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Global Anti-Corruption Insights

Update on Recent Enforcement, Litigation, and Compliance Developments

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EXECUTIVE SUMMARY: RECENT DEVELOPMENTS AND TRENDS

Foreign Corrupt Practices Act (FCPA) enforcement remained active in the first half of 2014, with the United States Department of Justice (Department or DOJ) and the United States Securities and Exchange Commission (Commission or SEC) bringing actions against several corporations, and obtaining US$580 million in criminal fines, forfeiture, and disgorgement. Individuals also remain in the FCPA spotlight, with the Department, for example, announcing criminal charges against multiple people in the first six months of 2014. Anti-corruption enforcement also continues to pick up around the globe, with the Serious Fraud Office (SFO) in the United Kingdom, the Royal Canadian Mounted Police (RCMP)in Canada, and other law enforcement authorities around the world becoming increasingly active in bringing actions to enforce their own anti-corruption laws.

We begin our Summer 2014 Anti-Corruption Newsletter by highlighting five particularly significant developments that captured anti-corruption headlines in the first half of 2014:

1. *Corporations Investigated for Repeat Offenses.* In the first half of 2014, Marubeni Corporation joined a small but growing list of companies that have been the subject of two FCPA-related enforcement actions. Following the resolution of charges in 2012 related to bribes allegedly paid to Nigerian government officials in connection with the Bonny Island natural gas project, in March 2014 Marubeni resolved a second FCPA-enforcement action relating to bribes to Indonesian officials in connection with another energy project. Marubeni isn't alone on the unfortunate list. Two other companies that have resolved FCPA-enforcement actions in the recent past—Biomet, Inc. and Orthofix International—recently disclosed that they, too, are again investigating potential FCPA violations.

2. *DOJ and SEC Pursue Individuals.* The DOJ and SEC have continued to pursue charges against individuals. The DOJ brought charges against six individuals for alleged violations of the FCPA in connection with mining titanium in India and charges against former executives of the now-defunct New York-based broker-dealer Direct Access Partners. The DOJ also obtained guilty pleas in several actions, including from Frédéric Cilins, who attempted to obstruct an investigation into FCPA violations. The SEC resolved charges against two former Noble Corporation executives and, in another widely watched action, narrowed its charges against several former Magyar Telekom executives.

3. *Court of Appeals Interprets "Instrumentality" under the FCPA.* On May 16, 2014, the United States Court of Appeals for the Eleventh Circuit issued an opinion addressing what constitutes an "instrumentality" of a foreign government under the FCPA. In upholding the FCPA convictions of Joel Esquenazi and Carlos Rodriguez, the Eleventh Circuit defined an "instrumentality" of a foreign government as "an entity controlled by the government of a foreign country that performs a function the controlling government treats as its own." The Court explained that this test involves fact-intensive inquiries and, as discussed below, offered factors to guide the analysis.

4. *Courts of Appeal Address Applicability of Attorney-Client Privilege in Internal Investigations and Standard of Review of SEC Settlements.* In addition to the Esquenazi case, Courts of Appeal addressed two other issues of significance to the FCPA bar. On June 27, 2014, the United States Court of Appeals for the District of Columbia Circuit issued a writ of mandamus making clear that the attorney-client privilege applies to information gathered during internal corporate investigations, a very welcome result for those of us who practice in this area. And, on June 4, 2014, the United States Court of Appeals for the Second Circuit held that a district court abused its discretion by requiring the SEC to establish the truth of its allegations against a settling party as a condition for approving an SEC consent judgment. The Court instead explained that district courts must provide the SEC with significant deference.

5. *International Anti-Corruption Enforcement Continues.* Authorities outside the United States also continued their efforts to enforce anti-corruption laws. In the United Kingdom, for example, the SFO's investigation of Rolls Royce has resulted in the arrest of two individuals and appears to be ongoing. Government authorities elsewhere, including in Canada, Japan, and Brazil, also are investigating allegations of bribery as efforts to stamp out corruption expand.

We analyze these developments from the first half of 2014 and more in this edition of Arnold & Porter LLP's Global Anti-Corruption Insights.

KEY ENFORCEMENT AND INVESTIGATIVE DEVELOPMENTS

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Notable Corporate FCPA Enforcement Actions

Marubeni Pleads Guilty to FCPA Violations, Resolving Second FCPA Enforcement Action Against It in Less Than Five Years

For the second time in a little over two years, **Marubeni Corporation** was sanctioned by the DOJ for violating the FCPA. On March 19, 2014, a little more than two years after the Japanese trading company entered into a two-year deferred prosecution agreement (DPA) from an enforcement action resolved in January 2012, the company pled guilty to one count of conspiracy to violate the anti-bribery provisions of the FCPA and seven counts of violating the FCPA.[1]

According to the plea agreement, Marubeni worked in concert with a French power company over a seven-year period, beginning in 2002, to pay bribes to high-ranking Indonesian officials to win an approximately US$118 million power project, known as the Tarahan Project.[2] While Marubeni's partner is not mentioned by name in either Marubeni's Plea Agreement or the DOJ's Press Release, it has been widely reported that the partner is **Alstom, SA** (Alstom).[3] In order to conceal the bribes, Marubeni and Alstom hired two third-party consultants under sham contracts to make payments to the Indonesian officials and employees of state-owned enterprises.[4]

Although Marubeni is neither an "issuer" nor a "domestic concern" under the FCPA, the DOJ asserted the company was subject to the FCPA based on meetings between the company and Alstom's subsidiary in Connecticut and payments to a US bank account of one of the consultants.[5] Subject to court approval, Marubeni agreed to settle the DOJ's charges for an US$88 million fine, US$25 million above the minimum end of the fine range recommended by the United States Sentencing Guidelines.[6]

According to former Acting Assistant Attorney General Mythili Raman, the Marubeni action is "one of only a handful of parent-level guilty pleas in an FCPA prosecution," and it was spurred by the "extremely serious" nature of the criminal conduct.[7] Raman also noted Marubeni's lack of an effective compliance program, failure to voluntarily disclose the conduct to the DOJ, failure to properly remediate the conduct, and failure to cooperate notwithstanding the pendency of its prior DPA as factors that made "a guilty plea by the parent company … the fair and appropriate result."[8]

While no Marubeni executives or employees have been charged yet by the DOJ in connection with the Indonesian bribery scheme, as discussed in more detail below, three former Alstom executives have pleaded guilty to violating the FCPA, and charges are pending against another.[9] In addition, an Indonesian lawmaker, **Izedrik Emir Moeis**, was sentenced to three years in prison by an Indonesian court for accepting US$357,000 from Alstom to help the international consortium win the Tarahan Project.[10]

Previously, in 2012, Marubeni entered into a two-year DPA that included payment of a US$54.6 million criminal penalty to resolve charges that it had participated in a decade-long scheme to bribe Nigerian government officials as part of the Bonny Island liquefied natural gas project.[11] Marubeni was charged with passing bribes from a four-company joint venture, TSKJ—comprised of Technip S.A., Snamprogetti Netherlands B.V., Kellogg Brown & Root Inc., and JGC Corporation, each of which was subject to its own FCPA action—to Nigerian government officials from 1995 to 2004 to secure engineering, procurement, and construction contracts related to the project. The DOJ did not reinstate the charges against Marubeni underlying the DPA when it charged the company with violating the FCPA for bribing the Indonesian officials; nevertheless, while the company was being investigated by the DOJ for the Indonesian bribes, it was subject to the 2012 DPA, which required it to cooperate with the government during its Bonny Island investigation.[12]

Alcoa Resolves Charges of Criminal and Civil FCPA Violations

As reported in our last newsletter, in January 2014, **Alcoa Inc.** (Alcoa) and its subsidiary **Alcoa World Alumina LLC** (Alcoa World) resolved FCPA enforcement actions brought by the DOJ and SEC for a combined US$384 million—the fifth largest FCPA resolution to date.[13] Notably, the DOJ agreed to fine Alcoa World less than half of the bottom of the fine range calculated under the

Sentencing Guidelines in light of factors that included: the financial condition of Alcoa; the remedies imposed on Alcoa by the SEC; Alcoa's substantial cooperation with the DOJ, including making employees available for interviews and collecting, analyzing, and organizing information for the DOJ; and remedial efforts undertaken by Alcoa, including hiring new legal and ethics compliance officers and implementing enhanced due diligence reviews of third-party consultants.

According to the DOJ and the SEC, Alcoa subsidiaries agreed to use a London-based middleman with "close ties" to certain members of Bahrain's royal family in order to obtain long-term alumina supply agreements with Alba. Through this middleman, his shell companies, and his offshore bank accounts, the subsidiaries funneled kickbacks to government officials with influence over Alba's contracting decisions. As part of its guilty plea, Alcoa World admitted to securing long-term supply agreements by causing Alcoa's Australian subsidiary to enter into a sham distributorship with various shell companies owned by the middleman, who, from 2005 to 2009, marked up the price of alumina by approximately US$188 million. In its court filings, the DOJ alleged that the middleman used this money to make tens of millions of dollars in illicit payments. In its administrative cease-and-desist order, the SEC made findings that Alcoa failed to conduct due diligence to determine whether there was a legitimate business purpose for using the middleman.

Justice Department and SEC Enforcement Actions against Individuals for Violations of the FCPA

Eleventh Circuit Takes Broad View of Who Is a Foreign Official

On May 16, 2014, the United States Court of Appeals for the Eleventh Circuit issued a long-awaited opinion addressing what constitutes an "instrumentality" of a foreign government under the FCPA.[14]

As we have reported previously, **Joel Esquenazi** and **Carlos Rodriguez** appealed their convictions for violating the FCPA, money-laundering, and conspiracy.[15] Esquenazi and Rodriguez co-owned **Terra Telecommunications Corp.** (Terra), a Florida company that purchased phone time from foreign vendors and resold the minutes to customers in the United States. One of Terra's vendors was **Telecommunications D'Haiti S.A.M.** (Haiti Teleco), and beginning in 2001, Esquenazi and Rodriguez authorized the payment of over US$890,000 in bribes to Haiti Teleco officials through a series of shell companies and bank accounts in order to reduce what Terra owed to Haiti Teleco by over US$2,000,000.[16]

A central issue at trial was whether Haiti Teleco was an "instrumentality" of the Haitian government within the meaning of the FCPA. The jury ultimately found that it was. Esquenazi and Rodriguez were convicted and sentenced to 15 years' imprisonment (five years for violating the FCPA and ten years for money-laundering) and seven years' imprisonment (five years for violating the FCPA and two years for money-laundering), respectively.[17]

The Eleventh Circuit affirmed the convictions, rejecting the defendants' argument that employees of Haiti Teleco were not an instrumentality of a foreign government because Haiti Teleco was not an actual part of the Haitian government and because it did not perform traditional government functions as would a government department or agency. The court reasoned that requiring an "instrumentality" to be an actual part of the government "would impede the 'wide net over foreign bribery' Congress sought to cast in enacting the FCPA."[18] The court also found that nothing in the FCPA limited "instrumentality" to traditional, core government functions.[19]

The court defined an "instrumentality" of a foreign government as "an entity controlled by the government of a foreign country that performs a function the controlling government treats as its own."[20] It noted that the two elements of that test—whether the foreign company was controlled by a foreign government and whether the foreign company was performing a function that the foreign government treated as its own—were fact-intensive inquiries that did not lend themselves to bright-line rules.[21] The Eleventh Circuit's opinion provided the following non-exhaustive list of "some factors that may be relevant" in determining whether an entity is under the control of a foreign government:

1. how the foreign government itself has formally designated the entity;
2. whether the foreign government "has a majority interest" in the entity;
3. the foreign government's "ability to hire and fire the entity's principals";
4. the extent to which the company pays its profits to the foreign government;
5. the extent to which the foreign government funds the entity "if it fails to break even"; and
6. how long these "indicia" of control have existed.[22]

The Eleventh Circuit also provided several non-exhaustive factors that courts can consider in determining whether the entity "performs a function the government treats as its own:"

1. whether the entity has been granted a monopoly to perform its function;
2. whether the government "subsidizes the costs associated with the entity providing services";
3. whether services are being provided by the entity to the "public at large"; and
4. whether the public and the foreign government "generally perceive" the entity to be "performing a governmental function."[23]

Applying these factors, the Eleventh Circuit upheld the trial court's jury instructions and found that there was ample evidence to support the jury's determination that Haiti Teleco was a Haitian instrumentality, including evidence that suggested Haiti granted Haiti Teleco a monopoly, owned 97% of Haiti Teleco (through the Haitian national bank), provided it with tax advantages, appointed key company officials and board members, and that Haiti Teleco was generally considered by the Haitian government and "everyone" to be a public entity that provided nationalized telecommunications services.[24]

Cilins Pleads Guilty to Obstructing Bribery Investigation

On March 10, 2014, French citizen Frédéric Cilins pled guilty in Manhattan federal court to one count of obstructing a federal criminal investigation into whether a mining company paid bribes to win lucrative mining rights in the Republic of Guinea, and on July 25, 2014, Cilins was sentenced to two years in prison.[25] Cilins admitted that he agreed to pay another person to destroy, or help him destroy, documents sought by the FBI. The documents related to allegations concerning bribes paid to obtain mining concessions in Guinea's Simandou region.

Cilins pled guilty just weeks before his trial was set to begin. The superseding indictment had charged him with multiple counts of obstructing government investigations.[26] As we previously reported, Cilins was arrested in April of last year, and prosecutors were working with a cooperating witness identified as Mamadie Touré, the fourth wife of deceased Guinean dictator Lansana Conté, who awarded the mining rights to **BSG Resources Ltd.** (BSG) in 2008.[27] BSG is reportedly the subject of investigations in various jurisdictions.[28]

Six Indicted in Alleged Bribery Conspiracy to Mine Titanium Minerals in India

On April 2, 2014, the DOJ announced the unsealing of an indictment charging six foreign nationals with engaging in a scheme to bribe government officials in India in connection with permits to mine for titanium minerals.[29] The indictment—which was returned under seal in June 2013—charges six individuals with conspiracy to engage in racketeering and money laundering:

1. **Dmitry Firtash**, a Ukrainian national and the alleged leader of the enterprise;
2. **Andras Knopp**, a Hungarian businessman and an alleged supervisor of the enterprise;

3. **Suren Gevorgyan**, of Ukraine;
4. **Gajendra Lal**, an Indian national and permanent resident of the United States;
5. **Periysamy Sunderalingam**, of Sri Lanka; and
6. **K.V.P. Ramachandra Rao**, a member of Parliament in India.

All defendants except Rao also are charged with conspiracy to violate the FCPA.

According to the DOJ, beginning in 2006, the six defendants allegedly conspired to pay at least US$18.5 million in bribes to secure licenses to mine minerals in India. The project was expected to generate over US$500 million annually from the sale of titanium products, including sales to an unnamed company headquartered in Chicago. Through a company named "**Group DF**," the defendants allegedly used US financial institutions to transfer millions of dollars for the purpose of bribing Indian public officials in connection with obtaining licenses for the project. The indictment lists 57 fund transfers between various entities, some controlled by Group DF, from April 2006 through July 2010 in varying amounts that totaled more than US$10.59 million.[30]

Firtash allegedly was the leader of the enterprise and controlled an international conglomerate of companies that were used to channel money to various officials both in the government of the Indian state of Andhra Pradesh and the central government of India.[31] The indictment charges Firtash and others with meeting various officials—including Andhra Pradesh Chief Minister Y.S. Rajesekhara Reddy (now deceased)—in connection with the mining operations, and that alleged conspirator Rao—a member of Parliament and a state official in Andhra Pradesh—allegedly solicited bribes for himself and others.[32] Firtash also allegedly directed the payments to be camouflaged so that they appeared to be for "legitimate commercial purposes."[33]

Firtash is the only defendant to have been arrested so far. The US government is seeking to extradite him from Austria, where he was arrested on March 12, 2014 and released on approximately US$174 million in bail.[34] The other defendants remain at large.

According to its press release, DOJ has worked closely with law enforcement authorities in Austria and Hungary.

Two More Executives of Direct Access Partners Indicted for Bribery Scheme

On April 14, 2014, the DOJ announced the arrest and indictment of two former executives of **Direct Access Partners LLC** (DAP), a now-defunct New York-based broker-dealer, in connection with a scheme to bribe a senior official of a Venezuelan state-owned economic development bank. The charges against these two executives—**Benito Chinea**, DAP's former CEO, and **Joseph DeMeneses**, a former DAP managing partner—follow the guilty pleas of four other individuals associated with the bribery scheme: DAP employees **Ernesto Lujan, Tomas Alberto Clarke Bethancourt**, and **Jose Alejandro Hurtado**, and the Venezuelan banking official, **Maria de Los Angeles Gonzalez De Hernandez** (Gonzalez).[35]

The DOJ alleges that from 2008 through 2012, Chinea and DeMeneses, together with their co-conspirators, paid "six-figure bribes" in exchange for fixed-income trading business that Gonzalez controlled. They and their co-conspirators allegedly routed these illicit payments through third parties posing as "foreign finders" and into offshore bank accounts.

The DOJ charged Chinea and DeMeneses each with conspiracy to violate the FCPA and to commit money laundering and violations of the FCPA, the Travel Act, and an anti-money-laundering statute. Furthermore, DeMeneses was charged with one count of conspiracy to obstruct justice, based on allegations that he deleted emails and took other steps to hide the bribes from the SEC.[36]

In a parallel proceeding, the SEC filed civil charges against Chinea and DeMeneses for having "devised and facilitated sham arrangements to conceal multi-million dollar kickback payments." The SEC seeks disgorgement of ill-gotten gains, plus interest, financial penalties, and injunctive relief against both Chinea and DeMeneses, as well as against five defendants with ties to DAP—Lujan, Bethancourt, Hurtado, **Haydee Leticia Pabon** (Hurtado's wife), and **Iuri Rodolfo Bethancourt** (an apparent relative of Alberto Clarke Bethancourt).[37]

The federal investigation of DAP reportedly began with a periodic examination of the broker-dealer by the SEC.

