



FCPA Enforcement and Anti-Corruption Developments

2019 YEAR IN REVIEW

January 24, 2020

© 2020 Paul, Weiss, Rifkind, Wharton & Garrison LLP. In some jurisdictions, this publication may be considered attorney advertising. Past representations are no guarantee of future outcomes.

 Table of Contents

Introduction	1
Corporate Enforcement Overview	2
DOJ Corporate Enforcement	5
New DOJ Policies Affecting Corporate Enforcement	6
Revisions to FCPA Corporate Enforcement Policy	6
Guidance for Evaluating Corporate Compliance Programs	8
Guidance for “Inability-to-Pay” Claims	9
China Initiative	10
SEC Corporate Enforcement	11
SEC Whistleblower Program	12
New SEC Policy Affecting Corporate Enforcement	14
CFTC Developments	14
Legislative Developments	16
Compliance Monitors	17
Review of Select Corporate Resolutions	18
MTS	18
Telefônica Brasil	19
Walmart	20
TFMC	21
SHI	23
Enforcement Actions Against Individuals	24
Legal Developments Affecting Enforcement Tools	27
<i>In re: Sealed Case</i>	27
<i>United States v. Hoskins</i>	28
<i>Liu v. SEC</i>	30
Multi-Jurisdictional Coordination	31
Foreign Jurisdictions Investigating and Prosecuting Corruption	32
Africa	32
Asia	32
Europe and the Middle East	34
Latin America	37
North America	39
Oceania	40

Multilateral Development Bank Sanctions	40
Looking Forward Into 2020.....	41

Introduction

The DOJ and the SEC assessed a record-breaking combined total of over \$2.6 billion in corporate penalties in FCPA cases in 2019, with foreign authorities assessing another nearly \$215 million in penalties in those cases. While many of the penalties closed out long-standing investigations that were begun prior to 2015, the number of corporate FCPA enforcement actions resolved by the DOJ and the SEC remained comparable with the number of resolutions in 2018, and clearly signaled the U.S. authorities' commitment to continued, vigorous enforcement of the FCPA.

Consistent with their stated emphasis on individual accountability, both the DOJ and the SEC were unusually active in prosecuting individuals in 2019. Four individuals were convicted of FCPA charges following three separate jury trials. This marks a significant increase in FCPA-related trials, with only three FCPA cases going to trial in the previous six years. In addition, both the DOJ and the SEC announced considerably more individual prosecutions than in 2018, returning to levels seen in 2017.

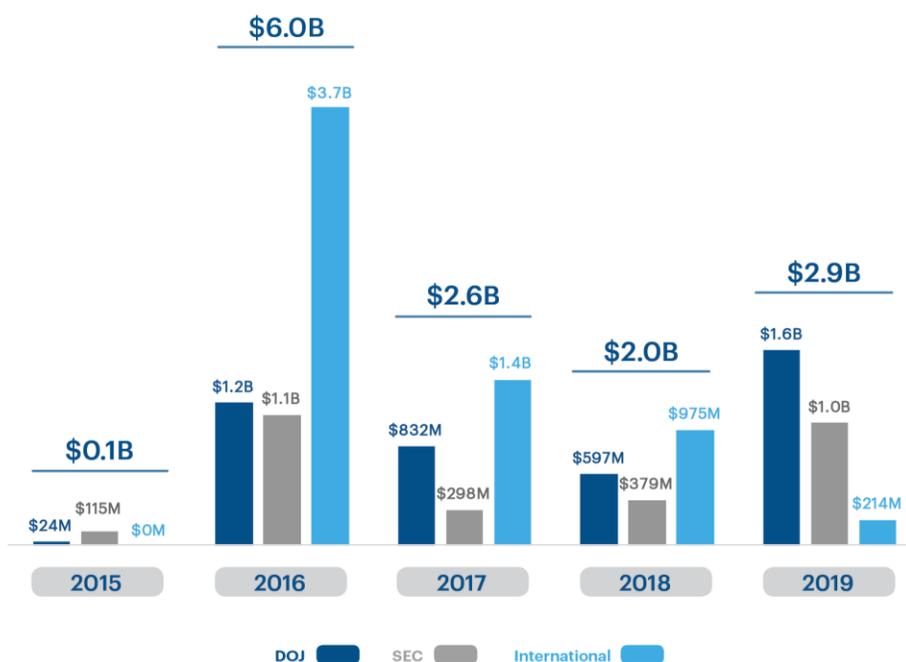
The DOJ also announced several policy changes intended to advance the Department's stated desire to increase transparency and consistency in the way that prosecutors enforce the FCPA. The policy revisions additionally seek to lessen the burden and costs of corporate investigations, and to avoid outcomes that disproportionately penalize innocent employees, stakeholders, and customers.

As in recent years, cooperation between the U.S. and foreign enforcement authorities remained a key feature of FCPA enforcement, with the DOJ and the SEC acknowledging assistance from the governments of over twenty countries in connection with U.S. corporate enforcement actions. Also continuing the trend of recent years, the penalty amounts assessed by foreign authorities in connection with these actions declined sharply. In addition, several foreign authorities brought aggressive prosecutions of high-level officials within their own borders, and a number of foreign jurisdictions enhanced their anti-corruption laws.

Our reflections on the year's most significant developments in anti-corruption and FCPA enforcement and policy are below.

