Party officialdom, reflected in declines in the consumption of luxury goods and services by officials, as well as some suicides.³³⁵ Indeed, in September 2014 the Party barred “leading cadres” of the Party from Executive MBA programs paid for by private companies—another example of a shifting definition of corruption applied to practices previously considered legitimate.

With regard to companies in China, specific targets of the anti-corruption campaign have included a number of pharmaceutical and medical device companies.³³⁶ In particular, China fined a British pharmaceutical company a record RMB3 billion (\$489 million) for allegedly making payments to hospitals and doctors to prescribe its products, highlighting China's increased emphasis on enforcing its anti-corruption laws against non-Chinese companies and individuals who offer or pay bribes.³³⁷ China's

aggressive pursuit of these companies demonstrates that foreign companies doing business in China must be mindful of China's own anti-corruption laws in addition to the FCPA.

G. India

Two pieces of legislation aimed at tackling corruption have come into effect in India over the past year. First, the Lokpal (or Watchdog) Bill was approved by the Indian Parliament and came into effect in January. The Lokpal Bill creates an independent ombudsman's office tasked with investigating and prosecuting cases of misconduct by politicians and government agents. The ombudsman is appointed by a committee comprised of the Prime Minister, the head of the Supreme Court, the leader of the opposition, and an eminent jurist. Creation of the ombudsman's office is no modest feat: the idea was first proposed and then tabled in 1968 and has suffered a succession of set-backs until now.³³⁸

The second relevant piece of legislation is the Whistleblowers' Protection Bill, passed in February, which seeks to provide "adequate protection to persons reporting corruption or wilful misuse of discretion which causes demonstrable loss to the government or commission of a criminal offense by a public servant."³³⁹

There was also at least one significant enforcement development this year. The country's Central Bureau of Investigation announced in March that it had launched an investigation into alleged corrupt payments made by Rolls-Royce to Hindustan Aeronautics Limited, a state-owned firm, to procure Government contracts. The payments are alleged to have been made through middlemen. The investigation remains ongoing.³⁴⁰

H. Brazil

Brazil's new anti-corruption law, the Clean Company Act ("the Act"), was enacted on August 1, 2013 and came into force on January 29, 2014.³⁴¹ The Act imposes civil and administrative liability on companies, both domestic and foreign, for acts of corruption and bid rigging by their employees or agents. The Brazilian Criminal Code also provides for criminal liability for individuals who engage in bribery of domestic and foreign public officials.

The Act shares certain characteristics with the FCPA but, as we reported in our 2013 Year in Review, goes somewhat further. The most significant difference is that it imposes strict liability on corporations, except in limited situations, for corrupt conduct that benefits the company. And unlike in the UK, where a company can be liable for failing to prevent bribery but can demonstrate that it has an adequate compliance program to counter the charge, there is no "adequate procedures" defense (although companies may qualify for leniency in Brazil if they cooperate with the authorities and can demonstrate an effective internal compliance program).³⁴² Another significant difference from the FCPA is that the Act covers private bribery to the extent that the bribery relates to a public contract or tender. Finally, there is no exception within the Act for facilitation payments.

The Act covers not only the domestic and foreign acts of Brazilian companies (including Brazilian subsidiaries of foreign companies), but also domestic acts of foreign companies that operate in Brazil.³⁴³ An entity acquiring another can be held liable for the acts of the acquired entity, even where those acts *pre-date* the acquisition. Although the Act creates only civil and administrative (not criminal) liability, the penalties are significant. Companies may be fined up to 20% of their annual revenue and may also face non-monetary penalties including debarment, dissolution and the suspension of corporate activities.

Although the Act represents a significant step forward in Brazil's fight against corruption, it has come under fire since its enactment due to a lack of clarity over how it will be enforced. One concern is the risk of double jeopardy arising from Brazil's multi-layered administrative structure, whereby courts at the federal, state and municipal levels could potentially have jurisdiction over the same conduct. There is also the potential for overlapping penalties due to the existence of laws that already penalize conduct covered by the Act. Although the government has made assurances that work is underway to address these structural issues, questions remain.

The year also witnessed a significant enforcement development in Brazil. In what could turn out to be Brazil's largest and most politically significant corruption case to date, as discussed above, Brazil's state-

owned oil company Petrobras is under investigation by the domestic authorities over allegations that certain of its officers accepted bribes and that some of the bribes were passed on to politicians. Former Petrobras director Paulo Roberto Costa has entered into a plea agreement with Brazilian prosecutors in which he has admitted to accepting bribes in exchange for awarding contracts. He has also accused a number of politicians of taking a commission on certain Petrobras contracts. And following a police raid across six states on November 14, the Brazilian federal police arrested 27 people and froze assets worth approximately \$276.6 million (BRL720 million) in connection with the matter.³⁴⁴ The international profile of the investigation also has been bolstered by the recent announcement that the DOJ and SEC have launched parallel FCPA investigations of the Petrobras matter.³⁴⁵

In yet another notable development, in September 2014, Brazilian authorities filed a criminal complaint against eight Embraer S.A. employees charging them with allegedly bribing officials in the Dominican Republic in return for a \$92 million contract to provide the country's armed forces with planes.³⁴⁶ This reportedly marked "one of the first known efforts by Brazil to prosecute its citizens for allegedly paying bribes abroad."³⁴⁷

I. World Bank

The World Bank's Integrity Vice Presidency division ("INT"), which investigates allegations of fraud and corruption in activities financed by the World Bank, saw a major decrease in the number of investigations opened in 2014. For the fiscal year 2014, only 40 investigations were opened, down from 89 in 2013 and 81 in 2012.³⁴⁸ However, the INT case substantiation rate (*i.e.*, the number of cases in which sufficient evidence was uncovered) has increased steadily to over 60%.³⁴⁹

There was also a reduction in the number of entities debarred by the INT this year. Debarred entities are suspended from bidding on contracts or obtaining access to loans financed by the World Bank. INT debarred 64 entities in FY 2014, down from a record 280 in 2013. It also instituted cross-debarments—recognizing debarments imposed by other multilateral development banks—of a further 15 entities.³⁵⁰ The general downturn in debarments by INT may be attributable, in part, to the reversal of a debarment decision in June 2013 in a case involving a Colombian contractor.³⁵¹ In that case, the World Bank Sanctions Board issued a harshly-worded decision in which it reversed a debarment decision, finding that INT had not met its burden of proof—"more likely than not."³⁵² This decision by the Sanctions Board may have caused INT to scrutinize its debarment decisions more closely.

INT has stated that one of its major challenges is to stop the flow of proceeds of corruption, noting that during many of its investigations jurisdictional hurdles and financial secrecy often hinder its efforts. INT has also stated that going forward it is committed to working with its multilateral partners to remedy that injustice.³⁵³ INT has also observed that a number of its investigations involved misconduct by small, local offices of widely known multinational corporations, suggesting shortcomings in creating a cross-jurisdictional compliance culture on the part of some major corporations.³⁵⁴

VIII. Predictions

- After a year that featured relatively few new FCPA cases, we anticipate a modest uptick in the number of cases brought in 2015. Nonetheless, we would be surprised if we saw a substantial increase in the number of cases. Over the last three years, the number of new cases has stabilized more or less, owing perhaps in part to the complexity of many (though by no means all) of the cases being investigated and resolved.
- We expect that third parties will continue to be the largest source of FCPA risk in the coming year. We also anticipate that we may begin to see resolutions involving misconduct committed by traditionally lower-risk third parties (such as travel agents or other contractors that may not themselves interact with government entities).
- We expect that the DOJ and SEC will even further increase their prosecution of individuals—perhaps more often without an accompanying corporate resolution. The FBI recently announced

it is tripling the number of agents assigned to pursue foreign bribery, which is likely to drive the continued focus on individuals.³⁶⁵ The DOJ and SEC may use such actions to try to reinforce their message about the benefits of cooperation, and corporations under investigation may be increasingly heeding the DOJ's and SEC's warnings about the importance of focusing on the culpability of corporate employees during investigations.

- We anticipate that, as foreign regulators become more aggressive in the enforcement of their own anti-bribery laws—a trend that we believe will continue in 2015—we will see additional declinations by the DOJ or SEC (or credit for foreign penalties in US actions), particularly where the misconduct has only an attenuated US nexus.
- There is a clear trend in favor of the SEC resolving its actions through administrative proceedings. We do not think that will change in the coming year and do not think that more than a very small percentage of SEC resolutions will be filed in District Courts.
- We anticipate that the SEC or DOJ will provide further clarity about the legal theory underlying the “connected hiring” investigations through settlements or litigation involving corporate defendants and/or individuals. This is an area of the law ripe for clarification, and we would be surprised if the agencies did not provide some guidance soon.
- We expect that many companies will continue to face inquiries prompted by anonymous whistleblowers, as former employees and others (and their lawyers) seek large rewards. In our experience, these matters can be burdensome to investigate and frequently have little or no substance behind them.

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¹ Editor's Note: There are a number of different ways to "count" the number of enforcement actions that arise in a given year, which explains why the number of reported cases is not always consistent between publications and reports of enforcement agencies, commentators, and law firms. WilmerHale generally counts enforcement actions by the year in which they arise (for example, when the DOJ files a complaint or indictment, or when the SEC files a complaint or administrative proceeding). WilmerHale also occasionally counts among enforcement actions cases that do not technically allege FCPA violations but for which the allegations fairly clearly implicate conduct within the sphere of the FCPA's prohibitions. Finally, in cases where multiple affiliated corporate entities are charged in a related action by a law enforcement authority, WilmerHale counts all of those cases as a single action (for example, cases brought against a parent and two subsidiaries by the DOJ would count as one action; if the SEC also brought a case, that would count as one additional action).

² Deferred Prosecution Agreement, *United States v. Alstom Power, Inc.*, No. 14-CR-00248 (D. Conn. Dec. 22, 2014); Deferred Prosecution Agreement, *United States v. Alstom Grid, Inc.*, No. 14-CR00247-JBA, ¶¶ 4, 7 (D. Conn. Dec. 22, 2014); Plea Agreement, *United States v. Alstom S.A.*, No. 14-CR-00246-JBA (D. Conn. Dec. 22, 2014); Plea Agreement, *United States v. Alstom Network Schweiz AG*, No. 14-CR-00245-JBA (D. Conn. Dec. 22, 2014).

³ Plea Agreement, *United States v. Alstom S.A.*, No. 14-CR-00246-JBA, Ex. 2 ¶¶ 16-24 (D. Conn. Dec. 22, 2014).

⁴ Plea Agreement, *United States v. Alstom S.A.*, No. 14-CR-00246-JBA, Ex. 2 ¶ 27 (D. Conn. Dec. 22, 2014).

⁵ Plea Agreement, *United States v. Alstom S.A.*, No. 14-CR-00246-JBA, Ex. 2 ¶ 32 (D. Conn. Dec. 22, 2014).

⁶ Plea Agreement, *United States v. Alstom S.A.*, No. 14-CR-00246-JBA, Ex. 2 ¶ 32 (D. Conn. Dec. 22, 2014).

⁷ Plea Agreement, *United States v. Alstom S.A.*, No. 14-CR-00246-JBA, Ex. 2 ¶ 29 (D. Conn. Dec. 22, 2014).

⁸ Plea Agreement, *United States v. Alstom S.A.*, No. 14-CR-00246-JBA, Ex. 2 ¶ 34 (D. Conn. Dec. 22, 2014).

⁹ Deferred Prosecution Agreement, *United States v. Alstom Power, Inc.*, No. 14-CR-00248-JBA (D. Conn. Dec. 22, 2014); Deferred Prosecution Agreement, *United States v. Alstom Grid, Inc.*, No. 14-CR00247-JBA, (D. Conn. Dec. 22, 2014); Plea Agreement, *United States v. Alstom S.A.*, No. 14-CR-00246-JBA (D. Conn. Dec. 22, 2014); Plea Agreement, *United States v. Alstom Network Schweiz AG*, No. 14-CR-00245-JBA (D. Conn. Dec. 22, 2014).

¹⁰ Plea Agreement, *United States v. Alcoa World Alumina LLC*, No. 14-CR-00007-DWA, Ex. 3 ¶ 32 (W.D. Pa. Jan. 9, 2014).

¹¹ Plea Agreement, *United States v. Alcoa World Alumina LLC*, No. 14-CR-00007-DWA, Ex. 3 ¶¶ 32, 40 (W.D. Pa. Jan. 9, 2014).

¹² Plea Agreement, *United States v. Alcoa World Alumina LLC*, No. 14-CR-00007-DWA, Ex. 3 ¶ 4 (W.D. Pa. Jan. 9, 2014); Order Instituting Cease-and-Desist Proceedings, *In the Matter of Alcoa Inc.*, Rel. No. 71261, File No. 3-15673, ¶ 16 (Jan. 9, 2014).

¹³ Plea Agreement, *United States v. Alcoa World Alumina LLC*, No. 14-CR-00007-DWA, ¶¶ 12-19 (W.D. Pa. Jan. 9, 2014).

¹⁴ Plea Agreement, *United States v. Avon Prods. (China) Co. Ltd.*, No. 14-CR00828-GBD, Ex. 2 ¶¶ 20-29 (S.D.N.Y. Dec. 17, 2014).

¹⁵ Complaint, *SEC v. Avon Prods., Inc.*, No. 14-CV-9956-KPF, ¶ 16 (S.D.N.Y. Dec. 17, 2014).

¹⁶ Complaint, *SEC v. Avon Prods., Inc.*, No. 14-CV-9956-KPF, ¶ 17 (S.D.N.Y. Dec. 17, 2014); Plea Agreement, *United States v. Avon Prods. (China) Co. Ltd.*, No. 14-CR00828-GBD, Ex. 2 ¶ 44 (S.D.N.Y. Dec. 17, 2014).

¹⁷ Complaint, *SEC v. Avon Prods., Inc.*, No. 14-CV-9956-KPF ¶¶ 4, 33 (S.D.N.Y. Dec. 17, 2014); Plea Agreement, *United States v. Avon Prods. (China) Co. Ltd.*, No. 14-CR00828-GBD, Ex. 2 ¶ 44 (S.D.N.Y. Dec. 17, 2014).

¹⁸ Plea Agreement, *United States v. Avon Prods. (China) Co. Ltd.*, No. 14-CR00828-GBD, Ex. 2 ¶ 22 (S.D.N.Y. Dec. 17, 2014).

