

WEBINAR

# *Foreign Corrupt Practices Act and Global Anti-Corruption: 2021 Update*

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October 7, 2021

Speakers: Stephanie Avakian, Christopher Cestaro, Jay Holtmeier, Kimberly Parker and Erin Sloane

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WEBINAR

*Speakers*



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Chair, Securities and Financial  
Services Department  
Former SEC Director of  
Enforcement



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Partner, FCPA and Anti-  
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Former DOJ FCPA Unit Chief



**Jay Holtmeier**  
Co-Chair, FCPA and Anti-Corruption  
Group



**Kimberly Parker**  
Co-Chair, FCPA and Anti-  
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**Erin Sloane**  
Partner, FCPA and Anti-  
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## *Agenda*

- I. Key Takeaways and Trends
- II. Administration and Agency Enforcement Priorities
- III. FCPA Enforcement Statistics
- IV. Recent Enforcement Actions
- V. Litigation and Legal Developments
- VI. International Developments



# *I. Key Takeaways and Trends*



## *Key Takeaways*

- Case counts are down, but that is likely to be temporary
- Signs that Biden Administration will make anti-corruption enforcement a priority
- Typical Administrative transition and personnel changes, but resources remain high
- New tools for law enforcement may give new case leads



## *Anti-Corruption Enforcement Trends*

- Increased use of money laundering charges
- Prioritization of large monetary settlements
- Settlements reflect continued focus on high-risk industries (energy, pharma/healthcare, defense, financial services)
- Reliance on FCPA's accounting provisions to reach settlements
- Continued focus on risks related to third parties
- International law enforcement cooperation
- DOJ and SEC highlight limited effect of COVID on enforcement



## *Anti-Corruption Enforcement Trends (Cont.)*

- Continued focus on bringing individual cases
- Rewards for companies that voluntarily self-disclose, fully cooperate, and appropriately remediate
- Continued CFTC involvement in FCPA-related cases involving commodities



*II. Administration and Agency  
Enforcement Priorities*



# *Relevant DOJ Personnel*

**Assistant Attorney General, Criminal Division**  
Kenneth Polite, Jr.



**Principal Deputy Assistant Attorney General, Criminal Division**  
Nicholas McQuaid



**Acting Deputy Assistant Attorney General, Criminal Division**  
Lisa Miller



**Acting Chief, Fraud Section**  
Joseph Beemsterboer



**Acting Co-Principal Deputy Chief, Fraud Section**  
Lorinda Laryea



**Acting Co-Principal Deputy Chief, Fraud Section**  
Brent Wible



**Chief, FCPA Unit**  
David Last



**Acting Principal Assistant Deputy Chief, FCPA Unit**  
David Fuhr





## *Biden Administration Focused on Anti-Corruption*

**On June 3, President Biden issued a National Security Memorandum establishing the fight against corruption as a core national security interest**

- 200-day interagency review designed to culminate in a report and recommendations on how the U.S. government and its partners can better combat corruption, enhance transparency in the global financial system
- May result in more resources being dedicated to anti-corruption enforcement and may herald an even more aggressive enforcement environment



## *DOJ Anti-Corruption Priorities, Generally*



### **Public comments from DOJ Officials indicate increasing FCPA enforcement**

- Then-Acting Assistant Attorney General Nicholas McQuaid publicly expressed an expectation that the number of FCPA investigations will increase before the end of 2021
- Pointed to the DOJ's focus on developing cases through its own initiatives – including mining certain data sources, employing covert investigative techniques, and continuing to closely collaborate with foreign authorities – as the impetus for DOJ increasing the number of leads for new FCPA cases
- “Redoubling” the DOJ’s commitment to white-collar enforcement:
- “Surge” in resources for corporate enforcement
  - New squad of FBI agents will be designated to work full time within the Fraud Section
- Continued assessment of practices and changes related to corporate crime prosecution to come
  - Focus on NPAs, DPAs, and guilty pleas as “just the start” to companies’ obligations