Additional Alstom Executive Arrested; Co-Defendant's Trial Delayed

As previously reported, on April 16, 2013, the DOJ unsealed FCPA charges filed in Connecticut federal court against **Frederic Pierucci**, an executive of the Connecticut-based US subsidiary of Alstom, and **David Rothschild**, a former Alstom executive.[38] Pierucci and Rothschild have pled guilty.[39] Pierucci's sentencing has been set for December 2014, with a pre-sentencing report to be filed in October; Rothschild's sentencing has not yet been scheduled on the court's docket.

In addition, on April 30, 2013, the DOJ brought charges against former executive **William Pomponi**, and on July 30, 2013, charges against former executive **Lawrence Hoskins**.[40] On July 17, 2014, Pomponi pled guilty to conspiracy to violate the FCPA.[41] His sentencing is scheduled for October 22, 2014.

Hoskins was arrested on April 24, 2014 in the US Virgin Islands.[42] According to a court filing by his lawyer, Hoskins was unaware of the indictment or the arrest warrant when he entered the US Virgin Islands, intending to board a flight to Dallas, Texas to visit his son.[43] Hoskins was arraigned in May 2014 and released on a $1.5 million bond, secured by his home in the [United Kingdom]."[44] Citing the large volume of the government's document production to him, Hoskins asked the court to delay current pretrial motion deadlines until July 2014 and to postpone his trial until late October 2014.[45] Judge Arterton granted this request, postponing his trial to June 2015.[46]

The defendants, together with others, allegedly paid bribes to Indonesian officials—including a member of the Indonesian Parliament and high-ranking officials of the Perusahaan Listrik Negara (PLN), a state-owned and controlled electricity company—for assistance in securing a US$118 million contract known as the Tarahan Project to provide power-related services in Indonesia.[47] The DOJ has also alleged that Alstom subsidiaries in the United States, Switzerland, and Indonesia were each involved in the bidding for the Tarahan Project.[48]

As a result of the DOJ probe, which has extended to Alstom's activities from Egypt to Indonesia, Alstom is also reportedly facing scrutiny by authorities in Brazil, the United Kingdom, India, and China.[49]

DOJ Charges Another PetroTiger Executive in Connection with FCPA Scheme

The DOJ's prosecution of former executives of **PetroTiger Ltd.** (PetroTiger), a British Virgin Islands oil and gas company with operations in Colombia and offices in New Jersey, continued in the first half of 2014. Former co-CEO **Knut Hammarskjold** and former general counsel **Gregory Weisman** pled guilty to conspiring to violate the FCPA and to commit wire fraud on February 18, 2014 and November 8, 2013, respectively.[50] More recently, on May 9, 2014, former co-CEO **Joseph Sigelman** was indicted by a New Jersey federal grand jury for conspiracy to violate the FCPA and to commit wire fraud, conspiracy to launder money, and FCPA and money-laundering violations.[51] Sigelman was arrested on January 3, 2014 in the Philippines.

According to the DOJ, in 2010, PetroTiger sought to secure an oil services contract worth roughly US$39.6 million that required approval from Colombia's state-owned and -controlled oil company, **Ecopetrol S.A** (Ecopetrol). To secure Ecopetrol's approval, the PetroTiger executives allegedly paid US$335,000 in bribes to an official at Ecopetrol.[52] To conceal the bribes, Hammarskjold, Sigelman, and Weisman allegedly created false justifications for the payments, including invoices for purported financial and management-related consulting services by the government official's wife that were never performed.[53] They also attempted to wire payments to the government official's wife's bank account and, when attempts to transfer money to the wife's bank account failed as a result of incorrect account information, the executives made several separate payments to the bank account of the government official.[54] Ultimately, PetroTiger secured the approximately US$39.6 million oil services contract, which allegedly led to approximately US$3.5 million in gross profits for PetroTiger.[55] The company voluntarily reported the case to the DOJ and cooperated with the DOJ's investigation.

In its press releases regarding its prosecutions, the DOJ has noted that it received significant assistance from its counterparts in Colombia, Panama, and the Philippines[56]

Former Noble Executives Settle SEC Charges

On July 2, 2014, a little more than a week before their trial was supposed to begin, two **Noble Corporation** executives—former CEO **Mark A. Jackson** and current vice president and general manager of Noble's Mexico division **James Ruehlen**—settled SEC charges that they had violated the FCPA by bribing Nigerian customs officials to process import permits related to Noble oil rigs.[57] Neither admitted or denied any wrongdoing, and while Jackson was enjoined from violating the books and records provisions of the FCPA, and Ruehlen was enjoined from aiding and abetting violations of the books and records provisions, neither received a financial penalty.[58]

As we have previously reported, the company settled charges related to a Nigerian bribery scheme in November 2010 by paying a US$2.59 million criminal penalty pursuant to a non-prosecution agreement (NPA) entered into with the DOJ and by agreeing to disgorge US$5.5 million in conjunction with resolving charges by the SEC.[59] In addition, a third company official, **Thomas F. O'Rourke**, a former controller and head of internal audit at Noble, settled the enforcement action brought by the SEC by consenting to the entry of an order requiring him to pay a US$35,000 penalty for assisting in the approval of the bribes and their false recording as legitimate operational expenses.

Judge Denies Former Magyar Executives' Request for Interlocutory Appeal

The SEC's case against three **Magyar Telekom Plc** (Magyar) executives—former Chairman and CEO **Elek Straub**, former Director of Central Strategic Organization **Andras Balogh**, and former Director of Business Development and Acquisitions **Tamas Morvai**—for scheming to bribe government officials in Macedonia and Montenegro, continues in the Southern District of New York. In January 2014 the SEC, however, advised that it was narrowing its case against the three to include allegations of bribery arising from conduct only in Macedonia, maintaining this would "streamline" the case by eliminating the need for testimony by some witnesses and limiting the scope of testimony needed for others.[60] The SEC's decision appears to have arisen, at least in part, from the 39 depositions of foreign witnesses the defendants sought to take in Germany, Greece, Hungary, Macedonia, and Montenegro under the Hague Convention and Rule 28 of the Federal Rules of Civil Procedure.

In another development, the SEC accused the three defendants of abusing their privilege against self-incrimination.[61] All three defendants invoked

the privilege against self-incrimination during their depositions in November 2013, but the SEC asserted that they had "no legitimate basis that their truthful testimony [would] expose them to a risk of criminal prosecution": the DOJ had closed its criminal investigation in 2011, and the defendants had requested and received declinations from the DOJ so that they could testify without fear of prosecution.[62] The SEC argued that it had relied on the defendants' representation that they would testify if they received declinations, and that, now that the defendants had the declinations in hand, they were reneging.[63] The SEC asked the court either to exclude the defendants' testimony or to compel them to testify.

The defendants responded that they still face the possibility of being prosecuted because the declinations from the DOJ stated "if additional information or evidence should be made available to us in the future, we reserve the right to reopen our inquiry," arguably leaving the door open to future prosecution based on testimony given to the SEC.[64] Moreover, they argued that they had offered to testify fully in December 2014, ostensibly because this scheduling would set the deposition past the applicable statute of limitations (which had been tolled based on an agreement with the SEC) while still leaving the SEC with two more months before the close of discovery.

The court, however, was un-persuaded by the defendants' arguments, and it criticized defendants for playing an "obstructionist game" for refusing to answer SEC questions as mundane as what country a particular European city is in.[65] The court ruled that defendants must submit to depositions by July 31, 2014 in the US, though it acknowledged the defendants' concerns about future prosecution based on their testimony by ordering the deposition to be placed under seal and not disclosed until December 2014, when the time limit for prosecution will have expired.[66]

Following the court's ruling, on July 16, 2014, the SEC and Morvai filed a joint motion seeking to extend the deadline for his deposition.[67] The joint motion explained that the SEC and Morvai have entered into settlement negotiations.

As we have previously reported, Magyar and its parent, Deutsche Telekom AG, agreed in December 2011 to resolve the enforcement actions taken against them by paying over US$95 million in criminal fines and civil penalties.[68]

Ninth Circuit Addresses Fugitive Disentitlement

On April 24, 2014, a three-judge panel of the US Court of Appeals for the Ninth Circuit denied a Petition for a Writ of Mandamus filed by **Han Yong Kim**—former President of **Control Components, Inc.'s** (CCI) Korean office—that sought to allow him to challenge bribery allegations against him through counsel from the Republic of South Korea, without first surrendering to United States authorities.[69] District Judge James Selna previously denied Kim's request applying the "fugitive disentitlement doctrine," which prevents a fugitive from invoking the jurisdiction of the Court without "submitting himself personally to the Court's jurisdiction."[70]

In his petition to the Ninth Circuit, Kim argued that Judge Selna's order was clearly erroneous because Kim had at all times lived in Korea and had never fled from the district court's jurisdiction.[71] Judge Selna disagreed relying on a decision from the Second Circuit, which provides that a defendant "is a fugitive when with the knowledge of the prosecution he remains outside the jurisdiction."[72] The Ninth Circuit acknowledged split among the courts of appeal as to whether a "fugitive disentitlement can be determined on the basis of 'constructive flight'" but held, in the absence of Supreme Court and Ninth Circuit precedent, the district court's order was not clearly erroneous.[73]

Kim, along with five other former CCI executives, was indicted in April 2009[74] for violation of the FCPA[75] and the Travel Act.[76] Kim is charged with causing approximately US$550,000 in corrupt payments to be paid to employees and officers of state-owned and private companies.[77] Kim is the only former executive with charges pending; the five other executives charged in the indictment have entered into plea agreements. Moreover, CCI pled guilty to violation of the FCPA and Travel Act in July 2009.

American Bank Note Holographics, Inc. Executive Sentenced

More than a decade after pleading guilty to conspiracy to violate the FCPA, conspiracy to commit securities fraud, the falsification of books and records, and the making false statements to auditors, former **American Bank Note Holographics Inc.** (ABNH) president **Joshua Cantor** was sentenced to time served.[78] Cantor was involved

in the payment of bribes to Saudi Arabian government officials to secure a contract to provide holograms for a commemorative banknote, and he helped develop a scheme to falsify the revenues and earnings that ABNH reported to the public and the SEC.[79]

The timing of Cantor's sentencing appears to relate to his cooperation with the government in its prosecution of **Morris Weissman**, ABNH's former CEO and Chairman. Weissman was convicted of participating in the underlying US$100 million accounting fraud scheme,[80] and, in January 2013, Weissman received his sentence, which required him to pay US$64 million in restitution.[81]

Other Decisions With Significance for FCPA Enforcement

Beyond the FCPA enforcement actions discussed above, in the first half of 2014, courts decided several matters that did not involve alleged violations of the FCPA but nevertheless have significance for companies subject to the FCPA. These decisions address (1) attorney-client privilege and corporate internal investigations, (2) the standard courts apply when asked to approve settlements between the SEC and companies, and (3) the reasonableness of commission payments.

DC Circuit Court of Appeals Affirms Privilege Applies to Company's Internal Investigation

On June 27, 2014, the United States Court of Appeals for the District of Columbia Circuit issued a writ of mandamus, reversing a district court decision that had prompted widespread concern about the applicability of the attorney-client privilege to information gathered during internal corporate investigations.[82]

The underlying case centered on allegations by *qui tam* plaintiff **Harry Barko**, a former **Kellogg Brown & Root** employee, that Halliburton had acted improperly in connection with government contract work performed for the US government in Iraq. [83] As part of discovery, Barko asked Halliburton for company reports summarizing the findings of its internal investigation. Halliburton objected, arguing that the reports were subject to the attorney-client privilege and the work product doctrine.

The district court disagreed, holding that the internal investigations had been conducted in order to comply with regulations requiring the company to have internal control systems designed to uncover misconduct. The district court also noted that employee interviews were not conducted by lawyers, and the employees themselves were not told that the purpose of the interview was to help the corporation secure legal advice. These factors, according to the court, brought the case outside the realm of the *Upjohn* doctrine, which generally protects information secured from employees during internal interviews pursuant to the attorney-client privilege. The court concluded that, because government regulations required the internal investigation, the internal investigations were not undertaken to help obtain legal advice and thus not protected by the attorney-client privilege. The district court further held that the work-product doctrine did not apply because the written reports of the internal investigation were not prepared in anticipation of litigation.

In its grant of mandamus, the DC Circuit rejected the district court's reasoning and held that Halliburton's internal investigation reports were indeed protected against disclosure by the attorney-client privilege. The Court of Appeals found that the internal investigations had proceeded under the supervision of the company's legal department, so that the company's legal department could advise on whether the company was, in fact, complying with the law. The Court of Appeals also rejected the district court's focus on whether the primary purpose in conducting the internal investigations was to secure legal advice. Instead, the Court of Appeals affirmed that the attorney-client privilege protects the findings of an investigation if it has as a "significant purpose" the obtaining or providing of legal advice. The DC Circuit concluded that investigations undertaken pursuant to regulations designed to ensure a contractor's compliance with the law fall within that ambit.

Second Circuit Clarifies Standard for Approving SEC Consent Judgments

On June 4, 2014, the US Court of Appeals for the Second Circuit issued a long-awaited ruling in *SEC v. Citigroup Global Markets, Inc.*,[84] holding that a district court applied an erroneous legal standard in refusing to approve a proposed consent judgment between the SEC and Citigroup Global Markets, Inc.

In November 2011, the district court declined to approve the proposed consent judgment. Judge Jed Rakoff found that the proposed consent judgment was "neither fair, nor reasonable, nor adequate, nor in the public interest" because, in his view, it failed to provide a sufficient evidentiary basis to evaluate whether these standards were met.[85] The district court attributed this insufficient factual basis to "the S.E.C.'s long-standing policy … of allowing defendants to enter into Consent Judgments without admitting or denying the underlying allegations." The district court criticized this policy as "serv[ing] the narrow interests *of the parties*" but failing to serve the "overriding public interest in knowing the truth" in cases dealing with the transparency of financial markets.[86]

The SEC and Citigroup appealed, and the SEC sought an emergency stay from the Second Circuit. In March 2012, the Second Circuit granted the emergency stay, finding that the SEC demonstrated a strong likelihood of success on the merits, and referred the appeal to a three-judge panel.

In its recently issued decision, the Second Circuit concluded that the district court abused its discretion by requiring "that the SEC establish the 'truth' of the allegations against a settling party as a condition for approving" the consent judgment. The court reasoned that settlements "are primarily about pragmatism" and provide the parties with a necessary means to manage the risks and costs of litigation. The court explained that "[t]hese assessments are uniquely for the litigants to make," and "[i]t is not within the district court's purview to demand" factual admissions regarding the allegations in the complaint as a condition for approving a proposed settlement.[87] The court explained that a district court should limit its inquiry to ensuring that such a settlement is "fair and reasonable, with the additional requirement that the 'public interest would not be disserved' in the event that the consent decree includes injunctive relief."[88] This standard requires "significant deference" to the SEC, and a district court must approve a proposed consent judgment absent a "substantial basis in the record" to conclude that these requirements are not met.[89]

Although the Second Circuit ultimately reversed the district court's decision, in the time since the district court's decision, the SEC has substantially revised its policies concerning "neither admit nor deny" settlements. Following Mary Jo White's confirmation as SEC chair in April 2013, one of her first steps was to change the longstanding policy of permitting essentially all defendants to settle cases without admitting or denying liability or admitting facts that establish their liability.[90] White has remarked that such admissions "provide a greater degree of accountability," "boost investors' confidence in our enforcement program and our markets," and "serve as a strong deterrent" to wrongdoing.[91] White recently explained that the SEC considers requiring admissions in cases involving "a greater need for public accountability," including cases that "involve particularly egregious conduct, a large number of harmed investors, significant risk to investors or the markets, obstruction of our investigations, or where the defendant presents a particular future threat to investors or the markets."[92] White recently expressed her "expectation … that there will be more such cases in 2014 as the new protocol continues to evolve and be applied."[93]

District Court Analyzes Reasonableness of Commissions

On June 25, 2014, the US District Court for the District of Columbia issued an opinion in ***United States ex rel. Purcell v. MWI Corp.***, denying defendant MWI's Motion for Judgment as a Matter of Law and Renewed Motion for Judgment as a Matter of Law.[94]

The case was filed under the False Claims Act in 1998 by relator Robert Purcell, a former employee of MWI. In 1992, MWI arranged to sell US$82.2 million worth of irrigation pumps and other equipment to seven Nigerian states. To finance these sales, MWI and Nigeria sought and received eight loans from the Export-Import Bank of the United States (Ex-Im), an agency of the United States that finances and facilitates transactions between US exporters and international buyers. Before Ex-Im approved the loans to Nigeria, it required MWI to submit certificates attesting that MWI paid only "regular commissions" in connection with pump sales, in part to assure that Ex-Im invests in projects where the products are priced correctly.

Purcell alleged that MWI paid commissions in excess of 30 percent to its long-time Nigerian sales agent, Alhaji Mohammed Indimi, and that such commissions were not "regular" and should have been disclosed on all of the certificates that MWI submitted to Ex-Im. In April 2002, the United States intervened and filed a complaint that alleged two violations of the FCA and two common law claims for unjust enrichment and payment by mistake.

The case went to trial in November 2013, where the jury returned a verdict for the government on both FCA counts. Shortly after, MWI filed its Motion and Renewed Motion for Judgment as a Matter of Law.

