

WEBINAR

*Foreign Corrupt Practices Act  
and Global Anti-Corruption:  
2018 Year-in-Review and  
Predictions for 2019*

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JANUARY 22, 2019

Speakers: Kimberly Parker, Jay Holtmeier, Erin Sloane,  
Lori Echavarria, John Walsh



WEBINAR

# *Speakers*



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- Participants are in listen-only mode
- Submit questions via the Q&A feature
- Questions will be answered as time permits
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## *Agenda*

- I. Recent Trends in Enforcement
- II. Notable Lessons on FCPA Risk Areas
- III. U.S. Government Policies and Priorities
- IV. Recent Legal Developments
- V. International Developments
- VI. Predictions for 2019



# *I. Recent Trends in Enforcement*



## *Anti-Corruption Enforcement Trends*

- ✓ Continued Enforcement Priority and Increased Risk
- ✓ Prioritization of Large Resolutions
- ✓ Aggressive Focus on Individuals
- ✓ Cross-Border Enforcement
- ✓ Continued Risks Related to Third Parties, Hiring Practices, and Gifts





## *Increased Risk of Enforcement*

U.S. FCPA investigations continue at a rapid pace

- Number of enforcement actions in 2018 rose significantly from 32 in 2017 to **50 in 2018** (56% increase)
- Total monetary penalties imposed on corporations increased significantly from \$1.9B in 2017 to **\$2.9B in 2018** (52% increase)
- Sharp increase in DOJ actions against individuals

Large resolutions contributed to increase in enforcement numbers

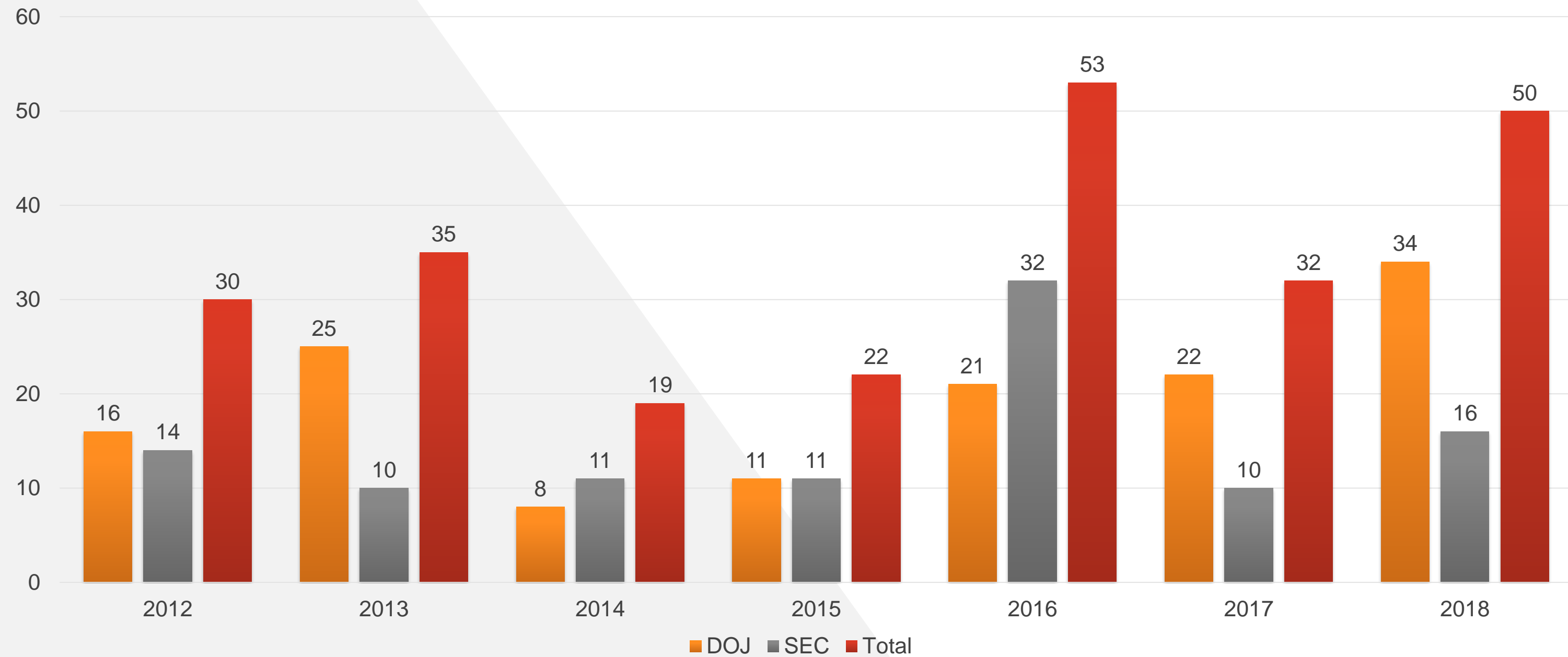
- Number of DOJ actions against individuals rose from 16 in 2017 to **28 in 2018**, mostly due to PDVSA corruption scandal
- \$1.8B out of the total \$2.9B total monetary penalties attributed to Petrobras settlement