## *Relevant SEC Personnel*

**SEC Chair**  
Gary Gensler



**Director, Division of Enforcement**  
Gurbir Grewal



**Deputy Director, Enforcement**  
Sanjay Wadhwa



**Chief, FCPA Unit**  
Charles Cain



**Deputy Chief, FCPA Unit**  
Tracy Price





## *SEC Enforcement Priorities, Generally*



- Aggressive enforcement and rulemaking program, with increased protections and oversight, with focuses including:
  - ESG / climate change
  - Cybersecurity / disclosures
  - Market structure (including payment for order flow and gamification of stock trading)
  - Digital asset space
  - Episodic market events (e.g., SPACs)
  - Rule 10b5-1 plans
  - Political contribution disclosures
  - Reversals of Trump-era rulemaking (e.g., shareholder ballot questions, proxy advisors, whistleblowers)



## *Recent Legislation Provides Additional Tools to Prosecutors and Regulators*

### **Anti-Money Laundering Act**

- Significantly expands the scope of DOJ's authority to obtain records from foreign banks that maintain a correspondent account in the U.S.
- Creates two new crimes:
  - Makes it a crime to knowingly misrepresent a material fact to a financial institution concerning the ownership of assets involved in a monetary transaction if the person or entity who owns the asset is a senior foreign political figure, or an immediate family member or close associate of one, and the value of the assets involved is at least \$1 million
  - Makes it a crime to knowingly misrepresent a material fact to a financial institution concerning the source of funds in a transaction that involves an entity that is a primary money laundering concern