Corporate Enforcement Overview

In 2019, the DOJ and the SEC resolved a combined 20 enforcement actions against business entities, resulting in over \$2.6 billion in fines, penalties, disgorgement, and pre-judgment interest, of which \$1.6 billion was assessed by the DOJ and \$1 billion by the SEC.¹ The two largest settlements—Mobile TeleSystems PJSC (“MTS”) and Telefonaktiebolaget LM Ericsson (“Ericsson”), each of which involved investigations of a foreign telecommunications company that began as early as 2013²—accounted for over \$1.9 billion of the total. The DOJ credited another \$214.3 million in penalties assessed by foreign authorities in foreign prosecutions associated with U.S. enforcement actions, a substantial decline compared to recent years.

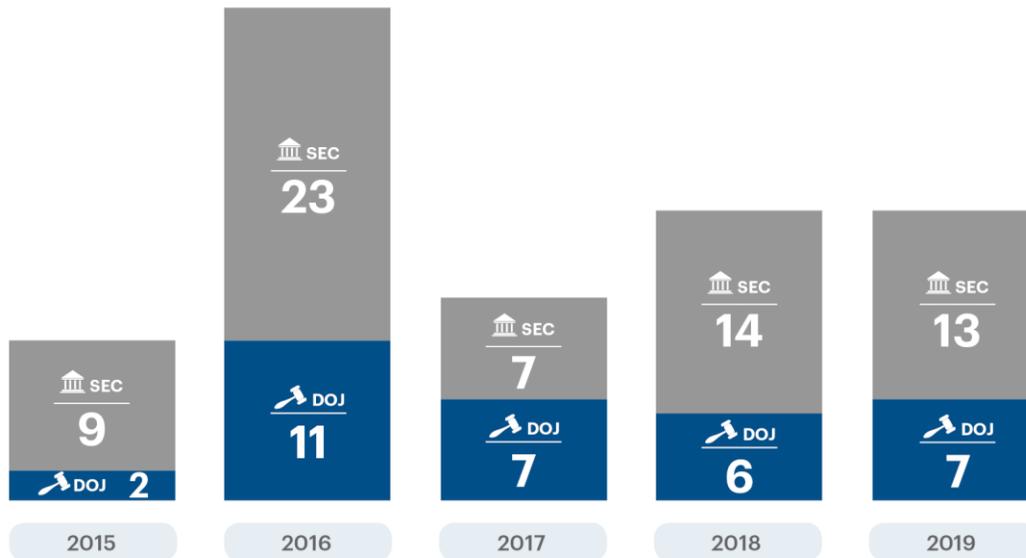


FCPA CORPORATE ENFORCEMENT ACTION PENALTIES 2015–2019

¹ Penalty amounts account for offsets between the DOJ and the SEC, and between U.S. and foreign authorities.

² Press Release, TELEFONAKTIEBOLAGET LM ERICSSON, *Ericsson Estimates Costs for Resolving Investigations by U.S. Authorities at SEK 12 b. and Makes Provision in Third Quarter* (Sept. 25, 2019), <https://www.ericsson.com/en/press-releases/2019/9/ericsson-estimates-costs-for-resolving-investigations-by-u.s.-authorities-at-sek-12-b.-and-makes-provision-in-third-quarter>; Mobile TeleSystems OJSC, Ad Hoc Notice (Form 6-K) (Mar. 19, 2014), https://www.sec.gov/Archives/edgar/data/1115837/000110465914020809/a14-8453_16k.htm.

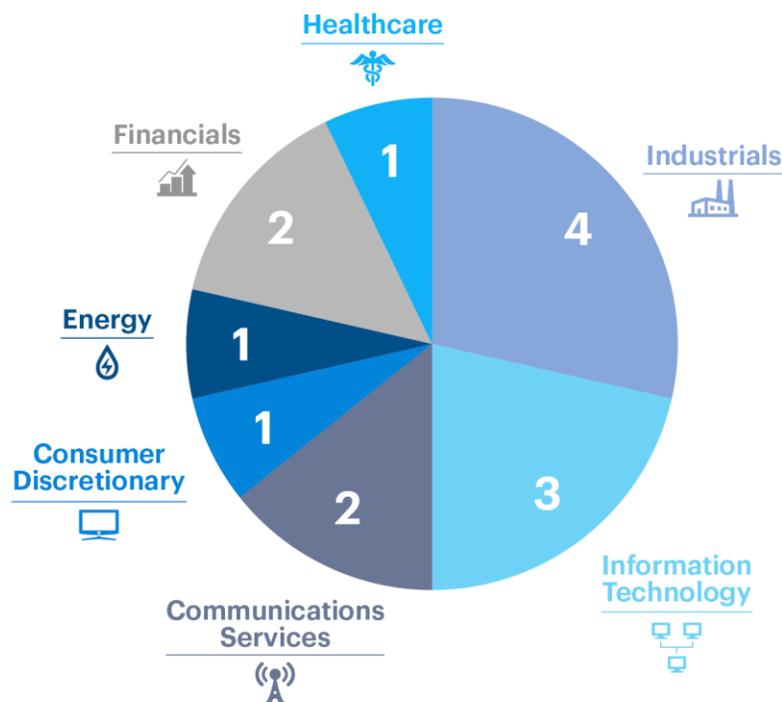
The DOJ resolved seven and the SEC resolved 13 corporate enforcement actions in 2019.³ These totals are generally consistent with recent years, aside from the highs of 2016.



