GLOBAL ANTI-CORRUPTION INSIGHTS
Update on Recent Enforcement, Litigation, and Compliance Developments

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EXECUTIVE SUMMARY: 2014 YEAR IN REVIEW

The Department of Justice and the Securities and Exchange Commission continued their focus on the Foreign Corrupt Practices Act in 2014, resolving cases against ten corporations and collecting a number of sizable monetary fines and penalties. Individual defendants remain a major focus of enforcement efforts as well, with the DOJ and the SEC pursuing significant cases against employees who allegedly engaged in foreign corruption. And regulators outside of the United States continued to ramp up their anti-corruption efforts, including the United Kingdom’s Serious Fraud Office, which obtained its first convictions following trial of violations of the Bribery Act.

We begin this edition of our Anti-Corruption Newsletter by highlighting five headlines from 2014.


The DOJ and the SEC combined to resolve FCPA enforcement actions against ten companies and certain of their subsidiaries in 2014. These cases led to approximately US$1.56 billion in criminal fines, civil monetary penalties, and disgorgement—a significant step up from the US$720 million collected in 2013 and the US$260 million in 2012.

Most of the fines hit the news in the second half of 2014, accounting for US$985 million of the US$1.56 billion in sanctions. The bulk of this came from the French power company Alstom, S.A., which agreed to pay a criminal penalty of US$772 million, the largest criminal penalty ever assessed in an FCPA enforcement action.

The SEC brought most (but not all) of its corporate enforcement actions in administrative proceedings in the second half of 2014. While a number of the cases involved parallel enforcement by both the DOJ and SEC, the SEC also went solo in three of these cases (involving Bruker Corporation, Layne Christensen Company, and Smith & Wesson Holdings Corporation).

2. DOJ and SEC Continue Their Focus on Trying to Hold Individuals Accountable

2014 saw the DOJ and SEC continuing their much-publicized effort to bring FCPA cases against individuals. In the second half of 2014, the DOJ obtained guilty pleas from three individuals and pursued its ongoing prosecution of a former Alstom employee, while the SEC obtained a cease-and-desist order against two former employees of FLIR Systems, Inc., a defense contractor. The trend has continued into 2015, with the DOJ announcing its indictment of Dmitrij Harder, a former owner and president of two consulting companies, for allegedly paying US$3.5 million to an official of the European Bank for Reconstruction and Development, and with the SEC announcing that it had settled an administrative proceeding with Walid Hatoum, a former executive of The PBSJ Corporation, for authorizing the payment of nearly US$1.4 million in bribes to a Qatari government official.

DOJ and SEC officials have made holding individuals accountable a well-publicized priority for a number of years now. Bringing an FCPA case against an individual can prove quite challenging, of course, and DOJ often will have to rely on a company’s cooperation in order to assemble the evidence it needs. Furthering that effort, DOJ officials recently have emphasized in public speeches that the degree of credit a company will get from the DOJ for cooperating in an FCPA investigation will be directly tied to the company’s willingness to assist with prosecutions of employees responsible for the bribery.

3. FCPA Disclosures Spur Related Civil Litigation

Companies disclosing potential FCPA violations increasingly are becoming targets of civil litigation brought by the company’s shareholders. One recent example involves Cobalt International Energy, Inc. and certain of its senior officers and directors, who—after disclosing in December 2014 that the SEC’s Division of Enforcement
had issued a “Wells Notice” to the company—were named as defendants in a securities fraud class action alleging that the company had concealed that it had obtained access to Angolan oil wells by paying bribes. (On January 28, 2015, Cobalt announced that the SEC had terminated its FCPA investigation.)

The threat of tag-along civil cases continues to affect how companies go about conducting internal investigations. One decision worth reading came from the Delaware Supreme Court, which held that a derivative plaintiff—a shareholder purportedly suing on the company’s behalf—may obtain materials generated during the company’s internal investigation and protected by the attorney-client privilege and attorney work product doctrine, by establishing “good cause,” such as by showing that the company’s officers or directors breached their fiduciary duties.

4. **SFO Breaks New Ground with a Pair of Bribery Convictions**

The SFO enjoyed some big successes in 2014, when it secured (1) its first conviction of a corporation for foreign bribery in a case that proceeded to trial and (2) its first convictions for violations of the Bribery Act. In December 2014, the Southwark Crown Court convicted Smith & Ouzman Ltd. and two of its employees of charges that the company and former employees violated the Prevention of Corruption Act (the 2011 Bribery Act’s predecessor) by bribing foreign officials to secure contracts in Kenya and Mauritania. The SFO also obtained its first convictions under the Bribery Act against two individuals who misled investors into believing that they had land in Cambodia planted with trees used for manufacturing biofuel. In fact, the defendants had used the investors’ money to fund their lavish lifestyles.

5. **Authorities Around the World Step Up Anti-Corruption Enforcement**

While the DOJ, the SEC and the SFO remain principal players in the anti-corruption arena, law enforcement elsewhere around the globe became increasingly active in 2014. For example, Canada’s Royal Canadian Mounted Police continued their prosecution of former SNC-Lavalin executives for alleged payment of bribes; Brazilian authorities announced charges in multiple, unfolding corruption cases; and prosecutors in Milan, Italy confirmed their investigation of oil company Eni SpA in connection with bribes it allegedly paid to acquire Nigerian oil.

We analyze these developments and more in this edition of Global Anti-Corruption Insights.
KEY ENFORCEMENT AND INVESTIGATIVE DEVELOPMENTS
Notable Corporate FCPA Enforcement Actions Resolved by the Justice Department and/or SEC

SEC Enters DPA with Florida Engineering Company and Settles Charges with a Former Executive of the Company

On January 22, 2015, the SEC announced that it had entered into a two-year deferred prosecution agreement (DPA) with The PBSJ Corporation (PBSJ)—a Florida-based engineering and construction company now known as The Atkins North America Holdings Corporation—in connection with FCPA charges relating to an alleged bribery scheme to secure two multi-million dollar contracts from the government of Qatar. This is the SEC’s second DPA in an FCPA matter; the first was entered into with Tenaris in 2011. Pursuant to the DPA, PBSJ must pay a total of US$3.4 million in disgorgement, interest, and penalties. Although according to, the SEC, PBSJ officers had “ignored multiple red flags that should have enabled other officers and employees to uncover the bribery scheme at an earlier stage,” the SEC commended the company for its self-reporting and cooperation, which included voluntarily making witnesses available for interviews and providing “factual chronologies, timelines, internal summaries, and full forensic images” to the SEC.

In a related administrative proceeding, the SEC charged former PBSJ officer Walid Hatoum with violating the anti-bribery provisions of the FCPA and with causing PBSJ to violate the books and records and internal controls provisions of the FCPA. According to Kara Brockmeyer, Chief of the SEC Enforcement Division’s FCPA Unit, “Hatoum offered and authorized nearly [US]$1.4 million in bribes disguised as ‘agency fees’ intended for a foreign official who used an alias to communicate confidential information that assisted PBSJ.” Hatoum, moreover, allegedly offered employment to a second government official in exchange for assistance. Hatoum did not admit or deny the SEC’s findings but agreed to pay a penalty of US$50,000 to settle the administrative charges.

Alstom S.A. and Subsidiaries Resolve DOJ Charges of FCPA Violations; Company Faces Ongoing Investigations Overseas

On December 22, 2014, the DOJ announced that Alstom S.A., a French energy and transportation company, had pleaded guilty to paying over US$75 million in bribes from 2000 to 2011 to government officials in the Bahamas, Egypt, Indonesia, Saudi Arabia, and Taiwan in connection with US$4 billion worth of power, grid, and transportation projects for state-owned entities. The company agreed to pay a US$772 million penalty to resolve the charges—the largest criminal fine ever imposed and the second largest FCPA penalty after Siemens AG’s US$800 million combined criminal and civil penalty in 2008.

In addition, Alstom’s Swiss subsidiary pleaded guilty to conspiracy to violate the anti-bribery provisions of the FCPA, and two U.S. subsidiaries entered into DPAs, admitting that they had conspired to violate the anti-bribery provisions of the Act. Three Alstom executives have also pleaded guilty to conspiring to violate the FCPA, and a fourth is awaiting trial. In addition to Alstom executives, the general manager of a third party involved in a deal in Egypt has pleaded guilty to mail and tax fraud and conspiracy to launder money for accepting kickbacks from Alstom, and a high-ranking member of the Indonesian Parliament was convicted in Indonesia of
accepting bribes from Alstom and is currently serving a three-year prison sentence.8

Alstom is also reportedly facing scrutiny by authorities in Brazil, the United Kingdom, India, and China.9 In the United Kingdom, for example, the SFO has charged a UK subsidiary of Alstom and four former employees with corruption relating to large transportation projects in India, Poland, Tunisia, and Lithuania, and is investigating the company’s conduct in Hungary.10

**Bruker Corporation Pays US$2.4 Million to Settle SEC FCPA Charges**

On December 15, 2014, **Bruker Corporation**, a Massachusetts-based manufacturer of scientific instruments, agreed to pay US$2.4 million in disgorgement, interest and penalties to settle the SEC’s charges of alleged violations of the books and records and internal controls provisions of the FCPA.11 According to the SEC’s order instituting a settled administrative proceeding, from at least 2005 through 2011, employees of the China offices of four Bruker subsidiaries made unlawful payments worth more than US$230,000 to Chinese government officials at Chinese state-owned entities that were Bruker customers.12 Specifically, the SEC charged that the Bruker employees funded leisure travel, including shopping trips, for Chinese government officials to visit the United States, the Czech Republic, Norway, Sweden, France, Germany, Austria, Switzerland, and Italy.13 The SEC further charged that one Bruker China office paid Chinese government officials under “collaboration agreements” for which there was “no legitimate business purpose.”14 Despite the nature of these payments, all were recorded as legitimate business and marketing expenses in the company’s books and records.15 According to the SEC, Bruker “realized approximately US$1.7 million in profits from sales contracts with [the state-owned entities] whose officials received the improper payments.”16

When it discovered these payments, Bruker initiated an internal investigation with independent counsel and self-reported the preliminary results of its investigation to both the SEC and the DOJ.17 The SEC noted that Bruker “promptly undertook significant remedial measures,” including conducting a “broad review of the China operations of its other divisions,” “revis[ing] its pre-existing compliance program,” and “updat[ing] and enhanc[ing] its financial accounting controls and its compliance protocols and policies.”18 The SEC also noted that Bruker provided “extensive, thorough, and real-time cooperation” during the SEC’s investigation, including “voluntarily provid[ing] the Commission with real-time reports of its investigative findings; shar[ing] its analysis of important documents and summaries of witness interviews; expand[ing] the scope of the investigation at the Commission’s request; and respond[ing] to the Commission’s requests for documents and information in a timely manner.”19

Taking into account the remediation and significant cooperation provided by Bruker, the SEC agreed to settle its FCPA charges against Bruker in an administrative action.20 Bruker consented to the SEC’s administrative order without admitting or denying the findings.