¹⁹ Deferred Prosecution Agreement, *United States v. Avon Prods., Inc.*, No. 14-CR-00828-GBD (S.D.N.Y. Dec. 17, 2014); Plea Agreement, *United States v. Avon Prods. (China) Co. Ltd.*, No. 14-CR-00828-GDB (S.D.N.Y. Dec. 17, 2014); *SEC v. Avon Prods., Inc.*, No. 14-CV-9956-KPF (S.D.N.Y. Dec. 17, 2014).

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- ²⁰ U.S. Securities and Exchange Commission Press Release No. 2014-285: SEC Charges Avon with FCPA Violations (Dec. 17, 2014).
- ²¹ Phil Wahba, *Avon Settles Justice Department Charges of China Bribery for \$135 Million*, FORTUNE, Dec. 17, 2014.
- ²² Respectively: ZAO Hewlett-Packard; Hewlett-Packard Mexico, S. de R.L. de C.V.; and A.O. Hewlett-Packard Polska, Sp.Z.O.O.
- ²³ Plea Agreement, *United States v. ZAO Hewlett-Packard A.O.*, No. 14-CR-201-DLJ, Ex. 5 ¶¶ 24, 33 (N.D. Cal. Apr. 9, 2014).
- ²⁴ Plea Agreement, *United States v. ZAO Hewlett-Packard A.O.*, No. 14-CR-201-DLJ, Ex. 5 ¶¶ 24-25 (N.D. Cal. Apr. 9, 2014).
- ²⁵ Non-Prosecution Agreement between U.S. Department of Justice and Hewlett-Packard Mexico, S. de R.L. de C.V., Attachment A ¶ 10 (Apr. 9, 2014), available at <http://www.justice.gov/criminal/fraud/fcpa/cases/hewlett-packard-mexico/hp-mexico-npa.pdf>.
- ²⁶ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Hewlett-Packard Co.*, Rel. No. 71916, File No. 3-15832, ¶ 49 (Apr. 9, 2014); Non-Prosecution Agreement between U.S. Department of Justice and Hewlett-Packard Mexico, S. de R.L. de C.V., Attachment A ¶ 12 (Apr. 9, 2014), available at <http://www.justice.gov/criminal/fraud/fcpa/cases/hewlett-packard-mexico/hp-mexico-npa.pdf>.
- ²⁷ See Plea Agreement, *United States v. Marubeni Corp.*, No. 14-CR-52-JBA, Ex. 3 ¶¶ 23, 28 (D. Conn. Mar. 19, 2014).
- ²⁸ See Matt Chiappardi, *Marubeni Cops to Indonesian Bribery Scheme, to Pay \$88M*, LAW360 (Mar. 19, 2014), <http://www.law360.com/articles/520158/marubeni-cops-to-indonesian-bribery-scheme-to-pay-88m>.
- ²⁹ Plea Agreement, *United States v. Marubeni Corp.*, No. 14-CR-52-JBA, Ex. 3 ¶ 17 (D. Conn. Mar. 19, 2014).
- ³⁰ Plea Agreement, *United States v. Marubeni Corp.*, No. 14-CR-52-JBA, Ex. 3 ¶ 55 (D. Conn. Mar. 19, 2014).
- ³¹ Plea Agreement, *United States v. Marubeni Corp.*, No. 14-CR-52-JBA, Ex. 3 ¶¶ 82-92 (D. Conn. Mar. 19, 2014).
- ³² Order Instituting Cease-and-Desist Proceedings, *In the Matter of Smith & Wesson Holding Corp.*, Rel. No. 72678, File No. 3-15986, ¶ 5 (July 28, 2014).
- ³³ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Smith & Wesson Holding Corp.*, Rel. No. 72678, File No. 3-15986, ¶ 8 (July 28, 2014).
- ³⁴ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Layne Christensen Co.*, Rel. No. 73437, File No. 3-16216, ¶ 8 (Oct. 27, 2014).
- ³⁵ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Layne Christensen Co.*, Rel. No. 73437, File No. 3-16216, ¶¶ 12, 17, 29 (Oct. 27, 2014).
- ³⁶ Non-Prosecution Agreement between U.S. Department of Justice and Bio-Rad Laboratories, Inc., Attachment A ¶¶ 7-9 (Nov. 3, 2014), available at <http://www.justice.gov/criminal/fraud/fcpa/cases/bio-rad/Bio-Rad-NPA-110314.pdf>.
- ³⁷ Non-Prosecution Agreement between U.S. Department of Justice and Bio-Rad Laboratories, Inc., Attachment A ¶¶ 10-11 (Nov. 3, 2014), available at <http://www.justice.gov/criminal/fraud/fcpa/cases/bio-rad/Bio-Rad-NPA-110314.pdf>.
- ³⁸ Non-Prosecution Agreement between U.S. Department of Justice and Bio-Rad Laboratories, Inc., Attachment A ¶ 12 (Nov. 3, 2014), available at <http://www.justice.gov/criminal/fraud/fcpa/cases/bio-rad/Bio-Rad-NPA-110314.pdf>.
- ³⁹ Non-Prosecution Agreement between U.S. Department of Justice and Bio-Rad Laboratories, Inc., Attachment A ¶ 20 (Nov. 3, 2014), available at <http://www.justice.gov/criminal/fraud/fcpa/cases/bio-rad/Bio-Rad-NPA-110314.pdf>.
- ⁴⁰ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Bio-Rad Laboratories, Inc.*, Rel. No. 73496, File No. 3-16231, ¶¶ 27-28 (Nov. 3, 2014).
- ⁴¹ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Bio-Rad Laboratories, Inc.*, Rel. No. 73496, File No. 3-16231, ¶ 29 (Nov. 3, 2014).
- ⁴² Order Instituting Cease-and-Desist Proceedings, *In the Matter of Bio-Rad Laboratories, Inc.*, Rel. No. 73496, File No. 3-16231, ¶ 29 (Nov. 3, 2014).
- ⁴³ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Bio-Rad Laboratories, Inc.*, Rel. No. 73496, File No. 3-16231, ¶ 30 (Nov. 3, 2014).
- ⁴⁴ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Bio-Rad Laboratories, Inc.*, Rel. No. 73496, File No. 3-16231, ¶¶ 31, 33 (Nov. 3, 2014).
- ⁴⁵ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Bio-Rad Laboratories, Inc.*, Rel. No. 73496, File No. 3-16231, ¶ 35 (Nov. 3, 2014).
- ⁴⁶ Deferred Prosecution Agreement, *United States v. Dallas Airmotive, Inc.*, No. 14-CR-483, Attachment A ¶¶ 19-20 (Dec. 10, 2014).

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- ⁴⁷ See, e.g., Deferred Prosecution Agreement, *United States v. Dallas Airmotive, Inc.*, No. 14-CR-483, Attachment A ¶ 29 (Dec. 10, 2014).
- ⁴⁸ Deferred Prosecution Agreement, *United States v. Dallas Airmotive, Inc.*, No. 14-CR-483, Attachment A ¶ 33 (Dec. 10, 2014).
- ⁴⁹ See Hester Plumridge & Christopher Matthews, *Glaxo Investigating Bribery Claims in Jordan and Lebanon*, WALL ST. J., Apr. 16, 2014; Christopher Matthews & Hester Plumridge, *Glaxo Investigates Bribery Accusations in the Mideast*, WALL ST. J., Apr. 6, 2014.
- ⁵⁰ Hester Plumridge & Laurie Burkitt, *GlaxoSmithKline Found Guilty of Bribery in China*, WALL ST. J., Sept. 19, 2014.
- ⁵¹ Paul Kiernan, *Petrobras Corruption Scandal Draws Attention of U.S. Investigators*, WALL ST. J., Nov. 12, 2014.
- ⁵² Kara Scannell, *U.S. Turns Up Heat with Criminal Investigation into Petrobras*, FIN. TIMES, Nov. 9, 2014.
- ⁵³ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Bruker Corp.*, Rel. No. 73835, File No. 3-16314, ¶ 1 (Dec. 15, 2014).
- ⁵⁴ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Bruker Corp.*, Rel. No. 73835, File No. 3-16314, ¶ 4 (Dec. 15, 2014).
- ⁵⁵ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Bruker Corp.*, Rel. No. 73835, File No. 3-16314, ¶ 6 (Dec. 15, 2014).
- ⁵⁶ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Bruker Corp.*, Rel. No. 73835, File No. 3-16314, ¶ 8 (Dec. 15, 2014).
- ⁵⁷ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Bruker Corp.*, Rel. No. 73835, File No. 3-16314, ¶ 9 (Dec. 15, 2014).
- ⁵⁸ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Smith & Wesson Holding Corp.*, Rel. No. 72678, File No. 3-15986, ¶ 5 (July 28, 2014).
- ⁵⁹ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Smith & Wesson Holding Corp.*, Rel. No. 72678, File No. 3-15986, ¶ 5 (July 28, 2014).
- ⁶⁰ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Stephen Timms & Yasser Ramahi*, Rel. No. 73616, File No. 3-16281, ¶¶ 7-15 (Nov. 17, 2014).
- ⁶¹ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Stephen Timms & Yasser Ramahi*, Rel. No. 73616, File No. 3-16281, ¶¶ 12, 15-17, 19 (Nov. 17, 2014).
- ⁶² Order Instituting Cease-and-Desist Proceedings, *In the Matter of Stephen Timms & Yasser Ramahi*, Rel. No. 73616, File No. 3-16281, ¶¶ 7-19 (Nov. 17, 2014).
- ⁶³ Complaint, *SEC v. Avon Prods., Inc.*, No. 14-CV-9956-KPF, ¶¶ 39-42 (S.D.N.Y. Dec. 17, 2014).
- ⁶⁴ Deferred Prosecution Agreement, *United States v. Dallas Airmotive, Inc.*, No. 14-CR-483, Attachment A ¶ 26 (N.D. Tex. Dec. 10, 2014).
- ⁶⁵ Plea Agreement, *United States v. ZAO Hewlett-Packard A.O.*, No. 14-CR-201-DLJ, Statement of Facts ¶ 43 (N.D. Cal. Apr. 9, 2014).
- ⁶⁶ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Hewlett-Packard Company*, Rel. No. 71916, File No. 3-15832, ¶ 51 (Apr. 9, 2014).
- ⁶⁷ Deferred Prosecution Agreement, *United States v. Hewlett-Packard Polska, Sp.Z.O.O.*, No. 14-CR-202, Information ¶ 16 (N.D. Cal. Apr. 9, 2014).
- ⁶⁸ Deferred Prosecution Agreement, *United States v. Hewlett-Packard Polska, Sp.Z.O.O.*, No. 14-CR-202, Information ¶ 15 (N.D. Cal. Apr. 9, 2014).
- ⁶⁹ Deferred Prosecution Agreement, *United States v. Hewlett-Packard Polska, Sp.Z.O.O.*, No. 14-CR-202, Information ¶ 15 (N.D. Cal. Apr. 9, 2014).
- ⁷⁰ See U.S. SENTENCING GUIDELINES MANUAL ch. 8 (2014).
- ⁷¹ Plea Agreement, *United States v. Alcoa World Alumina LLC*, No. 14-CR-00007-DWA, ¶ 35 (W.D. Pa. Jan. 9, 2014); U.S. Department of Justice Press Release No. 14-019: Alcoa World Alumina Agrees to Plead Guilty to Foreign Bribery and Pay \$223 Million in Fines and Forfeiture (Jan. 9, 2014).
- ⁷² Order Instituting Cease-and-Desist Proceedings, *In the Matter of Alcoa Inc.*, Rel. No. 71261, File No. 3-15673, ¶ III.J (Jan. 9, 2014).
- ⁷³ The 2012 resolution with Nordam Group Inc. and the 2010 resolution with Innospec, Inc. marked two other instances when the DOJ agreed to downward departures from the Sentencing Guidelines calculation due to the defendant's inability to pay. See U.S. Department of Justice Press Release No. 12-881: The Nordam Group Inc. Resolves Foreign Corrupt Practices Act Violations and Agrees to Pay a \$2 Million Penalty (July 17, 2012) (NORDAM agreed to enter into an NPA and pay a \$2 million penalty to resolve the FCPA charges. The DOJ recognized the company's "timely, voluntary and complete disclosure of the conduct, its cooperation with the department and its remedial efforts." It also noted that a fine below the Sentencing Guidelines range was appropriate

because “NORDAM fully demonstrated to the department, and an independent accounting expert retained by the department verified, that a fine exceeding \$2 million would substantially jeopardize the company’s continued viability.”); Plea Agreement, *United States v. Innospec, Inc.*, No. 10-CR-00061-ESH, ¶ 4 (D.D.C. Mar. 18, 2010) (As part of the plea agreement with the DOJ, Innospec agreed to pay a \$14.1 million criminal fine, which constituted approximately an 86% downward departure from the bottom of the Sentencing Guidelines fine range. The DOJ cited Innospec’s inability to pay fines and penalties assessed by other enforcement agencies as considerations relevant to the determination of the ultimate fine amount.)

⁷⁴ Plea Agreement, *United States v. Alcoa World Alumina LLC*, No. 14-CR-00007-DWA, ¶ 35 (W.D. Pa. Jan. 9, 2014).

⁷⁵ Plea Agreement, *United States v. Alcoa World Alumina LLC*, No. 14-CR-00007-DWA, ¶ 35 (W.D. Pa. Jan. 9, 2014). Alcoa Inc. agreed to pay an additional \$161 million in disgorgement, bringing the total amount of US criminal and regulatory penalties to be paid by Alcoa Inc. and AWA to \$384 million (the fifth largest FCPA settlement to date).

⁷⁶ The SEC, however, deemed a portion of Alcoa’s disgorgement obligation satisfied by Alcoa’s payment of \$14 million in forfeiture as part of its resolution with the DOJ. Order Instituting Cease-and-Desist Proceedings, *In the Matter of Alcoa Inc.*, Rel. No. 71261, File No. 3-15673, ¶ 4.B (Jan. 9, 2014).

⁷⁷ In the HP Russia matter in particular, the DOJ acknowledged the subsidiary’s and the parent’s (1) “extraordinary” cooperation, including “conducting an extensive internal investigation, voluntarily making U.S. and foreign employees available for interviews, and collecting, analyzing and organizing voluminous evidence and information”; (2) their “extensive remediation, including disciplinary action against culpable employees . . . and enhancing their internal accounting, reporting, and compliance functions”; and (3) the commitment to continued cooperation with US and foreign law enforcement authorities. Plea Agreement, *United States v. ZAO Hewlett-Packard A.O.*, No. 14-CR-201-DLJ, ¶ 39 (N.D. Cal. Apr. 9, 2014); *see also* Deferred Prosecution Agreement, *United States v. Hewlett-Packard Polska Sp.Z.O.O.*, No. 14-CR-202-EJD, ¶¶ 4, 7 (N.D. Cal. Apr. 9, 2014).

