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STEPTOE & JOHNSON LLP

2015 FCPA Year in Review

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INTRODUCTION

2015 was a year of significant change in the United States' efforts to prosecute transnational corruption cases, as well as a year of noteworthy legal developments and major enforcement efforts in major trading nations around the world. Continuing the pattern of the last few years, the overall numbers of Foreign Corrupt Practices Act (FCPA) enforcement actions brought by the US Department of Justice (DoJ) and the Securities and Exchange Commission (SEC) continued at levels below their 2009-2011 peaks, as did the aggregate dollar value of monetary sanctions imposed and the number of new investigations disclosed to the public. The agencies brought a combined total of 23 FCPA-related enforcement actions, 11 by the DoJ and 12 by the SEC. In contrast with recent years of record-setting monetary sanctions – such as 2014, which saw over $1.56 billion in fines, penalties and disgorgement levied against companies and individuals – in 2015, DoJ and SEC imposed a comparatively light $142.7 million in monetary sanctions.

The raw FCPA enforcement statistics do not, however, tell the full story of the United States' and other countries' anti-corruption enforcement exploits in the past year. Rather than reflecting a de-prioritization or decline in FCPA enforcement efforts by the SEC and DoJ, we believe they reflect evolving enforcement policies and priorities based on increasing experience and different agency missions and authorities. Early 2016 prosecutions of VimpelCom and Olympus have already demonstrated the fallacy of reading too much into year-to-year statistics. In our view, 2016 forward will see the DoJ and SEC pursuing foreign bribery in a more targeted, nuanced way than they may have done previously, with each agency focusing more on its core competency and statutory mission, while exhibiting a willingness to allow other countries' enforcement agencies to take the lead on matters when those countries' interests are primarily affected.

This evolution can be seen in the DoJ's and SEC's actions in 2015. Notably, it was the first year in at least a decade in which the SEC and DoJ did not bring joint enforcement actions against a company. Indeed, DoJ did not charge *any* companies in 2015 without also criminally charging associated individuals. DoJ brought only two cases against companies all year, with the large majority of its prosecutions being directed against individuals (8); it also declined to bring enforcement action against companies it investigated in four instances. The DoJ's release in September 2015 of the so-called "Yates Memorandum," mandating full disclosure of

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information, including with regard to culpable individuals, for companies to secure cooperation credit, is a reflection of this shift in priorities.[3]

For its part, the SEC, pursuant to its mandate to regulate and protect the integrity of US securities markets, forged a more independent path than in recent years. Of the 12 enforcement actions the SEC brought in 2015, all involved actions against companies. Two of the corporate cases also involved individuals. Moreover, a number of the SEC's corporate enforcement actions departed from the agency's prior enforcement practice and advanced novel – and arguably aggressive – legal theories of liability targeted as much at companies' allegedly deficient control environments as any alleged underlying improper or illegal payment activity. [4]

Another important piece of the maturing enforcement environment in 2015 was increased use by US enforcement agencies – in particular, the DoJ - of alternative tools to investigate and prosecute foreign bribery corruption, and not just on the "supply side." In 2015, there was continued activity by the DoJ's Kleptoacracy initiative in asset forfeiture cases, and high-profile cooperation with law enforcement agencies outside the US, exemplified by the joint US-Swiss investigation into corruption at FIFA.

While enforcement policies may have evolved, parallel civil risks continue to grow. Collateral litigation such as shareholder derivative actions, whistleblower litigation in federal court, and other actions continued to be filed, compounding the risk picture for companies facing allegations of corruption. The SEC's Dodd-Frank whistleblower program, in its fifth year, continued to receive numerous tips from inside and increasingly outside the United States, and continued to spawn internal investigations that companies had little choice but to address.

Outside the United States, the global trend towards increased enforcement, and legal reform contributing to anti-corruption enforcement efforts continued. The UK prosecuted its first cases under Section 7 (Failure to Prevent Bribery) of the Bribery Act 2010. A number of Continental European countries, in particular in the Nordic region, continued to ramp up their enforcement efforts. Canadian authorities continued to investigate alleged corruption abroad and domestically, and are considering whether a Dodd-Frank style whistleblower bounty program administered by the Ontario Securities Commission should be implemented in 2016. A significant set of anti-corruption enforcement players whose profiles have grown in recent years – the multilateral development banks, led by the World Bank – also continue to make their presence felt in international anti-corruption enforcement, as cooperation between those

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[3] *See Individual Accountability for Corporate Wrongdoing*, DOJ (Sept. 9, 2015), *available at* http://www.justice.gov/dag/file/769036/download.

[4] *See* Speech of Andrew Ceresney, Director, Div. of Enforcement at CBI's Pharmaceutical Compliance Congress in Washington D.C., SEC (Mar. 3, 2015), http://www.sec.gov/news/speech/2015-spch030315ajc.html ("Internal control problems have been prominently featured in recent enforcement cases we have brought in the financial reporting area, even in cases without accompanying charges of fraud."); Keynote Address of Andrew Ceresney, Director, Div. of Enforcement at ACI's 32nd FCPA Conference, SEC (Nov. 17, 2015), http://www.sec.gov/news/speech/ceresney-fcpa-keynote-11-17-15.html (noting that the Commission intends to "enforce the FCPA to the fullest extent of the statute.").

institutions and national law enforcement authorities continued – although, as described below, the World Bank's ability to share evidence with national law enforcement has come under threat in recent months.

In sum, we believe that 2015 saw important shifts in the FCPA/anti-corruption enforcement environment around the world. While US enforcement will remain robust, the compliance landscape going forward will continue to become more complicated for companies to navigate: US efforts likely will continue to be focused on individuals as well as companies, affecting how companies must respond to allegations and issues; the collateral risks to companies subject to US investigation and enforcement actions will persist; more and different countries will seek to enforce their own laws; and still-less-appreciated risks such as those presented by investigations conducted by the World Bank and other International Financial Institutions (IFIs) will increasingly continue to catch companies and individuals unaware.

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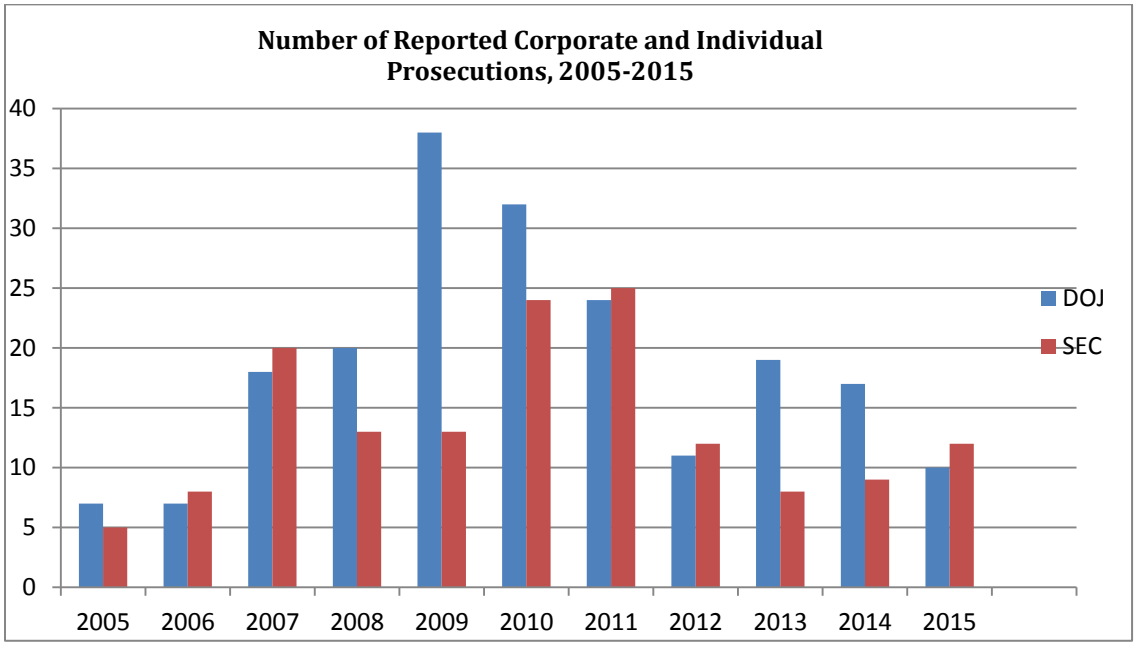
I. 2015 FCPA ENFORCEMENT STATISTICS FOR 2015

A. Number of Enforcement Actions

The DoJ and SEC concluded a total of 23 enforcement actions against companies and individuals in 2015: 12by the SEC and 11by the DoJ. This represents an enforcement level slightly lower than that of 2014 (26), but broadly consistent with enforcement action numbers over each of the past three years (2012, 2013 and 2014 (23, 27 and 26 enforcement actions, respectively)). It is a significant decline, however, when compared to the elevated numbers of each of 2009-2011 (41, 56 and 49 enforcement actions, respectively)).



Twelve separate companies faced charges from the SEC or DoJ, representing a slight increase from the ten separate companies that faced charges from one of the two agencies in 2014. Of the twelve companies, nine were US-based, and three were based abroad.

A significant departure from 2014, however – and from the DoJ and SEC's enforcement history over the last 10 years (effectively the modern enforcement history of the FCPA) – was the DoJ's and SEC's failure to bring a joint enforcement action against a company for the first time since at least 2003. As discussed below, we believe that this was not coincidental, and instead results from the gradual shifts in the enforcement priorities of both agencies, as does the significantly different mix of SEC and DoJ enforcement actions when compared to prior years. Of DoJ's 11 FCPA-related enforcement actions in 2015, nine were brought against individuals and two against companies, a ratio of 9:2, whereas the ratio has not been any higher than 4.4:1 since 2009. The SEC's activities resulted in effectively the opposite ratio, with two individuals and ten companies subject to enforcement actions, for an individual-to-company ratio of 1:5, which is broadly consistent with the SEC's 2014 ratio of 1:3.5 and its 2013 ratio of 0:8. Interestingly, the joint DoJ-SEC settlement involving Vincente E. Garcia, a former employee of global software company SAP, was the only joint SEC-DoJ enforcement action of 2015.

Among the other matters concluded in 2015 were:

- the DoJ's case against former Siemens Argentina executive Andres Truppel, who pleaded guilty to charges of conspiring to violate the FCPA in connection with his role in the Siemens corruption matter in Argentina;[5]
- the sentencing of five individuals involved in the *Direct Access Partners* prosecutions;[6]
- Joseph Sigelman's much-covered criminal trial and guilty plea for conspiracy to violate the FCPA in Ecuador in connection with his involvement in the PetroTiger Ltd. case;[7] and
- the SEC's entry into a $4.2 million settlement with Standard Bank Plc in connection with a Standard Bank subsidiary's role in making payments to Tanzanian government officials, despite the fact that Standard Bank is not an "issuer" as defined by the FCPA.[8]

These developments and what they signal for FCPA enforcement going forward are discussed in detail below.

B. Monetary Sanctions

While the raw number of enforcement actions in 2015 was broadly similar to that of the last two years, the aggregate dollar value of monetary sanctions levied by DoJ and SEC in 2015 was not. 2015 enforcement actions resulted in an aggregate $142.7 million in fines, penalties and disgorgement, down from a 2014 total of $1.56 billion and 2013 total of $720 million. This significantly lower number resulted from the fact that 2014 saw the resolution of a significant outlier case– that against Alstom SA – that resulted in over half the total amount levied (a record $772 million criminal penalty) that year. The SEC also resolved its long-running investigation

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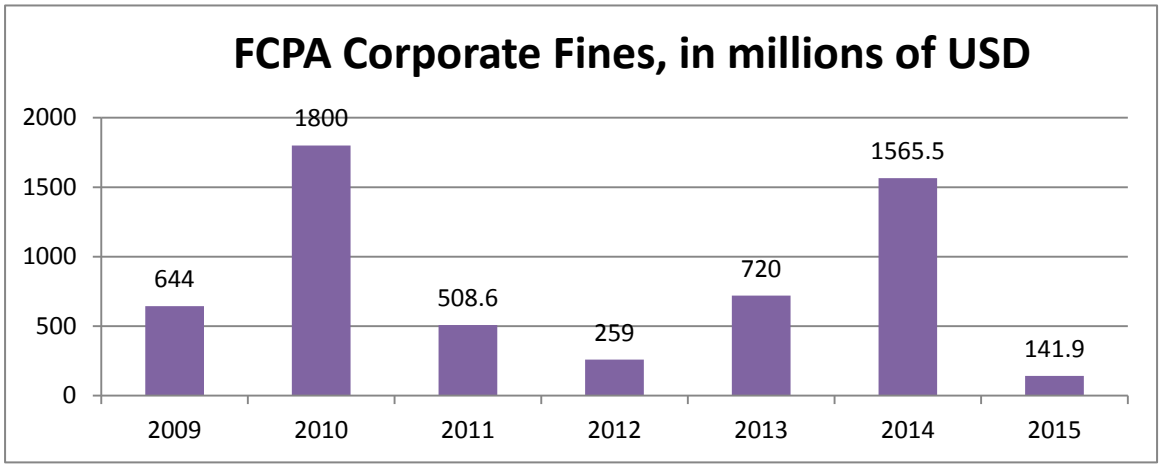
[5] DoJ Press Release, *Former Chief Financial Officer of Siemens Argentina Pleads Guilty to Role in Multimillion Dollar Foreign Bribery Scheme* (Sept. 30, 2015), http://www.justice.gov/opa/pr/former-chief-financial-officer-siemens-argentina-pleads-guilty-role-multimillion-dollar.

[6] *See* DoJ Press Release, *CEO and Managing Director of US Broker-Dealer Sentenced for International Bribery Scheme* (March 27, 2015), http://www.justice.gov/opa/pr/ceo-and-managing-director-us-broker-dealer-sentenced-international-bribery-scheme; DoJ Press Release, *Three Former Broker-dealer Employees Plead Guilty in Manhattan Federal Court to Bribery of Foreign Officials, Money Laundering and Conspiracy to Obstruct Justice* (Aug. 30, 2013), http://www.justice.gov/opa/pr/three-former-broker-dealer-employees-plead-guilty-manhattan-federal-court-bribery-foreign; Letter to Court from SEC Counsel Victor Suthammanont, *SEC v. Lujan*, Case 1:13-cv-03074-JMF (S.D.N.Y. Dec. 21, 2015).

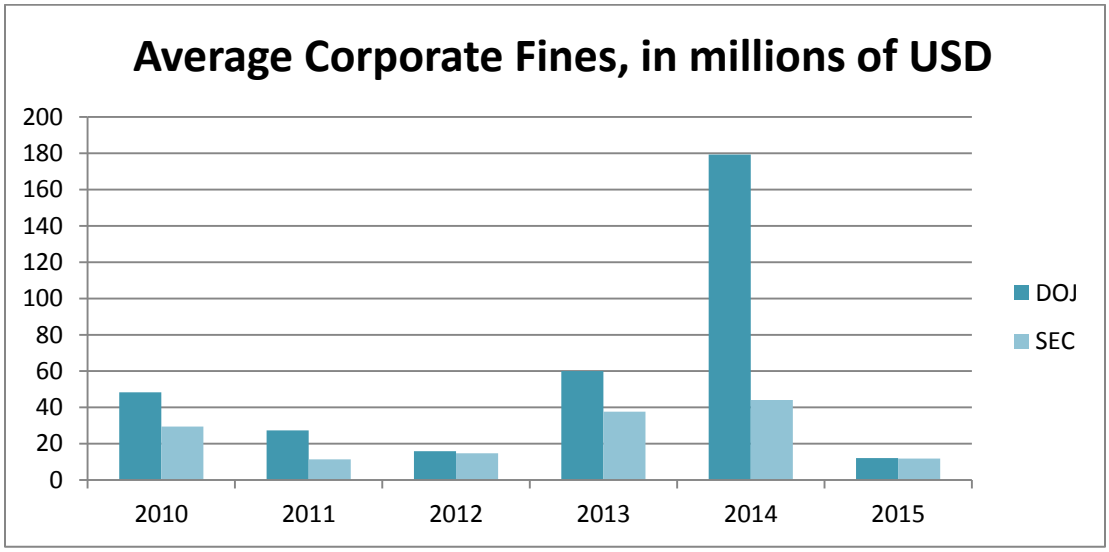
[7] Plea Agreement, *United States v. Sigelman*, No. 14-cr-00263 (D.N.J. June 15, 2015); *see also* DoJ Press Release, *Former Chief Executive Officer of Oil Services Company Pleads Guilty to Foreign Bribery Charge* (June 15, 2015), http://www.justice.gov/opa/pr/former-chief-executive-officer-oil-services-company-pleads-guilty-foreign-bribery-charge.

[8] Order Instituting Cease-and-Desist Proceedings, *In re Standard Bank Plc*, Exchange Act Release No. 9,981 (Nov. 30, 2015).

of Avon, Inc., resulting in another $135 million in civil penalties and disgorgement. In contrast, in 2015, the SEC brought a number of relatively small dollar-value cases (the largest monetary sanction being against BHP Billiton, for $25 million), and the DoJ brought only two cases against companies (those against IAP Worldwide and Louis Berger International), for relatively modest dollar amounts.



Those developments are, of course, borne out in the 2015 aggregate statistics, as the mean DoJ corporate sanction was $12.1 million, and the SEC mean was approximately $11.8 million. These values represent significant declines from the 2014 means of $179.43 million ($69 million excluding Alstom) for the DoJ and $44.1 million for the SEC.

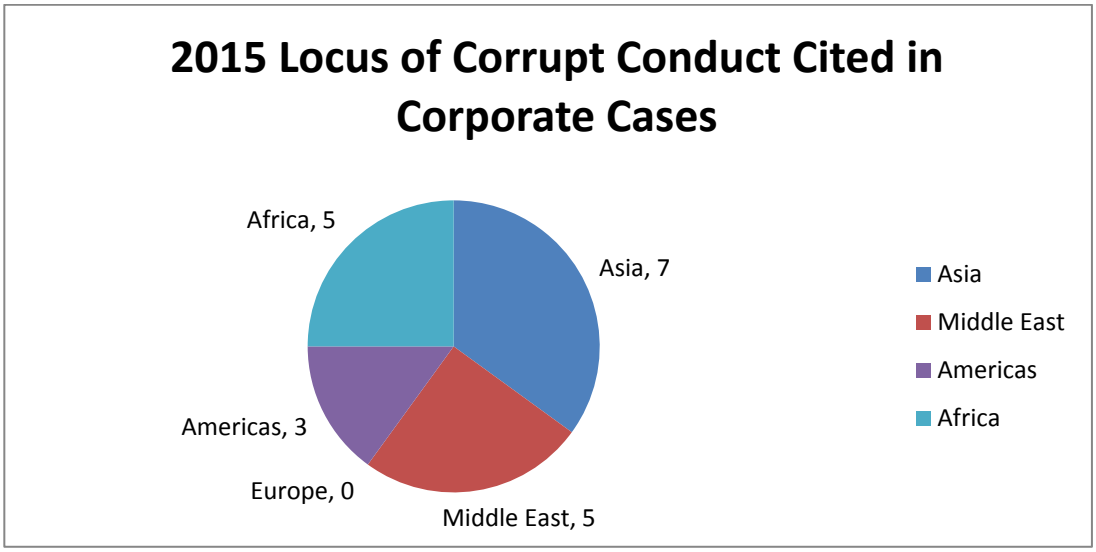


C. Geography and Industries Affected

As in 2014, 2015 saw FCPA-related settlements involving conduct related to a diverse array of countries – at least eighteen different jurisdictions across the world. Conduct in Asia, as in 2014, accounted for more enforcement actions than any other region, with conduct on that

continent cited seven times. The Middle East and Africa also saw relatively significant activity, with conduct in those regions cited five times each.

No one industry dominated 2015 settlements, with banking and financial services (*BNY Mellon*) to metals and mining (*BHP Billiton*), to industrial conglomerates (such as *Hitachi*), to *FLIR Systems*, which designs and produces thermal imaging cameras, all reaching settlements during the year.



II. FCPA CORPORATE AND INDIVIDUAL SETTLEMENTS

A. DoJ and SEC Policy Focus

Numbers alone, of course, do not tell the full story of the DoJ's and SEC's enforcement priorities in 2015. The SEC and DoJ officials with overall responsibility for FCPA were both active on the speaking circuit during the year regarding their FCPA and foreign corruption approaches, and their enforcement priorities more broadly. Assistant Attorney General Leslie Caldwell was particularly active, making significant policy statements regarding the importance of companies' compliance efforts and DoJ's expectations,[9] and DoJ's views on the value of

[9] *See e.g.* Assistant Attorney General Leslie R. Caldwell Delivers Remarks at American Conference Institute's 32nd Annual International Conference on Foreign Corrupt Practices Act, DOJ (Nov. 17, 2015), http://www.justice.gov/opa/speech/assistant-attorney-general-leslie-r-caldwell-delivers-remarks-american-conference ("in line with the focus on individual accountability for corporate criminal conduct announced earlier this year by Deputy Attorney General Sally Yates, companies seeking credit must affirmatively work to identify and discover relevant information about the individuals involved through independent, thorough investigations."); Assistant Attorney General Leslie R. Caldwell Speaks at SIFMA Compliance and Legal Society New York Regional Seminar, DOJ (Nov. 2, 2015), http://www.justice.gov/opa/speech/assistant-attorney-general-leslie-r-caldwell-speaks-sifma-

voluntary disclosure and cooperation. She also revealed that DoJ expected to issue more declinations to companies that cooperate and remediate, rather than entering into a DPA or NPA[10] – a pattern that appears to have begun to bear itself out during the year.

At the same time, DoJ also released the so-called "Yates Memorandum" setting forth expectations for companies when cooperating with a DoJ investigation. Those expectations, which DoJ explained must be met for companies to receive credit for their cooperation in investigations, are targeted at more effective prosecution of individuals:

- To be eligible for any cooperation credit, corporations must identify, and provide all relevant facts about, all individuals involved in corporate misconduct
- Prosecutors are required to focus on individuals from the inception of their investigations
- Other than in antitrust cases, no corporate resolution will protect individuals from criminal or civil liability absent extraordinary circumstances
- Prosecutors may not resolve corporate cases without a clear plan to resolve related individual cases, and declinations as to individuals must be approved by a high-level official
- Prosecutors and civil attorneys handling corporate investigations should be in routine communication with one another
- Civil attorneys should consistently focus on individuals as well as the company and evaluate whether to bring suit against an individual based on considerations beyond the individual's ability to pay

According to DoJ, these steps, some of which reflect existing DoJ enforcement policy, come from its desire to "fully leverage [DoJ] resources to identify culpable individuals at all levels in corporate cases" and to "ensure that all [DoJ] attorneys . . . are consistent in our best efforts to hold to account the individuals responsible for illegal corporate conduct."[11] See **here** for Steptoe's September 21, 2015 client alert on the Yates memorandum and its implications.

From the SEC side, Andrew Ceresney, SEC Director of Enforcement, was also an active speaker. He announced in November 2015 what amounted to an update of the SEC's policy as to when it will resolve investigations with companies using a DPA or NPA: "going forward, a

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compliance-and-legal-society (discussing the importance of financial sector compliance structures in the fight against financial crimes).

