2017 FCPA Mid-Year Review

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Lucinda A. Low, Brittany Prelogar and Tom Best (eds.)[2]

I. Introduction

2017 began with a flurry of enforcement actions in the first weeks of January, including some major resolutions that broke new ground in international anti-corruption enforcement. The most notable was a much-needed "win" for the UK Serious Fraud Office (SFO), which entered into a deferred prosecution agreement with Rolls-Royce plc as part of an $800 million coordinated set of resolutions with US, UK, and Brazilian authorities.[3] Rolls-Royce's global settlement in early January 2017 was the most recent in a series of important parallel and coordinated investigations that in 2016 culminated in enforcement actions against Veon (formerly known as VimpelCom) (US and Dutch authorities) and Odebrecht and Braskem (US, Brazilian, and Swiss authorities), as described in our 2016 FCPA Year in Review.[4]

Since the administration changed over on January 20, 2017, however, no further corporate US Foreign Corrupt Practices Act (FCPA) resolutions were announced until the June 2017 declination issued to Linde Gas North America LLC and Linde North America Inc. While questions have been raised about the Trump administration's commitment to continued enforcement of the FCPA, the inaction likely at least in part reflects delays in key appointments within the US Department of Justice (DOJ) and Securities and Exchange Commission (SEC). Although President Trump has expressed public skepticism about the law in the past,[5] senior political appointees such as Attorney General Sessions have stated that the DOJ would continue to enforce the FCPA "as appropriate based on the facts and circumstances of each case."[6]

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[2] Other contributors to Steptoe's 2017 FCPA Mid-Year Review include Brigid Benitez, Pablo Bentes, Patrick Rappo, John London, Jessica Piquet Megaw, Evan Abrams, Helen Aldridge, Claire Blakey, Brady Cassis, Sara Chouraqui, Alexis Early, Mara Giorgio, Peter Ibrahim, Peter Jeydel, Alex Melia, Bibek Pandey, Judy Wang, Stephanie Wang, and Bo Yue.

[3] *See infra* Parts II.A.6 and V.B.

[4] *See* Lucinda A. Low, Tom Best & Brittany Prelogar, *2016 FCPA Year in Review*, STEPTOE & JOHNSON, LLP (2017). As noted in our 2016 Year in Review, Odebrecht faced a criminal penalty of between $2.6 billion (the amount that Odebrecht represented it was able to pay) and $4.5 billion (the amount the parties agreed was "appropriate"), subject to an independent analysis to be performed by US and Brazilian authorities. In April of this year, a federal judge ordered Odebrecht to pay $2.6 billion to Brazilian, US, and Swiss authorities (of which the US will receive $93 million) based on that analysis. Brendan Pierson, *U.S. judge approves $2.6 billion fine for Odebrecht in corruption case*, Reuters (Apr. 17, 2017), http://www.reuters.com/article/us-brazil-corruption-usa-idUSKBN17J1A7.

[5] *See* David J. Lynch, *US Anti-Bribery Law Set to Remain in Place Under Trump*, FIN. TIMES (Dec. 30, 2016), https://www.ft.com/content/a5b6d5e8-c951-11e6-8f29-9445cac8966f.

[6] *See* U.S. SENATE JUDICIARY COMM., 114TH CONG., Nomination of Jeff Sessions To Be Attorney General of the United States: Questions for the Record (Jan. 17, 2017) (noted in nomination record as Sessions' Responses to White House Questions for the Record), https://www.judiciary.senate.gov/imo/media/doc/Sessions%20Responses%20to%20Whitehouse%20QFRs.pdf. Similarly, Trevor McFadden, the political appointee responsible for overseeing the Criminal Division at the DOJ (and who has been nominated to serve as a judge on the US District Court for the District of Columbia, and himself is expected to leave the DOJ), spoke publicly to "dispel the myth" that "the Department of Justice no longer is interested in prosecuting white collar crime." Although AG Sessions intends to focus the Criminal Division's resources on violent crime, McFadden noted that "[t]he department is committed to enforcing the FCPA and to

Delays in the nomination and confirmation of key political appointees at the DOJ and continued departures from the Fraud Section[7] have almost certainly contributed to the slowdown. At the SEC, the turnover includes the chair of the agency (Jay Clayton is now confirmed),[8] the head of the Enforcement Division (Stephanie Avakian and Steven Peikin have recently been named co-Directors of Enforcement),[9] and the head of the FCPA Unit.[10]

In the meantime, a number of companies have disclosed new investigations during the first and second quarters of 2017, and Acting Assistant Attorney General Kenneth Blanco announced in March 2017 that the DOJ would be continuing to apply the DOJ Pilot Program after it was originally set to expire in April 2017.[11] Although the DOJ has not offered further guidance regarding the anticipated direction of the Pilot Program, it was used as the basis for the only corporate resolution concluded since President Trump was inaugurated.

We expect that, once key enforcement posts are filled, the announcement of additional FCPA enforcement actions will resume, in relation to both existing and new matters, though the level of enforcement and types of matters that will be brought remain to be seen. We will continue to closely monitor changes in enforcement priorities and policies, and any additional enforcement actions released by the relevant agencies, as the year unfolds.

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prosecuting fraud and corruption more generally." McFadden noted, however, that the FCPA Unit will "not prosecute every company we can", "the department does not make the law," and the DOJ's "aim is to motivate companies and individuals voluntarily to comply with the law." DOJ Press Release, *Acting Principal Deputy Assistant Attorney General Trevor N. McFadden of the Justice Department's Criminal Division Speaks at ACI's 19th Annual Conference on Foreign Corrupt Practices Act* (Apr. 20, 2017), https://www.justice.gov/opa/speech/acting-principal-deputy-assistant-attorney-general-trevor-n-mcfadden-justice-department-s. As for the SEC, Jay Clayton, Trump's nominee to chair the SEC, pledged in April 2017 to enforce the FCPA and to work with other US and foreign agencies in enforcing the law. *See* Roger Hamilton-Martin, *Senate Banking Committee Passes SEC Nominee Clayton, Who Pledges to Enforce FCPA*, GIR: JUST ANTI-CORRUPTION (Apr. 4, 2017), http://globalinvestigationsreview.com/article/1138940/senate-banking-committee-passes-sec-nominee-clayton-who-pledges-to-enforce-fcpa. Clayton noted that the FCPA "can be a 'powerful and effective means' to combating corruption" and that it is most effective when enforced in coordination with international authorities. Sarah N. Lynch, *SEC's Foreign Corruption Unit Chief to Leave by Month's End*, REUTERS (Apr. 4, 2017), http://www.reuters.com/article/us-usa-sec-fcpa-idUSKBN1762PC?il=0.

[7] Andrew Weissmann, former Fraud Section Chief, has left the DOJ to join special counsel Robert Mueller's investigative team. Tom Schoenberg, *DOJ's Weissmann Joining Mueller's Russia Investigation Team, Sources Say*, BLOOMBERG POLITICS (May 31, 2017), https://www.bloomberg.com/politics/articles/2017-05-31/senior-justice-official-said-to-jump-to-russia-probe-team. His Deputy, Sandra Moser, is currently the Acting Chief. Brian Benczkowski, former DOJ Chief of Staff and staff director to Attorney General Jeff Sessions and current Kirkland & Ellis LLP partner, is expected to be nominated to head the DOJ's Criminal Division. Jody Godoy, *Kirkland Partner Likely to Be Tapped for DOJ Criminal Chief,* LAW360 (May 4, 2017), https://www.law360.com/articles/920723/kirkland-partner-likely-to-be-tapped-for-DOJ-criminal-chief.

[8] Sarah N. Lynch, *U.S. Senate Votes to Confirm Jay Clayton as SEC Chairman*, REUTERS (May 2, 2017), http://www.reuters.com/article/us-senate-sec-clayton-idUSKBN17Y2KS.

[9] SEC Press Release, *SEC Names Stephanie Avakian and Steven Peikin as Co-Directors of Enforcement* (June 8, 2017), https://www.sec.gov/news/press-release/2017-113.

[10] SEC Press Release, *Kara Novaco Brockmeyer, Chief of FCPA Unit, to Leave SEC After 17 Years of Service* (Apr. 4, 2017), https://www.sec.gov/news/press-release/2017-76.

[11] *See* Jonathon Sack, *DOJ Announces It Will Extend FCPA "Pilot Program"*, WALL ST. J. (Mar. 13, 2017), https://www.forbes.com/sites/insider/2017/03/13/doj-announces-it-will-extend-fcpa-pilot-program/#2cf688f61d3e. Mr. Blanco also indicated, however, that the DOJ would be evaluating the Pilot Program's "utility and efficacy" and determining "whether to extend it and what revisions, if any," would be made.

In the meantime, the end of the Supreme Court's term saw the issuance of a unanimous decision in the *Kokesh* case ruling that SEC disgorgement was a penalty, and therefore subject to the five-year statute of limitations.[12] This decision has potentially significant implications for the SEC's enforcement program more broadly, which has relied heavily on disgorgement in recent years.

Outside the United States, the first half of 2017 has seen an important ruling on legal privilege by the UK courts, presenting significant challenges for cross-border UK/US investigations,[13] as well as continued anti-corruption legal, policy, and enforcement developments in Europe – including in the UK, France, the Netherlands, and Spain – and an ongoing enforcement push by Chinese and Brazilian authorities. As cooperation among national enforcement authorities continues to expand, multinational companies are likely to face a growing number of cross-border investigations of transnational bribery.