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**Dallas Airmotive, Inc. Admits FCPA Violations and Pays US$14 Million Criminal Penalty**

**Dallas Airmotive, Inc.** (DAI), a Texas-based provider of aircraft-engine maintenance, repair, and overhaul (MRO) services, is the latest in a series of companies that provide aircraft MRO services to resolve an FCPA investigation.21 On December 10, 2014, DAI entered into a DPA admitting that it bribed government officials in Argentina, Brazil, and Peru to secure contracts and agreeing to pay a US$14 million criminal penalty to resolve FCPA charges brought by the DOJ.22
According to a statement of facts agreed to by DAI, from 2008 through 2012, DAI and its employees and agents made unlawful payments and provided things of value to officials of the Brazilian Air Force, the Peruvian Air Force, the office of the Governor of the Brazilian State of Roraima, and the Office of the Governor of the Argentine State of San Juan to obtain and retain MRO services business for DAI and its affiliate, Dallas Airmotive do Brasil (DAB). Employees of DAI and DAB referred to bribe payments as “commissions” or “consulting fees”; used front companies affiliated with foreign officials; directly provided things of value, such as paid vacations, to a foreign official and his spouse; and made payments to third-party commercial representatives with the understanding that the payments would be passed along to the foreign officials.

The DOJ filed a criminal information in federal court in the Northern District of Texas, charging DAI with one count of conspiring to violate the FCPA and one count of violating the FCPA’s anti-bribery provisions. Under the DPA, DAI agreed to pay a US$14 million criminal penalty to resolve the FCPA charges brought by the DOJ. The DOJ considered DAI’s “substantial cooperation, including conducting an internal investigation, voluntarily making U.S. and foreign employees available for interviews, and collecting, analyzing, and organizing voluminous evidence and information” as factors in entering into the DPA.

The DPA also notes that DAI had improved its compliance program and internal controls and has committed to further enhancing both. The DPA requires DAI to report annually to the DOJ for three years but does not require DAI to engage an independent compliance monitor.

In announcing the resolution of FCPA charges against DAI, the DOJ acknowledged the “assistance of law enforcement counterparts in Brazil.”

**Bio-Rad Laboratories, Inc. Resolves DOJ and SEC Investigations**

On November 3, 2014, Bio-Rad Laboratories, Inc., a California-based life sciences research and clinical diagnostics products company, resolved parallel FCPA investigations by the DOJ and the SEC by agreeing to pay a total of US$55 million in disgorgement, interest, and penalties. Bio-Rad paid the DOJ a US$14.35 million penalty pursuant to a non-prosecution agreement (NPA), which stated that the company violated the books and records and internal controls provisions of the FCPA in connection with sales made in Russia. According to the DOJ, several high-level managers at French and Russian Bio-Rad subsidiaries who were responsible for overseeing Bio-Rad’s business in Russia, paid intermediary companies commissions of between 15 and 30 percent, purportedly for services related to sales of diagnostic products to the Russian government, despite knowing that the intermediaries were not providing those services. The intermediary companies had been created by an agent hired by the French subsidiary, Bio-Rad SNC, to assist the subsidiary with sales in Russia and were located in Panama, the United Kingdom, and Belize. The agent also established bank accounts for the intermediary companies in Lithuania and Latvia, into which Bio-Rad SNC paid funds. Bio-Rad conducted no due diligence on the intermediary companies prior to engaging them, and, according to the DOJ, the intermediary companies lacked the capabilities to perform the contractually defined services. The DOJ also noted that even had the intermediary companies actually been able to perform the services, they nevertheless would have been overpaid since they were receiving commissions of between 15 and 30 percent. The DOJ did not charge Bio-Rad with violations of the anti-bribery provisions of the FCPA or make any mention of what the payments might have been used for, but did find that the company, through its managers, had failed to implement an adequate system of accounting controls or an adequate compliance system “with regard to its Russian operations while knowing that the failure to implement such controls allowed the intermediary companies to be paid significantly above-market commissions for little or no services.”

The DOJ gave the company credit for conducting an internal investigation with independent counsel following the discovery of potential FCPA violations, and for fully cooperating with the DOJ’s investigation, including voluntarily producing U.S. and foreign employees for interviews and voluntarily producing documents from overseas. In addition, the DOJ credited the company with undertaking remedial measures to enhance its internal controls and compliance program, including its third-party due diligence procedures, and with closing its Vietnam office after learning of improper payments by
its Vietnamese subsidiary. As part of the NPA, Bio-Rad has agreed to continue cooperating with the DOJ and to periodically report on its compliance efforts for the next two years.40

The SEC charged the company with making improper payments in violation of the FCPA to government officials in Vietnam and Thailand from 2005 to 2010, and, during the same timeframe, ignoring the high probability that certain payments to third parties would be used to make improper payments to Russian government officials.41 According to the SEC’s Order, Bio-Rad’s foreign subsidiaries improperly booked US$7.5 million in payments—which resulted in US$35.1 million in illicit profits—as commissions, advertising, and training fees.42 Because the subsidiaries’ books were consolidated into the parent company’s books and records, the SEC concluded that Bio-Rad violated the anti-bribery, books and records, and internal controls provisions of the FCPA.43

The SEC entered an administrative cease-and-desist order against Bio-Rad, pursuant to which the company agreed to pay US$40.7 million in disgorgement and prejudgment interest.44

Layne Christensen Company Settles SEC Charges

As we reported in our Winter 2014 newsletter, Layne Christensen Company—a Kansas-based water management, construction, and drilling business—has been investigating potential FCPA violations in connection with payments made to agents and third parties interacting with government officials in certain African countries since 2010.45 The company disclosed in its quarterly report filed with the SEC on December 10, 2013 that it had shared the results of its internal investigation with the DOJ and SEC and was cooperating with both agencies in their investigations.46

Layne has now resolved the government’s FCPA investigations. On October 27, 2014, the SEC announced its order instituting settled administrative proceedings, which charged the company with violating the FCPA’s anti-bribery and books and records and internal controls provisions.47 To resolve these charges, without admitting or denying the SEC’s findings, the company agreed to pay US$5.1 million—US$3,893,472.42 in disgorgement plus US$858,720 in prejudgment interest, as well as a US$375,000 penalty. The company also agreed to provide periodic reports to the SEC, at no less than nine-month intervals during a two-year term, regarding the status of its FCPA and anticorruption-related remediation and its implementation of compliance measures.

According to the SEC’s Order, between 2005 and 2010, the company, through its subsidiaries in Africa and Australia, made more than US$1 million in improper payments—some of which were funded by cash transfers from its U.S. bank accounts—to government officials in the Republic of Mali, the Republic of Guinea, Burkina Faso, the United Republic of Tanzania, and the Democratic Republic of the Congo.48 The Order found that the company—with the knowledge of and in some cases authorization by the president of its Mineral Exploration Division—made these payments to obtain approximately US$3.9 million in benefits, including “favorable tax treatment, customs clearance for drilling equipment, work permits for expatriates, and relief from inspection by immigration and labor officials, as well as to avoid penalties for the delinquent payment of taxes and customs duties and the failure to register immigrant workers.”49 The order further found that the company “falsely recorded these improper payments as legitimate expenses and failed to maintain a system of internal accounting controls sufficient to provide reasonable assurances over its operations.”50

In issuing its order, the SEC credited the company’s cooperation and remediation. Upon learning of the improper payments, the company “quickly” initiated an internal investigation conducted by outside counsel, self-reported preliminary findings to the SEC, and
terminated four employees, including the president of the Mineral Exploration Division. In addition, Layne Christensen voluntarily provided the Commission with real-time reports of its investigative findings, produced English language translations of documents, made foreign witnesses available for interviews in the United States, shared summaries of witness interviews and reports prepared by forensic consultants retained in connection with the Company’s internal investigation, and responded to the Commission’s requests for documents and information in a timely manner.

Earlier, on August 15, 2014, the company announced that the DOJ “ha[d] decided to not file any charges against the Company in connection with the previously disclosed investigation into potential violations of the [FCPA]” and that the DOJ “considers the matter closed.”

Smith & Wesson Resolves SEC FCPA Charges for US$2 Million

On July 28, 2014, the SEC announced an order instituting settled administrative proceedings against Smith & Wesson Holding Corporation (Smith & Wesson), a Massachusetts-based firearms manufacturer, charging the company with violating the anti-bribery, books and records, and internal controls provisions of the FCPA. The company allegedly made or authorized improper payments to government officials in Indonesia, Bangladesh, Nepal, Pakistan, and Turkey from 2007 to 2010 in order to win contracts to supply the countries’ law enforcement agencies with firearms and related products. Smith & Wesson settled the charges with a cease-and-desist order and agreed to pay US$2 million, comprising US$107,852 in disgorgement, US$21,040 in prejudgment interest, and US$1.906 million in penalties.

The SEC alleged that during this time period, Smith & Wesson was actively trying to expand its predominately U.S. sales to several new, potentially high-risk international markets by engaging in a pattern of offering, authorizing, or making illegal payments and gifts. According to the SEC, neither Smith & Wesson’s compliance program nor its internal controls were designed or implemented to account for the FCPA risks associated with contracting in new, high-risk markets.

The Order specifically notes that the company performed no anti-corruption risk assessment of its new activities, conducted virtually no due diligence on its third-party agents, and failed to devise adequate policies and procedures for commission payments and the use of samples or gifts.

Despite the pattern of bribery, according to the SEC, Smith & Wesson succeeded in obtaining only one firearms contract—when it retained a third-party agent in Pakistan to provide over US$11,000 in free guns and cash to Pakistani police officials. The SEC Order found that the free guns and cash were authorized by Smith & Wesson’s Vice President of International Sales and its Regional Director of International Sales, and were characterized in the company’s books and records as legitimate commissions to the third-party agent.

The SEC Order also found that the Pakistan contract resulted in US$107,852 profit for Smith & Wesson, the amount the SEC required the company to disgorge.

In announcing the settlement with Smith & Wesson, Kara Brockmeyer, Chief of the SEC Enforcement Division’s FCPA Unit, said: “This is a wake-up call for small and medium-size businesses that want to enter into high-risk markets and expand their international sales. … When a company makes the strategic decision to sell its products overseas, it must ensure that the right internal controls are in place and operating.”
The SEC credited the company’s “prompt action to remediate its immediate FCPA issues,” including conducting an internal investigation, terminating its entire international sales staff, terminating pending international sales transactions,” and re-evaluating its international sales strategy. In addition, Smith & Wesson implemented a series of remedial measures designed to enhance its compliance program and strengthen its internal controls.

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

Former Owner and President of Chestnut Consulting Indicted for Violations of the FCPA

On January 6, 2015, a federal grand jury in the Eastern District of Pennsylvania indicted Dmitrij Harder, the former owner and President of Chestnut Consulting Group Inc. and Chestnut Consulting Group Co. (collectively, Chestnut Group) on charges of violating the FCPA, Travel Act, and anti-money laundering laws. The allegations in the indictment center around Chestnut Group’s payment of approximately US$3.5 million to an official of the European Bank for Reconstruction and Development (EBRD), a London-based multilateral development bank, which is owned by over 60 sovereign nations and finances development projects in Eastern Europe and other emerging markets. According to the indictment, the improper payments were made through phony contracts with the EBRD official’s sister and were “in exchange for influencing the [EBRD] official’s actions on applications for financing submitted by the Chestnut Group’s clients and for directing business to the Chestnut Group.” One application was for an EBRD investment of US$85 million and a loan of €90 million, and the other for an EBRD investment of US$40 million and a convertible loan of US$60 million. The Chestnut Group allegedly received US$8 million in success fees as a result of these applications getting approved.