In denying MWI's motions, the court opined that there was sufficient evidence demonstrating that the commissions paid were not regular. For example, the sheer amount of money paid to Indimi "dwarfed" the commissions paid to other MWI agents. Specifically, between 1992 and 1994, Indimi received over US$26 million in 8 commissions versus over US$1.7 million in 48 commissions to all other agents.[95] Of the largest 21 commissions MWI paid between 1980 and 1995, Indimi received 19 of them, including a US$12.7 million commission that was almost four times greater than all other sales agents between 1980 and 1995.[96]

Additionally, the percentage of the total sales Indimi received in commissions "was far higher than the percentages" given to other MWI sales agents—18 commissions were above 30% of the sales price between 1980 and 1995, and 15 of those went to Indimi.[97] Moreover, Indimi's average percentage of sales price was 33.9% between 1992 and 1994, while other MWI sales agents received approximately 10%, and between 1980 and 1995, Indimi's percentage was 33.71% versus 14.68%.[98] The court reasoned that this evidence, along with testimony for Ex-Im employees, showed that Indimi's commissions were irregular and, thus, MWI's certifications to the contrary were false.

Although not an FCPA case, the MWI decision identifies factors that courts, and government authorities, may consider when analyzing the appropriateness of commission payments, which have been the source of FCPA enforcement actions. The court rejected MWI's assertion that the government failed to demonstrate that MWI's commissions were inconsistent with an industry-wide standard. At trial, the court instructed the jury that the term "regular commission" referred to commissions "normally and typically paid by the exporter and its competitors in the same industry."[99] The government submitted evidence that (1) showed that in markets where there was competition, MWI's commissions were limited to 10 percent or less, and (2) it was unable to introduce further evidence regarding commission payments paid by competitors selling irrigations pumps in Nigeria because "there were no such competitors."[100] The court found this evidence sufficient for a jury to find that Indimi's commissions were irregular compared to those generally paid in the industry.

The court also rejected MWI's assertion that the company neutrally applied a formula that set a commission of 10 percent of the base price. The court reasoned that because "there were no competitors selling similar pumps in Nigeria, there were no market forces to ensure that MWI's prices or commissions were not inflated."[101] For example, the court explained that Indimi sold his products to Nigeria at between 168% and 296% of the base price (with an average of 250%), compared to 102% from other salespeople.[102] The commissions were therefore not regular "because the formula was applied to irregular, inflated prices." Finally, the court found that evidence that MWI paid Indimi in cash and advances, and provided him with "many free services … were indications that his commissions were not 'regular.'"[103]

DOJ Releases Opinion on Buy Out of Foreign Partner Appointed to Government Post

On March 17, 2014, the DOJ issued its first opinion procedure release of the year. The release concerns a request by a US financial services company and investment bank (the "Requestor") to buy out the remaining minority interest of a foreign business partner who was appointed to a high-level government position and had, thus, become a foreign government official under the FCPA.[104] The Requestor bought the majority interest in the foreign business partner's company in 2007, and the two parties had agreed that the foreign business partner was prohibited from selling his interest for five years unless he were appointed to a minister-level position or higher. The 2007 agreement provided that Requestor would buy out the foreign business partner's interest in the event the foreign business partner became a government official.

At the end of 2011, the foreign business partner was appointed to serve as a high-level official at the foreign country's central monetary and banking agency, at which point he ceased any operational role in the foreign business and became a passive shareholder. While the agency does not directly regulate the foreign business, the agency had been a client of the Requestor for the past 20 years.

In early 2012, the Requestor and the foreign business partner entered into negotiations for the Requestor to buy the foreign business partner's interest in the foreign company, pursuant to a formula set forth in the parties' agreement. Because the formula used to value the foreign business partner's shares used the foreign company's average net income for the two years prior to the buyout, and because the foreign company had experienced net losses from 2008 to 2011 in large part because of the financial crisis, the formula valued the foreign business partner's shares at zero. The Requestor represented to the DOJ that the parties had not intended this result when they entered into the contract in 2007 and that it believed that the shares in fact had substantial value. Moreover, the Requestor explained that attempting to enforce the contract as written would either have resulted in litigation or the foreign business partner selling the shares to a third party, leaving the foreign company in a precarious position as it was a closely-held firm. Instead, the two parties retained a highly-regarded global accounting firm to value the shares. The DOJ had previously issued an opinion in 2000 that discussed the situation where a foreign partner of a US law firm became a high-ranking foreign government official, and the Requestor in the current Opinion Procedure adopted similar safeguards as had been endorsed by the DOJ in 2000: recusal by the foreign business partner from matters related to the Requestor and a local legal opinion that the payments do not violate the laws of the foreign country.[105] In this case, the Requestor went even further in specifying how the foreign business partner would recuse himself and how the Requestor would notify the foreign agency of the payments. The DOJ advised that it did not intend to take any enforcement action based on the facts and circumstances represented by the Requestor, seeing no "indicia of corrupt intent."[106]

Standard in all Opinion Procedures is the qualification, "[t]his FCPA Opinion Release has no binding application to any party that did not join in the Request, and can be relied on by Requestor only to the extent that the disclosure of facts and circumstances in its request and supplements is accurate and complete." Notably, this Opinion Procedure includes two new qualifications, in addition to the usual one: that "this Opinion does not foreclose future enforcement action should facts indicative of corrupt intent (such as an implied understanding that Foreign Shareholder would direct business to Requestor or inflated earnings projections being used to induce Foreign Shareholder to act on Requestor's behalf) later become known;" and that the Opinion Procedure is "conditioned on Requestor and Foreign Shareholder making all required notifications and obtaining all required approvals (or non-objections), including those described above."[107]

Update on Industry-Based Investigations

In our Winter 2014 newsletter, we reported on DOJ and SEC investigations into multiple financial institutions and health care corporations.[108] Developments in the past six months reflect that, while some investigations of potential FCPA investigation in these sectors have come to an end, other investigations are ongoing.

Financial Institutions. As we reported previously, the hiring practices of US and European financial institutions in China have come under scrutiny. In May, the *Wall Street Journal* reported that the SEC has requested information from five US and European financial institutions regarding their hiring of relatives of Chinese government officials.[109]

The DOJ and SEC also are investigating whether financial institutions may have violated the FCPA outside of China. **Och-Ziff Capital Management Group LLC** (Och-Ziff), a large institutional alternative asset manager, stated in its annual report filed with the SEC on March 18, 2014 that it is cooperating with the DOJ and SEC in their investigation into investments by a foreign sovereign wealth fund into certain Och-Ziff funds, as well as investments by certain Och-Ziff funds in several African companies.[110] The investments in question reportedly relate to dealings in Libya and the Democratic Republic of the Congo.[111]

Health Care. Illinois-based healthcare company **Baxter International Inc.** (Baxter) announced that, in January 2014, the DOJ and the SEC concluded investigations of the company that were "part of a broader review of industry practices for compliance with the U.S. Foreign Corrupt Practices Act."[112] Neither agency decided to take further action against the company.

Two other pharmaceutical companies appear poised to resolve FCPA enforcement actions in the near future. California-based pharmaceutical company **SciClone Pharmaceuticals Inc.** (SciClone) disclosed in a current report on March 12, 2014 that it had recorded a US$2 million charge in the fourth quarter of 2013 to reflect the company's probable penalties resulting from the SEC and DOJ's ongoing investigation into the company's business activities in China.[113] In August 2010, the company received formal notices of investigation from the SEC and DOJ relating to its business operations in China. The company conducted its own internal investigation into, among other things, sales and marketing practices in China, and the special committee appointed by the board of directors responsible for the investigation identified particular practices that may constitute violations of the FCPA.[114] The company expects to incur additional costs—in addition to the US$2 million recorded to date—to implement remedial measures and respond to the SEC's and DOJ's requests for information.[115]

Life sciences research and clinical diagnostics products company **Bio-Rad Laboratories, Inc.** (Bio-Rad) stated in its annual report on March 18, 2014 that it was continuing to cooperate with the DOJ and the SEC in their investigations into "certain…overseas operations" that may have violated the anti-bribery and books and records provisions of the FCPA.[116] The DOJ and SEC began their investigations in May 2010, when Bio-Rad voluntarily disclosed the details of an internal investigation.[117] In the second half of 2013, the company estimated the contingent liability associated with the investigations at US$20 million. The company has since increased that estimate twice—in February 2014, the company disclosed that it had increased the estimate to US$35 million,[118] and in May 2014, the company disclosed a new estimated contingent liability of US$44.8 million.[119] The company has discussed the possibility of resolving the investigations with the SEC and DOJ, but at this time is unable to estimate the duration or eventual scope of the inquiries.[120]

Several other pharmaceutical and medical device manufacturers have reported that they were the subjects of ongoing FCPA investigations. Indeed, two medical device manufacturers that previously resolved FCPA enforcement actions disclosed that they had identified additional FCPA issues. On July 2, 2014, **Biomet Inc.** (Biomet), which in 2012 entered into a DPA with the DOJ and a consent judgment with the SEC to resolve investigations into potential FCPA violations, disclosed that it had become "aware of certain alleged improprieties regarding its operations in Brazil and Mexico. Biomet retained counsel and other experts to investigate both matters. Based on the results of the investigation, Biomet terminated, suspended or otherwise disciplined certain of the employees and executives involved in these matters, and took certain other remedial measures."[121] Biomet announced that it disclosed these matters to, and continues to cooperate with, the DOJ and SEC.

Similarly, in March 2014, Texas-based medical device manufacturer **Orthofix** reported that it had disclosed potential FCPA violations at its Brazilian subsidiary to the DOJ and SEC. Orthofix first became aware of corruption allegations at **Orthofix do Brasil Ltda** in August 2013 and its internal investigation remains ongoing. This announcement comes less than two years after Orthofix entered into a three-year DPA with the DOJ and SEC in connection with potential corruption at its Mexican subsidiary, **Promeca S.A. de C.V.** (Promeca). The DPA requires Orthofix to cooperate fully with the government in corruption investigations, implement a compliance regime to prevent and detect FCPA violations, and provide periodic reporting to the government.[122]

Oil and Gas. The energy sector also continues to be the source of FCPA enforcement activity. For example, in April 2014, Italian energy company **Saipem SpA** (Saipem) confirmed that the DOJ had requested information concerning allegations of bribery in Algeria.[123] Saipem is a subsidiary of the Italian oil company **Eni SpA** (Eni). As reported in our Winter 2014 newsletter, Eni and Saipem are both also under investigation by the Judicial Authority in Algeria, and the Public Prosecutor of Milan in Italy.[124] These investigations, like the US investigations, focus on allegations that Saipem paid bribes to Algerian public officials, including then Algerian Energy Minister, Chakib Khelil, for purposes of securing a series of contracts worth US$11 billion.

Power technology company **SL Industries Inc.** (SL) announced that the DOJ has concluded an investigation related to potential violations of the FCPA by the company's employees in China.[125] SL began an internal investigation back in 2012 to determine whether employees of three Chinese subsidiaries had inappropriately provided gifts and entertainment to Chinese officials. At that time, the company voluntarily disclosed the results of an internal investigation to the DOJ and SEC as part of its effort to cooperate fully with the government. In its annual report, filed with the SEC in March, SL disclosed that "the DOJ notified the Company that it had closed its inquiry into this matter without filing criminal charges." SL further commented, however, that it had no updates with regard to the separate SEC investigation.

Key Energy Services, Inc. (Key)—a Houston-based onshore well servicing contractor—disclosed in its Form 8-K filed with the SEC on June 4, 2014, that it is investigating allegations of possible bribery involving its operations in Mexico, in addition to the previously disclosed investigation of its business in Russia. Key stated that it first became aware of the Mexico allegations in April of 2014. In Key's quarterly report filed with the SEC on May 6, 2014, the company reported the SEC's investigation of its Russian operations for potential FCPA violations.[126] In its June 4 filing, Key stated that it had conducted an initial investigation, and that its Board of Directors had formed a special committee of independent directors to oversee the investigations regarding both Mexico and Russia. Key further stated that on May 30, 2014, it made a voluntary disclosure to the SEC and DOJ of the allegations and information regarding those investigations.[127]

Rounding Out the Enforcement Docket

Wal-Mart Investigation Continues

Investigations into whether **Wal-Mart Stores, Inc.** (Wal-Mart) violated the FCPA continue to unfold, with the company facing possible enforcement action by the DOJ and the SEC, as well as investor complaints and shareholder lawsuits.

Wal-Mart's Audit Committee is conducting an internal investigation into whether its subsidiary in Mexico, **Wal-Mart de México, S.A.B. de C.V.** (Walmex), may have violated the FCPA, and whether allegations of potential FCPA violations were appropriately handled by the Company. The DOJ and the SEC have informed the Company that it is the subject of investigations, and Mexican authorities are also investigating.[128] Wal-Mart also has undertaken a global review of its operations and identified additional allegations of potential FCPA violations. According to the company, "[i]nquiries or investigations regarding allegations of potential FCPA violations have been commenced in a number of foreign markets where the Company operates, including, but not limited to, Brazil, China and India."[129]

In addition to government investigations, Wal-Mart has faced recent criticism from Institutional Shareholder Services, Inc. (ISS) and Glass Lewis & Co., two shareholder advisory firms that have raised concerns about a lack of transparency of the FCPA investigation and lack of accountability of senior executives who were involved.[130] As a result, ISS encouraged shareholders to reject Wal-Mart's executive compensation plan at the company's June 6, 2014 shareholder meeting.[131] Wal-Mart opposed the request, asserting that it would be bad for the company for more information about the FCPA investigation to be made public before the investigation was complete.[132] Shareholders rejected ISS's proposal,

which is no surprise given that Walton family members control more than 50 percent of the company's stock.[133]

Numerous shareholder lawsuits were filed after details about the investigation were announced in 2012, including a securities fraud class action and shareholder derivative suits. Among other things, Wal-Mart shareholders are claiming that the company misled investors by not publicly disclosing more information about the investigation before the *New York Times* reported Wal-Mart's issues in April 2012.[134] A US Magistrate Judge in Arkansas recently recommended denial of a motion to dismiss a lawsuit claiming that Wal-Mart defrauded investors.[135] The magistrate found that reasonable investors could have been misled by Wal-Mart's December 2011 Form 10-Q, which disclosed that the company was conducting an internal investigation into certain unspecified FCPA compliance issues, but did not acknowledge that bribery concerns had existed in Mexico as early as 2005.[136] Several of the pending lawsuits have been consolidated in Delaware and Arkansas courts.[137]

DOJ Commences Investigation of Rolls-Royce

In February 2014, UK-based jet engine manufacturer **Rolls-Royce Holdings** (Rolls-Royce) disclosed that the DOJ was investigating allegations that company executives had bribed Chinese and Indonesian officials to win lucrative contracts.[138] The DOJ's informal inquiry into Rolls-Royce follows a formal SFO investigation of similar allegations. As discussed further below, British authorities reportedly have arrested two individuals and executed various search warrants in connection with their investigation.[139]

In its annual report released in February, Rolls-Royce stated that it is cooperating with government authorities on both sides of the Atlantic and already has undertaken several measures to combat bribery and corruption. For example, the company implemented a "holistic" ethics compliance improvement program overseen by a newly appointed Director of Risk. The company also introduced a new Global Code of Conduct, which outlines what is expected of all individual employees to combat bribery and corruption.[140] According to the annual report, the recently announced DOJ investigation is at "too early a stage to assess the consequences (if any)."[141]

As discussed in our Winter FCPA newsletter, allegations of bribery involving Rolls-Royce in Indonesia in the 1990s were brought to light by former Rolls-Royce employee turned whistleblower, Dick Taylor. Meanwhile, accusations against Rolls-Royce of bribery in China surfaced when an anonymous blogger known as "Soaring Dragon" alleged that Rolls-Royce paid bribes to Chinese airline officials to win engine contracts worth around US$2 billion in 2005 and 2010.[142]

In addition to the ongoing inquiries by the DOJ and SFO, Rolls-Royce faces a separate investigation by Indian authorities. This investigation concerns bribes allegedly paid to Hindustan Aeronautics Limited, a state-owned aircraft manufacturer, between 2007 and 2011. These allegations came to the attention of India's defense minister, A.K. Antony, by way of an anonymous letter.[143]

DOJ Extends Monitoring of Alcatel-Lucent

In an April SEC filing, France-based **Alcatel-Lucent S.A.** (Alcatel-Lucent) disclosed that the DOJ may seek to extend the term of a DPA with the company to provide an independent monitor with additional time to confirm improvements to Alcatel-Lucent's internal controls.[144] Under the DPA, Alcatel-Lucent agreed to be monitored by a French anti-corruption compliance expert for three years, with the possibility of a one-year extension at the sole discretion of the DOJ.[145]

As previously reported, in December 2010 Alcatel-Lucent and three of its subsidiaries entered into a three-year DPA to resolve an enforcement action concerning millions of dollars in allegedly improper payments to foreign officials in Costa Rica, Honduras, Malaysia, and Taiwan.[146] Alcatel-Lucent agreed to pay more than US$137 million in penalties to resolve coordinated FCPA enforcement actions by the DOJ and the SEC.[147]

Smith & Wesson Announces DOJ Declination, SEC Settlement

In its annual report filed with the SEC on June 17, 2014, firearms manufacturer **Smith & Wesson Holding Corporation** (Smith & Wesson) disclosed that the DOJ had declined to pursue any FCPA charges against the company in connection with the so-called 'SHOT Show' case.[148] That case involved the unsuccessful prosecution

of 22 individuals, including the company's former Vice President of Sales, International & US Law Enforcement. As part of that case, Smith & Wesson received a grand jury subpoena, and the DOJ also conducted an investigation regarding the company's compliance with the FCPA. According to Smith & Wesson, the DOJ noted the company's "thorough cooperation." Smith & Wesson also disclosed that it was "in the final stages of discussions with the SEC staff that have brought us close to a resolution," and on July 28, 2014, as this newsletter was going to press, the SEC announced that the company had agreed to pay US$2 million to resolve the SEC's charges.[149]