## *Enforcement Trend Line*

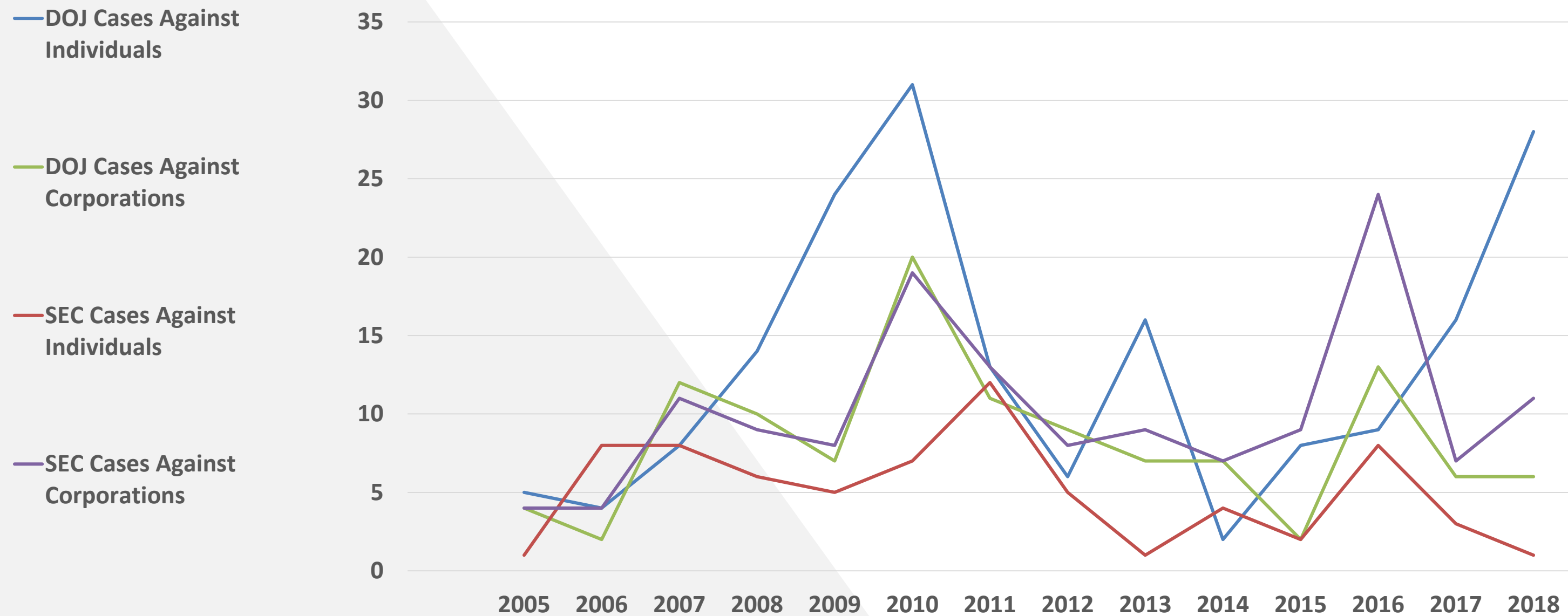
FCPA Enforcement Actions (2012-2018)





# *Increased Risk of Enforcement*

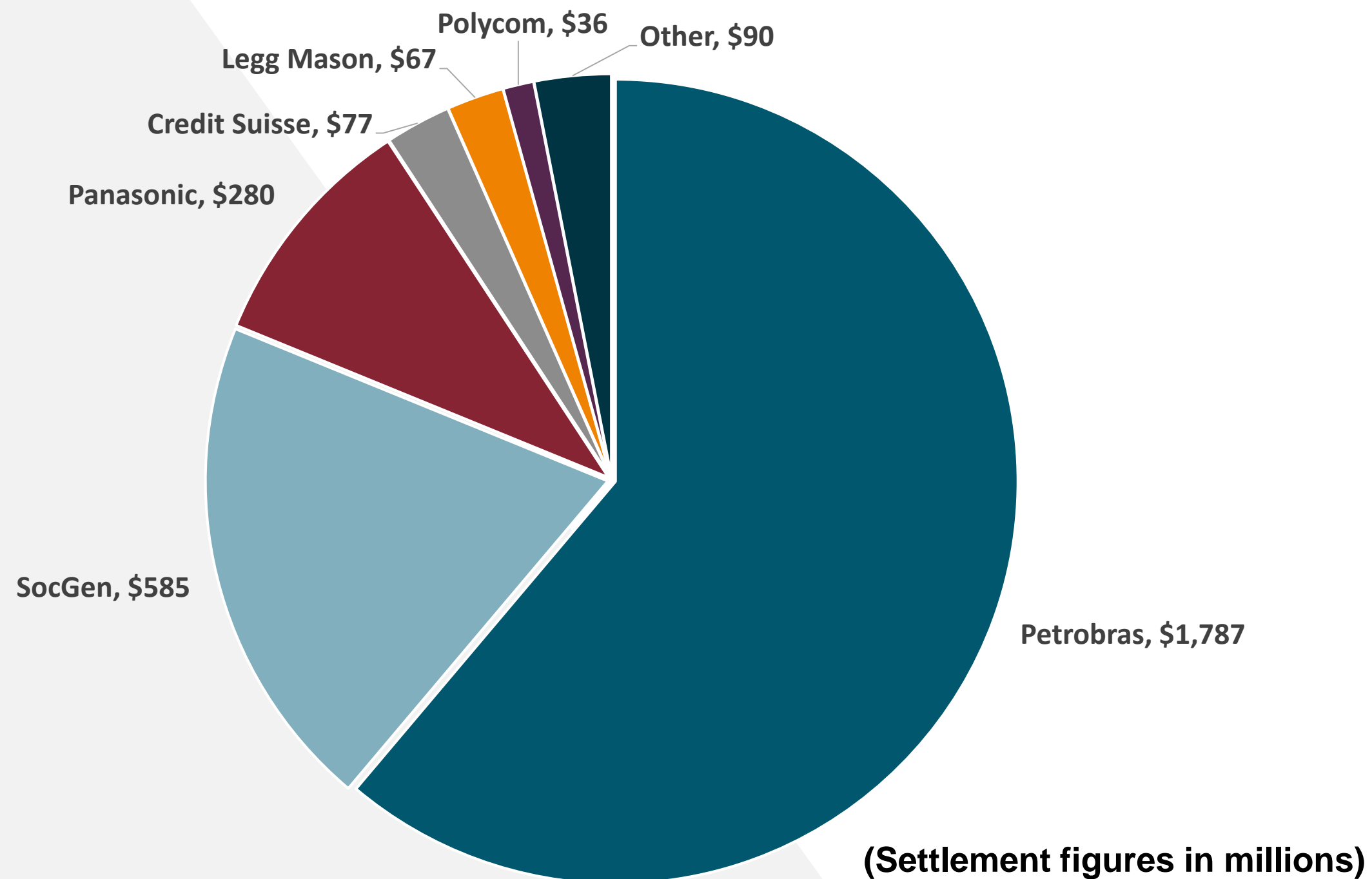
DOJ and SEC Enforcement Actions 2005-2018





## *Record-Breaking Settlement Amounts*

**2018 Corporate Settlements Total: \$2.9 Billion**





## Top 10 Monetary Settlements

\* Denote globally coordinated resolutions in which the DOJ/SEC credit companies for amounts paid to foreign authorities or other specified parties (e.g., shareholders), but companies remained liable to the DOJ/SEC for any unpaid amounts.