[10] Assistant Attorney General Caldwell Delivers Remarks at New York University Law School's Program on Corporate Compliance and Enforcement, DOJ (Apr. 17, 2015), http://www.justice.gov/opa/speech/assistant-attorney-general-caldwell-delivers-remarks-acams-anti-money-laundering (noting that "[w]e seek not just to prosecute, but to encourage and reward good corporate citizenship, and increasing transparency [in declinations] can play an important role in achieving that goal.").

[11] *See* Sally Quillian Yates, *Individual Accountability for Corporate Wrongdoing*, DOJ (Sept. 9, 2015), *available at* http://www.justice.gov/dag/file/769036/download.

company must self-report misconduct in order to be eligible for the Division to recommend a DPA or NPA to the Commission in an FCPA case."[12] Although this statement was received by much of the FCPA/anti-corruption user community as a new policy, it remains to be seen if that will in fact be the case: as noted below, the SEC concluded only its second-ever DPA with a company in 2015, and it has concluded only one NPA to date, over two years ago.[13]

Consistent with these public statements, the authorities' enforcement efforts diverged in in 2015. The SEC focused on investigating and reaching settlements with corporate defendants, in some cases based on aggressive or novel theories of liability and on fact patterns that the SEC had not previously charged as violations. In particular, SEC settled enforcement actions in 2015 that imposed liability pursuant to the books and records and internal controls provisions, not only without alleging corresponding violations of the anti-bribery provisions, but also without alleging factual elements that would establish a *quid pro quo* fact pattern or value being improperly transferred to government officials. These developments represented a new set of tactics in the SEC's enforcement program, which will be unwelcome for many US issuers doing business abroad.

For its part, DoJ focused its enforcement efforts primarily on the prosecution of individuals, while concluding only two enforcement actions against corporate defendants. Those enforcement actions, however, arose out of a number of investigations that the DoJ conducted into various companies and individuals around the world and that were conducted using more traditional law enforcement techniques, such as sting operations and wire-taps. On the one hand, DoJ did not pursue some of the more aggressive theories it has asserted in recent prosecutions, while seeking to hold individuals accountable and secure prison sentences for wrongdoers. On the other hand, DoJ also appears to have made good on Assistant Attorney General Caldwell's prediction that DoJ would issue more corporate declinations as it focused on individual prosecutions. The DoJ also may have prioritized the use of its resources while it prosecuted labor-intensive criminal trials and conducted large-scale investigations, such as Wal-Mart and Petrobras.

B. New DoJ Compliance Counsel

In November 2015, DoJ announced that it had hired Hui Chen as compliance counsel, reporting to the Chief of the Fraud Section and the Acting Chief of the Strategy, Policy, and Training Unit in the Fraud Section.[14] DoJ has said that Chen would provide guidance on the effectiveness of corporate compliance programs, including whether companies had taken appropriate remedial steps to improve such programs in light of an enforcement action, benchmarks for compliance programs, and assessment of a company's compliance efforts. Some have questioned why such a position is necessary, when prosecutors presumably already exercise

[12] Keynote Address of Andrew Ceresney, Director, Div. of Enforcement at ACI's 32nd FCPA Conference, SEC (Nov. 17, 2015), http://www.sec.gov/news/speech/ceresney-fcpa-keynote-11-17-15.html.
[13] *See* Deferred Prosecution Agreement, *In re Tenaris, S.A.* (May 17, 2011); Non-Prosecution Agreement, *In re Ralph Lauren Corp.* (Apr. 18, 2013).
[14] *See* DoJ Announcement, available at http://www.justice.gov%2Fcriminal-fraud%2Ffile%2F790236%2Fdownload&usg=AFQjCNFd3h0bTGXUD2Twn0fiSCwZekONcA.

the discretion and have ample experience in making these determinations. According to Andrew Weissmann, DoJ Criminal Division Fraud Section Chief, compliance counsel would "differentiate the companies that get it and are trying to implement a good compliance program from the people who have a near-paper program."[15]

C. 2015 SEC Corporate Enforcement

1. BHP Billiton

On May 20, 2015, BHP Billiton Ltd. (BHP Billiton), an Anglo-Australian metals and mining company, agreed to pay a $25 million civil penalty to settle allegations by the SEC that it violated the books and records and internal controls provisions of the FCPA in connection with the company's 2008 Beijing Olympics hospitality program. That program offered tickets to events, luxury hotel accommodations, meals, sightseeing excursions and business class airfare, at a value of between $12,000 and $16,000 per recipient. The company invited over 650 people to participate in the hospitality program, including 176 senior government officials and state-owned enterprise (SOE) executives, of whom 60 officials and 24 of their spouses ultimately attended.[16]

Specifically, the SEC found that BHP Billiton's controls around the 2008 Olympics hospitality program were deficient, despite the application review processes in place. The cited reasons included the fact that the applications were not subject to review by a compliance official outside the country or business unit; some of the applications were not accurate or complete; the compliance tracking forms were not updated to reflect changes in the invitees' official positions; and/or the company failed to provide legal and ethics training in connection with the program. In addition to these heightened control expectations, the SEC did not allege any specific *quid pro quo* related to the program; instead, the internal controls charge apparently was based on the SEC's subjective judgment that a *quid pro quo* could develop in connection with the recipients and their official positions in the future, which we believe to be the first time that the SEC has imposed liability on a company under such a theory.

2. Hyperdynamics

In an SEC resolution similarly lacking apparent *quid pro quo* elements, Hyperdynamics Corporation (Hyperdynamics) agreed to pay the SEC a $75,000 civil penalty on September 29, 2015, without admitting or denying liability, to settle alleged violations of the books and records and internal controls provisions of the FCPA relating to $130,000 of public relations and lobbying expenses paid to third parties in the Republic of Guinea that were later found to have been controlled by a Hyperdynamics employee.[17] The basis for the allegations was that Hyperdynamics' inadequate controls prevented the company from understanding the purpose of

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[15] *See Wall Street Journal*, July 30, 2015.
[16] Order Instituting Cease-and-Desist Proceedings, *In re BHP Billiton Ltd. and BHP Billiton plc*, Release No. 74998 (May 20, 2015), http://www.sec.gov/news/pressrelease/2015-93.html.
[17] Order Instituting Cease-and-Desist Proceedings, *In re Hyperdynamics Corporation*, Exchange Act Release No. 76,006 (Sept. 29, 2015), https://www.sec.gov/litigation/admin/2015/34-76006.pdf.

the payments. Again, no improper purpose for the payments was alleged in the SEC settlement documents.

Although the SEC investigation ended with a relatively small civil fine and no admission of liability, and the DoJ investigation ended with a declination,[18] Hyperdynamics incurred $12.7 million in legal fees in connection with both processes.[19] Collateral litigation associated with these investigations also has resulted, with Hyperdynamics filing a civil suit against two partner companies based primarily on their wrongful invocation of the force majeure provisions of their mutual agreements as a result of the SEC's FCPA investigation.[20]

3. BNY Mellon

The SEC broke new legal and factual ground in August 2015 by holding Bank of New York Mellon (BNY Mellon) liable in connection with its internship hiring practices. BNY Mellon settled SEC allegations that it violated the FCPA's anti-bribery, books and records and internal controls provisions by providing internships to family members of officials of a Middle Eastern sovereign wealth fund.[21] The SEC found that BNY Mellon employees believed that providing the internships was necessary to retain or grow business with the fund, and that the hiring process employed was not the rigorous process required under its normal internship program, but instead was designed to ensure that the fund officials' family members would receive employment. The SEC emphasized the "value" of the internships, including the difficult-to-quantify value that fund officials derived from the internships being provided to their family members. Without admitting or denying the SEC's findings, BNY Mellon agreed to a cease-and-desist order and $14.8 million in sanctions, consisting of $8.3 million in disgorgement, $1.5 million in prejudgment interest, and a $5 million civil penalty.

The settlement is the first enforcement action based entirely on a theory of improper hiring and internship practices, and represents the first in what may be a number of similar enforcement actions to come targeting major financial institutions' practices of hiring SOE and government officials' family members.[22] Indeed, 2016 has already seen further enforcement activity in this area.

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[18] Hyperdynamics Corporation, Annual Report (Form 10-K) (Sept. 16, 2015), http://www.sec.gov/Archives/edgar/data/937136/000104746915007344/a2225959z10-k.htm.
[19] *Id*. at 27.
[20] Complaint, *SCS Corp., Ltd. v. Tullow Guinea Ltd.*, No. 16-cv-0076 (S.D. Tex. Jan. 8, 2016).
[21] Order Instituting Cease-and-Desist Proceedings, *In re Bank of New York Mellon Corp.*, Exchange Act Release No. 75,720 (Aug. 18, 2015), http://www.sec.gov/litigation/admin/2015/34-75720.pdf; *see also* Sec. Exc. Comm'n, *SEC Charges BNY Mellon with FCPA Violations* (Aug. 18, 2015), http://www.sec.gov/news/pressrelease/2015-170.html.
[22] *See, e.g.*, Arno Schuetze, *Regulators Investigate Deutsche Bank in China 'Princeling' Probe*, Reuters (June 5, 2015), http://www.reuters.com/article/us-deutsche-bank-princelings-idUSKBN0EG2BX20140605.

4. Bristol-Myers Squibb

On October 5, 2015, Bristol-Myers Squibb Company (BMS) agreed to pay over $14 million to settle SEC allegations that it violated the books and records and internal controls provisions of the FCPA[23] in connection with the failure of BMS's Chinese subsidiary and its majority-owned joint venture, to maintain sufficient internal controls over cash payments, travel, meals, entertainment and conference sponsorships provided to government officials to secure sales.[24]

The SEC cited BMS's remedial measures as its reasons for agreeing to the settlement, including termination and disciplinary actions for employees, improved accounting systems, third-party audits of sales events, and a pre-reimbursement review policy for expense claims.[25] BMS also agreed to a two-year compliance self-reporting period to the SEC on its FCPA and general anti-corruption compliance measures.[26]

BMS disclosed on October 27, 2015 that the DoJ had closed its FCPA investigation of the company without enforcement action.[27]

5. FLIR Systems

On April 8, 2015, FLIR Systems, Inc. (FLIR), an Oregon-based infrared technology company, agreed to pay more than $9.5 million, without admitting or denying liability, to settle SEC charges that FLIR violated the anti-bribery, books and records, and internal control provisions of the FCPA by providing travel, gifts, and entertainment to Saudi Arabian government officials. The charges relate to, among other things, a "world tour" for officials at the Saudi Ministry of Interior (MOI) that the SEC found improperly influenced officials to award FLIR a contract.[28] Although the ostensible purpose of the trip was a "Factory Acceptance Test," the SEC found that MOI officials stopped in Casablanca, Paris, Dubai, and Beirut over a twenty-day period that included only a five-hour visit to the FLIR factory. The SEC also found other improper travel and gifts spanning several years.[29]

To settle the charges, FLIR agreed to pay a total of $9,504,584 and report to the SEC regarding its compliance efforts for the next two years. In settling the case, the SEC cited FLIR's voluntary disclosure and "significant remedial efforts," including, among others, terminating certain personnel and vendors, broadening its compliance policies and training

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[23] SEC Press Release, *SEC Charges Bristol-Myers Squibb with FCPA Violations* (Oct. 5. 2015), http://www.sec.gov/news/pressrelease/2015-229.html.
[24] Order Instituting Cease-and-Desist Proceedings, *In re Bristol-Myers Squibb Company*, Exchange Act Release No. 76,073, at 2 (Oct. 5, 2015), http://www.sec.gov/litigation/admin/2015/34-76073.pdf.
[25] *Id*. at 6. http://www.sec.gov/litigation/admin/2015/34-76073.pdf.
[26] *Id*. at 8. http://www.sec.gov/litigation/admin/2015/34-76073.pdf.
[27] Bristol-Myers Squibb, Quarterly Report (Form 10-Q), at 23 (Oct. 27, 2015).
[28] Order Instituting Cease-and-Desist Proceedings, *In re FLIR Systems, Inc.*, Exchange Act Release No. 74,673 (Apr. 8, 2015), https://www.sec.gov/litigation/admin/2015/34-74673.pdf.
[29] *Id*.

program, providing translations of its anti-bribery policy, vetting third parties such as travel agencies, and conducting a compliance review of travel expenses in its foreign operations.[30]

6. Goodyear Tire & Rubber Company

On February 24, 2015, Goodyear Tire & Rubber Company (Goodyear) paid over $16 million to settle SEC allegations that it violated the internal controls and books and records provisions of the FCPA. The settlement related to alleged bribes paid by employees of Goodyear's subsidiaries to Kenyan and Angolan government officials, including police and tax officials, in order to secure tire sales in those countries.[31] As to Kenya, the SEC found that the finance director and general manager of Goodyear's subsidiary in that country approved, among other things, payments for sham promotional products in a scheme that paid over $1.5 million in bribes between 2007 and 2011, after Goodyear obtained majority ownership and control of the operations.[32] The SEC cited Goodyear's failure to conduct adequate due diligence during the acquisition of the Kenyan company, resulting in failure to identify the improper payments, which were ongoing at the time of acquisition. The SEC also alleged that Goodyear failed to implement compliance training and accounting controls once it acquired control of the operation.[33]

In Angola, the SEC found that Goodyear's subsidiary, Trentyre (which was initially established by Goodyear in that country), paid over $1.6 million to employees of government-owned and private customers to obtain tire sales. Similar to the SEC allegations related to Kenya, the SEC cited Goodyear's failure to prevent or detect the violations, and found that Goodyear failed to implement adequate FCPA compliance training and controls at the subsidiary.[34]

In reaching a settlement, the SEC cited Goodyear's voluntary disclosure and remedial measures, including the production of documents from Goodyear's internal investigation and the divestment of its Kenyan subsidiary. Goodyear must report to the SEC for three years regarding the status of its remedial efforts and compliance program.[35]

7. Hitachi, Ltd.

On September 28, 2015, Hitachi, Ltd. (Hitachi) agreed to pay $19 million to settle SEC allegations that it violated the books and records and internal control provisions of the FCPA with respect to payments made to South Africa's ruling political party, the African National

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[30] *Id*.
[31] SEC Press Release, *SEC Charges Goodyear with FCPA Violations* (Feb. 24, 2015), http://www.sec.gov/news/pressrelease/2015-38.html.
[32] Order Instituting Cease-and-Desist Proceedings, *In re The Goodyear Tire & Rubber Company*, Exchange Act Release No. 74,356, at 3 (Feb. 24, 2015).
[33] *Id*. at 3–4.
[34] *See id*. at 4.
[35] *Id*. at 5–7.

Congress (ANC).[36] The SEC found that Hitachi sold a minority share in a South African subsidiary to a front company for the ANC and that Hitachi paid the front company $5 million in dividends and a $1 million "success fee" in exchange for the award of the power station contracts.[37] The settlement did not include any alleged violations of the FCPA's anti-bribery provisions.

Notably, the SEC's public citation of the assistance of the African Development Bank's (AfDB) Integrity and Anti-Corruption Department represents the first time that the AfDB has been publicly credited with assisting a US FCPA enforcement action. As discussed in Section VIII, below, Hitachi entered into a settlement agreement with the AfDB on November 30, 2015, in which the AfDB debarred Hitachi for twelve months with conditional release, citing Hitachi's voluntary cooperation and Hitachi's voluntary agreement to make a "substantial financial contribution to the AfDB."[38]

8. Mead Johnson Nutrition

On July 28, 2015, Mead Johnson Nutrition Company (Mead Johnson) agreed to pay $12 million to settle SEC allegations that it violated the books and records and internal controls provisions of the FCPA relating to approximately $2 million in payments made by Mead Johnson's distributors in China to health-care professionals at state-owned hospitals to recommend Mead Johnson's infant formula.[39] The SEC found that Mead Johnson's employees funded the improper payments using a "distributor allowance" discount. Although the funds contractually belonged to the distributors, the SEC found that Mead Johnson employees exercised some control over how the money was spent and provided specific guidance to distributors on how to use the funds. In the settlement documents, the SEC credited Mead Johnson's remedial measures and subsequent cooperation even though the company did not voluntarily disclose the violation to the SEC.

9. PBSJ Corporation & Walid Hatoum

On January 22, 2015, PBSJ Corporation (PBSJ), a Florida-based engineering and construction firm, agreed to pay $3.4 million and entered into a DPA with the SEC related to charges that it violated the anti-bribery, internal controls, and books and records provisions of the FCPA by offering funds to a local Qatari company owned by a government official in order to

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[36] SEC Press Release, *SEC Charges Hitachi with FCPA Violations* (Sep. 28, 2015), http://www.sec.gov/news/pressrelease/2015-212.html.
[37] Complaint, *SEC v. Hitachi, Ltd.*, No. 15-cv-01573 (D.D.C. Sept. 28, 2015), http://www.sec.gov/litigation/complaints/2015/comp-pr2015-212.pdf.
[38] Afr. Dev. Bank Grp., *Integrity in Development: AfDB and Hitachi, Lt. Conclude Settlement Agreement* (Feb. 12, 2015), http://www.afdb.org/en/news-and-events/article/integrity-in-development-afdb-and-hitachi-ltd-conclude-settlement-agreement-15118/.
[39] Order Instituting Cease-and-Desist Proceedings, *In the Matter of Mead Johnson Nutrition Co.*, Exchange Act Release No. 75,532 (July 28, 2015); *see also* SEC Press Release, *SEC Charges Mead Johnson Nutrition with FCPA Violations* (July 28, 2015), http://www.sec.gov/news/pressrelease/2015-154.html.

obtain confidential bid information for tenders on Qatari government contracts.[40] On the same day, Walid Hatoum, a former officer of PBSJ and president of its international subsidiary, agreed to pay $50,000 to settle, without admitting or denying liability, SEC charges that he violated the anti-bribery provisions of the FCPA and caused PBSJ to violate the internal controls and books and records provisions.[41]

This matter is noteworthy for two reasons. First, the settlement with PBSJ represents only the second DPA the SEC has entered into with a company (the first being in connection with the Tenaris matter in 2011). It also represents one of the few corporate settlements the SEC entered into in 2015 for which it did not use its own administrative proceedings, but instead was settled before a US federal district court. The reasons for bringing this action in federal court are not clear. Notably, PBSJ had ceased to be an issuer by the time of the resolution, having been acquired by WS Atkins plc and delisted on October 1, 2010).

10. Standard Bank Plc

Another interesting 2015 case is the SEC's November 30, 2015, $4.2 million settlement with Standard Bank Plc (now ICBC Standard Bank Plc) (Standard Bank),[42] which was announced on the same day as Standard Bank's settlement with the UK SFO. *See* Section VIII, below. The SEC brought charges against Standard Bank pursuant to Section 8A of the Securities Act – not the FCPA – because the bank was not an "issuer" as defined by the FCPA at the time. Section 8A, the cease-and-desist proceedings provision of the Securities Act, allowed the SEC to seek a civil penalty and disgorgement related to the settlement as a result of Standard Bank's having issued debt securities in the United States pursuant to SEC Regulation S.

The SEC found that Standard Bank failed to disclose improper payments made by a Standard Bank affiliate to a private Tanzanian firm with connections to a Government of Tanzania official and that the Tanzanian firm did not perform a substantive role in the offering.[43] The SEC further found that Standard Bank's documents and other statements to potential investors related to a private debt offering in the United States were materially misleading, in violation of section 17(a)(2) of the Securities Act of 1933 because they omitted reference to improper payments made to the private Tanzanian firm. In addition to a $4.2 million civil penalty, the SEC ordered Standard Bank to cease and desist from violations of section 17(a)(2) of the Securities Act.

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[40] Deferred Prosecution Agreement, *PBSJ Corp.* (Jan. 21, 2015), http://www.sec.gov/news/press/2015/2015-13-dpa.pdf.

[41] Order Instituting Cease-and-Desist Proceedings, *In re Walid Hatoum*, Exchange Act Release No. 74112 (Jan. 22, 2015), *available at* http://www.sec.gov/litigation/admin/2015/34-74112.pdf

[42] Order Instituting Cease-and-Desist Proceedings, *In re Standard Bank Plc*, Securities Act Release No. 9,981 (Nov. 30, 2015).

[43] SEC Press Release, *Standard Bank to Pay $4.2 Million to Settle SEC Charges* (Nov. 30, 2015), http://www.sec.gov/news/pressrelease/2015-268.html; *see also* Mike Koehler, *The SEC Gets Creative in also Bringing an Enforcement Action Against Standard Bank*, THE FCPA PROFESSOR (Dec. 9, 2015), www.fcpaprofessor.com/the-sec-gets-creative-in-also-bringing-an-enforcement-action-against-standard-bank.

D. 2015 DoJ Corporate Enforcement Actions

As discussed above, the DoJ's enforcement efforts in 2015 contrast significantly with those of the SEC. The DoJ concluded two prosecutions of companies in 2015, in both cases also prosecuting corporate executives related to the conduct. The DoJ also issued five public declinations, likely reflecting its announced shift in focus to increasingly prioritize prosecution of individuals, or potentially, its diversion of resources towards large pending matters, such as the ongoing investigation of Brazilian oil company Petrobras.

1. IAP Worldwide Services Inc. & James Rama

On June 16, 2015, IAP Worldwide Services, Inc. (IAP) entered into a non-prosecution agreement (NPA) with the DoJ, and agreed to pay a $7.1 million penalty related to payments made to Kuwaiti government officials to secure a government contract.[44] In 2004, the Kuwaiti Ministry of the Interior (MOI) initiated a security program, and IAP tried to secure the profitable second stage of the project by creating a shell company to bid on the first phase. The shell company won the phase-one contract and passed half of the fee to a "consultant" who in turn passed funds on to Kuwaiti officials on IAP's behalf.[45] In entering the NPA, the DoJ cited IAP's voluntary disclosure, remediation and compliance program, and agreement to cooperate in the prosecution of its officers, employees and agents.[46]

Concurrent with the corporate resolution on June 16, 2015, the DoJ announced that James Rama, IAP's Vice President of Special Projects who managed the Kuwaiti project, pleaded guilty to one count of conspiracy to violate the anti-bribery provisions of the FCPA in connection with the same underlying facts.[47]

2. Louis Berger International Inc., Richard Hirsch & James McClung

One month after the IAP Worldwide/Rama resolution, on July 17, 2015, Louis Berger International (LBI) — a privately held consulting firm that provides engineering, architecture, program and construction management services — entered into a DPA with DoJ charging violations of the anti-bribery provisions of the FCPA in connection with improper payments in several countries in Asia and the Middle East. According to the DPA, two of LBI's (former) executives, Richard Hirsch and James McClung, along with other employees and agents, made

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[44] DoJ Press Release, *IAP Worldwide Services Inc. Resolves Foreign Corrupt Practices Act Investigation* (Jun. 16, 2015), http://www.justice.gov/opa/pr/iap-worldwide-services-inc-resolves-foreign-corrupt-practices-act-investigation.

[45] Non-Prosecution Agreement, *In re IAP Worldwide Services, Inc*. at A4 (Jun. 16, 2015), http://www.justice.gov/criminal-fraud/file/629201/download.

[46] *Id*. at 1.