⁷⁸ U.S. Department of Justice Press Release No. 14-1419: Avon China Pleads Guilty to Violating the FCPA by Concealing More Than \$8 Million in Gifts to Chinese Officials (Dec. 17, 2014).

⁷⁹ Deferred Prosecution Agreement, *United States v. Dallas Airmotive, Inc.*, No. 14-CR-843, ¶ 7 (N.D. Tex. Dec. 10, 2014).

⁸⁰ Plea Agreement, *United States v. Marubeni Corp.*, No. 14-CR-52-JBA, ¶ 17 (D. Conn. Mar. 19, 2014). Notably, Marubeni had previously entered into a DPA with the DOJ and agreed to pay a \$54.6 million penalty to resolve charges relating to its involvement with the Bonny Island joint venture bribery scheme in Nigeria. Deferred Prosecution Agreement, *United States v. Marubeni Corp.*, No. 12-CR-022 (S.D. Tex. Jan. 17, 2012).

⁸¹ U.S. Department of Justice Press Release No. 14-290: Marubeni Corporation Agrees to Plead Guilty to Foreign Bribery Charges and to Pay an \$88 Million Fine (Mar. 19, 2014).

⁸² Plea Agreement, *United States v. Alstom S.A.*, No. 14-CR-00246-JBA, ¶ 18 (D. Conn. Dec. 22, 2014).

⁸³ U.S. Department of Justice Press Release No. 14-1418: Alstom Pleads Guilty and Agrees to Pay \$772 Million Criminal Penalty to Resolve Foreign Bribery Charges (Dec. 22, 2014).

⁸⁴ Plea Agreement, *United States v. Alstom S.A.*, No. 14-CR-00246-JBA, ¶ 18 (D. Conn. Dec. 22, 2014).

⁸⁵ U.S. Securities and Exchange Commission Press Release No. 2014-240: SEC Charges Texas-Based Layne Christensen Company with FCPA Violations (Oct. 27, 2014).

⁸⁶ U.S. Securities and Exchange Commission Press Release No. 2014-148: SEC Charges Smith & Wesson with FCPA Violations (July 28, 2014).

⁸⁷ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Bruker Corp.*, Rel. No. 73835, File No. 3-16314, ¶ IV.C (Dec. 15, 2014); Order Instituting Cease-and-Desist Proceedings, *In the Matter of Layne Christensen Co.*, Rel. No. 73437, File No. 3-16216, ¶ IV.D (Oct. 27, 2014).

⁸⁸ U.S. Department of Justice, Assistant Attorney General Leslie R. Caldwell Speaks at American Conference Institute’s 31st International Conference on the Foreign Corrupt Practices Act (Nov. 19, 2014), *available at* <http://www.justice.gov/opa/speech/assistant-attorney-general-leslie-r-caldwell-speaks-american-conference-institute-s-31st>. In her speech, Caldwell emphasized prompt disclosure, thorough and appropriately tailored investigation of misconduct, and timely reporting on findings as important factors for receiving cooperation credit.

⁸⁹ Andrew Ceresney, Director of the Division of Enforcement, SEC Remarks at 31st International Conference on the Foreign Corrupt Practices Act (Nov. 19, 2014), *available at* <http://www.sec.gov/News/Speech/Detail/Speech/1370543493598#.VHN88PIWqVB>.

⁹⁰ Andrew Ceresney, Director of the Division of Enforcement, SEC, Remarks at 31st International Conference on the Foreign Corrupt Practices Act (Nov. 19, 2014), *available at* <http://www.sec.gov/News/Speech/Detail/Speech/1370543493598#.VHN88PIWqVB>.

⁹¹ In 2013, three of the SEC's nine corporate FCPA enforcement actions were resolved through administrative proceedings.

⁹² Jean Eaglesham, *SEC Is Steering More Trials to Judges It Appoints*, WALL ST. J., Oct. 21, 2014.

⁹³ This strategy was made possible by Section 929P(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which empowered the SEC to obtain civil monetary penalties in administrative proceedings against any person or company (whereas previously the agency was more limited in against whom it could proceed and what remedies it could obtain administratively).

⁹⁴ Jean Eaglesham, *SEC Is Steering More Trials to Judges It Appoints*, WALL ST. J., Oct. 21, 2014.

⁹⁵ Richard Cassin, *Bio-Rad Cracks the Disgorgement Top Ten List*, FCPABLOG.COM (Nov. 4, 2014, 2:00 PM), <http://www.fcpablog.com/blog/2014/11/4/bio-rad-cracks-the-disgorgement-top-ten-list.html> .

⁹⁶ Jean Eaglesham, *SEC Is Steering More Trials to Judges It Appoints*, WALL ST. J., Oct. 21, 2014.

⁹⁷ See, e.g., Final Judgment, *SEC v. Int'l Business Machines Corp.*, No. 11-cv-0563, at 3-4 (D.D.C. July 25, 2013); Final Judgment, *SEC v. Tyco Int'l*, No. 12-cv-01583, at 5-6 (D.D.C. June 17, 2013); Decision and Order, *SEC v. S.A.C. Capital Advisors*, No. 12-CIV-08466, at 9-16 (S.D.N.Y. Apr. 16, 2013); *SEC v. Citigroup Global Mkts. Inc.*, 827 F. Supp. 2d 328, 335 (S.D.N.Y. 2011), *vacated*, 752 F.3d 285 (2d Cir. 2014).

⁹⁸ Hon. Jed S. Rakoff, US District Court Judge, Keynote Address at the PLI Securities Regulation Institute: *Is the S.E.C. Becoming a Law Unto Itself?* (Nov. 5, 2014), available at <http://assets.law360news.com/0593000/593644/Sec.Reg.Inst.final.pdf>.

⁹⁹ Andrew Cereseny, Director, SEC Division of Enforcement, Remarks to the American Bar Association's Business Law Section Fall Meeting (Nov. 21, 2014), available at

<http://www.sec.gov/News/Speech/Detail/Speech/1370543515297>.

¹⁰⁰ Stephanie Russell-Kraft, *Ceresney Rebuts Rakoff's Critique of SEC Admin. Actions*, LAW360 (Nov.7, 2014), <http://www.law360.com/articles/594489/ceresney-rebuts-rakoff-s-critique-of-sec-admin-actions>.

¹⁰¹ Deferred Prosecution Agreement, *United States v. Avon Prods. Inc.*, No. 14-CR-00828-GBD, ¶¶ 11, 13 (Dec. 17, 2014); U.S. Securities and Exchange Commission Press Release No. 2014-285: SEC Charges Avon with FCPA Violations (Dec. 17, 2014).

¹⁰² Plea Agreement, *United States v. Marubeni Corp.*, No. 3:14-CR-00052-JBA (D. Conn. Mar. 19, 2014).

¹⁰³ Plea Agreement, *United States v. Marubeni Corp.*, No. 3:14-CR-00052-JBA (D. Conn. Mar. 19, 2014).

¹⁰⁴ Plea Agreement, *United States v. Marubeni Corp.*, No. 3:14-CR-00052-JBA (D. Conn. Mar. 19, 2014).

¹⁰⁵ Marubeni Corporation, Press Release, Settlement with the U.S. Department of Justice Regarding Indonesia Tarahan Project (Mar. 20, 2014) (“[The enforcement action] follows the successful completion by Marubeni of its obligations under a January 2012 Deferred Prosecution Agreement entered with the DOJ relating to the liquid natural gas project in Nigeria. That Agreement required Marubeni to retain a corporate compliance consultant for two years to review and enhance its anticorruption compliance program to ensure that it satisfies standards specified by the DOJ, and to report to the DOJ regarding the results of this review. This was completed in January 2014, and at the request of the DOJ the related proceeding was dismissed on February 26, 2014. The Tarahan conduct pre-dates the execution of Marubeni's 2012 Deferred Prosecution Agreement with the DOJ. Marubeni has undertaken extensive efforts to enhance its anti-corruption compliance program, and believes that its current program is robust and effective. Although the agreement reached with DOJ today does not require Marubeni to further engage a compliance consultant, Marubeni is taking this matter seriously and commits to continue to thoroughly implement and enhance its anti-corruption compliance program.”).

¹⁰⁶ Non-Prosecution Agreement between U.S. Department of Justice and Bio-Rad Laboratories, Inc., Attachment C (Nov. 3, 2014), available at <http://www.justice.gov/criminal/fraud/fcpa/cases/bio-rad/Bio-Rad-NPA-110314.pdf>.

¹⁰⁷ See, e.g., Plea Agreement, *United States v. ZAO Hewlett-Packard A.O.*, No. 14-CR-201-DLJ, Exs. 3-4 (N.D. Cal. Apr. 9, 2014).

¹⁰⁸ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Layne Christensen Co.*, Rel. No. 73437, File No. 3-16216 (Oct. 27, 2014); Order Instituting Cease-and-Desist Proceedings, *In the Matter of Smith & Wesson Holding Corp.*, Rel. No. 72678, File No. 3-15986 (July 28, 2014).

¹⁰⁹ Deferred Prosecution Agreement, *United States v. Dallas Airmotive Inc.*, No. 14-CR-843 (N.D. Tex. Dec. 10, 2014).

¹¹⁰ Deferred Prosecution Agreement, *United States v. Alstom Power, Inc.*, No. 14-CR-00248, Attachment D (D. Conn. Dec. 22, 2014); Deferred Prosecution Agreement, *United States v. Alstom Grid, Inc.*, No. 14-CR-00247-JBA, ¶¶ 4, 7 (D. Conn. Dec. 22, 2014); Plea Agreement, *United States v. Alstom S.A.*, No. 14-CR-00246-JBA, Ex. 4 (D. Conn. Dec. 22, 2014); Plea Agreement, *United States v. Alstom Network Schweiz AG*, No. 14-CR-00245-JBA, Ex. 4 (D. Conn. Dec. 22, 2014).

¹¹¹ Deferred Prosecution Agreement, *United States v. Alstom Power, Inc.*, No. 14-CR-00248-JBA, ¶ 4 (D. Conn. Dec. 22, 2014) (“The Offices enter into this Agreement based on the individual facts and circumstances presented by this

case and the Company. Among the factors considered were the following: . . . (d) General Electric Company, which intends to acquire the Company, has represented that it will implement its compliance program and internal controls at the Company within a reasonable time after the acquisition closes; . . .”); Deferred Prosecution Agreement, *United States v. Alstom Grid, Inc.*, No. 14-CR-00247-JBA, ¶ 4(d) (D. Conn. Dec. 22, 2014) (“The Offices enter into this Agreement based on the individual facts and circumstances presented by this case and the Company. Among the factors considered were the following: . . . (d) General Electric Company, which intends to acquire the Company, has represented that it will implement its compliance program and internal controls at the Company within a reasonable time after the acquisition closes; . . .”). See also Alstom Press Conference Transcript, p. 14 (Dec. 22, 2014) (“GE has a very robust compliance program, and one of the requirements of the transaction imposed by GE is that Alstom must immediately come under GE’s very robust compliance program. Because those two entities will be under a deferred prosecution agreement, if for some reason that does not happen, they can still be subject to having some prosecution or have a monitor imposed on them. So we will be relying at least in the first instance on GE’s compliance program to police the behavior of the Alstom subsidiaries.”).

¹¹² See Image Sensing Systems, Inc., Press Release, ISS Announces Completion of Department of Justice Investigation (Sept. 8, 2014), available at <http://www.imagesensing.com/company/news-and-events/140908.html>; U.S. Securities and Exchange Commission Press Release No. 2014-240: SEC Charges Texas-Based Layne Christensen Company with FCPA Violations (Oct. 27, 2014); LyondellBasell, N.V., Annual Report (Form 10-K), at 127 (Feb. 20, 2014); SBM Offshore, Press Release, SBM Offshore Achieves Settlement with Dutch Public Prosecutor’s Office Over Alleged Improper Payments. United States Department of Justice Closes Out the Matter, (Nov. 12, 2014), available at <http://www.sbmoffshore.com/?press-release=sbm-offshore-achieves-settlement-dutch-public-prosecutors-office-alleged-improper-payments-united-states-department-justice-closes-matter>. Of these, Image Sensing received declinations from both the DOJ and SEC; LyondellBassell and SBM Offshore received declinations from the DOJ; and Layne Christensen received a declination from the DOJ and settled with the SEC through an administrative proceeding.

¹¹³ Russ Berland, Brian O’Bleness, & Shellie Clausen, Showing Leadership: Layne’s Journey from FCPA Investigation to DOJ Declination, at 6-8 (Oct 8, 2014), available at http://www.acc.com/chapters/midam/upload/2014-10-08_Stinson-Leonard_Street_PPTX-KS-NE.pdf. Counsel stated that one of the “lessons learned” from the investigation was to “[s]elf-report quickly and investigate quickly and thoroughly” and that a “compliance program and internal controls are critical.” *Id.*

¹¹⁴ Layne Christensen was one of only two companies (the other was Smith & Wesson) that received declinations from the DOJ but settled with the SEC through administrative proceedings. The DOJ has stated that it “recently declined matters” where certain circumstances were present, including, among others: (1) voluntary and full disclosure of potential misconduct by a corporation; (2) corporate principals voluntarily engage in interviews with the DOJ and provide “truthful and complete information”; (3) the company provides information about its “extensive compliance policies, procedures, and internal controls”; and (4) the company agrees to a civil resolution with the SEC. U.S. Department of Justice & U.S. Securities and Exchange Commission, *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, n.382, (2012). Smith & Wesson also settled with the SEC for \$2 million to resolve FCPA violations, but the company did not make detailed statements explaining why it settled with the SEC nor why it received a declination from the DOJ. The SEC stated that it considered the company’s “cooperation with the investigation as well as the remedial acts taken after the conduct came to light.” U.S. Securities and Exchange Commission Press Release No. 2014-148: SEC Charges Smith & Wesson with FCPA Violations (July 28, 2014). According to the company’s 10-K filing, the DOJ investigation “caused [it] to make substantial changes in foreign sales personnel . . . and [to] cease sales in certain foreign countries.” Smith & Wesson Holding Corp., Annual Report (Form 10-K), at 23 (June 19, 2014).

¹¹⁵ U.S. Securities and Exchange Commission Press Release No. 2014-148: SEC Charges Smith & Wesson with FCPA Violations (July 28, 2014).