No.	Company	Date	Total Resolution	DOJ Liability (actual payment)	SEC Liability (actual payment)	Foreign Gov't Payments / Other Payments
1	<b>Odebrecht S.A./ Braskem S.A.*</b>	12/21/2016	\$3,557M	<b>Odebrecht:</b> \$2,600M (\$93M) <b>Braskem:</b> \$957M (\$94.9M)	<b>Braskem:</b> (\$65M) (imposed by DOJ but paid to SEC)	<b>Odebrecht:</b> \$2,391M (Brazil); \$116M (Switzerland) <b>Braskem:</b> \$442.8M (Brazil – crim penalty); \$94.89M (Switzerland); \$260M (Brazil – disgorgement)
2	<b>Petrobras*</b>	9/27/2018	\$1,786M	\$853.2M (\$85.32M)	\$933M (\$85.3M – imposed by DOJ but paid to SEC)	\$682.6M (Brazil) \$933M (shareholders)
3	<b>Siemens AG</b>	12/15/2008	\$1,746M	\$450M	\$350M	\$800M (Germany); \$46M (Nigeria); \$100M (World Bank)
4	<b>Telia*</b>	9/21/2017	\$965M	\$548M (\$274M)	\$417M (\$208.5M)	\$274M (Netherlands - crim); \$32.7M (Netherlands – disgorgement – expected); \$175.8M (Sweden - expected)
5	<b>SBM Offshore</b>	11/30/2017	\$825M	\$238M	--	\$240M (Netherlands); \$347M (Brazil)
6	<b>Vimpelcom*</b>	2/18/2016	\$795M	\$460.3M (\$230.1M)	\$375M (\$167.5M)	\$397.5M (Netherlands)
7	<b>Alstom S.A.</b>	12/22/2014	\$772.3M	\$772.3M	--	--
8	<b>Société Générale S.A.*</b>	6/4/2018	\$585.6M	\$585.6M (\$292.8M)	--	\$292.8 (France)
9	<b>KBR/Halliburton</b>	2/11/2009	\$579M	\$402M	\$177M	--
10	<b>Teva Pharmaceuticals</b>	12/22/2016	\$519M	\$283M	\$236M	--





## *Global Enforcement and Cooperation*

- Cooperation and information-sharing among governments on the rise

2017

U.S., Brazilian, and Singaporean cooperation for **Keppel**  
 U.S. and Brazilian cooperation for **SBM**  
 U.S., U.K., and Brazilian cooperation for **Rolls-Royce**  
 U.S., Swedish, and Dutch cooperation for **Telia**

2018

U.S./Brazilian cooperation for **Petrobras**  
 U.S./French cooperation for **Société Générale**  
 U.S./Swiss cooperation in individual prosecutions related to bribes paid to **PDVSA**

Ongoing

U.S./French/U.K. cooperation in **Airbus** investigation  
 Potential other, undisclosed investigations

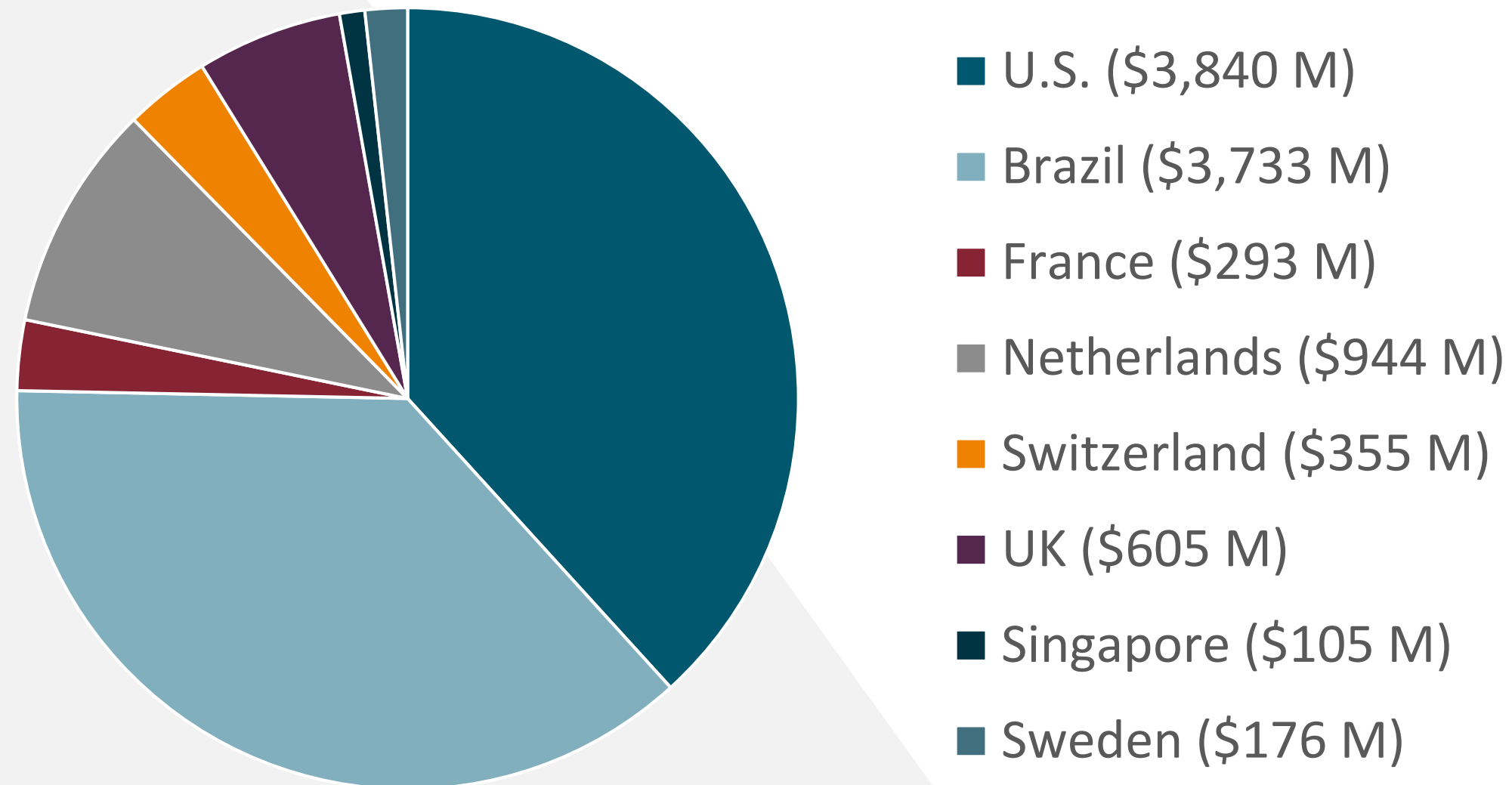
- Sizeable share of fines paid to foreign jurisdictions
- 5 out of top 10 largest FCPA settlements in history are globally coordinated resolutions, and occurred within the past 3 years