Two More Executives of Direct Access Partners Plead Guilty to FCPA and Travel Act Charges

On December 17, 2014, two former executives of Direct Access Partners LLC (DAP), a now-defunct New York-based broker-dealer, pleaded guilty in Manhattan federal court to a conspiracy to violate the FCPA and the Travel Act in connection with a scheme to bribe a senior official at a Venezuelan state-owned economic development bank. The guilty pleas of Benito Chinea, DAP’s former CEO, and Joseph DeMeneses, a former DAP managing partner, follow the criminal convictions 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), who was also convicted in U.S. federal court.

The DOJ alleges that from 2008 through 2012, Chinea and DeMeneses, together with their co-conspirators, made millions of dollars in illicit payments in exchange for bond trading business that Gonzalez controlled. The defendants allegedly routed these illicit payments through third parties posing as “foreign finders” and into offshore bank accounts. According to the DOJ, DAP generated over US$60 million in commissions on trading business that resulted from the bribery scheme.

Chinea and DeMeneses have agreed to pay US$3,636,432 and US$2,670,612 in forfeiture, respectively, and their sentencing hearings are scheduled for March 27, 2015.

A parallel SEC enforcement action is pending. The federal investigation of DAP reportedly began with a periodic examination of the broker-dealer by the SEC.

Former FLIR Systems Employees Consent to SEC Cease-and-Desist Order

On November 17, 2014, the SEC announced that it had sanctioned two former employees of FLIR Systems Inc., a U.S.-based defense contractor, for violating the FCPA. Stephen Timms, head of FLIR’s Middle East office in Dubai, and Yasser Ramahi, who reported to Timms, consented to the entry of a cease-and-desist order against them and agreed to pay US$50,000 and US$20,000 respectively in financial penalties, without admitting or denying the SEC’s findings. According to the SEC, the
two provided five Saudi officials with US$7,000 worth of watches in March 2009 and arranged for certain key Saudi officials, including two who received watches, to have a “world tour” in the summer of 2009 in connection with a multi-million dollar contract with the Saudi government to provide thermal binoculars. The “world tour” for the officials consisted of 20 nights of leisure travel paid for by FLIR, with stops in Casablanca, Paris, Dubai, Beirut, and New York City, and four visits to the company’s Boston facilities (one for five hours, the others for one or two hours), as well as a few other meetings with FLIR personnel in Boston at the officials’ hotel. Timms and Ramahi attempted to cover up the world tour by claiming to the FLIR finance department that the Saudis were supposed to have paid for the trip themselves and that FLIR had paid only because of a billing mistake by FLIR’s travel agent. They then fabricated invoices and other documentation purportedly showing the mistake and also submitted false, supposedly “corrected” documentation. Similarly, when the FLIR finance department flagged the US$7,000 in watch purchases, Timms and Ramahi attempted to cover them up by claiming that the purchases were for 7,000 Saudi Riyals, not dollars. Ramahi obtained a fabricated invoice indicating that the watches were bought for 7,000 Riyals (about US$1,900), and Timms submitted this false invoice to the finance department. When the finance department emailed the third party used for the watch purchases to ask follow-up questions, Timms drafted the third party’s responses. The SEC noted in its order that FLIR had a code of conduct and required them to record information “accurately and honestly” in the company’s books and records. In addition, both Timms and Ramahi had received FCPA-compliance training, including training on providing gifts, travel, and entertainment to government officials. Former Alstom Executive’s Motion to Dismiss Indictment Denied, Trial Set for June 2015; Sentencing for Co-Defendants Delayed As we have reported previously, on July 30, 2013, the DOJ announced that it had charged former Alstom executive Lawrence Hoskins for his alleged participation in a bribery scheme in violation of the FCPA. In late December 2014, Hoskins lost his motion to dismiss the government’s indictment, and his trial currently is scheduled for June 2015. In denying his motion to dismiss, the court found that (1) whether Hoskins had withdrawn from the alleged conspiracy to violate the FCPA by resigning from Alstom on August 31, 2004, such that the charges against him were barred by the five-year statute of limitations, and (2) whether he could be considered an agent of Alstom’s U.S. subsidiary, as opposed to solely an agent of the French parent, were both factual questions for a jury to resolve. The court also found that the FCPA could be applied extraterritorially in this case because the indictment alleged that Hoskins had used U.S. wire transfers to promote the conspiracy; his lack of physical presence in the U.S. while involved in the conspiracy was not required to allege a violation of the FCPA. The court also rejected Hoskins’ arguments that venue was improper. His trial is currently scheduled for June 2, 2015. As we also reported previously, the DOJ has brought charges against other former Alstom employees. On April 30, 2013, former Alstom executive William Pomponi pleaded guilty to charges for his alleged participation in a bribery scheme in violation of the FCPA, and on July 17, 2014, Pomponi pleaded guilty. Pomponi’s sentencing, which was originally scheduled for October 22, 2014, has been continued without date to permit completion of Hoskins’ trial. Two other Alstom executives, Frederic Pierucci, an executive of the Connecticut-based U.S. subsidiary of Alstom, and David Rothschild, a former Alstom executive, have pleaded guilty. Pierucci’s sentencing, which was originally set for December 10, 2014, has been “continued with no new date set.” Rothschild’s sentencing has not yet been scheduled on the court’s docket. 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. 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.
Former BizJet CEO Sentenced to Time Served

In July 2014, Bernd Kowalewski, the former President and CEO of BizJet International Sales and Support Inc. pleaded guilty in U.S. District Court for the Northern District of Oklahoma to an FCPA charge and an FCPA conspiracy charge. On November 18, 2014, Kowalewski was sentenced to time served and a US$15,000 criminal penalty.

The scheme that led to Kowalewski's arrest involved more than US$2.5 million in payments to government officials in Brazil, Mexico, and Panama in exchange for BizJet receiving maintenance, repair, and overhaul (MRO) contracts. According to the DOJ, Kowalewski and his co-conspirators paid bribes directly, as well as through a shell company, to officials employed by the Mexican federal police, the Mexican air transport authority, the air fleet for the Mexican state of Sinaloa, the air fleet for the Mexican state of Sonora, and the Panamanian civil air authority. At corporate board meetings and in email correspondence, the co-conspirators reportedly referred to the improper payments as “commissions” or “incentives” for the foreign officials who helped them secure contracts.

Kowalewski, a German citizen, was arrested in the Netherlands in March 2014 and waived extradition to the United States on June 20, 2014. After pleading guilty in July, he was placed under house arrest in Tulsa, Oklahoma.

Kowalewski is the third BizJet executive to enter a guilty plea in this case. As we previously reported, on January 5, 2012 Peter DuBois, BizJet’s former vice president of sales and marketing, pleaded guilty to one count of conspiracy to violate the FCPA and one count of violating the FCPA, and Neal Uhl, BizJet’s former vice president of finance, pleaded guilty to one count of conspiracy to violate the FCPA. Moreover, on March 15, 2012, BizJet agreed to pay a US$11.8 million criminal penalty pursuant to a three-year DPA in order to resolve a charge of conspiring to violate the FCPA's anti-bribery provisions. BizJet’s parent company, Lufthansa Technik AG, also entered into an NPA in connection with the unlawful payments made by BizJet.

Top U.S. Enforcement Officials Comment on FCPA

In recent speeches, DOJ officials have emphasized the Department’s focus on holding individual employees of companies under investigation accountable for FCPA violations. Principal Deputy Assistant Attorney General for the Criminal Division, Marshall Miller, explained in September 2014 that the degree of credit a company will get from the DOJ under the Principles of Federal Prosecution of Business Organizations for cooperating in an FCPA investigation will be directly tied to the company’s willingness to assist the DOJ in prosecuting those employees responsible for the bribery:

If you want full cooperation credit, make your extensive efforts to secure evidence of individual culpability the first thing you talk about when you walk in the door to make your presentation. Make those efforts the last thing you talk about before you walk out. And most importantly, make securing evidence of individual culpability the focus of your investigative efforts so that you have a strong record on which to rely.

Miller noted Morgan Stanley’s assistance in securing evidence to hold an employee, Garth Peterson, criminally responsible for bribing Chinese government officials as a “critical factor” leading to the company obtaining
a declination from the DOJ. He also noted that while PetroTiger Ltd’s ex-CEO and general counsel pleaded guilty to bribing a Colombian official to obtain a US$39 million services contract, PetroTiger itself escaped all charges as a result of its cooperation.

On November 19, 2014, Assistant Attorney General Leslie Caldwell, head of the DOJ’s Criminal Division, and Andrew Ceresney, director of the SEC’s Enforcement Division, addressed the American Conference Institute’s 31st International Conference on the FCPA, both emphasizing the U.S. government’s continued commitment to fight foreign bribery. Caldwell discussed how in recent years the DOJ has improved its ability to investigate FCPA cases quickly and to prosecute individuals and intermediary entities for their roles in bribery schemes. Echoing Miller’s remarks, Caldwell said that in order for a company to get full cooperation credit, the DOJ “expect[s] [it] to provide us useful facts in a timely manner. And that includes, importantly, facts about the individuals responsible for the misconduct, no matter how high their rank may be.”

Caldwell highlighted the DOJ’s Kleptocracy Asset Recovery Initiative, which uses both criminal and civil authorities to strip corrupt officials of the proceeds of their corruption; the DOJ’s increased collaboration with law enforcement and regulatory authorities in other countries; and the benefits of cooperation with the DOJ. In encouraging companies to cooperate with U.S. authorities, she stressed that “[f]oreign data privacy laws exist to protect individual privacy, not to shield companies that purport to be cooperating in criminal investigations.” While Caldwell presented a broad vision of FCPA enforcement, she did state that “we are focusing our attention on bribes of consequence – ones that fundamentally undermine confidence in the markets and governments.”

Caldwell concluded by saying that “with the power of so many countries now standing by our side, we are determined to use every lawful means available to hold the perpetrators of corruption to account.”

Meanwhile, the SEC’s Andrew Ceresney covered four main topics: (1) a focus on cases against individuals, which are “a powerful deterrent because people pay attention and alter their conduct when they personally face potential punishment”; (2) the importance of robust compliance programs, which can help companies avoid FCPA issues in the first place and receive more lenient treatment from U.S. authorities in the event that a problem does arise; (3) the benefits of cooperation, such as self-reporting to the government, even in cases involving whistleblowers; and (4) how a broad range of items of “value”—not only money and tangible gifts, but also contributions to charities headed by or affiliated with foreign officials—may pose problems under the FCPA when provided in order to obtain or retain business.

According to a report from the Wall Street Journal, the Federal Bureau of Investigation this year is tripling the number of agents focusing on foreign bribery to more than 30. The additional agents will investigate potential violations of the FCPA, as well as potential recoveries of corrupt payments received by foreign government officials under the government’s Kleptocracy Asset Recovery Initiative. The agents will work from FBI field offices in New York, Washington, D.C., San Francisco, Los Angeles, Miami, and Boston.