¹¹⁶ Rachel Louise Ensign, *Baxter International Says FCPA Probe is Closed*, WALL ST. J. (Feb. 21, 2014, 12:35 PM), <http://blogs.wsj.com/riskandcompliance/2014/02/21/baxter-international-says-fcpa-probe-is-closed/>. SBM Offshore, a Netherlands-based company, stated that it had enhanced its compliance programs and related internal controls, including enhancing financial and audit controls, implementing new sales agency agreements that include anti-corruption terms, training staff on anti-corruption procedures, and starting a hotline. SBM Offshore, Press Release, SBM Offshore Findings of Internal Investigation (Apr. 2, 2014), available at <http://www.sbmoffshore.com/?press-release=sbm-offshore-findings-internal-investigation>.

¹¹⁷ Baxter International conducted an internal investigation into allegations following a July 2012 whistleblower complaint. Baxter International, Inc. Annual Report (Form 10-K), at 95 (Feb. 21, 2014). Image Sensing Systems “immediately engaged outside counsel to conduct an internal investigation” upon finding out that two employees of a subsidiary in Poland might have been involved in FCPA violations. Image Sensing Systems, Inc., Press Release,

ISS Announces Completion of Department of Justice Investigation (Sept. 8, 2014), *available at* <http://www.imagesensing.com/company/news-and-events/140908.html>. Technology company Dialogic Inc. stated in its SEC filing that it took remedial action upon advice of outside counsel, but did not elaborate on what that action was. Dialogic Inc., Quarterly Report (Form 8-Q), at 34 (Aug. 14, 2014).

¹¹⁸ SBM Offshore, Press Release, SBM Offshore Achieves Settlement with Dutch Public Prosecutor's Office Over Alleged Improper Payments. United States Department of Justice Closes Out the Matter (Nov. 12, 2014), *available at* <http://www.sbmoffshore.com/?press-release=sbm-offshore-achieves-settlement-dutch-public-prosecutors-office-alleged-improper-payments-united-states-department-justice-closes-matter>.

¹¹⁹ SBM Offshore, Press Release, SBM Offshore Achieves Settlement with Dutch Public Prosecutor's Office Over Alleged Improper Payments. United States Department of Justice Closes Out the Matter (Nov. 12, 2014), *available at* <http://www.sbmoffshore.com/?press-release=sbm-offshore-achieves-settlement-dutch-public-prosecutors-office-alleged-improper-payments-united-states-department-justice-closes-matter>.

¹²⁰ SBM Offshore, Press Release, SBM Offshore Achieves Settlement with Dutch Public Prosecutor's Office Over Alleged Improper Payments. United States Department of Justice Closes Out the Matter (Nov. 12, 2014), *available at* <http://www.sbmoffshore.com/?press-release=sbm-offshore-achieves-settlement-dutch-public-prosecutors-office-alleged-improper-payments-united-states-department-justice-closes-matter>.

¹²¹ Deferred Prosecution Agreement, *United States v. Biomet, Inc.*, No. 12-CR-080 (D.D.C. Mar. 26, 2012); U.S. Securities and Exchange Commission Press Release No. 2012-50: SEC Charges Medical Device Company Biomet with Foreign Bribery (Mar. 26, 2012).

¹²² Deferred Prosecution Agreement, *United States v. Orthofix Int'l, N.V.*, No. 4:12-CR-00150-RAS-DDB-1 (E.D. Tex. July 5, 2012); U.S. Securities and Exchange Commission Press Release No. 22412: SEC Charges Orthofix International with FCPA Violations (July 10, 2012).

¹²³ Deferred Prosecution Agreement, *United States v. Orthofix Int'l, N.V.*, No. 4:12-CR-00150-RAS-DDB-1, ¶ 5 (E.D. Tex. July 5, 2012); Deferred Prosecution Agreement, *United States v. Biomet, Inc.*, No. 12-CR-080, ¶ 12 (D.D.C. Mar. 26, 2012).

¹²⁴ Orthofix Int'l N.V., Annual Report (Form 10-K/A), at 21 (Mar. 24, 2014).

¹²⁵ Orthofix Int'l N.V., Annual Report (Form 10-K/A), at 21 (Mar. 24, 2014).

¹²⁶ Biomet Inc., Current Report (Form 8-K) (July 3, 2014).

¹²⁷ Ben Protess & Michael de la Merced, *Inquiry Into Foreign Bribes at Biomet Hangs Over \$13 Billion Merger*, N.Y. TIMES, Dec. 23, 2014.

¹²⁸ Biomet Inc., Current Report (Form 8-K) (July 3, 2014).

¹²⁹ Deferred Prosecution Agreement, *United States v. Orthofix Int'l, N.V.*, No. 4:12-CR-00150-RAS-DDB-1, ¶ 13 (E.D. Tex. July 5, 2012); Deferred Prosecution Agreement, *United States v. Biomet, Inc.*, No. 12-CR-080, ¶ 14 (D.D.C. Mar. 26, 2012).

¹³⁰ Deferred Prosecution Agreement, *United States v. Orthofix Int'l, N.V.*, No. 4:12-CR-00150-RAS-DDB-1, ¶¶ 12-13 (E.D. Tex. July 5, 2012); Deferred Prosecution Agreement, *United States v. Biomet, Inc.*, No. 12-CR-080, ¶¶ 13-14 (D.D.C. Mar. 26, 2012).

¹³¹ WilmerHale, *Recent Trends in Foreign Corrupt Practices Act Sentencing* (May 9, 2012), *available at* http://www.wilmerhale.com/uploadedFiles/WilmerHale_Shared_Content/Files/Editorial/Publication/Recent%20Trends%20in%20Foreign%20Corrupt%20Practices%20Act%20FCPA%20Sentencing.pdf.

¹³² U.S. Department of Justice, Remarks by Assistant Attorney General for the Criminal Division Leslie R. Caldwell at the 22nd Annual Ethics and Compliance Conference (Oct. 1, 2014), *available at* <http://www.justice.gov/opa/speech/remarks-assistant-attorney-general-criminal-division-leslie-r-caldwell-22nd-annual-ethics>.

¹³³ The defendants were charged with honest services fraud for agreeing to pay an inflated price of \$53 million for a target company (an oil services company that operates in Colombia but is not named in the indictment) in exchange for kickbacks, that is, depriving two investing partners in the deal of the three executives' "honest services." The kickbacks totaled about \$400,000 from the owners of the target company, and the monies were deposited in Sigelman's bank account in the Philippines to avoid detection. The defendants allegedly used the code name "Manila Split" for the scheme. Indictment, *United States v. Joseph Sigelman*, No. 14-CR-263, ¶¶ 2-5, 28-33, 43-64 (D.N.J. May 9, 2014); DOJ Announces FCPA Enforcement Action Against Former CEO's and General Counsel of PetroTiger, FCPA PROFESSOR (Jan. 7, 2014), <http://www.fcpaprofessor.com/doj-announces-fcpa-enforcement-action-against-former-ceos-and-general-counsel-of-petrotiger>.

¹³⁴ Indictment, *United States v. Joseph Sigelman*, No. 14-CR-263, ¶¶ 7-8 (D.N.J. May 9, 2014). Prosecutors unsealed the complaint in the District of New Jersey charging these three individuals in January 2014; the original complaint was filed in November 2013. U.S. Department of Justice Press Release No. 14-489: Former Chief

Executive Officer of Oil Services Company Indicted in New Jersey on Foreign Bribery and Kickback Charges (May 9, 2014).

¹³⁵ U.S. Department of Justice Press Release No. 14-171: Former Chief Executive Officer of Oil Services Company Pleads Guilty to Foreign Bribery Charges (Feb. 18, 2014).

¹³⁶ Joel Schectman, *How PetroTiger's Board Became Federal Informer*, WALL ST. J. (June 9, 2014, 6:00 AM), <http://blogs.wsj.com/riskandcompliance/2014/06/09/how-petro-tigers-board-became-federal-informer/>.

¹³⁷ Order, *United States v. Weisman*, No. 1:13-CR-00730 (Oct. 9, 2014).

¹³⁸ Sigelman subpoenaed the law firm that conducted the internal investigation, Sidley Austin LLP, for all of the documents related to the investigation. The firm moved to quash the subpoena on grounds that the documents were protected work product and that the disclosure of 4500 pages of documents to the government—which were shared with Sigelman in discovery—did not constitute a broad privilege waiver. US District Court Judge Joseph Irenas quashed the subpoena as an overbroad “fishing expedition.” Josh Kovensky, *In Quashing Sidley Subpoena, Sigelman Judge Condemned ‘Classic Fishing Expedition*, MAINJUSTICE (Oct. 21, 2014), <http://www.mainjustice.com/justanticorruption/2014/10/21/in-quashing-sidley-subpoena-sigelman-judge-condemned-classic-fishing-expedition/>.

¹³⁹ U.S. Department of Justice Press Release No. 14-007: Foreign Bribery Charges Unsealed Against Former Chief Executive Officers of Oil Services Company (Jan. 6, 2014).

¹⁴⁰ Stephen Dockery, *U.S. Charges Two More DAP Executives in Venezuela Bribery Case*, MAINJUSTICE (Apr. 15, 2014), <http://www.mainjustice.com/justanticorruption/2014/04/15/u-s-charges-two-more-dap-executives-in-venezuela-bribery-case>.

¹⁴¹ In 2008, DAP established a group called the Global Markets Group, which offered fixed income trading services in the purchase and sale of foreign sovereign debt. One of the group’s clients was Bandes, which operated under the Venezuelan Ministry of Finance. The improper payments spanned the period from 2008 to 2012. Samuel Rubinfeld, *Direct Access Partners CEO Charged in Venezuela Bribery*, WALL ST. J. (Apr. 14, 2014, 5 :20 PM), <http://blogs.wsj.com/riskandcompliance/2014/04/14/direct-access-partners-ceo-charged-in-venezuela-bribery-scheme/>.

¹⁴² U.S. Department of Justice Press Release No. 13-169: Two U.S. Broker-Dealer Employees and Venezuelan Government Official Charged for Massive International Bribery Scheme (May 7, 2013); *see also* Roger M. Witten *et al.*, *WilmerHale Client Alert: Periodic SEC Examination at Broker-Dealer Leads to Criminal FCPA, Money Laundering Charges Against Two Employees* (May 10, 2013), available at <http://www.wilmerhale.com/pages/publicationsandnewsdetail.aspx?NewsPubId=10737421365>.

¹⁴³ Liz Moyer & Steven Russolillo, *Direct Access Shuts Down After Bribery Probe*, WALL ST. J. (May 23, 2013, 5:12 PM), <http://blogs.wsj.com/moneybeat/2013/05/23/direct-access-shuts-doors-after-bribery-probe>.

¹⁴⁴ Indictment, *United States v. Chinea et al.*, No. 14-CR-240 (S.D.N.Y. Apr. 14, 2014).

¹⁴⁵ U.S. Securities & Exchange Commission Press Release No. 2014-74: SEC Charges Brokerage Firm Executives in Kickback Scheme to Secure Business of Venezuelan Bank (Apr. 14, 2014).

¹⁴⁶ Richard L. Cassin, *Two More Brokerage Execs Plead Guilty for \$5 Million Venezuela Bank Bribes*, FCPABLOG.COM (Dec. 18, 2014, 9:50 AM), <http://www.fcpablog.com/blog/2014/12/18/two-more-brokerage-execs-plead-guilty-for-5-million-venezuel.html>.

¹⁴⁷ Stephen Dockery, *U.S. Charges Two More DAP Executives in Venezuela Bribery Case*, MAINJUSTICE (Apr. 15, 2014), <http://www.mainjustice.com/justanticorruption/2014/04/15/u-s-charges-two-more-dap-executives-in-venezuela-bribery-case>.

¹⁴⁸ Order Instituting Cease-and-Desist Proceeding, *In the Matter of Stephen Timms & Yasser Ramahi*, Release No. 73616, File No. 3-16281, ¶¶ 7-10 (Nov. 17, 2014).

¹⁴⁹ Order Instituting Cease-and-Desist Proceeding, *In the Matter of Stephen Timms & Yasser Ramahi*, Release No. 73616, File No. 3-16281, ¶¶ 13-15 (Nov. 17, 2014).

¹⁵⁰ Order Instituting Cease-and-Desist Proceeding, *In the Matter of Stephen Timms & Yasser Ramahi*, Release No. 73616, File No. 3-16281, ¶¶ 16-19 (Nov. 17, 2014).

¹⁵¹ Order Instituting Cease-and-Desist Proceeding, *In the Matter of Stephen Timms & Yasser Ramahi*, Release No. 73616, File No. 3-16281, ¶¶ IV.B & C (Nov. 17, 2014); *see also* U.S. Securities and Exchange Commission Press Release No. 2014-257: SEC Sanctions Two Former Defense Contractor Employees for FCPA Violations (Nov. 17, 2014).

¹⁵² Order Instituting Cease-and-Desist Proceeding, *In the Matter of Stephen Timms & Yasser Ramahi*, Release No. 73616, File No. 3-16281, ¶ II (Nov. 17, 2014); *see also* U.S. Securities and Exchange Commission Press Release No. 2014-257: SEC Sanctions Two Former Defense Contractor Employees for FCPA Violations (Nov. 17, 2014).

¹⁵³ Indictment, *United States v. Asem M. Elgawhary*, No. 14-CR-0068 (D. Md. Feb. 10, 2014).

¹⁵⁴ Indictment, *United States v. Asem M. Elgawhary*, No. 14-CR-0068, ¶ 1 (D. Md. Feb. 10, 2014).

¹⁵⁵ Indictment, *United States v. Asem M. Elgawhary*, No. 14-CR-0068, ¶ 4 (D. Md. Feb. 10, 2014).

¹⁵⁶ The indictment enumerated Elgawhary's employer's compliance program and detailed how Elgawhary had falsely certified his compliance with those programs, placing his employer in the category of victim of Elgawhary's fraud, rather than co-conspirator in his scheme. Indictment, *United States v. Asem M. Elgawhary*, No. 14-CR-0068, ¶¶ 20-35 (D. Md. Feb. 10, 2014).

¹⁵⁷ Plea Agreement, *United States v. Asem M. Elgawhary*, No. 14-CR-0068 (D. Md. Dec. 4, 2014); Dylan Tokar, *Former Bechtel Exec Asem Elgawhary Pleads Guilty to FCPA-Related Charges in Maryland*, MAINJUSTICE (Dec. 4, 2014), <http://www.mainjustice.com/justanticorruption/2014/12/04/former-bechtel-exec-ase-elgawhary-pleads-guilty-to-fcpa-related-charges-in-maryland>.