## *Global Enforcement and Cooperation, cont'd*

### Monetary Penalties in Global FCPA Resolutions (2016 to 2018)





## *Resolution: Petrobras (2018)*

In September 2018, the Brazilian state-owned energy company agreed to pay \$1.78 billion in penalties and disgorgement

- Second largest FCPA penalty in history
- Approximately 80% of Petrobras's \$853.2M criminal penalty will be paid to Brazilian authorities
- Illustrates the DOJ's and SEC's prioritization of more significant cases
- Demonstrates continued U.S. cross-border cooperation
- Marks U.S. authorities' second-ever settlement with a state-owned enterprise



**PETROBRAS**



## *Resolution: Société Générale (2018)*

In September 2018, the French bank agreed to pay \$585 million in penalties

- Eighth largest penalty in FCPA history
- Represents the first U.S.-French coordinated resolution in a foreign bribery case
- Half of the penalty will be paid to the French prosecuting office







## *Investigations Conducted by Foreign Authorities*

DOJ closed two investigations in 2018, in deference to investigations conducted by foreign authorities

- **Güralp Systems** (announced Aug. 22, 2018): DOJ issued declination in part because of the U.K. Serious Fraud Office's ongoing investigation
- **ING Group NV** (announced Sep. 5, 2018): SEC issued declination following ING's \$900M settlement with Dutch authorities





## *DOJ China Initiative*

DOJ also announced a specific “China Initiative” in 2018

- Launched by Attorney General Jeff Sessions in November 2018 after a six-month investigation of China’s trade practices
  - The Initiative appears to be focused on “economic espionage” by China
- One of the priorities of the China Initiative includes “identify[ing] Foreign Corrupt Practices Act (FCPA) cases involving Chinese companies that compete with American businesses”
  - May result in targeting of Chinese companies for FCPA-related offenses
  - Coincides with decline across East Asia in companies self-reporting potential bribery to U.S. enforcement authorities
  - May be complicated by China’s International Criminal Judicial Assistance Law (ICJA), which may prevent companies from providing evidence or testimony in criminal proceedings outside of China without government approval



## *Focus on Individuals*

DOJ continued to prioritize the prosecution of culpable individuals in 2018

- In 2018, DOJ emphasized its focus on individuals, stating that its “goal in every case should be to make the next violation less likely to occur by punishing individual wrongdoers” because “a company only acts through its employees and agents”
- Number of DOJ actions rose from 16 in 2017 to 28 in 2018, continuing an upward trend that began in 2014

SEC only brought 3 actions against individuals in 2018

- However, SEC has indicated continued heightened focus on individuals and “gatekeepers”



Jho Low  
(1MDB)



Matthias Krull  
(PDVSA)



Raul Gorrín Belisario  
(PDVSA)



Arturo Escobar Dominguez  
(PetroEcuador)



## *Focus on Individuals*

### Widespread Global Scandals Result in Numerous Charges

#### PDVSA

- DOJ charged 14 additional individuals in 2018 and announced 10 guilty pleas
  - Among those charged include “professional money launderers” and former PDVSA officials, primarily charged with money laundering offenses
  - Vendors and businesspeople have primarily been charged with FCPA-related offenses

#### PetroEcuador

- DOJ announced charges against 4 individuals for facilitating \$3.2M in bribes
  - Individuals include former PetroEcuador employees, contractors, and financial advisors
  - 3 of the individuals have entered guilty pleas

#### 1MDB

- DOJ brought the first individual charges arising from the 1MDB investigation
  - DOJ unsealed a criminal indictment charging Malaysian financier Jho Low; a guilty plea of an investment banker; and a guilty plea of a former DOJ employee

#### Individual Charges After Corporate Resolutions

- **Rolls-Royce:** DOJ charged 2 individuals with money laundering violations 17 months after Rolls-Royce DPA
- **SQM:** SEC resolved action against former CEO in Sep. 2018, 8 months after SQM settled the related misconduct
- **Panasonic:** SEC resolved charges against former CEO and CFO of U.S. subsidiary in Dec. 2018, 7 months after Panasonic’s settlement





## *Speeding Up Resolutions*

Both the DOJ and SEC emphasized in 2018 shortening the length of investigations as a priority

- DOJ: has cited two major settlements as examples of settlements resolved in under 18 months: *Odebrecht* (2016) and *Keppel* (2017)
- SEC: explained goal is to reduce burden on companies under investigation and address challenges with investigating older conduct

However, most of the investigations closed in 2018 had been pending for several years

- *Beam Suntory*: disclosed in Nov. 2012 → settled in Jul. 2018 = 5+ years
- *Dun & Bradstreet*: announced in Mar. 2012 → settled in Apr. 2018 = 6+ years