II. ENFORCEMENT ACTIONS AND PILOT PROGRAM DECLINATIONS

During the first few weeks of 2017, the DOJ and SEC brought a total of six enforcement actions against companies and 12 enforcement actions against individuals – all prior to President Trump's inauguration on January 20, 2017. Of the corporate actions, two were brought by the DOJ alone, two by the SEC alone, and two as parallel DOJ/SEC actions. Underlying conduct in corporate enforcement actions centered largely on Asia and South America, and primarily involved the improper use of third parties. Overall penalties were just under $210 million for the DOJ (derived largely from a $170 million penalty against Rolls-Royce) with a much lower $47 million for the SEC. Individual enforcement – which included six actions by the DOJ and six by the SEC – arose out of alleged conduct by individuals associated with four companies.

In June, the DOJ also issued its first declination under the new administration to Linde North America Inc. and Linde Gas North America LLC.

A. Corporate Resolutions

1. Las Vegas Sands Corp.

On January 17, 2016, Las Vegas Sands Corporation (LVSC) entered into a non-prosecution agreement (NPA) with the DOJ regarding substantially the same conduct as an April 7, 2016 settlement with the SEC involving books and records and internal control deficiencies surrounding payments made to a China-based consultant retained by a majority-owned LVSC affiliate.[14]

LVSC agreed to pay a $6.96 million criminal penalty and to disclose, for a term of three years, any conduct that would violate the FCPA if it occurred in the United States.[15] Although LVSC did not receive credit for voluntary disclosure, the company received a 25% reduction off

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[12] *Kokesh v. SEC*, 137 S. Ct. 1635, No. 16-529, at *1 (2017); *see also infra* Part V(b).
[13] *See infra* Part VI.
[14] *See* Non-Prosecution Agreement, *Las Vegas Sands Corp.*, at 2 (January 17, 2007), https://www.justice.gov/opa/press-release/file/929836/download.
[15] *See id.* at 4.

the bottom of the US Sentencing Guidelines (Guidelines) penalty range due to its cooperation and remediation.[16] The DOJ cited in particular the termination of the individuals implicated in the conduct; "revamping and expanding [LVSC's] compliance and audit function," including retaining new leaders in the legal, compliance, internal audit, and gatekeeping functions; and LVSC's commitment to continue enhancing the company's compliance program and internal controls.[17]

2. Linde

On June 16, 2017, the DOJ issued its first public FCPA declination under the Trump administration in a case involving an entity acquired in 2006 by Linde North America Inc. and Linde Gas North America LLC doing business through a joint venture in the Republic of Georgia.[18] The DOJ issued the declination, "consistent with the Pilot Program," based on Linde's voluntary self-disclosure, comprehensive investigation, full cooperation, compliance program enhancements, and remediation. Linde agreed to disgorge profits of the acquired entity obtained through the Georgian conduct and forfeit proceeds owed to certain unrelated entities involved in the conduct (which Linde withheld upon discovery of the conduct) in the amount of $11 million. This matter is the first declination released by the DOJ addressing issues arising in the mergers and acquisitions context. Although it is difficult to project too many lessons from the resolution of this matter onto DOJ's enforcement program under the Trump administration – it involved decade-old conduct and had been before the DOJ for some time prior to its resolution – it does demonstrate continuing efforts by the FCPA Unit to bring longstanding investigations to a close. It is the first declination to involve an element of forfeiture as well as disgorgement, and will be of interest to any company involved in mergers and acquisitions (M&A) activity.

3. Mondeléz International, Inc.

On January 6, 2017, the SEC issued a cease-and-desist order against Cadbury Ltd. (Cadbury) and Mondeléz International, Inc. (Mondeléz) relating to books and records and internal controls violations surrounding conduct in India.[19] Mondeléz (formerly Kraft Foods Inc.) is a global food and beverage manufacturer that is based in the United States and trades shares on the NASDAQ. In February 2010, Mondeléz acquired Cadbury, a UK-based confectionary manufacturer whose shares at the time traded as American Depository Receipts (ADRs) on the NYSE, and its subsidiaries, including Cadbury India Limited.

In the same month Mondeléz completed its acquisition of Cadbury, Cadbury India finalized its retention of a local tile and marble vendor as an agent to obtain certain government licenses and approvals needed to expand a Cadbury India chocolate factory. The SEC's cease-and-desist order did not find specifically that Cadbury or its subsidiary engaged in bribery. Rather, the SEC stated, in connection with the settled enforcement action, that Cadbury India failed to conduct proper due diligence on the agent and failed to obtain adequate documentary

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[16] *See id.* at 1–2.
[17] *See id.* at 2–3.
[18] DOJ Declination Letter, *In re Linde North America Inc.* (June 16, 2017), https://www.justice.gov/criminal-fraud/file/974516/download. Steptoe represented the companies in this matter.
[19] *See* Order Instituting Cease-and-Desist Proceedings, *In re Cadbury Ltd. & Mondeléz Int'l Inc.*, Exchange Act Release No. 79,753 (Jan. 6, 2017), https://www.sec.gov/litigation/admin/2017/34-79753.pdf.

support regarding services provided by that agent.[20] While the tile and marble vendor provided invoices and copies of the permits obtained, the SEC noted the lack of a contract with the agent and that Cadbury India had itself prepared the permit applications, while descriptions on the agent's invoices suggested the agent had performed such services.[21] The SEC stated that Cadbury India's deficiencies in due diligence and monitoring "created the risk" that the agent could use funds paid to it for improper or unauthorized purposes and that Cadbury India's books and records did not "accurately and fairly" reflect the nature of the services rendered by the agent.[22]

According to the SEC Order, due to the nature of Mondeléz's acquisition of Cadbury, Mondeléz could not conduct "complete" pre-acquisition due diligence.[23] Mondeléz also did not identify the relationship with the Indian agent during the "substantial, risk-based, post-acquisition compliance-related due diligence" it conducted beginning in April 2010.[24] In October 2010, however, Mondeléz initiated an internal investigation related to the Indian agent, required Cadbury India to terminate and cease payments to the agent, cooperated with the SEC, and undertook "extensive remedial actions" with respect to Cadbury.[25]

In addition to finding Cadbury responsible for books and records and internal controls violations, the SEC found Mondeléz responsible for Cadbury's violations as a result of its acquisition of Cadbury stock.[26] Mondeléz agreed to pay a civil penalty of $13 million to resolve the matter, without admitting or denying the SEC's findings.[27]

4. Orthofix International N.V.

On January 17, 2017 the SEC announced that Orthofix International N.V. (Orthofix) agreed to admit wrongdoing and pay more than $6 million in civil penalties and disgorgement for improper payments made to government officials by a Brazilian subsidiary.[28] Senior officials at Orthofix's wholly-owned subsidiary, Orthofix do Brasil LTDA (Orthofix Brazil), collaborated with third-party commercial representatives and distributors to make improper payments to government-employed doctors.[29] In particular, payments to doctors were funded through high commissions Orthofix Brazil paid to commercial representatives that were supported by false invoices for "marketing" services, through high discounts for distributors, or through payments to distributors for services that were not rendered. These amounts were recorded improperly as commissions, discounts, consulting fees, administrative expenses, and other legitimate expenses. The payments to doctors secured additional sales of Orthofix products to Brazilian state-run hospitals, netting approximately $2.9 million in illegal profits.

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[20] *See id.* ¶¶ 10, 12.
[21] *See id.* ¶ 11.
[22] *See id.* ¶ 21.
[23] *See id.* ¶ 14. The Order does not specify the applicable legal or other restriction that prevented the company from conducting robust pre-acquisition due diligence.
[24] *See id.* ¶ 14.
[25] *See id.* ¶¶ 15–16.
[26] *See id.* ¶ 21.
[27] *See id.* § IV.
[28] *See* SEC Press Release, *Medical Device Company Charged with Accounting Failures and FCPA Violations* (Jan. 17, 2017), https://www.sec.gov/news/pressrelease/2017-18.html.
[29] *See* Order Instituting Cease-and-Desist Proceedings, *In re Orthofix International N.V.*, Exchange Act Release No. 79,828, at 2 (Jan. 17, 2017), https://www.sec.gov/litigation/admin/2017/34-79828.pdf.

In support of the internal control charges, the SEC found that Orthofix had deficient controls surrounding the setting, approval, payment, and monitoring of commissions and discounts. The SEC noted that Orthofix management pressured subsidiaries to meet internal sales targets and that the company's decentralized reporting structure complicated parent company oversight, compliance monitoring, and communication with US executives. In addition, the SEC noted that "a lack of centralized global accounting and payment controls allowed Orthofix to record the improper payments as legitimate business expenses."

This marked the second time in five years that the Texas-based medical device company settled with the SEC to resolve FCPA books and records and internal controls charges. Orthofix disclosed the Brazil allegations in the course of ongoing self-reporting obligations undertaken as part of a 2012 settlement with the SEC related to FCPA violations by a Mexican subsidiary. Although the SEC noted that Orthofix had not fully implemented remedial steps following the 2012 matter until discovery of the Brazil conduct in late 2013, it also noted that these "significant" efforts had included terminating problematic third parties, adopting new policies, establishing an internal audit function and expanding its compliance department, conducting extensive third-party audits, and conducting revised and additional training.

On the same day, the SEC also announced settlements with Orthofix and four former executives concerning non-FCPA related accounting violations.