¹⁵⁸ U.S. Department of Justice Press Release No. 14-1114: Second Vice President of Equatorial Guinea Agrees to Relinquish More Than \$30 Million of Assets Purchased with Corruption Proceeds (Oct. 10, 2014).

¹⁵⁹ U.S. Department of Justice Press Release No. 14-1114: Second Vice President of Equatorial Guinea Agrees to Relinquish More Than \$30 Million of Assets Purchased with Corruption Proceeds (Oct. 10, 2014).

¹⁶⁰ Settlement Agreement, *United States v. One Michael Jackson Signed Thriller Jacket et. al*, No. 13-CV-9169 (C.D. Cal. Oct. 10, 2014). The settlement provides that Obiang may keep a variety of Michael Jackson memorabilia, including the red leather jacket worn in the "Thriller" music video, and the crystal-covered glove from Jackson's "Bad" tour. Previously, the French government seized Obiang's Paris mansion, valued at \$180 million, in connection with a money laundering probe. Maia de la Baume, *A French Shift on Africa Strips a Dictator's Son of His Treasures*, N.Y. TIMES, Aug. 23, 2012.

¹⁶¹ U.S. Department of Justice Press Release No. 14-1114: Second Vice President of Equatorial Guinea Agrees to Relinquish More Than \$30 Million of Assets Purchased with Corruption Proceeds (Oct. 10, 2014).

¹⁶² U.S. Department of Justice, Remarks by Principal Deputy Assistant Attorney General for the Criminal Division Marshall L. Miller at the Global Investigation Review Program (Sept. 17, 2014), available at <http://www.justice.gov/opa/speech/remarks-principal-deputy-assistant-attorney-general-criminal-division-marshall-l-miller>.

¹⁶³ Complaint, *United States v. Cilins*, No. 13-MAG-975 (S.D.N.Y. Apr. 15, 2013); U.S. Department of Justice Press Release No. 14-249: French Citizen Pleads Guilty to Obstructing Criminal Investigation into Alleged Bribes Paid to Win Mining Rights in the Republic of Guinea (Mar. 14, 2014).

¹⁶⁴ U.S. Attorney's Office Press Release, Manhattan U.S. Attorney Announces Arrest of French Citizen for Obstructing Foreign Bribery and Money Laundering Investigation (Apr. 15, 2013); U.S. Department of Justice Press Release No. 14-210: French Citizen Sentenced in Manhattan Federal Court to 24 Months in Prison for Obstructing a Criminal Investigation of Alleged Bribes Paid to Secure Mining Rights in Guinea (July 25, 2014).

¹⁶⁵ Complaint, *United States v. Cilins*, No. 13-MAG-975, ¶¶ 16-20 (S.D.N.Y. Apr. 15, 2013).

¹⁶⁶ U.S. Department of Justice, Remarks by Principal Deputy Assistant Attorney General for the Criminal Division Marshall L. Miller at the Global Investigation Review Program (Sept. 17, 2014), available at <http://www.justice.gov/opa/speech/remarks-principal-deputy-assistant-attorney-general-criminal-division-marshall-l-miller>.

¹⁶⁷ U.S. Department of Justice Press Release No. 14-210: French Citizen Sentenced in Manhattan Federal Court to 24 Months in Prison for Obstructing a Criminal Investigation of Alleged Bribes Paid to Secure Mining Rights in Guinea (July 25, 2014); Samuel Rubinfeld, *French Man Sentenced for Obstructing FCPA Probe*, WALL ST. J. (July 25, 2014), <http://blogs.wsj.com/riskandcompliance/2014/07/25/french-man-sentenced-for-obstructing-fcpa-probe/>.

¹⁶⁸ U.S. Securities and Exchange Commission Litigation Release No. 22923, SEC Concludes Its Case Against Former Siemens Executives Charged with Bribery in Argentina, Obtaining Judgments Over \$1.8 Million (Feb. 10, 2014). See also Complaint, *SEC v. Sharef et al.*, No. 1:11-cv-09073-SAS (S.D.N.Y. Dec. 13, 2014).

¹⁶⁹ Consent to Entry of Final Judgment by Defendant Andres Truppel, *SEC v. Sharef et al.*, No. 1:11-cv-09073-SAS, ¶ 1 (S.D.N.Y. Jan. 31, 2014); Final Judgment as to Defendant Andres Truppel, *SEC v. Sharef et al.*, No. 1:11-cv-09073-SAS (S.D.N.Y. Feb. 3, 2014).

¹⁷⁰ See Complaint, *SEC v. Sharef et al.*, No. 1:11-cv-09073-SAS, ¶ 38 (S.D.N.Y. Dec. 13, 2011).

¹⁷¹ Complaint, *SEC v. Sharef et al.*, No. 1:11-cv-09073-SAS, ¶ 47 (S.D.N.Y. Dec. 13, 2011); the SEC also alleged that Bock had had been present for at least one meeting in the United States—in Miami, Florida—in June 2001, and that he had, at Signer's direction, signed a consulting agreement that was tied to an improper payment made through a New York bank account. *Id.* ¶¶ 38, 45-47.

¹⁷² Complaint, *SEC v. Sharef et al.*, No. 1:11-cv-09073-SAS, ¶¶ 60, 64 (S.D.N.Y. Dec. 13, 2011). The SEC alleged that Bock and a family member received over \$316,000. *Id.* ¶ 64.

¹⁷³ The fine was comprised of a \$524,000 civil penalty, \$316,452 in disgorgement, and prejudgment interest in the amount of \$97,505.

¹⁷⁴ Final Judgment as to Defendants Ulrich Bock and Stephan Signer, *SEC v. Sharef et al.*, No. 1:11-cv-09073-SAS, ¶ 38 (S.D.N.Y. Feb. 4, 2014).

¹⁷⁵ U.S. Securities and Commission Exchange Litigation Release No. 22923, SEC Concludes Its Case Against Former Siemens Executives Charged with Bribery in Argentina, Obtaining Judgments Over \$1.8 Million (Feb. 10, 2014).

¹⁷⁶ Indictment, *United States v. Sharef et al.*, No. 11-CR-01056-DLC-1 (S.D.N.Y. Dec. 13, 2011); Endorsed Letter from Jason P. Hernandez (Attorney for the United States), *United States v. Sharef et al.*, No. 11-CR-01056-DLC-1, (S.D.N.Y. Dec. 15, 2011) (stating that the defendants “all reside overseas and none of the defendants is currently in custody. As such, none of the defendants will be arraigned in the immediate future.”).

¹⁷⁷ Group DF Limited is an international conglomerate of corporations with interests in minerals and mining, organized under a British Virgin Islands company. U.S. Department of Justice Press Release No. 14-333: Six Defendants Indicted in Alleged Conspiracy to Bribe Government Officials in India to Mine Titanium Minerals (Apr. 2, 2014).

¹⁷⁸ The six defendants are Dimitry Firtash, a Ukrainian national; Andreas Knopp, a Hungarian national; Suren Gevorgyan, a Ukrainian national; Gjendra Lal, an Indian national and permanent U.S. resident; Periyasamy Sunderalingam, a Sri Lankan national, and K.V.P. Ramachandra Rao, a Member of Parliament in India. The indictments were entered in June 2013 and unsealed in April 2014 upon the arrest of Firtash in March 2014. Mary Jacoby, *Charges Against Ukrainian Oligarch Firtash Not a Typical FCPA Matter*, MAINJUSTICE (Apr. 2, 2014), <http://www.mainjustice.com/justanticorruption/2014/04/02/charges-against-ukrainian-oligarch-firtash-not-a-typical-fcpa-matter/>.

¹⁷⁹ U.S. Department of Justice Press Release No. 14-333: Six Defendants Indicted in Alleged Conspiracy to Bribe Government Officials in India to Mine Titanium Minerals (Apr. 2, 2014).

¹⁸⁰ Indictment, *United States v. Firtash et al.*, No. 1:13-CR-00515, Count I, ¶ 16(f)-(h) (N.D. Ill. June. 20, 2013).

¹⁸¹ Firtash is a close ally of former Ukrainian President Viktor Yanukovich, who was ousted from power in February 2014. David Herszenhorn, *Brash Ukrainian Mogul Prepares to Fight U.S. Bribery Charges*, N.Y. TIMES, May 16, 2014; Mary Jacoby, *Charges Against Ukrainian Oligarch Firtash Not a Typical FCPA Matter*, MAINJUSTICE (Apr. 2, 2014), <http://www.mainjustice.com/justanticorruption/2014/04/02/charges-against-ukrainian-oligarch-firtash-not-a-typical-fcpa-matter/>.

¹⁸² Memorandum in Support of Lawrence Hoskins’s Motion to Dismiss the Second Superseding Indictment, *United States v. Hoskins*, No. 3:12-CR-00238-JBA, at 34 (D. Conn. July 31, 2014).

¹⁸³ Memorandum in Support of Lawrence Hoskins’s Motion to Dismiss the Second Superseding Indictment, *United States v. Hoskins*, No. 3:12-CR-00238-JBA, at 34 (D. Conn. July 31, 2014).

¹⁸⁴ Ruling on Defendant’s Motion to Dismiss the Indictment, *United States v. Hoskins*, No. 3:12-CR-00238-JBA, at 18-19 (D. Conn. Dec. 29, 2014).

¹⁸⁵ See Order Granting, with No Date Set, Motion to Continue as to William Pomponi, *United States v. Pierucci*, No. 3:12-CR-00238 (D. Conn. Sept. 18, 2014).

¹⁸⁶ See Complaint, *SEC v. Jackson*, No. 4:12-cv-00563 (S.D. Tex. Feb. 24, 2012). Normally, TIPs were obtained by an application process, and allowed a company temporary use of Nigerian resources for a one-year period. The Customs Service could, in its discretion, extend a TIP for six months, up to three times. Without such an extension, a rig would need to be moved out of Nigerian waters, and re-imported permanently, or temporarily under a new TIP.

¹⁸⁷ O’Rourke settled with the SEC in 2012, agreeing to injunctions preventing future violations of the FCPA, and paying a \$35,000 penalty. See U.S. Securities and Exchange Commission Press Release No. 2012-32: SEC Charges Three Oil Services Executives with Bribing Customs Officials in Nigeria (Feb. 24, 2012). Noble settled in 2010 by paying a \$5.57 million disgorgement with the SEC and signed a non-prosecution agreement with the DOJ that included a \$2.59 million criminal penalty. See U.S. Securities and Exchange Commission Litigation Release No. 21728, SEC Charges Noble with FCPA Violations (Nov. 4, 2010); U.S. Department of Justice Press Release No. 10-1251: Oil Services Companies and a Freight Forwarding Company Agree to Resolve Foreign Bribery Investigations and to Pay More Than \$156 Million in Criminal Penalties (Nov. 4, 2010).

¹⁸⁸ Jackson and Ruehlen challenged the SEC’s initial complaint, which detailed acts committed between 2002 and 2007, as untimely, arguing that the alleged conduct occurred prior to the five year statute of limitations period, *i.e.*, before February 24, 2007. Complaint, *SEC v. Jackson*, No. 4:12-cv-00563, ¶¶ 18-149 (S.D. Tex. Feb. 24, 2012); see also Second Amended Complaint, *SEC v. Jackson*, No. 4:12-cv-00563 (S.D. Tex. Mar. 25, 2013). *SEC v. Gabelli*, 133 S. Ct. 1216 (2013), was being litigated concurrently, and would decide whether the discovery rule would apply to this case. The discovery rule allows a case to accrue when the government discovers a potential violation of the law, rather than when the violation actually took place. In *Gabelli*, the Supreme Court held that the SEC is not entitled to the benefit of the discovery rule when it seeks monetary penalties. Accordingly, in its second amended complaint, the SEC limited the civil penalties sought to activity after May 2006, per the tolling agreement it entered

into with the defendants. It also sought equitable remedies covering the entire period of activity. The US District Court for the Southern District of Texas denied all motions for summary judgment, and the parties eventually settled.

¹⁸⁹ See Final Judgment, *SEC v. Jackson*, No. 4:12-cv-00563 (S.D. Tex. July 3, 2014).

¹⁹⁰ 15 U.S.C. §§ 78dd-1(b), 78dd-2(b), 78dd-3(b); see also Defendant James J. Ruehlen's Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim and Memorandum in Support Thereof, *SEC v. Jackson*, No. 4:12-cv-00563, at 13-17 (S.D. Tex. May 8, 2012); Defendant Mark A. Jackson's Motion to Dismiss the Complaint under Rule 12(b)(6) for Failure to State a Claim Upon Which Relief Can Be Granted, *SEC v. Jackson*, No. 4:12-cv-00563, at 13-19 (S.D. Tex. May 8, 2012); Defendant James J. Ruehlen's Motion for Summary Judgment and Memorandum of Law in Support, *SEC v. Jackson*, No. 4:12-cv-00563, at 19-26 (S.D. Tex. Mar. 28, 2014); Defendant Mark A. Jackson's Motion for Summary Judgment, *SEC v. Jackson*, No. 4:12-cv-00563, at 19-31 (S.D. Tex. Mar. 28, 2014).

¹⁹¹ Defendant James J. Ruehlen's Motion for Summary Judgment and Memorandum of Law in Support, *SEC v. Jackson*, No. 4:12-cv-00563, at 23-26 (S.D. Tex. Mar. 28, 2014); Defendant Mark A. Jackson's Motion for Summary Judgment, *SEC v. Jackson*, No. 4:12-cv-00563, at 22-24 (S.D. Tex. Mar. 28, 2014); Transcript of Proceedings—Motion Hearing for Summary Judgment, *SEC v. Jackson*, No. 4:12-cv-00563, at 13-33, 61-63 (S.D. Tex. May 29, 2014).

¹⁹² Defendant James J. Ruehlen's Motion for Summary Judgment and Memorandum of Law in Support, *SEC v. Jackson*, No. 4:12-cv-00563, at 23-26 (S.D. Tex. Mar. 28, 2014); Defendant Mark A. Jackson's Motion for Summary Judgment, *SEC v. Jackson*, No. 4:12-cv-00563, at 22-24 (S.D. Tex. Mar. 28, 2014); Transcript of Proceedings – Motion Hearing for Summary Judgment, *SEC v. Jackson*, No. 4:12-cv-00563, at 13-33, 61-63 (S.D. Tex. May 29, 2014).

¹⁹³ See SEC's Motion for Partial Summary Judgment on Inapplicability of Facilitating Payment Exception and Memorandum of Law in Support, *SEC v. Jackson*, No. 4:12-cv-00563 (S.D. Tex. Mar. 28, 2014).