[47] DoJ Press Release, *IAP Worldwide Services Inc. Resolves Foreign Corrupt Practices Act Investigation* (Jun. 16, 2015), http://www.justice.gov/opa/pr/iap-worldwide-services-inc-resolves-foreign-corrupt-practices-act-investigation; *see also* Statement of Facts, *United States v. Rama*, No. 15-cr-143, at ¶ 5 (E.D. Va. Jun. 16, 2015), http://www.justice.gov/criminal-fraud/file/629186/download.

payments to secure government construction management contracts.[48] LBI agreed to pay a $17.1 million criminal penalty, implement rigorous internal controls, and retain a compliance monitor for at least three years. Concurrent with the corporate resolution, DoJ announced it had reached plea agreements with Hirsch and McClung, each of whom pleaded guilty to one count of conspiracy to violate the FCPA and one substantive count of violating the FCPA.[49] At the time of the misconduct, both were high-level executives who oversaw LBI's operations in India, Indonesia, and Vietnam.[50] The sentencing hearings for Hirsch and McClung are currently scheduled for May 12, 2016 and May 11, 2016, respectively.

In connection with its decision to enter into a DPA with LBI, the DoJ explained that considered, among other things, LBI's cooperation in making certain individuals available for interviews and terminating the officers and employees responsible for the violations.[51] Separately, other Berger affiliates were sanctioned by the World Bank in January 2015 for the conduct in Vietnam.[52]

E. 2015 DoJ and SEC Enforcement Efforts Against Individuals

DoJ's strong focus on individual prosecutions in 2015 suggests a refocusing of prosecutorial resources away from smaller, potentially less significant corporate investigations to major corporate cases and individuals.

1. Joseph Sigelman & PetroTiger Ltd.

Despite its focus on individuals, however, DoJ – and the SEC in prior years – has continued to have a mixed track record when forced to meet its burden of proof in contested proceedings. Perhaps the most high-profile example in 2015 was the case of Joseph Sigelman, former CEO of PetroTiger Ltd., a British Virgin Islands-registered company, who ended up pleading guilty after a lengthy trial to only one of the six counts on which he was indicted. Although DoJ succeeded in securing a conviction, Siegelman's single-count plea, resulting in a sentence of three years of probation, was seen by many as yet another instance in which DoJ has struggled to prosecute effectively an FCPA case.[53]

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[48] Order for Continuance, *United States v. Louis Berger International Inc.*, No. 15-3624 (D.N.J. July 17, 2015).
[49] Plea Agreement with Richard Hirsch, *United States v. Hirsch*, No. 15-cr-00358 (D.N.J. July 17, 2015); Plea Agreement with James McClung, *United States v. McClung*, No. 15-cr-00357 (D.N.J. July 17, 2015).
[50] Order for Continuance, *United States v. Louis Berger International Inc.*, No. 15-3624 (D.N.J. July 17, 2015).
[51] *Id.*
[52] Notice of Uncontested Sanctions Proceedings (Case No. 317) (Jan. 29, 2015). That sanction was terminated on January 28, 2016.
[53] For example, in 2012, the DoJ faced several mistrials, hung juries, and acquittals against the 22 "SHOT Show" defendants. Charges were ultimately successful only against the FBI's informant, Richard Bistrong. *United States v. Bistrong*, No. 1:10-cr-00021-RJL (D.D.C. 2010).

At the time of the plea agreement, DoJ also announced that it was declining to prosecute PetroTiger Ltd. for FCPA violations. This announcement marks only the second time that the DoJ has publicly announced an FCPA declination.[54] In declining to prosecute, DoJ cited PetroTiger's voluntary disclosure, its full cooperation in the investigation against its employee, and its remediation efforts, among other factors.

2. Andres Truppel

On September 30, 2015, Andres Truppel, the former CFO of Siemens Argentina, pleaded guilty to conspiring to pay bribes to Argentine government officers in connection with Siemens' now-infamous $1 billion-dollar contract to produce national identity cards for the Argentine state.[55] Mr. Truppel pleaded guilty to conspiring to violate the anti-bribery, internal controls, and books and records provisions of the FCPA, and to committing wire fraud.[56] As noted in our 2014 Year in Review, Mr. Truppel settled charges brought by the SEC without admitting or denying liability, and he agreed to pay an $80,000 civil penalty.[57] These resolutions with Mr. Truppel are the last remaining proceedings related to the Siemens Argentina matter.

3. JSC Techsnabexport Conspirators

On August 31, 2015, Vadim Mikerin, a Russian official residing in Maryland, pleaded guilty to the charge of conspiracy to commit money laundering. The money laundering count related to Mr. Mikerin's role in arranging for over $2 million in corrupt payments to influence the award of contracts with the Russian state-owned enterprise JSC Techsnabexport (TENEX).[58] Similarly, on June 15, 2015, Boris Rubizhevsky, a US citizen, pleaded guilty to conspiracy to commit money laundering for his role in entering into a sham consulting arrangement to conceal

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[54] The DoJ previously announced a declination in the *Morgan Stanley/Garth Peterson* matter in 2012, portraying Peterson as a rogue employee and noting Morgan Stanley's compliance efforts as a factor in their decision. *See* Dept. of Justice, *Former Morgan Stanley Managing Director Pleads Guilty for Role in Evading Internal Controls Required by FCPA* (Apr. 25, 2012), *available at* http://www.justice.gov/opa/pr/2012/April/12-crm-534.html.

[55] This contract, of course, was the subject of the Argentina-related portion of Siemens' 2009 resolution of FCPA and related charges resulting in $800 million in criminal fines, civil penalties and disgorgement to be paid by Siemens. Siemens also agreed to pay over Euro 395 million to German authorities in connection with related facts.

[56] DoJ Press Release, *Former Chief Financial Officer of Siemens Argentina Pleads Guilty to Role in Multimillion Dollar Foreign Bribery Scheme* (Sep. 30, 2015), http://www.justice.gov/opa/pr/former-chief-financial-officer-siemens-argentina-pleads-guilty-role-multimillion-dollar.

[57] SEC Press Release, *SEC Charges Seven Former Siemens Executives with Bribing Leaders in Argentina* (Dec. 13, 2011), https://www.sec.gov/news/press/2011/2011-263.htm.

[58] Dept. of Justice, *Russian Nuclear Energy Official Pleads Guilty to Money Laundering Conspiracy Involving Violations of the Foreign Corrupt Practices Act* (Aug. 31, 2015), http://www.justice.gov/opa/pr/russian-nuclear-energy-official-pleads-guilty-money-laundering-conspiracy-involving.

payments made at the direction and for the benefit of Mr. Mikerin.[59] Finally, on June 5, 2015, Daren Condrey pleaded guilty to conspiracy to violate the FCPA and conspiracy to commit wire fraud for his payment, facilitated by Mr. Rubizhevsky, to bribe Mr. Mikerin.[60]

This case represents yet another instance of the government's use of money laundering authorities to prosecute a foreign official for *receiving* a bribe.[61]

4. Vincente E. Garcia

On August 12, 2015, Vincente E. Garcia pleaded guilty to the charge of conspiracy to violate the anti-bribery provisions of the FCPA.[62] Garcia also settled civil charges with the SEC and agreed to disgorge $92,395 plus prejudgment interest.[63] The charges related to Garcia's position as former head of Latin American sales for SAP SE, a subsidiary of SAP International Inc., a technology service provider. Garcia admitted that he and others at SAP SE, including third-party consultants, planned to bribe three Panamanian officials to secure software license sales of approximately $3.7 million to various government agencies. Garcia and others paid at least $145,000 to one senior government official, and offered to pay bribes to the two other officials. Garcia also admitted to falsifying SAP Mexico's books and records to create a slush fund for these payments, knowingly circumventing the company's internal controls.[64]

Garcia was sentenced to 22 months in prison on December 16, 2015.[65] According to press reports, prosecutors cited Garcia's cooperation with the investigation in sentencing papers, but noted that to date the government has been unable to prosecute others accused of participating in the crimes.[66] After Garcia's plea, SAP commented that it would continue to

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[59] Letter, *United States v. Rubizhevsky*, No. 15-cr-332 (D. Md. June 15, 2015), ECF No. 26-1, http://www.justice.gov/criminal-fraud/file/783851/download; Information, *United States v. Rubizhevsky*, No. 15-cr-332 (D. Md. June 10, 2015), http://www.justice.gov/criminal-fraud/file/783846/download.

[60] Letter, *United States v. Condrey*, No. 15-cr-336 (D. Md. June 17, 2015), ECF No. 22.

[61] *See, for example*, Superseding Indictment, *United States v. Cruz et al.*, No. 09-21010-cr-JEM (S.D. Fla. Jul. 12, 2011) (indicting several Haiti Teleco officials on money laundering charges). *See also* Lucinda A. Low, Sarah R. Lamoree & John London, *The "Demand Side" of Transnational Bribery and Corruption: Why Leveling the Playing Filed on the Supply Side Isn't Enough*, 84 Fordham L. Rev. 563, 584–87 (2015).

[62] DoJ Press Release, *Former Executive Pleads Guilty to Conspiring to Bribe Panamanian Officials* (Aug. 12, 2015), http://www.justice.gov/opa/pr/former-executive-pleads-guilty-conspiring-bribe-panamanian-officials.

[63] SEC Order Instituting Cease-and-Desist Proceedings, Release No. 75,684 (Aug. 12, 2015).

[64] *Id.*; Criminal Information, *United States v. Garcia*, No. 15-cr-00366 (N.D. Cal. July 13, 2015).

[65] DoJ Press Release, *Former Executive Sentenced for Conspiracy to Bribe Panamanian Officials* (Dec. 16, 2015), http://www.justice.gov/opa/pr/former-executive-sentenced-conspiracy-bribe-panamanian-officials.

[66] Ross Todd, *SAP Exec Gets Prison Term for Bribery*, THE RECORDER (Dec. 17, 2015), http://www.therecorder.com/id=1202745193538/SAP-Exec-Gets-Prison-Term-for-Bribery?mcode=1202615718827&slreturn=20151123232827.

cooperate with the DoJ and SEC investigations;[67] SAP entered into a settlement with the SEC on February 1, 2016, in which it agreed to disgorge $3.7 million in profits relating to the contacts Garcia had secured through his activities in Panama.[68]

F. DoJ and SEC Declinations

The DoJ and SEC's enforcement activities in 2015 were also marked by an uptick in declinations reported. Whether this increase represents an ongoing trend is unclear, but it was consistent with DoJ's policy statements on the issue during the year. As noted above, the PetroTiger declination was only the second case in which DoJ has announced a declination publicly; the other instance was the Morgan Stanley/Petersen matter from 2012, in which DoJ similarly relied on company assistance to prosecute an individual.

In addition to the *PetroTiger*, *Bristol-Myers Squibb* and *Hyperdynamics* DoJ matters noted above, the following companies also received declinations from DoJ and/or SEC in 2015.

1. 21st Century Fox & News Corporation

On February 2, 2015, News Corporation (News Corp.) and 21st Century Fox (Fox) disclosed that DoJ had declined to prosecute either party following an investigation related to the discovery that News Corp.'s British subsidiary hacked phones and bribed police officers to obtain information for news articles.[69]

2. Cobalt International Energy

On January 29, 2015, Cobalt International Energy (Cobalt) announced that the SEC ended its investigation into allegations related to its operations in Angola.[70] In November 2011, Cobalt received a formal investigative order from the SEC about potential connections between Angolan government officials and an Angolan company that held working interests alongside Cobalt in a lucrative set of blocks that the company had acquired and developed offshore from Angola.[71] On August 5, 2014, Cobalt disclosed that it had received a *Wells* notice from the SEC that it intended to bring an enforcement action. As the matter developed in 2015, Cobalt subsequently disclosed that Cobalt represented that it had fully cooperated with the SEC by

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[67] Katherine Noyes, *Former SAC Exec Pleads Guilty to Bribery Charge*, PC WORLD (Aug. 13, 2015) http://www.pcworld.com/article/2971272/former-sap-exec-pleads-guilty-to-bribery-charge.html.

[68] Order Instituting Cease-and-Desist Proceedings, *In the Matter of SAP SE*, Exchange Act Release No. 77,005 (Feb. 1, 2016)

[69] News Corporation, Current Report (Form 8-K) (Feb. 2, 2015), http://investors.newscorp.com/secfiling.cfm?filingID=1299933-15-161&CIK=1564708; 21st Century Fox, Current Report (Form 8-K) (Feb. 2, 2015).

[70] Cobalt International Energy, *Cobalt Announces Termination of SEC Investigation* (Jan. 28, 2015), http://www.cobaltintl.com/newsroom/cobalt-announces-termination-of-sec-investigation.

[71] Cobalt International Energy, Current Report (Form 8-K), (March 11, 2011), http://www.sec.gov/Archives/edgar/data/1471261/000110465911013928/a11-7846_18k.htm.

conducting an extensive investigation, and Cobalt believed that in light of the investigation it had conducted, the SEC had concluded that its activities in Angola complied with all laws.[72] In its most recent statement regarding the SEC declination, Cobalt also disclosed that the parallel DoJ investigation remained open.[73]

3. Eli Lilly

In January 2015, the DoJ advised Indianapolis-based pharmaceutical maker Eli Lilly that it had closed the investigation of the company's marketing practices.[74] Previously, on December 20, 2012, Eli Lilly paid more than $29 million to settle civil charges with the SEC related to alleged illicit benefits that the company provided to government officials in Russia, Brazil, China, and Poland.[75]

4. Gold Fields Ltd.

On June 22, 2015, South African gold and diamond mining concern Gold Fields Ltd. (Gold Fields) released a statement saying that the SEC had concluded its FCPA-related investigation and would not recommend an enforcement action in connection with a Black Economic Empowerment (BEE) transaction, which was supported by the ANC, the ruling party of South Africa. Previously, on September 10, 2013, Gold Fields had disclosed that the SEC was investigating a $210 million BEE payment that was associated with the grant of a mining license for its South Deep operation.[76] This followed press reports that Gold Fields buried an internal investigation report recommending that the company disclose to the SEC that it had bribed ANC Chairman Baleka Mbete through a BEE payment.[77]

5. NCR Corp.

On June 22, 2015, the SEC notified NCR Corp. (NCR) that it did not intend to recommend an enforcement action in relation to anonymous allegations made in 2012 by a purported whistleblower regarding potential violations of the FCPA in China, the Middle East, and Africa.[78] As reported in our 2014 FCPA Year in Review, in April 2014, NCR also entered a

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[72] *Id*.
[73] Cobalt International Energy, *Cobalt Announces Termination of SEC Investigation* (Jan. 28, 2015), http://www.cobaltintl.com/newsroom/cobalt-announces-termination-of-sec-investigation.
[74] Eli Lilly, Annual Report (Form 10-K), at 26 (Feb. 19, 2015), http://www.sec.gov/Archives/edgar/data/59478/000005947815000100/lly-20141231x10k.htm.
[75] Complaint, *SEC v. Eli Lilly & Co.*, No. 12-cv-02045 (D.D.C. Dec. 20, 2012).
[76] Gold Fields, *Gold Fields Acknowledges SEC Investigation* (Sept. 10, 2013), https://www.goldfields.co.za/news_article.php?articleID=1836.
[77] Christopher M. Matthews, *SEC Investigates Gold Fields for South African Deal*, WALL ST. J. (Sept. 12, 2013), http://blogs.wsj.com/riskandcompliance/2013/09/12/sec-investigates-miner-gold-fields-for-south-african-deal/.
[78] NCR Corp., Form 10-Q (July 31, 2015), pg. 16, https://www.sec.gov/Archives/edgar/data/70866/000007086615000046/ncr-2015630x10q.htm; *see also* Richard L. Cassin, *NCR: SEC Declination Three Years After Whistleblower Complaint*,

no-fault settlement agreement in a shareholder derivative suit in which NCR agreed to enhance its corporate compliance program, without a monetary recovery for the plaintiffs.

6. NET 1 UEPS Technologies

On June 8, 2015, Net 1 UEPS Technologies (Net 1 UEPS), a South Africa-based telecom company that provides payment processing services, disclosed that it had received a letter from the SEC indicating that it would not pursue an enforcement action related to payments to South African government officials to win a contract with the South African Social Security Agency.[79] The company also stated that a DoJ investigation is ongoing even though Net 1 UEPS's only apparent nexus to the United States is as an issuer.[80]

III. 2015 ONGOING MATTERS AND NEW INVESTIGATIONS

Despite the relative reduction in the number of enforcement actions brought by DoJ and SEC over the past few years, significant investigation activity from legacy matters, and a number of new investigations, were underway in 2015, so the pipeline going into 2016 is strong.

A. Developments in Ongoing Matters

1. *Direct Access Partners* Executives

Direct Access Partners Executives Benito Chea, Joseph DeMeneses, Jose Alejandro Hurtado, Tomas Clarke, and Ernesto Lujan were sentenced in 2015 for their roles in a scheme to pay bribes to a senior official in Venezuela's state economic development bank, Banco de Desarrollo Económico y Social de Venezuela (Bandes). Sentences included prison terms (four years for Chea and DeMeneses, three years for Hurtado, and two years for Clark and Lujan) and forfeiture ranging from $2.6 million to $18.5 million.[81] Maria de los Angeles Gonzalez de

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The FCPA Blog, http://www.fcpablog.com/blog/2015/8/6/ncr-sec-declination-three-years-after-whistleblower-complain.html.

[79] Net1 UEPS Technologies, Current Report (Form 8-K) (June 8, 2015); *see also* Net 1 UEPS Technologies, *Net1 Announces Conclusion of SEC investigation* (June 8, 2015).

[80] *See* Richard L. Cassin, *Net 1 Probe Shows FCPA's Awesome Reach*, THE FCPA BLOG (Dec. 6, 2012), http://www.fcpablog.com/blog/2012/12/6/net-1-probe-shows-fcpas-awesome-reach.html.

[81] *See* DoJ Press Release, *CEO and Managing Director of US Broker-Dealer Sentenced for International Bribery Scheme* (March 27, 2015), http://www.justice.gov/opa/pr/ceo-and-managing-director-us-broker-dealer-sentenced-international-bribery-scheme; DoJ Press Release, *Three Former Broker-dealer Employees Plead Guilty in Manhattan Federal Court to Bribery of Foreign Officials, Money Laundering and Conspiracy to Obstruct Justice* (Aug. 30, 2013), http://www.justice.gov/opa/pr/three-former-broker-dealer-employees-plead-guilty-manhattan-federal-court-bribery-foreign; Letter to Court from SEC Counsel Victor Suthammanont, *SEC v. Lujan*, Case 1:13-cv-03074-JMF (S.D.N.Y. Dec. 21, 2015); *see also* Nate Raymond, *Ex-brokerage executive gets two years in U.S. prison over Venezuelan bribes*, REUTERS (Dec. 4, 2015), http://www.reuters.com/article/us-venezuela-usa-corruption-idUSKBN0TN2NZ20151205; Nate Raymond, *Ex-brokerage executive gets two years in U.S. prison for Venezuelan bribes*, REUTERS (Dec. 8, 2015), http://www.reuters.com/article/us-

Hernandez pleaded guilty in November 2013, and is scheduled to be sentenced on January 15, 2016.[82]

2. Magyar Telekom Executives

A long-running litigation filed by the SEC in December 2011, involving three former senior executives of Magyar Telekom, Hungary's largest telecommunications company, continues to progress and saw some movement in 2015.[83] The SEC alleges that executives Elek Straub, Andras Balogh, and Tama Morvai orchestrated, approved, and executed a plan to bribe Macedonian officials in 2005 and 2006 to prevent the introduction of a new competitor and gain other regulatory benefits. In August 2015, filings were unsealed regarding testimony of witness, Slobodan Bogoeski, the former Macedonian Secret Service Chief, who supports the SEC's allegations against the executives. On August 11, 2015, the SEC overcame initial hurdles when the court denied the executives' motion to bar Bogoeski's testimony.[84]

In October 2015, cross summary judgment motions were filed that provide some insight into the SEC's views on its jurisdictional reach under the FCPA, and the applicable statute of limitations.[85] The SEC argued that FCPA's anti-bribery provisions apply because emails relating to the alleged bribery scheme passed through US-based servers, and because the defendants knowingly signed documents filed with the SEC that failed to disclose the alleged corruption. On the limitations period, the SEC argued that in order for the FCPA's five-year limitations period to run, the defendants must be physically present in the United States at least once during that period. As of this publication's date, resolution of these motions remains pending.

3. Alstom Executives

In 2014, Alstom plead guilty and paid the largest ever penalty in a criminal FCPA case - $772 million – to settle charges relating to bribery of Indonesian officials.[86] Litigation against executives involved in the scheme remains ongoing, including a significant piece of litigation involving a former Alstom executive, Lawrence Hoskins, Alstom's former senior vice president for the Asia region. Mr. Hoskins is currently pending trial, scheduled for April, 2016, in the

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venezuela-usa-corruption-idUSKBN0TR2XD20151208; Nate Raymond, *Brokerage employee gets three years in U.S. prison over Venezuelan bribes*, REUTERS (Dec. 15, 2015), http://www.reuters.com/article/us-venezuela-usa-corruption-idUSKBN0TY32020151215.

[82] Letter to Court from SEC Counsel Victor Suthammanont, *SEC v. Lujan*, Case 1:13-cv-03074-JMF (S.D.N.Y. Dec. 21, 2015).

[83] Complaint, *SEC v. Straub*, No. 1:11-cv-09645-RJS (S.D.N.Y. Dec. 29, 2011).

[84] *See* Motion to Strike the Statements of Slobodan Bogoeski, *SEC v. Straub*, No 1:11-cv-09645-RJS (S.D.N.Y. Aug. 26, 2015); Op. & Order, *SEC v. Straub*, No. 1:11-cv-09645-RJS (S.D.N.Y. Aug. 24, 2015).

[85] Notice of Motion for Summary Judgment, *SEC v. Straub*, 1:11-cv-09645-RJS (S.D.N.Y. Oct. 9, 2015); Plaintiff US Security & Exchange Commission's Notice of Motion for Partial Summary Judgment, *SEC v. Straub*, 1:11-cv-09645-RJS (S.D.N.Y. Oct. 9, 2015).

[86] Plea Agreement, *United States v. Alstom*, No. 14-cr-246 (D. Conn. Dec. 22, 2014).

District of Connecticut.[87] After Mr. Hoskins' case is resolved, we would expect sentencing for other executives to proceed, including Frederic Pierucci, Alstom's former vice president of global boiler sales who pleaded guilty on July 29, 2013; David Rothschild, Alstom Power's former vice president of regional sales who pleaded guilty on November 2, 2012; and William Pomponi, Alstom Power's former vice president of regional sales who pleaded guilty on July 17, 2014.