## *Prior Offenders*

- The SEC resolved another FCPA action against **Stryker**, which had previously settled charges with the SEC in 2013
  - Stryker's internal accounting controls were found insufficient to detect third-party improper payments risks in multiple regions in Asia
  - Allegations related to technical violations of Stryker's own internal policies and did not state that Stryker made any improper payment or earned any ill-gotten gains
  - SEC noted controls failings were unacceptable given Stryker's earlier FCPA settlement
  - Stryker agreed to a \$7.8M penalty and to retain an independent monitor
- **GlaxoSmithKline**, which previously settled FCPA charges with the SEC in 2016, announced a new investigation in 2018
- The persistent government focus on prior offenders suggests that settling an FCPA case may lead to continuing or increased scrutiny



## *Accounting Charges Without Bribery Evidence*

- The SEC brought two actions in 2018 based on internal controls and books and records violations without citing direct evidence of bribery
  - **Stryker.** SEC alleged that the company failed to investigate billing practices, sufficiently document transactions, and train and monitor distributors, but stated only that these deficiencies “increased the risk of bribery and other improper payments”
  - **Elbit.** SEC claimed that Elbit and its subsidiary mischaracterized third-party payments as legitimate business expenses, but alleged only that “some or all of the funds may have been used to make corrupt payments to Romanian government officials”
- DOJ did not bring any case exclusively based on controls violations in 2018



## *Charging Non-U.S. Companies*

- 4 of the 6 DOJ and 7 of the 11 SEC FCPA corporate enforcement actions in 2018 involved non-U.S. companies
  - DOJ: *Société Générale* (France), *Panasonic* (Japan), *Credit Suisse* (Switzerland), *Petrobras* (Brazil)
  - SEC: *Elbit Imaging* (Israel), *Kinross Gold Corp.* (Canada), *Panasonic* (Japan), *Credit Suisse* (Switzerland), *Sanofi* (France), *Petrobras* (Brazil), *Vantage Drilling* (Cayman Islands)
- 9 out of the top 10 FCPA corporate resolutions now involve non-U.S. parent companies





## *II. Notable Lessons on FCPA Risk Areas*



## *Continued Risks – Third Parties*

- Vast majority of FCPA cases have involved payments through third parties
- Third parties continue to present significant risk

### **Types of third parties include:**

- Sales agents and consultants
- General contractors and subcontractors
- Travel agents and marketing agencies
- Distributors
- Customs brokers and freight forwarders
- Joint venture partners
- Other vendors



## *Continued Risks – Third Parties*

Matter	DOJ/SEC	Resolution Amount	Third Party Allegations
Société Générale (Jun. 2018)	DOJ	\$585M	Libyan <b>intermediary</b> paid over \$90M in bribes to officials in Libya in exchange for business from the Libyan sovereign wealth fund
Panasonic (Apr. 2018)	DOJ/SEC	\$280M	subsidiary hired <b>consultants</b> to obtain confidential non-public business information regarding negotiations with competitors
Sanofi (Sep. 2018)	SEC	\$25M	employees in Kazakhstan used local <b>distributors</b> to pay bribes to government officials in exchange for tender awards
United Technologies Corp. (Sep. 2018)	SEC	\$13.9M	<b>subcontractors</b> and distributors made payments to an Azerbaijani official and an employee of a Chinese state-owned bank
Dun & Bradstreet (Apr. 2018)	SEC	\$9M	subsidiary in China made payments to Chinese government officials through third-party <b>agents</b> in exchange for government data important to the company's business
Beam Suntory (Jul. 2018)	SEC	\$8M	<b>promoters</b> and <b>distributors</b> made improper payments to various government officials in India via false or inflated invoices, which were recorded as legitimate discounts and commissions
Vantage Drilling (Nov. 2018)	SEC	\$5M	Brazilian third-party <b>agents</b> provided improper payments to Petrobras officials and other Brazilian politicians in exchange for Petrobras entering into a \$1.8B contract with the company
Kinross Gold Corp. (Mar. 2018)	SEC	\$1M	paid a third-party <b>consultant</b> approximately \$12,000 in petty cash to obtain a mining permit





## *Continued Risks – Hiring and Favors*

### ***Credit Suisse (Jul. 2018) –***

- Agreed to pay a \$47M criminal penalty to the DOJ and \$29.8M in disgorgement to the SEC to resolve allegations that it bribed foreign officials in the Asia-Pacific region by hiring their relatives
- In total, between 2007-2013, Credit Suisse hired more than 100 candidates who were connected to foreign government officials
- Signals that the DOJ's and SEC's investigations into bank hiring practices have not abated under the current administration
- Other banks have reported regulatory inquiries from the DOJ and SEC concerning hiring practices in Asia



## ***Continued Risks – Gifts and Travel***

### ***Teradata (Feb. 2018) –***

- Announced that the DOJ and SEC closed investigations into the company, which had focused on potentially improper travel, gifts, and other expenses provided by Teradata's subsidiary in Turkey

### ***United Technologies Corp. (Sep. 2018) –***

- Paid \$13.9M to the SEC to resolve charges that its subcontractors and distributors, in addition to other payments to government officials, provided trips and gifts to various foreign officials in China, Kuwait, South Korea, Pakistan, Thailand, and Indonesia





## *Continued Risks – Charitable Contributions*

### ***Laureate Education (Nov. 2018) –***

- Announced that the DOJ and SEC closed investigations into the company, which had focused on an \$18M charitable contribution made in 2014 by Laureate's institution in Turkey
- Laureate began an internal investigation in 2016 to determine whether the donation was part of an embezzlement scheme or paid to government officials



### *III. U.S. Government Policies and Priorities*



## *FCPA Corporate Enforcement Policy*

- Announced in late 2017
  - Requirements:
    - Voluntary self-disclosure
    - Full cooperation
    - Remediation and disgorgement
- } When satisfied, presumption of declination under the policy
- Disclosure and cooperation must be timely and proactive
  - Defines “declination” as:
    - “A case that would have been prosecuted or criminally resolved except for the company’s voluntary disclosure, full cooperation, remediation, and payment of disgorgement, forfeiture, and/or restitution”
    - Distinguishes a declination from a case where the government concludes it does not have sufficient evidence to bring a case (in those situations, resolution is a “closure”)
  - Absent voluntary disclosure, companies still eligible for substantial penalty discount where other elements are met
    - But “aggravating circumstances” overcome presumption of declination