5. Rolls-Royce

Also on January 17, 2017, the DOJ unsealed a deferred prosecution agreement (DPA) entered into with Rolls-Royce plc (Rolls-Royce) on December 20, 2016. Rolls-Royce agreed to pay the DOJ almost $170 million as part of an $800 million coordinated global settlement with US, UK, and Brazilian authorities based on a decade-long scheme to use consultants and distributors as intermediaries to pay bribes to officials in Thailand, Brazil, Kazakhstan, Azerbaijan, Angola, Iraq, and elsewhere to obtain confidential information and win contracts to supply turbines, gas generators, and other equipment to state-owned and state-controlled oil and gas power generation projects in those countries.[30] The DOJ charged Rolls-Royce, a UK holding company, with one count of conspiring to violate the FCPA, basing jurisdiction on the involvement of Rolls Royce Energy Systems, Inc. – an indirect, US-based subsidiary of Rolls-Royce – and various US citizen employees in the scheme, as well as the use of US bank accounts to transfer the bribe payments.[31]

The DOJ penalty reflects a 25% reduction from the bottom of the applicable Guidelines range.[32] Although the DOJ did not credit Rolls-Royce with a timely voluntary disclosure because the company disclosed violations only after media reports arose alleging corruption and

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[30] *See* DOJ Press Release, *Rolls-Royce plc Agrees to Pay $170 Million Criminal Penalty to Resolve Foreign Corrupt Practices Act Case* (Jan. 17, 2017), https://www.justice.gov/opa/pr/rolls-royce-plc-agrees-pay-170-million-criminal-penalty-resolve-foreign-corrupt-practices-act.
[31] *See* Information, *United States v. Rolls-Royce plc*, No. 16-cr-247 ¶¶ 3, 19 (S.D. Ohio Dec. 20, 2016), https://www.justice.gov/opa/press-release/file/927226/download.
[32] *See* DOJ Press Release, *Rolls-Royce plc Agrees to Pay $170 Million Criminal Penalty to Resolve Foreign Corrupt Practices Act Case* (Jan. 17, 2017), https://www.justice.gov/opa/pr/rolls-royce-plc-agrees-pay-170-million-criminal-penalty-resolve-foreign-corrupt-practices-act.

after the SFO initiated an inquiry,[33] Rolls-Royce did receive full cooperation credit.[34] The DOJ also noted Rolls-Royce's significant remedial measures, including: terminating or accepting the resignation of employees implicated in the conduct; terminating business relationships with relevant intermediaries; enhancing compliance procedures used to review and approve third-party intermediaries, including limiting the use of such intermediaries; engaging an outside compliance advisor to monitor implementation of remedial procedures; and implementing new and enhanced internal controls.[35]

6. Sociedad Química y Minera de Chile (SQM)

On January 13, 2017, Chilean chemical and mining company Sociedad Química y Minera de Chile (SQM), whose shares also trade on the NYSE, entered into a DPA with the DOJ to resolve criminal violations of the FCPA's internal control and books and records provisions surrounding use of a discretionary account for the office of SQM's CEO, and consented to entry of an SEC cease-and-desist order to resolve civil violations relating to the same conduct .[36]

Between 2008 and 2015, the CEO's discretionary account, which was designated for travel, publicity, and advisory services, allegedly was used to direct payments totaling approximately $14.75 million to Chilean politicians, political candidates, and other politically exposed persons via vendors and foundations that were connected to these recipients. This included, among other payments, approximately $630,000 paid to foundations controlled by an official who had influence over the Chilean government's plans for mining in Chile.[37] SQM failed to require appropriate due diligence, documentation, or oversight with respect to these payments. SQM reportedly used fictitious contracts and invoices to disguise the nature of the payments, which were falsely recorded as "financial services," "communications advice," and "consulting services" in SQM's books and records.[38] Payments continued for an additional six months after concerns were raised in an internal audit report and to SQM's board of directors.

SQM agreed to pay a criminal penalty of $15,487,500, cooperate with the DOJ's investigation, make improvements to its compliance program, and retain an independent corporate compliance monitor for a term of two years, with a third year of self-reporting thereafter.[39] Although SQM did not voluntarily self-disclose to the DOJ, it received a 25%

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[33] *See* Deferred Prosecution Agreement, *United States v. Rolls-Royce plc*, No. 16-cr-247 ¶ 4.a (S.D. Ohio Dec. 20, 2016), https://www.justice.gov/opa/press-release/file/927221/download.
[34] *See id.* ¶ 4.b.
[35] *See id.* ¶ 4.d.
[36] *See* DOJ Press Release, *Chilean Chemicals and Mining Company Agrees to Pay More Than $15 Million to Resolve Foreign Corrupt Practices Act Charges* (Jan. 13, 2017), https://www.justice.gov/opa/pr/chilean-chemicals-and-mining-company-agrees-pay-more-15-million-resolve-foreign-corrupt; Deferred Prosecution Agreement, *United States v. Sociedad Química y Minera de Chile, S.A.*, Case 17-cr-00013-TSC, at 2 (D.D.C.. Jan. 13, 2017); Information, *United States v. Sociedad Química y Minera de Chile, S.A.*, No. 17-cr-00013, at 2–3 (D.D.C. Jan. 13, 2017).
[37] *See* Information, *United States v. Sociedad Química y Minera de Chile, S.A.*, Case 17-cr-00013-TSC, at 4 (D.D.C. Jan. 13, 2017).
[38] *See id.* at 6.
[39] *See* DOJ Press Release, *Chilean Chemicals and Mining Company Agrees to Pay More Than $15 Million to Resolve Foreign Corrupt Practices Act Charges* (Jan. 13, 2017), https://www.justice.gov/opa/pr/chilean-chemicals-and-mining-company-agrees-pay-more-15-million-resolve-foreign-corrupt; *see also* Deferred Prosecution

reduction off the low end of the applicable Guidelines range in view of its full cooperation and substantial remediation.[40] SQM's parallel settlement with the SEC required payment of a $15 million civil monetary penalty.[41]

7. Zimmer Biomet

As noted in our 2016 FCPA Year in Review, after medical device manufacturer Biomet entered into a DPA with the DOJ in 2012 relating to payments to public doctors in Argentina, Brazil, and China, in 2015 the company was acquired by Zimmer Holdings, Inc. and Biomet's monitorship was extended to March 2016. The newly combined company Zimmer Biomet Holdings, Inc. (Zimmer Biomet) disclosed on March 25, 2016 that the DOJ and SEC continued to investigate alleged misconduct in Brazil and Mexico.[42] As a result of that investigation, the DOJ found that Zimmer Biomet breached the 2012 DPA, and, on January 12, 2017, Zimmer Biomet entered into a new three-year DPA in connection with a superseding criminal information that charged the company with failing to implement adequate internal controls in Brazil and Mexico. In particular, Biomet allowed a Brazilian distributor to sell, import, and market its products through a different distributor that Biomet previously had terminated due to prior FCPA violations. In addition, Biomet used an unlicensed customs broker, without appropriate due diligence or a written agreement, to pay bribes to Mexican customs officials to facilitate the importation of unregistered and mislabeled dental products into Mexico.

Pursuant to the new DPA, Zimmer Biomet agreed to pay a $17.4 million criminal penalty and retain an independent corporate monitor for an additional three years based on a finding of criminal internal control violations.[43] In addition, an indirect subsidiary of Zimmer Biomet agreed to plead guilty to charges of causing Zimmer Biomet to violate the FCPA's books and records provisions. Zimmer Biomet also settled civil anti-bribery, books and records, and internal control charges with the SEC related to the same conduct and agreed to pay a $6.5 million civil penalty and over $6 million in disgorgement and prejudgment interest.[44]

B. Individual Charges and Resolutions

1. Bahn, Ban, Woo, and Harris

Four individuals – including the brother and nephew of former United Nations Secretary-General Ban Ki-Moon – were charged in December 2016 and January 2017 in a matter involving

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Agreement, *United States v. Sociedad Química y Minera de Chile, S.A.*, Case 17-cr-00013-TSC, at 2–12 (D.D.C. Jan. 13, 2017).

[40] *See* Deferred Prosecution Agreement, *United States v. Sociedad Química y Minera de Chile, S.A.*, Case 17-cr-00013-TSC, at 6 (D.D.C. Jan. 13, 2017).

[41] *See* Order Instituting Cease-and-Desist Proceedings, *In re Sociedad Química y Minera de Chile., S.A.*, Exch. Act Release No. 79,795 (Jan. 13, 2017), https://www.sec.gov/litigation/admin/2017/34-79795.pdf.

[42] *See* Zimmer Biomet Holdings, Inc., Current Report (Form 8-K) (Mar. 25, 2016), https://www.sec.gov/Archives/edgar/data/1136869/000119312516518185/d318910d8k.htm.

[43] *See* DOJ Press Release, *Zimmer Biomet Holdings Inc. Agrees to Pay $17.4 Million to Resolve Foreign Corrupt Practices Act Charges* (Jan. 12, 2017), https://www.justice.gov/opa/pr/zimmer-biomet-holdings-inc-agrees-pay-174-million-resolve-foreign-corrupt-practices-act.