Company Disclosing Developments regarding FCPA Investigations

In the first half of 2014, several companies disclosed that the DOJ and/or the SEC had commenced bribery-related investigations. For example:

- In a February 20, 2014 SEC filing, California-based networking equipment company **Cisco Systems, Inc.** (Cisco) disclosed that it was conducting an internal investigation into certain of its business activities and the activities of certain resellers of Cisco products in Russia and the Commonwealth of Independent States.[150] The investigation was initially revealed on Cisco's blog in December 2013, when a vice president in the company's Compliance Systems division noted that the DOJ and SEC had called for an investigation after receiving an unspecified communication relating to the conduct in question.[151] Cisco indicated that it intends to cooperate fully with the SEC and DOJ, and that the company does not anticipate that the outcome will have a material adverse effect on its financial position.[152]
- Fiber optics and cable company **General Cable Corporation** (General Cable) disclosed in a March 3, 2014 annual SEC filing that it is conducting an internal review of commission payments made by a company subsidiary in Angola.[153] At this time, General Cable is unable to estimate the duration of the review or predict its outcome.
- On March 10, 2014, the Houston-based infrastructure services company **Quanta Services, Inc.** (Quanta) received an inquiry from the SEC regarding certain aspects of its operations in jurisdictions including South Africa and the United Arab Emirates. The SEC also requested the preservation and retention of particular categories of documents, including those relating to Quanta's FCPA compliance program. In its quarterly report filed with the SEC on May 8, 2014, Quanta stated that, "The SEC has not alleged any violations of law by Quanta or its employees. Quanta has complied with the preservation request and is cooperating with the SEC."[154]
- In a March 12, 2014 SEC filing, Netherlands-based telecommunications company **VimpelCom, Ltd.** (VimpelCom) announced receipt of a request from the SEC for documents. VimpelCom further disclosed that on March 11, 2014, Dutch authorities obtained documents from its Amsterdam headquarters and notified VimpelCom that it was the focus of a criminal investigation in the Netherlands.[155] In a separate filing on March 18, 2014, VimpelCom disclosed that it is also the focus of an investigation by the DOJ. According to the company, the focus of all of these investigations "appears to be the Company's operations in Uzbekistan." VimpelCom noted that it intends to fully cooperate with the investigations.[156]
- Swedish telecommunications company **TeliaSonera AB** (TeliaSonera) announced on March 17, 2014 that the DOJ and SEC had requested documents as part of an ongoing bribery investigation into the company's transactions in Uzbekistan.[157] The DOJ and SEC document requests have come amid a broader investigation by Swedish and Dutch authorities concerning bribery and money laundering, and the company said that it "cooperates fully with all the authorities…in order to gain full clarity on these issues."[158] It has noted that Dutch authorities requested collateral between EUR10 and 20 million for financial claims that may be decided against TeliaSonera's Netherlands-based holding companies. In early 2013, TeliaSonera's President and CEO resigned, the company elected six new Directors, and the Board launched an internal investigation into the company's Eurasian transactions.[159] While TeliaSonera has not admitted to illegal conduct, the company has said that some transactions in Eurasia "have been inconsistent with sound business practice and [the Company's] ethical requirements."[160]

- Dutch oil and gas services company **SBM Offshore NV** (SBM Offshore) announced on April 2, 2014 that its internal investigation focusing on the Company's use of agents from 2007 through 2011 in Angola, Equatorial Guinea and Brazil found that "there is some evidence that payments may have been made directly or indirectly to government officials" in the two African countries.[161] SBM Offshore explained that its operations in Brazil, the Company's largest market, raised "certain red flags, but the investigation did not find any credible evidence that the Company or the Company's agent made improper payments to government officials (including state company employees)."[162] SBM Offshore noted that in April 2012, it voluntarily disclosed its internal investigation to the DOJ and Dutch authorities and is discussing its findings with both governments, but cannot estimate "the ultimate consequences" of such disclosures.[163]
- Wireless technology service provider **Qualcomm Incorporated** (Qualcomm) disclosed in its April 23, 2014 quarterly SEC filing that on March 13, 2014, the Company received a Wells Notice from the SEC that its "staff has made a preliminary determination to recommend that the SEC file an enforcement action against" Qualcomm for FCPA violations related to alleged "benefits offered or provided to individuals associated with Chinese state-owned companies or agencies."[164] On April 4, 2014, Qualcomm responded with a submission explaining "why the Company believes it has not violated the FCPA and therefore enforcement action is not warranted."[165]
- UK-based automotive parts manufacturer **Delphi Automotive PLC** (Delphi) disclosed in its April 24, 2014 quarterly SEC filing that the Company is conducting an ongoing internal investigation related to potentially improper payments in China, and that the Company voluntarily disclosed this information to the DOJ and SEC.[166] As part of the internal investigation, Delphi explained, the Company engaged outside counsel to evaluate existing controls and compliance policies and procedures. The Company advised that "there can be no assurances as to the ultimate outcome of these matters at this time."[167]
- Milwaukee-based **Johnson Controls, Inc.** (Johnson Controls), a manufacturer of automatic temperature regulation systems, disclosed in its quarterly report filed with the SEC on May 2, 2014 that the Company had self-reported to the SEC and DOJ in June 2013 alleged FCPA violations in China, dating back to 2007.[168] The Company explained that the alleged violations "were isolated to the Company's marine business in China which had annual sales ranging from $20 million to $50 million during this period."[169] Johnson Controls noted that it intends to "fully cooperate" with the SEC and DOJ. Moreover, as part of its internal investigation conducted with outside legal counsel and forensic accountants, "the Company continues to evaluate certain enhancements to its FCPA compliance program."[170]
- On June 17, 2014, the *Wall Street Journal* reported that **Federal Express Corporation** (FedEx) has reported to the DOJ and SEC its receipt of allegations that its operations in Kenya made questionable payments to government officials that may have violated the FCPA. According to the article, questionable payments went to customs officials to avoid inspections. FedEx is conducting an internal investigation and so far has "not found anything to substantiate the allegations."[171]
- Massachusetts-based systems development firm **PTC Inc.** (PTC) (formerly Parametric Technology Corporation) disclosed in its quarterly report, filed with the SEC on May 6, 2014, that the SEC and DOJ are continuing to investigate "payments and expenses" by certain of PTC's China business partners and employees that raise FCPA compliance concerns, and that it is continuing to respond to the agencies' requests for information, "including a subpoena issued to the company by the SEC." The investigation, first disclosed by PTC in late 2011, appears to have expanded to include "periods earlier than those previously examined." PTC further noted that it had "terminated certain employees and business partners in China in connection with this matter, which may have an adverse impact on our level of sales in China. Revenue from China has historically represented 5% to 7% of our total revenue."[172]
- **Gold Fields Limited** (Gold Fields), a South African gold producer with a secondary listing on the New York Stock Exchange, reported in April that South Africa's Directorate for Priority Crime Investigation (known as the "Hawks"), as well as the SEC, was conducting an inquiry into the company's efforts to obtain a mining license.[173] Gold Fields previously had disclosed the

existence of the SEC investigation. According to press reports, the SEC was looking into the company's payment of US$210 million, in the form of a nine percent stake in South Africa's South Deep mine, to a fund called Black Economic Empowerment. This fund was established to create economic opportunities to redress inequalities created by South Africa's former apartheid regime, but has attracted criticism in recent years for benefiting only a politically connected elite.[174] A recent public disclosure by Gold Fields states because the government investigations are in the early stages, the company cannot yet determine what effect the outcome of these investigations will have.[175]

Developments in the Justice Department's Kleptocracy Initiative

During the first half of 2014, the DOJ has continued to aggressively seek to recover corruption funds under its Kleptocracy Asset Recovery Initiative.

On March 5, 2014, the DOJ announced that it had frozen more than US$458 million received and hidden by **Sani Abacha**, a former dictator of Nigeria, and his conspirators, in the largest action brought under the Kleptocracy Initiative.[176] Abacha, his son, and others have been accused of embezzling millions from Nigeria's government and laundering the illegal proceeds by buying bonds backed by the US.[177] The proceeds include roughly US$313 million in two Bailiwick of Jersey accounts, US$145 million in two French bank accounts, and an estimated value of at least US$100 million in four investment portfolios and three UK bank accounts.[178]

Less than a month later, on April 24, 2014, the DOJ filed a complaint in the US District Court for the Central District of California to recover US$726,951.45 in alleged corruption proceeds from **Chun Doo-hwan**, a former president of South Korea.[179] In 1997, Chun was convicted in the Republic of Korea of taking bribes from the country's businesses of more than US$200 million.[180] The money at issue was discovered and seized when Chun's relatives sold a Newport Beach, California house that had been purchased with laundered proceeds.

Finally, the DOJ has reached a tentative settlement with **Teodoro Nguema Obiang Mangue**, second vice president in Equatorial Guinea (and son of the president), to resolve two civil forfeiture actions filed by the DOJ to recover over US$70 million in proceeds allegedly resulting from corruption and money laundering in violation of US and Equatoguinean law.[181] The government has been attempting to seize real and personal property including a US$38.5 million Gulfstream G-V jet, a US$30 million mansion in Malibu, California, and US$1.8 million worth of Michael Jackson memorabilia.

SEC Whistleblower Program Update

In June 2014, the SEC charged a hedge fund advisory firm based in Albany, New York, with retaliating against an employee who informed the SEC of alleged trade violations at the firm.[182] This enforcement action marks the first time that the SEC has sought to enforce the Dodd-Frank anti-retaliation provisions.

The SEC accused **Paradigm Capital Management Inc.** (Paradigm) and its owner, **Candace King Weir**, of demoting a trader who had informed the SEC about allegedly improper transactions between the firm and a broker-dealer affiliated with Weir. The actions allegedly resulted in the whistleblower's resignation. To resolve the administrative proceeding brought by the SEC, Paradigm agreed to pay approximately US$2.2 million in sanctions. The firm did not, however, admit any wrongdoing.[183]

Litigation Regarding the Scope of Dodd-Frank's Whistleblower Protections Continues

Both the SEC and a US District Court judge recently took issue with the US Court of Appeals for the Fifth Circuit's decision in *Asadi v. G.E. Energy (USA) L.L.C.*,[184] which held that Dodd-Frank's whistleblower protection apply only to those who report wrongdoing directly to the SEC.

On February 20, 2014, the SEC filed an amicus brief urging the US Court of Appeals for the Second Circuit not to follow *Asadi*.[185] The SEC argued that the Fifth Circuit's narrow reading of Dodd-Frank's whistleblower protections would "significantly weaken the deterrence effect on employers who might otherwise consider taking an adverse employment action" upon an employee who has internally reported violations. Failing to protect internal reporting would also be detrimental to the purposes of the Dodd-Frank Act, the SEC contended, because incentivizing internal reporting is essential to the federal securities regulation system. According to the SEC, the Commission often relies on internal reporting as a first-step in policing corporate misconduct.[186] The Second Circuit heard oral argument on June 16, 2014.

More recently, in *Bussing v. COR Clearing, LLC*, a Nebraska federal court ruled that the anti-retaliation provision of the Dodd-Frank Act applies to all whistleblowers, including those who took evidence of illegal activity to their bosses rather than to the SEC.[187] The Nebraska judge disagreed with the Fifth Circuit's *Asadi* holding because it not only "fail[s] to protect the majority of whistleblowers," but also "fails to protect those who are most vulnerable to retaliation."[188]

FCPA-Related Civil Litigation

Shareholder lawsuits have now become commonplace following news of FCPA investigations. In addition to Wal-Mart, high-profile shareholder suits have been filed against a number of companies that are conducting ongoing investigations or that have just wrapped up investigations into possible corruption in their overseas operations. For example:

- As discussed above, **Och-Ziff Capital Management Group** disclosed in March 2014 that it had been under investigation by the DOJ and SEC for possible violations of the FCPA in connection with investments in Africa.[189] A shareholder suit soon followed in May, with investors claiming that Och-Ziff had failed to disclose that it had violated the FCPA in Libya and in the Republic of the Congo, that the DOJ and SEC were investigating those violations, and that the company's financial statements were accordingly materially false and misleading during the relevant time period.[190]
- In December 2013, **Archer Daniels Midland Company** (ADM) reached agreements with the DOJ and SEC to resolve an enforcement action related to bribery allegations that arose from ADM's efforts to obtain Value-Added Tax (VAT) refunds from the Ukraine government.[191] ADM agreed to pay US$17.8 million as part of its NPA with the DOJ and US$36.4 million in a consent judgment with the SEC.[192] Shortly thereafter, in January 2014, an ADM investor brought a derivative suit against current and former directors and officers in Cook County, Illinois. [193] The suit alleged that they failed to implement "anything resembling an appropriate system of internal controls," and that, as a result, "ADM repeatedly violated the FCPA."[194] The derivative suit is currently pending.
- In September 2013, **Hyperdynamics Corporation** (Hyperdynamics), an oil and gas exploration and production company based in Houston, announced that it had received a subpoena from the DOJ in connection with its operations in Guinea.[195] Hyperdynamics subsequently confirmed in February 2014 that it had received a subpoena from the SEC in January 2014 related to the same issues, and that the company had launched an internal investigation.[196] Shortly thereafter, investors sued Hyperdynamics and claimed the company violated the federal securities laws by misrepresenting its compliance with the FCPA and US anti-money-laundering statutes and misrepresenting the state of its internal controls.[197]
- In August 2013, news broke that the Chinese government had widened a corruption investigation into executives at **PetroChina**, a Chinese energy company that is also listed on the New York Stock Exchange.[198] Shortly thereafter, shareholders sued in New York, alleging that the company failed to tell shareholders about internal corruption.[199] An amended complaint filed June 6, 2014, alleges that the company defrauded shareholders by "falsely claim[ing] to maintain high standards of corporate governance and ethics in its annual reports filed with the SEC … and on PetroChina's corporate website."[200] The complaint further claims that the company's financial statements and SOX certifications were false and misleading and that the company lacked adequate internal and financial controls.[201]

GLOBAL ANTI-CORRUPTION UPDATE

GLOBAL ANTI-CORRUPTION UPDATE

Developments in the United Kingdom

SFO Arrests Two in Rolls-Royce Investigation

In February 2014, two men were arrested, and five properties raided, as part of the ongoing criminal investigation by the SFO into corruption and bribery at Rolls-Royce.[202] The men arrested were Indian businessman **Sudhir Choudhrie**, and his son **Bhanu Choudhrie**.[203]

Allegations against Rolls-Royce center on claims that the company paid bribes in order to secure lucrative contracts in Asian markets. Before the launch of the official SFO investigation in December 2013,[204] a Rolls-Royce independent investigation unearthed "matters of concern" in the company's dealings in the region.[205] The SFO investigation into Rolls-Royce is now examining the company's activities in Asia, particularly in India, Indonesia and China.[206]

Victor Dahdaleh

On December 10, 2013, **Victor Dahdaleh** was found not guilty of bribing former executives at **Aluminium Bahrain** (Alba),[207] one of the largest aluminum smelters in the world, in return for contracts for the supply of aluminum to Bahrain, in a scheme that was alleged to have involved members of Bahrain's royal family.[208] The trial collapsed when prosecuting counsel acting for the SFO offered no evidence against Dahdaleh,[209] blaming the failure of two witnesses to attend. The two witnesses were lawyers from the law firm representing Alba in the US in a civil suit against Dahdaleh.[210]

On March 21, 2014, in a related hearing on costs brought by Dahdaleh, Justice Loraine-Smith openly blamed the SFO for the collapse of the Dahdaleh case.[211] The judge criticized the SFO for relying on Alba's counsel for both documents and witnesses, and for failing to foresee the conflict problems that ultimately arose at trial. The SFO has denied any wrongdoing in the Dahdaleh case and has denied that it improperly delegated any aspect of the investigation.[212]

SFO Investigates Alstom

In February 2014, SFO officials travelled to Paris to interview senior officials at the French train manufacturer Alstom SA in connection with the SFO's five year ongoing investigation into the company.[213] In June 2014, the UK Attorney General, Dominic Grieve QC, granted permission for the SFO to proceed with a prosecution against Alstom and its former employees over allegations

of bribery.[214] Seven Alstom employees have since been notified by the SFO that they are under investigation.[215]

In 2010, three Alstom board members were arrested in the UK on suspicion of bribery and corruption;[216] however, charges against them were subsequently dropped. Alstom has also faced corruption investigations in other jurisdictions[217] and is currently cooperating with the DOJ over allegations of bribery in Asia.[218]

FCA Fines Besso For Deficient Internal Controls

On March 17, 2014, the Financial Conduct Authority (FCA) fined **Besso Ltd.** (Besso), a Lloyd's general insurance broker, £315,000 for breaching Principle 3 of FCA's Principles for Businesses and related rules over a six-year period from 2005 to 2011.[219]

According to the FCA, Besso failed to take reasonable care to establish and maintain an effective internal system for combating the risk of bribery and corruption at the company.[220] These risks continued at Besso, despite two prior inspections by the FCA that identified significant weaknesses in its systems and controls, in addition to industry-wide warnings.[221] The FCA found that Besso's control system relating to the payment of commissions was unacceptably weak and gave rise to the risk that such commission payments could be used for corrupt purposes, including bribes.[222] It also found that Besso failed to conduct sufficient due diligence before entering into relationships with third parties.