## *Recent Legislation Provides Additional Tools to Prosecutors and Regulators*

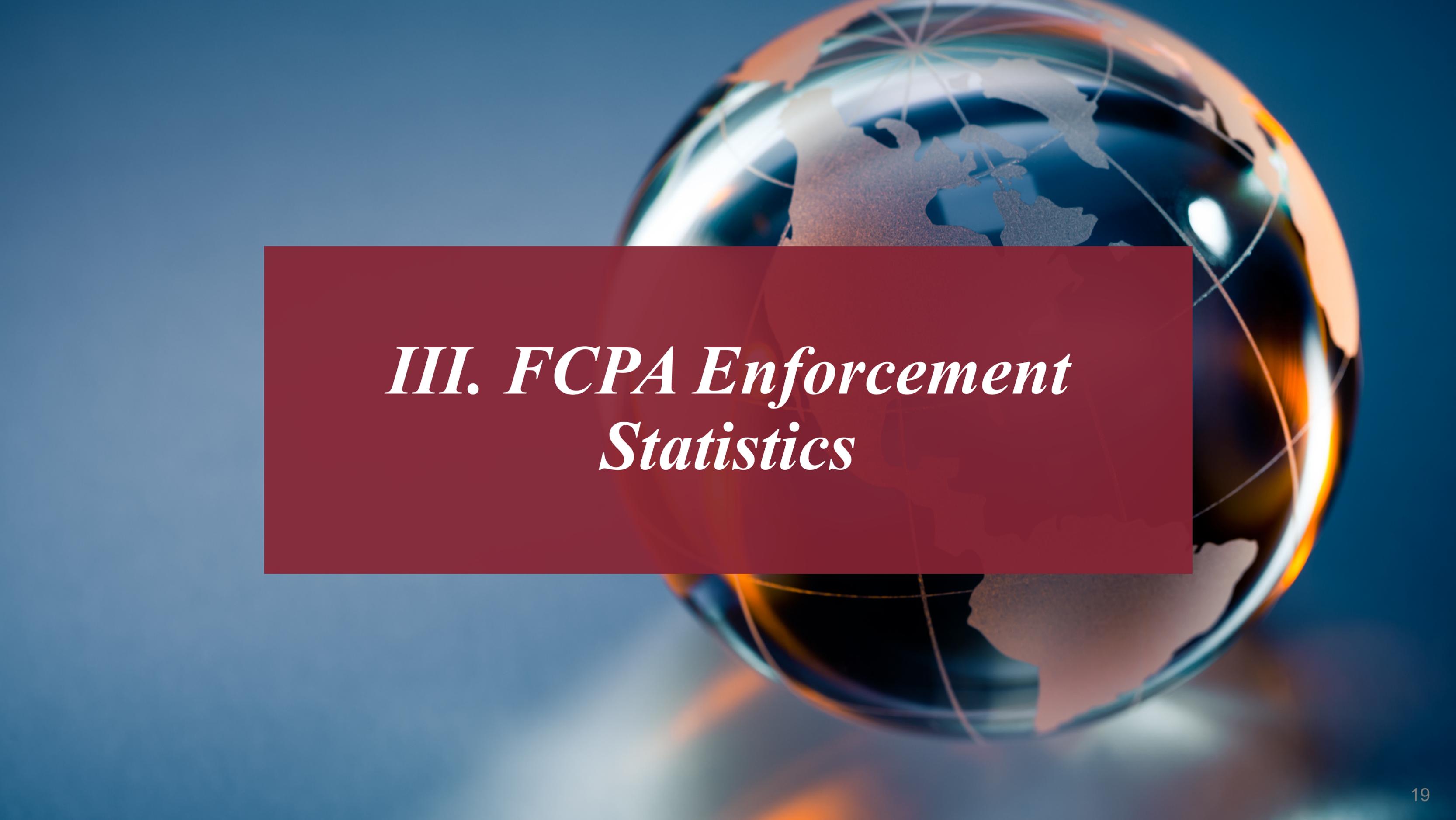
### **Corporate Transparency Act**

- Under the Corporate Transparency Act, many small companies and shell companies will be required to disclose beneficial ownership information to FinCEN
- This information will likely be made accessible to enforcement authorities to be used to generate leads for cases and to advance existing investigations that implicate the corrupt use of shell companies



## *Pandora Papers*

- Pandora Papers, published over this past weekend, involved a leak of confidential records of 14 offshore service providers
- Exposed ties of 35 current and former world leaders and more than 330 politicians and public officials in over 90 countries and territories to shell companies, trusts, foundations and other entities in low- or no-tax jurisdictions
- Like the Panama Papers, this could generate leads for FCPA and other anti-corruption investigations and potentially enforcement actions