In its second opinion procedure release of 2014, the DOJ provided further insight into the circumstances in which it will seek to hold an acquiring company accountable under the FCPA for the pre-acquisition conduct of its target.
While the principles contained in the opinion procedure are substantially similar to those laid out by prior DOJ opinion releases—most notably a 2008 opinion release in response to a request from Halliburton—and by the DOJ and SEC’s FCPA Resource Guide, the release does reflect the DOJ’s evolving approach.102

The requestor of the opinion was a U.S. company interested in acquiring all outstanding shares of a foreign consumer products manufacturer and its subsidiary (the target of the acquisition). Unlike the requestor, the target had minimal contacts with the United States: its operations were largely confined to its country of incorporation, and it was not an issuer of securities on any U.S. exchange.103

During the course of the requestor’s pre-acquisition due diligence, which included a review of the target’s books and records by a forensic accounting firm, the requestor discovered over US$100,000 of potentially improper payments to government officials out of the 1,300 transactions with a total value of US$12.9 million analyzed. While the majority of the potentially improper payments were for licenses and permits, others involved gifts and cash donations to government officials, charitable contributions and sponsorships, and payments to the state-owned media to minimize negative coverage. These payments were improperly classified in the target’s books and records, and the target had virtually no anti-corruption compliance program. Importantly, however, none of the improper payments had any nexus to the United States.104

The requestor represented to the DOJ that as part of integrating the target into its operations, it would also integrate the target into its compliance and reporting structure within one year of closing. In addition, it represented that no contracts or other assets that had been obtained through improper payments would remain in effect following the acquisition.105

In light of these facts, the DOJ determined that it would not have jurisdiction over the target for any improper payments that occurred pre-acquisition. Quoting from the FCPA Resource Guide, the DOJ noted that “Successor liability does not … create liability where none existed before. For example, if an issuer were to acquire a foreign company that was not previously subject to the FCPA’s jurisdiction, the mere acquisition of that foreign company would not retroactively create FCPA liability for the acquiring issuer.”106 Thus, since the target was not subject to the FCPA prior to the acquisition, its acquisition would not retroactively create liability for the requestor.

Unlike in the Halliburton Opinion Release,107 the requestor did not set forth a strict schedule for the target’s integration into its compliance program. The DOJ recognized, however, that “[t]he circumstances of each corporate merger or acquisition are unique and require specifically tailored due diligence and integration processes. Hence, the exact timeline and appropriateness of particular aspects of Requestor’s integration of the Target Company are not necessarily suitable to other situations.”108 Again citing the FCPA Resource Guide, the DOJ encouraged “companies engaging in mergers and acquisitions to (1) conduct thorough risk-based FCPA and anti-corruption due diligence; (2) implement the acquiring company’s code of conduct and anti-corruption policies as quickly as practicable; (3) conduct FCPA and other relevant training for the acquired entity’s directors and employees, as well as third-party agents and partners; (4) conduct an FCPA-specific audit of the acquired entity as quickly as practicable; and (5) disclose to the Department any corrupt payments discovered during the due diligence process.”

Rounding Out the Enforcement Docket

U.S. Supreme Court Declines to Hear Case Involving Meaning of “Foreign Official” under the FCPA

On October 6, 2014, the U.S. Supreme Court denied a petition for a writ of certiorari filed by Joel Esquenazi and Carlos Rodriguez, former owners of Terra Telecommunications Corp., who were seeking review of the U.S. Court of Appeals for the Eleventh Circuit’s interpretation of a key term in the FCPA.109 In May 2014, the Eleventh Circuit upheld Esquenazi’s and Rodriguez’s FCPA convictions, concluding that the persons they bribed were employees of an “instrumentality” of the Haitian government and therefore counted as “foreign officials” for purposes of the FCPA. 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 appellate court explained that this test involves fact-intensive inquiries and offered a non-exclusive list of factors that may be relevant.110
U.S. Supreme Court Declines to Hear Former CCI Executive’s Appeal Regarding “Fugitive Disentitlement Doctrine”

On October 20, 2014, the U.S. Supreme Court denied a petition for a writ of certiorari filed by Han Yong Kim, the former President of Control Components, Inc.’s (CCI) Korean office, who was seeking review of a lower court decision that has prevented him from challenging the bribery allegations he faces in the United States without first surrendering to U.S. authorities. In 2011, the U.S. District Court for the Central District of California cited the “fugitive disentitlement doctrine” as a basis for denying Kim’s request to contest the bribery case from South Korea, and in April of this year, the U.S. Court of Appeals for the Ninth Circuit rejected Kim’s request for a Writ of Mandamus.

Kim argued that application of the fugitive disentitlement doctrine to him was clearly erroneous, because he had at all times lived in the Republic of South Korea and had never fled from the jurisdiction of U.S. courts. Thus, in Kim’s view, he is not a fugitive and should not be prevented from invoking the U.S. court’s jurisdiction through counsel from South Korea. Although Kim’s certiorari petition pointed out that there is a split among circuit courts as to whether “constructive flight” is a basis for courts to invoke the fugitive disentitlement doctrine, the U.S. Supreme Court denied the petition.

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

Nortek Discloses Investigation Into Questionable Payments

On January 7, 2015, Nortek, Inc., a manufacturer of products including heating, cooling and security control systems, disclosed that it had discovered “questionable hospitality, gift and payment practices, and other expenses at the Company’s subsidiary, Linear Electronics (Shenzhen) Co. Ltd. (“Linear China”), which are inconsistent with the Company’s policies and raise concerns under the [FCPA] and perhaps under other applicable anti-corruption laws.” The company has initiated an internal investigation with the assistance of outside counsel and has self-reported to the SEC and DOJ. The company currently believes that the amount of the questionable expenses and payments is not material to its financial condition or results of operations.

SEC Declines to Take Enforcement Action Against Dialogic

In its November 14, 2014 Form 10-Q, California-based Dialogic Inc. announced that the SEC had concluded its informal inquiry into potential FCPA violations at the company and did not intend to recommend any enforcement action. The SEC’s inquiry, which was first disclosed in 2011, stemmed from allegations of potential FCPA violations by Veraz Networks, Inc., a company that Dialogic acquired in 2010, prior to the acquisition. In 2010, Veraz had paid US$300,000 to settle SEC charges regarding improper payments to officials in China and Vietnam.

Announcements Regarding New, Ongoing, and Closed Investigations

Bank of New York Mellon Receives Wells Notice from SEC

On January 23, 2015, the Bank of New York Mellon Corporation (BNY Mellon) disclosed that “[i]n the third quarter of 2014, the SEC Staff issued Wells notices to certain current and former employees of BNY Mellon, informing them that the SEC Staff has made a preliminary determination to recommend enforcement action against them for alleged violations of the [FCPA] in connection with the provision of a limited number of internships to relatives of sovereign wealth fund officials” and that “BNY Mellon received a similar Wells notice in the fourth quarter of 2014.” The bank was reportedly told in January 2011 of the SEC’s inquiry into its dealings with sovereign-wealth fund clients. According to BNY Mellon, other financial institutions were notified around the same time of similar inquiries by the SEC.

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Goodyear Reserves for Potential Resolution of FCPA Investigations

On October 29, 2014, Ohio-based Goodyear Tire & Rubber Co. announced that, after ongoing discussions with the DOJ and the SEC, the company was recording a charge of US$16 million in the third quarter of 2014 in connection Goodyear’s conduct in Kenya and Angola. According to Goodyear, in June 2011 an anonymous source reported that the company’s majority-owned joint venture in Kenya may have made “improper payments,” possibly in violation of the FCPA. The following month, in July 2011, an employee of Goodyear’s Angolan subsidiary reported that improper payments may also have been made in Angola. In response, Goodyear retained outside counsel and forensic accountants to investigate the allegations of improper payments in both Kenya and Angola and to examine the company’s overall compliance with the FCPA in those countries. Goodyear voluntarily disclosed the results of this initial investigation to the DOJ and the SEC. The company noted in its October 2014 10-Q that the US$16 million reserve is an estimate of the potential loss “associated with these matters,” which “could vary, and the timing of any resolution and payment [had not] yet been determined.”

Agilent Discloses Completion of DOJ and SEC Probes

Agilent Technologies, a California-based manufacturer of electronic and bio-analytical measurement instruments, disclosed in its September 29, 2014 8-K, that the DOJ and the SEC have closed their inquiries into the company’s sales practices in China without recommending any enforcement action. The company reported that it had received a letter from the SEC’s Division of Enforcement stating that its investigation had been completed and that the Division of Enforcement did not recommend any enforcement action against the company. Agilent also reported that on September 24, 2014, the company had received a letter from DOJ stating that it had closed its inquiry, citing Agilent’s voluntary disclosure and thorough investigation.

In Agilent’s September 2013 10-Q, the company reported that it had initiated an internal investigation relating to sales made by company employees and through third-party intermediaries in China which raised FCPA concerns. According to Agilent, a routine internal audit detected had detected the concerns. The DOJ and SEC each opened investigations into the company’s conduct after Agilent voluntarily advised both agencies of its internal investigation on September 5, 2013.

DOJ and SEC Close Inquiries into Image Sensing Systems

On September 8, 2014, St. Paul, Minnesota-based tech firm Image Sensing Systems (ISS) announced that the DOJ and SEC had closed their inquiries into the company’s compliance with the FCPA without recommending any enforcement action. As previously disclosed, ISS had launched an internal investigation in early 2013 upon learning that Polish authorities were probing its subsidiary, Image Sensing Systems Europe Limited SP.Z.O.O., in connection with potential criminal violations related to a project in Poland. ISS credited its voluntary disclosure, cooperation and enhancements to its compliance program as reasons for the decision not to pursue any enforcement actions.

BHP Billiton Ltd. In Discussions to Resolve Investigations

BHP Billiton Ltd.—an Australian company and one of the world’s largest producers of aluminum, copper, coal, iron ore, and other commodities— disclosed in its annual report that it is in discussions to resolve an investigation of potential FCPA violations related to BHP’s sponsorship of the 2008 Beijing Olympics and hospitality and gifts provided to Chinese dignitaries. After receiving a request for information from the SEC in August 2009, BHP launched an internal investigation and “disclosed to relevant authorities evidence that it [had] uncovered regarding possible violations of applicable anti-corruption laws involving interactions with government officials.” The annual report further explains that the “issues relate primarily to matters in connection with previously terminated exploration and development efforts, as well as hospitality provided as part of the Company’s sponsorship of the 2008 Beijing Olympics.” The Australian Federal Police are commencing their own investigation into these issues.
General Cable Corp. Announces Internal Investigation

On September 3, 2014, the Kentucky-based cable manufacturer, General Cable Corp., announced that it has been investigating transactions involving its operations in Angola, Thailand, India, and Portugal in order to determine whether anti-corruption laws may have been violated. In response to this investigation, the company is “implementing a screening process relating to sales agents … use[d] outside of the United States, including, among other things, a review of the agreements under which they were retained and a risk-based assessment of such agents to determine the scope of due diligence measures to be performed by a third-party investigative firm.”

General Cable is also reviewing its use of and payments to agents in connection with its Thailand and India operations which, according to the company, could have implications under the FCPA. In response to this investigation, the company is “implementing a screening process relating to sales agents … use[d] outside of the United States, including, among other things, a review of the agreements under which they were retained and a risk-based assessment of such agents to determine the scope of due diligence measures to be performed by a third-party investigative firm.”

The company has voluntarily disclosed this information to the SEC and DOJ and continues to cooperate with both agencies.