FCPA CORPORATE ENFORCEMENT ACTION RESOLUTIONS 2015–2019

³ Enforcement actions were counted based on the year they were announced. See *Related Enforcement Actions*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/criminal-fraud/related-enforcement-actions>; *SEC Enforcement Actions: FCPA Cases*, U.S. SEC. & EXCH. COMM'N, <https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml>. Resolutions announced on the same day by the same enforcement agency against corporate affiliates were counted as one resolution (e.g., TechnipFMC plc and Technip USA, Inc.).

The DOJ and the SEC entered into corporate resolutions with companies across a variety of industries. U.S. authorities were most active in the industrials and information technology sectors, though the two largest settlements involved companies in the communications services sector.⁴



2019 FCPA CORPORATE ENFORCEMENT RESOLUTIONS BY INDUSTRY

⁴ Industries were defined according to the sector classifications set by S&P Global Market Intelligence, pursuant to the Global Industry Classification Standard. See *Companies, Assets and Profiles*, S&P GLOBAL (2020), <https://platform.mi.spglobal.com/web/client?auth=inherit#dashboard>; S&P GLOBAL, GLOBAL INDUSTRY CLASSIFICATION STANDARD (2018), https://www.spglobal.com/marketintelligence/en/documents/112727-gics-mapbook_2018_v3_letter_digitalspreads.pdf. Resolutions announced on the same day against corporate affiliates were counted as one resolution, irrespective of the enforcement agency.

The map below demonstrates the global span of FCPA cases by showing the countries in which improper conduct allegedly occurred, based upon the allegations in the 2019 corporate resolutions. China and Brazil featured in the largest number of FCPA cases, at seven and six cases respectively.



2019 FCPA CORPORATE ENFORCEMENT ACTIONS BY LOCATION

DOJ Corporate Enforcement

In 2019, the DOJ announced seven corporate resolutions and assessed \$1.6 billion in penalties. Nearly two-thirds of the resolutions in 2019 involved foreign companies, which is an increase from 2018, when half of the DOJ resolutions involved foreign companies.

The DOJ issued two public declination letters in 2019 pursuant to the FCPA Corporate Enforcement Policy.⁵ Both declination letters specified that the companies (Cognizant Technology Solutions Corp. and Quad/Graphics Inc.) were required to disgorge all ill-gotten gains. This is consistent with prior public

⁵ See Letter from Craig Carpentino, U.S. Att’y for D.N.J., and Robert Zink, Acting Chief, U.S. Dep’t of Justice Crim. Div. Fraud Sec. (Feb. 13, 2019), <https://www.justice.gov/criminal-fraud/file/1132666/download>; Letter from Matthew Kruger, U.S. Att’y for E.D. Wisc., and Robert Zink (Sept. 19, 2019), <https://www.justice.gov/criminal-fraud/file/1205341/download>; see also Client Memorandum, Paul, Weiss, Rifkind, Wharton & Garrison LLP, DOJ Issues New FCPA Corporate Enforcement Policy (Nov. 30, 2017), <https://www.paulweiss.com/practices/litigation/anti-corruption-fcpa/publications/doj-issues-new-fcpa-corporate-enforcement-policy?id=25619>.

declination letters: Ten of the eleven prior letters issued pursuant to either the FCPA Corporate Enforcement Policy or the 2016 FCPA Pilot Program, the predecessor to the FCPA Corporate Enforcement Policy, had stated that the companies were required to disgorge ill-gotten gains to the DOJ or that the DOJ had credited the company's disgorgement of ill-gotten gains to the SEC as part of parallel settlements.⁶

Based on the companies' public announcements, the DOJ also apparently closed its investigations, without issuing public declination letters, into at least four companies that had been under investigation for potential corruption offenses (OSI Systems, Inc., Misonix, Inc., EniSpA, and Royal Dutch Shell plc).⁷ The bases for these decisions are not known, including whether there was conduct sufficient to support a prosecution.

New DOJ Policies Affecting Corporate Enforcement

In 2019, the DOJ announced a number of policies affecting FCPA corporate enforcement, including revisions to the DOJ's existing policies regarding cooperation credit, guidance on how prosecutors should evaluate the effectiveness of corporate compliance programs, guidance on how prosecutors should evaluate claims that corporations are unable to pay a proposed fine or monetary penalty, and an enforcement policy concerning Chinese entities. Although it is too early to evaluate the effect of these policies on FCPA enforcement, the DOJ has stated that it intends for these new policies to increase transparency and to lessen the severity and costs of corporate investigations. These policies also indicate the importance the DOJ places on corporate compliance and incentivizing self-disclosure.

Revisions to FCPA Corporate Enforcement Policy

On March 8, 2019, Assistant Attorney General Brian A. Benczkowski announced revisions to the FCPA Corporate Enforcement Policy to reflect how the original policy is applied in prosecutions.⁸ On November 20, the DOJ announced additional revisions to the policy to clarify the information companies need to disclose, and when, to obtain the benefits of the policy.

In a speech announcing the DOJ's efforts to bring its policies up to date, AAG Benczkowski remarked that the policy had been revised to set forth updated, practical definitions, with the expectation that the revised policy will "bring it in line with current practice" at the DOJ and "avoid[] chilling acquisition activity by law-

⁶ See *Declinations*, U.S. DEPT OF JUSTICE (last updated Sept. 26, 2019), <https://www.justice.gov/criminal-fraud/pilot-program/declinations>.