## *FCPA Corporate Enforcement Policy, cont'd*

DOJ announced 4 declinations under Corporate Enforcement Policy in 2018

- 2018: 4 declinations: *Dun & Bradstreet, Güralp, ICBL, Polycom*
- 2017: 2 declinations
- 2016: 5 declinations (under Pilot Program)

Unclear whether Corporate Enforcement Policy has had significant impact on voluntary disclosure, given low declination numbers

- Incentives do not include immunization from monetary penalties – all 4 declinations in 2018 still involved (or will likely involve) fines or disgorgement
- DOJ does not always award “full” credit (25% reduction of penalties) for cooperation and remediation; multiple companies received “partial” credit (15-20% reduction) in 2018
- DOJ did choose to fully decline prosecution for two companies that voluntarily disclosed but had aggravating circumstances in 2018



## *Voluntary Disclosure and Cooperation: DOJ*

### 2018 Declinations under the FCPA Corporate Enforcement Policy

- ***Dun & Bradstreet***

- Paid \$9M in a parallel resolution with the SEC

- ***Güralp Systems:***

- No U.S. financial penalty has been levied, but the company is negotiating a settlement with the UK SFO which may include a penalty

- ***ICBL:***

- Paid approximately \$94,000 in disgorgement to the DOJ



## *Voluntary Disclosure and Cooperation: DOJ, cont'd*

### 2018 Declinations under the FCPA Corporate Enforcement Policy, cont'd

- **Polycom:** Required to disgorge a combined \$20.3M in penalties
  - DOJ disgorgement is in addition to \$15.8M SEC settlement; will be paid to U.S. Treasury Department and the U.S. Postal Inspection Service Consumer Fraud Fund
  - DOJ required for the first time greater disgorgement than what was collected by SEC; this and language in the declination letter suggest that the DOJ's penalty addressed amounts the SEC could not collect due to disgorgement limitations under *Kokesh*

Pursuant to this letter agreement, the Company agrees to disgorge \$30,978,000 (the "Disgorgement Amount"), which represents the profit to the Company from the illegally obtained contracts in China. The Company will pay \$10,672,926 in disgorgement of profits earned within the time limits prescribed by 28 U.S.C. § 2462 to the U.S. Securities and Exchange Commission, \$10,152,537 to the United States Treasury Department, and \$10,152,537 to the United States Postal Inspection Service Consumer Fraud Fund. The payments to the Treasury

- This is the largest amount paid by a company that received a declination under the Corporate Enforcement Policy – raises question of what constitutes "significant profit" under the policy



## *Voluntary Disclosure and Cooperation: DOJ, cont'd*

Other resolutions: full cooperation and remediation remained in focus for the DOJ in determining monetary penalties

- **Petrobras** (25%\*): DOJ awarded full credit for cooperation and remediation, even though the company did not voluntarily disclose the conduct
- **Société Générale** (20%\*): DOJ awarded “substantial credit” for cooperation but did not receive “full credit” due to “delays during the early stages of the investigation”
- **Credit Suisse** (15%\*): DOJ awarded “partial credit” for “reactive instead of proactive” cooperation and lack of complete remediation
- **Panasonic** (20%\*): DOJ awarded “partial credit,” acknowledging thorough investigation but noting that the company did not disclose voluntarily and that its remedial measures were untimely
- **Transportation Logistics Int’l** (25%+\*): DOJ initially granted 25% discount for full cooperation and remediation (\$28.5M to \$21.4M), then dramatically cut the fine to \$2M total to account for the company’s inability to pay

\* Represents the discount value off the bottom of the U.S. Sentencing Guidelines fine range.



## *DOJ Policy Changes*

DOJ announced three significant enforcement policy changes in 2018 (not limited to FCPA cases):

- **No “piling on” policy** (announced May 9, 2018): provides guidelines aimed at preventing duplicative fines on companies under investigation by multiple government agencies
  - Appears largely to codify existing practice
- **Monitorship policy** (announced Oct. 12, 2018): details when and to what extent prosecutors should impose monitorships
  - Signals that the DOJ will reduce and narrow occurrence and scope of monitorships
- **Changes to requirements for corporate disclosures for culpable individuals** (announced Nov. 29, 2018): reduces amount of information companies seeking cooperation credit need to provide about employees allegedly involved in criminal conduct
  - Makes changes to the 2016 Yates Memo, which required companies to provide information on all culpable individuals



## *Voluntary Disclosure and Cooperation: SEC*

SEC continues to adhere to its more informal practices in considering voluntary reporting, cooperation, and remediation in determining civil penalties

- **Sanofi:** Sanofi paid \$20M in disgorgement and interest but paid only a \$5M civil penalty, due to voluntary disclosure, regular and timely cooperation, and remedial efforts, including a compliance program overhaul
- **United Technologies Corp.:** SEC limited UTC's civil penalty to \$4M, even though UTC allegedly benefited over \$9M from the misconduct, citing the company's cooperation
- **Vantage Drilling:** SEC noted it did not impose financial penalties upon Vantage beyond \$5M in disgorgement for conduct related to a \$1.8B Petrobras services contract, mostly due to the company's poor financial condition
  - SEC also noted Vantage's full cooperation, voluntary disclosure of information and documents that the SEC "would not have been readily able to discover," and remedial actions



## *SEC Enforcement Trends*

- SEC did not announce any new FCPA policies in 2018 but continued to signal its move away from the “broken windows” approach
  - In 2017, the SEC stated it would be more “selective” and “bring a few cases” to send a broader message, rather than “sweep the field” and focus on raw enforcement numbers
  - 2018 enforcement actions support the continuation of this trend
- SEC has discussed focus on “gatekeepers” (lawyers, auditors and accountants who help others carry out their schemes) due to limited resources
  - Due to hiring freeze, SEC enforcement staff has seen significant reduction in personnel
- SEC’s whistleblower program continues to be an active source of new cases for the SEC
  - Both the number of whistleblower tips and size of payouts to whistleblowers increased in 2018