Cubist Pharmaceuticals Confirms DOJ and SEC Investigations

Massachusetts-based Cubist Pharmaceuticals Inc. has disclosed that it is continuing to cooperate with DOJ and SEC investigations into potential violations of the FCPA by its subsidiary Optimer Pharmaceuticals Inc. (Optimer). The DOJ and SEC investigations revolve around a 2011 attempted share grant by Optimer, and a potentially improper payment to a research laboratory associated with that grant, though the company did not disclose any detail about the conduct or countries the investigations involved. Cubist acquired Optimer, a global biopharmaceutical company, on October 24, 2013.

SEC Whistleblower Program Update

The SEC’s Whistleblower Program, created by the 2010 Dodd-Frank Act, has three principal objectives: (1) to provide monetary awards to whistleblowers; (2) to protect whistleblowers from retaliation; and (3) to protect whistleblower confidentiality. Awards are made to whistleblowers “who voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action, or related action.” To date, the Program has received 10,193 tips from whistleblowers, including 83 tips from persons living outside the United States. 423 tips related to potential FCPA violations. Since its inception, 14 whistleblowers have received monetary awards from the program, including four persons living outside the U.S. No awards have been made in the FCPA context, however.

In 2014, the SEC awarded nine whistleblowers over US$31 million, including one award over US$30 million and another award to an individual working in an audit or compliance function. The US$30 million award was made to a foreign whistleblower and is the largest in the Program’s history. The award to the whistleblower working in an audit or compliance function was made only after the whistleblower reported the violation internally and waited 120 days before reporting the violation to the SEC. The SEC reports that in 2014, it received 3,620 tips, 159 of which related to the FCPA.
In 2014, for the first time, the SEC exercised its anti-retaliation authority and charged Paradigm Capital Management, Inc., a hedge fund advisory firm, with retaliating against a whistleblower. Paradigm paid US$2.2 million to settle the charges.150

**DOJ Recovers Proceeds of Corruption under Its Kleptocracy Initiative**

The DOJ has continued its commitment to the global fight against corruption through its Kleptocracy Asset Recovery Initiative. In the consecutive months of August, September, October, and November, the DOJ announced the execution of civil forfeiture judgments and complaints against three former and one current foreign official, totaling over US$30 million.

Described by the DOJ as the largest forfeiture ever obtained through a Kleptocracy Action, on August 7, 2014, the DOJ announced the forfeiture of over US$480 million in hidden corruption proceeds by former Nigerian dictator, Sani Abacha, and his co-conspirators.151 This forfeiture judgment was the result of a complaint that the DOJ filed in November 2013, seeking to seize more than US$625 million in assets.152 As alleged in the complaint, and affirmed by Judge John D. Bates of the U.S. District Court for the District of Columbia, Abacha—along with his son, Mohammad Sani Abacha, their associate, Abubakar Atiku Bagudu, and others—embezzled public funds from the Central Bank of Nigeria on the false pretense that the funds were necessary for national security; the funds were then moved overseas through U.S. financial institutions and deposited in different banks around the world.153 Abacha and others also caused the Nigerian government to purchase bonds backed by the United States at inflated prices, resulting in a windfall of over US$282 million.154

On September 3, 2014, the DOJ announced the seizure of an additional US$500,000 worth of assets stemming from corruption proceeds obtained by former president of South Korea, Chun Doo Hwan.155 According to the DOJ, while in office Chun accumulated over US$200 million in bribes, which he and his relatives “systematically laundered” through a “complex web of transactions in the United States and Korea.”156 The DOJ seized US$726,000 in April 2014 based on proceeds of a residence purchased by Chun’s son, Chun Jae-Yong, located in Newport Beach, California. This additional US$500,000 seizure came on the heels of a federal district court in Pennsylvania unsealing DOJ’s seizure warrant application filed on August 22, 2014 based on a US$500,000 Pennsylvania limited partnership established by Chun’s daughter-in-law, Park Sang-Ah.157 The total amount of seized proceeds traceable to Chun now exceeds US$1.2 million.158

On October 10, 2014, DOJ announced the settlement of its civil forfeiture case filed in October 2011 against the Second Vice President of Equatorial Guinea, Teodoro (Teddy) Obiang Mangue.159 According to the DOJ, Obiang received an official government salary of less than US$100,000, but used his position and influence as a government minister to accumulate over US$300 million worth of assets in violation of both Equatoguinean and U.S. law.160 Obiang then used intermediaries to acquire several assets in the United States, including a US$30 million mansion in Malibu, California; a Ferrari; and approximately US$1 million of Michael Jackson memorabilia.161 Under the settlement agreement, Obiang must sell these items and give most of the proceeds to a charity for the benefit of the people of Equatorial Guinea.162 Obiang must also disclose and remove other assets he owns in the United States, and if certain other assets not in the United States are ever brought into the United States, such assets will be subject to seizure and forfeiture as well.163

On November 7, 2014, the DOJ announced the filing of a civil forfeiture complaint in July against Chad’s former Ambassador to the United States and Canada, Mahamoud Adam Bechir.164 According to the DOJ, in 2009 Bechir used his position “to influence the award of oil development rights in Chad in exchange for US$2 million and other valuable interests from Griffiths Energy International Inc., a Canadian company” under the guise of various consulting agreements.165 The DOJ further alleged that once the company secured its oil rights in Chad, US$2 million was subsequently transferred to an account located in Washington, D.C. held by a shell company created by Bechir’s wife, Nouracham Niam.166 These payments were then commingled with other funds, US$1,474,517 of which were subsequently transferred to Bechir’s bank account in South Africa, where he is currently serving as Chad’s Ambassador.167 On September 9, 2014, the DOJ’s seizure warrant was executed with respect to US$106,488.31, the current balance of Bechir’s account in South Africa.168 Griffiths Energy pleaded guilty to bribing Bechir in Canadian court in 2013.169
FCPA-Related Civil Litigation

Wal-Mart Ordered to Produce Internal Investigation Documents

Two shareholder suits against Wal-Mart continue to move forward. Both suits stem from allegations that in the early 2000s Wal-Mart’s Mexican subsidiary bribed Mexican officials and that once Wal-Mart executives became aware of the matter, they failed to conduct a proper investigation.

In the first case, which is pending in the Western District of Arkansas, shareholders brought a “securities fraud putative class action on behalf of all persons who purchased or otherwise owned common stock of [Wal-Mart] between December 8, 2011 and April 20, 2012. …” The plaintiffs allege violations of Section 10(b) and 20(a) of the 1934 Securities Act and Rule 10b-5. According to the plaintiffs, in December 2011, Wal-Mart filed a 10-Q with the SEC that deceptively “omitted” the fact that Wal-Mart learned of suspected corruption in 2005 and conduct an internal investigation in 2006. …”

Wal-Mart filed a motion to dismiss the complaint in March, 2013. United States District Judge Susan O. Hickey referred the motion to Magistrate Judge Erin L. Setser, who issued a Report and Recommendation recommending denial. On September 26, 2014, Judge Hickey adopted the Report and Recommendation, agreeing that Wal-Mart’s submission to the SEC “could have left a reasonable investor with the impression that [Wal-Mart] first learned of the suspected corruption during fiscal year 2012—an impression that would be untrue.” The court also found that the plaintiffs sufficiently alleged the requisite scienter for the claims. As result, the parties are now moving forward with discovery.

In the second case, shareholders brought a suit against Wal-Mart in Delaware Chancery Court to inspect the company’s books and records under Section 220 of the Delaware General Corporation Law so that they can “investigate mismanagement and possible breaches of fiduciary duty by the directors and officers. …” On October 15, 2013, the Court of Chancery entered a final order requiring Wal-Mart “to produce (1) officer (and lower)-level documents regardless of whether they were ever provided to Wal-Mart’s Board of Directors or any committee thereof; (2) documents spanning a seven-year period [2005-2012] and extending well after the timeframe at issue; (3) documents from disaster recovery tapes; and (4) any additional responsive documents ‘known to exist’ by the undefined ‘Office of the General Counsel.’” Moreover, the order “requires the production of … contents of Responsive Documents that are protected by the attorney-client privilege … and the contents that are protected by the attorney work-product doctrine …” Wal-Mart’s production is supposed to cover “1) any aspect of the … Investigation; 2) [Wal-Mart’s] FCPA general compliance policies and procedures; and 3) [Wal-Mart’s] internal investigation policies, procedures, and/or protocols.”

Wal-Mart appealed to the Supreme Court of Delaware, which, on July 25, 2014 upheld the Court of Chancery’s decision. The Supreme Court found that the “officer-level documents are necessary and essential to determining whether and to what extent mismanagement occurred and what information was transmitted to Wal-Mart’s directors and officers.” In requiring the production of documents protected by the attorney-client privilege, the Court explicitly adopted the Garner doctrine for the first time. This doctrine states that “where the corporation is in suit against its stockholders on charges of acting inimically to stockholder interests,” the shareholders may have access to otherwise protected material for good cause, such as proving a breach of a fiduciary duty.

Prior to Wal-Mart’s October 29, 2014 production deadline, Wal-Mart filed a motion with the Court of Chancery seeking clarification of its original order. On October 23, 2014, the court issued an order stating that Wal-Mart did not have to produce documents created as part of its 2011-2012 investigation into the original allegations of bribery and Wal-Mart’s response. However, Wal-Mart had to include all documents from its 2011-2012 investigation in a privilege log for possible use in future litigation. On December 11, 2014, the plaintiffs filed a motion seeking sanctions against Wal-Mart for its “materially deficient” production in the Delaware action. The plaintiffs asked for US$1 million and an additional US$10,000 per day until Wal-Mart fully complies with the court order.

In its most recent Form 10-Q, filed with the SEC on December 12, 2014, Wal-Mart mentioned both lawsuits, but stated that “Management does not believe any possible loss or the range of any possible loss may be incurred in connection with these proceedings will be material to the Company’s financial condition or results of operation.”
Business Groups Support Protection Against Defamation Suits Based On Communications With DOJ

On October 31, 2014, three major business groups—the U.S. Chamber of Commerce, the National Association of Manufacturers, and the American Petroleum Institute—filed an amicus brief in the Supreme Court of Texas in support of Shell Oil Co. and Shell International Exploration and Production, Inc. (collectively, Shell). The brief comes in response to a decision by the Texas First Court of Appeals, which refused to extend an absolute privilege to Shell for communication between the company and the Justice Department and, accordingly, allowed a defamation suit against Shell by a former employee to proceed.

In the amicus brief, the business groups contend that the “court of appeals decision undermines corporate cooperation with federal government investigators and does little to discourage companies from making false statements to the government.” Moreover, the brief discusses how, by discouraging corporate self-disclosure, the appellate court ruling undercuts Congress’ policy goals in passing the FCPA.

The business groups highlight the tension created, on the one hand, by a rule that exposes corporations to defamation liability for communications with federal agencies and, on the other, by the U.S. Sentencing Guidelines that reduce the offense level for companies that report offenses to governmental authorities when that information is “sufficient for law enforcement to identify … the individual(s) responsible for the criminal conduct.” There is also a concern, according to the business groups, that this decision will make Texas a magnet for “fishing expeditions” launched by employees seeking to uncover reports from the many companies that have a presence in Texas.