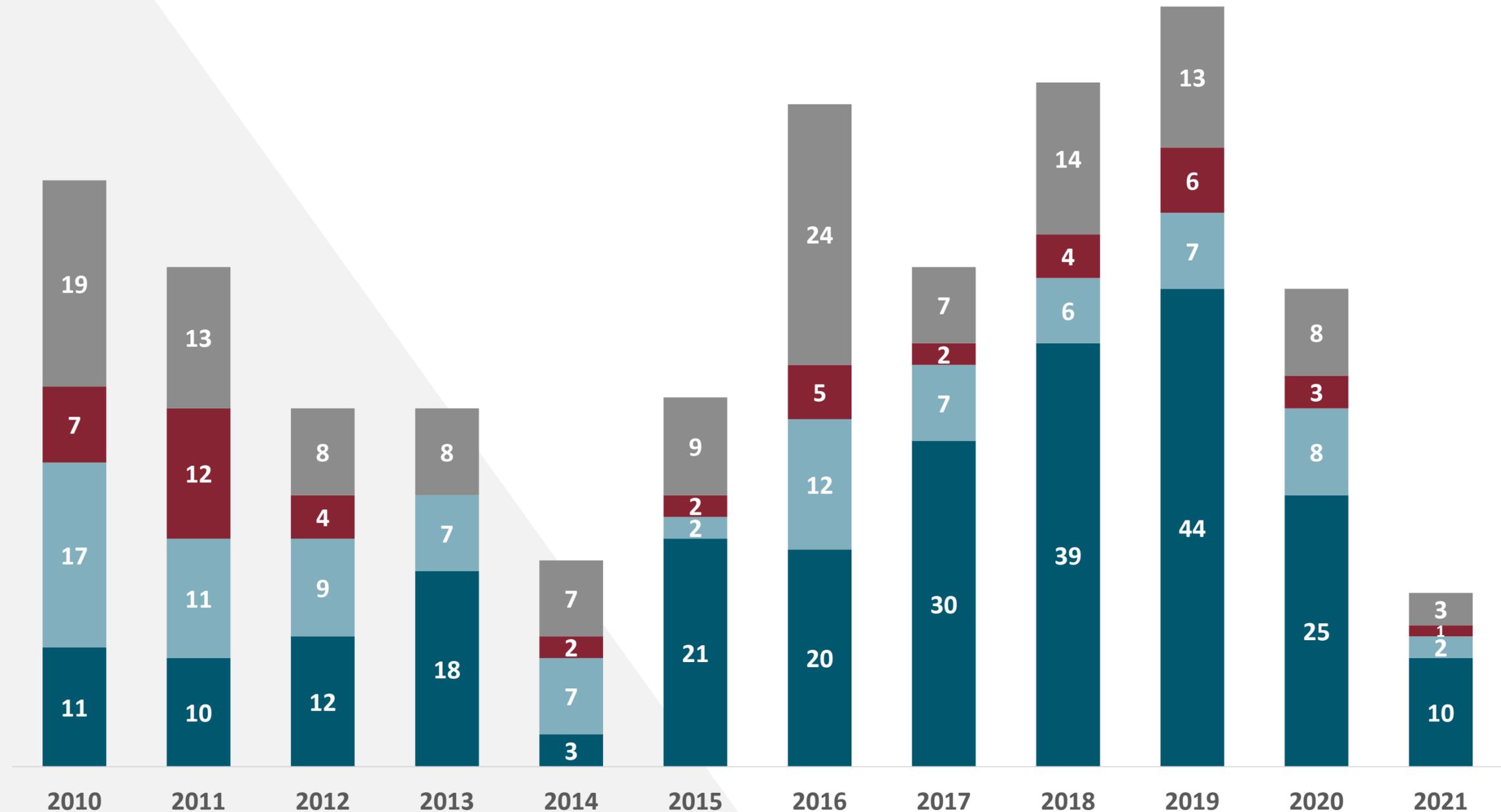
*III. FCPA Enforcement  
Statistics*



# *Decreased Enforcement Activity*

## DOJ and SEC Enforcement Actions 2005-2021

- DOJ Cases Against Individuals
- DOJ Cases Against Corporate Entities
- SEC Cases Against Individuals
- SEC Cases Against Corporate Entities