¹⁹⁴ Jackson and Ruehlen responded by noting that the SEC had proffered no evidence of corrupt intent, and by noting that focusing purely on the act, rather than a defendant's purpose and state of mind while making a payment, renders the statute's use of the word "corruptly" superfluous. See Transcript of Proceedings – Motion Hearing for Summary Judgment, *SEC v. Jackson*, No. 4:12-cv-00563, at 39-41 (S.D. Tex. May 29, 2014).

¹⁹⁵ See Transcript of Proceedings—Motion Hearing for Summary Judgment, *SEC v. Jackson*, No. 4:12-cv-00563, at 160-63 (S.D. Tex. May 29, 2014).

¹⁹⁶ See Plea Agreement as to William Pomponi, *United States v. Pierucci*, No. 3:12-CR-00238 (D. Conn. July 17, 2014).

¹⁹⁷ See Second Superseding Indictment, *United States v. Pierucci*, No. 3:12-CR-00238, at 17-26 (D. Conn. July 30, 2013).

¹⁹⁸ See Sentencing Scheduling Order Granting, with No Date Set, Motion to Continue as to William Pomponi, *United States v. Pierucci*, No. 3:12-CR-00238 (D. Conn. Sept. 18, 2014).

¹⁹⁹ See Indictment as to Bernd Kowalewski, *United States v. Kowalewski*, No. 4:12-CR-00007 (N.D. Okla. Jan. 5, 2012).

²⁰⁰ Indictment as to Bernd Kowalewski, *United States v. Kowalewski*, No. 4:12-CR-00007, at 8-14 (N.D. Okla. Jan. 5, 2012).

²⁰¹ U.S. Department of Justice Press Release No. 14-778 (July 24, 2014).

²⁰² Judgment and Commitment, *United States v. Kowalewski*, No. 4:12-CR-00007 (N.D. Okla. Nov. 18, 2014).

²⁰³ Indictment, *United States v. Firtash*, No. 13-CR-515 (N.D. Ill. 2013).

²⁰⁴ Indictment, *United States v. Firtash*, No. 13-CR-515, Count V, ¶¶ 2(a) & 3 (N.D. Ill. 2013).

²⁰⁵ Indictment, *United States v. Firtash*, No. 13-CR-515, at 5-19, Counts 1 & 5 (N.D. Ill. 2013).

²⁰⁶ Andrew Ceresney, Director of the Division of Enforcement, SEC, Remarks at 31st International Conference on the Foreign Corrupt Practices Act (Nov. 19, 2014), available at <http://www.sec.gov/News/Speech/Detail/Speech/1370543493598>.

²⁰⁷ Andrew Ceresney, Director of the Division of Enforcement, SEC, Remarks at 31st International Conference on the Foreign Corrupt Practices Act (Nov. 19, 2014), available at <http://www.sec.gov/News/Speech/Detail/Speech/1370543493598>.

²⁰⁸ *United States v. Esquenazi*, 752 F.3d 912 (11th Cir. 2014).

²⁰⁹ *Esquenazi*, 752 F.3d at 925.

²¹⁰ At the time of the appeal, only two other district court opinions had outlined factors describing what constitutes an "instrumentality" under the FCPA. In *United States v. Noriega*, the US District Court for the Central District of California applied a five-factor test: (1) the entity provides a service to its citizens; (2) the primary officers are appointed by government officials; (3) the entity is largely financed through government appropriations; (4) the entity is vested with controlling power; and (5) the entity is understood to be performing official functions. See Minutes in Chamber Order, *United States v. Noriega*, No. 10-CR-01031, at 9 (C.D. Cal. Apr. 20, 2011). One month

later, the same court in *United States v. Carson* offered a six-factor test: (1) the government's characterization of the entity; (2) the government's degree of control; (3) the purpose of the entity's activities; (4) the entity's obligations under the law, including whether it holds a monopoly; (5) the circumstances of the entity's creation; and (6) the government's ownership interest, including ongoing financial support. *United States v. Carson*, No. 09-77, 2011 WL 5101701, at *3-4 (C.D. Cal. May 18, 2011).

²¹¹ *Esquenazi*, 752 F.3d at 925.

²¹² *Esquenazi*, 752 F.3d at 926.

²¹³ *Esquenazi*, 752 F.3d at 925 n.8.

²¹⁴ *Esquenazi*, 752 F.3d at 924.

²¹⁵ *Esquenazi*, 752 F.3d at 922-23.

²¹⁶ Motion to Dismiss, *United States v. Sigelman*, 1:14-CR-00263-JEI (D.N.J. Oct. 29, 2014).

²¹⁷ Order Denying Motion to Dismiss, *United States v. Sigelman*, 1:14-CR-00263-JEI (D.N.J. Dec. 30, 2014).

²¹⁸ U.S. Department of Justice, FCPA Opinion Procedure Release 14-01 (Mar. 17, 2014).

²¹⁹ U.S. Department of Justice, FCPA Opinion Procedure Release 14-01, at 1-2 (Mar. 17, 2014).

²²⁰ U.S. Department of Justice, FCPA Opinion Procedure Release 14-01, at 3 (Mar. 17, 2014).

²²¹ U.S. Department of Justice, FCPA Opinion Procedure Release 14-01, at 6 (Mar. 17, 2014).

²²² U.S. Department of Justice, FCPA Opinion Procedure Release 14-02 (Nov. 7, 2014).

²²³ U.S. Department of Justice, FCPA Opinion Procedure Release 14-02, at 1 (Nov. 7, 2014).

²²⁴ U.S. Department of Justice, FCPA Opinion Procedure Release 14-02, at 3 (Nov. 7, 2014).

²²⁵ U.S. Department of Justice, Assistant Attorney General Leslie R. Caldwell Speaks at American Conference Institute's 31st International Conference on the Foreign Corrupt Practices Act (Nov. 19, 2014), available at <http://www.justice.gov/opa/speech/assistant-attorney-general-leslie-r-caldwell-speaks-american-conference-institute-s-31st>.

²²⁶ U.S. Department of Justice, Assistant Attorney General Leslie R. Caldwell Speaks at American Conference Institute's 31st International Conference on the Foreign Corrupt Practices Act (Nov. 19, 2014), available at <http://www.justice.gov/opa/speech/assistant-attorney-general-leslie-r-caldwell-speaks-american-conference-institute-s-31st>.

²²⁷ U.S. Department of Justice, Remarks by Principal Deputy Assistant Attorney General for the Criminal Division Marshall L. Miller at the Global Investigation Review Program (Sept. 17, 2014), available at <http://www.justice.gov/criminal/pr/speeches/2014/crm-speech-1409171.html>.

²²⁸ Mary Jo White, Chairman, SEC, Speeches: The Challenge of Coverage, Accountability and Deterrence in Global Enforcement (Oct. 1, 2014), available at http://www.sec.gov/News/Speech/Detail/Speech/1370543090864#_ftnref12.

²²⁹ Mary Jo White, Chairman, SEC, Speeches: The Challenge of Coverage, Accountability and Deterrence in Global Enforcement (Oct. 1, 2014), available at http://www.sec.gov/News/Speech/Detail/Speech/1370543090864#_ftnref12.

²³⁰ U.S. Securities and Exchange Commission Press Release No. 2014-7: SEC Charges Alcoa with FCPA Violation (Jan. 9, 2014).

²³¹ U.S. Securities and Exchange Commission Press Release No. 2014-73: SEC Charges Hewlett-Packard with FCPA Violations (Apr. 9, 2014); U.S. Department of Justice Press Release No. 14-358: Hewlett-Packard Russia Agrees to Plead Guilty to Foreign Bribery (Apr. 9, 2014).

²³² U.S. Securities and Exchange Commission Press Release No. 2014-245: SEC Charges California-Based Bio-Rad Laboratories With FCPA Violations (Nov. 3, 2014).

²³³ U.S. Department of Justice Press Release No. 14-290: Marubeni Corporation Agrees to Plead Guilty to Foreign Bribery Charges and to Pay an \$88 Million Fine (Mar. 19, 2014).

²³⁴ U.S. Department of Justice Press Release No. 14-1383: Dallas Airmotive Inc. Admits Foreign Corrupt Practices Act Violations and Agrees to Pay \$14 Million Criminal Penalty (Dec. 10, 2014).

²³⁵ See U.S. Department of Justice Press Release No. 14-007: Foreign Bribery Charges Unsealed Against Former Chief Executive Officers of Oil Services Company (Jan. 6, 2014); U.S. Department of Justice Press Release No. 14-171: Former Chief Executive Officer of Oil Services Company Pleads Guilty to Foreign Bribery Charges (Feb. 18, 2014); U.S. Department of Justice Press Release No. 14-489: Former Chief Executive Officer of Oil Services Company Indicted in New Jersey on Foreign Bribery and Kickback Charges (May 9, 2014).

²³⁶ U.S. Department of Justice Press Release No. 14-778 (July 24, 2014).

²³⁷ U.S. Department of Justice Press Release No. 14-752: Former Executive of French Power Company Subsidiary Pleads Guilty in Connection with Foreign Bribery Scheme (July 17, 2014).

²³⁸ U.S. Department of Justice Press Release No. 14-333: Six Defendants Indicted in Alleged Conspiracy to Bribe Government Officials in India to Mine Titanium Minerals (Apr. 2, 2014).

- ²³⁹ Openbaar Ministerie Press Release, SBM Offshore N.V. settles bribery case for US\$ 240,000,000 (Nov. 12, 2014), available at <https://www.om.nl/actueel/nieuwsberichten/@87201/sbm-offshore-settles/>.
- ²⁴⁰ Openbaar Ministerie Press Release, SBM Offshore N.V. settles bribery case for US\$ 240,000,000 (Nov. 12, 2014), available at <https://www.om.nl/actueel/nieuwsberichten/@87201/sbm-offshore-settles/>.
- ²⁴¹ See Tim Perry, *The DoJ Goes to China: Re-Evaluating Corporate Cooperation*, Global Investigations Review, Dec. 18, 2014, available at <http://globalinvestigationsreview.com/article/2197/the-doj-goes-china-re-evaluating-corporate-cooperation>.
- ²⁴² U.S. Department of Justice, Remarks by Principal Deputy Assistant Attorney General for the Criminal Division Marshall L. Miller at the Global Investigation Review Program (Sept. 17, 2014), available at <http://www.justice.gov/criminal/pr/speeches/2014/crm-speech-1409171.html>.
- ²⁴³ U.S. Department of Justice Press Release No. 14-067: French Citizen Pleads Guilty in Manhattan Federal Court to Obstructing Criminal Investigation into Alleged Bribes Paid to Win Mining Rights in Guinea (Mar. 10, 2014).
- ²⁴⁴ Mary Jacoby & Stephen Dockery, *Guinean Panel Publishes Evidence Linking Steinmetz to Alleged Mining Corruption*, MAINJUSTICE (Apr. 15, 2014), <http://www.mainjustice.com/justanticorruption/2014/04/15/guinean-panel-publishes-evidence-linking-steinmetz-to-alleged-mining-corruption/>.
- ²⁴⁵ U.S. Department of Justice, Acting Assistant Attorney General Mythili Raman Speaks at the Global Anti-Corruption Compliance Congress (Mar. 20, 2014), available at <http://www.justice.gov/criminal/pr/speeches/2014/crm-speech-140320.html>.
- ²⁴⁶ U.S. Department of Justice Press Release No. 14-778 (July 24, 2014).
- ²⁴⁷ U.S. Department of Justice, Remarks by Principal Deputy Assistant Attorney General for the Criminal Division Marshall L. Miller at the Global Investigation Review Program (Sept. 17, 2014), available at <http://www.justice.gov/criminal/pr/speeches/2014/crm-speech-1409171.html>.
- ²⁴⁸ See Michael Mugmon & Tim Perry, *The Rise of White Collar Wiretaps*, LOS ANGELES DAILY J., Nov. 10, 2014 (citing 18 U.S.C. § 2581(c)).
- ²⁴⁹ U.S. Department of Justice, Remarks by Principal Deputy Assistant Attorney General for the Criminal Division Marshall L. Miller at the Global Investigation Review Program (Sept. 17, 2014), available at <http://www.justice.gov/criminal/pr/speeches/2014/crm-speech-1409171.html>.
- ²⁵⁰ U.S. Department of Justice, Remarks by Principal Deputy Assistant Attorney General for the Criminal Division Marshall L. Miller at the Global Investigation Review Program (Sept. 17, 2014), available at <http://www.justice.gov/criminal/pr/speeches/2014/crm-speech-1409171.html>.
- ²⁵¹ U.S. Department of Justice, Remarks by Principal Deputy Assistant Attorney General for the Criminal Division Marshall L. Miller at the Global Investigation Review Program (Sept. 17, 2014), available at <http://www.justice.gov/criminal/pr/speeches/2014/crm-speech-1409171.html>; David A. O'Neil, Then-Acting Attorney General for the Criminal Division, Speech given at the Southeastern White Collar Crime Institute I (Sept. 12, 2014), available at http://www.americanbar.org/content/dam/aba/events/criminal_justice/WCC_ONeil_remarks.authcheckdam.pdf.
- ²⁵² U.S. Department of Justice, Remarks by Principal Deputy Assistant Attorney General for the Criminal Division Marshall L. Miller at the Global Investigation Review Program (Sept. 17, 2014), available at <http://www.justice.gov/criminal/pr/speeches/2014/crm-speech-1409171.html>.
- ²⁵³ U.S. Department of Justice, Remarks by Principal Deputy Assistant Attorney General for the Criminal Division Marshall L. Miller at the Global Investigation Review Program (Sept. 17, 2014), available at <http://www.justice.gov/criminal/pr/speeches/2014/crm-speech-1409171.html>.
- ²⁵⁴ U.S. Department of Justice, Remarks by Principal Deputy Assistant Attorney General for the Criminal Division Marshall L. Miller at the Global Investigation Review Program (Sept. 17, 2014), available at <http://www.justice.gov/criminal/pr/speeches/2014/crm-speech-1409171.html>.
- ²⁵⁵ Andrew Ceresney, Director of the Division of Enforcement, SEC, Remarks at 31st International Conference on the Foreign Corrupt Practices Act (Nov. 19, 2014), available at <http://www.sec.gov/News/Speech/Detail/Speech/1370543493598#.VHN88PIWqVB>.
- ²⁵⁶ See U.S. Department of Justice Press Release No. 14-419: Avon China Pleads Guilty to Violating the FCPA by Concealing More Than \$8 Million in Gifts to Chinese Officials (Dec. 17, 2014); U.S. Department of Justice Press Release No. 14-1221: Bio-Rad Laboratories Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay \$14.35 Million Penalty (Nov. 3, 2014); U.S. Department of Justice Press Release No. 14-358: Hewlett-Packard Russia Agrees to Plead Guilty to Foreign Bribery (Apr. 9, 2014); U.S. Department of Justice Press Release No. 14-019: Alcoa World Alumina Agrees to Plead Guilty to Foreign Bribery and Pay \$223 Million in Fines and Forfeiture (Jan. 9, 2014).
- ²⁵⁷ U.S. Department of Justice Press Release No. 14-1221: Bio-Rad Laboratories Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay \$14.35 Million Penalty (Nov. 3, 2014).