UK Government to Review White Collar Law Enforcement

In June 2014, it was announced that former Home Secretary and Minister for Justice Ken Clarke MP will be conducting a review of the UK's ability to combat economic crime.[223] The review comes amid concerns that London's reputation as an international financial center is being tarnished by large-scale criminal investigations, such as the LIBOR scandal.

The review will focus on the key financial and white collar crime enforcement agencies; namely, the Serious Fraud Office (SFO), the City of London Police (the lead investigative force for economic crime nationally), the Metropolitan Police Service overseas anti-corruption team, and the newly formed National Crime Agency (NCA). This is not the first review of its kind in recent years, and follows in the wake of Lord Roskill's report in 1985, which established the SFO, and the Attorney General's Fraud Review, which took place between 2005 and 2007.

Clarke has indicated that his review will consider whether or not "appropriate prosecution is going ahead with reasonable efficiency." There will likely be recommendations to change the way the investigative and prosecutorial bodies interact and assist one another, though Clarke has said it is "far too early" to suggest what those changes may be.[224]

The review comes at a time when economic crime is taking an increasingly important role within government. The Serious Crime Bill, currently at its second reading in the House of Lords,[225] contains several provisions that could be of interest, such as those relating to confiscation orders and the criminalizing of professionals who assist in the furtherance of a criminal enterprise. There are also new proposed provisions to deal with the sort of financial market manipulation seen recently, such as section 36 Financial Services (Banking Reform) Act 2013, and amendments to the Financial Services and Markets Act 2000, which all seek to criminalize reckless misconduct by finance professionals and the manipulation of financial mechanisms such as LIBOR and FOREX.

Former Innospec Executives Convicted in Overseas Bribery Case

Two former executives of Innospec Limited have been convicted of conspiracy to corrupt Indonesian public officials.[226] Former CEO **Dennis Kerrison** and former sales director **Dr. Miltiades Papachristos** were convicted by an unanimous guilty verdict on June 18, 2014, convictions which follow the previous guilty pleas of Innospec and two other former executives, former CEO **Paul Jennings** and former sales director **David Turner**.[227]

At the time of this writing, the four individual executives are due to be sentenced on July 25, 2014. The defendants' conduct occurred between 2002 and 2008, pre-dating the enactment of the UK's Bribery Act 2010. The court's approach to sentencing may provide an early indication to the approach that is likely to be adopted in prosecutions made under the Bribery Act 2010 and in accordance with the soon to be enforced Corruption Sentencing Guidelines.[228]

Tesler Disbarred for FCPA Violations

The British Solicitors Regulation Authority has disbarred UK lawyer **Jeffrey Tesler** as a result of bribes that he paid Nigerian officials to obtain US$6 billion worth of liquefied natural gas contracts for his former client, KBR Inc.[229] The UK extradited Tesler to face charges in the US, and Tesler ultimately pled guilty to FCPA bribery charges. A US federal judge sentenced him in 2012 to 21 months' imprisonment.[230] Multiple KBR executives, including former CEO Albert "Jack" Stanley, also admitted to being part of the bribery scheme.[231]

Canada Takes Steps to Increase Anti-Corruption Enforcement

Nazir Karigar Sentenced Following the First CFPOA Conviction

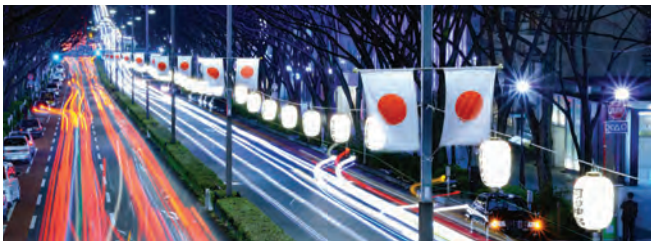
As we reported in our Winter 2014 newsletter, **Nazir Karigar** was convicted in August 2013 under Canada's anti-bribery law for his role in a failed conspiracy to secure a US$100 million security contract with Air India through bribery of Air India officials.[232] Karigar, a former executive with Canadian security systems firm Cryptometrics, was sentenced to a three-year prison term by an Ottawa judge in late May.[233] Karigar's case was the first prosecution to proceed to trial under Canada's Corruption of Foreign Public Officials Act (CFPOA), which prohibits directly or indirectly giving or offering a loan, reward, advantage, or benefit of any kind to a foreign public official to obtain or retain an advantage in the course of business.

In announcing his decision, the sentencing judge stated, "Any person who proposes to enter into a sophisticated scheme to bribe foreign public officials to promote the commercial or other interests of a Canadian business abroad must appreciate that they will face a significant sentence of incarceration in a federal penitentiary."[234] The judge imposed less than the maximum sentence possible, however, in light of Karigar's cooperation during the proceedings, his age, and the fact that the bribery scheme did not ultimately succeed.[235]

Cryptometrics Investigation Moves into a New Phase

New charges suggest that Karigar's sentencing will not be the end of the Canadian authorities' investigations of Cryptometrics in connection with the Air India plot. In early June, the Royal Canadian Mounted Police (RCMP) announced that it had issued warrants for former Cryptometrics Inc. CEO **Robert Barra** and former COO **Dario Berini**, as well as former Cryptometrics agent and U.K. national **Shailesh Govindia**.[236]

Japan Launches Investigation of Deutsche Securities Inc.



As we have reported in our Winter 2014 newsletter, in September 2013, during a regularly scheduled audit of Deutsche Securities Inc., Deutsche Bank AG's Japanese investment arm, the Japanese Securities and Exchange Surveillance Commission (SESC) uncovered large expenses incurred by bank employees for the entertainment of three Japanese pension fund executives

from 2010 to 2012.[237] On December 5, 2013, Tokyo police arrested **Shigeru Echigo**, a Deutsche Securities employee, and **Yutaka Tsurisawa**, a former official at Mitsui & Co.'s pension fund, which had been a client of Deutsche Securities. During his trial, Echigo admitted in Tokyo District Court to having spent around US$8,800 entertaining Tsurisawa, paying for meals, entertainment, overseas trips, and golf outings, as a reward for the pension fund having invested US$9.7 million with Deutsche Securities.[238] Echigo claimed, however, that the conduct was directed by Deutsche Securities, saying, "My actions as a salesman were part of systematic conduct based on the instructions and consent of my bosses at Deutsche Securities."[239]

According to Reuters, which reviewed an internal SESC report, SESC's investigation largely corroborated Echigo's claims and detailed at least one instance in October 2011 where the chairman of Deutsche Securities was present while a Japanese pension fund official was being entertained.[240] The SESC report says that the chairman participated despite realizing that the pension officials were public officials and that entertaining them could be illegal. Another senior executive, the Chief Operating Officer of Deutsche Securities, was reported to have approved a US$15,000 trip for pension officials to visit Deutsche Bank's home offices in Frankfurt, though the report also notes that the COO was unaware that the pension officials were government officials. According to the report, Echigo told two managers, including a compliance officer, that the entertainment could be problematic under Japanese law, and at least one senior manager was not only aware of such entertainment occurring within the company, but gave it his "tacit consent, believing it necessary to promote the business."[241]

The SESC report also describes how the sales team would circumvent compliance checks by manipulating entertainment receipts and how the sales team spent the equivalent of almost US$108,000 entertaining pension officials.

As a result of the reported wrongdoing, the CEO of Deutsche Securities received a 20 percent pay cut for six months, and its COO and Chairman each received a 30 percent pay cut for six months.[242] Tsurisawa was given a suspended 18-month prison sentence on March 14, and told to repay the US$8,800.[243] If convicted, Echigo faces up to three years in prison and a fine of up to 2.5 million yen (approximately US$25,000).[244]

Brazil Investigates Petrobras

Prosecutors in Brazil are investigating bribery allegations involving Brazilian oil giant **Petrobras**. The investigation is related to whether bribes totaling US$139 million dollars were paid by Dutch company **SBM Offshore** between the years of 2005 and 2012 in exchange for oil platform contracts.[245] SBM is the world's largest leaser of floating, production, storage and offloading ships, and relies on Petrobras for almost half of its annual revenue.[246]

In March, Petrobras announced that, based on its internal investigation, 'no events or documents were found to evidence bribe payments to Petrobras employees.'[247] However, an investigation by Brazil's controller-general into the alleged bribery is still ongoing. In late May, Petrobras said that it will not seek bids from SBM until the investigation is concluded.[248]

This bribery investigation comes at a time when Petrobras is under investigation for possible corruption in other matters. The Brazilian Congress and Brazilian federal police are currently probing Petrobas's purchase of an oil refinery in Pasadena, Texas for an allegedly inflated price of US$1.24 billion. The refinery had been purchased a few years earlier for only US$42 million dollars.[249] Petrobras also formed two internal commissions to investigate the construction of two refineries in Brazil, both of which have suffered massive cost overruns.[250]

African Development Bank Sanctions Four Oil Companies For Bonny Island Bribes

On March 21, 2014, the African Development Bank Group (AfDB) concluded "Negotiated Resolution Agreements" with **Kellogg Brown & Root LLC, Technip S.A.**, and **JGC Corp.** following the companies' admission of corrupt practices by the companies' affiliates in a project financed by AfDB.[251] As part of the Negotiated Resolution Agreement, the three companies agreed to pay financial penalties of US$6.5 million, US$5.3 million and US$5.2 million, respectively.

In addition, on May 28, 2014, AfDB announced that **Snamprogetti Netherlands B.V.** had admitted to "corrupt practices from 1995 until 2004 by affiliated companies," and had agreed to pay US$5.7 million in penalties, "in relation to the award of AfDB-financed services contracts" for liquefied natural gas (LNG) production plants in Nigeria.[252] AfDB has, in total, collected US$22.7 million in fines from the four companies related to the LNG production plant contracts, "among the highest ever [financial penalties] imposed by any multinational development bank."[253]

According to AfBD, the companies formed multiple Portuguese entities as joint ventures "for the purposes of bidding for engineering, procurement and construction services contracts," and over a period of almost 10 years, "the joint-venture companies made improper payments totaling US$180 million in return for the award of" contracts worth US$6 billion.[254] In addition to the monetary penalties imposed, AfDB debarred the Portuguese joint venture companies for three years, with potential cross-debarment by the Asian Development Bank, the European Bank for Reconstruction and Development, the World Bank Group, and the Inter-American Development Bank Group.[255]

Spain Criminalizes Foreign Bribery

In March 2014, Spain amended its penal code to criminalize bribery of foreign officials, expanding its law beyond bribes that occurred in Spain to include corrupt transactions that occur in other countries that involve Spanish companies or nationals.[256]

TRACE International Issues Global Enforcement Report

In March 2014, TRACE International, Inc. published its annual Global Enforcement Report, which reflected that the total number of bribery enforcement actions around the world has been increasing.[257] This report cites a number of interesting developments in the world of anti-bribery enforcement. For example, the report finds that while US enforcement activity remained flat in 2013 as compared to 2012, "[t]he number of formal foreign bribery actions by countries other than the US increased by 71% between 2012 and 2013."

CONCLUSION

Developments in the first half of 2014 confirm that efforts to combat foreign corruption will continue to make headlines in the US, UK, and around the world in 2014.[258]

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Endnotes

1 Press Release, DOJ, Marubeni Corporation Agrees to Plead Guilty to Foreign Bribery Charges and to Pay an $88 Million Fine (Mar. 19, 2014), *available at* http://www.justice.gov/opa/pr/2014/March/14-crm-290.html [hereinafter "DOJ Marubeni Press Release"]; DPA ¶ 3, *United States v. Marubeni Corp.*, Case No. 12 CR 022 (S.D. Tex. Jan 17, 2012), *available at* http://www.mainjustice.com/download-document-file/?download=205-2-Marubeni-Corporation-Deferred-Prosecution-Agreement.pdf [hereinafter "Marubeni DPA"].

2 Plea Agreement, *United States v. Marubeni Corp.*, Case No. 3:14-cr-00052 (D. Conn. Mar. 19, 2014), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/marubeni-corp/marubeni-corp-plea-agreement.pdf [hereinafter "Marubeni Plea Agreement"].

3 *See, e.g.*, Casey Sullivan, Marubeni pleads guilty to U.S. charges of bribery in Indonesia, Reuters (Mar. 19, 2014), *available at* http://www.reuters.com/article/2014/03/20/marubeni-corruption-idUSL2N0MG25K20140320.

4 DOJ Marubeni Press Release, *supra* note 1.

5 Information ¶ 10, *United States v. Marubeni Corp.*, Case No. 3:14-cr-00052 (D. Conn. Mar. 19, 2014), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/marubeni-corp/marubeni-corp-information.pdf.

6 Marubeni DPA, *supra* note 1.

7 Press Release, DOJ, Acting Assistant Attorney General Mythili Raman Speaks at the Global Anti-corruption Compliance Congress (Mar. 20, 2014), *available at* http://www.justice.gov/criminal/pr/speeches/2014/crm-speech-140320.html [hereinafter "Raman Remarks"]; DOJ Marubeni Press Release, *supra* note 1; Marubeni Plea Agreement, *supra* note 2, ¶ 17.

8 Raman Remarks, *supra* note 7.

9 DOJ Marubeni Press Release, *supra* note 1.

10 *Indonesian lawmaker jailed in Alstom-Marubeni bribe case*, Asia One (Apr. 14, 2014), *available at* http://news.asiaone.com/news/asia/indonesian-lawmaker-jailed-alstom-marubeni-bribe-case.

11 Press Release, DOJ, Marubeni Corporation Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay a $54.6 Million Criminal Penalty (Jan. 17, 2012), *available at* http://www.justice.gov/opa/pr/2012/January/12-crm-060.html.

12 *See* Marubeni DPA, *supra* note 1.

13 Arnold & Porter LLP, Global Anti-Corruption Insights (Winter 2014) at 7-8, *available at* http://www.arnoldporter.com/resources/documents/FcpaNewsletterWinter2014.pdf [hereinafter "A&P Winter 2014 FCPA Newsletter"].

14 *United States v. Esquenazi*, 752 F.3d 912, 925-26 (11th Cir. 2014).

15 A&P Winter 2014 FCPA Newsletter, *supra* note 13, at 16.

16 *See Esquenazi*, 752 F.3d at 918-20; *see also* Indictment, *United States v. Esquenazi*, Case No. 09-CR-21010 (S.D. Fla. Dec. 8, 2009), Dkt. Entry 3, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/esquenazij/12-08-09esquenazi-indict.pdf; Press Release, DOJ, Two Telecommunications Executives Convicted by Miami Jury on All Counts for Their Involvement in Scheme to Bribe Officials at State-Owned Telecommunications Company in Haiti (Aug. 5, 2011), *available at* http://www.justice.gov/opa/pr/2011/August/11-crm-1020.html.

17 Amended Judgment in a Criminal Case, *United States v. Esquenazi*, Case No. 09-CR-21010 (S.D. Fla. Oct. 26, 2011), Dkt. Entry 638, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/esquenazij/2011-11-03-esquenazij-amended-judgment.pdf; Amended Judgment in a Criminal Case, *United States v. Rodriguez*, Case No. 09-CR-21010 (S.D. Fla. Oct. 26, 2011), Dkt. Entry 637, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/esquenazij/2011-11-03-rodriguez-amended-judgment.pdf. The district court also ordered Esquenazi and Rodriguez to forfeit US$3,093,818.50.

18 *Esquenazi*, 752 F.3d at 921 (citing *United States v. Kay*, 359 F.3d 738, 749 (5th Cir. 2004)).

19 *See id.* at 924. The court concluded that accepting a traditional function limitation would run contrary to 1998 amendments to the FCPA, which implemented the US' obligations under the Organization for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention).

20 *See id.* at 925.

21 *See id.* at 925-26.

22 *See id.* at 926-27. The Eleventh Circuit noted that its list of factors was "informed" by the commentary to the OECD Convention, which the United States ratified in 1998. Opinion at 21.

23 *See id.* at 926-27. The Eleventh Circuit also noted that the OECD Convention focused in part on whether an enterprise was competing in the marketplace on a normal commercial basis or whether it received "preferential subsidies or other privileges." *See id* at 916 (quoting OECD Convention, art. 1.4, cmt. 15).

24 *See Esquenazi*, 752 F.3d at 929. The Eleventh Circuit also rejected Esquenazi's and Rodriguez's other grounds for appeal.

25 Press Release, DOJ, French Citizen Pleads Guilty to Obstructing Criminal Investigation into Alleged Bribes Paid to Win Mining Rights in the Republic of Guinea (Mar. 10, 2014), *available at* http://www.justice.gov/opa/pr/2014/March/14-crm-249.html; Judgment, *United States v. Cilins*, No. 1:13-cr-00315 (S.D.N.Y. July, 29 2014), Dkt. Entry 71.

26 Superseding Indictment, *United States v. Cilins*, No. 1:13-cr-00315 (S.D.N.Y. Feb. 18, 2014), Dkt. Entry 51, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/cilinsf/2014-02-18-cilinsf-sup-ind.pdf.

27 *See* Samuel Rubenfeld, *Mining Lobbyist Pleads Guilty in Bribery Obstruction Case*, Wall St. J. (Mar. 10, 2014), *available at* http://online.wsj.com/news/articles/SB10001424052702304020104579431650550548312 (subscription required).

28 A&P Winter 2014 Newsletter, *supra* note 13, at 14-15.

29 Press Release, DOJ, Six Defendants Indicted in Alleged Conspiracy to Bribe Government Officials in India to Mine Titanium Minerals (Apr. 2, 2014), *available at* http://www.justice.gov/opa/pr/2014/April/14-crm-333.html [hereinafter "Firtash Press Release"].

30 *Id.; see also* Indictment ¶¶ 16(b)(i)-(xvii), *United States v. Dmitry Firtash*, No. 13-CR-515 (N.D. Ill. June 20, 2013), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/firtashd/df_indictment_final_stamped_6-20-13.pdf [hereinafter "Firtash Indictment"].