[44] *See* SEC Press Release, *Biomet Charged with Repeating FCPA Violations* (Jan. 12, 2017), https://www.sec.gov/news/pressrelease/2017-8.html.

alleged violations of the anti-bribery provisions of the FCPA, conspiracy to violate the FCPA, money laundering, wire fraud, and aggravated identity theft in connection with the planned sale of Vietnam's tallest building, Landmark 72.[45]

According to the indictment, Ban Ki Sang (Ban) and son Joo Hyun Bahn (Bahn) conspired to pay $2.5 million in bribes to a foreign official of an unnamed Middle Eastern country to facilitate the $800 million sale of Landmark 72 to the country's sovereign wealth fund. At the time, Ban was a senior executive at Keangnam, a South Korean construction company that built and owned Landmark 72. The construction company was undergoing a liquidity crisis, and Ban attempted to secure an investor for Landmark 72. Bahn was a broker for a commercial real estate firm in New York and stood to earn a commission from Keangnam if he secured an investor for Landmark 72. Ban and Bahn allegedly approached Malcolm Harris, an individual who held himself out as having personal ties to the royal family of the Middle Eastern country, to help influence the sale to the fund. Unbeknownst to Ban and Bahn, Mr. Harris allegedly had no such ties and instead pocketed $500,000 intended to be used as upfront bribe money for his personal use. The sale of Landmark 72 to the sovereign wealth fund never materialized, and Keangnam was forced to enter court receivership in South Korea. On June 21, 2017, Harris pleaded guilty to wire fraud and money laundering charges for his role in the scheme; he faces up to 30 years in prison on those charges.[46] Bahn, Harris, and Woo, an individual who allegedly helped Bahn obtain the $500,000 used as the upfront bribe payment, have been arrested. Ban remains at large and is believed to be residing in South Korea.

2. PDVSA Individuals

On January 10, 2017, Juan Jose Hernandez Comerma (Hernandez), a former general manager and partial owner of a Florida-based energy company, and Charles Quintard Beech III (Beech), owner of multiple Texas-based energy companies, each pleaded guilty to FCPA charges for their role in a scheme to corruptly obtain contracts from Petróleos de Venezuela SA (PDVSA), Venezuela's state-owned and state-controlled energy company.[47]

Hernandez pleaded guilty to one count of conspiracy to violate the FCPA and one count of violating the FCPA for bribing PDVSA officials. According to the Criminal Information (Information), Hernandez conspired with US-based businessmen Abraham Jose Shiera Bastidas (Shiera) and Roberto Enrique Rincon Fernandez (Rincon) to wire transfer a bribe payment and provide recreational travel and entertainment to PDVSA purchasing analysts and other PDVSA officials to ensure that their companies were considered for PDVSA energy contracts. According to the Information, the co-conspirators used private email accounts to conceal the scheme.

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[45] *See* Sealed Indictment, *United States of America v. Bahn*, No. 16-cr-00831-ER (S.D.N.Y. Dec. 15, 2016); Complaint, *United States of America v. Woo*, No. 17-mj-00139-UA (S.D.N.Y. Jan. 10, 2017).

[46] *See* DOJ Press Release, *Middleman Pleads Guilty in Foreign Bribery and Fraud Scheme Involving Potential $800 Million International Real Estate Deal* (June 21, 2017), https://www.justice.gov/usao-sdny/pr/middleman-pleads-guilty-foreign-bribery-and-fraud-scheme-involving-potential-800.

[47] DOJ Press Release, *Two Businessmen Plead Guilty to Foreign Bribery Charges in Connection with Venezuela Bribery Schemes* (Jan. 10, 2017), https://www.justice.gov/usao-sdtx/pr/two-businessmen-plead-guilty-foreign-bribery-charges-connection-venezuela-bribery.

Beech pleaded guilty to one count of conspiracy to violate the FCPA. According to the Information, Beech paid bribes to multiple PDVSA officials, including Alfonzo Eliezer Gravina Munoz (Gravina), in exchange for the officials providing confidential information to Beech concerning the PDVSA bidding process, placing Beech's companies on PDVSA bidding panels, assisting Beech in winning PDVSA purchase orders, and assisting Beech in receiving payment for previously awarded PDVSA contracts. Beech also admitted to agreeing with PDVSA officials to engage in financial transactions to conceal the nature, source, and ownership of the bribe proceeds.

The plea agreements remain sealed, and sentencing for both individuals is scheduled for July 14, 2017. The Informations for both matters note the DOJ's intention to seek forfeiture of all property derived from proceeds traceable to the offenses. The bribery scheme undertaken by Hernandez and Beech is part of a larger, ongoing investigation into bribery at PDVSA. Six other individuals (eight in total) have pleaded guilty so far, including Shiera, Rincon and Gravina.

3. Och-Ziff Capital Management Individuals

On January 26, 2017, the SEC charged Michael Cohen and Vanja Baros, both former Och-Ziff Capital Management (Och-Ziff) executives, with violating the FCPA.[48] In September of last year, as described in our 2016 FCPA Year in Review, Och-Ziff and two of its senior executives reached settlement agreements with the SEC and DOJ to resolve allegations stemming from the same scheme. Cohen was the head of Och-Ziff's European office and Baros oversaw Africa-related deals. From 2007 to 2012, the pair allegedly facilitated tens of millions of dollars in improper payments to high-ranking government officials in multiple countries in Africa. Specific alleged acts of wrongdoing include, among others, inducing the Libyan Investment Authority to invest in an Och-Ziff fund and illicitly obtaining mining deals in four African countries.[49] Cohen and Baros also allegedly sought to sidestep Och-Ziff's internal controls and caused the company falsely to record improper payments as legitimate investments or expenses in its books and records.[50] In addition to violations of the FCPA, and aiding and abetting Och-Ziff's violations (as discussed in our 2016 FCPA Year in Review), the pair was charged with violations of the Investment Advisers Act for material misrepresentations and omissions to Och-Ziff investors, failure to disclose conflicts of interest, and improper use of investor funds.[51]

Another individual involved in the Och-Ziff matter, Samuel Mebiame (who worked as a "fixer" on behalf of Och-Ziff and who pleaded guilty in December 2016), was sentenced to two years in prison for his role in the scheme.[52] Notably, the judge sentencing Mebiame criticized a "lack of balance" in prosecuting individuals for bribery while entering into DPAs with

[48] SEC Press Release, *SEC Charges Two Former Och-Ziff Executives with FCPA Violations* (Jan. 26, 2017), https://www.sec.gov/news/pressrelease/2017-34.html.
[49] *Id*.
[50] Complaint, *Sec. & Exch. Comm'n v. Cohen*, No. 17-cv-0043-PKC-LB, at 9 (E.D.N.Y. Jan. 26, 2017), https://www.sec.gov/litigation/complaints/2017/comp-pr2017-34.pdf.
[51] *Id*. at 2.
[52] DOJ Press Release, *Gabonese-French Dual Citizen Sentenced to 24 Months Imprisonment for Bribing African Officials* (May 31, 2017), https://www.justice.gov/opa/pr/gabonese-french-dual-citizen-sentenced-24-months-imprisonment-bribing-african-officials.

companies.[53]

4. Magyar Telecom Defendants

In Steptoe's 2016 FCPA Year in Review, we reported that the SEC secured a significant jurisdictional ruling over three former Magyar Telecom executives. In February 2017, one of those defendants, Tamás Morvai, settled with the SEC. While neither admitting nor denying allegations against him (except with respect to personal and subject matter jurisdiction), Mr. Morvai agreed to a $60,000 civil penalty.[54] In April 2017, both Elek Straub and András Balogh settled the SEC's charges without admitting or denying the allegations, except as to jurisdiction.[55] Mr. Balogh was prohibited from acting as an officer or director of any issuer of US securities for a period of five years, and agreed to pay a civil penalty of $150,000.[56] Mr. Straub also was prohibited from acting as an officer or director of any issuer for a period of five years and agreed to pay a civil penalty of $250,000.[57]

III. Developments in Ongoing FCPA/Anti-Corruption-Related Litigation

1. Bio-Rad Laboratories Inc.

In litigation in California federal courts between Bio-Rad Laboratories, Inc. (Bio-Rad) and its former General Counsel Sanford S. Wadler, a jury awarded Mr. Wadler significant monetary damages for wrongful termination in retaliation for protected whistleblowing activity.[58] In post-trial litigation related to the verdict, Mr. Wadler secured an $11 million award from the jury as a result of his dismissal.[59] Bio-Rad has appealed the judgment.[60]

2. Mexican Aviation Defendants

In Steptoe's 2016 FCPA Year in Review, we reported that six individuals (including two officials) pleaded guilty to a scheme to bribe Mexican officials to obtain and retain service contracts to maintain government aircraft. In March 2017, Douglas Ray, president and owner of Global Aviation Services (who pleaded guilty in October 2016), was sentenced to 18 months in prison for his role in the scheme. Mr. Ray was also ordered to pay $590,000 in restitution.[61]

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[53] Roger Hamilton-Martin, *Och-Ziff Judge "Sick and Tired" of Big Law Securing DPAs for Clients*, GIR: JUST ANTI-CORRUPTION (June 2, 2017), http://globalinvestigationsreview.com/article/1142258/och-ziff-judge-%E2%80%9Csick-and-tired%E2%80%9D-of-big-law-securing-dpas-for-clients?utm_source=Law%20Business%20Research&utm_medium=email&utm_campaign=8357616_JAC%20Headlines%2002%2F06%2F2017&dm_i=1KSF,4Z4S0,MAGW1F,IXIHV,1.

[54] Final J. as to Def. Tamás Morvai, *Sec. & Exch. Comm'n v. Straub*, No. 11-cv-9645, at 1, 3 (S.D.N.Y. Feb. 8, 2017).

[55] Final J. as to Def. Andras Balogh, *Sec. & Exch. Comm'n v. Straub*, No. 11-cv-9645 (S.D.N.Y. Apr. 24, 2017); Final J. as to Def. Elek Straub, *Sec. & Exch. Comm'n v. Straub*, No. 11-cv-9645 (S.D.N.Y. Apr. 24, 2017).

[56] Final J. as to Def. Andras Balogh, *Sec. & Exch. Comm'n v. Straub*, No. 11-cv-9645 (S.D.N.Y. Apr. 24, 2017).

[57] Final J. as to Def. Elek Straub, *Sec. & Exch. Comm'n v. Straub*, No. 11-cv-9645 (S.D.N.Y. Apr. 24, 2017).