⁷ Closures of investigations were counted based on the year in which the U.S. authority appears to have closed the investigation, irrespective of the year in which the company made its disclosure.

⁸ See Brian A. Benczkowski, Dep't of Justice Assistant Attorney General, Remarks at the 33rd Annual ABA National Institute on White Collar Crime Conference (Mar. 8, 2019) (hereinafter, "Benczkowski Remarks"), <https://www.justice.gov/opa/speech/assistant-attorney-general-brian-benczkowski-delivers-remarks-33rd-annual-aba-national>; Dep't of Justice, Justice Manual, § 9-47.120 (revised Nov. 2019) (hereinafter, "Justice Manual"), <https://www.justice.gov/jm/jm-9-47000-foreign-corrupt-practices-act-1977>; see also Client Memorandum, Paul, Weiss, Rifkind, Wharton & Garrison LLP, DOJ, FBI, and CFTC Announce FCPA Policy Revisions and Initiatives (Mar. 15, 2019), <https://www.paulweiss.com/media/3978517/15mar19-doj-fcpa-revs.pdf>.

abiding companies, who might otherwise walk away from worthwhile investments due to the risk of FCPA enforcement.”⁹

The policy revisions codified two changes announced in speeches last year.¹⁰ The revisions extend the policy’s presumption of a declination to companies that, through timely due diligence during a mergers and acquisitions process, uncover corrupt conduct, voluntarily disclose such conduct, and provide full cooperation in an ensuing investigation. The revisions also relax a key component of the so-called “Yates Memo,” which provided that companies could receive credit only by “identify[ing] all individuals” involved in misconduct and by “completely disclos[ing] . . . all relevant facts about individual misconduct.”¹¹ The DOJ no longer will require companies seeking to qualify for voluntary disclosure credit to provide information on *all* employees tied to the misconduct, which the DOJ described as “not practical.”¹² The revised policy now requires that companies simply disclose information about “all individuals substantially involved” in the misconduct.¹³ The revised policy also relaxes the requirement that companies prohibit employees from using “ephemeral messaging platforms that undermine the company’s ability to appropriately retain business records or communications,” permitting the use of such messaging platforms but requiring that companies implement “appropriate guidance and controls.”¹⁴

Following on the update to the policy in March, the DOJ in November announced additional revisions to clarify the requirements concerning a company’s voluntary disclosures of potential FCPA violations to the DOJ. The revised policy makes three key clarifications:

- To receive credit for voluntary self-disclosure of wrongdoing, a company must disclose “all relevant facts known to it at the time of the disclosure, including as to any individuals substantially involved in or responsible for the misconduct at issue.” This change emphasizes the DOJ’s desire for prompt disclosure, while acknowledging that such disclosure could come before an internal investigation can be completed;
- To receive full cooperation credit, a company that “is aware of relevant evidence not in the company’s possession . . . must identify that evidence” to the DOJ, clarifying a prior requirement

⁹ Benczkowski Remarks, *supra*.

¹⁰ See Matthew S. Miner, Dep’t of Justice Deputy Assistant Attorney General, *Remarks at the American Conference Institute 9th Global Forum on Anti-Corruption Compliance in High Risk Markets* (July 25, 2018), <https://www.justice.gov/opa/pr/deputy-assistant-attorney-general-matthew-s-miner-remarks-american-conference-institute-9th>; Rod J. Rosenstein, Dep’t of Justice Deputy Attorney General, *Remarks at the American Conference Institute’s 35th International Conference on the Foreign Corrupt Practices Act* (Nov. 29, 2018), <https://www.justice.gov/opa/speech/deputy-attorney-general-rod-j-rosenstein-delivers-remarks-american-conference-institute-o>.

¹¹ See Memorandum from Sally Q. Yates, Deputy Att’y Gen., U.S. Dep’t of Justice, to Heads of Dep’t Components & All U.S. Attorneys (Sept. 9, 2015), <https://www.justice.gov/archives/dag/file/769036/download>.

¹² See Rod J. Rosenstein, Dep’t of Justice Deputy Attorney General, *Remarks at the American Conference Institute’s 35th International Conference on the Foreign Corrupt Practices Act* (Nov. 29, 2018), <https://www.justice.gov/opa/speech/deputy-attorney-general-rod-j-rosenstein-delivers-remarks-american-conference-institute-o>.

¹³ Justice Manual, § 9-47.120(3)(a).

¹⁴ Justice Manual, § 9-47.120(3)(c).

that a company that “is or should be aware of opportunities for the Department to obtain relevant evidence not in the company’s possession and not otherwise known to the Department . . . must identify those opportunities”; and

- The “M&A Due Diligence and Remediation” guidance was revised to make clear that a “presumption of a declination” applies where a company discovers misconduct “by the merged or acquired entity,” clarifying that acquirers are encouraged to disclose conduct discovered post-merger and to assure the acquirer that it will not face successor liability.¹⁵

Together, these revisions suggest that the DOJ is actively revisiting its FCPA Corporate Enforcement Policy and taking steps to ensure greater consistency and transparency in the policy’s application, while attempting to account for practical realities when investigating and considering enforcement actions against corporations.