By way of background, in November 2010, as part of a settlement with the SEC and the DOJ, a number of companies, including Shell Oil Co. and two of its subsidiaries, paid millions of dollars in both fines and criminal penalties. According to an SEC Press Release, Royal Dutch Shell plc, Shell Oil Co., and its indirect subsidiary, Shell International Exploration and Production, Inc. “violated the FCPA by using a customs broker to make payments from 2002 to 2005 to officials at [Nigerian Customs Service] to obtain preferential customs treatment related to a project in Nigeria.” Before the settlement was reached, the company had provided federal authorities with information from its investigation, including a memorandum describing Robert Writt as a “major participant” in the bribery scheme. The memo further stated that Writt recommended the company reimburse contractor payments that Writt knew to be bribes and that Writt failed to report illegal conduct.

Writt went on to file a defamation suit against Shell for being named in the memorandum, and though the trial court granted summary judgment in favor of Shell—based on Shell’s “absolute privilege” or “immunity” to make defamatory statements to the DOJ—the Texas First Court of Appeals reversed the trial court’s finding of absolute privilege. Specifically, the appellate court found that, given the public interest in cooperation with the DOJ, the communication made by Shell was protected by a “conditional privilege”; however, the court found that the evidence presented to the trial court did not suffice to establish Shell’s “absolute privilege” in these circumstances. The court explained that “neither Shell nor Writt was a party to an ongoing or proposed judicial or quasi-judicial proceeding at the time that Shell made the complained-of statements.”

The Texas Supreme Court heard oral argument on November 6, 2014.

Cobalt International Energy, Inc. Faces Class Action Lawsuit After Disclosing “Wells Notice” from SEC

On November 30, 2014, Houston-based oil exploration and production company Cobalt International Energy, Inc. (Cobalt) and certain of its senior executives were hit with a shareholder class action lawsuit based on alleged misstatements to investors regarding the nature of the company’s operations in the Republic of Angola. This shareholder suit—which alleges, among other things, that Cobalt concealed that it obtained access to Angolan oil wells through bribery and improper partnerships with shell companies partially owned by high-level Angolan officials—follows Cobalt’s August 5, 2014 announcement that the SEC’s Division of Enforcement had issued a “Wells Notice” stating that the Division was considering recommending an enforcement action for possible violations of federal securities laws. In 2011, the SEC issued a formal order of investigation regarding Cobalt’s Angola operations.
On January 28, 2015, however, Cobalt announced that it received a letter from the SEC advising that the Commission had concluded its investigation relating to Cobalt’s operations in Angola and no longer intended to recommend an enforcement action.\(^{199}\)

Alcoa will also pay US$3.75 million in attorneys’ fees, costs, and expenses.\(^{205}\) The settlement follows Alcoa’s guilty plea in January 2014 to one count of violation of the anti-bribery provisions of the FCPA.\(^{206}\) As part of its guilty plea, Alcoa paid a criminal fine of US$209 million and a forfeiture of US$14 million.\(^{207}\)

**Court Approves Settlement of Alcoa Shareholder Suit**

On January 20, 2015, U.S. District Judge Donetta W. Ambrose of the Western District of Pennsylvania approved a settlement between the board of Alcoa Inc. and the company’s shareholders.\(^{200}\) The shareholders’ suit alleged that Alcoa’s officers allowed Alcoa to engage in a scheme whereby Alcoa overcharged the government of Bahrain by approximately US$2 billion for the purchase of alumina over fifteen years.\(^{201}\) According to the complaint, Alcoa bribed Bahraini officials and employees of the alumina smelter controlled by the government of Bahrain in exchange for the smelter paying excessive prices for alumina.\(^{202}\) The suit further alleged that Alcoa’s officers breached their fiduciary duties and wasted corporate assets by allowing the bribery scheme to occur.\(^{203}\)

Under the terms of the settlement, Alcoa must institute certain compliance reforms, such as the creation of a high-level chief ethics and compliance officer position and the development of an anti-corruption policy.\(^{204}\)
In late December 2014, the SFO won its first corporate foreign-bribery conviction. Smith & Ouzman Ltd., a global printing company based in Eastbourne, was convicted in the Southwark Crown Court of making corrupt payments totaling £395,074 to foreign officials in order to secure business contracts in Kenya and Mauritania in violation of Section 1(1) of the Prevention of Corruption Act 1906 (the Bribery Act's predecessor).

Christopher John Smith, chairman of Smith and Ouzman, and Nicholas Charles Smith, the company’s sales and marketing director, were convicted of agreeing to make corrupt payments. Two other Smith and Ouzman employees, Timothy Hamilton Forrester and Abdirahman Mohamed Omar, were acquitted of similar charges. On February 12, 2015, Christopher Smith was sentenced to 18 months' imprisonment suspended for two years, and Nicholas Smith was sentenced to three years’ imprisonment.

The convictions came at the end of a three-year investigation by the SFO. Speaking after the convictions, SFO director David Green QC remarked: “This is the SFO’s first conviction, after trial, of a corporate for offences involving bribery of foreign public officials. Such criminality, whether involving companies large or small severely damages the UK’s commercial reputation and feeds corrupt governance in the developing world.”

On December 5, 2014, three individuals—James Brunel Whale, former Director, Chief Executive Officer and Chairman of Sustainable Growth Group (SGG); Gary Lloyd West, former Director and Chief Commercial Officer of SGG subsidiary Sustainable AgroEnergy plc (SAE); and Stuart John Stone, Director of SJ Stone Ltd, a sales agent of unregulated pension and investment products—were convicted of offenses relating to misleading investors into believing SAE owned land in Cambodia planted with Jatropha trees that could be used for biofuel. The offenses took place between April 2011 and February 2012 and concerned what prosecutors said was a £23 million Ponzi scheme, used by the defendants to fund lavish lifestyles at investors’ expense. West and Stone were convicted of multiple charges, including two counts each of requesting or accepting bribes in violation of the Bribery Act—the first convictions secured under the Act by the SFO since it came into force in July 2011. In addition, West was convicted of conspiracy to commit fraud, conspiracy to furnish false information, and fraudulent trading; Stone was convicted...
of conspiracy to furnish false information; and Whale was convicted of conspiracy to commit fraud and fraudulent trading. A fourth defendant, Fung Fong Wong, SAE’s former controller, was acquitted of the charges brought against him.

On December 8, 2014, Whale, West and Stone were sentenced by the Southwark Crown Court to 9, 13, and 6 years in prison, respectively.216 All three were subject to disqualification from serving as company directors for between 10 and 15 years.

**Innospec Employees Sentenced**

On March 18, 2010, Innospec Ltd., a manufacturer and distributor of fuel additives and other chemicals, pleaded guilty in Southwark Crown Court to a charge of conspiracy to bribe employees of an Indonesian state owned refinery and other Indonesian officials.217 The company was fined £7.5m.218

On June 18, 2014, Innospec employees Miltiades Papachristos and Dennis Kerrison, were convicted of conspiracy to corrupt.219 Both were alleged to have conspired between 2002 and 2008 “to give or agree to give corrupt payments contrary to section 1 of the Prevention of Corruption Act 1906 to public officials and other agents of the Government of Indonesia as inducements to secure or as rewards for having secured contracts from the Government of Indonesia for the supply of its products, including Tetraethyl Lead to the said Government of Indonesia by Innospec Ltd.”220 Two other defendants in the Innospec case, Paul Jennings and David Turner, pleaded guilty to related charges of conspiracy to commit corruption for bribing Iraqi and Indonesian government officials in 2012 to increase sales of a fuel additive.221

On August 4, 2014, during the Southwark Crown Court sentencing of Papachristos and Kerrison, His Honour Judge Goymer remarked that “[c]orruption in this company was endemic, institutionalised and ingrained … and made by human minds.”222 Kerrison and Papachristos were initially sentenced initially to four years and 18 months respectively, though Kerrison’s sentence was reduced to three years on appeal.223

**SFO Investigates Sweett Group**

On July 14, 2014, the SFO announced that it had opened an investigation into the Sweett Group’s activities in the UAE and elsewhere.224 Sweett Group is a global provider of professional services for the construction and management of building and infrastructure projects.225 Allegations against the company first surfaced in 2012 in the Wall Street Journal, which reported that a former Dubai-based employee of the company had requested that an architecture firm bribe an Emirati official in order to secure a hospital construction contract in Morocco worth US$100 million.226 The project was funded by the Khalifa Bin Zayed Al Nahyan Foundation, a foundation established by the UAE president, Khalifa Bin Zayed Al Nahyan.227 In 2014 the Sweett Group commissioned an international law firm to conduct an independent investigation into the allegations.228 In a statement to its shareholders in July this year, the Sweett Group stated that:

Evidence came to light that suggests that material instances of deception may have been perpetrated by a former employee or employees during the period 2009 - 2011. One of the former employees refused to answer questions asked of him by the independent investigators.229

On November 6, 2014, Sweett Group announced that its independent investigation was nearing completion. The Sweett Group’s announcement states that “[i]n mid-August 2014, Sweett Group took the decision on legal advice to continue its independent investigation. Consequent to that decision, the SFO no longer considered Sweett Group to be cooperating. The Company will continue to comply with all reasonable requests made by the SFO, subject to legal professional privilege.”230

**Alba CEO Bruce Hall Sentenced**

Bruce Hall, the CEO of Aluminium Bahrain B.S.C. (Alba) from 2001 to 2005,231 was charged in February 2012 by the SFO with conspiracy to corrupt,232 corruption and acquiring and transferring criminal property in connection with contracts for the supply of goods and services to Alba.233 Hall pleaded guilty to one charge of conspiracy to corrupt on June 27, 2012.235

On July 22, 2014, Hall was sentenced in Southwark Crown Court to 16 months in prison and to pay £3,070,106.03. During Hall’s sentencing, the court heard how he had received £2.9 million in payments between 2002 and 2005, including corrupt payments from the Bahraini royal family and Bahrain’s minister of finance at the time. In addition,
Hall was ordered to pay £500,010 in compensation to Alba and a £100,000 contribution to prosecution costs. According to the SFO, Hall’s received a reduced sentence as a result of cooperation with authorities and early guilty plea.236

More Arrests Expected for Rolls-Royce

On December 23, 2013, the SFO confirmed that it had opened a criminal investigation into allegations of bribery and corruption at Rolls-Royce, the world’s second biggest manufacturer of aircraft engines.237 The SFO investigation is focusing on Rolls-Royce’s “intermediaries” who handle sales, distribution, repair and maintenance for the company in countries outside the United Kingdom, particularly in China and Indonesia.238

In February 2014, Bhanu Choudhrie, executive director of C&C Alpha Group Ltd., and his father, Sudhir Choudhrie, were arrested in connection with the investigation.239 Bail for the pair was reportedly lifted in July of this year, suggesting they are no longer subjects of investigation.240

In September 2014, during an interview at the Cambridge International Symposium on Economic Crime, SFO director David Green QC said that “there will be more arrests” in relation to the Rolls-Royce investigation. This comment was later confirmed by an SFO spokeswoman; however, no one has yet been charged.241

SFO Director Speaks at Pinsent Masons Regulatory Conference

On October 23, 2014, SFO Director David Green QC spoke at the Pinsent Masons Regulatory Conference. His remarks included a discussion of recent achievements of the SFO, including the sentencing of Bruce Hall. Green also defended the SFO’s use of the “Roskill model,” whereby the SFO is empowered both to investigate and prosecute offences.242 In his view:

[The SFO is] working on the cases for which the SFO’s unique Roskill model was designed: all are top end fraud or bribery investigations. These include: … Rolls-Royce, … Alstom, … Sweett Group, and significant money laundering activity through London … It embraces the conduct of both corporates and individuals. It undoubtedly constitutes a critical mass for the SFO as a specialist crime fighting organisation. It represents the most demanding caseload the SFO has ever shouldered and we do so with ambition, focus and determination. … [T]he SFO has recovered its mojo.243

Green also outlined why he believes the SFO should not be absorbed into the National Crime Agency. He argued that there is no evidence that abandoning the Roskill model would lead to any better results; that any such merger “would create really significant upheaval and uncertainty directly affecting current operational activity”; that there is the need for visible and demonstrable independence; and that the agency charged with the investigation of such matters must contain both prosecutors and investigators working together in specialist teams, should be adequately funded for the activity, and should have bribery and corruption as its top priority.244

Also, in October 2014, the SFO requested that its budget be increased from £35.2m to £61.7m in order to proceed with a number of expensive high-profile investigations.245 This request comes after the agency received a £19m increase in funds over its 2013 budget for its 2014 budget.246

UK declines to adopt U.S.-style whistleblower rewards

In July 2014, UK regulators stated they would not be adopting the U.S. approach of providing incentives for whistleblowers.247 UK regulators have asserted that there is no empirical evidence of incentives leading to higher-quality or a greater volume of whistleblower reporting.248 In addition, according to the Financial Conduct Authority (FCA) and the Bank of England Prudential Regulation Authority (PRA), “[i]ncentives offered by regulators could undermine the introduction and maintenance by firms of effective internal whistleblowing mechanisms, which both the regulators and the PCBS want to see.”249

The FCA and the PRA will start publishing annual reports on the whistleblowing disclosures they receive and how they handle them. The regulators believe that this will provide greater transparency and increase confidence in the regulatory system.250

SFO settles the Tchenguiz brothers’ lawsuit

In July 2014 the SFO announced that it had settled the civil damages claims brought against it by both Vincent and Robert Tchenguiz.251
Vincent Tchenguiz’s claims related to searches conducted at his home and his business following his arrest in March 2011. The High Court, which in 2012 had quashed the warrants authorizing the searches, was critical of the SFO’s conduct, which was part of an investigation into the collapse of the Icelandic Bank Kaupthing. Vincent Tchenguiz’s civil claim sought damages of £200 million for alleged misfeasance in public office, malicious prosecution, trespass and false imprisonment. Vincent’s brother Robert Tchenguiz brought similar claims against the agency arising from his arrest and the searches of his home and business during the same period in 2011.

As part of the 2014 settlement, the SFO agreed to pay Vincent Tchenguiz £3 million plus reasonable costs and to pay to Robert Tchenguiz £1.5 million plus reasonable costs. SFO Director David Green QC stated that “[t]he SFO deeply regrets the errors for which we were criticised by the High Court in July 2012.” Green also offered an apology to the Tchenguiz brothers.

On October 15, 2014, Switzerland extradited Ben Aissa to Canada to face 16 fraud-related charges in connection with a contract worth an estimated C$1.3 billion (approximately US$1.25 billion) the company had won in 2010 to build the McGill University Health Centre in Montreal. The Royal Canadian Mounted Police (RCMP) alleged that Ben Aissa had “orchestrated the transfer” from SNC-Lavalin to a Bahamian company of C$22.5 million, which Canadian investigators say was then used to bribe public officials to award SNC-Lavalin the Health Centre contract. As we have previously reported, Pierre Duhaime, the former CEO of SNC-Lavalin, was arrested in late 2012 and charged by Canadian authorities with fraud, conspiracy to commit fraud, and use of forged documents in connection with the Health Centre project.

In January 2014, two other former SNC-Lavalin executives were charged by Quebec’s anti-corruption unit and the RCMP in connection with the project. Stephane Roy, the company’s former comptroller, faces eleven new fraud and corruption-related charges in addition to charges
from January 2014 relating to the bribery scheme in Libya, for his involvement in the corruption leading to the contract for the Health Centre project.\(^{270}\) Sami Abdellah Bebawi, the head of SNC-Lavalin’s international construction division from 1998 until 2006 and Ben Aissa’s predecessor at the company, was charged with obstruction of justice for attempting to get Ben Aissa to change statements he had made while in Swiss custody, in exchange for an unspecified sum of money. Bebawi was already facing RCMP charges relating to the bribery scheme in Libya when he was charged with obstruction of justice.\(^{271}\) According to an RCMP affidavit, filed in connection with a court order freezing many of Bebawi’s assets, between 2001 and 2011, SNC-Lavalin funneled C$118 million to Duvel Securities, a British Virgin Islands company controlled by Ben Aissa, to assist it in securing contracts in Libya. The RCMP alleged that, in reality, Duvel was a shell company created to pay bribes to Saadi Gadhafi, while allowing Bebawi and Ben Aissa to skim money for themselves.\(^{272}\)

As we have previously reported,\(^{273}\) multiple other SNC-Lavalin executives have been charged with corruption in connection with projects in Bangladesh and Cambodia since 2012. As a result, in 2013 the World Bank Group debarred SNC-Lavalin, as well as over 100 of its affiliates, for a period of 10 years.\(^{274}\) In June 2013, for example, Algerian police raided the company’s office in Algiers amid an investigation into the company’s alleged use of bribes and kickbacks to Algerian officials to secure infrastructure projects.\(^{275}\) Additionally, a shareholder class-action suit brought in Toronto in December 2014 alleged that Ben Aissa had deposited about US$900,000 into a Swiss bank account of Slim Chiboub, the son-in-law of Tunisia’s current leader, Zine El Abidine Ben Ali, in exchange for contracts in Tunisia.\(^{276}\) According to Ben Aissa in the Swiss plea agreement, Chiboub introduced him to the Gadhafi family, telling Ben Aissa that only through the family would SNC-Lavalin get contracts in the country.\(^{277}\)

The company remains under investigation by the RCMP and could face prosecution under Canada’s Corruption of Foreign Public Officials Act. It has also been sued in Canadian court in a C$1 billion class-action lawsuit by shareholders.\(^{278}\)
On November 21, 2014, Petrobras received a subpoena from the SEC “requesting certain documents relating to the SEC’s investigation of the Company” but did not provide any details on the substance of the subpoena.285 According to Reuters, Petrobras also is under investigation by the DOJ.286 Additionally, Petrobras is facing U.S. civil litigation related to the alleged bribery and corruption scheme, including various class-action complaints in the U.S. District Court for the Southern District of New York filed on behalf of purchasers of Petrobras stock on the NYSE “who were allegedly harmed by the share price drop in connection with the recent accusations of corruption.”287 Plaintiffs allege that Petrobras “made false and misleading statements by misrepresenting facts and failing to disclose a culture of corruption at the company that consisted of a multi-billion dollar money-laundering and bribery scheme embedded in the company since 2006.”288 Similarly, the city of Providence, Rhode Island, has sued Petrobras for allegedly making false statements to investors in connection with the offer and sale of its corporate bonds.289

Authorities File Criminal Complaint Against Embraer Employees

In August 2014, Brazilian authorities reportedly filed a criminal complaint against eight employees of Embraer S.A. (Embraer), a Brazil-based aircraft manufacturer, for their alleged roles in agreeing to pay a US$3.5 million bribe to Dominican Republic officials in order to secure a US$92 million contract for military planes. According to the Wall Street Journal, the U.S. DOJ and SEC assisted Brazilian prosecutors with bringing corruption and money-laundering charges against these eight employees, who are Brazilian citizens. U.S. authorities have been investigating Embraer’s dealings in the Dominican Republic, as well as other countries, for more than four years.290

Former Deutsche Securities Inc Salesman Receives Suspended Sentence in Japanese Bribe Case

On July 16, 2014, Shigeru Echigo, a former Deutsche Securities Inc. salesman who pleaded guilty in Tokyo District Court to bribing a Japanese pension fund official, received a 10-month suspended prison sentence. Echigo had appealed the sentence but ultimately withdrew the appeal.291 As we reported in our Winter 2014 newsletter,292 a regularly scheduled audit of Deutsche Securities Inc. revealed large expenses incurred by bank employees for the entertainment of three Japanese pension fund executives, considered government officials under Japanese law, from 2010 to 2012. Yutaka Tsurisawa, a former official at Mitsui & Co’s pension fund, a client of Deutsche Securities Inc., was convicted in the same court on March 14, 2014 for accepting improper benefits from Echigo.293

Italy Investigates Oil Company Eni SpA

In September 2014, Italian oil company Eni SpA (Eni) confirmed that Milan’s prosecutor’s office is investigating bribery allegations related to the company’s acquisition of the Nigerian oil block OPL 245 in 2011. According to Reuters, which reportedly reviewed two letters from Italian prosecutors to officials in the UK’s Crown Prosecution Service, the Italian authorities believe that Eni paid half of the US$1.1 billion in bribes to Nigerian government officials or to intermediaries with close ties to those officials.294

In a September 11, 2014 press release, Eni denied any illegal conduct and disclosed that the company is cooperating with the Milan prosecutor’s office.295 Eni also revealed that its CEO, Claudio Descanzi, who was the head of Eni’s Exportation and Production Division in 2011, is also under investigation. Descanzi was appointed CEO in May 2014 following former CEO Pablo Scaroni’s
removal amid an investigation for alleged corruption in Algeria. Eni said its Operations and Technology Officer Roberto Casula is also being investigated. The company stated that it is “confident that the correctness of its actions will emerge during the court of the investigation.”

In July 2013, British authorities began investigating Eni for possible money-laundering in connection with the purchase of OPL 245. Since opening their investigation earlier this year, Italian authorities have asked the UK’s Crown Prosecution Service to freeze US$85 million in assets related to a Nigerian company, Malabu Oil & Gas, which the Italian prosecutors believe to be involved in the sale of OPL to Eni.

As reported in our Summer 2014 newsletter, Eni is also currently under investigation by the DOJ, SEC, and the Judicial Authority in Algeria. These investigations focus on allegations that Eni’s subsidiary, 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.

**OECD Releases Foreign Bribery Report**

On December 2, 2014, the Organisation for Economic Co-operation and Development (OECD) released its Foreign Bribery Report, which surveyed all publicly reported foreign bribery enforcement actions completed since the entry into force of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Report reviewed data from law enforcement authorities in the 17 countries that had successfully concluded a foreign bribery case in their jurisdiction, analyzing enforcement actions against 263 individuals and 164 entities from February 15, 1999 through June 1, 2014. Among the highlights:

- “Two-thirds of the foreign bribery cases occurred in four sectors: extractive (19%); construction (15%); transportation and storage (15%); and information and communication (10%)”.
- “In 41% of cases management-level employees paid or authorised the bribe, whereas the company CEO was involved in 12% of cases”.
- “Intermediaries were involved in 3 out of 4 foreign bribery cases. These intermediaries were agents, such as local sales and marketing agents, distributors and brokers, in 41% of cases. Another 35% of intermediaries were corporate vehicles, such as subsidiary companies, local consulting firms, companies located in offshore financial centers or tax havens, or companies established under the beneficial ownership of the public official who received the bribes”.
- “Bribes were promised, offered or given most frequently to employees … of state-owned or controlled enterprises (27%), followed by customs officials (11%), health officials (7%) and defense officials (6%)”.
- “In the majority of cases, bribes were paid to obtain public procurement contracts (57%), followed by clearance of customs procedures (12%)”.
- “On average, bribes equaled 10.9% of the total transaction value and 34.5% of the profits.”
- One in three cases came to the attention of law enforcement authorities through self-reporting by defendant companies or individuals; 13% of cases were investigations initiated directly by law enforcement authorities; and whistleblower reports and media coverage instigated a foreign bribery investigation in just 2% and 5% of matters, respectively.
- “Companies that self-reported became aware of the foreign bribery in their international operations primarily through internal audits (31%) and merger and acquisition due diligence procedures (28%)”.
- “In 69% of foreign bribery cases, sanctions were imposed by way of settlement.”