[58] *See* Final Verdict Form, *Wadler v. Bio-Rad Labs., Inc.*, No. 15-cv-2356 (N.D. Cal. Feb. 6, 2017).

[59] *See, e.g.*, Mot. for J. as a Matter of Law, *Wadler v. Bio-Rad Labs., Inc.*, No. 15-cv-2356 (N.D. Cal. Mar. 10, 2017).

[60] *See* Notice of Appeal, *Wadler v. Bio-Rad Labs., Inc.*, No. 15-cv-2356 (N.D. Cal. June 7, 2017).

[61] Michelle Casady, *Aviation Service Co. Owner Gets 18 Months in Bribery Case,* LAW360 (Mar. 30, 2017), https://www.law360.com/articles/907184/aviation-service-co-owner-gets-18-months-in-bribery-case.

3. Gregory Weisman, Former General Counsel of PetroTiger Ltd.

In June 2017, Gregory Weisman, the former General Counsel of PetroTiger, was suspended from practicing before the SEC for disbarments in New York and Pennsylvania related to his 2014 guilty plea for conspiracy to violate the FCPA.[62] The charge arose from a scheme by PetroTiger executives to bribe a Colombian official to secure a contract from the country's state-owned oil company.[63] In 2015, the DOJ announced that it was declining to prosecute PetroTiger for FCPA violations as a result, among other things, of its voluntary disclosure and full cooperation in the investigations of its employees.[64]

IV. New Investigations

In addition to the international investigations noted below, during the first six months of the year, at least 14 companies publicly disclosed ongoing internal or government anti-corruption investigations in filings made with the SEC. In the life sciences arena, Herbalife,[65] Usana Health Sciences,[66] and Sinovac Biotech Ltd.[67] disclosed investigations related to conduct in China. In finance, ING Groep,[68] Citigroup,[69] and World Acceptance Corporation[70] disclosed government investigations. Citigroup disclosed that the investigation relates to ongoing government scrutiny of hiring practices in the finance sector, discussed in our 2016 FCPA Year in Review. In the technology and industrial sectors, Panasonic,[71] ABB,[72] Quad/Graphics,[73] and Par Technology[74] also disclosed anti-corruption investigations. Additionally, investigations were disclosed by

[62] Order of Forthwith Suspension Pursuant to Rule 102(e)(2) of the Comm'n's Rules of Practice, *In re Gregory Scott Weisman*, Exchange Act Release No. 80,775 (May 25, 2017).
[63] *See* Lucinda A. Low, Brittany Prelogar & Sarah Lamoree, *2014 FCPA Year in Review*, Steptoe & Johnson, LLP, at 24 (2015).
[64] *See* Lucinda A. Low, Brigida Benitez & Tom Best, *2015 FCPA Year in Review*, Steptoe & Johnson, LLP, at 14–15 (2016).
[65] *See* Herbalife Ltd., Current Report (Form 8-K) (Jan. 20, 2017), https://www.sec.gov/Archives/edgar/data/1180262/000119312517013649/0001193125-17-013649-index.htm.
[66] *See* Usana Health Sciences, Inc., Current Report (Form 8-K) (Feb. 7, 2017), https://www.sec.gov/Archives/edgar/data/896264/000115752317000383/a51506012.htm.
[67] *See* Sinovac Biotech Ltd., Current Report of Foreign Private Issuer (Form 6-K) (May 16, 2017), https://www.sec.gov/Archives/edgar/data/1084201/000114420417027949/0001144204-17-027949-index.htm.
[68] *See* ING Groep N.V., Amendment to Annual Report of Foreign Private Issuer (Form 20-F/A), at F-126 (Mar. 20, 2017), https://www.sec.gov/Archives/edgar/data/1039765/000119312517089220/d322744d20fa.htm.
[69] *See* Citigroup Inc., Annual Report (Form 10-K), at 291 (Feb. 24, 2017), https://www.sec.gov/Archives/edgar/data/831001/000083100117000038/c-12312016x10k.htm.
[70] World Acceptance Corporation, Notification of Late Filing (Form 12b-25), at 2–3 (June 14, 2017), https://www.sec.gov/Archives/edgar/data/108385/000010838517000019/wrld_6-15x17xform12bx25.htm.
[71] *See* Panasonic Corp., *Panasonic Discloses Investigation by the United States Department of Justice and United States Securities and Exchange Commission* (Feb. 2, 2017), http://news.panasonic.com/global/press/data/2017/02/en170202-7/en170202-7.html.
[72] *See* ABB Ltd., Current Report of Foreign Private Issuer (Form 6-K), at 23 (Feb. 8, 2017), https://www.sec.gov/Archives/edgar/data/1091587/000110465917007298/a17-4067_16k.htm.
[73] *See* Quad/Graphics, Inc., Annual Report (Form 10-K), at 99 (Feb. 22, 2017), https://www.sec.gov/Archives/edgar/data/1481792/000148179217000006/a12312016form10k.htm.
[74] *See* Par Technology Corporation, Quarterly Report (Form 10-Q), at 14 (May 15, 2017) (disclosing an SEC subpoena arising from an anti-corruption investigation previously disclosed in its 2016 Annual Report), https://www.sec.gov/Archives/edgar/data/708821/000114036117020767/form10q.htm.

several Brazilian companies, including Gol Intelligent Airlines Inc. (a Brazilian airline),[75] Cosan Limited (a Brazilian energy and logistics conglomerate),[76] and BRF S.A. (a Brazilian food producer),[77] and by Amec Foster Wheeler (a UK engineering, procurement, and construction firm).[78]

V. DEVELOPMENTS IN FCPA/ANTI-CORRUPTION COMPLIANCE AND ENFORCEMENT POLICY; LITIGATION

A. DOJ Compliance Program Guidance

On February 8, 2017, the DOJ's Fraud Section posted on its website a document entitled "Evaluation of Corporate Compliance Programs" (the Guidance). The document, which was released without any accompanying public announcement or explanation,[79] sets out a list of 11 topics and over 100 detailed questions which the DOJ now states it considers when evaluating whether a company's compliance program is "effective" for the purpose of a "Filip Factors" analysis under the Principles of Federal Prosecution of Business Organizations in the US Attorney's Manual.[80] While many of the questions and concepts introduced in the document will be familiar to compliance professionals, in-house and external counsel, others will be less so, and all take on a new light when framed in the context of program evaluation for purposes of potential enforcement.

For all the Guidance's usefulness – it is a long list of questions a prosecutor or compliance counsel from the DOJ could readily have compiled over the years when evaluating companies during investigations – it is important to note what the Guidance is, and what it is not. It is not a generalized guide to how DOJ expects compliance programs will be designed, but rather a detailed set of questions the DOJ states it will ask in a specific context – i.e., when a company is engaged in a dialogue with the DOJ in the context of a compliance issue having arisen, and the DOJ is evaluating the effectiveness of a company's program for the purpose of making a charging decision. It bears some telltale signs of the influence of the DOJ's former Compliance Consultant, Hui Chen, who was hired in late 2015 (and recently left the DOJ in

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[75] Gol Linhas Aéreas Inteligentes S.A., Annual Report of Foreign Private Issuer (Form 20-F), at 82 (May 1, 2017) (disclosing a settlement with Brazilian authorities and voluntary dislosure to the SEC and DOJ), https://www.sec.gov/Archives/edgar/data/1291733/000129281417001139/golform20f_2016.htm.
[76] Cosan Limited, Annual Report of Foreign Private Issuer (Form 20-F), at 29 (Apr. 26, 2017) (disclosing an internal investigation of conduct at an acquired company and disclosure to local authorities), https://www.sec.gov/Archives/edgar/data/1402902/000119312517139811/d567821d20f.htm.
[77] BRF S.A., Annual Report of Foreign Private Issuer (Form 20-F), at 8, 123 (Apr. 26, 2017) (disclosing potential violations of anti-corruption laws and investigation of potential improper offers and promises to government inspectors), https://www.sec.gov/Archives/edgar/data/1122491/000129281417001013/brfform20f_2016.htm.
[78] Amec Foster Wheeler PLC, Annual Report of Foreign Private Issuer (Form 20-F), at 165 (Apr. 28, 2017) (stating that the company made a disclosure to the UK SFO and received voluntary requests for information from the DOJ and SEC related to its historical use of third parties in the Middle East, among other regions), https://www.sec.gov/Archives/edgar/data/1328798/000093041317001797/c88192_20-f.htm.
[79] Dept. of Justice, *Evaluation of Corporate Compliance Programs* (2017), https://www.justice.gov/criminal-fraud/page/file/937501/download.
[80] Dept. of Justice, U.S. ATTORNEY'S MANUAL ("USAM") §§ 9-28.300(A)(5), 9-28.800 (Nov. 2015), https://www.justice.gov/usam/usam-9-28000-principles-federal-prosecution-business-organizations#9-28.300.

advance of the expiration of her two-year contract),[81] and many have speculated that it is, in effect, her checklist when sitting across the table from a company under investigation. For small and medium-sized companies, and even for many larger companies, however, this list should give pause, as it presumes a level of resources and sophistication that only a relatively small segment of companies can realistically be expected to have. Moreover, it is unclear to what extent the Guidance will be applied by the DOJ going forward, for at least two reasons. First, as noted, Ms. Chen has left the Department and the DOJ is reportedly looking for a replacement Compliance Consultant.[82] Second, the document has not been endorsed publicly by any DOJ official, and as noted above, the leadership of the Fraud Section and the Criminal Division is changing over with the new Administration.[83]

B. Significant Litigation

On June 5, 2017, the Supreme Court unanimously held in *Kokesh v. Securities and Exchange Commission* that disgorgement in SEC enforcement actions operates as a penalty, and that the SEC's efforts to recover disgorgement were themselves subject to the federal five-year statute of limitations under 28 U.S.C. §2462. This decision resolved a circuit split reported in our 2016 FCPA Year in Review and could have an important impact on the SEC's efforts to impose monetary sanctions on issuers in FCPA and other matters, as disgorgement penalties can be quite burdensome and have (in some of the more significant cases) reflected conduct spanning well beyond the five-year limitations period. Unfortunately, the Court has left open the question of whether courts possess the inherent authority, as courts of law and equity, to order disgorgement in SEC, DOJ and other enforcement actions where disgorgement is not a statutorily-provided-for remedy. A more detailed analysis of the *Kokesh* decision will be forthcoming as a separate Steptoe client alert in the coming weeks.