## *IV. Recent Legal Developments*



## *Jurisdiction Over Foreign Nationals*

### ***United States v. Hoskins*** (2d Cir. 2018)

- DOJ charged Hoskins, a British national, with conspiring to participate in a bribery scheme involving a \$118M project to build power stations for Indonesia's state electricity company
- In August 2018, the Second Circuit affirmed the District Court's limitations on the jurisdictional reach of the FCPA:
  - Congress intended to exclude foreign nationals from the reach of the FCPA if such individuals did not act within the United States and did not act as an agent of a domestic concern
  - The government cannot use a conspiracy charge to reach such persons
- Decision will mostly affect prosecutions of local employees of foreign companies
- *Hoskins* is currently on appeal to the U.S. Supreme Court



## *Time-Barred Disgorgement and Injunction Claims*

### ***SEC v. Cohen*** (E.D.N.Y. July 12, 2018)

- District court dismissed an SEC action against two individuals, stating that the conduct was time-barred under *Kokesh v. SEC*, in part because the SEC sought disgorgement beyond the 5-year limitation period
  - In June 2017, the court in *Kokesh* had concluded that disgorgement in SEC cases is subject to the 5-year statute of limitations under 28 U.S.C. § 2462
  - The Eastern District expanded *Kokesh* to cover injunctions directing defendants to refrain from any future violations of securities laws
  - Decision also confirms that SEC tolling agreements should be construed narrowly to apply only to the specific investigation referenced in the agreement





## *U.S. Nexus and Alternative Charging Theories*

### ***United States v. Chi Ping Patrick Ho*** (S.D.N.Y. July 19, 2018)

- Government charged Ho, a Chinese national, in connection with his role in bribing government officials in two African nations
- District court affirmed the government's flexibility in using alternate FCPA charging theories:
  - Under certain circumstances, the domestic concern and territorial provisions of the FCPA are not mutually exclusive and can be charged as alternative theories against a single defendant
- Correspondent banking transactions cleared through the U.S. were sufficient to form a U.S. nexus for money laundering violations
  - Ho caused funds to be transferred from China and to or through the U.S. to foreign countries, in furtherance of the unlawful scheme
  - Transaction from an account in Hong Kong to an account in New York and then to Dubai was sufficient to demonstrate that transactions occurred "to" and "from" the U.S.
  - Despite *Ho*, questions may continue to arise regarding whether dollar-denominated clearance activity is itself sufficient to serve as a jurisdictional hook for potential money laundering violations for transactions that otherwise occur entirely outside the U.S.
- Ho was ultimately convicted in December 2018 of 7 out of 8 counts



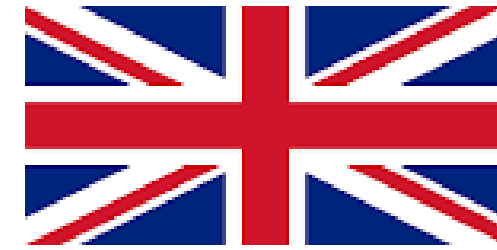
## *V. International Developments*





## *International Anti-Corruption Efforts*

- ✓ United Kingdom
- ✓ France
- ✓ Germany
- ✓ China
- ✓ Malaysia
- ✓ Singapore
- ✓ Brazil
- ✓ Mexico
- ✓ Argentina
- ✓ Other Developments



## *United Kingdom*

- Leadership changes in the U.K.'s Serious Fraud Office (SFO)
  - Lisa Osofsky, a dual U.S./U.K. national, was announced as the new Director – may lead to increased cooperation with national and international law enforcement
- Significant Cases
  - SFO announced it launched a formal investigation into **Chemring Group** in January 2018
  - SFO indicted **Unaoil Ltd** and **Unaoil Monaco SAM** in June 2018
  - SFO brought charges against two former employees of **Güralp Systems**
  - SFO has so far secured 9 convictions to date in investigations related to **FH Bertling**
  - **Griffiths Energy** represented the first instance of corruption proceeds returned overseas (to Chad) in a civil recovery case
- Legislative Developments
  - The House of Lords appointed a Select Committee to review the implementation and enforcement of the UKBA
  - Current figures indicate that UKBA enforcement has been insufficient



## *France and Germany*



### — France

- The French Supreme Court rendered a judgment in a French ***Oil-for-Food Program*** case, holding senior company managers liable and imposing criminal sanctions
- ***Société Générale*** agreed to a settlement with U.S. and French authorities to end investigations into the bank's businesses in Libya
- The Minister of Justice issued administrative guidelines laying out the details of the implementation of the Convention judiciaire d'intérêt public ("CJIP"), the French equivalent of a DPA

### — Germany

- ***Airbus SE*** agreed to pay an €81M fine to end a five-year bribery investigation
- German arms manufacturer ***Heckler & Koch*** is under investigation for bribing Mexican government officials to enable the sale of assault rifles to the Mexican government
- Several top-level managers of the ***German Football Association*** are under investigation related to bribes paid in 2005 to the FIFA executive committee



# China



## — Enforcement Efforts

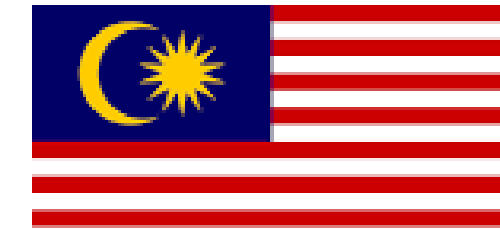
- In December 2018, President Xi Jinping pledged to wage war on graft until corruption has been expunged from the Communist Party of China
- In nine months in 2018, 464,000 corruption cases were filed, with 406,000 people disciplined, including 39 government officials
- Several senior government officials and high-ranking employees of state-owned enterprises have been placed under investigation
- Chinese police are investigating several employees of ***Clear Media Ltd***, a subsidiary of ***Clear Channel Outdoor***, for misappropriation of funds in China