31 Firtash Indictment ¶ 7.

32 *Id.* ¶¶ 7, 12.

33 *Id.* ¶¶ 1(c), 7.

34 *See* Firtash Press Release, *supra* note 29.

35 Press Release, DOJ, CEO and Managing Partner of Wall Street Broker-Dealer Charged with Massive International Bribery Scheme (Apr. 14, 2014), *available at* http://www.justice.gov/opa/pr/2014/April/14-crm-381.html.

36 Indictment ¶ 38, *United States v. Chinea and Demeneses*, No. 14 Crim 240 (S.D.N.Y. Apr. 10, 2014), Dkt. Entry 2, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/chinea/2014-04-10-chinea-indictment.pdf.

37 Press Release, SEC, SEC Charges Brokerage Firm Executives in Kickback Scheme to Secure Business of Venezuelan Bank (Apr. 14, 2014), *available at* http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370541487258#.U6i0ApRdUs8; *see also* Second Amended Complaint ¶¶ 3, 36-40, *SEC v. Bethancourt*, Case 1:13-cv-03074 (S.D.N.Y. Apr. 28, 2014), Dkt. Entry 27-3, *available at* http://www.sec.gov/litigation/complaints/2014/comp-pr2014-73.pdf.

38 Press Release, DOJ, Foreign Bribery Charges Unsealed Against Current and Former Executives of French Power Company (Apr. 16, 2013), *available at* http://www.justice.gov/opa/pr/2013/April/13-crm-434.html. Though DOJ press release does not reference the company by name, numerous news reports have identified it as Alstom. *See, e.g.*, Aruna Viswanatha, *Ex-Alstom exec pleads guilty to bribery over Indonesia power contract*, Reuters (July 17, 2014), *available at* http://www.reuters.com/article/2014/07/17/alstom-corruption-plea-idUSL2N0PS23W20140717.

39 *See* Plea Agreement, *United States v. Pierucci*, Crim. No. 3:12CR238 (D. Conn. July 29, 2013), Dkt. Entry 46, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/pieruccif/de46-pierucci-plea-agreement.pdf; Plea Agreement, *United States v. Rothschild*, Crim. No. 3:12CR223 (D. Conn. Nov. 2, 2012), Dkt. Entry 8, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/rothschildd/rothschild-guilty-plea.pdf.

40 Press Release, DOJ, Former Executive of French Power Company Subsidiary Charged in Connection with Foreign Bribery Scheme (May 1, 2013), *available at* http://www.justice.gov/opa/pr/2013/May/13-crm-496.html [hereinafter "DOJ Pomponi Press Release"]; *see also* Press Release, DOJ, Former Senior Executive of French Power Company Charged in Connection with Foreign Bribery Scheme (July 30, 2013), *available at* http://www.justice.gov/opa/pr/2013/July/13-crm-862.html; Second Superseding Indictment, *United States v. Hoskins and Pomponi*, Crim. No. 3:12CR238 (D. Conn. July 30, 2013), Dkt. Entry 50, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/pomponi/de50-second-superseding-indictment.pdf [hereinafter "Pomponi Second Superseding Indictment"].

41 Plea Agreement, *United States v. Pomponi*, Crim. No. 3:12CR238 (D. Conn. July 17, 2014), Dkt. Entry 138, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/pomponi/pomponi-plea-agreement.pdf; Courtroom Minutes, *United States v. Hoskins and Pomponi*, Crim. No. 3:12CR238 (D. Conn. July 17, 2014), Dkt. Entry No. 142.

42 Stephen Dockery, *Unaware of Indictment, Ex-Alstom Exec Visits a U.S. Territory - and Gets Nabbed*, Main Justice (June 4, 2014), *available at* http://www.mainjustice.com/justanticorruption/2014/06/04/unaware-of-indictment-ex-alstom-exec-visits-a-u-s-territory-and-gets-nabbed/.

43 *Id.*

44 Stephen Dockery, *Alstom Defendant Asks for Delay Following Voluminous U.S. Discovery Production*, Main Justice (June 4, 2014), *available at* http://www.mainjustice.com/justanticorruption/2014/06/04/alstom-defendant-asks-for-delay-following-voluminous-u-s-discovery-production.

45 *Id.*

46 Scheduling Order, *United States v. Hoskins*, Crim. No. 3:12CR238 (D. Conn. June 6, 2014).

47 DOJ Pomponi Press Release, *supra* note 40; Pomponi Second Superseding Indictment, supra note 40.

48 Superseding Indictment ¶ 4, *United States v. Pierucci and Pomponi*, Crim. No. 3:12CR238 (D. Conn. Apr. 30, 2013), *available at* http://www.justice.gov/iso/opa/resources/97120135111365434237 8.pdf.

49 Stephen Dockery, *Alstom Foreign Bribery Investigation Appears to Be Yielding a Multitude of Cases*, Main Justice (Apr. 1, 2014), *available at* http://www.mainjustice.com/justanticorruption/2014/04/01/alstom-foreign-bribery-investigation-appears-to-be-yielding-a-multitude-of-cases/.

50 Press Release, DOJ, Foreign Bribery Charges Unsealed Against Former Chief Executive Officers of Oil Services Company (Jan. 6, 2014), *available at* http://www.justice.gov/opa/pr/2014/January/14-crm-007.html [hereinafter "DOJ January PetroTiger Release"]; Press Release, DOJ, Former Chief Executive Officer of Oil Services Company Indicted in New Jersey on Foreign Bribery and Kickback Charges (May 9, 2014), *available at* http://www.justice.gov/opa/pr/2014/May/14-crm-489.html [hereinafter "DOJ May PetroTiger Release"].

51 DOJ May PetroTiger Release, *supra* note 50.

52 Criminal Complaint, *United States v. Hammarskjold*, No. 13-2086 (D.N.J. Nov. 8, 2013), *available at* http://www.justice.gov/iso/opa/resources/79320141616333061662 3.pdf [hereinafter "Hammarskjold Complaint"]; Criminal Complaint, *United States v. Sigelman*, 13-2087 (D.N.J. Nov. 8, 2013), *available at* http://www.justice.gov/iso/opa/resources/96420141616353838250 6.pdf [hereinafter "Sigelman Complaint"].

53 DOJ January PetroTiger Release; Information, *United States v. Weisman*, (D.N.J. Nov. 8, 2013), *available at* http://www.justice.gov/iso/opa/resources/69720141616363275774 6.pdf [hereinafter "Weisman Information"].

54 Hammarskjold Complaint, *supra* note 52; Sigelman Complaint, *supra* note 52; Weisman Information, *supra* note 53.

55 Hammarskjold Complaint, *supra* note 52; Sigelman Complaint, *supra* note 52.

56 DOJ January PetroTiger Release, *supra* note 50.

57 *See* SEC Settles Pending Civil Action Against Noble Executives Mark A. Jackson and James J. Ruehlen, Litigation Release No. 23083 (July 7, 2014), *available at* http://www.sec.gov/litigation/litreleases/2014/lr23038.htm; *see also* Arnold & Porter LLP, FCPA, Bribery Act & Global Anti-Corruption Insights (Summer 2012) at 20, *available at* http://www.arnoldporter.com/publications_newsletter.cfm?action=view&id=119 [hereinafter "A&P Summer 2012 FCPA Newsletter"]; Joint Stipulation and Mot. For Entry of Final Judgments, *SEC v. Jackson*, No. 4:12-cv-00563 (S.D. Tex. July 2, 2014), Dkt. Entry 209 [hereinafter "Noble Stipulation"].

58 Noble Stipulation, *supra* note 57, Ex. A ¶ 2, Ex. C ¶ 3.

59 A&P Summer 2012 FCPA Newsletter, *supra* note 57, at 20.

60 Letter from SEC to Honorable Richard J. Sullivan, *SEC v. Straub*, No. 11-cv-9645 (S.D.N.Y. Jan. 24, 2014), Dkt. Entry 81; First Amended Complaint, *SEC v. Straub*, No. 11-cv-9645 (S.D.N.Y. July 17, 2014), Dkt. Entry 155; *see also* Joel Schectman, *SEC Drops Montenegro Bribe Allegations Against Executives*, Wall St. J. (Mar. 10, 2014), *available at* http://blogs.wsj.com/riskandcompliance/2014/03/10/sec-drops-montenegro-bribe-allegations-against-executives/?cb=logged0.3326157295768255 (subscription required).

61 Letter from SEC to Honorable Richard J. Sullivan, *SEC v. Straub*, No. 11-cv-9645 (S.D.N.Y. Apr. 11, 2014), Dkt. Entry 114 [hereinafter "Straub Motion to Compel"].

62 *Id.*; Letter from DOJ to Saul M. Pilchen Esq., *SEC v. Straub*, No. 11-cv-9645 (S.D.N.Y. Mar. 4, 2013), Dkt. Entry 72 (DOJ Declinations sent to counsel for Straub).

63 Straub Motion to Compel, *supra* at 61.

64 Letter to Honorable Richard J. Sullivan, *SEC v. Straub*, No. 11-cv-9645 (S.D.N.Y. Apr. 16, 2014), Dkt. Entry 118 (Defendants' response to motion to compel deposition testimony).

65 Hearing Transcript, *SEC v. Straub*, No. 11-cv-9645 (S.D.N.Y. May 14, 2014), Dkt. Entry 123.

66 Order, *SEC v. Straub*, No. 11-cv-9645 (S.D.N.Y. May 29, 2014), Dkt. Entry 128.

67 Joint Motion, *SEC v. Straub*, No. 11-cv-9645 (S.D.N.Y. July 16, 2014), Dkt. Entry 153.

68 Arnold & Porter LLP, FCPA & Global Anti-Corruption Insights (Winter 2012) at 24, *available at* http://www.arnoldporter.com/resources/documents/FCPA%20Newsletter%202_14.pdf [hereinafter "A&P Winter 2012 FCPA Newsletter"].

69 *In re Han Yong Kim*, --- F. App'x ---, 2014 WL 1624310 (9th Cir. Apr. 24, 2014).

70 Min. Order re Def. Kim's Mot. for Leave to File a Special Appearance at 2, *United States v. Kim*, No. 8:09-CR-00077 (C.D. Cal. Apr. 4, 2011), Dkt. No. 330 (citing *Molinaro v. New Jersey*, 396 U.S. 365, 366 (1970)) [hereinafter "Kim Minute Order"]. Judge Selna also cited the "lack of mutuality flowing from entertaining a motion from a defendant who declines to submit to the Court's jurisdiction." *Id.* at 4.

71 Pet. For Writ of Mandamus at 9-10, *In re Han Yong Kim*, No. 13-72727 (9th Cir. Aug. 5, 2013), Dkt. Entry 1.

72 Kim Minute Order, *supra* note 70, at 2 (citing *United States v. Catino*, 735 F.2d 718, 722 (2d Cir. 1984)).

73 *Kim*, 2014 WL 1624310, at *1.

74 Indictment, *United States v. Kim*, No. 8:09-CR-00077 (C.D. Cal. Apr. 8, 2009), Dkt. Entry 1 [hereinafter "Kim Indictment"].

75 15 USC. § 78dd-2.

76 18 USC. § 1952.

77 Kim Indictment, *supra* note 74, ¶ at 9.

78 Judgment, *United States v. Cantor*, 1:01-CR-00687 (S.D.N.Y. May 8, 2014), Dkt. Entry 40.

79 *See* Information, *United States v. Cantor*, 1:01-CR-00687 (S.D.N.Y. July 17, 2001), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/cantor/05-03-10cantor-info.pdf.

80 *See* Press Release, US Attorney for the Southern District of New York, Former American Banknote CEO Convicted of $100 Million Accounting Fraud Scheme (Aug. 6, 2003), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/cantor/08-06-03cantor-pressrelease.pdf.

81 *See* Christopher M. Matthews, *Weissman Sentenced to Time Served, $64 Million Restitution in Fraud Case*, Wall St. J. (Jan. 8, 2013), *available at* http://blogs.wsj.com/corruption-currents/2013/01/08/weissman-sentenced-to-time-served-64-million-restitution-in-fraud-case/ (subscription required).

82 *In re Kellogg Brown & Root, Inc.*, No. 14-5055, --- F.3d ---, 2014 WL 2895939 (D.C. Cir. June 27, 2014).

83 *United States ex rel. Barko v. Halliburton Co.*, --- F.3d ---, 2014 WL 1016784 (D.D.C. Mar. 6, 2014).

84 752 F.3d 285 (2d Cir. 2014).

85 *SEC v. Citigroup Global Markets, Inc.*, 827 F. Supp. 2d 328, 332 (S.D.N.Y. 2011).

86 *Id.* at 332, 335. Judge Rakoff had raised similar concerns in conjunction with two prior settlements. *See SEC v. Vitesse Semiconductor Corp.*, 771 F. Supp. 2d 304 (S.D.N.Y. 2011); *SEC v. Bank of America Corp. (Bank of America II)*, Nos. 09-CV-6829, 10-CV-0215, 2010 WL 624581 (S.D.N.Y. Feb. 22, 2010); *SEC v. Bank of America Corp. (Bank of America I)*, 653 F. Supp. 2d 507 (S.D.N.Y. 2009). At least two other federal judges have echoed these concerns. In August 2010, Judge Huvelle in the District Court of the District of Columbia raised questions about whether to approve a proposed US$75 million SEC settlement. Her concerns mirrored Judge Rakoff's. *See* H'rg Tr., *SEC v. Citigroup*, No. 1:10-cv-01277 (D.D.C. Aug. 20, 2010), Dkt. Entry 13. Similarly, in December 2011, Judge Randa requested from the SEC "written factual predicate for why it believes the Court should find that the proposed final judgment is fair, reasonable, adequate, and in the public interest." *See* Letter to Counsel, *SEC v. Koss Corp.*, No. 2:11-cv-00991 (E.D. Wis. Dec. 20, 2011), Dkt. Entry 5, *available at* http://www.fedseclaw.com/files/2013/10/2011-12-20-Letter-Order-from-Court.pdf (citing Citigroup and Bank of America I).

87 *Id.* at 22.

88 *Id.* at 19.

89 *Id.*

90 *See generally* Arnold & Porter LLP, *Advisory - SEC Announces New Enforcement Initiatives*, (July 2013), *available at* http://www.arnoldporter.com/resources/documents/ADV713SecAnnouncesNewEnforcementInitiatives.pdf.

91 Mary Jo White, Perspectives on Strengthening Enforcement (Mar. 24, 2014), *available at* http://www.sec.gov/News/Speech/Detail/Speech/1370541253621.

92 *Id.*

93 Mary Jo White, Chairman's Address at SEC Speaks 2014 (Feb. 21, 2014), *available at* http://www.sec.gov/News/Speech/Detail/Speech/1370540822127.

94 *United States ex rel. Purcell v. MWI Corp.*, --- F. Supp. 2d ---, 2014 WL 2881550 (D.D.C. June 25, 2014).

95 2014 WL 2881550, at *5.

96 *Id.*

97 *Id.*

98 *Id.*

99 *MWI Corp.*, 2014 WL 2881550, at *7.

100 *Id.*

101 *Id.* at *8.

102 *Id.*

103 *Id.* at *8, 9 n.10.

104 DOJ Opinion Procedure Release No. 14-01 (Mar. 17, 2014), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2014/14-01.pdf [hereinafter "Release No. 14-01"].

105 DOJ Opinion Procedure Release No. 00-01 (Mar. 29, 2000), *available at* http://www.justice.gov/criminal/fraud/fcpa/opinion/2000/0001.pdf.

106 Release No. 14-01, *supra* note 104, at 4.

107 *Id.* at 6.

108 *See* A&P Winter 2014 FCPA Newsletter, *supra* note 13, at 18-19.

109 Enda Curran and Jean Eaglesham, *Regulators Step Up Probe Into Bank Hiring Overseas*, Wall St. J. (May 6, 2014), *available at* http://online.wsj.com/news/articles/SB10001424052702303417104579546190553220338 (subscription required).

110 Och-Ziff Capital Management Group LLC, Annual Report (Form 10-K), at 27 (Mar. 18, 2014), *available at* http://www.sec.gov/Archives/edgar/data/1403256/000156459014000870/ozm-10k_20131231.htm.

111 *See* Joe Palazzolo, Michael Rothfeld, and Justin Baer, *Probe Widens Into Dealings Between Finance Firms, Libya*, Wall St. J. (Feb. 3, 2014), *available at* http://online.wsj.com/news/articles/SB10001424052702303743604579355162160100456 (subscription required); Juliet Chung, *Och-Ziff Discloses Probe Into Dealings With Libyan Firm*, Wall St. J. (Mar. 18, 2014), *available at* http://online.wsj.com/news/articles/SB10001424052702304017604579448150304592832 (subscription required); John Carreyrou, *Och-Ziff Loans Financed Controversial Congo Deals*, Wall St. J. (Apr. 28, 2014), *available at* http://online.wsj.com/news/articles/SB10001424052702304788404579523772144953130 (subscription required).

112 Baxter International Inc., Annual Report (Form 10-K), at 99, *available at* http://www.sec.gov/Archives/edgar/data/10456/000119312514061654/d596470d10k.htm.

113 SciClone Pharmaceuticals Inc., Current Report (Form 8-K) ex. 99.1, at 4 (Mar. 12, 2014), *available at* http://www.sec.gov/Archives/edgar/data/880771/000119312514094596/d691639dex991.htm.

114 SciClone Pharmaceuticals Inc., Annual Report (Form 10-K), at 23-24 (Mar. 17, 2014), *available at* http://www.sec.gov/Archives/edgar/data/880771/000119312514102095/d657541d10k.htm.