VI. International Developments

The following overview examines selected developments occurring within the first half of 2017 in Europe (including the UK and other countries), Brazil, and China. These developments show anti-corruption enforcement outside the United States continuing to proceed at robust levels, and in the process giving rise to FCPA enforcement actions when the companies and schemes involved implicate US jurisdiction.

A. Europe

1. United Kingdom

As noted above, on January 17, 2017, the SFO entered into a DPA with Rolls-Royce in settlement of bribery allegations spanning three decades, seven jurisdictions and three of Rolls-

[81] Adam Dobrik, *DOJ and Hui Chen Agree to End Contract Early,* GIR: JUST ANTI-CORRUPTION (June 21, 2017), http://globalinvestigationsreview.com/article/1143345/doj-and-hui-chen-agree-to-end-contract-early?utm_source=Law%20Business%20Research&utm_medium=email&utm_campaign=8427701_JAC%20Headlines%2026%2F06%2F2017&dm_i=1KSF,50MUT,MAGW1F,J4WJT,1.
[82] Adam Dobrik, *DOJ Considering Contractor Bids for Hui Chen Role,* GIR: JUST ANTI-CORRUPTION (June 9, 2017), http://globalinvestigationsreview.com/article/1142759/DOJ-considering-contractor-bids-for-hui-chen-role?utm_source=Law%20Business%20Research&utm_medium=email&utm_campaign=8379423_JAC%20Headlines%2009%2F06%2F2017&dm_i=1KSF,4ZLLR,MAGW1F,IZRHX,1.
[83] *See supra* notes 4–5.

Royce's business units. The DPA represents the largest ever enforcement action against a company in the United Kingdom for criminal conduct. Under the agreement, Rolls-Royce will disgorge profits of £258,170,000, pay a financial penalty of £239,082,645, and reimburse the SFO's investigative costs of £13,000,000 in full.[84] Despite the gravity of Rolls-Royce's conduct and lack of voluntary disclosure, the use of a DPA to resolve this matter was approved in large part because of Rolls-Royce's full cooperation with the SFO's investigation and extensive efforts to implement an enhanced program of corporate reform and compliance.[85] The SFO's investigation into the conduct of individuals remains ongoing.

A series of new SFO investigations stemming from the Unaoil investigation was announced in the first half of 2017. In February, the SFO opened an investigation into allegations of bribery and corruption by ABB Limited's UK subsidiaries and their officers, employees and agents.[86] ABB said in a statement that it had self-reported some of its past dealings with Unaoil and its subsidiaries, including alleged improper payments, and was cooperating with the SFO and US authorities.[87] Furthermore, on April 28, 2017, the SFO opened an investigation into allegations of bribery and corruption by KBR, Inc.'s UK subsidiaries, also related to Unaoil.[88] On May 12, 2017, the SFO announced an investigation into allegations of bribery, corruption and money laundering by Petrofac PLC and its subsidiaries and their officers, employees and agents, again relating to the Unaoil investigation.[89]

On March 29, 2017, the English High Court rejected a judicial review claim brought by Unaoil and its owners, the Ahsani family, relating to the March 2016 raid of Unaoil's Monaco-based offices by Monegasque police. The SFO opened an investigation into allegations of bribery, corruption and money laundering by Unaoil itself in March 2016 and requested that the Monegasque authorities seize evidence from the company and its principals with the utmost urgency. The High Court held that the SFO did not act unlawfully when it asked Monaco police to raid Unaoil's premises. The judgment demonstrates the breadth of the SFO's discretion and authority in seeking cooperation from international authorities in connection with its investigative efforts.[90]

On May 2, 2017, the SFO charged F.H. Bertling Ltd and four individuals (Robert McNally, Georgina Ayres, Giuseppe Morreale and Stephen Emler) with one count of conspiracy to give or accept corrupt payments. A fifth individual, Christopher Lane, has been charged with

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[84] SFO Press Release, *SFO Completes £497.25m Deferred Prosecution Agreement with Rolls-Royce PLC* (Jan. 17, 2017), https://www.sfo.gov.uk/2017/01/17/sfo-completes-497-25m-deferred-prosecution-agreement-rolls-royce-plc/.
[85] SFO Speeches, *Ben Morgan: The Future of Deferred Prosecution Agreements after Rolls-Royce* (Mar. 8, 2017), https://www.sfo.gov.uk/2017/03/08/the-future-of-deferred-prosecution-agreements-after-rolls-royce/.
[86] SFO Press Release, *SFO Opens Investigation into ABB Ltd* (Feb. 10, 2017), https://www.sfo.gov.uk/2017/02/10/sfo-opens-investigation-abb-ltd/.
[87] John Revill, *ABB Says Cooperating with UK Corruption Probe*, REUTERS (Feb. 10, 2017), http://www.reuters.com/article/us-abb-unaoil-investigation-idUSKBN15P22Q.
[88] SFO Press Release, *Investigation Opened into KBR, Inc.* (Apr. 28, 2017), https://www.sfo.gov.uk/2017/04/28/kbr/.
[89] SFO Press Release, *SFO Confirms Investigation into Petrofac PLC* (May 12, 2017), https://www.sfo.gov.uk/2017/05/12/sfo-confirms-investigation-petrofac-plc/.
[90] SFO Press Release, *Judicial Review Judgment on Unaoil and Others v Director of the Serious Fraud Office* (Mar. 29, 2017), https://www.sfo.gov.uk/2017/03/29/judicial-review-judgment-unaoil-others-v-director-serious-fraud-office/.

a separate count of conspiracy to give or accept corrupt payments. The charges arise out of the SFO's inquiry into freight forwarding contracts between January 2010 and May 2013 in a North Sea oil exploration project known as "Jasmine."[91]

On May 8, 2017, the English High Court rendered a judgment in *Director of the Serious Fraud Office v. Eurasian Natural Resources Corporation Ltd* with important implications for application of legal privilege in internal investigations.[92] The SFO had commenced an investigation into Eurasian Natural Resources Corporation Ltd (ENRC) in respect of allegations of fraud, bribery and corruption and, following the failure of settlement negotiations and the dismissal of ENRC's initial set of legal advisers, sought disclosure of various materials created during an internal investigation by ENRC's lawyers, which included interviews of employees and interview memoranda created by lawyers. Upon ENRC's refusal to disclose certain requested materials on the grounds of legal professional privilege, the SFO applied to the High Court to obtain a ruling that the materials, prepared by lawyers and forensic accountants, were not privileged and therefore were required to be disclosed. The court ruled that for litigation privilege to apply, the company needed to be aware of circumstances that made litigation – in this case prosecution – a real likelihood as opposed to a mere possibility. ENRC's fear of a dawn raid and concern that there might be a subsequent prosecution by the SFO was held to be insufficient to establish that the company believed prosecution was a real likelihood. Further, even if this hurdle were passed, it was ruled that the "dominant purpose" of the internal investigation and resultant documents and communications, was not for the conduct of that anticipated litigation; instead, the primary purpose of the investigation by ENRC was to ascertain if there was any truth in the allegations and to establish facts in preparation for an investigation by a regulator or investigatory body or to persuade the SFO not to commence a prosecution. Accordingly, litigation privilege did not protect the majority of documents generated by the internal investigation that were sought by the SFO, and the court ordered their disclosure. Furthermore, as the employees who were interviewed were not classified as the "client" of the lawyers conducting the internal interviews and as the notes did not in fact contain any advice or give any indication or impressions of what that future advice may be, they were also not treated as privileged, either under "litigation" privilege or "advice" privilege.

The judgment can be interpreted as an effort by the English judiciary to rein in the conduct of US-style internal investigations and cooperation with enforcement authorities in investigations conducted under legal privilege. It certainly makes it more difficult to apply legal privilege (or, for US purposes, attorney work product protection) in respect of documents compiled during internal investigations – particularly with respect to demonstrating that there was "reasonable contemplation" of criminal proceedings and that the dominant purpose behind creation of the documents was the conduct of that litigation. The case is subject to an appeal, but in the interim, it remains the leading case on UK legal privilege in the corporate investigation context and will likely continue to generate much debate as to how best to protect notes of internal investigation interviews and other investigation materials from disclosure.

On May 18, 2017, following the decision by Prime Minister Theresa May to call an early general election, the Conservative Party unveiled a manifesto that included plans to abolish the

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[91] SFO Press Release, *Charges in the F.H. Bertling Ltd Investigation*, (May 2, 2017), https://www.sfo.gov.uk/2017/05/02/charges-f-h-bertling-ltd-investigation/.
[92] *Serious Fraud Office v Eurasian Natural Res. Corp.* [2017] EWHC 1017.