²⁵⁸ See U.S. Department of Justice Press Release No. 14-358: Hewlett-Packard Russia Agrees to Plead Guilty to Foreign Bribery (Apr. 9, 2014); U.S. Department of Justice Press Release No. 14-019: Alcoa World Alumina Agrees to Plead Guilty to Foreign Bribery and Pay \$223 Million in Fines and Forfeiture (Jan. 9, 2014).

²⁵⁹ Barrie McKenna, *HP Faces 10-Year Ban as Canadian Government's Technology Supplier*, GLOBE & MAIL, Sept. 26, 2014.

²⁶⁰ Barrie McKenna, *Companies Worried About Strict Ottawa Rules on Corruption*, GLOBE & MAIL, Oct. 12, 2014.

²⁶¹ Barrie McKenna, *Companies Worried About Strict Ottawa Rules on Corruption*, GLOBE & MAIL, Oct. 12, 2014.

²⁶² Barrie McKenna, *HP Faces 10-year Ban as Canadian Government's Technology Supplier*, GLOBE & MAIL, Sept. 26, 2014 (“The department is reviewing the recent U.S. court decision regarding HP Russia and is examining the impact of this court decision on our current and future business with HP Canada,” confirmed Alyson Queen, communications director for Public Works Minister Diane Finley. The department will conduct its review ‘as quickly as possible,’ Ms. Queen insisted, adding that the government is ‘committed to doing business with suppliers who respect the law and act with integrity, including affiliates of suppliers.’”).

²⁶³ Rajat Pandit, *All Deals with Rolls-Royce Put on Hold Till CBI Probe Is Over*, TIMES OF INDIA (Mar. 4, 2014), <http://timesofindia.indiatimes.com/india/All-deals-with-Rolls-Royce-put-on-hold-till-CBI-probe-is-over/articleshow/31356825.cms>.

²⁶⁴ Richard L. Cassin, *India Lifts Military Procurement Ban on Rolls Royce, Finmeccanica*, FCPABLOG.COM (Sept. 17, 2014, 10:28 AM), <http://www.fcpablog.com/blog/2014/9/17/india-lifts-military-procurement-ban-on-rolls-royce-finmecca.html>.

²⁶⁵ *In re Kellogg Brown & Root, Inc.*, 756 F.3d 754 (D.C. Cir. 2014).

²⁶⁶ *In re Weatherford Int'l Sec. Litig.*, No. 11-cv-1646, 2013 WL 6628964, at *2 (S.D.N.Y. Dec. 16, 2013).

²⁶⁷ *In re Weatherford Int'l Sec. Litig.*, 2013 WL 6628964, at *1 (quoting the court's Order of November 5, 2013).

²⁶⁸ *In re Weatherford Int'l Sec. Litig.*, 2013 WL 6628964, at *3 (internal quotation marks and citation omitted).

²⁶⁹ *In re Weatherford Int'l Sec. Litig.*, 2013 WL 6628964, at *2.

²⁷⁰ The program rewards individuals who provide high-quality, original information that results in an SEC enforcement action with sanctions exceeding \$1 million. Awards can range from 10 to 30% of the money collected in a case. See U.S. Securities and Exchange Commission Press Release No. 2014-180: SEC Announces \$300,000 Whistleblower Award to Audit and Compliance Professional Who Reported Company's Wrongdoing (Aug. 29, 2014).

²⁷¹ U.S. Securities and Exchange Commission, 2014 Annual Report to Congress on the Dodd-Frank Whistleblower Program 20 (Nov. 17, 2014). The SEC's fiscal year ran from October 1, 2013, through September 30, 2014.

²⁷² U.S. Securities and Exchange Commission, 2014 Annual Report to Congress on the Dodd-Frank Whistleblower Program 27 (Nov. 17, 2014).

²⁷³ See U.S. Securities and Exchange Commission Press Release No. 2014-230: SEC's FY 2014 Enforcement Actions Span Securities Industry and Include First-Ever Cases (Oct. 16, 2014).

²⁷⁴ U. S. Securities and Exchange Commission Press Release No. 2014-180: SEC Announces \$300,000 Whistleblower Award to Audit and Compliance Professional Who Reported Company's Wrongdoing (Aug. 29, 2014).

²⁷⁵ U. S. Securities and Exchange Commission Press Release No. 2014-180: SEC Announces \$300,000 Whistleblower Award to Audit and Compliance Professional Who Reported Company's Wrongdoing (Aug. 29, 2014).

²⁷⁶ *Bussing v. COR Clearing, LLC*, No. 8:12-CV-238, 2014 U.S. Dist. LEXIS 69461, at *7-9, 17-35 (D. Neb. May 21, 2014).

²⁷⁷ *Bussing*, 2014 U.S. Dist. LEXIS 69461, at *20, 22-24.

²⁷⁸ *Asadi v. G.E. Energy (USA), LLC*, 720 F.3d 620, 625-29 (5th Cir. 2013).

²⁷⁹ *Bussing*, 2014 U.S. Dist. LEXIS 69461, at *29-32, 35.

²⁸⁰ Stephanie Russell-Kraft, *8th Circ. Denies Appeal on Dodd-Frank Whistleblower Limits*, Law360 (Sept. 4, 2014), <http://www.law360.com/articles/574043/8th-circ-denies-appeal-on-dodd-frank-whistleblower-limits>. Judgment, *Bussing v. COR Clearing, LLC*, Case No: 14-8015 (8th Cir. Sept. 4, 2014).

²⁸¹ *Liu v. Siemens*, 763 F.3d 175, 177 (2d Cir. 2014).

²⁸² See WilmerHale, *2013 Anti-Bribery Global Year-In-Review* (Feb. 5, 2014), available at http://www.wilmerhale.com/uploadedFiles/Shared_Content/Editorial/Publications/WH_Publications/Client_Alert_P Dfs/FCPA%20YIR%20Alert_02%2004%2014.pdf.

²⁸³ *Liu*, 763 F.3d at 177 (citing *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 255 (2010), and quoting *EEOC v. Arabian Am. Oil Co. ("Aramco")*, 499 U.S. 244, 248 (1991)).

²⁸⁴ *Liu*, 763 F.3d at 180 (citing *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 263 (2010)).

²⁸⁵ *Halliburton, Inc. v. Admin. Review Bd., U.S. Dep't of Labor*, No. 13-60323 (5th Cir. Nov. 12, 2014); see 18 U.S.C. § 1514A(a).

²⁸⁶ *Halliburton*, No. 13-60323, at 4 (5th Cir. Nov. 12, 2014).

²⁸⁷ *Halliburton*, No. 13-60323, at 2-4 (5th Cir. Nov. 12, 2014).

²⁸⁸ *Halliburton*, No. 13-60323, at 13-16 (5th Cir. Nov. 12, 2014).

²⁸⁹ *Rio Tinto plc v. Vale S.A., et al.*, C.A. No. 14-cv-3042 (RMB) (S.D.N.Y.). Rio Tinto filed an amended complaint on August 15, 2014. (See Dkt. No. 83.) The Amended Complaint alleges the following causes of action: (1) violations of RICO, 18 U.S.C. § 1962; (2) conspiracy to violate RICO, 18 U.S.C. § 1962(d); (3) fraud; (4) civil conspiracy to commit fraud; (5) aiding and abetting a fraud; and (6) fraudulent inducement (against Vale only). The Amended Complaint requests an award of compensatory, consequential, exemplary, and punitive damages, as well as treble damages pursuant to 18 U.S.C. § 1964(c), and demands a jury trial.

²⁹⁰ The Amended Complaint also alleges that the defendants attempted to cover up their acts by instructing one of the defendants to destroy incriminating documents, even after they knew the US Federal Bureau of Investigation was investigating.

²⁹¹ As a predicate act for the RICO claims, Rio Tinto alleges that certain defendants “made illegal payments to, and improperly influenced, one or more senior officials in Guinea, including Defendant Thiam . . . within the meaning of 15 U.S.C. § 78dd-2(a).” Amended Complaint, *Rio Tinto plc v. Vale S.A.*, C.A. No. 14-cv-3042, ¶ 175 (S.D.N.Y. Aug. 15, 2014).

²⁹² *Worldwide Directories, S.A. De C.V. v. Yahoo! Inc.*, No. 1:14-cv-07349-AJN (S.D.N.Y.). The Complaint alleges the following causes of action: (1) violations of RICO, 18 U.S.C. § 1962(c); (2) conspiracy to violate RICO, 18 U.S.C. § 1962(d); (3) fraud; and (4) civil conspiracy. The Amended Complaint requests an award of treble damages pursuant to 18 U.S.C. § 1964(c) and an injunction against the defendants “engaging in any unlawful means to secure any judgment in the Mexican court system, or elsewhere” (Prayer for Relief ¶ E), and demands a jury trial.

²⁹³ *Petroleos Mexicanos v. Hewlett-Packard Co.*, No. 5:14-cv-05292-NC (N.D. Cal.). The Complaint alleges the following causes of action: (1) RICO; (2) RICO conspiracy; (3) unfair competition; (4) aiding and abetting unfair competition; (5) fraudulent concealment; and (6) common law tortious interference with contracts (by Petroleos Mexicanos only). The Complaint requests disgorgement and/or restitution, permanent injunctive relief, as well as compensatory, punitive, and treble damages, and demands a jury trial.

²⁹⁴ *City of Brockton Ret. Sys. v. Avon Prods.*, No. 11-cv-04665 (S.D.N.Y. July 6, 2011).

²⁹⁵ *City of Brockton Ret. Sys. v. Avon Prods.*, No. 11-cv-04665, 2014 U.S. Dist. LEXIS 137387 (S.D.N.Y. Sept. 28, 2014). Judge Gardephe also found some statements to be immaterial. *Id.*

²⁹⁶ Order, *Williams v. Nuti*, No. 1:13-cv-01400-SCJ (N.D. Ga. Apr. 8, 2014).

²⁹⁷ Stipulation of Settlement, *Williams v. Nuti*, No. 1:13-cv-01400-SCJ (N.D. Ga. Jan. 22, 2014). The derivative action was filed in 2013 after a shareholder’s demand that the board investigate possible foreign bribery and sanctions violations was refused. *Id.* at 2.

²⁹⁸ Order, *Rubery v. Kleinfeld*, No. 2:12-cv-00844-DWA (W.D. Pa. Oct. 22, 2014); Stipulation of Settlement, *Rubery v. Kleinfeld*, No. 2:12-cv-00844-DWA, at 2-5 (W.D. Pa. Oct. 20, 2014).

²⁹⁹ Settlement, *Rubery v. Kleinfeld*, No. 2:12-cv-00844-DWA (W.D. Pa. Oct. 20, 2014); Terms of Remediation, *Rubery v. Kleinfeld*, No. 2:12-cv-00844-DWA, at Ex. A (W.D. Pa. Oct. 20, 2014). A hearing to finalize the settlement is scheduled for January 20, 2015. Order, *Rubery v. Kleinfeld*, No. 2:12-cv-00844-DWA (W.D. Pa. Oct. 22, 2014).

³⁰⁰ Complaint, *Copeland v. Apotheker*, No. 5:14-cv-00622-EJD (N.D. Cal. Feb. 10, 2014). The litigation was subsequently stayed in April 2014 pending the outcome of a Ninth Circuit appeal of an earlier derivative lawsuit that was dismissed in 2013. See Order, *Copeland v. Apotheker*, No. 5:14-cv-00622-EJD (N.D. Cal. Apr. 7, 2014). The Ninth Circuit appeal is still pending. *Copeland v. Lane*, No. 13-1625 (9th Cir. filed May 31, 2013).

³⁰¹ *Menaldi v. Och-Ziff Capital Mgmt. Group LLC*, No. 14-cv-3251 (S.D.N.Y. May 5, 2014).

³⁰² *Cady v. Key Energy Servs., Inc.*, No. 4:14-cv-2368 (S.D. Tex. Aug. 15, 2014); Notice of Related Case, *Cady v. Key Energy Servs., Inc.*, No. 4:14-cv-2368 (S.D. Tex. Aug. 28, 2014).

³⁰³ See *City of Providence v. Petroleo Brasileiro S.A.*, No. 1:14-cv-10117-JSR (S.D.N.Y. Dec. 24, 2014); *Messing v. Petroleo Brasileiro S.A.*, No. 1:14-cv-09847-JSR (S.D.N.Y. Dec. 12, 2014); *Ngo v. Petroleo Brasileiro S.A.*, No. 1:14-cv-09760-JSR (S.D.N.Y. Dec. 10, 2014); *Kaltman v. Petroleo Brasileiro S.A.*, No. 1:14-cv-09662-JSR (S.D.N.Y. Dec. 8, 2014).

³⁰⁴ Complaint, *City of Providence v. Petroleo Brasileiro S.A.*, No. 1:14-cv-10117-JSR (S.D.N.Y. Dec. 24, 2014).

³⁰⁵ OECD, *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*, OECD Publishing (Dec. 2014), available at <http://dx.doi.org/10.1787/9789264226616-en>. The report focuses on enforcement actions between February 15, 1999 and June 1, 2014. Two things should be noted: (1) the review was limited to known enforcement actions and thus is dominated by US enforcement actions; and (2) while the review

term is 15 years, a whopping 366 of the enforcement actions took place in the six-year term between 2007 and 2013. Additionally, it appears that the report was based mostly, if not exclusively, upon publicly-available data.

³⁰⁶ OECD, *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*, OECD Publishing, at 26-27 (Dec. 2014), available at <http://dx.doi.org/10.1787/9789264226616-en>. According to the OECD, foreign bribery costs businesses an average of 10.9% of the total transaction value (in a reduced data set of 55 cases for which it could obtain this information. These bribes have social cost as well, because the business would then have to offset the losses from bribes paid in some other way; for example, they may reduce the costs of production in such ways that make its product unsafe, or put its workers at risk.