Several related proceedings have been resolved, including an Indonesian case against a high-ranking member of the Indonesian Parliament who was convicted of accepting bribes from Alstom and is currently serving a three-year prison term;[88] and a DoJ enforcement action against Asem Elgawhary, who was working on behalf of the Egyptian state-owned electricity company. Mr. Elgawhary pleaded guilty on December 4, 2014, to mail fraud, conspiring to launder money and tax fraud for accepting kickbacks from Alstom and other companies and was sentenced to serve 42 months in prison and to forfeit approximately $5.2 million.[89]

4. Dmitry Firtash

As discussed in our 2014 FCPA Year in Review, on April 2, 2014, the US District Court for the Northern District of Illinois unsealed a five-count indictment against Dmitry Firtash and five other foreign nationals.[90] Firtash was charged with racketeering conspiracy, money laundering conspiracy, interstate travel in aid of racketeering, and conspiracy to violate the FCPA. Although Firtash was arrested in Austria on March 12, 2014, he was thereafter released from custody after posting $174 million bail.[91] On April 30, 2015, Judge Christoph Bauer of the Landesgerichtsstrasse Regional Court in Vienna refused to order the extradition of Firtash on the basis that the prosecution was politically motivated and the US has not provided coherent evidence.[92]

5. Petróleos de Venezuela

On December 10, 2015, Roberto Rincón, the president of Tradequip Services & Marine, and another US-based Venezuelan businessman, Abraham Jose Shiera Bastidas, were charged with conspiracy to violate the FCPA resulting from allegedly bribing Venezuelan officials of the

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[87] DoJ Press Release, *Alstom Sentenced to Pay $772 Million Criminal Fine to Resolve Foreign Bribery Charges*, (Nov. 13, 2015), http://www.justice.gov/opa/pr/department-justice-seeks-recovery-approximately-100000-bribes-paid-former-chad-ambassador.
[88] *Id.*
[89] *Id.*
[90] Indictment, *U.S. v. Dmitry Firtash*, No. 13-cr-515 (N.D.Ill. June 20, 2013).
[91] DoJ Press Release, *Six Defendants Indicted in Alleged Conspiracy to Bribe Government Officials in India to Mine Titanium Minerals* (Apr. 2, 2014), http://www.justice.gov/opa/pr/six-defendants-indicted-alleged-conspiracy-bribe-government-officials-india-mine-titanium.
[92] David M. Herszenhorn, *Judge Rebuffs U.S. in Rejecting Extradition of Ukraine Billionaire*, WALL ST. J. (Apr. 30 2015), http://www.nytimes.com/2015/05/01/world/europe/dmitry-v-firtash-extradition.html.

national oil company PDVSA.[93] According to the indictment, the two men also were charged with wire fraud and money laundering.[94] The indictment claims that they bribed at least five PDVSA officials to receive contracts.[95] Rincón and Bastidas provided the officials with travel, hotel rooms, and meals, and then concealed the gifts by recording them as commissions or payments for work or services rendered.[96]

6. Dimitrij Harder

On January 6, 2015, the DoJ filed a multi-count indictment against Russian national and US permanent resident Dmitrij Harder, owner and president of the Chestnut Consulting Group, Inc. and the Chestnut Consulting Group Co. (Chestnut Consulting), alleging, among other things, violations of the FCPA and the Travel Act. The DoJ alleged that Chestnut Consulting provided "success fees" from two of its clients to the sister of a European Bank for Reconstruction and Development (EBRD) employee in exchange for the official's approval of funding and that Harder concealed the payments to the EBRD official's sister by issuing false invoices.[97]

The case is noteworthy because Harder filed a motion to dismiss in his case in which he argued, among other things, that the statutory provision that permits the US government to expand the definition of "foreign official" to include "public international organizations" is unconstitutional and void for vagueness.[98] As of the date of this publication, the motion is still pending.

7. Biomet

In March 2015, Biomet, Inc. (Biomet) disclosed that the DoJ had extended the term of its compliance monitor for one more year after Biomet disclosed to DoJ new FCPA violations in its Latin American business operations.[99] According to media reports, the SEC initiated an investigation as a result.[100] The monitor initially was imposed by a 2012 DPA in which Biomet agreed to pay a $17.28 million criminal penalty for improper payments to healthcare

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[93] Indictment, *U.S. v. Rincon et al.*, No. 15-cr-654, 15 (S.D. Tex. Dec. 10, 2015); *see also* William Neuman, *U.S. Charges Two With Corruption Linked to Venezuelan Oil Company*, N.Y. TIMES (Dec. 21, 2015), http://www.nytimes.com/2015/12/22/world/americas/us-charges-2-with-corruption-linked-to-venezuelan-oil-company.html?_r=0.
[94] *Id*. at 15.
[95] *Id*.
[96] *Id*. at 12–13.
[97] Complaint, *United States v. Harder*, Case No. 15-cr-0001 (E.D. Pa. Jan. 6, 2015).
[98] Motion to Dismiss, *United States v. Harder*, Case No. 2:15-cr-00001 (E.D. Pa. filed Oct. 22, 2015); *see also* 15 U.S.C. § 78dd-2(h)(2)(B).
[99] Biomet, Inc., Current Report (Form 8-K) (Mar. 13, 2015).
[100] Jessica Corso, *DoJ Monitors Biomet for Another Year for FCPA Violations*, LAW360.COM (Mar. 18, 2015), www.law360.com/articles/632887/DoJ-monitors-biomet-for-another-year-for-fcpa-violations.

professionals employed at public hospitals in Argentina, Brazil, and China in exchange for contracts.[101] In 2012, Biomet also settled SEC allegations related to the same conduct.[102]

8. Siemens AG

Although not an ongoing enforcement matter, Siemens continues to be involved in litigation related to its prior FCPA investigation and its December 2008 SEC and DoJ resolutions. On July 24, 2014, 100Reporters LLC (100 Reporters), a nonprofit news media organization that focuses on foreign and domestic corruption cases, filed suit to compel DoJ to release records the group previously requested under the Freedom of Information Act (FOIA), relating to the 2008 guilty pleas of Siemens AG and three of its subsidiaries and the subsequent four year independent monitorship by Dr. Theodore Waigel.[103]

After a series of request denials and administrative appeals in 2014,[104] Siemens AG and the Monitor, Dr. Waigel, submitted motions to intervene, which the court granted.[105] On March 30, 2015, the D.C. District Court granted DoJ more time "to search for and review FCPA compliance monitoring records requested by 100ReportersLLC."[106] The litigation is ongoing, but could potentially have significant implications on settlement confidentiality.

B. New Investigations in 2015

There were few publicly disclosed investigations early in 2015, but the second half of the year saw a number of announcements relating to new FCPA investigations. A number of sectors were again the focus of investigations in 2015, including energy and extractives (in particular relating to companies' dealings with Petrobras in Brazil), healthcare, and technology.

1. Energy and Extractives Sectors

The energy and extractives sectors have long been a focus of enforcement activity, a trend that continued in 2015. Kinross Gold Corporation, a Canadian-based gold mining company, said in a statement in October 2015 that it is under investigation by the SEC and DoJ for alleged improper payments and certain internal control deficiencies at its West Africa mining

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[101] Deferred Prosecution Agreement, *United States v. Biomet, Inc.*, No. 12-cr-080-RBW (Mar. 26, 2012).
[102] SEC Press Release, *SEC Charges Medical Device Company with Foreign Bribery* (Mar. 26, 2012), www.sec.gov/News/PressRelease/Detail/PressRelease/1365171487958.
[103] Complaint for Injunctive Relief, *100 Reporters LLC v. DoJ*, No. 14-1264, 2014 WL 6817009 (D.D.C. July 24, 2014).
[104] *Id*. at 6-8.
[105] *100 Reporters LLC v. DoJ*, No. 14-1264, 2014 WL 6817009 (D.D.C. July 24, 2014) (Contreras, J.).
[106] *Siemens AG: DoJ Granted More Time to Review FCPA Monitoring Records in FOIA Case*, FCPA LITIGATION NEWS (Mar. 31, 2015), http://fcpalitigationnews.com/siemens-ag-DoJ-granted-more-time-to-review-fcpa-monitoring-records-in-foia-case/.

operations.[107] Sociedad Química y Minera de Chile S.A. (SQM), a Chilean producer of potassium nitrate and iodine chemicals, also reported it had commenced an FCPA-related internal investigation, in addition to a domestically-focused corruption investigation.[108]

Of particular note in 2015 is the spreading fallout from the Brazilian anti-corruption investigation (dubbed "Operation *Lava Jato*" or "Car Wash") into state-owned oil giant Petroleo Brasileiro SA (Petrobras). That Brazilian investigation continues to include a focus on other companies operating in the area, including many based outside Brazil.[109] According to media reports, in addition to the Brazilian investigations, Petrobras has been cooperating with the SEC and DoJ since late 2014.[110] Although there were reports that Petrobras was prepared to settle for record penalties in August 2015, no FCPA-related settlement has been reached as of our publication date.[111]

The Petrobras scandal has implicated, in one way or another, a number of companies now under investigation by US enforcement agencies for some aspect of their dealings with Petrobras or the Brazilian authorities.[112] The list of companies reportedly under investigation or otherwise involved is striking for its worldwide scope. It includes Braskem SA, a Brazilian petrochemical producer;[113] Eletrobrás, a major Brazilian electric utility company;[114] Houston-based Hines, a privately-owned real estate firm;[115] US-based driller Pride International;[116] Transocean Corp;[117]

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[107] Kinross Gold Corporation Press Release, *Kinross Addresses Regulatory Review of West Africa Operations* (Oct. 2, 2015), http://www.kinross.com/news-and-investors/news-releases/press-release-details/2015/Kinross-addresses-regulatory-review-of-West-Africa-operations/default.aspx.

[108] SQM Press Release, *SQM Informs Results of Shearman & Sterling Report* (Dec. 15, 2015), http://ir.sqm.com/English/investor-relation/press-releases/press-release-details/2015/SQM-Informs-Results-of-Shearman--Sterling-Report/default.aspx.

[109] Collateral litigation stemming from the scandal is discussed in Section VII, while ongoing investigations by Brazilian authorities are discussed in Section VIII.

[110] Peter Millard and Alan Katz, *Petrobras Cooperating with SEC Probe into Kickbacks*, BLOOMBERG BUS. (Nov. 24, 2014), http://www.bloomberg.com/news/articles/2014-11-24/petrobras-cooperating-with-sec-probe-into-kickbacks.

[111] Jeb Blount and Mica Rosenberg, *Exclusive: U.S. graft probes may cost record $1.6 billion or more – source*, REUTERS (Aug. 18, 2015), http://www.reuters.com/article/us-brazil-petrobras-corruption-idUSKCN0QN0BB20150818.

[112] Such authorities are reportedly receiving information from Brazilian prosecutors. *See* Sabrina Valle, U.S. Alerted in Brazil's Foreign Supplier Probe, Prosecutor Says, BLOOMBERG BUS. (Jun. 2, 2015), http://www.bloomberg.com/news/articles/2015-06-02/u-s-alerted-in-brazil-foreign-supplier-probe-prosecutor-says.

[113] Braskem S.A., Annual Report (Form 20-F) (Apr. 24, 2015).

[114] Centrais Eletricas Brasileiras S.A. – Eletrobras, Report of Foreign Private Issuer (Form 6-K) (July 9, 2015).

[115] Nancy Sarnoff, *Hines linked to Petrobras scandal in Brazil*, HOUSTON CHRONICLE (Nov. 10, 2015), http://www.houstonchronicle.com/business/real-estate/article/Hines-linked-to-Petrobras-scandal-in-Brazil-6623361.php; Craig Karmin & Will Connors, *Hines's Brazil Business Mired in*

Vantage Drilling Company;[118]and a number of others. In all, the Brazilian authorities have reportedly determined to focus on investigations of approximately 30 companies based outside of Brazil in 2016.[119]

2. Health Care Industry

In 2015, the SEC and DoJ launched new investigations as well as reached settlements in long-running healthcare industry investigations. As discussed below, Mead Johnson Nutrition Company[120] and Bristol-Myers Squibb both agreed in 2015 to settle charges relating to activities in China.[121] In terms of new investigations, Alexion Pharmaceuticals, Inc. announced on November 4, 2015 that DoJ and the SEC were investigating the company for possible FCPA violations, focusing on business operations in Japan, Brazil, Turkey, and Russia.[122]

3. Manufacturing

Several manufacturing companies have announced internal investigations, subpoenas, declinations and other FCPA-related activity in the manufacturing sector this year. For example, Affinia Group Intermediate Holdings Inc. disclosed that it conducted an internal investigation related to its subsidiaries in Poland and Ukraine in 2015.[123] It self-reported to DoJ and SEC, and DoJ issued a declination in mid-2015.[124] Flowserve Corp. also disclosed in early 2015 that an employee of a foreign subsidiary had violated its code of conduct and possibly also the FCPA, after which the company self-reported to the government and has been conducting an internal investigation.[125] Flowserve, which was also subject to dual SEC/DoJ FCPA settlements in 2008

Probe, WALL STREET J. (Nov. 10, 2015), http://www.wsj.com/articles/hiness-brazil-business-mired-in-probe-1447183547?alg=y.

[116] Ensco Plc., Quarterly Report (Form 10-Q) (Oct. 29, 2015).

[117] Transocean Ltd., Quarterly Report (Form 10-Q) (Nov. 4, 2015).

[118] Vantage Drilling Company, Quarterly Report (Form 10-Q) (Aug. 4, 2015).

[119] Dylan Tokar, *30 foreign companies probed in Brazilian Petrobras scandal*, MAIN JUSTICE (Nov. 25, 2015), http://www.mainjustice.com/justanticorruption/2015/11/25/30-foreign-companies-probed-in-brazilian-petrobras-scandal/.

[120] Order, *In re Mead Johnson Nutrition Co.*, Exchange Act Release No. 75,532 (July 28, 2015); *see also* SEC Press Release, *SEC Charges Mead Johnson Nutrition with FCPA Violations* (July 28, 2015), www.sec.gov/news/pressrelease/2015-154.html.

[121] Order, *In re Bristol-Myers Squibb Co.*, Exchange Act Release No. 76,073 (Oct. 5, 2015); *see also* SEC Press Release, *SEC Charges Bristol-Myers Squibb with FCPA Violations* (Oct. 5, 2015), www.sec.gov/news/pressrelease/2015-229.html.

[122] Alexion Pharmaceuticals Inc., Quarterly Report (Form 10-Q) (Nov. 4, 2015).

[123] The company's forms 10-Q for the periods ending March 31, 2015 and September 30, 2015 both reference previous disclosures of this investigation. *See* Affinia Group Intermediate Holdings Inc., Quarterly Reports (Forms 10-Q) (March 31 and September 30, 2015).

[124] *Id.*

[125] Flowserve Corporation, Annual Report (Form 10-K) (December 31, 2014); *see also* Samuel Rubenfeld, *Flowserve Discloses FCPA Investigation*, WALL ST. J. (Feb. 18, 2015), http://blogs.wsj.com/riskandcompliance/2015/02/18/flowserve-discloses-fcpa-investigation/.

related to the Iraq Oil-For-Food program, subsequently disclosed that it received an SEC subpoena in mid-2015.[126]

Other disclosures included Nortek Inc., which made public that it had uncovered and self-reported to SEC and DoJ "questionable" practices that may have violated the FCPA at its China subsidiary,[127] and Roust Corporation, which has been subject to a DoJ FCPA inquiry for the past several years, but stated earlier this year that DoJ would not take further action on the matter.[128]

4. Technology Sector

The technology industry saw a rising number of new investigations in 2015. Akamai Technologies disclosed in its SEC filing that it has advised the SEC and DoJ in February 2015 of an internal investigation that the company is conducting in relation to sales practices in a country outside the US[129] Millicom also announced that it has conducted an investigation and reported to the US and Swedish enforcement authorities potential improper payments relating to a joint venture in Guatemala.[130] Finally, Xylem Inc., which was conducting an investigation in relation to antitrust allegations in South Korea, broadened its investigation to include a review of compliance with FCPA in late 2014 and reported to the SEC and DoJ in January 2015.[131]

2015 also saw developments in ongoing investigations in the technology sector. For example, PTC and Analogic disclosed that they may be close to settling ongoing investigations with DoJ and SEC.[132]

5. Financial Services

Although enforcement actions (including BNY Mellon, discussed above, which was the first in a number of actions involving hiring) and investigations continued in the financial services sector, only one new investigation, of Crawford & Company, was disclosed by an industry company in 2015.[133]

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[126] Flowserve Corporation, Quarterly Report (Form 10-Q) (June 30, 2015); *see also* Samuel Rubenfeld, *SEC Subpoenas Flowserve in Bribery Probe*, WALL ST. J. (Aug. 3, 2015), http://blogs.wsj.com/riskandcompliance/2015/08/03/sec-subpoenas-flowserve-in-bribery-probe/.
[127] Nortek, Inc., Current Report (Form 8-K) (Jan. 7, 2015); *see also* Joel Schectman, *Nortek Investigates Possible Bribe Payments*, WALL ST. J. (Jan. 16, 2015), http://blogs.wsj.com/riskandcompliance/2015/01/16/nortek-investigates-possible-bribe-payments/.
[128] Roust Corporation (Form 10-Q) (Mar. 31, 2015).
[129] Akamai Technologies (Form 10-K) (Mar. 2, 2015).
[130] Millicom Pres Release, *Millicom reports to authorities potential improper payments on behalf of its Guatemala joint venture*, (Oct. 21, 2015), http://mb.cision.com/Main/950/9852447/434107.pdf.
[131] Xylem Inc., (Form 10-K) (Feb. 26, 2015).
[132] PTC Inc., (Form 10-K) (Nov. 23, 2015); Analogic Corp., (Form 10-Q) (Dec. 9, 2015).
[133] Crawford & Co., Quarterly Report (10-Q), (Nov. 9, 2015).

6. Other Investigations

In addition to those above, several significant SEC and DoJ FCPA investigations that were announced prior to 2015 remained ongoing in 2015.

Notably, Wal-Mart remains subject to an FCPA investigation by SEC and DoJ since 2011 and continues to receive substantial media attention. Media reports in October speculated that federal investigators have found "little in the way of major offenses" in Wal-Mart's operations in Mexico as was earlier suspected, but has uncovered relatively small bribes paid in India.[134] US authorities are also investigating Wal-Mart in Brazil.[135] According to media reports, Wal-Mart has already spent well over half a billion dollars investigating corruption allegations and improving its internal compliance program.[136] The company also remains subject to a number of derivative suits and class actions, discussed in more detail below.

SEC and/or DoJ also continue investigations of several pharmaceutical companies, including AstraZeneca PLC, Merck & Co. Inc., and Sciclone Pharmaceuticals Inc., all of which have been under FCPA investigation since before 2011. Of note in 2015, Sciclone Pharmaceuticals Inc. is reportedly discussing a tentative $12.8 million settlement with the SEC to resolve potential violations of the FCPA with respect to its China operations.[137]

The financial services sector also continued to face scrutiny for ongoing investigations commenced in 2014 and earlier. This included investigations into the hiring practices of various financial services institutions (including BNY Mellon, discussed above). In February 2015, reports indicated that J.P. Morgan Chase & Co. was preparing to settle with government authorities examining J.P. Morgan's decision to hire the son of China's current commerce minister.[138] However, later articles have since reported that J.P. Morgan and other banks are pushing back against the government's interpretation of the FCPA to include such hiring practices.[139]

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[134] Aruna Viswanatha and Delvin Barrett, *Wal-Mart Bribery Probe Finds Few Signs of Major Misconduct in Mexico*, WALL ST. J. (Oct. 19, 2015), http://www.wsj.com/articles/wal-mart-bribery-probe-finds-little-misconduct-in-mexico-1445215737.

[135] Aruna Viswanatha and Sarah Nassauer, *U.S. Probes Possible Wal-Mart Misconduct in Brazil*, WALL ST. J. (Nov. 24, 2015), http://www.wsj.com/articles/u-s-probe-of-wal-mart-finds-possible-misconduct-in-brazil-1448401190.

[136] Aruna Viswanatha and Delvin Barrett, *Wal-Mart Bribery Probe Finds Few Signs of Major Misconduct in Mexico*, WALL ST. J. (Oct. 19, 2015), http://www.wsj.com/articles/wal-mart-bribery-probe-finds-little-misconduct-in-mexico-1445215737.

[137] Jaclyn Jaeger, *SciClone Could Pay SEC $12.8 Million in FCPA Case*, https://www.complianceweek.com/blogs/enforcement-action/sciclone-could-pay-sec-128-million-in-fcpa-case#.VoG9QVJdCdc.

[138] Ned Levin, Emily Glazer, and Christopher M. Matthews, *In J.P. Morgan Emails, a Tale of China and Connections*, WALL ST. J. (Feb. 6, 2015), http://www.wsj.com/articles/in-j-p-morgan-emails-a-tale-of-china-and-connections-1423241289.

[139] Jean Eagleshem, Emily Glazer, Ned Levin, *Wall Street Pushes Back on Foreign Bribery Probe*, WALL ST. J. (Apr. 29, 2015).

Financial services firms financing and investing in Libya prior to the 2011 revolution also continued to face scrutiny – however, it appears that investigations into some firms are nearing an end.[140] Och-Ziff disclosed this year that it believed that it was "reasonably likely" to enter into discussions with the SEC and DoJ to resolve ongoing matters.[141] An ongoing investigation involving Dun & Bradstreet's China operations also appears to be nearing settlement discussions.[142]

V. NON-FCPA SIGNIFICANT DOJ/SEC ENFORCEMENT EFFORTS

A. Whistleblower Activity

The SEC's whistleblower program continued to show substantial activity in 2015, with awards to eight whistleblowers during the fiscal year, although none were FCPA-related.[143] Litigation regarding the scope of anti-retaliation provisions of the Dodd-Frank Act continued as well in 2015.

1. SEC 2015 Whistleblower Report

According to the SEC's annual report, the number of whistleblower tips continued to climb, with 3,923 reports during the 2015 fiscal year report compared to 3,620 reported in the previous year. There continued to be only a small percentage of FCPA-related tips, with only 186 reported (or 4.7% of the total amount) in fiscal 2015.[144]

2. Recent Dodd-Frank Whistleblower Awards

Eight whistleblowers received awards during the 2015 fiscal year. The highest award to date of $30 million was paid out during the 2015 fiscal year (although authorized previously), and in its report, the SEC noted that the whistleblower received additional payments due to successful related actions.[145] The SEC also awarded the maximum amount to the whistleblower at the center of its first action alleging violations of the Dodd-Frank anti-retaliation provisions.[146] A compliance officer was also awarded $1.5 million in 2015.[147] This represented the first time in

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[140] Scott Patterson and Michael Rothfeld, *U.S. Investigates Hedge Fund Och-Ziff's Link to $100 Million Loan to Mugabe*, WALL ST. J. (Aug. 5, 2015), http://www.wsj.com/articles/u-s-probes-och-ziff-africa-deal-tied-to-mugabe-1438817223.
[141] Och-Ziff Capital Management Group, LLC, Quarterly Report (10-Q) (May 5, 2015); Dunn & Bradstreet Corp., Quarterly Report (10-Q) (May 6, 2015).
[142] Dun & Bradstreet Corp., Quarterly Report (10-Q) (May 6, 2015).
[143] *2015 Annual Report to Congress on the Dodd-Frank Whistleblower Program*, SEC (Nov. 2015), *available at* https://www.sec.gov/whistleblower/reportspubs/annual-reports/owb-annual-report-2015.pdf.
[144] *Id.*
[145] *Id.*
[146] Order Determining Award Claim, Release No. 74826 (Apr. 28, 2015) *available at* https://www.sec.gov/rules/other/2015/34-74826.pdf.
[147] Order Determining Award Claim, Release No. 74781 (Apr. 22, 2015) *available at* https://www.sec.gov/rules/other/2015/34-74781.pdf.

which a whistleblower has successfully availed him/herself of the exception to the general bar on control persons' collection of whistleblower bounties. The award was based on a finding that the information received was "necessary to prevent the relevant entity from engaging in conduct that is likely to cause substantial injury to the financial interest or property of the entity or investors."[148] There was also the first whistleblower award to an officer who had learned about the wrongdoing through another employee.[149]

3. Litigation over the Dodd-Frank Whistleblower Provisions

There is currently a split among federal circuit courts of appeals as to whether the anti-retaliation provisions of the Dodd-Frank Act cover whistleblowers that do not first report to the SEC, but rather only report misconduct internally. The Second Circuit ruled in 2015 that whistleblowers were protected even if they only reported internally.[150] This ruling is in conflict with the Fifth Circuit's prior opinion in *Asadi v. G.E. Energy*, which found that the statute was unambiguous and only protected whistleblowers who had reported to the SEC.[151] This issue is currently being litigated in the context of an ongoing FCPA whistleblower lawsuit, *Sanford Wadler v. Bio-Rad*, discussed below.