**Transparency International Releases Its 2014 Corruption Perceptions Index and Its Annual Progress Report**

**Transparency International’s 2014 Corruption Perceptions Index**

In early December 2014, Transparency International published its twentieth annual Corruption Perceptions Index. The Index aggregates and standardizes data collected from twelve studies conducted by eleven different organizations in order to create a country-by-country ranking of perceived levels of public sector corruption. A score ranging from 0 (highest level of perceived corruption) to 100 (lowest level of perceived corruption) is given annually to 175 countries and territories. According to Transparency International
“[c]ountries’ scores can be helped by open government where the public can hold leaders to account, while a poor score is a sign of prevalent bribery, lack of punishment for corruption and public institutions that don’t respond to citizens’ needs.”

On this year’s Index, Denmark had the lowest levels of perceived corruption, with a score of 92, while Somalia and North Korea tied for the highest levels of perceived corruption, with scores of eight. Other results included the following:

- Germany: Ranked 12 with a score of 79.
- United Kingdom: Ranked 14 with a score of 78.
- Japan: Ranked 15 with a score of 76.
- United States: Ranked 17 with a score of 74.
- Brazil: Ranked 69 with a score of 43.
- India: Ranked 85 with a score of 38.
- China: Ranked 100 with a score of 36.
- Russia: Ranked 136 with a score of 27.

Most countries—121 of the 175—scored below a 50, with a global average score of 43. Turkey, which ranked 64th with a score of 45, lost five points from its 2013 score. This constituted the biggest point drop since last year. China, Angola, Malawi, and Rwanda each lost four points from their 2013 scores. Conversely, Côte d’Ivoire, Egypt, and Saint Vincent and the Grenadines each improved their 2013 score by 5 points.

José Ugaz, the chair of Transparency International, noted that the Index “shows that economic growth is undermined and efforts to stop corruption fade when leaders and high level officials abuse power to appropriate public funds for personal gain. …” To combat such perceived corruption, Transparency International encourages those countries with low-levels of perceived corruption to help fight corruption globally. It urges the European Union, the United States, and the G20 countries to adopt a public register of the owners, including beneficial owners, of all companies incorporated in each country. Such a policy, according to Transparency International, “will make it harder for the corrupt to hide behind companies registered in another person’s name.”

Denmark, Ukraine, and the UK have each announced plans for such a registry.

Transparency International is a Germany-based organization whose stated “mission is to stop corruption and promote transparency, accountability and integrity at all levels and across all sectors of society.”

Transparency International’s 10th Annual Progress Report

Transparency International issued its tenth annual report evaluating the performance of each of the 40 parties to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention (Convention). According to the report, 22 of the Convention’s signatories have “Little or No Enforcement” of the Convention. These countries account for 27% of global exports and include Japan, Netherlands, South Korea, Russia, Spain, Belgium, Mexico, Brazil, Ireland, Poland, Turkey, Denmark, Czech Republic, Luxembourg, Chile, Israel, Slovak Republic, Colombia, Greece, Slovenia, Bulgaria, and Estonia. Eight countries, representing nearly 8% of global exports, have “Limited Enforcement.” Those countries are France, Sweden, Norway, Hungary, South Africa, Argentina, Portugal, and New Zealand.

Transparency International reported minimal change in the categories of “Active Enforcement” and “Moderate Enforcement.” In the category of “Active Enforcement,” there was no change from 2013 in the United States, Germany, United Kingdom, and Switzerland. In the category of “Moderate Enforcement,” Canada moved up from the “Limited Enforcement” category to join 2013 and 2014 members Italy, Australia, Austria, and Finland. The report explained that Canada owed its rise to having “launched a number of new investigations and moved them forward to court proceedings” and also having “introduced major legislative reforms in the field.”

Finally, the report provided recommendations for the OECD Working Group on Bribery and governments. These recommendations include, for example, the collection and publication of “data on mutual legal assistance requests relating to foreign bribery” and a Working Group study regarding the practice of settlements.

Finally, the Report noted that while the G20 has “repeatedly encouraged” all of its members to join and enforce the Convention, four countries—China, India, Indonesia, and Saudi Arabia—have so far declined.
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Endnotes


2 Hatoum Press Release, supra note 1.


4 Hatoum Press Release, supra note 1.


6 Alstom Press Release, supra note 5.


8 Alstom Press Release, supra note 5.


13 Id. ¶¶ 4-5.

14 Id. ¶¶ 1, 4, 7.

15 Id. ¶ 2.

16 Id. ¶¶ 1, 6-7.

17 Bruker Cease and Desist Order, supra note 12, ¶ 10.

18 Id. ¶¶ 10-11.

19 Id. ¶ 12.

20 Id. § IV.


24 Id. at Attachment A ¶ 20.

25 Id. at Attachment A ¶¶ 22-24.

26 Id. at Attachment A ¶¶ 25-26.

27 Id. at Attachment A ¶¶ 27-28.

28 DAI Information, supra note 22.
29 DAI DPA, supra note 23, ¶ 4.
30 Id.
31 Id. ¶ 11.
32 DAI Press Release, supra note 22.
34 Bio-Rad DOJ Press Release, supra note 33; Bio-Rad NPA, supra note 33, at Attachment A.
36 Id.
37 Id. ¶ 9, 11.
38 Id. ¶ 11.
40 Bio-Rad NPA at 1-2, supra note 33.
43 Bio-Rad SEC Order, supra note 41, ¶ 3.
49 Id. at 2, ¶ 1.
50 Id. ¶ 2.
51 Id. at 11.
52 Id.
55 Smith & Wesson Press Release, supra note 54.
56 Smith & Wesson Order, supra note 54, ¶¶ 8, 15.
57 Id.
58 Id. ¶¶ 4-5.
59 Id. ¶¶ 5, 13.
60 Id. ¶ 5.
61 Smith & Wesson Press Release, supra note 54.
62 Smith & Wesson Order, supra note 54, ¶ 9.
63 Id.

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Id. ¶ 13-15.

Id. ¶ 7-11.

Id. ¶ 19.

Id. ¶ 16-18.

Id. ¶ 22-23.


Ruling on Defendant’s Motion to Dismiss the Indictment, United States v. Hoskins, No. 3:12CR238 (D. Conn. Dec. 29, 2014), Dkt. Entry 190 [hereinafter “Hoskins’ Ruling”].


Hoskins Ruling, supra note 74, at 10, 16.

Id. at 18-19.

Id. at 19-22.


Pomponi Scheduling Order, supra note 75.


See Order & Motion to Modify Conditions of Release by Frederic Pierucci, United States v. Pierucci, Crim. No. 3:12CR 238 (Nov. 5-6, 2014), Dkt. Entries 180-81.

DOJ Pomponi Press Release, supra note 73; Pomponi Second Superseding Indictment, supra note 73.


Id.


96 Id.

97 Id.

98 Id.


102 Compare id. with DOJ, FCPA Opinion Procedure Release No. 08-02 (June 13, 2008) [hereinafter “Halliburton Opinion Release”].

103 14-02 Opinion Release, supra note 101, at 1-2.

104 Id. at 2.

105 Id. at 2-3.

106 Id. at 3 (quoting FCPA Resource Guide at 28).


109 Id. at 2-3 (citing the FCPA Resource Guide at 29).


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


113 In re Han Yong Kim, 571 F. App’x 556 (9th Cir. 2014).


124 Id.


126 Id.

127 Id.


129 Id.


132 BHP Annual Report, supra note 133.

133 Id.

134 Id.


136 General Cable 8-K, supra note 137, at 7.

137 Id.

138 Id.


143 See Annual Report at 20, 23.

144 See id. at Appendix A.

145 See id. at 1, 10.

146 See id. at 10-12.

147 See id. at 10.

148 See id. at 11.

149 See id. at 20 and Appendix A.

150 See id. at 18.


153 Id. (approximately $303 million in two bank accounts in the Bailiwick of New Jersey, $144 million in two bank accounts in France, and approximately $175 million in additional bank accounts in the United Kingdom and Ireland).

154 Id.


156 Id.

157 Id.

158 Id.


160 Id.

161 Id.


163 Id.

200 Judgment and Final Order of Dismissal with Prejudice, 
203 Id. ¶¶ 57-58.
204 Id. ¶¶ 126-138.
207 Id.
208 Caroline Binham, SFO gets first conviction for company for foreign official bribes, Fin. Times (Dec. 22, 2014) available at http://www.ft.com/cms/s/0/28e88282-8a04-11e4-9271-00144feabdc0.html#axzz3NwqzkjsjB (subscription required) [hereinafter “Financial Times Bribery Article”].
211 Id.
212 Id.
214 Smith & Ouzman Press Release, supra note 212.
219 Papachristos and Kerrison Judgment, supra note 219, ¶ 1.
220 Id. ¶ 17.
227 Gill Pimmer and Simeon Kerr, SFO launches probe into Sweett Group over Mideast contract, Fin. Times, (July 14, 2014), available at http://www.ft.com/cms/s/0/7e6164b8-0b44-11e4-aeb6-00144feabdc0.html#axzz3LV1n827G (subscription required) [hereinafter “FT Sweett Group Article”].
228 Telegraph Sweett Group Article, supra note 228.
contrary to Section 1 of the Criminal Law Act 1977 and Section 1 of the Prevention of Corruption Act 1906.

Bruce Hall Press Release, supra note 233.


Green Pinsent Speech, supra note 244.


SNC-Lavalin Recoups Money Article, supra note 262.

Ben Aissa WSJ Article, supra note 261.


SNC-Lavalin executives January 2014 Article, supra note 270; SNC-Lavalin executives September 2014 Article, supra note 271.

SNC-Lavalin executives January 2014 Article, supra note 270.


A&P Winter 2014 FCPA Newsletter, supra note 45.


SNC-Lavalin Recoups Money Article, supra note 262.


See Petrobras Executives Charged Article, supra note 282.

See Petrobas US City Article, supra note 282.

See Petrobas Executives Charged Article, supra note 282.

See Petrobas US City Article, supra note 282; Petrobas Executives Charged Article, supra note 282.


See Petrobras US City Article, supra note 282.


Id.


298 See Reuters Eni Article, supra note 296.


300 Id. at 8.

302 Id.

304 OECD Foreign Bribery Report, supra note 301, at 8.

306 Id. at 9.

307 Id.

308 Id.


312 Corruption Perceptions Index 2014, supra note 312.

313 Id.

314 Id.


317 TI OECD Report, supra note 318, at 4-5.

318 The TI OECD Report explains that “both ‘Moderate Enforcement’ and ‘Limited Enforcement’ indicate insufficient deterrence, while ‘Little to No Enforcement’ indicates no deterrence at all. Id. at 3.

319 Id.

321 Id.

322 Id. at 8.

323 Id.

324 Id. at 9.

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