³⁰⁷ OECD, *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*, OECD Publishing, at 29-30 (Dec. 2014), available at <http://dx.doi.org/10.1787/9789264226616-en>.

³⁰⁸ OECD, *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*, OECD Publishing, at 30 (Dec. 2014), available at <http://dx.doi.org/10.1787/9789264226616-en>. The HDI of the countries where officials received bribes broke down as follows: 21% “very high,” 22% “high”, and 24% “medium.” Only 33% of bribes paid were in countries where the HDI was either “low” or unknown.

³⁰⁹ OECD, *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*, OECD Publishing, at 22 (Dec. 2014), available at <http://dx.doi.org/10.1787/9789264226616-en>. The report found that more than half—59%—of bribes occurred in four industries: (1) extractive (19%); (2) construction (15%); (3) transportation (15%); and (4) information and communication (10%). *Id.*

³¹⁰ OECD, *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*, OECD Publishing, at 22 (Dec. 2014), available at <http://dx.doi.org/10.1787/9789264226616-en>.

³¹¹ OECD, *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*, OECD Publishing, at 22 (Dec. 2014), available at <http://dx.doi.org/10.1787/9789264226616-en>.

³¹² OECD, *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*, OECD Publishing, at 23 (Dec. 2014), available at <http://dx.doi.org/10.1787/9789264226616-en>. The data set was 224 of the 427 enforcement actions for this figure. *Id.*

³¹³ OECD, *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*, OECD Publishing, at 23 (Dec. 2014), available at <http://dx.doi.org/10.1787/9789264226616-en>.

³¹⁴ OECD, *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*, OECD Publishing, at 23 (Dec. 2014), available at <http://dx.doi.org/10.1787/9789264226616-en>.

³¹⁵ OECD, *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*, OECD Publishing, at 32 (Dec. 2014), available at <http://dx.doi.org/10.1787/9789264226616-en>.

³¹⁶ Serious Fraud Office Press Release, Four Charged in ‘Bio fuel’ Investigation (Aug. 14, 2013), available at <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2013/four-charged-in-'bio-fuel'-investigation.aspx>; Serious Fraud Office Press Release, Sustainable Agroenergy Plc and Sustainable Wealth Investments UK Ltd (updates on the case), available <http://www.sfo.gov.uk/our-work/our-cases/case-progress/sustainable-agroenergy-plc-and-sustainable-wealth-investments-uk-ltd.aspx>.

³¹⁷ Serious Fraud Office Press Release, City Directors Sentenced to 28 Years in Total for £23m Green Biofuel Fraud (Dec. 8, 2014), available at <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2014/city-directors-sentenced-to-28-years-in-total-for-23m-green-biofuel-fraud.aspx>.

³¹⁸ Serious Fraud Office Press Release, Four sentenced for role in Innospec corruption (Aug. 4, 2014), available at <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2014/four-sentenced-for-role-in-innospec-corruption.aspx>. Dennis Kerrison’s sentence was reduced to three years on appeal. Serious Fraud Office Press Release, Statement: Innospec Judgement (Sept. 19, 2014), available at <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2014/statement-innospec-judgement.aspx>.

³¹⁹ Serious Fraud Office Press Release, Criminal Charges Against Alstom in the UK (July 24, 2014), available at <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2014/criminal-charges-against-alstom-in-the-uk.aspx>. See Kate Beioley, *SFO in Court for Alstom Bribery Case*, Lawyer (Oct. 9, 2014), <http://www.thelawyer.com/news/practice-areas/litigation-news/sfo-in-court-for-alstom-bribery-case/3026909.article> (reporting of the preliminary hearing on October 6, 2014).

³²⁰ For a list of the larger ongoing investigations see the Director’s Foreword of the Annual Report for the Serious Fraud Office for the Year 2013-2014, available at <http://www.sfo.gov.uk/media/274080/sfo%20ar-2014%20sps-26-6.pdf>; Serious Fraud Office Press Release, GlaxoSmithKline plc Investigation (May 27, 2014), available at <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2014/glaxosmithkline-plc-investigation.aspx>; Serious Fraud Office Press Release, Sweett Group Investigation (July 14, 2014), available at <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2014/sweett-group-investigation.aspx>. Case progress updates from the SFO are all contained on their website, available at <http://www.sfo.gov.uk/our-work/our-cases/case-progress.aspx>.

³²¹ David Green, Director of the Serious Fraud Office, Speech to the Cambridge Symposium on Economic Crime (Sept. 2, 2014), available at <http://www.sfo.gov.uk/about-us/our-views/director's-speeches/speeches-2014/cambridge-symposium-2014.aspx>.

³²² Serious Fraud Office Press Release, The Serious Fraud Office and Vincent Tchenguiz Announce Settlement of Civil Claims (July 25, 2014), available at <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2014/the-serious-fraud-office-and-vincent-tchenguiz-announce-settlement-of-civil-claims.aspx>.

³²³ Serious Fraud Office Press Release, Kaupthing: Judicial Review Judgment (July 31, 2012), available at <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2012/kaupthing-judicial-review-judgment.aspx>.

³²⁴ Caroline Binham, *Serious Fraud Office Blamed for Collapse of Victor Dahdaleh Trial*, FIN. TIMES, Mar. 21, 2014.

³²⁵ Harry Wilson, *Fraud Office Attacks Flawed Crime Reports*, TIMES, Aug. 27, 2014, available at <http://www.thetimes.co.uk/tto/business/industries/banking/article4186648.ece>.

³²⁶ Serious Fraud Office Press Release, Deferred Prosecution Agreements: New Guidance for Prosecutors (Feb. 14, 2014), available at <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2014/deferred-prosecution-agreements-new-guidance-for-prosecutors.aspx>.

³²⁷ David Green, Director of the Serious Fraud Office, Ethical Business Conduct: An Enforcement Perspective (Mar. 6, 2014), available at <http://www.sfo.gov.uk/about-us/our-views/director's-speeches/speeches-2014/ethical-business-conduct-an-enforcement-perspective.aspx>.

³²⁸ Corruption of Foreign Public Officials Act, S.C. 1998, c. 34 (June 19, 2013), available at <http://laws-lois.justice.gc.ca/eng/acts/c-45.2/index.html>.

³²⁹ Royal Canadian Mounted Police Press Release, RCMP Charge Individuals with Foreign Corruption (June 4, 2014), available at <http://www.rcmp-grc.gc.ca/ottawa/ne-no/pr-cp/2014/0604-corruption-eng.htm>.

³³⁰ Royal Canadian Mounted Police Press Release, Charges Laid in Project Assistance (Sept. 10, 2014), available at <http://www.rcmp-grc.gc.ca/ottawa/ne-no/pr-cp/2014/0910-assistance-eng.htm>.

³³¹ David Seglins, *SNC-Lavalin Paid Gadhafi Son's Wife as Libya Fell: Ex-VP*, CBC NEWS (Feb. 27, 2014), <http://www.cbc.ca/news/business/snc-lavalin-paid-gadhafi-son-s-wife-as-libya-fell-ex-vp-1.2552439>.

³³² *Chowdhury v. H.M.Q.*, Court File No. M065/14, 2014 ONSC 2635 (S.C.C. Apr. 28, 2014), available at <http://s3.documentcloud.org/documents/1180722/snc-chowdhury-2014onsc2635-1.pdf>.

³³³ For more background on the dynamics of the anti-corruption campaign and its head, the anti-corruption “czar” Wang Qishan, see generally Lingling Wei & Bob Davis, *China's Top Graft Buster, Wang Qishan, Probing Thousands: Anti-Corruption Drive Headed by a Heavy-Handed Communist Party Loyalist*, WALL ST. J., Aug. 20, 2014. The anti-corruption campaign has also extended to industry. For example, Wang Zongnan, an acolyte of Jiang Zemin and the former chairman of Bright Food, a major international food company that owned prominent brands like Weetabix, a British cereal company, was investigated for his roles running other state-owned companies in Shanghai.

³³⁴ Zhou was the former head of China's domestic security apparatus, and also a former chairman of the China National Petroleum Corporation, one of China's three oil majors (the other two being Sinopec and CNOOC). Zhou served on the nine-man Politburo Standing Committee alongside Xi Jinping from 2007-2012, making him one of the most powerful individuals in China. Since the end of the Cultural Revolution, it had been taboo to pursue any current or former member of the Standing Committee. The purpose of this tacit understanding was to maintain stability and to allow for orderly transitions of power. The investigation of Zhou broke that taboo, and now he is expected to be put on trial and almost certainly convicted. See, e.g., *No Ordinary Zhou*, ECONOMIST, Aug. 2, 2014.

³³⁵ The anti-corruption campaign has also targeted more than 50 high-ranking officials (often described in China as “tigers”), including Gui Jianying, an inspector responsible for prices in the pharmaceutical industry, who is under investigation for taking bribes to help pharmaceutical firms secure approval for their drugs. *NDRC Price Section – Gui Jianying Under Investigation – Previously Said That the Government Supervises [the] Pharmaceutical [Industry] Too Strictly*, news.163.com, (Sept. 29, 2014), <http://news.163.com/14/0929/06/A79QFBF70001124J.html>.

³³⁶ See, e.g., Malcolm Moore, *GSK Executive Confesses to Bribery on Chinese Television*, TELEGRAPH, July 16, 2013; *CCTV Exposé: Danone Suspected of Bribing Chinese Hospitals*, CAIJING, Sept. 16, 2014; *Chinese Authority Includes AstraZeneca, Novo Nordisk and Eli Lilly in Bribery Investigation*, PARR (May 26, 2014), available at <http://app.parr-global.com/intelligence/view/1115032>; *Sinopharm Former Vice President Held on Corruption Claim*, BLOOMBERG NEWS, Jan. 13, 2014.

³³⁷ Adam Jourdan & Ben Hirschler, *China Hands Drugmaker GSK Record \$489 Million Fine for Paying Bribes*, REUTERS, Sept. 19, 2014.

³³⁸ Prakash Singh, *With Lokpal Bill, the Crusade Against Corruption Has Begun*, NEW INDIAN EXPRESS (Jan. 10, 2014), <http://www.newindianexpress.com/magazine/voices/With-Lokpal-Bill-the-Crusade-Against-Corruption-Has-Begun/2014/01/12/article1991718.ece>.

- ³³⁹ The Whistle Blowers Protective Bill, 2011, No. 97-C of 2010 (passed by Lok Sabha Dec. 27, 2011), *available at* <http://www.prsindia.org/uploads/media/Public%20Disclosure/whistle%20blower%20as%20passed%20by%20LS.pdf>. While the Bill was passed by the Lok Sabha in December 2011, it was passed by the Upper House in February 2014.
- ³⁴⁰ PTI, *CBI to Start Probe in HAL Bribery Scam*, TIMES OF INDIA (Mar. 9, 2014), <http://timesofindia.indiatimes.com/india/CBI-to-start-probe-in-HAL-bribery-scam/articleshow/31745338.cms>.
- ³⁴¹ Law 12.846 (Aug. 1, 2013), *available at* http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2013/Lei/L12846.htm.
- ³⁴² Law 12.846, Capítulo V (Aug. 1, 2013), *available at* http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2013/Lei/L12846.htm.
- ³⁴³ Law 12.846, Capítulo I (Aug. 1, 2013), *available at* http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2013/Lei/L12846.htm.
- ³⁴⁴ Joe Leahy & Thalita Carrico, *Petrobras Delays Results as Police Raid Offices*, FIN. TIMES, Nov. 14, 2014.
- ³⁴⁵ Ken Scannell, *US Turns Up Heat with Criminal Investigation into Petrobras*, FIN. TIMES, Nov. 9, 2014.
- ³⁴⁶ Richard L. Cassin, *Brazil Charges Eight Embraer Employees with Overseas Bribery*, FCPABLOG.COM (Sept. 24, 2014, 8:10 AM), <http://fcpablog.squarespace.com/blog/2014/9/24/brazil-charges-eight-embraer-employees-with-overseas-bribery.html#sthash.wNzgAEf2.dpuf>.
- ³⁴⁷ Joe Palazzolo & Rogerio Gelmayer, *Brazil Files Bribery Charges in Embraer Aircraft Sale to Dominican Republic*, WALL ST. J., Sept. 23, 2014.
- ³⁴⁸ The World Bank Group, Integrity Vice Presidency, Annual Update Fiscal Year 2014 (Aug. 10, 2014), at 31, *available at* http://siteresources.worldbank.org/EXTDOII/Resources/588920-1412626296780/INT_Annual_Update_FY14_WEB.pdf.
- ³⁴⁹ The World Bank Group, Integrity Vice Presidency, Annual Update Fiscal Year 2014 (Aug. 10, 2014), at 31, *available at* http://siteresources.worldbank.org/EXTDOII/Resources/588920-1412626296780/INT_Annual_Update_FY14_WEB.pdf.
- ³⁵⁰ The World Bank Group, Integrity Vice Presidency, Annual Update Fiscal Year 2014 (Aug. 10, 2014), at 42, 46, *available at* http://siteresources.worldbank.org/EXTDOII/Resources/588920-1412626296780/INT_Annual_Update_FY14_WEB.pdf.
- ³⁵¹ The World Bank Group, Sanctions Board Decision No. 59, Sanctions Case No. 187 (June 24, 2013), *available at* <http://siteresources.worldbank.org/INTOFFEVASUS/Resources/3601037-1346795612671/SanctionsBoardDecisionNo.59.pdf>.
- ³⁵² The World Bank Group, Sanctions Board Decision No. 59, Sanctions Case No. 187 (June 24, 2013), *available at* <http://siteresources.worldbank.org/INTOFFEVASUS/Resources/3601037-1346795612671/SanctionsBoardDecisionNo.59.pdf>.
- ³⁵³ The World Bank Group, Integrity Vice Presidency, Annual Update Fiscal Year 2014, at v, vi (Cover Letter to Annual Report), *available at* http://siteresources.worldbank.org/EXTDOII/Resources/588920-1412626296780/INT_Annual_Update_FY14_WEB.pdf.
- ³⁵⁴ The World Bank Group, Integrity Vice Presidency, Annual Update Fiscal Year 2014, at 19, *available at* http://siteresources.worldbank.org/EXTDOII/Resources/588920-1412626296780/INT_Annual_Update_FY14_WEB.pdf.
- ³⁵⁵ Joel Schectman, *FBI to Bulk Up Foreign Bribery Efforts*, WALL ST. J., Jan. 14, 2015.

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