115 *Id.*

116 Bio-Rad Laboratories, Inc., Annual Report (Form 10-K), at 7 (Mar. 18, 2014), *available at* http://www.sec.gov/Archives/edgar/data/12208/000001220814000020/a10k123113.htm.

117 *Id.*

118 Press Release, Bio-Rad Labs., Inc., Bio-Rad Reports Fourth-Quarter and Full-Year 2013 Financial Results (Feb. 27, 2014), *available at* http://www.sec.gov/Archives/edgar/data/12208/000001220814000006/bio-8k2272014xex991.htm.

119 Press Release, Bio-Rad Labs., Inc., Bio-Rad Reports First-Quarter 2014 Financial Results (May 6, 2014), *available at* http://www.sec.gov/Archives/edgar/data/12208/000001220814000034/bio-8k562014xex991.htm.

120 Bio-Rad Laboratories, Inc., Quarterly Report (Form 10-Q), at 21 (May 8, 2014), *available at* http://www.sec.gov/Archives/edgar/data/12208/000001220814000038/a10q33114.htm.

121 Biomet Inc., Current Report, Form 8-K (July 2, 2014), *available at* http://www.sec.gov/Archives/edgar/data/351346/000119312514260798/d753648d8k.htm.

122 Orthofix International N.V. Form 10-K/A, at 21 (Mar. 24, 2014), *available at* http://www.sec.gov/Archives/edgar/data/884624/000119312514112500/d635050d10ka.htm.

123 Stephen Jewkes, *Saipem says US DOJ has asked for information on Algeria*, Reuters (Apr. 24, 2014), *available at* http://uk.mobile.reuters.com/article/bondsNews/idUKL6N0NG5KW20140424.

124 *See* A&P Winter 2014 FCPA Newsletter, *supra* note 13, at 22.

125 SL Industries Inc., Annual Report, (Form 10-K), at 11, F-29 (Mar. 19, 2014), *available at* http://www.sec.gov/Archives/edgar/data/89270/000119312514106402/d647128d10k.htm.

126 Key Energy Services, Inc., Quarterly Report (Form 10-Q), at 33 (May 6, 2014), *available at* http://www.sec.gov/Archives/edgar/data/318996/000031899614000008/keg10-q3312014.htm.

127 Key Energy Services, Inc., Form 8-K, at 1 (June 4, 2014), *available at* https://www.sec.gov/Archives/edgar/data/318996/000119312514225914/d736651d8k.htm.

128 *See* Wal-Mart Stores, Inc. Quarterly Report (Form 10-Q), at 15 (June 6, 2014), *available at* http://services.corporate-ir.net/SEC.Enhanced/SecCapsule.aspx?c=112761&fid=9507768 [hereinafter "Wal-Mart 10-Q"].

129 *Id*.

130 Renee Dudley, *Wal-Mart Draws New Rebuke From Advisory Firms Over Probes*, Bloomberg News (May 28, 2014), *available at* http://www.bloomberg.com/news/2014-05-27/wal-mart-draws-fresh-criticism-from-shareholder-advisory-firms.html.

131 *Id*.

132 *See* Wal-Mart Stores, Inc., Schedule 14A, at 2 (May 29, 2014), *available at* http://services.corporate-ir.net/SEC.Enhanced/SecCapsule.aspx?c=112761&fid=9488432.

133 Jena McGregor, *Wal-Mart faces pressure at annual meeting*, Wash. Post (June 6, 2014), *available at* http://www.washingtonpost.com/blogs/on-leadership/wp/2014/06/06/wal-mart-faces-pressure-at-annual-meeting/.

134 Magistrate Judge's Report and Recommendation at 2-3, *City of Potomac General Employees' Retirement System v. Wal-Mart Stores, Inc.*, Civil No. 12-5162 (W.D. Ark. May 8, 2014), Dkt. Entry 133 [hereinafter "Wal-Mart R&R"].

135 *See id*. at 13.

136 *Id*.

137 *See* Wal-Mart 10-Q, *supra* note 128 at 34.

138 Katherine Rushton, *Rolls-Royce investigated in US over bribery claims*, The Telegraph (Mar. 5, 2014), *available at* http://www.telegraph.co.uk/finance/newsbysector/industry/10679362/Rolls-Royce-investigated-in-US-over-bribery-claims.html [hereinafter "Telegraph Rolls-Royce US Bribery Claims Article"].

139 Brenda Goh, *Two men arrested in UK fraud probe into Rolls Royce*, Reuters (Feb. 12, 2014), *available at* http://uk.reuters.com/article/2014/02/12/uk-rollsroyce-sfo-idUKBREA1B16O20140212.

140 Rolls-Royce Holdings plc, Annual Report 2013, at 133 (Feb. 12, 2014), *available at* http://www.rolls-royce.com/reports/2013/_assets/pdf/RR_Full%20Annual%20Report_smallest.pdf [hereinafter "Rolls-Royce 2013 Annual Report"].

141 *Id*. at 7.

142 Telegraph Rolls-Royce US Bribery Claims Article, *supra* note 138.

143 Dean Nelson, *Rolls-Royce faces inquiry over Indian jet bribes claim*, The Telegraph (Mar. 3, 2014), *available at* http://www.telegraph.co.uk/finance/newsbysector/epic/rrdot/10672170/Rolls-Royce-faces-inquiry-over-Indian-jet-bribes-claim.html.

144 Alcatel-Lucent, Annual Report (Form 20-F), at 17 (Apr. 1, 2014), *available at* http://www.sec.gov/Archives/edgar/data/886125/000119312514125806/d629011d20f.htm.

145 Deferred Prosecution Agreement ¶ 3, *United States v. Alcatel-Lucent, S.A.*, Case No. 10-20907 (S.D. Fla. Feb. 22, 2011), Dkt. Entry 10, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/alcatel-etal/02-22-11alcatel-dpa.pdf.

146 Press Release, DOJ, Alcatel-Lucent S.A. and Three Subsidiaries Agree to Pay $92 Million to Resolve Foreign Corrupt Practices Act Investigation (Dec. 27, 2010), *available at* http://www.justice.gov/opa/pr/2010/December/10-crm-1481.html [hereinafter "DOJ Alcatel-Lucent Press Release"].

147 Arnold & Porter LLP, FCPA, Bribery Act & Other Global Anti-Corruption Insights (Summer 2013), at 8, *available at* http://www.arnoldporter.com/resources/documents/FcpaNewsletterAugust2013.pdf [hereinafter "A&P Summer 2013 FCPA Newsletter"].

148 Smith & Wesson Holding Corporation, Annual Report (Form 10-K), at 24-25 (June 17, 2014), *available at* http://www.sec.gov/Archives/edgar/data/1092796/000119312514242483/d704464d10k.htm.

149 *Id*.; Press Release, SEC, SEC Charges Smith & Wesson with FCPA Violations (July 28, 2014), *available at* http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370542384677#.U9gbA1OjuA8.

150 Cisco Systems, Inc., Quarterly Report (Form 10-Q), at 32 (Feb. 20, 2014), *available at* http://www.sec.gov/Archives/edgar/data/858877/000085887714000009/csco-20140125x10qq214.htm [hereinafter "Cisco 10-Q"].

151 Roxane Marenberg, *The Importance of Ethics in Global Business*, Cisco Blogs (Dec. 23, 2013), *available at* http://blogs.cisco.com/news/the-importance-of-ethics-in-global-business/.

152 Cisco 10-Q, *supra* note 150, at 32.

153 General Cable Corporation, Annual Report (Form 10-K), at 12 (Mar. 3, 2014), *available at* http://www.sec.gov/Archives/edgar/data/886035/000088603514000021/bgc-201310k.htm.

154 Quanta Services, Inc., Quarterly Report (Form 10-Q), at 29 (May 8, 2014), *available at* https://www.sec.gov/Archives/edgar/data/1050915/000119312514190173/d692596d10q.htm.

155 VimpelCom, Ltd., Report of Foreign Private Issuer (Form 6-K), at 1 (Mar. 12, 2014), *available at* http://www.sec.gov/Archives/edgar/data/1468091/000119312514094910/d692188d6k.htm.

156 VimpelCom, Ltd., Report of Foreign Private Issuer (Form 6-K), at 1 (Mar. 18, 2014), *available at* http://www.sec.gov/Archives/edgar/data/1468091/000119312514103672/d694604d6k.htm.

157 Press Release, TeliaSonera, Update on investigations of TeliaSonera's investments in Uzbekistan (Mar. 17, 2014), *available at* http://feed.ne.cision.com/wpyfs/00/00/00/00/00/24/90/5E/wkr0006.pdf [hereinafter "TeliaSonera March 17, 2014 Press Release"]; Press Release, TeliaSonera, Dutch TeliaSonera companies subject to preliminary investigation (Mar. 12, 2014), *available at* http://feed.ne.cision.com/wpyfs/00/00/00/00/00/24/81/A3/wkr0006.pdf.

158 TeliaSonera March 17, 2014 Press Release, *supra* note 157.

159 TeliaSonera, Year-End Report, at 6-7 (Jan. 30, 2014), *available at* http://feed.ne.cision.com/wpyfs/00/00/00/00/00/23/A8/C4/wkr0006.pdf.

160 TeliaSonera, Interim Report, at 2 (Apr. 23, 2014), *available at* http://feed.ne.cision.com/wpyfs/00/00/00/00/00/25/59/B5/wkr0006.pdf.

161 Press Release, SBM Offshore NV, SBM Offshore Findings of Internal Investigation (Apr. 2, 2014), *available at* http://www.sbmoffshore.com/?press-release=sbm-offshore-findings-internal-investigation.

162 *Id*.

163 *Id*.

164 Qualcomm Inc., Quarterly Report (Form 10-Q), at 12 (Apr. 23, 2014), *available at* https://www.sec.gov/Archives/edgar/data/804328/000123445214000154/qcom03301410-q.htm#s92B95214E29B016C1B5E030720318A0B.

165 *Id*.

166 Delphi Automotive, PLC, Quarterly Report (Form 10-Q), at 17 (Apr. 24, 2014), *available at* https://www.sec.gov/Archives/edgar/data/1521332/000152133214000022/dlph331201410q.htm#s4D07CD7CFE24CC9C802622F3A9979684.

167 *Id*.

168 Johnson Controls, Inc., Quarterly Report (Form 10-Q), at 55 (May 2, 2014), *available at* https://www.sec.gov/Archives/edgar/data/53669/000005366914000016/q2fy1410-q.htm#s7CF730B2C7973D5FE08195F498CC6345.

169 *Id*.

170 *Id*.

171 Rachel Louise Ensign, *FedEx Reports Kenya Bribery Allegations to U.S. Government*, Wall St. J. (June 17, 2014), *available at* http://online.wsj.com/articles/fedex-reports-kenya-bribery-allegations-to-u-s-government-1403049189 (subscription required).

172 PTC, Inc., Quarterly Report (Form 10-Q), at 14, 17, 18 (May 6, 2014), *available at* https://www.sec.gov/Archives/edgar/data/857005/000085700514000010/ptc03292014-q2.htm.

173 Gold Fields Limited, Annual Report (Form 20-F), at 9 (Apr. 25, 2014), *available at* https://www.sec.gov/Archives/edgar/data/1172724/000119312514159410/d646278d20f.htm [hereinafter "Gold Fields 20-F"].

174 Christopher M. Matthews, *SEC Investigates Gold Fields For South African Deal*, Wall St. J. (Sept. 12, 2013), *available at* http://blogs.wsj.com/riskandcompliance/2013/09/12/sec-investigates-miner-gold-fields-for-south-african-deal/.

175 Gold Fields 20-F, *supra* note 173.

176 Press Release, DOJ, U.S. Freezes More Than $458 Million Stolen by Former Nigerian Dictator in Largest Kleptocracy Forfeiture Action Ever Brought in the U.S. (Mar. 5, 2014), *available at* http://www.justice.gov/opa/pr/2014/March/14-crm-230.html.

177 Complaint, *United States v. All Assets Held in Account Number 80020796, in the Name of Doraville Props. Corp.*, Case No. 1:13-cv-01832 (D.D.C. Nov. 18, 2013), Dkt. Entry 1, *available at* http://www.justice.gov/iso/opa/resources/765201435135920471922.pdf.

178 *Id*.

179 Complaint, *United States v. $726,951.45 In Uniti Bank Funds*, Case No. 14-cv-03140 (C.D. Cal. Apr. 24, 2014), Dkt. Entry No. 1.

180 Press Release, DOJ, U.S. Seeks to Recover Over $700,000 in Kleptocracy Proceeds of Former South Korean President Chun Doo-hwan (Apr. 24, 2014), *available at* http://www.justice.gov/opa/pr/2014/April/14-crm-430.html.

181 Notice of Settlement, *United States v. One Gulfstream G-V Jet Aircraft Displaying Tail Number VPCES, Its Tools and Appurtenances*, Civil Action No. 1:11-cv-01874-RC (D.D.C. July 18, 2014), Dkt. Entry No. 50; *see also* Press Release, DOJ, Department of Justice Seeks to Recover More Than $70.8 Million in Proceeds of Corruption from Government Minister of Equatorial Guinea (Oct. 25, 2011), *available at* http://www.justice.gov/opa/pr/2011/October/11-crm-1405.html.

182 *In re Paradigm Capital Mgmt., Inc. and Candace King Weir*, Securities Exchange Act Release No. 72393 (June 16, 2014), *available at* http://www.sec.gov/litigation/admin/2014/34-72393.pdf.

183 *Id*.

184 *Asadi v. G.E. Energy* (USA), L.L.C., 720 F.3d 620 (5th Cir. 2013).

185 Brief of The Securities And Exchange Commission, *Amicus Curiae* in Support of the Appellant at 30, *Liu Meng-Lin v. Siemens AG*, No. 13-4385 (2d Cir. Feb. 20, 2014), Dkt. Entry 50, *available at* http://www.sec.gov/litigation/briefs/2014/liu-siemens-0214.pdf [hereinafter "SEC Meng-Lin Brief"].

186 *Id.* at 29-30.

187 *Bussing v. COR Clearing*, LLC, -- F. Supp. 2d --, 2014 WL 2111207 (D. Neb. May 21, 2014).

188 *Id.* at *11.

189 *See* Och-Ziff Capital Management Group LLC, Annual Report (Form 10-K), at 27 (Mar. 18, 2014), *available at* http://shareholders.ozcap.com/phoenix.zhtml?c=213764&p=irol-sec.

190 *See* Complaint ¶ 4, *Menaldi v. Och-Ziff Capital Mgmt. Group*, Case No. 14-CV-3251 (S.D.N.Y. May 5, 2013).

191 *See* Archer Daniels Midland Co. DOJ Non-Prosecution Agreement (Dec. 20, 2013), *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/archer-daniels-midland/adm-npa.pdf [hereinafter "ADM Non-Prosecution Agreement"]; *see also* Press Release, SEC, SEC Charges Archer-Daniels-Midland Company with FCPA Violations (Dec. 20, 2013), *available at* http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370540535139 [hereinafter "ADM SEC Press Release"]. ADM's Ukrainian subsidiary separately pleaded guilty to a criminal charge for funneling bribe payments through the third party vendors.

192 *See* ADM Non-Prosecution Agreement; ADM SEC Press Release; *see also* Press Release, ADM, ADM Reaches FCPA Settlement (Dec. 20, 2013), *available at* http://www.adm.com/en-US/news/_layouts/PressReleaseDetail.aspx?ID=555.

193 Complaint ¶¶ 5-6, *Vladimir Gusinsky Revocable Trust (Derivatively) v. Archer-Daniels-Midland Co.*, Civil No. 2014-CH-00953 (Ill. Cir. Ct. Jan. 16, 2014).

194 *Id.*

195 Press Release, Hyperdynamics, Hyperdynamics Notified of DOJ Investigation (Sept. 30, 2013), *available at* http://investors.hyperdynamics.com/releasedetail.cfm?ReleaseID=793971.

196 *See* Hyperdynamics Corp., Quarterly Report (Form 10-Q), at 16 (Feb 7, 2014), *available at* http://investors.hyperdynamics.com/secfiling.cfm?filingID=1104659-14-7274.

197 *See* Hyperdynamics Corp., Quarterly Report (Form 10-Q), at 15 (May 9, 2014), *available at* http://investors.hyperdynamics.com/secfiling.cfm?filingID=1104659-14-37036.

198 *See* Chen Aizhu and Charlie Zhu, *China Investigates more top PetroChina executives over corruption*, Reuters (Aug. 27, 2013), *available at* http://www.reuters.com/article/2013/08/27/us-china-cnpc-idUSBRE97Q0DE20130827.

199 *See* Aibing Guo, *PetroChina to 'Vigorously' Contest U.S. Investor Lawsuit*, Bloomberg (Sept. 6, 2013), *available at* http://www.bloomberg.com/news/2013-09-06/petrochina-to-vigorously-contest-u-s-investor-lawsuit.html.

200 Amended Complaint, *In re PetroChina Co. Ltd. Sec. Litigation*, Master File No. 1:13-CV-6180 (ER) (S.D.N.Y. June 6, 2014).

201 *Id.*

202 Rupert Neate, *Two held in Rolls-Royce bribery inquiry*, The Guardian (Feb. 12, 2014), *available at* http://www.theguardian.com/business/2014/feb/12/rolls-royce-serious-fraud-office-indonesia [hereinafter "Rolls-Royce Guardian Article"]; Caroline Binham and Carola Hoyos, *Two arrested after raids linked to SFO's Rolls-Royce probe*, Fin. Times (Feb. 12, 2014), *available at* http://www.ft.com/cms/s/0/ce534256-93d6-11e3-bf0c-00144feab7de.html#axzz34oPt1cWA [hereinafter "Rolls-Royce FT Article"].