The SEC also in 2015 brought its first enforcement action against a company for using language in a confidentiality agreement that impeded whistleblowers from reporting to the SEC. This action settled for $130,000.[152] This action followed a media report in early 2015 that the SEC was conducting a wider investigation into such confidentiality agreements.[153]

B. FIFA Investigation

On May 27, 2015, an indictment was unsealed charging fourteen defendants involved in international soccer with various offenses including racketeering, wire fraud, bribery and money laundering.[154] The defendants included high-ranking Fédération Internationale de Football Association (FIFA) officials, officials of other governing bodies of world soccer, and sports

[148] 17 C.F.R. § 240.21F-4(b)(4)(v)(A).
[149] Order Determining Award Claim, Release No. 75477 (July 17, 2015) *available at* https://www.sec.gov/rules/other/2015/34-75477.pdf.
[150] *Berman v. Neo@Ogilvy*, 801 F.3d 145, 155 (2nd Cir. 2015).
[151] *Asadi v. G.E. Energy*, 720 F. 3d 620, 630 (5th Cir. 2013).
[152] Order Institution Cease and Desist Proceedings, *In the Matter of KBR, Inc.*, Release No. 74619 (April 1, 2015), *available at* https://www.sec.gov/litigation/admin/2015/34-74619.pdf.
[153] Rachel Louise Ensign, *SEC Probes Companies' Treatment of Whistleblowers*, WALL ST. J. (Feb. 25, 2015) *available at* http://www.wsj.com/articles/sec-probes-companies-treatment-of-whistleblowers-1424916002.
[154] DoJ Press Release, Nine FIFA Officials and Five Corporate Executives Indicted for Racketeering Conspiracy and Corruption (May 27, 2015) http://www.justice.gov/opa/pr/nine-fifa-officials-and-five-corporate-executives-indicted-racketeering-conspiracy-and.

marketing executives.[155] Seven of the defendants were arrested by Swiss authorities at the request of the United States.

A superseding indictment was unsealed on December 3, 2015, which added sixteen additional defendants and was accompanied by arrests of two current presidents of regional soccer federations who are also FIFA officials.[156] To date, 41 individuals and entities have been charged. Of those charged, 12 individuals and two sports marketing companies have pleaded guilty, and have agreed to forfeit over $190 million in allegedly ill-gotten assets.[157]

Federal prosecutors also are known to be investigating financial institutions in connection with their role in facilitating the payments in question.[158] Other countries, in addition to the US and Switzerland, have also started initiating their own investigations into FIFA-related corruption allegations.[159]

C. Kleptocracy Asset Recovery Initiative

In 2015, the DoJ's Kleptocracy Asset Recovery Initiative continued to recover proceeds related to foreign official corruption. In the past year, the DoJ notably reached a settlement of its civil forfeiture cases of $1.2 million traceable to corruption involving the former president of Korea, Chun Doo Hwan.[160] The DoJ also assisted the Korean government in recovering an additional $27.5 million in satisfaction of an outstanding criminal restitution order against former President Chun.[161]

The DoJ brought multiple new proceedings in 2015 under this initiative. Several of the notable ones are summarized below:

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[155] Indictment, *United States v. Webb, et al.*, 15-CR-0252 (RJD) (RML) (E.D.N.Y. May 22, 2015).
[156] DoJ Press Release, *Sixteen Additional FIFA Officials Indicted for Racketeering Conspiracy and Corruption* (Dec. 3, 2015) http://www.justice.gov/opa/pr/sixteen-additional-fifa-officials-indicted-racketeering-conspiracy-and-corruption; Indictment; *United States v. Hawit, et al.*, 15-CR-0252 (S-1) (RJD) (RML) (E.D.N.Y. Nov. 25, 2015).
[157] DoJ Press Release, *Sixteen Additional FIFA Officials Indicted for Racketeering Conspiracy and Corruption* (Dec. 3, 2015), http://www.justice.gov/opa/pr/sixteen-additional-fifa-officials-indicted-racketeering-conspiracy-and-corruption.
[158] Gina Chon and Ben McLannahan, *Banks Face US Investigation in Fifa Corruption Scandal*, FINANCIAL TIMES (May 28, 2015) http://www.ft.com/cms/s/0/97f147f2-04ab-11e5-adaf-00144feabdc0.html#slide0.
[159] *See e.g.*, *Fifa Scandal: Around the World in Football Investigations*, BBC NEWS (June 2, 2015) http://www.bbc.com/news/world-us-canada-32965432l.
[160] DoJ Press Release, *United States Assists Korean Authorities in Recovering Over $28.7 Million In Corruption Proceeds of Former President of the Republic of Korea* (March 4, 2015), http://www.justice.gov/opa/pr/united-states-assists-korean-authorities-recovering-over-287-million-corruption-proceeds.
[161] *Id.*

- *Honduras* | *Mario Roberto Zelaya Rojas*: On January 13, 2015, the DoJ filed a civil complaint in the Eastern District of Louisiana to recover properties in the New Orleans area allegedly bought with funds related to a $2 million bribe paid to Mario Roberto Zelaya Rojas, a former Honduran official.[162] This bribe was allegedly from an information technology firm in exchange for prioritizing and expediting payments to it under a contract with the Honduran Institute of Social Security.[163]

- *Uzbekistan* | *Gulnara Karimova*: On June 25, 2015, the DoJ filed a complaint in federal court in the Southern District of New York seeking the forfeiture of $300 million in assets that represent the proceeds of bribes and kickbacks Gulnara Karimova, a daughter of Uzbekistan's President Islam Karimov, allegedly received from companies seeking to enter Uzbekistan's telecommunications market.[164]

- *Philippines* | *Janet Napoles:* On July 14, 2015, the DoJ filed a civil forfeiture complaint against Janet Napoles to recover $12.5 million in assets. Napoles allegedly made millions in improper payments to Filipino politicians and officials in exchange for more than $200 million in funding for development assistance work that her non-profit then failed to deliver. Currently, Napoles is serving a life-sentence in the Philippines for her role in kidnapping and detaining her cousin, who served as her finance officer.[165]

- *Chad* | *Mahamoud Adam Bechir*: On June 30, 2015, the DoJ filed a complaint to recover approximately $34 million in shares of stock of Caracal Energy Inc., formerly Griffiths Energy International.[166] The complaint alleges that these shares were bribes made to

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[162] Complaint, *United States v. Real Property Located At 1404 North Highway 190, Covington, Louisiana 70433, et al.*, Case 2:15-cv-0074-SM-MBN, 2–3 (E.D. La. Jan. 13, 2015) (hereinafter *Zelaya Rojas Complaint*); *see also* Sam Rubenfeld, *U.S. Seeks New Orleans Real Estate Linked to Honduran Bribe*, WALL ST. J. (Jan. 13, 2015), http://blogs.wsj.com/riskandcompliance/2015/01/13/u-s-seeks-new-orleans-real-estate-linked-to-honduran-bribery/.

[163] *Zelaya Rojas Complaint*, at 11.

[164] Verified Complaint, *United States v. Any and All Assets Held in Account Numbers 102162418400 et al.*, Case 1:15-cv-05063-ALC (S.D.N.Y. Jun. 29, 2015); *see also* Bruce Zagaris, *US Brings Civil Asset Forfeiture Case Against Kickbacks of Uzbek Ruling Family*, INTERNATIONAL ENFORCEMENT LAW REPORTER (Aug. 2015) (identifying Karimova as "Government Official A" in the complaint).

[165] DoJ Press Release, *U.S. Seeks to Recover $12.5 Million Obtained from High-Level Corruption in the Philippines* (July 14, 2015), https://www.fbi.gov/losangeles/press-releases/2015/u.s.-seeks-to-recover-12.5-million-obtained-from-high-level-corruption-in-the-philippines.

[166] DoJ Press Release, *Department of Justice Seeks Forfeiture of $34 Million in Bribe Payments to the Republic of Chad's Former Ambassador to the U.S. and Canada* (June 30, 2015), http://www.justice.gov/opa/pr/department-justice-seeks-forfeiture-34-million-bribe-payments-republic-chad-s-former; *see also United States v. Approximately £22 Million in British Pounds Representing the Value of 4,000,000 Shares of Common Stock in Caracal Energy Inc., formerly Griffiths Energy International Inc., on Deposit at the Royal Bank of Scotland in London, United*

Mahamoud Adam Bechir, the former Chadian Ambassador to the US and Canada (and current ambassador to South Africa), and Youssouf Hamid Takane, the former Chad Deputy Chief of Mission, in return for the award of oil development rights in Chad. As noted in Steptoe's 2013 Year in Review, Griffiths Energy has already pleaded guilty in Canada to criminal violations of the Canadian Corruption of Foreign Public Officials Act (CFPOA).[167] In 2014, the DoJ filed a forfeiture action to recover $100,000 traceable in the United States to the $2 million payment involved in the Canadian prosecution.[168]

- *Malaysia | Najib Razak*: According to media reports, the Kleptocracy Asset Recovery Initiative is overseeing an investigation regarding approximately $680 million in payments made to bank accounts linked to Najib Razak, the Prime Minister of Malaysia.[169] The investigation is reportedly focused on real estate acquired by shell companies linked to Razak's stepson and a close family friend.[170]

VI. FCPA-RELATED COLLATERAL LITIGATION

Government-led FCPA investigations again resulted in collateral civil litigation last year, including shareholder derivative and class action lawsuits, RICO claims, requests to inspect books, and other civil matters. A brief survey of certain of these cases follows.

A. Petrobras

Brazilian energy giant Petroleo Brasileiro SA (Petrobras) continues to be the target of lawsuits in the wake of the Brazilian Federal Police's 2014 high-profile Operation *Lava Jato*, which uncovered an alleged fraud, corruption and bid-rigging scheme where funds derived from inflated Petrobras contracts were siphoned off to political parties in President Dilma Roussef's governing coalition. As noted above, the SEC and DoJ also have launched investigations leading to nearly twenty shareholder derivative lawsuits in the US against Petrobras.[171]

Kingdom in Account Number 10008114, at Sort Code 16-08-82, and All Assets Traceable Thereto, Case 1:15-cv-01018 (D.D.C. June 30, 2015).

[167] *See* Steptoe's 2013 FCPA Year in Review at 42, http://www.steptoe.com/publications-9394.html.

[168] DoJ Press Release, *U.S. Seeks to Recover $12.5 Million Obtained from High-Level Corruption in the Philippines* (July 14, 2015), https://www.fbi.gov/losangeles/press-releases/2015/u.s.-seeks-to-recover-12.5-million-obtained-from-high-level-corruption-in-the-philippines.

[169] Louise Story, *Malaysia's Leader, Najib Razak, Faces U.S. Corruption Inquiry*, N.Y. TIMES (Sept. 25, 2015), http://www.nytimes.com/2015/09/22/world/asia/malaysias-leader-najib-razak-faces-us-corruption-inquiry.html.

[170] *Id.*

[171] *E.g.*, Complaint, *In re Petrobras Securities Litigation*, No. 1:14-cv-09662 (S.D.N.Y. Dec. 8, 2014).

B. Hewlett-Packard

In 2011, shareholder A.J. Copeland filed a derivative lawsuit against Hewlett-Packard Co. (HP) and several current and former executives after DoJ and the SEC launched investigations into allegations that HP and three of its wholly-owned non-US subsidiaries made bribes to obtain technology contracts with governmental entities in Russia, Poland, and Mexico.[172] The District Court for the Northern District of California dismissed Copeland's suit in 2013 due to time-barred claims and insufficient evidence of negligence,[173] and HP reached a $108 million settlement with DoJ and the SEC in 2014.[174] On October 26, 2015, the Ninth Circuit affirmed the lower court's dismissal.[175]

After HP's settlement, on December 2, 2014, Petróleos Mexicanos and Pemex Exploración y Producción (Pemex) filed a RICO claim against HP in federal court in San Jose, California, alleging a "pattern of bribery" to secure Pemex contracts.[176] Pemex alleged that HP paid $1.6 million to bribe officials to approve $6 million in contracts, which resulted in $2.5 million in benefits to the company. HP moved to dismiss on jurisdictional grounds, arguing that most of the conduct occurred abroad and was not within the reach of the RICO statute.[177] In June 2015, the court denied HP's motion to dismiss. Four months later, on November 4, 2015, the parties stipulated to dismissal of the case, presumably on the basis of a settlement, the terms of which have not been publicly reported.[178]

C. Rio Tinto/Vale

The long-running and high-profile dispute between Rio Tinto plc and Vale SA, two of the largest mining companies in the world, came to a close on November 20, 2015. Rio Tinto had alleged that Vale conspired with Israeli billionaire Beny Steinmetz's BSG Resources to deprive Rio Tinto of its mining concessions to the lucrative Simandou iron ore vein in Guinea.

Rio Tinto sued Vale in the US District Court for the Southern District of New York on April 30, 2014,[179] alleging in a lengthy complaint that Vale and BSG Resources bribed Guinean

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[172] Complaint, *Copeland v. Lane et al.*, No. 5:11-cv-01058 (N.D. Cal. Mar. 7, 2011).
[173] Order, *Copeland v. Lane et al.*, No. 5:11-cv-01058 (N.D. Cal. May 6, 2013).
[174] Non-Prosecution Agreement, *In Re Hewlett-Packard Mexico, S. de R.L. de C.V.*, No. 5:14-cr-358 (N.D. Cal. Dec. 16, 2014), Deferred Prosecution Agreement, *In Re Hewlett-Packard Polska, SP. Z O.O.*, No. 5:14-cr-202 (N.D. Cal. Apr. 9, 2014), *and* Plea Agreement, *United States v. ZAO Hewlett-Packard A.O.*, No. 5:14-cr-201 (N.D. Cal. Apr. 9, 2014).
[175] Order, *Copeland v. Lane et al.*, No. 13-cv-16251 (9th Cir. Oct. 26, 2015).
[176] Complaint, *Petróleos Mexicanos v. Hewlett-Packard Co.*, No. 14-cv-5292 (N.D. Cal. Dec. 2, 2014).
[177] For a discussion of this phase of the case, *see* S. Todd. Rogers, *HP Loses Bid to Knock Out Pemex Corruption Suit*, THE RECORDER (June 25, 2015), http://www.therecorder.com/id=1202730595963/HP-Loses-Bid-to-Knock-Out-Pemex-Corruption-Suit?slreturn=20151123090658.
[178] Joint Stipulation of Dismissal, *Petróleos Mexicanos v. Hewlett-Packard Co.*, No. 14-cv-5292 (N.D. Cal. Nov. 4, 2015).
[179] Complaint, *Rio Tinto plc v. Vale, SA*, No. 1:14-cv-03042 (S.D.N.Y. Apr. 30, 2014)

government officials and violated RICO.[180] Rio Tinto based these allegations on the fact that BSG Resources was previously implicated in an ongoing Guinean mining sector corruption scandal, which prompted a Federal Bureau of Investigation probe and resulted in multiple indictments.

In November 2015, the court dismissed the case, finding that Rio Tinto's allegations were beyond the four-year RICO statute of limitations and lacked sufficient evidence to support fraud and conspiracy charges.[181]

D. Wal-Mart

Wal-Mart Stores, Inc. continues to face collateral litigation (including derivative suits and class actions) in federal and state court related to allegations that its Mexican subsidiary paid bribes to Mexican government officials. On March 31, 2015, Judge Susan Hickey of the Western District of Arkansas dismissed a plaintiff's derivative suit — raising claims under federal and Delaware law — because the plaintiff failed to serve a demand on the Wal-Mart Board of Directors.[182] An appeal is pending before the Eighth Circuit.[183] In addition, a derivative lawsuit raising similar state-law claims is pending in the Delaware Court of Chancery, and Wal-Mart has argued that the case should be dismissed because the claim already has been litigated in federal court.[184] A putative class action by Wal-Mart investors is also pending in the Southern District of New York.[185]

E. Hyperdynamics

As reported previously, several FCPA-related lawsuits have been filed against Hyperdynamics Corporation over the past few years.[186] Those cases saw some movement in 2015, when a motion to consolidate the three cases was denied, and a motion to dismiss was granted in the *Parker* suit.[187] In *Parker*, the court found that plaintiffs failed to allege facts that rendered Hyperdynamics statements concerning denials of violations of the FCPA false or misleading, and that instead the claims were "based on speculation of uncharged, unadjudicated

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[180] 18 U.S.C. §§ 1961-68 (2014).
[181] Decision & Order, *Rio Tinto plc v. Vale SA*, No. 1:14-cv-3042 (S.D.N.Y. Nov. 20, 2015).
[182] Amended Order, *In re Wal-Mart Stores, Inc. Shareholder Derivative Litigation*, No. 12-cv-4041 (W.D. Ark. Apr. 3, 2015).
[183] The case is *John Cottrell et al. v. Michael Duke et al.*, No. 15-1869, in the U.S. Court of Appeals for the Eighth Circuit.
[184] Tom Hals, *Investor Case Over Wal-Mart Bribes Hangs on Judge's Advice*, REUTERS (Nov. 13, 2015), www.reuters.com/article/us-wal-mart-corruption-lawsuit-idUSKCN0T302B20151114.
[185] Order, *Fogel v. Vega*, No. 13-cv-2282 (S.D.N.Y. Dec. 10, 2015).
[186] *Parker v. Hyperdynamics Corp.*, No. 4:12-CV-999 (S.D. Tex.); *Gerami v. Hyperdynamics Corp.*, No. 4:14-cv-00641 (S.D. Tex.); *Stahelin v. Hyperdynamics Corp.*, No. 4:14-cv-00649 (S.D. Tex.).
[187] Opinion and Order, *Parker v. Hyperdynamics Corp.*, No. 4:12-CV-999 (S.D. Tex Aug. 25, 2015).

FCPA violations that [were] not plausibly material."[188] The *Gerami* case was dismissed without prejudice in September 2015 (following closely on the heels of the *Parker* decision),[189] while the *Stahelin* matter remains ongoing.

F. Wynn Resorts

On March 3, 2015, the District Court for the Northern District of California granted defendant James Chanos' motion to dismiss and motion to strike in a defamation case brought by Stephen Wynn and Wynn Resorts, Ltd.[190] The court held that Chanos' statements, made in the context of an academic symposium, expressed "general uncertainty" about Wynn's Macau business practices but did not amount to a factual assertion on Wynn's compliance with the FCPA.[191]

G. Parker Drilling

On March 4, 2015, the Delaware Court of Chancery denied a stockholder's request against Parker Drilling Company for inspection of books and records.[192] The complaint had been filed by the Fuchs Family Trust on July 31, 2014,[193] following Parker Drilling's 2013 settlement with the DoJ and SEC for nearly $16 million over allegations of bribery in Nigeria and a three-year DPA. The court held, among other things, that the requesting stockholder did not have a proper purpose because the stated purpose of the demand was to investigate potential derivative litigation and the stockholder was barred by collateral estoppel from pursuing another derivative action. Various stockholders, including Fuchs, had previously filed derivative actions in Texas state courts that were ultimately dismissed without prejudice for failure to plead demand futility.[194]

H. Bio-Rad

On April 21, 2015, Wayne County Employees Retirement Systems, an investor in Bio-Rad Laboratories, Inc., a life sciences research company, asked the Delaware Chancery Court to compel the company to turn over records related to accusations it violated the FCPA.[195] The claim followed Bio-Rad's $55 million settlement on November 3, 2014 with the DoJ and SEC involving allegations that Bio-Rad's subsidiaries made improper payments to foreign officials in

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[188] *Id.* at 19-23.
[189] Notice of Voluntary Dismissal, *Gerami v. Hyperdynamics Corp.*, No. 4:14-cv-00641 (S.D. Tex. Sept. 16, 2015).
[190] Order, *Wynn et al. v. Chanos*, No. 14-cv-04329-WHO (N.D. Cal. Mar. 3, 2015)
[191] *Id.* at 3-4.
[192] Mem. Op., *Fuchs Family Trust v. Parker Drilling Co.*, C.A. No. 9986-VCN (Del. Ch. Ct. Mar. 4, 2015).
[193] Verified Complaint, *Fuchs Family Trust v. Parker Drilling* Co., No. 9986-VCN (Del. Ch. Ct. July 31, 2014).
[194] Order, *In re Parker Drilling Co. Deriv. Litig.*, No. 2010-34655 (Harris Cnty. Distr. Ct., Tex. July 23, 2012).
[195] Verified Complaint, *Wayne Cnty. Emps.' Ret. Sys. v. Bio-Rad Labs., Inc.*, No. 10930, 2015 WL 1871050 (Del. Ch. Ct. Apr. 21, 2015).

Russia, Vietnam, and Thailand to win business.[196] The complaint demanded records stretching back to 2005 to examine whether Bio-Rad, which self-reported the conduct, was upholding its duty to act in shareholders' interest. On May 26, 2015, the court granted an order consolidating the *Wayne County* case and a related case filed by another Bio-Rad investor.[197] The parties then entered into a settlement agreement and the court dismissed the case with prejudice on July 27, 2015.[198]

On May 27, 2015, Sanford Wadler, the former general counsel of Bio-Rad, filed a lawsuit in California federal court against Bio-Rad stemming from his dismissal, after he had reported that Bio-Rad may be engaged in bribery in China.[199] Bio-Rad moved to dismiss, arguing that Wadler was terminated for other reasons.[200] The SEC was filed an amicus brief,[201] which argued, consistent with its recent announcement on the issue,[202] that whistleblowers such as Wadler, who report only internally within their company, must be protected from retaliation as strongly as those that report to the authorities. On October 23, 2015, the court granted in part and denied in part defendants' motion to dismiss, allowing claims against the company and Norman Schwartz, the CEO, to proceed, concluding that Wadler was covered by the whistleblower protections for reporting internally. On November 23, 2015, Bio-Rad filed a motion for an interlocutory appeal,[203] which was denied on December 15, 2015.[204]

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[196] Order Instituting Cease-and-Desist Proceedings, *In the Matter of Bio-Rad Labs., Inc*., SEC Release No. 73496 (Nov. 3, 2014); Press Release, Department of Justice, Office of Public Affairs, *Bio-Rad Laboratories Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay $14.35 Million Penalty* (Nov. 3, 2014), http://www.justice.gov/opa/pr/bio-rad-laboratories-resolves-foreign-corrupt-practices-act-investigation-and-agrees-pay-1435.

[197] Order, *Wayne Cnty. Emps.' Ret. Sys. v. Bio-Rad Labs., Inc*., Nos. 10930VCN, 10977-VCN (Del. Ch. Ct. May 26, 2015).

[198] Order, *In re Bio-Rad Labs., Inc. Books & Records Litig.*, No. 10930-VCN (Dec. Ch. Ct. July 27, 2015).