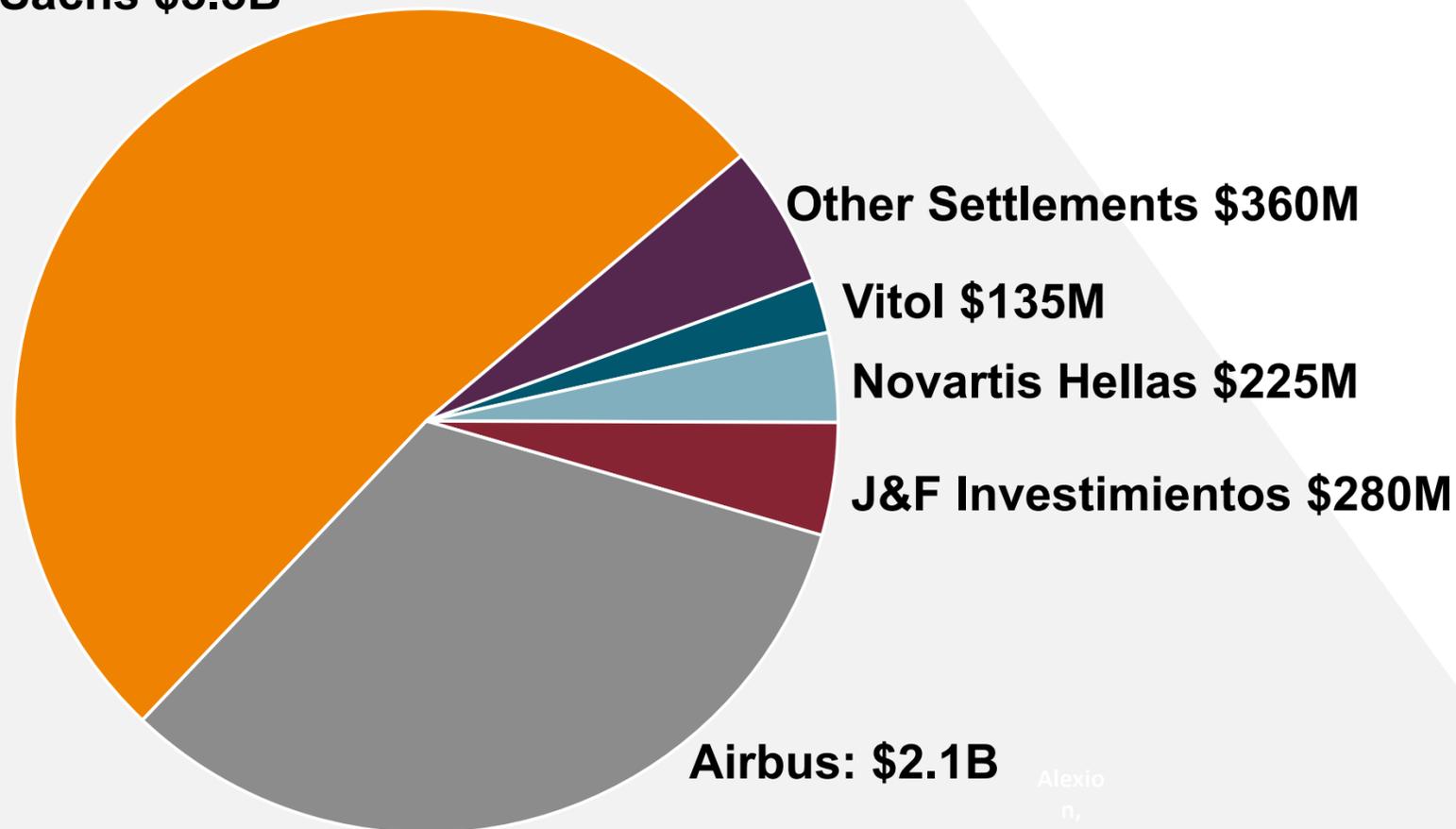


# Corporate Monetary Settlements 2020 vs. 2021 to date

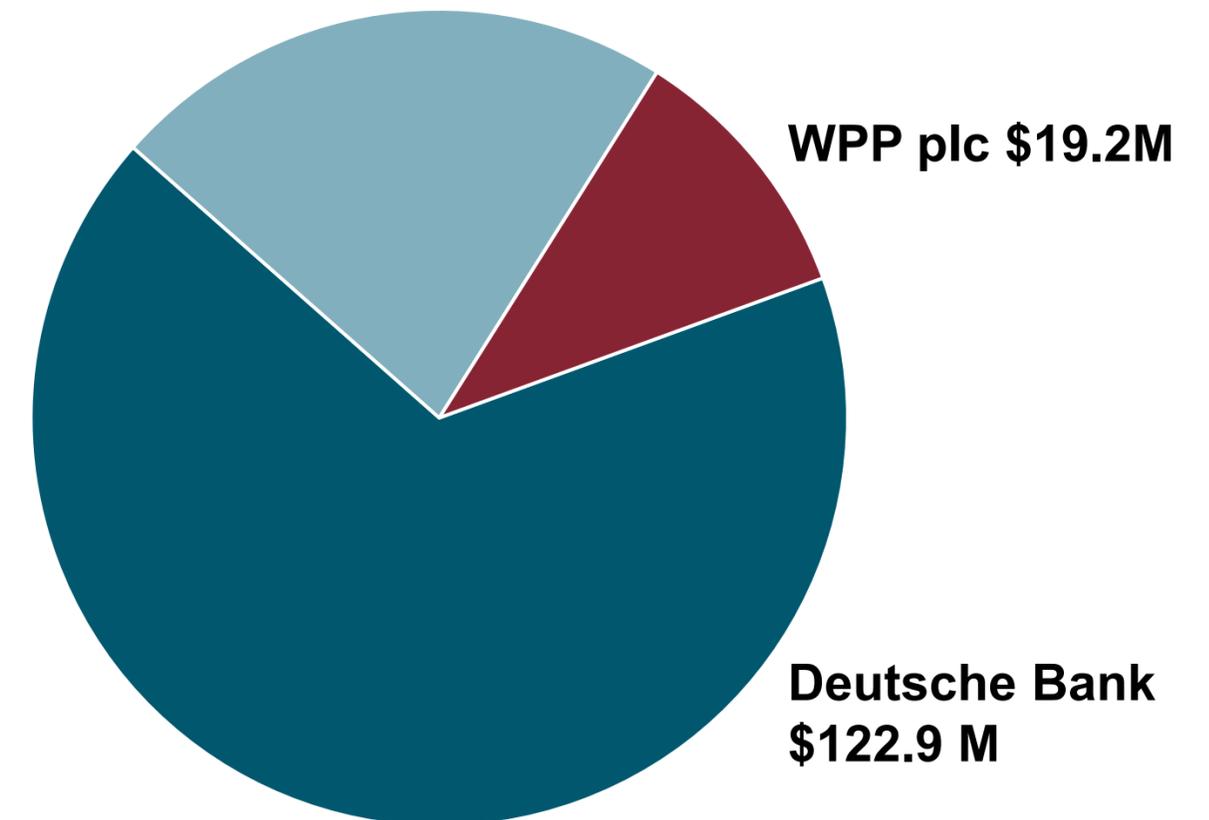
**Total 2020 Corporate Settlements:  
\$6.4B**