Guidance for Evaluating Corporate Compliance Programs

On April 30, 2019, the DOJ’s Criminal Division released updated guidance on how prosecutors should evaluate the effectiveness of corporate compliance programs, which include, but are not limited to, anti-corruption compliance programs.¹⁶ The updated guidance, entitled “Evaluation of Corporate Compliance Programs,” expands on the guidance released by the DOJ’s Fraud Section in February 2017. When announcing the updated guidance, AAG Benczkowski noted that it is intended to “harmonize the prior Fraud Section publication with other DOJ guidance and legal standards” and “provide additional transparency in how [the DOJ] will analyze a company’s compliance program.”¹⁷ The updated guidance provides a framework for how prosecutors will assess compliance programs as they consider potential enforcement actions, and it complements the DOJ training programs, announced last October, designed to enhance prosecutors’ understanding of compliance. Despite the new detail provided by the updated guidance, the DOJ continues to make individualized determinations in each case and, as AAG Benczkowski explained, continues to eschew “any rigid formula to assess the effectiveness of corporate compliance programs.”¹⁸

The updated guidance focuses on the same topics as the 2017 guidance, which included the company’s analysis and remediation of the underlying misconduct; the conduct of senior and middle management; the autonomy and resources of the compliance function; policies and procedures; risk assessment; training and

¹⁵ Justice Manual, § 9-47.120.

¹⁶ See Dep’t of Justice, Criminal Division, Evaluation of Corporate Compliance Programs at 1 (Apr. 30, 2019), <https://www.justice.gov/criminal-fraud/page/file/937501/download>; see also Client Memorandum, Paul, Weiss, Rifkind, Wharton & Garrison LLP, DOJ Updated Guidance for Evaluating Corporate Compliance Programs Focuses on Effectiveness (May 6, 2019), <https://www.paulweiss.com/media/3978632/6may19-doj-compliance.pdf>.

¹⁷ Brian A. Benczkowski, Assistant Att’y Gen., Dep’t of Justice, *Keynote Address at the Ethics and Compliance Initiative (ECI) 2019 Annual Impact Conference* (Apr. 30, 2019), <https://www.justice.gov/opa/speech/assistant-attorney-general-brian-benczkowski-delivers-keynote-address-ethics-and>.

¹⁸ *Id.*

communication; confidential reporting; incentives for compliance and non-compliance; periodic testing and review; and monitoring of third-party relationships and potential mergers and acquisitions.¹⁹ The updated guidance contains twelve topics and nearly 150 sample questions that expand on and are structured around three “fundamental questions” concerning a compliance program’s design, implementation, and function: (1) Is the corporation’s compliance program well designed? (2) Is the program being applied earnestly and in good faith? (In other words, is the program being implemented effectively?) and (3) Does the corporation’s compliance program work in practice?²⁰

Organizing the evaluation of corporate compliance programs around these three fundamental questions provides a useful framework for companies in designing, implementing, and testing a compliance program, including by better enabling companies to identify business risks, mitigate them, and remediate shortcomings.²¹ In addition to setting out this framework, the updated guidance provides context for each factor to better enable companies to gauge the adequacy and effectiveness of their compliance programs.

Guidance for “Inability-to-Pay” Claims

On October 8, 2019, the Criminal Division of the DOJ released guidance on how federal prosecutors should evaluate claims that corporations are unable to pay a proposed fine or monetary penalty.²² In announcing the guidance, AAG Benczkowski noted that the evaluation of “inability-to-pay” claims is an area of white-collar criminal enforcement that the DOJ has determined would benefit from greater transparency. He said that guidance on this issue, along with recent DOJ guidance relating to compliance programs and monitorships, is “part and parcel of [the DOJ’s] broader mission . . . to establish more predictable guideposts by which companies can gauge expectations, conform their conduct, and act as responsible corporate citizens.”²³

The DOJ’s new guidance, entitled “Evaluating a Business Organization’s Inability to Pay a Criminal Fine or Criminal Monetary Penalty,” sets forth a detailed framework for federal prosecutors to assess a company’s “inability to pay” once the company and the DOJ have agreed on both a corporate criminal resolution and an appropriate monetary penalty or fine based on the law and the facts (without considering the company’s

¹⁹ See Dep’t of Justice, Criminal Division, Fraud Section, Evaluation of Corporate Compliance Programs (Feb. 8, 2017); see also Client Memorandum, Paul, Weiss, Rifkind, Wharton & Garrison LLP, DOJ Releases Guidance for Evaluating Corporate Compliance Programs (Mar. 20, 2017), <https://www.paulweiss.com/media/3977003/20mar17doj.pdf>.

²⁰ See Dep’t of Justice, Criminal Division, Evaluation of Corporate Compliance Programs at 1-2 (Apr. 30, 2019), <https://www.justice.gov/criminal-fraud/page/file/937501/download>.

²¹ See Client Memorandum, Paul, Weiss, Rifkind, Wharton & Garrison LLP, DOJ Updated Guidance for Evaluating Corporate Compliance Programs Focuses on Effectiveness (May 6, 2019), <https://www.paulweiss.com/media/3978632/6may19-doj-compliance.pdf>.

²² Brian A. Benczkowski, Assistant Attorney General, Criminal Division, U.S. Dep’t of Justice, Evaluating a Business Organization’s Inability to Pay a Criminal Fine or Criminal Monetary Penalty (Oct. 8, 2019), <https://www.justice.gov/opa/speech/file/1207576/download>; see also Client Memorandum, Paul, Weiss, Rifkind, Wharton & Garrison LLP, DOJ Announces Guidance for “Inability-to-Pay” Claims (Oct. 10, 2019), <https://www.paulweiss.com/media/3979024/10oct19-inability-to-pay-claims.pdf>.