[199] Complaint, *Wadler v. Bio-Rad Labs., Inc.*, No. 3:15-cv-02356-JCS (N.D. Cal. May 27, 2015).

[200] Defendants' Motion to Dismiss the Complaint, *Wadler v. Bio-Rad Labs., Inc.*, No. 3:15-cv-02356-JCS (N.D. Cal. July 28, 2015).

[201] Motion by the Securities & Exchange Commission to File Amicus Curiae Brief in Support of Plaintiff, *Wadler v. Bio-Rad Labs., Inc.*, No. 3:15-cv-02356-JCS (N.D. Cal. Aug. 7, 2015); Order Granting Motion by the Securities & Exchange Commission to File Amicus Curiae Brief in Support of Plaintiff, *Wadler v. Bio-Rad Labs., Inc.*, No. 3:15-cv-02356-JCS (N.D. Cal. Aug. 14, 2015).

[202] *See* Interpretation of the SEC's Whistleblower Rules Under Section 21F of the Securities Exchange Act of 1934, 80 Fed. Reg. 47829 (Aug. 4, 2015).

[203] Defendants' Motion for Certification of Interlocutory Appeal, *Wadler v. Bio-Rad Labs., Inc.*, No. 3:15-cv-02356-JCS (N.D. Cal. Nov. 23, 2015).

[204] Order Denying Motion for Certification of Interlocutory Appeal, *Wadler v. Bio-Rad Labs., Inc.*, No. 3:15-cv-02356-JCS (N.D. Cal. Dec. 15, 2015).

I. Och-Ziff

Och-Ziff Capital Management Group LLC, which is reportedly in the resolution phase of discussions with the SEC and DoJ over its FCPA investigations,[205] has been the target of several shareholder claims over the past couple of years following media reports and securities filings disclosing the details of the allegations. On September 2, 2015, a shareholder filed a derivative action in New York County court against Och-Ziff claiming failure to prevent and disclose FCPA violations in Africa.[206] The claims relate to $100 million in financing that allegedly benefited Robert Mugabe's government in Zimbabwe, handling investments on behalf of the Libyan Investment Authority, and $234 million in loans connected to ventures in the Democratic Republic of the Congo.[207] There is also a putative class action in the Southern District of New York that was filed in 2014, claiming failure to disclose the details of the activities that gave rise to the federal FCPA investigations in 2014, which likewise remains pending following motions to dismiss.[208]

J. Las Vegas Sands/Adelson

On June 16, 2015, the District Court for the District of Nevada dismissed for the second time a shareholder derivative lawsuit against Las Vegas Sands and several of its board members arising out of bribery and money laundering allegations related to a subsidiary in China.[209] W.A. Sokolowski, the shareholder, had originally filed a complaint on January 23, 2014, accusing directors of Las Vegas Sands of participating in widespread bribery, kickbacks, money laundering, as well as associations with organized crime in Macau and China.[210] The court dismissed that complaint and an amended complaint because Sokolowski had not shown he owned company stock during the time of any wrongdoing.[211] Las Vegas Sands has since asked for sanctions against Sokolowski for filing a frivolous lawsuit.[212]

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[205] Scott Patterson, *U.S. Investigates Hedge Fund Och-Ziff's Link to $100 Million Loan to Mugabe*, WALL ST. J. (Aug. 5, 2015), http://www.wsj.com/articles/u-s-probes-och-ziff-africa-deal-tied-to-mugabe-1438817223.

[206] Summons and Complaint, *Kumari et al. v. Och et al.*, No. 653016/2015 (N.Y. Sup. Ct. Sept. 2, 2015). There is another derivative action in New York County dating from May 30, 2014, that remains pending. Summons and Complaint, *Stokes v. Och*, No. 651663/2014 (N.Y. Sup. Ct. May 30, 2014).

[207] *Id.;* Jeff Zalesin, *Och-Ziff Brass Hit With Derivative Suit Over FCPA Probes*, LAW360 (Sept. 4, 2015), http://www.law360.com/articles/699201/och-ziff-brass-hit-with-derivative-suit-over-fcpa-probes.

[208] Complaint, *Menaldi v. Och-Ziff Capital Mgmt. Grp. LLC*, No. 1:14-cv-03251 (S.D.N.Y. May 5, 2014).

[209] Order on Motion to Dismiss, *Sokolowski v. Sheldon G. Adelson et al.*, No. 2:14-cv-111 (D. Nev. June 15, 2015).

[210] Complaint, *Sokolowski v. Sheldon G. Adelson et al.*, No. 2:14-cv-111 (D. Nev. Jan. 23, 2015).

[211] Order on Motion to Dismiss, *Sokolowski, individually and on Behalf of Las Vegas Sands Corp. v. Sheldon G. Adelson et al.*, No. 2:14-cv-111 (D. Nev. July 30, 2014).

[212] Motion for Sanctions/Non-Discovery, *Sokolowski, individually and on Behalf of Las Vegas Sands Corp. v. Sheldon G. Adelson et al.*, No. 2:14-cv-111 (D. Nev. July 16, 2015).

Las Vegas Sands and Sheldon Adelson are still facing the wrongful termination lawsuit filed by former executive, Steven Jacobs, whose allegations in 2011 about various misdeeds in China prompted a derivative lawsuit and a government investigation into the casino. On May 22, 2015, the Clark County District Court ruled that Nevada had jurisdiction to hear the wrongful termination claim, rejecting defendants' arguments that the case should be tried in China.[213]

K. Key Energy

Key Energy is defending against a 2014 shareholder derivative lawsuit that followed the company's announcement that Mexico's state-owned Petróleos Mexicanos (Pemex) was conducting an audit of its dealings with Key Energy, along with the disclosure that the SEC was investigating potential FCPA violations in Russia.[214] The plaintiffs claimed that Key Energy and high-level officers misled shareholders.[215] On April 14, 2015, the defendants filed a motion to dismiss.[216] Subsequently, they filed a notice of supplemental authority, wherein they pointed to the recent dismissal of the *PetroChina* shareholder lawsuit, which rejected the argument that SOX certifications and the company's code of ethics should be considered false or misleading statements under securities laws.[217]

VIII. NON-US ENFORCEMENT, INVESTIGATIONS AND LEGAL DEVELOPMENTS

Other jurisdictions besides the US saw important developments in 2016 as well. The past year saw increased enforcement of the UK Bribery Act, as well as the UK's first Deferred Prosecution Agreement. The Serious Fraud Office pursued an active enforcement agenda against both companies and individuals in the UK, and obtained its first conviction for a corporate failure to prevent bribery offence under the Bribery Act. There were also notable developments in China, Brazil, Canada, and several EU jurisdictions.

A. United Kingdom

Since 2010, there has been much fanfare about the UK Bribery Act 2010 (Bribery Act) and UK Deferred Prosecution Agreements, yet there had been few developments of note. This changed in 2015, which was all about enforcement. The UK Serious Fraud Office (SFO)

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[213] Kimberly Pierceall, *Former CEO's Lawsuit against Sands China Stays in Nevada*, ASSOCIATED PRESS. (May 22, 2015), http://lasvegassun.com/news/2015/may/22/former-ceos-lawsuit-against-sands-china-stays-neva/.
[214] Complaint, *Cady v. Key Energy Services et. al.*, No. 4:14-cv-2368 (S.D. Tex. Aug. 15, 2014).
[215] Consolidated Amended Complaint for Violation of Federal Securities Laws, *Cady v. Key Energy Services et. al.*, No. 4:14-cv-2368 (S.D. Tex. Feb. 13, 2015).
[216] Motion to Dismiss Plaintiff's Consolidated Amended Complaint for Violations of the Federal Securities Law, *In re Key Energy Services, Inc. Securities Litigation*, No. 4:14-cv-2368 (S.D. Tex. April 14, 2015); Joinder in Motion and Motion to Dismiss by Defendant Taylor M. Whichard III, *In re Key Energy Services, Inc. Securities Litigation*, No. 4:14-cv-2368 (S.D. Tex. April 14, 2015).
[217] Defendants' Notice of Supplemental Authority, *In re Key Energy Services, Inc. Securities Litigation*, No. 4:14-cv-2368 (S.D. Tex. Aug. 7, 2015) (citing Opinion and Order, *In re PetroChina Company Ltd. Securities Litigation*, No. 13-cv-6180 (S.D.N.Y. Aug. 3, 2015)).

resolved its first case under Section 7 of the Bribery Act and entered into the first UK Deferred Prosecution Agreement (DPA). While there were no civil settlements in England & Wales, Scotland continued to show its willingness to settle cases with companies in its first civil settlement under Bribery Act Section 7. There also has been a continued focus by both prosecutors and regulators on individual and corporate responsibility, as well as a renewed focus on money laundering and asset recovery.

1. UK Legal Developments

a. Failure to prevent economic crime

One of the most wide-reaching actions under the UK's 2014 Anti-Corruption Plan[218] – to examine the case for introducing a new offence of corporate failure to prevent economic crime, mirroring the strict liability provisions of the Bribery Act – was shelved by the UK government. In spite of this, there has been a considerable focus on corruption, including the appointment of a new Anti-Corruption Champion and significant enforcement by the SFO. As such, this offense may still be instituted, failing which the UK government is continuing to look at introducing an offence of failure to prevent tax evasion.

b. Deferred Prosecution Agreements

On November 30, 2015, the UK's first ever DPA was approved for Standard Bank Plc.[219] Standard Bank Plc and its former sister company, Stanbic, sought to arrange a US$ 600 million private placement for the Government of Tanzania, which included a 1% fee for a local partner. No due diligence was undertaken on the local partner, whose chairman and one of its directors/shareholders were members of the Tanzanian government. This and other failed policies, procedures and training, meant that the high risk of bribery was not detected or prevented, resulting in a failure to prevent bribery charge.

Under the terms of the DPA, Standard Bank Plc agreed to pay a penalty of US$ 16.8 million - reduced from $25 million due to the company's cooperation and approved in part by the court because it was comparable to the penalty that would have been imposed in the US Standard Bank Plc also agreed to disgorge the total profits of the joint venture with Stanbic ($8.4 million as opposed to its net profit of $4.2 million), and agreed to pay US$7 million to the government of Tanzania. The Bank also agreed to cooperate with the SFO and any other agency in exchange for criminal proceedings being suspended for three years. The Bank also agreed to an independent review of existing anti-bribery and corruption controls, policies and procedures; and to pay the prosecutor's costs. It is notable that the Financial Conduct Authority (FCA) had fined Standard Bank Plc in January 2014, for failures in its anti-money laundering systems and controls. *See* our January 15, 2016 client alert.

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[218] Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388894/UKantiCorruptionPlan.pdf.

[219] SFO Press Release, *SFO agrees first UK DPA with Standard Bank* (Nov. 30, 2015), available at http://sfo.gov.uk/press-room/latest-press-releases/press-releases-2015/sfo-agrees-first-uk-dpa-with-standard-bank.aspx

c. Fourth Anti-Money Laundering Directive

On June 26, 2015, the Fourth European Union Money Laundering Directive (Directive) came into force.[220] Member States, including the UK, now have until June 26, 2017, to implement the Directive into their national laws.

The primary purpose of the Directive is to prevent the European Union's financial system from being used for money laundering and terrorist financing purposes. The Directive primarily applies to the financial services sector, as well as to dealers in goods making or receiving cash payments in excess of EUR 10,000 regardless of whether payment is made in one or more linked transactions (so-called "obliged" or "regulated" entities). The Directive has introduced the following notable changes:

- Ultimate beneficial owners register - Member States will need to introduce a register that provides adequate, accurate and current information on beneficial ownership of all firms incorporated within their territory.
- Increased responsibility of senior managers - Senior managers of obliged entities will be required to approve the implementation of anti-money laundering policies, procedures and controls, and monitor and periodically enhance such measures.
- Increased sanctions for non-compliance by individuals and firms - The Directive provides for public reprimands and fines of up to either 10% of a legal person's annual turnover in the preceding year, EUR 5,000,000 for individuals or twice the amount of the benefit derived from the breach, where the benefit can be determined.
- Written risk assessment requirement - The Directive requires the periodic production of written risk assessments identifying and assessing a firm's money laundering and terrorist financing risks. Firms also must ensure that they have implemented policies, procedures and controls to mitigate and manage the identified risks.
- New customer due diligence requirements – The Directive emphasizes a risk-based approach to customer due diligence, resulting in a requirement to perform enhanced due diligence when dealing with companies in "high risk" countries and Politically Exposed Persons (PEPs). The Directive has broadened the definition of a PEP to include domestic PEPs and increased the period of time for which enhanced due diligence must be performed on PEPs to 18 months after such individuals leave office.

d. FCA Business Plan 2015/2016

On March 24, 2015, the FCA published its Business Plan for 2015/2016 (Business Plan).[221] Among other things, the Business Plan highlighted the importance of measures aimed at tackling financial crime, money laundering, corruption and sanctions breaches. During 2016, there will be a renewed focus on financial crime and on looking at the effectiveness of firms' systems and controls to prevent such crimes.

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[220] Directive (EU) 2015/849, available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L0849&from=EN.
[221] Financial Conduct Authority, *Business Plan 2015/16*, available at http://www.fca.org.uk/static/channel-page/business-plan/business-plan-2015-16.html.

Firms that fail to have adequate systems and controls are more vulnerable to being used to further financial crime, and the FCA intends to focus on both anti-money laundering (including terrorist financing and sanctions) and anti-bribery and corruption measures. Moreover, action will be aimed at both firms and individuals within firms, as "individual accountability" is identified as a key priority.

In recognition of the important role whistleblowers can play in identifying wrongdoing, the FCA and the Prudential Regulation Authority (PRA) issued final rules on new whistleblowing procedures, enhancing the protections available, in October 2015 (the UK Rules).[222]

The UK Rules, which take full effect in September 2016, apply to deposit-takers (*e.g.*, banks, building societies and credit unions) with over £250,000,000 in assets, PRA-designated investment firms, insurers and reinsurers subject to the Solvency II directive. The UK Rules also offer non-binding guidance for all other firms supervised by the FCA and PRA. The UK Rules on whistleblowing require a firm to:

- Appoint a Senior Manager as a whistleblowers' champion and present a report on whistleblowing to the firm's board of directors at least annually
- Put in place internal whistleblowing arrangements that are able to handle all types of disclosure from all types of persons
- Inform the FCA if it loses an employment tribunal with a whistleblower and include text in settlement agreements explaining that workers have a legal right to blow the whistle
- Tell UK-based employees about the FCA and PRA whistleblowing services and require its appointed representatives and tied agents to provide this information to their UK-based employees

2. Enforcement Efforts

In 2015, the SFO continued its investigations into Rolls Royce, GSK, ENRC, GPT, Barclays, LIBOR, Forex and EURIBOR. The SFO also opened 16 new investigations between April 2014 and March 2015, including into Sweett Group, Bank of England, Tesco, FIFA, Soma Oil & Gas and Quindell. The UK government's commitment to provide "blockbuster" funding for the SFO remains strong and it was announced on February 9, 2016 that current SFO Director David Green received a two-year extension of his term, until April 20, 2018.[223]

[222] Financial Conduct Authority and Prudential Regulation Authority, *PS15/24: Whistleblowing in deposit-takers, PRA-designated investment firms and insurers*, available at https://www.fca.org.uk/your-fca/documents/policy-statements/ps15-24.
[223] SFO Press Release, *David Green CB QC, Director of the Serious Fraud Office, to have his contract extended by 2 years* (Feb. 9, 2016), available at https://www.gov.uk/government/news/david-greens-contract-extended-by-2-years.

a. Enforcement Against Companies

The first conviction for a corporate failure to prevent bribery offence happened on December 18, 2015, when Sweett Group PLC pleaded guilty to an offence under section 7 of the Bribery Act with respect to conduct in the Middle East.[224] Between December 2012 and December 2015, Sweett Group PLC failed to prevent the bribery of an individual by an associated person for securing and retaining a contract with a third party for project management and cost consulting services in connection with the building of a hotel in Dubai. Sentencing will be held in February 2016.

In November 2015, the SFO announced that it could not offer any evidence against Olympus Corporation and Gyrus Group Ltd.[225] These companies had been erroneously charged with offences under section 501 of the Companies Act 2006 (making misleading statements to auditors), which the Court of Appeal had earlier ruled could not apply against a company, but only individuals. The Crown Court accordingly entered not guilty verdicts on the counts the SFO had sought to assert.

On September 25, 2015, the Scottish Crown Office and Procurator Fiscal Service entered into a civil settlement with Brand-Rex Limited for failure to prevent bribery under Section 7 of the Bribery Act.[226] Brand-Rex operated a scheme for UK distributors and installers of cabling solutions between 2008 and 2012, rewarding participants who met or exceeded sales targets with items including foreign holidays. While the scheme was not unlawful, travel tickets were offered to those in a position to influence the purchase of cabling solutions. Brand-Rex self-reported to the Crown Office under the "self-reporting initiative," similar to the now scrapped guidance issued by the SFO in 2009. As part of the settlement, Brand-Rex agreed to pay £212,800.

Throughout 2015, the SFO brought further charges against Alstom Network UK Ltd. (formerly known as Alstom International Ltd.). The company currently faces numerous charges under section 1 of the Prevention of Corruption Act 1906 and section 1 of the Criminal Law Act 1977, for corruption in Hungary, India, Poland and Tunisia.[227]

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[224] SFO Press Release, *Sweett Group PLC pleads guilty to bribery offence* (Dec. 18, 2015), available at http://sfo.gov.uk/press-room/latest-press-releases/press-releases-2015/sweett-group-plc-pleads-guilty-to-bribery-offence.aspx.

[225] SFO Press Release, *Gyrus Group Ltd and Olympus Corporation* (Nov. 10, 2015), available at http://sfo.gov.uk/press-room/latest-press-releases/press-releases-2015/gyrus-group-ltd-and-olympus-corporation.aspx.

[226] Crown Office & Procurator Fiscal Service Press Release, *Glenrothes cabling company pays £212,800 after reporting itself for failing to prevent bribery by a third party* (Sept. 25, 2015), available at http://www.crownoffice.gov.uk/media-site/media-releases/1144-glenrothes-cabling-company-pays-212-800-after-reporting-itself-for-failing-to-prevent-bribery-by-a-third-party.

[227] SFO Press Release, *Alstom to face further criminal charges* (April 16, 2015), available at http://sfo.gov.uk/press-room/latest-press-releases/press-releases-2015/alstom-to-face-further-criminal-charges.aspx. *See* Section II, at 25-36, for a discussion of other litigation and enforcement actions related to Alstom and its executives.

b. Enforcement Against Individuals

The SFO charged former Alstom Network UK employees Graham Hill and Robert Hallett in connection with corruption in India, Poland and Tunisia. Michael John Anderson, a former business development director for Alstom Transport SA in France, was also charged with respect to corruption in Hungary; former Alstom Power Ltd. employees, Nicholas Reynolds and Johanes Venskus were charged with respect to corruption in Lithuania; and the former Senior Vice President of Ethics & Compliance and a director of Alstom International Limited, Jean-Daniel Lainé, was charged in connection with corruption in Hungary.[228]

In November 2015, the SFO initiated the first criminal proceedings against eleven individuals accused of manipulating EURIBOR.[229] The individuals will appear in the Magistrates Court in January 2016 to be charged with conspiracy to defraud.

On August 3, 2015, Tom Hayes was found guilty of conspiracy to defraud in the Yen LIBOR setting process.[230] The offences took place between August 2006 and September 2010. Mr. Hayes was sentenced to 14 years in prison (subsequently reduced on appeal to 11 years).

In June 2015, two former employees of Edinburgh Council and two directors of a construction company were sentenced under the Public Bodies Corrupt Practices Act 1889.[231] The Council employees helped award contracts to the construction company for the maintenance of Council buildings between 2006 and 2010, in return for which they received extensive hospitality. The construction company's invoices were then inflated to cover the cost of the hospitality.

In May 2015, Graham Marchment pleaded guilty to conspiracy to corrupt under section 1(1) of the Criminal Law Act 1977, and was sentenced to 2.5 years in prison.[232] Marchment worked as a procurement engineer and deliberately leaked confidential information to bidders in exchange for payments disguised as commissions in relation to oil and gas engineering projects in Egypt, Russia and Singapore between 2004 and 2008.

In December 2014, the SFO secured a conviction for offences involving bribery of foreign public officials against Smith and Ouzman Ltd. and two of its former directors, in relation to activities in Africa. In February 2015, Christopher John Smith (former chairman) was

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[228] *Id.*
[229] SFO Press Release, *SFO charges first individuals with EURIBOR manipulation* (Nov. 13, 2015), available at http://sfo.gov.uk/press-room/latest-press-releases/press-releases-2015/sfo-charges-first-individuals-with-euribor-manipulation.aspx.
[230] SFO Press Release, *First LIBOR defendant on trial found guilty* (Aug. 3, 2015), available at http://sfo.gov.uk/press-room/latest-press-releases/press-releases-2015/first-libor-defendant-on-trial-found-guilty.aspx.
[231] BBC, *Four jailed over Edinburgh City Council bribes* (June 18, 2015), available at http://www.bbc.co.uk/news/uk-scotland-edinburgh-east-fife-33182157.
[232] SFO Press Release, *Guilty plea in multi-million pound energy corruption case* (May 11, 2015), available at http://sfo.gov.uk/press-room/latest-press-releases/press-releases-2015/guilty-plea-in-multi-million-pound-energy-corruption-case.aspx.

sentenced to 18 months in prison (suspended for two years), ordered to carry out 250 hours of unpaid work and given a three-month curfew. Nicholas Charles Smith (former sales and/ marketing director) was sentenced to three years in prison. Both individuals were disqualified from acting as company directors for six years.[233]

c. Civil Cases Dealing with Bribery

In December 2015, in *BDW Trading Limited v. Michael Neill Fitzpatrick and Top Construction Services Limited*,[234] the UK High Court discussed the need to take speedy civil action to protect assets and to obtain disclosure of information in cases where a UK company is the victim of bribery. Fitzpatrick (BDW's procurement manager) and his company received, and participated in, the payment of secret profits, bribes or commissions from third parties. BDW Trading obtained a freezing order to prevent the alleged bribe monies from being disposed of, with ancillary orders for the disclosure of bank statements and financial information, and also sought the release of confidentiality undertakings, to use that disclosed information to bring employee disciplinary proceedings against Fitzpatrick. The court held that it would be inconsistent for disclosed information to be used against the subcontractors who made the alleged secret payments but not against Fitzpatrick (the alleged briber).