**Total 2021 Corporate Settlements:  
\$183.3 Million**

**Goldman Sachs \$3.3B**



**Amec Foster Wheeler \$41.1M**



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*IV. Recent Enforcement  
Actions*

# *Corporate Resolutions*



## 2021 Corporate Resolution Tracker to Date

Company	Resolution Date	Government Entity	Resolution	Alleged FCPA Violation	Industry	Geography
Deutsche Bank AG	Jan. 8, 2021	DOJ	\$79.6M (DPA)	Books & Records and Internal Controls Conspiracy	Financial	Saudi Arabia, UAE, Italy
Deutsche Bank AG	Jan. 8, 2021	SEC	\$43.3M (cease-and-desist order)	Books & Records Internal Controls	Financial	China Italy UAE
Amec Foster Wheeler Ltd.	June 25, 2021	SEC	\$22.8M (cease-and-desist order)	Anti-Bribery Books & Records Internal Controls	Oil & Gas	Brazil
Amec Foster Wheeler Ltd.	June 25, 2021	DOJ	\$18.4M (DPA)	Anti-Bribery Conspiracy	Oil & Gas	Brazil
WPP plc	Sept. 24, 2021	SEC	\$19.2M (cease-and-desist order)	Anti-Bribery Books & Records Internal Controls	Services	Brazil, Peru, China



## *Deutsche Bank AG*



Deutsche Bank

- Between 2009 and 2016, maintained false books and records and failed to implement internal accounting controls related to payments to business development consultants in multiple countries, including Saudi Arabia and the UAE; engaged in separate commodities fraud scheme
- Deutsche Bank settled with SEC
  - Cease-and-desist order and \$43.3 million in monetary sanctions
  - Investigation based out of Salt Lake Regional office
- Deutsche Bank and DOJ entered into DPA after the DOJ filed a criminal information in EDNY alleging one count of conspiracy to violate the books and records and internal accounting controls provisions of the FCPA in December 2020
  - \$79.6 million criminal penalty and three-year self-report requirement on anti-corruption compliance



## *Amec Foster Wheeler*



- Between 2011 and 2014, Amec Foster Wheeler bribed Brazilian officials of state-owned oil company (Petrobras) in exchange for \$190 million contract to design gas-to-chemicals complex; SEC and DOJ coordinated investigation with Brazilian and UK authorities
- Amec Foster Wheeler settled with SEC
  - Cease-and-desist order and \$22.7 million in monetary sanctions
- DOJ information in EDNY charges conspiracy to violate anti-bribery provisions of the FCPA
- Amec Foster Wheeler Energy Limited and DOJ entered into DPA
  - \$18.4 million criminal penalty and on-going cooperation and compliance obligations
- Also entered into settlement agreements with the UK's SFO and the Ministério Público Federal (MPF), the Controladoria-Geral da União (CGU), and the Advogado-Geral da União (AGU) in Brazil



## *WPP plc*



- Between 2013 and 2018, WPP acquired many localized advertising agencies in high-risk markets, including India, China, Brazil, and Peru, and left founders of those acquired entities in control of local operations
- WPP allegedly (1) failed to ensure that acquired subsidiaries implemented internal accounting controls and adequate compliance programs; and (2) did not adequately respond to warning signs of corruption at subsidiaries
- WPP entered neither-admit-nor-deny settlement with SEC for \$19.2 million in monetary sanctions; no monitor and no reporting period