²³ Assistant Attorney Gen. Brian A. Benczkowski, Remarks at the Global Investigations Review Live New York (Oct. 8, 2019), <https://www.justice.gov/opa/speech/assistant-attorney-general-brian-benczkowski-delivers-remarks-global-investigations>.

assertion that it is unable to pay). As part of the DOJ's evaluation process, companies claiming that they cannot afford a criminal fine or penalty must timely submit to the DOJ a completed "Inability-to-Pay Questionnaire" that focuses primarily on the company's financial condition and projections. The questionnaire also asks for a number of additional financial materials, including, among other things, current and prior financial statements, recent federal corporate income tax returns, recent appraisals and valuation studies, copies of current credit and loan agreements, and compensation information for the ten most highly compensated employees in the company.

The DOJ's guidance directs prosecutors to use the information gathered from the company's responses to the questionnaire to make an initial determination about the company's ability to pay a proposed fine or monetary penalty based on its current assets, liabilities, and cash flows. If prosecutors determine that a company is unable to pay an appropriate criminal fine or monetary penalty, the guidance instructs them to recommend an adjustment to avoid threatening the company's continued viability and/or impairing the company's ability to provide restitution to victims.

The new guidance is likely to serve as an additional tool that companies facing challenging financial circumstances may utilize to make strategic decisions about regulatory matters, including on issues such as self-disclosure, cooperation with the DOJ, and whether to advance inability-to-pay claims. Companies now have guidance beyond what could be gleaned from previous corporate resolutions, which, prior to issuance of the new guidance, did not provide detailed information on how the DOJ assessed corporate fine or penalty reductions based on an inability to pay.

China Initiative

Following the DOJ's announcement in November 2018 of the "China Initiative"—an effort to counter perceived national security threats to the United States from China, including by identifying FCPA cases involving Chinese companies that compete with American businesses—Attorney General William Barr declared in June 2019 that the DOJ must "continue to pursue, and indeed step up, our China initiative."²⁴ More recently, in November 2019, Assistant Attorney General John Demers stated that "the future of the China Initiative will depend on future Chinese behavior."²⁵

In connection with the China Initiative, the DOJ announced a number of China-related prosecutions in 2019, although only one appears to involve FCPA charges.²⁶ On November 14, 2019, the DOJ announced FCPA charges against Yanliang Li and Hongwei Yang, two former executives of a Chinese subsidiary of

²⁴ See William P. Barr, Att'y Gen., Dep't of Justice, *Opening Remarks at the U.S. Attorney's Conference* (June 26, 2019), <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-opening-remarks-us-attorneys-conference>.

²⁵ See Gina Jurva, *Reuters Newsmaker: Government Experts Discuss U.S./China Trade, Intellectual Property Theft, & Cyber-Espionage*, REUTERS (Nov. 4, 2019), <https://blogs.thomsonreuters.com/answeron/reuters-newsmaker-china-cyber-espionage/>.

²⁶ See Dep't of Justice, *Information About the Department of Justice's China Initiative and a Compilation of China Related Criminal Cases Since Jan. 2018* (Dec. 4, 2019), <https://www.justice.gov/opa/page/file/1223496/download>.

Herbalife Nutrition, the Los Angeles-based marketing corporation that sells healthcare, personal care, and other products around the world.²⁷ The executives were charged with conspiring to violate the FCPA's anti-bribery and internal control provisions. The SEC also announced related civil charges against Li. According to the allegations in the indictment, from approximately 2007 through 2017, Li, Yang, and others paid bribes to Chinese officials to obtain and retain licenses for Herbalife—which previously disclosed that the DOJ and the SEC were conducting an investigation into the company's FCPA compliance in China²⁸—to operate as a direct-selling enterprise in provinces throughout China. Although Herbalife is a U.S. company, the DOJ apparently considers its prosecutions of Li and Yang to be China-related cases under the China Initiative.²⁹

Notably, on December 13, 2019, the United States and China announced a limited trade agreement, with China agreeing to purchase certain American products in exchange for the United States halting the imposition of new tariffs and reducing other existing levies.³⁰ Robert E. Lighthizer, President Trump's chief negotiator, has stated that the trade deal is intended to be a “building block in building up something that will actually lead to the ability for the two systems to work together,”³¹ and commentators suggest that this phase-one deal marks a significant turning point in U.S.-China relations. To the extent the China Initiative seeks to promote “fair trade and good relationships based on honest dealing” with China, as former Attorney General Jeff Sessions explained,³² it remains to be seen whether the trade deal with China will impact the DOJ's enforcement policy.

SEC Corporate Enforcement

In 2019, the SEC resolved 13 corporate enforcement actions and assessed \$1 billion in penalties.

²⁷ See Indictment, *U.S. v. Li*, No. 19-CR-760 (S.D.N.Y. Nov. 14, 2019); Press Release, Dep't of Justice, *Two Former Executives of the China Subsidiary of a Multi-Level Marketing Company Charged for Scheme to Pay Foreign Bribes and Circumvent Internal Accounting Controls* (Nov. 14, 2019), <https://www.justice.gov/opa/pr/two-former-executives-china-subsidiary-multi-level-marketing-company-charged-scheme-pay>; see also Dylan Tokar, *Former Herbalife Executives Charged With Conspiracy to Bribe Chinese Officials*, WALL ST. J. (Nov. 15, 2019), <https://www.wsj.com/articles/former-herbalife-executives-charged-with-conspiracy-to-bribe-chinese-officials-11573848075>.