In July 2015, in *Serious Fraud Office v. Ikram Mahamet Saleh*,[235] the UK High Court upheld a forfeiture order of £4.4 million linked to the sale of 800,000 shares in Caracal Energy Inc. (formerly known as Griffiths Energy International Inc.). The SFO sought the forfeiture order at the request of the US DoJ. Griffiths Energy sold the shares to nominees of two Chad diplomats for approximately US$1 million. In exchange for the heavily-discounted shares, the Chad diplomats helped Griffiths Energy to obtain development rights to two oil blocks in Chad. This comes after the Royal Canadian Mounted Police brought an enforcement action against Griffiths Energy for its conduct in Chad, which resulted in a $10.35 million fine in 2013.[236]

In April 2015, in *R v. GH*,[237] the UK Supreme Court discussed the rules regarding money laundering arrangements under the Proceeds of Crime Act 2002 (POCA). In that case, the defendant had opened bank accounts and then handed over control of those bank accounts to a fraudster, who used the accounts to receive money from the public for online scams. The defendant was charged under section 328 of POCA. The Supreme Court noted that offences under sections 327-329 were "parasitic" offences, predicated on the commission of another offence which generates proceeds of crime. The Supreme Court confirmed that the property is criminal when the arrangement begins to operate on it. Furthermore, the Supreme Court clarified that the money in this case became "criminal property" when it was transferred into the bank

[233] SFO Press Release, *Two men sentenced following corruption trial* (Feb. 12, 2015), available at http://sfo.gov.uk/press-room/latest-press-releases/press-releases-2015/two-men-sentenced-following-corruption-trial.aspx.
[234] [2015] EWHC 3490 (Ch).
[235] [2015] EWHC 2119 (Qb).
[236] *See* Section II, at 36, for a discussion of DoJ's litigation against Griffiths stemming from the company's conduct in Chad.
[237] [2015] UKSC 24.

accounts because it had been obtained fraudulently, not because of the arrangement the defendant had made with the fraudster to open the bank accounts.

d. FCA Financial Crime Cases

January 2015 saw the FCA's first case focusing on individuals holding significant influence functions whose failings contributed to LIBOR misconduct. David Caplin (former Chief Executive of Martins Brokers) was fined £210,000[238] and Jeremy Kraft (former Compliance Officer of Martins Brokers) was fined £105,000.[239] Both also were banned from performing significant influence functions at financial services firms.

In March 2015, the FCA fined Bank of Beirut (UK) Ltd. £2,100,000 and stopped the bank from acquiring new customers from high-risk jurisdictions for 126 days after the bank repeatedly provided the FCA with misleading information about the steps it had taken to address concerns regarding its financial crime systems and controls.[240] In addition, the FCA fined Anthony Wills (former Compliance Officer)[241] and Michael Allin (former Internal Auditor)[242] £19,600 and £9,900, respectively. Wills and Allin failed to deal with the FCA in an open and cooperative way when responding to queries about the actions the bank took to mitigate its financial crime risk.

In November 2015, the FCA imposed its highest ever fine – £72,069,400 – for financial crime failings on Barclays Bank.[243] This related to a £1.88 billion transaction that was arranged and executed in 2011 and 2012 for ultra-high net worth clients who also were PEPs. While the transaction did not involve actual financial crime, the circumstances of the transaction and the PEP status of the clients required the bank to apply a high level of due skill, care and diligence. The bank failed to do so, applying a lower level of due diligence than its policies required for lower risk profile business relationships and failing to obtain information from the clients to comply with its financial crime requirements. This enforcement action reflects the focus on scrutinizing firms' systems and controls to prevent financial crime set out in the FCA's Business Plan (discussed in section 1e, above).

[238] FCA Final Notice 2015: David Caplin (Jan. 22, 2015), available at https://www.fca.org.uk/your-fca/documents/final-notices/2015/david-caplin.
[239] FCA Final Notice: Jeremy Kraft (Jan. 22, 2015), available at http://www.fca.org.uk/your-fca/documents/final-notices/2015/jeremy-kraft.
[240] FCA Final Notice: Bank of Beirut (UK) Ltd. (Mar. 5, 2015), available at https://www.fca.org.uk/your-fca/documents/final-notices/2015/bank-of-beirut-uk-ltd.
[241] FCA Final Notice: Anthony Willis (Mar. 5, 2015), available at https://www.fca.org.uk/your-fca/documents/final-notices/2015/anthony-rendell-boyd-wills.
[242] FCA Final Notice: Michael Allin (Mar. 5, 2015), available at https://www.fca.org.uk/your-fca/documents/final-notices/2015/michael-john-allin.
[243] FCA Final Notice: Barclays Bank PLC (Nov. 26, 2015), available at https://www.fca.org.uk/your-fca/documents/final-notices/2015/barclays-bank-plc-nov-2015.

e. National Crime Agency Bribery Cases

The National Crime Agency (NCA) had a number of successes in 2015, including the conviction in April 2015 of two individuals for conspiracy to commit bribery in connection with football match fixing (the individuals received prison sentences totalling 46 months), following three earlier convictions in relation to the same conspiracy.[244]

In August 2015, the NCA took control of a new International Corruption Unit (ICU), funded by the Department for International Development (DFID), which brings together investigation and intelligence units from the Metropolitan Police, City of London Police and NCA.[245] The ICU will be the central point of contact for investigating international corruption in the UK. The ICU's combined intelligence and investigation approach is expected to deliver a significant increase in money laundering and overseas bribery cases, a greater focus on preventive action and a more strategic approach to identifying and tackling corruption in DFID priority countries. In October 2015, the ICU arrested five people across London as part of an investigation into suspected bribery and money laundering offences.[246]

3. Isle of Man / Guernsey / Jersey / Ireland

In November 2015, the Guernsey Financial Services Authority fined five directors (Rudiger Falla, Richard Garrod, Leslie Hilton, Geoffrey Le Page and Kenneth Forman) of Confiance Limited for significant anti-money laundering and counter-terrorism financing systems and controls failures. Financial penalties of £50,000 were imposed on four individuals, whilst one individual was fined £10,000, under section 11D of the Guernsey Financial Services Commission Law. Three of the directors have also been prohibited from performing key business functions for the next five years.

It was anticipated that Ireland would introduce strict new anti-bribery and corruption legislation (the Criminal Justice Corruption Bill) similar to the UK and US legislation during 2015. As of the date of this publication, Ireland's new legislation has yet to be published and no draft is publicly available. Companies operating in Ireland should take note of this impending legislation, likely to be published in 2016.

On April 1, 2015, the Isle of Man's revised Anti-Money Laundering and Countering the Financing of Terrorism Code 2015 came into effect. This was revised to include changes made to take into account the revised FATF Recommendations adopted in 2012; changes in relation to simplified CDD concessions; and general amendments to improve the layout, flow and language of the Code. In addition, Schedule 4 to the Proceeds of Crime Act 2008 was extended to cover

[244] NCA Press Release, *Two More Convictions in Football Match Fixing Case* (Apr. 29, 2015), available at http://www.nationalcrimeagency.gov.uk/news/607-two-more-convictions-in-football-match-fixing-case.
[245] NCA Press Release, *Unit To Tackle Corruption, Bribery & Money Laundering* (Aug. 9, 2015), available at http://www.nationalcrimeagency.gov.uk/news/673-unit-to-tackle-corruption-bribery-money-laundering.
[246] NCA Press Release, *International Corruption Unit Arrests* (Oct. 2, 2015), available at http://www.nationalcrimeagency.gov.uk/news/718-international-corruption-unit-arrests.

tax advisors, payroll service providers, controlled machines, specified non-profit organizations, and virtual currency businesses.

B. China

On August 29, 2015, the Standing Committee of the National People's Congress promulgated the Ninth Amendment to the Criminal Law (the Amendment).[247] The Amendment, which came into force on November 1, 2015, added a new provision to criminalize offering bribes to close relatives of current or former state functionaries or any other persons that have a close relationship with current or former state functionaries.[248] The Amendment also increased penalties for offering bribes by adding mandatory fines and raising the requirements for the granting of a mitigated punishment.[249] In addition, the Amendment replaced monetary standards with more flexible and general standards for determining penalties for bribe-taking by state functionaries.[250]

China's anti-corruption campaign remained active in various public sectors throughout the year. Central Commission for Discipline Inspection (CCDI) statistics show that the agency has disciplined more officials in 2015 than in 2014, and a total of 4,790 cases relating to improper payments or gifts have been investigated.[251] The CCDI also announced that it would strengthen inspections of SOEs,[252] and has inspected at least 51 SOEs in the energy, mining and metals, manufacturing, telecommunications, technology, construction, transportation, banking, insurance, and other industries.[253] In April 2015, China also engaged seven accounting firms to conduct audits of overseas assets in SOEs.[254]

In March 2015, China launched "Operation Fox Hunt 2015" to continue its efforts to bring back corrupt officials and other economic fugitives who have fled abroad. From January through September, "Operation Fox Hunt 2015" resulted in 559 fugitives returning to China.[255]

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[247] *The Ninth Amendment to the Criminal Law of the People's Republic of China*, promulgated by the Standing Committee of the National People's Congress on Aug. 29, 2015, *available at* http://www.npc.gov.cn/npc/xinwen/2015-08/31/content_1945587.htm.
[248] *Id.*, Article 46.
[249] *Id.*, Article 45.
[250] *Id.*, Article 44.
[251] Press Release, CCDI (Dec. 3, 2015), *available at* http://www.ccdi.gov.cn/xwtt/201512/t20151203_69389.html.
[252] Announcement, CCDI (Jan. 14, 2015), *available at* http://www.ccdi.gov.cn/xxgk/hyzl/201501/t20150115_50176.html.
[253] *See* People's Daily (Mar. 1, 2015), *available at* http://politics.people.com.cn/n/2015/0301/c1001-26616522.html; Press Release, CCDI (Jul. 6, 2015), *available at* http://www.ccdi.gov.cn/xwtt/201507/t20150706_58798.html; Press Release, CCDI (Nov. 3, 2015), *available at* http://www.ccdi.gov.cn/xwtt/201511/t20151103_64392.html.
[254] *See* Sina (Apr. 17, 2015), *available at* http://finance.sina.com.cn/china/20150417/063621978627.shtml.
[255] *See* Xinhua (Oct. 29, 2015), *available at* http://news.xinhuanet.com/legal/201510/29/c_1116980620.htm.

At the same time, a broader project coded "Operation Sky Net" was also launched to target money laundering, transfer of illicit gains, and forging passports and relevant documents.[256]

C. Brazil

Brazil continues to step up its efforts to combat bribery and corruption through a combination of aggressive enforcement of criminal statutes against individuals, as well as enforcement of the recently-enacted *Clean Company Act*, which provides for civil and administrative liability of companies for acts against the public administration, including bribery and bid-rigging. In 2015, the main enforcement action continued to be the *Lava Jato* case ("car wash" in Portuguese), originally launched in the State of Parana in March 2014 and dramatically expanded in 2015.[257] *Lava Jato* unveiled a long-standing corruption scheme pursuant to which Brazil's largest construction companies colluded to inflate the price of public tenders put out by state-owned oil producer Petrobras, and would then use intermediaries to pay kickbacks of between 1 to 5% of the price of the contracts to financial operators, lobbyists, and ultimately to the politicians responsible for the appointment of Petrobras' executives.[258]

By the end of the year, *Lava Jato* had resulted in 1,016 different criminal proceedings, leading to the indictment of 179 individuals for corruption, crimes against the international financial system, racketeering, and money laundering.[259] As many as 119 individuals were provisionally arrested during the course of investigations, including senior executives of Brazil's largest construction companies, Petrobras' senior management, and high-profile politicians such as former Chief of Staff José Dirceu (who in 2012 had been convicted for corruption in connection with the *Mensalão* vote-buying scheme), and former Labor Party Treasurer Joao Vaccari Neto. These significant results stem in part from the federal prosecutors' aggressive use of plea bargains, a relative novelty in Brazilian criminal enforcement. As many as 40 individuals have signed agreements to cooperate with the *Lava Jato* investigations, and have agreed to disgorge a total of R$2.4 billion (US$700million) in bribes, in exchange for reduced sentences.[260] Another distinctive feature of *Lava Jato* is its multi-jurisdictional character. In the course of the investigations, Brazilian authorities have issued a total of 88 requests for information to 36 different jurisdictions, and have initiated proceedings against foreign companies, such as Skanska and SBM Offshore.[261] Information obtained in the course of *Lava Jato* also resulted in investigations in other jurisdictions, such as the United States and the Netherlands.

Enforcement against individuals has been supplemented with enforcement against companies under the recently-enacted Clean Company Act. In 2015, the General Comptroller's Office (CGU, in the acronym in Portuguese) has instituted administrative proceedings against 29 construction and engineering companies for bid-rigging and payment of bribes in connection

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[256] *See* People's Daily (Apr. 2, 2015), *available at* http://fanfu.people.com.cn/n/2015/0402/c64371-26788016.html.
[257] For additional information, see Parts III.B.1 and VI.A *supra*.
[258] *See* Section II, at 28-29, for more background on the Petrobras investigations.
[259] http://lavajato.mpf.mp.br/, last visited on January 11, 2016.
[260] *Id.*
[261] *Id.*

with the Petrobras corruption scheme unveiled in the course of *Lava Jato*.[262] By the end of 2015, six Brazilian companies and SBM Offshore were negotiating leniency agreements with CGU, aiming at obtaining reduced fines in exchange for their cooperation in the investigations. Despite the CGU's efforts, uncertainties remained as to what is the authority with ultimate jurisdiction to execute and approve such leniency agreements.

On February 11, 2015, the *Tribunal de Contas da União* (Federal Court of Accounts) published Normative Instruction 74/2015, pursuant to which it must audit and approve any leniency agreements entered into by CGU.[263] In order to resolve any ambiguities as to the relevant authority, on December 18, 2015, the Executive Branch published Provisional Measure 703/2015. It amends Articles 15 and 16 of the Clean Company Act so as to more clearly provide that the CGU, the Federal Prosecutor's Office, and the Attorney General retain concurrent jurisdiction at the federal level to negotiate and enter into leniency agreements, and it is incumbent upon the TCU to determine exclusively whether the terms of any restitutions are sufficient to reimburse the National Treasury.[264] More controversially, Provisional Measure 703/2015 also amends the Clean Company Act so as to eliminate the requirement that companies admit any wrongdoing and be the first to enter into leniency agreements with CGU.[265] In 2016, Provisional Measure 703/2015 needs to be approved by Congress in order to be definitively converted into law.

On the preventive front, the main development of 2015 was the publication by the CGU of its Guidelines for Compliance Programs of Legal Entities (Guidelines). The Guidelines set forth the requirements of compliance programs, which under the Clean Company Act are a mitigating factor in establishing a company's liability for acts against the public administration. The Guidelines provide that compliance programs must rest on the following five "pillars": (i) commitment and support from senior management; (ii) an internal department provided with resources to ensure the implementation of the program, (iii) assessment of the company's risk profile; (iv) a proper framework and structure to ensure compliance, and (v) continuous monitoring and implementation.

While emphasizing that there is no one-size-fits-all compliance program, the Guidelines – similar to the DoJ and SEC *Resource Guide to the US Foreign Corrupt Practices Act* – highlight anti-corruption measures and policies related to: (1) interactions with government entities; (2) offering gifts and hospitality; (3) accounting records and controls; (4) hiring of third parties; (5) mergers and acquisitions; and (6) sponsorships and donations. The Guidelines also underscore the need for policies that include proper communication and training, appropriate reporting channels, adequate disciplinary and remediation actions, and continuous monitoring within a company. They reflect continued convergence of compliance standards internationally.

[262] www.cgu.gov.br, last visited on January 11, 2016.
[263] TCU Normative Instruction 74 of February 11, 2015, Article I.
[264] Provisional Measure 703/2015, Article I (amending Article 16 of Law 12,846/2013).
[265] *Id.*

D. Canada

Canada continued to enforce the Corruption of Foreign Public Officials Act (CFPOA), and made important changes relating to debarment from federal procurement of suppliers who have been convicted of corruption and related charges outside of Canada. The Ontario Securities Commission (OSC) has also proposed a whistleblower bounty program partly inspired by a similar program under Dodd-Frank that may come into effect in 2016.

In February 2015, SNC-Lavalin Group Inc. – one of Canada's pre-eminent engineering firms – and two of its corporate affiliates, SNC Lavalin Construction Inc. and SNC-Lavalin International Inc., were charged by the Royal Canadian Mounted Police (RCMP) for violating the CFPOA by bribing one or more public officials in Libya for an aggregate sum of approximately $47.6 million over a 10-year period and an alleged fraud of $130 million in relation to projects in Libya.[266] There are other pending foreign bribery charges against the firm.[267] Last October, SNC-Lavalin agreed to pay $1.5 million to settle a corruption case brought against the company by the African Development Bank Group in connection with the company's operations in Mozambique and Uganda.[268] Several former executives of SNC-Lavalin are also facing charges in a Quebec court that they paid millions in bribes to win a contract to build the McGill University hospital.[269]

As discussed in detail in our 2013 Year in Review, Canada amended the CFPOA, its anti-bribery statute, in 2013 to comply with its obligations under the OECD Convention by expanding the jurisdictional scope of the Act and adding a bookkeeping offense that criminalizes committing or concealing bribery using improper accounting techniques.

The RCMP is actively investigating several CFPOA cases. Notably, the RCMP is investigating a Toronto-based mining company, MagIndustries Corp., for possible violations of the CFPOA in connection with the company's business dealings in the Republic of Congo. In January 2015, the RCMP raided the offices of MagIndustries, which is developing a $1.5 billion potash mine in Pointe Noir, Republic of Congo. The RCMP had received a tip from the company's former in-house accountant in the Republic of Congo, a Canadian citizen, alleging

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[266] Drew Hasselback, *SNC-Lavalin charges reveal new law's bite; Corporations found guilty of indictable offences face tough fines*, THE GAZETTE (MONTREAL) (Feb. 20, 2015); Graeme Hamilton, *RCMP charges SNC-Lavalin with fraud and corruption linked to Libyan projects*, FINANCIAL POST (Feb. 19, 2015).

[267] *E.g.*, Graeme Hamilton, *SNC-Lavalin paid $6M in kickbacks to Tunisian president's son-in-law: RCMP*, NATIONAL POST (May 21, 2013).

[268] *SNC-Lavalin to pay $1.5M in African Development Bank corruption case*, CBC NEWS (Oct. 1, 2015), http://www.cbc.ca/news/business/snc-lavalin-to-pay-1-5m-in-african-development-bank-corruption-case-1.3252015. In 2013, the World Bank debarred SNC-Lavalin and over 100 affiliates for a period of ten years. The World Bank, *World Bank Debars SNC-Lavalin Inc. and Its Affiliates for 10 Years* (Apr. 17, 2013), http://www.worldbank.org/en/news/press-release/2013/04/17/world-bank-debars-snc-lavalin-inc-and-its-affiliates-for-ten-years.

[269] *Former SNC-Lavalin execs in court in MUHC bribery case* (Mar. 16, 2015), CBC NEWS, http://www.cbc.ca/news/canada/montreal/former-snc-lavalin-execs-in-court-in-muhc-bribery-case-1.2996481.

that he was asked to approve a $12,000 cash payment to Congolese government officials to secure expropriation rights.[270]

On July 3, 2015, the Government of Canada announced the implementation of a new Integrity Regime for all federal government procurement and real property transactions valued at $10,000 or higher. The Integrity Regime makes important changes to the former Public Works and Government Services Canada Integrity Framework. More specifically, suppliers who have been convicted in the last three years of listed offenses, which includes corruption, bribery, and falsification of books and documents, could reduce their ineligibility period from 10 to 5 years if they can demonstrate either cooperation with law enforcement authorities or undertaking of remedial steps. So, too, with convictions outside of Canada, but only when they are similar to the listed offenses in Canada. The government will assess the "constitutive elements" of the foreign offense and, consider, among other factors, whether the foreign court acted within its jurisdiction and whether the supplier or affiliate had the right to present to the court "every defense" they would have been entitled to in Canada, in determining the similarity of foreign offense with listed offenses in Canada. Suppliers who are merely charged with or admit guilt to one of the listed or similar foreign offenses may be ineligible to do business with the Government of Canada for 18 months or longer. Prior to finding a supplier ineligible for conviction of its affiliate, the Canadian government will now assess whether the supplier participated or was involved in the actions that led to the affiliate's conviction.

Finally, the Ontario Securities Commission (OSC) has proposed a whistleblower bounty program which may come into effect in 2016. The program is intended to encourage the reporting of serious securities-related misconduct in Ontario to the OSC. Under the current proposal, whistleblowers could be awarded up to $5 million.[271]

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[270] Peter Koven, *MagIndustries Corp reveals evidence that subsidiaries allegedly paid major bribes in Republic of Congo*, FINANCIAL POST (June 17, 2015), http://business.financialpost.com/news/mining/magindustries-reveals-evidence-that-company-paid-major-bribes-in-republic-of-congo; Dave Seglins & Pete Evans, *MagIndustries probed by RCMP over bribery allegations in Congo*, CBC NEWS (May 29, 2015), http://www.cbc.ca/news/business/magindustries-probed-by-rcmp-over-bribery-allegations-in-congo-1.3091035.

[271] *OSC Policy 15-601 Whistleblower Program* (Oct. 28, 2015), available at https://www.osc.gov.on.ca/documents/en/Securities-Category1/rule_20151028_15-601_policy-whistleblower-program.pdf; also see, *OSC Staff Consultation Paper 15-401: Proposed Framework for an OSC Whistleblower Program* (Feb. 3, 2015), available at https://www.osc.gov.on.ca/documents/en/Securities-Category1/rule_20150203_15-401_whistleblower-program.pdf.

E. Other EU Jurisdictions

1. European Union

On October 6, 2015, in the case of *Maximillian Schrems v. Data Protection Commissioner*,[272] the Court of Justice of the European Union (CJEU) ruled that the "Safe Harbor" agreement (a mechanism for the transfer of personal data between Europe and the US) is invalid. The effect of this decision is that unless some mechanism other than Safe Harbor gives US companies permission to transfer the data, such transfers will be in violation of EU data protection rules.

The CJEU ruling means that Member States can now set up their own regulations governing the transfer of such data to the US. Indeed Member States can choose to prohibit the transfer of such data from the European Union to the US, which would effectively force companies to store such data on servers within the European Union, and prevent the transmission of this data outside the EU. One option that companies may have to consider is to seek the explicit and free consent of the data subject directly. However, not only would this be a complex procedure for companies that previously exclusively relied on the Safe Harbor, it could create legal issues as to whether consent is voluntary.

It is notable that the German data protection authority already has announced that it will begin investigating data transfers from the EU to the US, and may issue orders for data flows to be halted.[273]

2. France

In July 2015, it was announced that a new law against corruption would be submitted to French ministers in Council in the fall of 2015, for debate in Parliament in early 2016. The latest version of the draft, known as "Sapin II Bill," which is yet to be officially published, indicates significant changes to France's anti-corruption legislation. In particular, the draft Sapin II bill introduces an obligation to prevent risks of bribery on companies that (i) employ at least 500 employees and (ii) belong to a group that employs at least 500 employees and has a turnover in excess of EUR 100 million (as well as to their directors). Such companies will have to take efficient measures to combat bribery in France or abroad. Some of the measures include the:

- Adoption of a code of conduct
- Implementation of a whistleblowing mechanism
- Establishment of risk mapping

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[272] Case C‑362/14, Judgment of the Grand Chamber (Oct. 6, 2015), available at http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d2dc30dd371eefdc32c34c8ea284d76d382e5105.e34KaxiLc3qMb40Rch0SaxuRbhf0?text=&docid=169195&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=316438.

[273] *Safe-Harbor-Urteil: Deutsche Datenschützer überprüfen Töchter der US-Firmen*, SPIEGEL (Oct. 26, 2015), http://www.spiegel.de/netzwelt/netzpolitik/safe-harbor-datenschuetzer-kuendigen-ueberpruefungen-an-a-1059676.html.