203 Brenda Goh, *UK political donor and son arrested in Rolls-Royce probe*, Reuters (Feb. 14, 2014), *available at* http://uk.reuters.com/article/2014/02/14/uk-rollsroyce-sfo-donors-idUKBREA1D12620140214 [hereinafter "Rolls-Royce Reuters Article"].

204 Press Release, SFO, Rolls Royce (Dec. 23, 2013), *available at* http://www.sfo.gov.uk/our-work/our-cases/case-progress/rolls-royce.aspx.

205 Rolls-Royce Guardian Article, *supra* note 202; http://www.bloomberg.com/news/2014-03-06/rolls-royce-says-u-s-justice-department-pursuing-bribery-probe.html.

206 *See* Rolls-Royce Reuters Article, *supra* note 203; Rolls-Royce FT Article, *supra* note 202.

207 *See* Press Release, SFO, Bruce Hall and Victor Dahdaleh (Dec. 10, 2013), *available at* http://www.sfo.gov.uk/our-work/our-cases/case-progress/bruce-hall-and-victor-dahdaleh.aspx [hereinafter "Dahdaleh SFO Press Release"].

208 Simon Bowers, *Victor Dahdaleh collapsed trial: main witness wants to withdraw guilty plea*, The Guardian (Mar. 3, 2014), *available at* http://www.theguardian.com/law/2014/mar/03/prosecution-witness-victor-dahdaleh-trial-withdraw-guilty-plea.

209 Dahdaleh SFO Press Release, *supra* note 207.

210 Tom Harper, *Victor Dahdaleh corruption case: Billionaire's fraud trial collapses after key SFO witnesses refuse to give evidence*, The Independent (Dec. 10, 2013), *available at* http://www.independent.co.uk/news/business/news/victor-dahdaleh-corruption-case-billionaires-fraud-trial-collapses-after-key-sfo-witnesses-refuse-to-give-evidence-8995972.html.

211 Judgment, *Dahdelah v. MacDougall and Akin Gump*, Case No. T20117607 (Southwark Crown Ct. Mar. 21, 2014), *available at* http://res.cloudinary.com/lbresearch/image/upload/v1395768096/r_v_dahdaleh210314approvedjudgment_252114_1721.pdf.

212 Simon Bowers, *Serious Fraud Office rejects criticism from judge over Victor Dahdaleh trial*, The Guardian (Mar. 21, 2014), *available at* http://www.theguardian.com/law/2014/mar/21/serious-fraud-office-rejects-criticism-judge-victor-dahdaleh-trial ; Alistair Osborne, *Judge accuses SFO of 'mismanaging' Victor Dahdaleh case*, The Telegraph (Mar. 21, 2014), *available at* http://www.telegraph.co.uk/finance/financial-crime/10715623/Judge-accuses-SFO-of-mismanaging-Victor-Dahdaleh-case.html.

213 Caroline Binham, *UK SFO investigations questioned Alstom executives*, Fin. Times (Apr. 25, 2014), *available at* http://www.ft.com/cms/s/0/3360c854-cc89-11e3-9b5f-00144feabdc0.html#axzz34oPt1cWA (subscription required).

214 Caroline Binham, *UK weighs bribery charges against Alstom*, Fin. Times (June 13, 2014), *available at* http://www.ft.com/cms/s/0/c3d16350-f31f-11e3-91d8-00144feabdc0.html (subscription required).

215 *See id.*; *UK Serious Fraud Office pursues investigation of Alstom:* FT, Reuters (June 14, 2014), *available at* http://www.reuters.com/article/2014/06/14/us-alstom-britain-sfo-idUSKBN0EP0N320140614 [hereinafter "Alstom Reuters Article"].

216 Roberta Holland, *U.K. Bribery Charges in the Offing for France's Alstom*, Compliance Week (Feb. 26, 2014), *available at* http://www.complianceweek.com/uk-bribery-charges-in-the-offing-for-frances-alstom/article/335783/ [hereinafter "Alstom CW Article"]; Suzi Ring, *Alstom Said to Face U.K. Bribery Charges After Five-Year Probe*, Bloomberg (Feb. 19, 2014), *available at* http://www.bloomberg.com/news/2014-02-19/alstom-said-to-face-u-k-bribery-charges-after-five-year-probe.html [hereinafter "Alstom Bloomberg Article"].

217 Alstom Bloomberg Article, *supra* note 216; Alstom CW Article, *supra* note 216; *U.K. Prosecutors Said to Explore Charging People in Alstom Probe*, Swiss Info (June 18, 2014), *available at* http://www.swissinfo.ch/eng/news/business/U.K._Prosecutors_Said_to_Explore_Charging_People_in_Alstom_Probe.html?cid=38793484.

218 Alstom Reuters Article, *supra* note 215.

219 FCA, Final Notice to Besso Ltd (Mar. 19, 2014), *available at* http://www.fca.org.uk/your-fca/documents/final-notices/2014/besso-limited [hereinafter "Besso Final Notice"]; *FCA fines Lloyd's general insurance broker for anti-bribery and corruption systems and controls failings*, Practical Law (Mar. 19, 2014), *available at* http://uk.practicallaw.com/8-561-4325?q=besso+ltd (subscription required).

220 Roberta Holland, *U.K. Regulator Hits Besso Ltd. with £315,000 Fine for Anti-Bribery Lapses*, Compliance Week (Apr. 2, 2014), *available at* http://www.complianceweek.com/uk-regulator-hits-besso-ltd-with-315000-fine-for-anti-bribery-lapses/article/341033/.

221 Press Release, FCA, Besso Limited fined for anti-bribery and corruption systems failings (Mar. 19, 2014), *available at* http://www.fca.org.uk/news/press-releases/besso-limited-fined-for-antibribery-and-corruption-systems-failings.

222 Besso Final Notice, *supra* note 219.

223 Caroline Binham and Helen Warrell, *City scandals prompt review of UK anti-bribery standards*, Fin. Times (June 11, 2014), *available at* http://www.ft.com/cms/s/0/34bbffc6-f186-11e3-a2da-00144feabdc0.html#axzz34oHWQc8B (subscription required).

224 *Id.*

225 Parliament, Serious Crime Bill: Lords committee stage day three (July 15, 2014), *available at* http://www.parliament.uk/business/news/2014/june/lords-serious-crime-bill/.

226 Press Release, SFO, Two More Guilty in Innospec Conspiracy Trial (June 18, 2014), *available at* http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2014/two-more-guilty-in-innospec-conspiracy-trial.aspx.

227 Kirsten Ridley, *Ex-Innospec directors found guilty over bribes to sell toxic fuel additives*, Reuters (June 18, 2014), *available at* http://www.reuters.com/article/2014/06/18/us-courts-innospec-idUSKBN0ET2G620140618.

228 UK Sentencing Council, Forthcoming guidelines, *available at* http://sentencingcouncil.judiciary.gov.uk/guidelines/forthcoming-guidelines.htm.

229 Stewart Bishop, *UK Lawyer Disbarred For KBR-Related Bribery Scheme*, Law360 (May 20, 2014), *available at* http://www.law360.com/articles/539873/uk-lawyer-disbarred-for-kbr-related-bribery-scheme [hereinafter "KBR Disbarment Article"].

230 Judgment in a Crim. Case, *United States v. Tesler*, No. 4:09-cr-00098 (S.D. Tex. Feb. 28, 2012), Dkt. Entry 95, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/tesler/2012-02-28-teslerj-judgment.pdf.

231 KBR Disbarment Article, *supra* note 229.

232 A&P Winter 2014 FCPA Newsletter, *supra* note 13, at 30.

233 Jeff Sistrunk, *Canadian Biometrics Agent Gets 3 Years In Bribery Case*, Law360 (May 29, 2014), *available at* http://www.law360.com/whitecollar/articles/543004?nl_pk=197136cb-045f-4e2d-aba6 2a40dfe2c517&utm_source=newsletter&utm_medium=email&utm_campaign=whitecollar.

234 *Id.*

235 *Id.*

236 Press Release, Royal Canadian Mounted Police, RCMP Charge Individuals with Foreign Corruption (June 4, 2014), *available at* http://www.rcmp-grc.gc.ca/ottawa/ne-no/pr-cp/2014/0604-corruption-eng.htm; Samuel Rubenfeld, *Canada Charges US Executives as Anti-Bribery Push Advances*, Wall St. J. (June 4, 2014), *available at* http://blogs.wsj.com/riskandcompliance/2014/06/04/canada-charges-american-executives-as-anti-bribery-push-advances/ (subscription required).

237 A&P Winter 2014 FCPA Newsletter, *supra* note 13, at 8.

238 *Tokyo police arrest Deutsche Sec employee, client on suspected bribery*, Reuters (Dec. 5, 2013), *available at* http://www.reuters.com/article/2013/12/05/deutsche-japan-bribe-idUSL4N0JK05M20131205; Takahiko Hyuga, *Former Deutsche Bank Salesman Admits Bribery in Tokyo*, Bloomberg (Apr. 22, 2014), *available at* http://www.bloomberg.com/news/2014-04-21/ex-deutsche-bank-salesman-to-enter-plea-in-wining-dining-probe.html [herein after "Hyuga Bloomberg Article"].

239 Hyuga Bloomberg Article, *supra* note 238.

240 Nathan Layne and Emi Emoto, *Deutsche managers knew about, didn't stop entertainment of Japan pension funds: regulator*, Reuters (June 16, 2014), *available at* http://www.reuters.com/article/2014/06/16/us-deutsche-bank-japan-report-idUSKBN0ER0S520140616.

241 *Id.*

242 Takahiko Hyuga and Takako Taniguchi, *Deutsche Bank Unit Cuts Pay for Five Executives on Japan Penalty*, Bloomberg (Dec. 12, 2013), *available at* http://www.bloomberg.com/news/2013-12-12/deutsche-bank-unit-cuts-pay-for-five-executives-on-japan-penalty.html; Hyuga Bloomberg Article, supra note 238.

243 Hyuga Bloomberg Article, *supra* note 238.

244 *Id*.

245 Samantha Pearson, *Petrobras in criminal bribery probe*, Financial Times (Mar. 18, 2014), *available at* http://www.ft.com/intl/cms/s/0/20865a70-aeb9-11e3-aaa6-00144feab7de.html#axzz38yihJ9NQ.

246 *Petrobras Investigating SBM Offshore Bribery Allegations*, Reuters (Feb. 18, 2014), *available at* http://www.rigzone.com/news/oil_gas/a/131695/Petrobras_Investigating_SBM_Offshore_Bribery_Allegations.

247 Rodrigo Otihuela, *Petrobras Finds No Evidence of SBM Offshore Contract Bribes*, Businessweek (Mar. 31, 2014), *available at* http://www.businessweek.com/news/2014-03-31/petrobras-finds-no-evidence-of-sbm-offshore-contract-bribes.

248 *Petrobras won't seek SBM Offshore bids during probe*, Reuters (May 27, 2014), *available at* http://www.reuters.com/article/2014/05/27/snippet-idUSL1N0OD0Y320140527.

249 Harry R. Weber and Dan Murtaugh, *Brazil Energy Giant Buys $1.24 Billion of Pain in Texas*, Businessweek (June 18, 2014), *available at* http://www.businessweek.com/news/2014-06-18/brazil-energy-giant-buys-1-dot-24-billion-of-pain-in-texas#p1.

250 Denyse Godoy and Juan Pablo Spinetto, *Petrobras to probe refinery contracts for bribery, Hydrocarbon Processing* (May 6, 2014), *available at* http://www.hydrocarbonprocessing.com/Article/3337945/Petrobras-to-probe-refinery-contracts-for-bribery.html.

251 Press Release, African Development Bank Group, AfDB Levies US $17 Million in Financial Penalties in Corruption Case (Mar. 21, 2014), *available at* http://www.afdb.org/en/news-and-events/article/afdb-levies-us-17-million-in-financial-penalties-in-corruption-case-12923/.

252 Press Release, African Development Bank Group, AfDB charges Snamprogetti Netherlands B.V. US $5.7 million in monetary sanction for corrupt practices (May 28, 2014), *available at* http://www.afdb.org/en/news-and-events/article/afdb-charges-snamprogetti-netherlands-b-v-us-5-7-million-in-monetary-sanction-for-corrupt-practices-13233/.

253 *Id*.

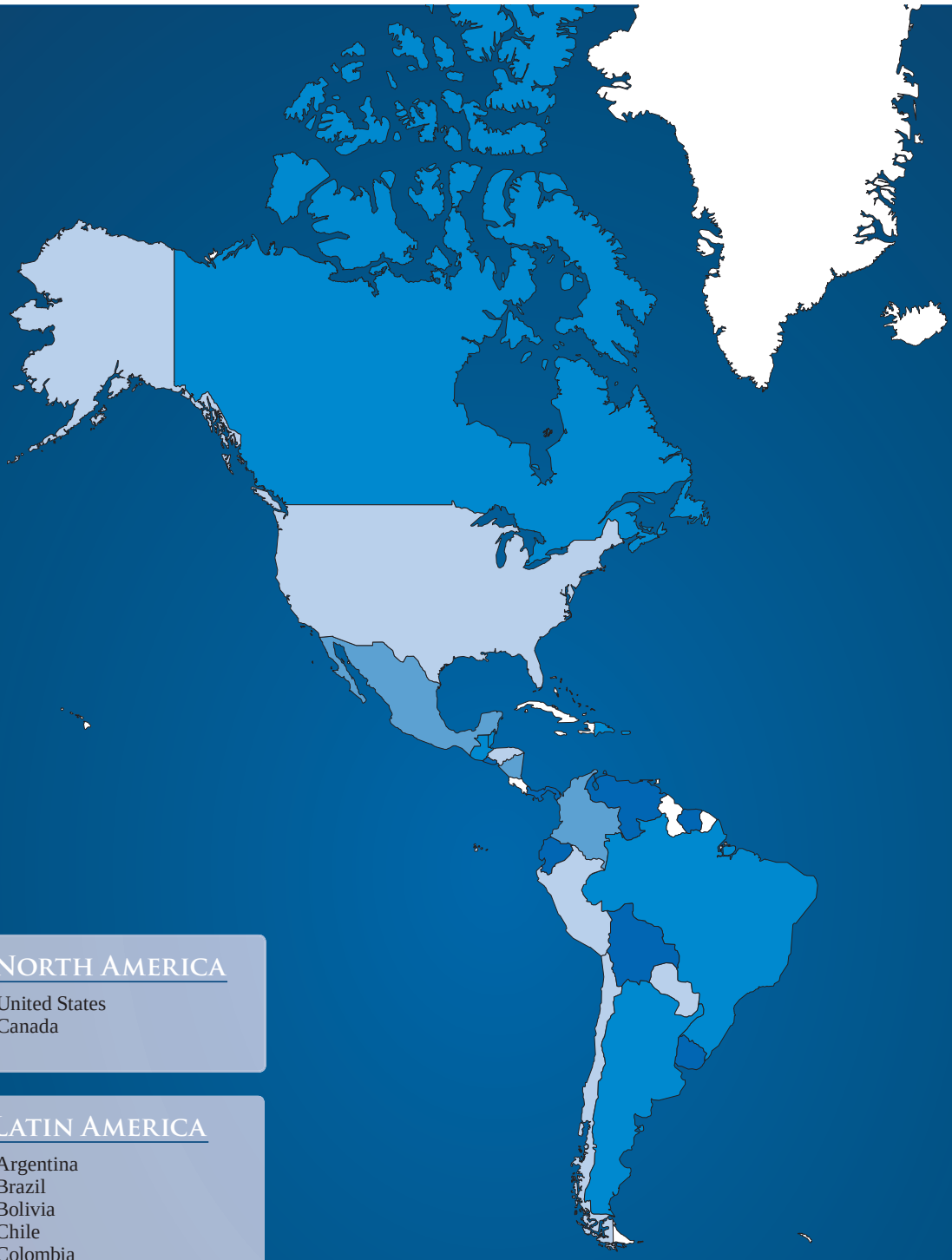
254 *Id*.

255 *Id*.; *see also* Agreement for Mutual Enforcement of Debarment Decisions (Apr. 9, 2010); *available at* http://lnadbg4.adb.org/oai001p.nsf/0/F77A326B818A19C548257853000C2B10/$FILE/cross-debarment-agreement.pdf.

256 *See* Statement of OECD Working Group on Bribery on Spain's efforts to amend its Penal Code and to enforce its foreign bribery offence (June 12, 2014), *available at* http://www.oecd.org/corruption/oecd-working-group-on-bribery-on-spain-efforts-to-amend-its-penal-code-and-to-enforce-its-foreign-bribery-offence.htm; Adam Dobrik, *Spain adopts US/UK style foreign bribery law*, Global Investigations Review (Mar. 31, 2104), *available at* http://globalinvestigationsreview.com/article/447/?utm_medium=email&utm_source=Law+Business+Research&utm_campaign=3912727_GIR+Headlines&dm_i=1KSF,2BV2V,9GPGG9,8G7A0,1.

257 TRACE International, Inc., Global Enforcement Report (GER) 2013 (Mar. 2014) at 4, *available at* http://www.traceinternational.org/Knowledge/ger2013.html.

258 Daniel Bernstein, Alex J. Berz, Abraham Gitterman, Blake Huffman, Dorian L. Hurley, Colleen Lima, Catherine Long, Meghan C. Martin, Brittany McClure, Eric McKeown, James McSweeney, Whitney Moore, Daniel T. Ostrow, Carmela Romeo, Csaba Rusznak, Brandie Weddle, Jocelyn Wiesner, Tara Williamson and Summer Associate Joshua Weiss contributed to this publication.



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