²⁸ See Herbalife Nutrition, Current Report (Form 8-K, Ex. 99.1) (Jan. 20, 2017), <https://www.sec.gov/Archives/edgar/data/1180262/000119312517013649/d322807dex991.htm>.

²⁹ See Dep't of Justice, *Information About the Department of Justice's China Initiative and a Compilation of China Related Criminal Cases Since Jan. 2018* (Dec. 4, 2019), <https://www.justice.gov/opa/page/file/1223496/download>.

³⁰ See William Mauldin, Lingling Wei & Alex Leary, *U.S., China Agree to Limited Deal to Halt Trade War*, WALL ST. J. (Dec. 13, 2019), https://www.wsj.com/articles/us-china-confirm-reaching-phase-one-trade-deal-11576234325?mod=article_inline&mod=article_inline.

³¹ See David J. Lynch, *Even as the U.S. and China Agree to Trade Truce, They Are Edging Toward Partial Economic Divorce*, WASH. POST (Dec. 27, 2019), https://www.washingtonpost.com/business/economy/trade-talks-between-us-china-mask-threat-of-a-divorce/2019/12/27/a4da3e72-2370-11ea-bed5-880264cc91a9_story.html.

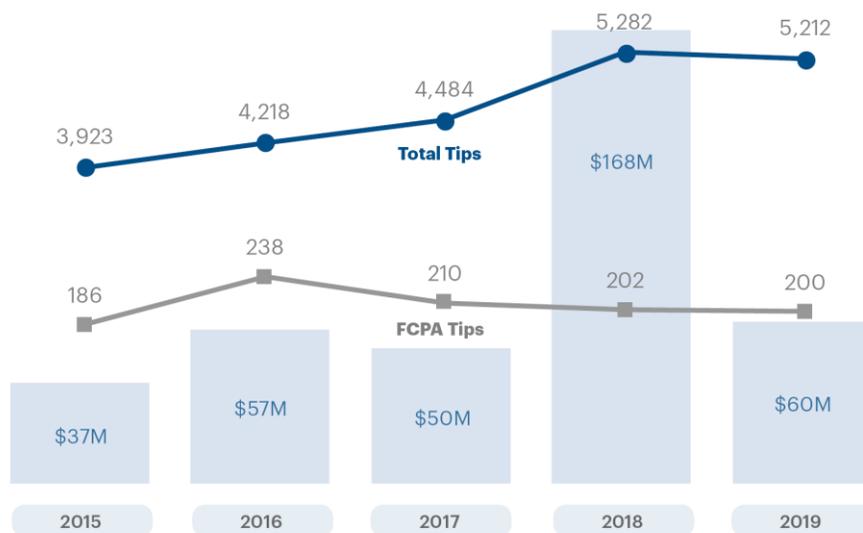
³² See Dep't of Justice, Att'y General Jeff Sessions, *Announcement of New Initiative to Combat Chinese Economic Espionage* (Nov. 1, 2018), <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-announces-new-initiative-combat-chinese-economic-espionage>.

Based on the companies' public announcements, the SEC apparently closed its investigations into at least five companies that had been under investigation for potential FCPA offenses (PAR Technology Corp., Gerdau S.A., OSI Systems, Inc., Misonix, Inc., and Ciena Corp.). As with the DOJ's decisions to close various investigations, it is difficult to draw any conclusions from these decisions, including whether there was any identified conduct that violated the FCPA.

SEC Whistleblower Program

In fiscal year 2019, the SEC received its second highest number of whistleblower tips since the start of the whistleblower program in 2011.³³ As reflected below, the SEC received 5,212 tips, 70 fewer than the record-setting high in 2018. FCPA-related whistleblower tips declined for the third year in a row, though the number of FCPA-related tips received in 2019 (200) was essentially the same as the number in 2018 (202).

The SEC issued awards totaling \$60 million to eight whistleblowers, an award amount comparable to prior years, although significantly less than the \$168 million awarded in fiscal year 2018. These awards included a \$50 million award to two individuals, which is the SEC's third largest award since the start of the whistleblower program. The SEC also awarded more than \$4.5 million to a whistleblower whose tip triggered Zimmer Biomet Holdings Inc. to conduct an internal investigation that led the company to self-report and eventually settle DOJ and SEC investigations into alleged FCPA violations.³⁴