- Implementation of due diligence procedures for third partners engaged by the company
- Provision of training for the company's executives and employees performing higher bribery risk roles

The draft bill also introduces an offence of influence peddling in relation to foreign public officials, which aims to encourage the prosecution of corruption committed outside France, by removing two prerequisites. One, that the offense should also be punishable in the country where it was committed, and two, the requirement of a prior complaint by the public prosecutor.

The proposed anti-corruption law follows the criticism that France has received in particular from the OECD, who noted with concern that no French company had been convicted for foreign bribery in France (in stark contrast to the numerous international regulatory convictions on multiple French companies for that offence).[274]

3. Iceland

Iceland has been the subject of similar criticism from the OECD for its failure to implement the OECD Anti-Bribery Convention and its lack of progress in tackling bribery of foreign public officials.[275] Although Iceland has yet to bring any enforcement actions against foreign bribery, in February 2015, Iceland's Supreme Court upheld convictions for financial fraud against the collapsed Kaupthing Bank and four of its former senior executives, all of whom were sentenced to between four and five and a half years in prison – these were the heaviest fines for financial fraud in Iceland's history.[276]

4. Germany

On November 26, 2015, Germany's new law on corruption, Gesetz zur Bekämpfung der Korruption, entered into force.[277] The new law amends the existing anti-corruption provisions in the *Strafgesetzbuch* [German Criminal Code] and expands existing criminal provisions on money laundering. Notably, the new law broadens the scope of corruption sanctions to include bribing officials of the European Union and its agencies and institutions. Thus, even small-scale bribery

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[274] *Statement on the OECD Working Group on Bribery on France's implementation of the Anti-Bribery Convention* (Oct. 23, 2014), available at http://www.oecd.org/newsroom/statement-of-the-oecd-working-group-on-bribery-on-france-s-implementation-of-the-anti-bribery-convention.htm.

[275] *Iceland's Inter-Ministerial Steering Group Must Make Prompt Progress in Fighting Foreign Bribery* (Apr. 9, 2015), available at http://www.oecd.org/newsroom/iceland-s-inter-ministerial-steering-group-must-make-prompt-progress-in-fighting-foreign-bribery.htm.

[276] Alistair Scrutton and Ragnhildur Sigurdardottir, *Iceland Convicts Bad Bankers and says Other Nations can Act*, REUTERS (Feb. 13, 2015), http://uk.reuters.com/article/uk-iceland-bankers-idUKKBN0LH0OC20150213.

[277] Nov. 25, 2015, Bundesgesetzblatt [BGBL.] Nr. 46, p. 2025, available at http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl#__bgbl__%2F%2F*[%40attr_id%3D%27bgbl115s2025.pdf%27]__1451551238277.

of employees of the EU and its institutions is now punishable in Germany. The new law also expands the territorial scope of bribery in that it now applies to offences committed by European Union officials who accept bribes and who have headquarters in Germany, and German citizens who engage in bribery whilst abroad. The new law also extends the predicate offences for money laundering to include the receiving and granting of bribes to employees of foreign and supranational public authorities, and makes "self-money laundering" a punishable offence. Finally, the new law extends the scope of bribery in the private sector; it is now a punishable offence to offer, promise or demand a bribe whenever the purpose is to cause an employee to breach his/her internal obligations to his/her employer, the so-called "Geschäftsherrenmodell" (employer model). This provision is very wide in scope; the employer does not even have to suffer a financial disadvantage.

In 2015, Germany continued a number of anti-bribery and corruption investigations. Hannover prosecutors confirmed they were examining whether they have jurisdiction with respect to the corruption allegations faced by Continental relating to bribery in China;[278] prosecutors have opened an investigation into Martin Winterkorn, Volkswagen AG's former chairman, over allegations of fraud in the sale of cars with manipulated emissions data;[279] and the Deutscher Fußball-Bund launched an investigation into allegations of bribery by Germany's 2006 World Cup organizing committee to FIFA.[280]

5. Italy

In October 2015, a Milanese judge ordered Saipem to face trial for allegedly bribing Algerian officials to win work from Sonatrach, the Algerian state-owned energy firm. Three former Saipem senior executives and two alleged Algerian intermediaries also will stand trial on charges of tax fraud and international corruption.[281] The Italian prosecutor alleges that intermediaries working for Saipem paid approximately US$ 221,550,000 in bribes to win contracts worth in the region of US$ 9 billion with Sonatrach. The alleged corruption took place until the beginning of 2010. The trial began in early December 2015.

6. Nordics

In July 2015, a Norwegian court imposed custodial sentences on four former senior executives of Yara International. The four men were convicted of paying approximately US$

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[278] Christian Schnell, *Continental Faces China Corruption Probe*, HANDELSBLATT (Sep. 11, 2015), https://global.handelsblatt.com/edition/261/ressort/companies-markets/article/continental-faces-china-corruption-probe?c2f2.

[279] Chris Bryant, Jeevan Vasagar and Robert Wright, *German Prosecutors Launch Probe of ex-VW Chief Martin Winterkorn*, F.T. (Sep. 28, 2015), http://www.ft.com/cms/s/0/de2df282-65e1-11e5-a57f-21b88f7d973f.html#axzz3vspjTc5N.

[280] Karolos Grohmann, *Slush Fund Allegedly used to Buy Votes for Germany's 2006 World Cup – Report*, REUTERS (Oct. 16, 2015), http://uk.reuters.com/article/uk-soccer-fifa-germany-idUKKCN0SA11A20151016.

[281] Emilio Parodi, *UPDATE 1-Judge orders Saipem to stand trial in Algeria corruption case*, REUTERS (Oct. 2, 2015), http://www.reuters.com/article/saipem-algeria-trial-idUSL5N1222ZA20151002.

8,000,000 in bribes to senior government officials in India and Libya to gain access to those markets. Thorleif Enger, the former CEO, was sentenced to three years in prison. Kendrick Wallace, the former General Counsel, was jailed for two-and-a-half years. Tor Holba, the former head of upstream activities, and Daniel Clauw, the former deputy CEO, both received two years in prison. All four men have filed appeals. The convictions follow the imposition of a US$ 48,000,000 fine on the company by Norwegian authorities in 2014 in connection with the same scheme.[282]

In August 2015, the US DoJ asked authorities in several European countries to freeze approximately US$ 1 billion in assets tied to an investigation of the Norwegian company VimpelCom, Russian-owned MTS, and Swedish-Finnish company TeliaSonera. The investigation concerns the possible bribery of Uzbek officials, including the daughter of the Uzbek President, to obtain mobile telecommunications business in Uzbekistan and the laundering of money involved in the scheme through a series of shell companies.[283]

In November 2015, VimpelCom announced that it will reserve US$ 900,000,000 to cover fees and costs it may incur relating to the investigation of its business in Uzbekistan by the Dutch Public Prosecution Service and US criminal and civil authorities. A settlement was announced in early 2016.[284] VimpelCom is part of Norway's Telenor, which is 54% owned by the Norwegian government. The investigation forced the resignation of Telenor's Chairman, Svein Aaser, in October 2015.[285]

7. Spain

On March 31, 2015, amendments to la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal (Spain's 1995 Criminal Code) were published, which became effective on July 1, 2015.[286] In particular, the amendments to Article 31 of the 1995 Criminal Code stipulate that a company can be held liable for:

- Criminal offenses committed by persons authorized to make decisions in the company's name or on behalf of the company and to the company's benefit (either directly or indirectly) and legal representatives

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[282] Stine Jacobson, *Former Yara executives sentenced to prison in corruption case*, REUTERS (Jul. 7, 2015), http://www.reuters.com/article/us-yara-intl-lawsuit-idUSKCN0PH1LY20150707.
[283] Richard L. Cassin, *DOJ asks Sweden to freeze $30 million in TeliaSonera, Uzbek graft probe*, FCPA BLOG (Apr. 2, 2015), http://www.fcpablog.com/blog/2015/4/2/doj-asks-sweden-to-freeze-30-million-in-teliasonera-uzbek-gr.html.
[284] SEC Press Release, *VimpelCom to Pay $795 Million in Global Settlement for FCPA Violations* (Feb. 18, 2016), https://www.sec.gov/news/pressrelease/2016-34.html.
[285] *VimpelCom makes provision in connection with ongoing investigations* (Nov. 3, 2015), available at http://www.vimpelcom.com/Media-center/Press-releases/2015/VimpelCom-makes-provision-in-connection-with-ongoing-investigations/.
[286] March 31, 2015, Boletín Oficial Del Estado, No. 77, available at http://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-3439.

- Criminal offenses by employees acting under the authority of such persons, if the offense benefits the company (either directly or indirectly) and the misconduct occurred because the company seriously breached its duties to supervise, oversee and control such conduct

A further amendment to Article 31 bis 2 sees Spain join a growing number of countries seeking to regulate the content of corporate compliance programs. Under this new provision, a company will have a defense to liability if, prior to the commission of the crime in question, the company's directors adopted a compliance program to prevent or significantly reduce the risk of such crimes being committed. To be "adequate," a program must include the following six elements:

- Risk assessment
- Standards and controls to mitigate any risks identified
- Financial controls to prevent crimes
- Compulsory reporting policies to ensure that misconduct is promptly notified (*e.g.*, a whistleblower channel)
- Implementation of a disciplinary system
- Periodic review and updating of the compliance program

IX. INTERNATIONAL FINANCIAL INSTITUTIONS

2015 saw a number of developments for the World Bank and other Multilateral Development Banks (MDBs) this year, including in procedural process, enforcement, and cases – both resolved and ongoing. Some of the more notable developments are described below.

A. The World Bank

The World Bank continued active enforcement of its fraud and anti-corruption standards in 2015. During the World Bank's 2015 fiscal year, it debarred 73 firms or individuals (eighteen of which resulted from negotiated resolutions) and enforced 66 temporary suspensions.[287] The Bank also honored 27 debarments as a result of the 2010 Cross-Debarment Agreement among the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank, and the World Bank.[288] The World Bank's Integrity Vice Presidency also continued active investigation of cases, opening 32 new cases in 2015,[289] and submitting 35 cases to the Office of Suspension and Debarment for review.

The Sanctions Board issued nine decisions in 2015, as compared to fourteen decisions in 2014. Conduct at issue in those decisions spanned across a variety of regions. There were a number of notable cases this year, including a case in which a dissenting opinion was filed by

[287] WORLD BANK GROUP, OFFICE OF SUSPENSION AND DEBARMENT, REPORT ON FUNCTIONS, DATA AND LESSONS LEARNED 25-27 (2d ed. 2015).
[288] WORLD BANK GROUP, INTEGRITY VICE PRESIDENCY, ANNUAL UPDATE FISCAL YEAR 2015 50-51 (2015). The significance of cross-debarment is discussed in more detail below.
[289] *Id*. at 43.

one of the Sanctions Board members,[290] which is unprecedented. The year also saw a precedent-setting case in which an accounting firm was found liable for fraud based on statements made in its audit reports.[291] According to the Sanctions Board, the Honduran accounting firm should have been on notice that there was a risk of inaccuracies in its deliverables because "the difficulties in obtaining complete and timely information [from the client] demonstrated a substantial risk of misrepresentations, and […] the Respondent's staff were apparently aware of this risk when they submitted the data sheets in question."[292] The Sanctions Board construed payment for this contracted work as a "financial benefit" sufficient to satisfy the elements of fraud – potentially opening the doors for essentially any contracted auditor to face future scrutiny.[293] Also notable this year was a decision addressing parent liability for the actions of an affiliate. In Decision No. 83, the Sanctions Board found that the controlling affiliate was not liable for the conduct of a subsidiary where INT had failed to satisfy its burden that the controlling affiliate had knowledge of or was willfully blind of the misconduct in question.[294] The Sanctions Board took into consideration evidence that the controlling affiliate had no specific knowledge of the misconduct or of earlier red flags, and that the controlling affiliate had compliance measures in place at the time of the misconduct.[295] Effective compliance measures also played a role in another significant decision, Sanctions Board Decision No. 78, in which the Respondent Firm received only a reprimand for hiring a public official's daughter (first as a paid intern, and then as a full time employee).[296] Notably, and for the first time, the official was sanctioned as an "individual respondent."[297]

The World Bank also remains involved in a case that is now before the Supreme Court of Canada that may impact the privileges and immunities of the Bank and other IFIs. The case involves investigative findings that the Bank turned over to the RCMP, which resulted in an investigation and criminal charges against individuals charged with corruption relating to SNC-Lavalin's bid to construct the Padma Bridge in Bangladesh.[298] At issue is the scope of the Bank's immunity, and whether this immunity was impliedly waived by providing records to the RCMP.[299] This is an appeal from the Ontario Superior Court of Justice ruling, which previously ordered the Bank to produce the records.[300]

B. Other IFIs

Although the remaining IFIs release less public information regarding their decisions, the enforcement actions of those banks can have a broad impact. The African Development Bank

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[290] Sanctions Board Decision No. 81 (2015) (including dissenting opinion by Denis Robitaille).
[291] Sanctions Board Decision No. 82 (2015).
[292] *Id.* at para. 32.
[293] *Id.* at para. 36.
[294] Sanctions Board Decision No. 83 (2015), para. 77.
[295] *Id.*
[296] Sanctions Board Decision No. 78 (2015), paras. 80-81.
[297] *Id.*
[298] Summary, *World Bank Group v. Wallace, et al*., Case No. 36315 (S.C.C. Mar. 12, 2012).
[299] *Id.*
[300] *World Bank Group v. Wallace et al*., No. CR-13-90000727, 2014 ONSC 7449 (Dec. 23, 2014).

(AfDB), the Asian Development Bank (ADB), the European Bank for Reconstruction and Development (EBRD), the Inter-American Development Bank (IDB), and the World Bank mutually recognize and cross-debar firms subject to debarments of more than one year.[301] Thus, a firm subject to a suspension or debarment greater than one year will be barred from participating in projects funded by any of those IFIs.

Cross-debarment raises issues of fairness if the burdens of proof or due process rights differ between each forum. As a result, the IFIs committed to standardize and align the procedural rights afforded companies in the investigative and sanctioning process of each bank. This year, the IDB released a revised set of Sanctions Procedures, effective June 9, 2015, meant to bring its sanctions system even more in line with that of the World Bank and other major IFIs.[302] The most significant change is the introduction of "negotiated resolution agreements," whereby a party may settle a matter if it agrees "to provide evidence that facilitates the Bank Group's understanding of systemic Prohibited Practices or integrity risks to Bank Group-financed activities, significant Prohibited Practices of the external parties or other parties, and/or such other criteria as may be determined by the Bank or the Corporation." The negotiated resolution agreement must be entered into prior to the issuance of a Statement of Charges. Other changes include the change in title of the "Case Officer" to a "Sanctions Officer" and the renaming of the notice to an official "Statement of Charges" reviewed by the Sanctions Officer.[303]

Further, US issuers facing investigation by IFIs should be cognizant of the regulatory and collateral litigation risks that may result from settlement with or investigation by an IFI, especially given the practice of many of the IFIs of sharing information with national authorities. For example, on November 30, 2014, Hitachi, Ltd. (Hitachi) entered into a settlement agreement in which the AfDB imposed the sanction of debarment for twelve months with conditional release, citing Hitachi's voluntary cooperation with the AfDB and Hitachi's voluntary agreement to make a "substantial financial contribution to the AfDB."[304] As noted above, subsequently, on September 28, 2015, Hitachi also agreed to pay $19 million to settle SEC allegations that it violated the FCPA with respect to payments made to South Africa's ruling political party, and the SEC cited assistance from the AfDB's Integrity and Anti-Corruption Department.[305]

The AfDB's Integrity and Anti-Corruption Department is the newest among the IFIs. The recent launch of the Asian Infrastructure Investment Bank raises the question of whether in 2016 it will join the ranks of the World Bank, the AfDB, and the other IFIs that have established independent investigative and sanctioning mechanisms to ferret out corruption.

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[301] *See* Cross Debarment, http://lnadbg4.adb.org/oai001p.nsf/.
[302] Inter-American Dev. Bank, Sanctions Procedures (2015), http://www.iadb.org/document.cfm?id=39676437.
[303] *Compare id.*, *with* Inter-American Dev. Bank, Sanctions Procedures (Previous Version) (2011), http://www.iadb.org/document.cfm?id=36233155.
[304] Afr. Dev. Bank Grp., *Integrity in Development: AfDB and Hitachi, Lt. Conclude Settlement Agreement* (Feb. 12, 2015), http://www.afdb.org/en/news-and-events/article/integrity-in-development-afdb-and-hitachi-ltd-conclude-settlement-agreement-15118/.
[305] Sec. Exch. Comm'n, *SEC Charges Hitachi with FCPA Violations* (Sep. 28, 2015), http://www.sec.gov/news/pressrelease/2015-212.html.

APPENDIX: Table of 2015 Corporate Cases, by Element

Anti-Bribery Provisions: Substantive Elements	Case
• **Officials Involved**	• Government officials affiliated with a Middle Eastern sovereign wealth fund (*BNY Mellon*) • Government officials of the Saudi Arabian Ministry of Interior and Egyptian Ministry of Defense (*FLIR Systems*) • Kuwaiti officials connected to the Ministry of Interior (*IAP Worldwide*) • Foreign officials in Indonesia, Vietnam, India and Kuwait (*Louis Berger*) • Official with Qatar's real estate development company (*PBSJ*)
• **Third Parties Involved, if any**	• Travel agent (*FLIR Systems*) • Consultant (*IAP Worldwide*) • A non-governmental organization, subcontractors, a consulting company, and various vendors (*Louis Berger*) • Company owned by Qatari real estate development official, included on PBSJ's bid as a subcontractor to handle local requirements (*PBSJ*)
• **Value Provided**	• Internships for relatives of foreign government officials (*BNY Mellon*) • Approximately $90,000 in gifts and travel, and a 20-night "world tour" (*FLIR Systems*) • At least $1.7 million in bribes to a consultant, with intent for all or part of it to go to Kuwaiti officials (*IAP Worldwide*) • Direct and indirect payments to foreign officials totaling $3,934,431 (*Louis Berger*) • Third party company owned by official was entitled under its agreement to 40% of the profits from the contract and "agency fees" of between 1.8% and 3% of the contract amounts (equivalent to approximately $640,000 on one project and $750,000 on the other), along with other sums, but the contracts were never consummated (*PBSJ*)
• **Action, Inaction, Influence or Advantage Sought:**	• Retain and win business managing and servicing assets of a Middle Eastern sovereign wealth fund (*BNY Mellon*) • To fulfill a sales contract and to potentially obtain additional orders (*FLIR Systems*)

	• To secure a government security project contract (*IAP Worldwide*) • Various government construction management contracts (*Louis Berger*) • Assistance in obtaining confidential bid information and shaping a tender process to help PBSJ win an otherwise competitive tender for one large development project in Qatar and another in Morocco (*PBSJ*)
• **Combined Total Fines, Penalties, Disgorgement, Pre-Judgment Interest**	• $17.1 million (*Louis Berger*) • $14.8 million (*BNY Mellon*) • $9.5 million (*FLIR Systems*) • $7.1 million (*IAP Worldwide*) • $3.41 million (*PBSJ*)

Anti-Bribery Provisions: Jurisdictional Elements	**Case**
• **dd-1 or dd-2 jurisdiction**	• *BNY Mellon* • *FLIR Systems* • *IAP Worldwide* • *Louis Berger* • *PBSJ*
• **dd-3 territoriality**	• *None*

Accounting Provisions: Substantive Elements	**Case**
• **Nature of Alleged Books and Records Inaccuracy**	• "[C]ertain Olympic hospitality applications, did not, in reasonable detail, accurately and fairly reflect pending negotiations or business dealings between BHPB and government officials invited to the Olympics." (*BHP Billiton*) • Falsely recording as legitimate business expenses in internal books and records cash payments, gifts, meals, travel, entertainment, conference sponsorships of unspecified value to health care providers at state-owned and state-affiliated hospitals in China by its Chinese affiliate (*Bristol-Myers Squib*) • Falsely recording the value of gifts and the extent and nature of travel (*FLIR Systems*) • Falsely recording bribes as legitimate business expenses in internal books and records (*Goodyear*)

	• Falsely recording $5 million in dividends and a $1 million "success fee" paid to a minority shareholder in South Africa that was a front company for the ANC (*Hitachi*) • Improperly recording payments to related parties as public relations and lobbying expenses paid to unrelated third parties (*Hyperdynamics*) • Improperly recording the portion of marketing funds to distributors that were used for improper payments to health care professionals at state-owned hospitals to develop business for the company by recommending products and providing information to new or expectant mothers (*Mead Johnson*) • Company officer directed subordinates to conceal some of the payments he offered and authorized to an official within bids; other offers and promises to pay were improperly described in the books and records as legitimate transaction costs with the officer's knowledge (*PBSJ*)
• **Nature of Alleged Internal Control Weaknesses**	• Invitation application process forms found to be inadequate because they were not subject to legal or compliance review by an independent (*i.e.*, outside the country or business unit) company official; some of the applications were not accurate or complete, or not updated as the facts changed; the company failed to provide related legal/ethics training and failed to track its dealings with particular officials across business units (*BHP Billiton*) • Failure to devise and maintain a system of internal accounting controls around its hiring practices to provide reasonable assurances that its employees were not bribing foreign officials in contravention of company policy (*BNY Mellon*) • Lacking a dedicated compliance officer; failing to identify and correct non-compliance (*Bristol-Myers Squib*) • Lacking adequate accounting controls over travel in its foreign sales offices and the giving of gifts to customers (*FLIR Systems*) • Failure to detect payments to government officials in Kenya and Angola, including police and tax agents; failure to implement adequate FCPA compliance controls at its subsidiaries; failure to conduct adequate due diligence on Kenyan subsidiary (*Goodyear*) • Failure to detect and prevent payment to minority shareholder owned by ANC (*Hitachi*)

	• Failure to devise and maintain accounting controls to track subsidiary's use of funds and to provide reasonable assurances that its recording of expenditures was accurate; lack of due diligence and monitoring processes for vetting third parties (*Hyperdynamics*) • Failure to devise and maintain an adequate system of internal controls over operations at its China subsidiary to ensure its method of funding marketing and sales expenditures through distributors was not used for unauthorized purposes (*Mead Johnson*) • Failure to conduct due diligence on company owned by official and to implement other appropriate controls given that a company officer knew the company was owned by official and other employees knew official was providing confidential bid information and agency fees were being disguised as legitimate costs; officer repeatedly exploited company's internal accounting control deficiencies to offer and authorize improper payments (*PBSJ*)

Nature of Resolution: DoJ	**Case**
• **Plea (Parent or Subsidiary)**	• *None*
• **Deferred Prosecution Agreement**	• *Louis Berger*
• **Non-Prosecution Agreement**	• *IAP Worldwide*
• **Monitor**	• *Louis Berger*

Nature of Resolution: SEC	**Case**
• **Civil Injunctive Action**	• *None*
• **Civil Administrative Action (Cease and Desist Order)**	• *BHP Billiton* • *BNY Mellon* • *Bristol-Myers Squib* • *FLIR Systems* • *Goodyear* • *Hyperdynamics* • *Mead Johnson* • *Standard Bank*
• **Monitor**	• *None*

• **Non-Prosecution Agreement**	• *None*
• **Deferred Prosecution Agreement**	• *PBSJ Corp.*

International Cooperation	Case
• **Countries Cited for Assistance with US investigation**	• Australia (*BHP Billiton*) • UK (*Standard Bank* – joint settlement with SFO)

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