# *Individual Enforcement Actions*



## *Jorge Cherrez Miño, John Robert Luzuriaga Aguinaga*



- Cherrez was manager of Florida-based investment companies
- Luzuriaga was a director of ISSPOL, the Ecuadorian public institution that managed police officers' contributions to social security
- Between 2014 and 2020, Luzuriaga allegedly accepted \$1.4 million in bribes from Cherrez in exchange for ISSPOL's investment business
- **February 2021**: DOJ filed related complaints in SD Fla. charging Cherrez and Luzuriaga with money laundering conspiracy based on underlying FCPA violation of bribing public official



## *Luis Alvarez Villamar*

- Villamar was manager at a private securities clearing house in Ecuador
- Villamar's clearing house acted as custodian for ISSPOL
- Villamar allegedly accepted bribes from Cherez in exchange for allowing him to act as a custodian over ISSPOL investments
- **May 2021**: Villamar entered into plea agreement with DOJ for one count of money laundering conspiracy based on underlying FCPA bribery violation





## *Raymond Kohut*



- Kohut was manager and crude oil trader for commodities trading house Gunvor Group
- Between 2012 and 2020, Kohut allegedly engaged in scheme to bribe Ecuadorian government officials to win business from state-controlled oil company, Petroecuador
- **April 2021**: Kohut pleaded guilty in EDNY to one count of money laundering conspiracy based on underlying FCPA anti-bribery violation



*Arturo Carlos Murillo Prijic, Sergio Rodrigo Mendez Mendizabal, Luis Berkman, Bryan Berkman, and Philip Lichtenfeld*



- Bryan and Luis Berkman and Lichtenfeld, three Florida-based businessmen, allegedly paid bribes to Murillo and Mendez in exchange for contract to provide equipment to Bolivian Ministry of Defense
- **May 2021**: DOJ filed complaint in SD Fla. charging all five defendants with one count of money laundering conspiracy based on underlying FCPA bribery violations
- **September 2021**: Bryan Berkman and Lichtenfeld pleaded guilty to one count of conspiracy to violate the FCPA and Luis Berkman pleaded guilty to one count of money laundering conspiracy



## *Asante Berko*

- Berko, an executive for a Goldman Sachs subsidiary, allegedly funneled bribes for his client, a Turkish energy company, to Ghanaian government officials in exchange for approval of a power plant project
- **June 2021**: SEC obtained final judgment against Berko, who agreed to disgorge a total of \$329,000
  - Underlying complaint (filed in April 2020) alleged Berko had violated the anti-bribery provisions of the FCPA
  - SEC press release: “The firm’s compliance personnel took appropriate steps to prevent the firm from participating in the transaction and it is not being charged.”



## *Anthony Stimler*

- Stimler was British oil trader for Swiss commodities trading company
- Between 2007 and 2018, Stimler allegedly paid bribes to Nigerian officials in exchange for contracts with a state-owned oil company
- **July 2021**: Stimler pleaded guilty in SDNY to conspiracy to violate the FCPA and conspiracy to commit money laundering



## *Naman Wakil*



- Wakil owned food companies that dealt with CASA, Venezuela's state-owned food company
- According to DOJ, between 2010 and 2017, Wakil paid bribes to officials of CASA and Venezuela's state-owned oil company, PDVSA, to obtain contracts
- **August 2021**: Wakil was indicted in SD Fla. and charged with conspiracy to violate the FCPA and violating the FCPA, among other charges



*V. Litigation and Legal  
Developments*



## *United States v. Baptiste & Boncy Appeal (August 2021)*

- Baptiste and Boncy were convicted in D. Mass. of conspiracy to violate the FCPA (among other things) for allegedly attempting to bribe Haitian officials to promote a port development project in Mole Saint Nicolas
- In March 2020, D. Mass (Burroughs, J.) granted motion for new trial for both defendants based on ineffective assistance provided by Baptiste's attorney
- DOJ appealed and First Circuit, in a unanimous opinion, affirmed the lower court decision in August 2021



## *United States v. Hoskins Appeal (August 2021)*

- After Hoskins was convicted again of FCPA violations and money laundering in 2020, D. Conn. (Judge Arterton) issued a decision upholding his money laundering convictions and acquitting him of FCPA charges
  - Judge Arterton found that there was insufficient evidence to show that Hoskins acted as an agent of Alstom Power Inc., and thus insufficient evidence to establish the connection between his actions and the US for FCPA conviction purposes
- DOJ and Hoskins both appealed portions of the decision to the Second Circuit
- Second Circuit heard oral arguments on the appeal on August 17, 2021, and has yet to issue a decision