## — Legislative Developments

- China recently amended its Criminal Procedure Law (CPL) to formalize leniency rules in guilty pleas and revise procedures for investigating the corruption of government officials
- China enacted the International Criminal Judicial Assistance Law (ICJA Law), which could prevent China-based individuals and entities including subsidiaries of non-Chinese companies, from providing assistance in criminal proceedings outside of China



## *Malaysia and Singapore*



### — Malaysia

- Malaysian authorities, the Office Attorney General of Switzerland, and the DOJ continued investigations into the billions of dollars allegedly stolen from Malaysian sovereign wealth fund **1Malaysia Development Berhad (1MDB)**
- The Malaysian Anti-Corruption Commission (Amendment) Act of 2018 imposes liability on commercial organizations and their directors and managers for acts of bribery committed by employees for the organization's benefit

### — Singapore

- The Corrupt Practices Investigations Bureau (CPIB) is investigating several individuals employed by **Keppel** in connection with a decade-long bribery scheme involving Brazilian politicians and Petrobras officials





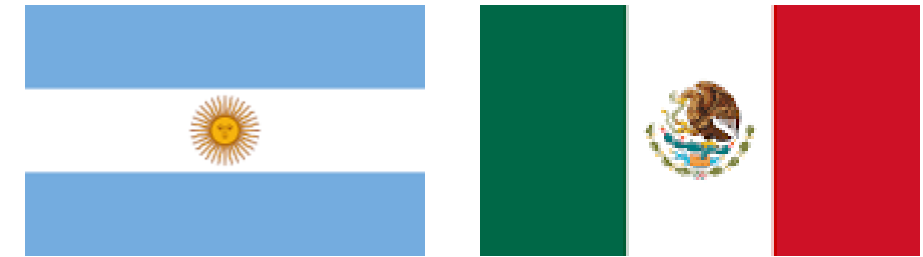
## *Brazil*



- Operation Lava Jato (“Car Wash”)
  - Brazilian prosecutors continue to secure convictions related to a vast corruption scheme that exploited contracts with **Petrobras**
  - By October 2018, Operation Car Wash had resulted in more than 200 convictions for corruption, money laundering, abuse of international financial systems, and drug trafficking
  - Brazilian prosecutors recently levied corruption and money laundering charges against the former CEO of U.S. oil services company **Vantage Drilling** in connection with Vantage’s contract with Petrobras
- Operation Carne Fraca (“Weak Meat”)
  - Brazilian prosecutors also have expanded an investigation which focuses on the alleged bribery of food-sanitation inspectors by **BRF** and **JBS**, the world’s top beef and poultry exporters



## *Argentina and Mexico*



### — Argentina

- The 2018 investigation into the ***Cuadernos (“Notebook”) Scandal*** began when an Argentinian newspaper obtained notebooks maintained by a chauffeur of a former ministry official, which detailed an extensive bribery scheme to obtain public works contracts
- Commentators are speculating that the Cuadernos Scandal may become the next Operation Car Wash in its rapid expansion, potential cross-border scope, and use of plea bargains to gather information regarding additional corruption

### — Mexico

- New regulations issued in Mexico in 2018 aim to ensure that companies contracting with state-owned oil company ***Petróleos Mexicanos (PEMEX)*** have adequate compliance measures in place
- Mexico’s attorney general’s office is independently investigating Mexican officials in connection with a massive bribery scheme involving ***Odebrecht***



## *Other Developments*



- Israel: The Israeli authorities' conditional agreement with ***Teva Pharmaceuticals*** represented the second to be brought under Israel's foreign bribery statute, enacted in 2008
- India: A comprehensive Amendment Act to India's Prevention of Corruption Act (PCA) establishes a substantive offense of bribery by commercial organizations that give or promise to give an undue advantage to a public servant
- Canada: Amendments to Canada's Criminal Code include new processes for "remediation agreements" that will function similarly to DPAs
- Russia: New amendments to the Russian Code on Administrative Offenses exempt legal entities from liability for bribery if they assist authorities in the discovery or investigation of bribery
- Ukraine: The newly established High Anti-Corruption Court (HACC) will consider corruption cases under the jurisdiction of the National Anticorruption Bureau of Ukraine (NABU)
- Bulgaria: The Bulgarian parliament passed laws to create a special anti-corruption unit in response to persistent pressure from the European Union for Bulgaria to strengthen its anti-corruption measures
- Austria, Switzerland, and Poland: DPA regimes and anti-corruption reforms are in the process of being enacted



# *International Organizations*



## — World Bank

- 2018 saw an increase in enforcement efforts by the World Bank, including debarment of 78 firms and individuals in 2018 (up from 58 in 2017), opening of 68 new investigations into allegations of misconduct in bank-funded projects (up from 51 in 2017), and recognition of 73 cross-debarments from other multilateral development banks
- Announced changes to its monitorship policy – the World Bank will now consider a lawyer or consultant who works at a firm with other enforcement matters before the organization’s anti-corruption arm, Integrity Vice Presidency (INT), for a potential monitorship

## — Organisation for Economic Co-operation and Development (OECD)

- Continued “Phase 4” anti-bribery monitoring efforts, which included scheduled visits to some of the 43 signatory countries to the OECD’s Convention on Combating Bribery of Foreign Public Officials in International Business Transactions





## *VI. Predictions for 2019*





## *Predictions for 2019*

- FCPA enforcement will remain a priority
- Continued focus on individual accountability, including on gatekeepers, in conjunction with pursuing large corporate fines from both U.S. and non-U.S. companies, often in coordination with foreign authorities
- Continued emphasis on self-reporting and cooperation through use of Corporate Enforcement Policy
- Continued SEC movement away from “broken windows” policy to focus on larger resolutions
- Continued investigation and prosecution of non-U.S. companies
- Continued geographic focus on Latin America and China
  - Continued investigation of individuals linked to PDVSA, PetroEcuador, and Petrobras
  - DOJ’s announcement of China Initiative



## *Resources*

**WilmerHale Global Anti-Bribery Year-in-Review:  
2018 Developments and Predictions for 2019**

**WilmerHale Global Anti-Bribery Year-in-Review Addendum:  
Summaries of 2018 Resolutions**



## *Questions*

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