SFO and incorporate it within the National Crime Agency. The future of those plans remains unclear following the recent UK general election result. On June 20, 2017, the *Evening Standard* published an article[93] alleging that Theresa May was facing growing pressure to abandon plans to abolish the SFO, particularly in light of the SFO's success in commencing a prosecution against Barclays Bank, citing comments by former Attorney General Dominic Grieve, Solicitor General Sir Oliver Heald, and others.

2. France

In March 2017, Airbus publicly revealed that the *Parquet National Financier* had opened an investigation into allegations of fraud, bribery and corruption within Airbus' civil aviation arm. The same allegations are the subject of an ongoing SFO investigation. The French and UK authorities reportedly will cooperate on this matter going forward.[94]

In May 2017, the press reported that the *Parquet National Financier* opened an investigation – in October 2016 – into French naval supplier DCNS, focusing on bribery of foreign public officials. The investigation reportedly relates to a 2008 contract worth €6.7 billion between DCNS and Brazil for the sale of five submarines. DCNS is alleged to have paid €40 million to a Brazilian lobbyist who was involved with the 2008 contract.[95]

As discussed in our 2016 FCPA Year in Review, France's new law on corruption – known as "Sapin II" – entered into force in December 2016. One of the requirements under Sapin II is that companies with over 500 employees and more than €100 million in annual gross revenues adopt a robust compliance program. This requirement became effective as of June 1, 2017. According to a *Brink News* article, however, as of the end of May 2017, only 100 out of the 1,600 companies affected had developed plans for their compliance programs.[96]

Another requirement under Sapin II is that any company with at least 50 employees in France has a duty to implement "appropriate procedures to receive concerns from employees and external/casual collaborators." On April 20, 2017, Decree n° 2017-564[97] was published, setting out the requirements for the content and establishment of these whistleblower procedures. The duties under Decree n° 2017-564 will enter into force on January 1, 2018.

In a recent article, the president of France's new anti-corruption authority (*l'agence française anticorruption)*, Judge Duchaine, indicated that his experience as an investigative

[93] Nicholas Cecil, *Theresa May Faces Fresh Calls to Halt Plan to Ditch Serious Fraud Office*, EVENING STANDARD (June 20, 2017), http://www.standard.co.uk/news/politics/theresa-may-faces-fresh-calls-to-halt-plan-to-ditch-serious-fraud-office-a3568991.html.
[94] Airbus Press Release, *Airbus to Cooperate with France's Parquet National Financier in Preliminary Investigation* (Mar. 16, 2017), http://www.airbus.com/newsroom/press-releases/en/2017/03/Airbus-cooperate-France-Parquet-National-Financier.html.
[95] Cameron Stewart, *French Subs Firm in Bribery Scandal*, THE AUSTRALIAN (May 23, 2017), http://www.theaustralian.com.au/national-affairs/defence/french-subs-firm-in-bribery-scandal/news-story/cfe05e9196cd280f99a4051b44c3519b.
[96] Olivier Lopez, *France to Corrupt Multinationals: You Can Run, But You Can't Hide*, BRINK NEWS (May 30, 2017), http://www.brinknews.com/france-to-corrupt-multinationals-you-can-run-but-you-cant-hide/.
[97] Décret 2017-564 du 19 Avril 2017 Relatif aux Procédures de Recueil des Signalements Émis par les Lanceurs d'Alerte au Sein des Personnes Morales de Droit Public ou de Droit Privé ou des Administrations de l'État, https://www.legifrance.gouv.fr/eli/decret/2017/4/19/ECFM1702990D/jo/texte.

judge prosecuting misconduct in the financial sector may shape how the agency will investigate companies.[98] Judge Duchaine further noted, however, that the agency – which is still without an office or operating procedure and has yet to fill most of its positions – is not yet in a position to monitor implementation of Sapin II's compliance program requirements.[99]

Sapin II also introduced the possibility for companies to enter settlements of certain criminal matters – including corruption offenses – with French authorities prior to charges being brought. As part of such resolutions, penalties may be imposed up to a maximum of 30 per cent of the company's average annual revenues over the past three years, as well as a requirement to make restitution to victims and implement a compliance program under the supervision of the French anti-corruption agency.[100] French prosecutors reportedly are in the process of negotiating the first such corporate settlements, which are likely to bear similarities to DPAs in the United States,[101] but no such resolution has been announced at the time of this publication.

3. Germany

On June 1, 2017, Atlas Elektronik signed a disgorgement agreement for €48 million with the Bremen Prosecutor's Office to settle bribery allegations dating back to the 1990s, relating to work in Greece, Peru, and Turkey. Atlas Elektronik's employees allegedly paid a Greek middleman €13 million to win a contract to supply submarine sonar systems and made payments to a Peruvian middleman to win a contract to supply torpedoes to Peru's navy. Atlas Elektronik was given credit for cooperating with prosecutors, creating a new compliance program (for example, revamping guidelines for how employees should deal with third parties), and undertaking an internal investigation. The Bremen Prosecutor's Office also investigated 12 former Atlas Elektronik employees, though no charges have been brought against those individuals to date.[102]

4. The Netherlands

In March 2017, the Dutch Prosecutor's Office opened a criminal investigation into ING Bank's role in corruption and money laundering in Uzbekistan. One aspect of the investigation relates to unusual payments by VimpelCom to the company of an Uzbek government official.[103]

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[98] Michael Griffiths, *France's Anti-Corruption Authority Will Be a Tough Enforcer, Once It Finds an Office*, GLOBAL INVESTIGATIONS REVIEW (Jun. 14, 2017), http://globalinvestigationsreview.com/article/1142850/france%E2%80%99s-anti-corruption-authority%C2%A0will-be-a-tough-enforcer-once-it-finds-an-office.
[99] *Id.*
[100] Loi 2016-1691 du 9 Décembre 2016 Relative à la Transparence, à la Lutte Contre la Corruption et à la Modernisation de la Vie Économique [on Transparency, the Fight Against Corruption and Modernisation of the Economy], Title 7, Chapter 3, Article 22.
[101] Michael Griffiths, *Magic Circle Firm Representing Two Banks Vying for France's First DPA,* GLOBAL INVESTIGATIONS REVIEW (Mar. 9, 2017), http://globalinvestigationsreview.com/article/1137605/magic-circle-firm-representing-two-banks-vying-for-frances-first-dpa.
[102] Michael Griffiths, *German Prosecutors Reward Cooperation in Atlas Foreign Bribery Settlement*, GLOBAL INVESTIGATIONS REVIEW (Jun. 6, 2017), http://globalinvestigationsreview.com/article/1142640/german-prosecutors-reward-cooperation-in-atlas-foreign-bribery-settlement.
[103] Toby Sterling, *Dutch Prosecutors Investigate ING's Role in Uzbekistan Case*, REUTERS (Mar. 22, 2017), http://www.reuters.com/article/us-ing-groep-corruption-idUSKBN16T0OQ?il=0.

5. Spain

On February 20, 2017, Antonio Leal Parra and Basilio Martinez Abril (two senior executives of Aplicaciones Pedagógicas y Comercialización Editorial (APYCE)) each admitted to paying a €70,000 bribe to the Deputy Education Minister of Equatorial Guinea in 2009 to secure several contracts for APYCE to publish schoolbooks for the Equatoguinean state education system. Messrs. Parra and Abril entered into a plea agreement with Spain's Anti-Corruption Prosecutors, which led to Spain's first foreign bribery conviction. Messrs. Parra and Abril each agreed to a one-year jail sentence and a fine of €1,080, and were forbidden from participating in commercial contracts with public entities for a period of three years. APYCE was not charged, as corporate criminal liability for corruption was not introduced into Spain's criminal code until a year after the relevant payment was made.[104]

6. Sweden

In March 2017, Swedish prosecutors arrested an employee of Bombardier Transportation, and questioned other employees, on suspicion of bribing Azerbaijani officials in order to "adapt" a 2013 rail equipment procurement deal worth $340 million.[105]

7. Switzerland

In March 2017, the Geneva Prosecutor opened a criminal investigation into allegations of bribery of foreign officials by Addax Petroleum relating to business in Nigeria. Zhang Yi (Addax's CEO) and Addax's Legal Director were arrested and charged in connection with the investigation.[106]

B. Brazil

Brazil's principal enforcement activities continued to stem from "Operation Car Wash," which has unveiled corrupt practices of unprecedented scope involving contracts with Petrobras and other government agencies, reaching into the highest levels of the Brazilian government. Operation Car Wash was dramatically expanded during the first two quarters of 2017, resulting in provisional arrests and criminal indictments of politicians, business executives, and financial operatives beyond the original inner circle of former Presidential Chief of Staff José Dirceu. One noteworthy example was the initiation of "Operation Efficiency" in January 2017, a criminal investigation into activities by a group of operatives around Rio de Janeiro's former Governor Sérgio Cabral Filho. Operation Efficiency resulted in the provisional imprisonment of nine individuals, as well as the repatriation of R$270 million (US$ 80 million). Among the individuals prosecuted for corruption, money laundering, and racketeering are the former Governor of Rio de Janeiro Cabral Filho, two former State Secretaries, and one of Brazil's richest men, Eike Batista. Current Brazilian President Michel Temer was formally charged with

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[104] Euan Conley, *Spanish Enforcers Turn Their Attentions Abroad*, GLOBAL INVESTIGATIONS REVIEW (Mar. 3, 2017), http://globalinvestigationsreview.com/article/1129484/spanish-enforcers-turn-their-attentions-abroad.

[105] *Bombardier Employee Arrested, Others Questioned in Swedish Bribery Probe*, CBC NEWS (Mar. 10, 2017), http://www.cbc.ca/news/business/bombardier-sweden-arrest-1.4019054.