## *United States v. Roger Ng (September 2021)*

- Roger Ng, former Goldman Sachs banker in Malaysia, was charged in 2018 with conspiring to launder money and conspiring to violate the FCPA in relation to the 1MDB matter
- Ng filed a motion to dismiss the charges brought against him, arguing, among other things, that Ng could not have circumvented his employer's internal accounting controls in violation of the FCPA because the bribe money was paid with funds stolen from 1MDB and not his employer
- Judge Margo Brodie (EDNY) rejected Ng's argument, whether "transactions" or "assets" of the issuer were involved, and whether the controls at issue are internal "accounting" controls, are matters for the jury to decide



*VI. International  
Developments*



## *International Enforcement and Policy Updates—UK*

- **Corporate settlement activity:**
  - Wood Group settled with Scotland’s Crown Office and Procurate Fiscal Service due to subsidiary benefitting from payments made to Unaoil to secure contracts in Kazakhstan
  - Oilfield services company Petrofac pleaded guilty to seven bribery offenses regarding contracts in the Middle East
- **Individual enforcement actions:**
  - Conviction of Paul Bond (former sales manager at SBM Offshore) for taking part in a scheme to bribe Iraqi officials for oil contracts
  - Guilty plea from David Lufkin (former Petrofac executive) for paying bribes to win construction contracts in the UAE
- **Case closures:** British American Tobacco and KBR
- **Policy Updates:** Guidance on encrypted messaging apps, limitation of SFO’s investigation powers, Whistleblowers



## *International Enforcement Updates—Brazil*

- **February:**
  - Brazil shut down the Operation Car Wash anti-corruption task force
  - Brazilian authorities and Samsung Heavy Industries entered into a resolution agreement
- **March:** Brazilian Supreme Court annulled the corruption convictions against former Brazilian president Lula and found evidence about Lula's alleged property ownership was inadmissible due to lack of judicial impartiality
- **August:** Brazilian prosecutors charged two executives at Doris Group for funneling bribes to a former Petrobras manager for contracts
- **September:** Reuters report stating that Brazilian authorities are reportedly investigating JPMorgan Chase potential involvement in the Petrobras bribery and money laundering activity dating back to 2011



## *International Enforcement Updates—Other*

- **Malaysia:** Malaysian Ministry of Finance reached an \$80M resolution with Deloitte related to its audit work for shuttered sovereign wealth fund 1MDB; Malaysian Anti-Corruption Commission accused Malaysian shipping company and one of its former directors of bribery in the first prosecution under the country's new corporate criminal liability law
- **Italy:** Shell and Eni acquitted of paying millions in bribes to Nigerian officials to secure prospecting rights to a lucrative oil field
- **Hong Kong:** Hong Kong District Court acquitted JPMorgan's former vice-chair of Asian investment of bribing a potential client in exchange for banking business
- **South Africa:** Former President Jacob Zuma sentenced to 15 months imprisonment for refusing to appear at commission investigating alleged government corruption
- **Canada:** Royal Canadian Mounted Police joined the US and UK prosecutors by opening an investigation into Bombardier over suspected bribery in Indonesia
- **Colombia:** Colombian Superintendency of Industry and Commerce fined Odebrecht, two other construction companies, and four individuals for agreeing to not compete for a highway construction contract and instead colluded to bribe public officials into giving them the project



## *International Policy Developments—Other*

- **EU**: EU's public prosecution office launch of operations after appointing over 100 prosecutors from 22 countries
- **Switzerland**: Swiss Federal Supreme Court's privilege ruling: Prosecutors can seize communications between a company and its legal team if the lawyers are registered outside of Switzerland, the EU, or the UK and the European Free Trade Association and the company is not under investigation
- **France**: English version of revised anti-corruption compliance guidelines published by the French Anti-Corruption Agency
- **China**: The Ministry of Commerce for the People's Republic of China published an order allowing it to prohibit local individuals and organizations from complying with overseas legislation or regulations that it believes have an unjustified extraterritorial application
- **Nigeria**: Lagos Governor signed Public Complaints and Anti-Corruption Commission Bill into law, paving the way for an agency that will investigate and prosecute state government officials and registered contractors accused of economic crime



## *Questions*

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