[106] Stephanie Nebehay & Michael Shields, *Addax CEO, Legal Director Arrested in Bribery Case: Geneva Prosecutor*, REUTERS (Mar. 24, 2017), http://www.reuters.com/article/us-swiss-addax-idUSKBN16V2VE.

corruption on June 26, 2017 in connection with the same investigation.[107]

The first two quarters of 2017 also saw the conclusion and ratification by the Supreme Court of two high-profile plea bargains with major enforcement implications. First, 77 Odebrecht executives, including its former CEO Marcelo Odebrecht, pled guilty to corruption, money laundering, and racketeering in exchange for reduced sentences. Testimony of Odebrecht Executives has led to the conviction of various former high-ranking officials, including former Finance Minister Antonio Pallocci, recently sentenced to 12 years in prison for passive corruption, money laundering, and racketeering. Second, a group of JBS Executives, including its controller and CEO Joesley Batista, pled guilty to active corruption, money laundering, and racketeering, and admitted to bribing more than 50 high-ranking politicians. More controversially, Joesley also recorded conversations in which both President Michel Temer and Senator Aecio Neves (opposition leader) purportedly solicited bribes and conspired to obstruct justice. As a result, Senator Neves has been suspended from his activities as Senator, and the Federal Public Prosecutor presented formal criminal charges against President Michel Temer. Under Brazilian law, once the Supreme Court receives criminal charges against a sitting President, an authorization by two-thirds of the Congress is required to formally initiate criminal procedures. At the time of this writing, it is still unclear whether Congress will authorize the initiation of criminal procedures against President Temer.

C. China

Data released by the Supreme People's Procuratorate (SPP) on March 12, 2017 reflects that Chinese authorities continue to pursue the vigorous anti-corruption campaign initiated after President Xi Jinping took office in late 2012.[108] In 2016, 10,472 individuals were investigated for accepting bribes and 7,375 individuals were investigated for giving bribes. In addition, the Central Commission for Discipline Inspection (CCDI) disclosed that 415,000 Chinese officials were disciplined for violating the CPC's anti-corruption and other disciplinary rules.[109] This trend continued during the first half of 2017 and is unlikely to change in the near term. At a CCDI meeting on January 6, 2017, President Xi Jinping summarized China's anti-corruption efforts in the last four years as having effectively curbed the spread of corruption and created overwhelming pressure against engaging in corrupt practices, and he committed to maintaining the force of the Party's anti-corruption efforts.[110]

On February 26, 2017, the Legislative Affairs Commission of the NPC Standing Committee released new Draft Amendments to the Anti-Unfair Competition Law.[111] The draft

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[107] Brad Brooks & Ricardo Brito, *Brazil's President Michel Temer Charged with Taking Bribes*, REUTERS (June 26, 2017), https://www.reuters.com/article/us-brazil-corruption-temer-idUSKBN19H2PG.
[108] SPP, *The Supreme People's Procuratorate's Report on Work in 2016* (Mar. 12, 2017), http://www.spp.gov.cn/gzbg/201703/t20170320_185861.shtml.
[109] CCDI, *Wang Qishan's Report at the 7th Plenary Session of the 18th CCDI Meeting* (Jan. 6, 2017), http://www.ccdi.gov.cn/xwtt/201701/t20170119_93032.html.
[110] CCDI Release, *Xi Jinping: Fully Implementing the Spirit of the 6th Plenary Session of the 18th Central Committee of the Communist Party of China and Promoting Systematic Creativity and Effectiveness* (Jan. 6, 2017), http://www.ccdi.gov.cn/special/sbjqcqh/imgnews_sbjqzqh/201701/t20170106_92436.html.
[111] *Anti-Unfair Competition Law of the People's Republic of China (Draft Amendments)*, released by the Legislative Affairs Commission of the NPC Standing Committee on Feb. 26, 2017, http://www.npc.gov.cn/npc/xinwen/2017-02/26/content_2008334.htm.

provision on commercial bribery has been further revised and states that a company will be liable for an employee's acts if the employee uses commercial bribery to seek a transaction opportunity or competitive advantage for the company, unless the company has evidence to prove that the employee engaged in such acts in his/her personal capacity.[112]

On the enforcement side, in addition to the ongoing focus on the healthcare and pharmaceutical industry, the financial sector, including the banking, insurance, and securities industries, is another area that is under scrutiny by Chinese anti-corruption authorities.[113]

VII. THE WORLD BANK

In Steptoe's 2016 FCPA Year in Review, we noted that the World Bank secured a major victory in preserving its legal immunity from suit under member nations' laws, and facilitating cooperation and evidence sharing in ongoing investigations in a matter before the Supreme Court of Canada in *World Bank Group v. Wallace.*[114] In a related decision released in February 2017, an Ontario court excluded evidence against two SNC-Lavalin executives (Kevin Wallace and Ramesh Shah) and a Canadian businessman (Zulfiquar Bhuiyan) due to a lack of factual evidence supporting the wiretap authorization (which was sought largely on the basis of information provided by the World Bank).[115] According to the decision, the information supporting the authorization was based on "nothing more than generalized allegations of corruption with virtually no detail that would be unique to the persons involved, as opposed to being the equivalent of rumour or gossip or speculation."[116] In particular, the Justice criticized the Royal Canadian Mounted Police (RCMP) for failing to follow up with the World Bank "tipsters" (at least one of which was an SNC-Lavalin competitor) who had provided hearsay evidence against the defendants to the World Bank.[117] The individuals were later acquitted after the prosecutors ended the case based on a lack of evidence.[118] While the decision with respect to the World Bank's immunities still stands, the more recent decision provides some insight into the type of information shared with national authorities by the World Bank Integrity Vice Presidency (INT), and sends a warning to national authorities to independently verify the credibility of information shared by the World Bank.

In our 2016 FCPA Year in Review, we also noted a potential shift in focus on the part of INT towards higher-value, more egregious conduct. This trend appears to be confirmed in two of five Sanctions Board Decisions released to date this year, both of which imposed 14-year

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[112] *Id.* at Art. 7.
[113] *Premier Li Keqiang's Speech at the 5th Anti-Corruption Working Conference of the State Council* (Mar. 21, 2017), http://www.gov.cn/guowuyuan/2017-04/09/content_5184453.htm.
[114] *World Bank Group v. Wallace*, [2016] 1 S.C.R. 207 (Can.).
[115] *R. v. Wallace*, No. CR-13-90000727, 2017 ONSC 132 (Jan. 6, 2017).
[116] *Id.* ¶ 45.
[117] Of the four World Bank Integrity Vice Presidency (INT) "tipsters," two were anonymous, one was known to the World Bank (at the tipster's request, INT kept that individual's identity from the RCMP), and one was identified to the RCMP. According to the judgment, INT had communicated with all tipsters via e-mail only, and the RCMP contacted only one tipster via telephone. Furthermore, the Court noted that "most, if not all of the information provided by the three tipsters had, in turn, been received by the tipsters from other sources," and that the RCMP did not contact any of these sources to verify hearsay information. *Id.* ¶¶ 7–8.
[118] Janet McFarland, *Former SNC Executives, Businessman Acquitted in Corruption Case*, THE GLOBE & MAIL (Feb. 10, 2017), http://www.theglobeandmail.com/report-on-business/former-snc-lavalin-executives-businessman-acquitted-in-corruption-case/article33979762/.

debarments on respondent firms for allegations of fraudulent and corrupt practices across five projects in Indonesia and Vietnam[119] and for corrupt and obstructive practices across multiple contracts in the Republic of Romania.[120] Also of note in the first half of 2017 was Sanctions Board Decision No. 96, in which the Sanctions Board issued a rare finding that there was insufficient evidence of misconduct, thereby terminating sanctions proceedings against all respondents.[121] Since Sanctions Board decisions began to be fully released in 2012, an outright termination of proceedings against all respondents in a matter before the Sanctions Board has only occurred in four other cases.[122]

VIII. CONCLUSION

The year began with a cascade of corporate settlements, including a large, coordinated settlement in the Rolls-Royce matter involving US, UK, and Brazilian authorities. After President Trump's inauguration, no further corporate FCPA resolutions were announced by the SEC or DOJ until the DOJ declination issued to Linde North America Inc. and Linde Gas North America LLC in June 2017. Despite the lack of significant corporate enforcement in the new administration, President Trump's political appointees have committed publicly to enforce the FCPA, and inaction likely reflects – at least in part – delays in key appointments within the DOJ and SEC and ongoing turnover in senior government positions. However, some rethinking of enforcement policy and priorities seems likely.

In the meantime, the US and UK courts have taken decisions that are likely to have a significant impact on investigations and enforcement. The restrictive view of privileged taken by the UK courts in the *ENRC* case will likely have reverberations for cross-border US/UK investigations and disclosures, while the *Kokesh* decision will, absent legislative changes, have a potentially significant impact on the ability of the SEC to pursue disgorgement beyond five years.

[119] Sanctions Board Decision No. 92 (2017).
[120] Sanctions Board Decision No. 93 (2017).
[121] Sanctions Board Decision No. 96 (2017). Steptoe defended the Respondent company before the Sanctions Board.
[122] *See* Sanctions Board Decision No. 59 (2013) (proceeding terminated due to insufficient evidence); Sanctions Board Decision No. 64 (2014) (proceeding terminated due to insufficient evidence); Sanctions Board Decision No. 76 (2015) (proceeding terminated due to lack of jurisdiction); Sanctions Board Decision No. 81 (2015) (proceeding terminated due to insufficient evidence).