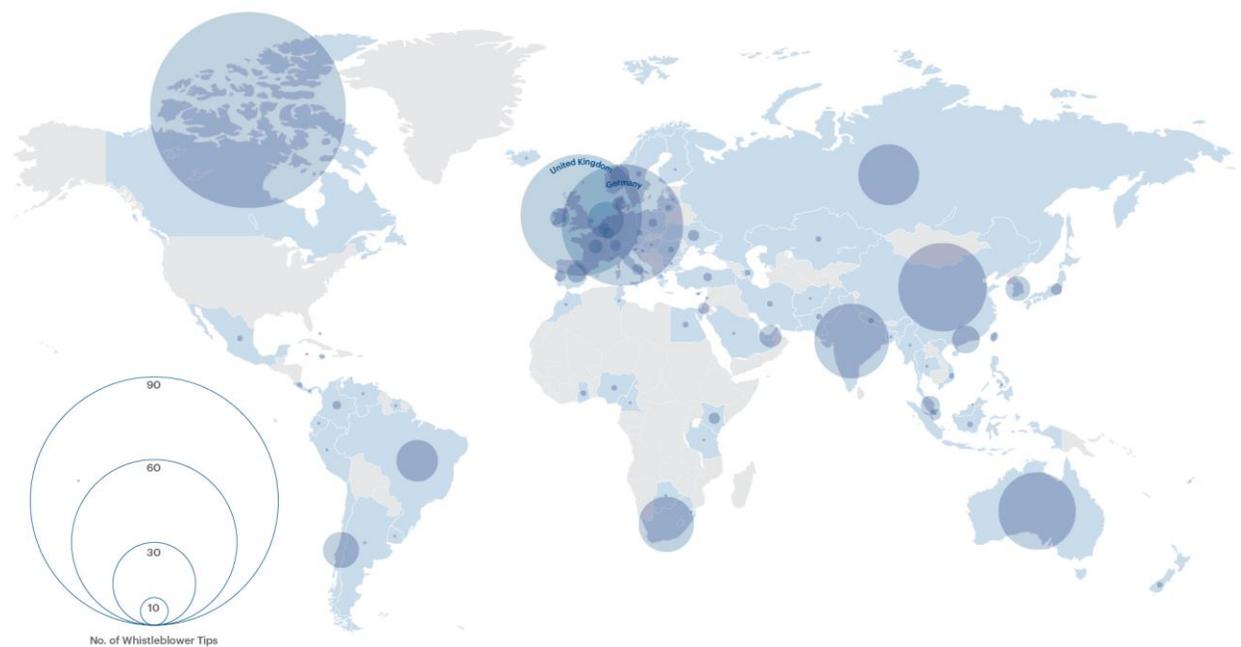


SEC WHISTLEBLOWER TIPS AND TOTAL WHISTLEBLOWER AWARDS 2015–2019

³³ See U.S. SEC. & EXCH. COMM'N, 2019 ANNUAL REPORT TO CONGRESS: WHISTLEBLOWER PROGRAM (Nov. 15, 2019), <https://www.sec.gov/files/sec-2019-annual-report-whistleblower-program.pdf>. As stated in the SEC's report, statistics regarding whistleblower tips are current through the end of its fiscal year on September 30, 2019.

³⁴ See Mengqi Sun & Kristin Broughton, *SEC Issues \$4.5 Million Whistleblower Award*, WALL ST. J. (May 24, 2019), <https://www.wsj.com/articles/sec-issues-4-5-million-whistleblower-award-11558738601>; see also *In the Matter of the Claim for Award*, Exchange Act Release No. 85936 (May 24, 2019), <https://www.sec.gov/rules/other/2019/34-85936.pdf>.

The map below shows the geographic distribution of whistleblower tips from foreign countries in 2019.³⁵ The SEC received tips from 70 countries. The largest number of tips came from the United States, Canada, the United Kingdom, and Germany. The large number of countries from which tips emanated continues to suggest, as it has in recent years, that contacting the SEC's whistleblower program has become a more well-known and accepted practice internationally.



2019 FCPA SEC WHISTLEBLOWER TIPS — WORLDWIDE

In addition, the SEC's Office of the Whistleblower has proposed amendments to the SEC's whistleblower regulations that would clarify the requirements for anti-retaliation protections under the whistleblower statute and increase efficiencies in the claims review process.³⁶ The SEC is reviewing public comments on the proposed amendments and anticipates that the new rules will be adopted in 2020.

³⁵ This map does not depict the 3,262 tips from the United States and its territories.

³⁶ See U.S. SEC. & EXCH. COMM'N, 2019 ANNUAL REPORT TO CONGRESS: WHISTLEBLOWER PROGRAM at 2 (Nov. 15, 2019), <https://www.sec.gov/files/sec-2019-annual-report-whistleblower-program.pdf>; see also Whistleblower Program Rules, Release No. 34-83557 (proposed June 28, 2018) (to be codified at 17 C.F.R. pts. 240, 249).

New SEC Policy Affecting Corporate Enforcement

On July 3, 2019, as part of the SEC's efforts to improve the effectiveness and efficiency of settlement negotiations, SEC Chairman Jay Clayton announced a new approach to how the SEC will consider contemporaneous settlement offers and waiver requests from defendants.³⁷

As Chairman Clayton explained in announcing the new approach, the imposition of certain types of relief by the SEC and other authorities in connection with settlement agreements can have significant collateral consequences, such as subjecting an entity to disqualifications that, as a practical matter, can prohibit the entity from continuing to conduct certain businesses. He explained that, in certain cases, these collateral consequences may not be appropriate, including because other measures may more appropriately address the conduct at issue and because of related investor protection considerations. In many cases, the SEC has the authority to grant a waiver from these collateral consequences, either in full or subject to conditions. Parties seeking settlements with the SEC consequently often make contemporaneous settlement offers and waiver requests.

Previously, the SEC's practice in determining whether to grant or deny a waiver request made contemporaneously with a settlement offer was to decide the two matters separately and independently. According to Chairman Clayton, this practice "may not produce the best outcome for investors in all circumstances," including because it can complicate and lengthen the negotiating process and can unnecessarily burden SEC resources. Accordingly, Chairman Clayton announced that a settling entity can request that the SEC consider a settlement offer that simultaneously addresses both the underlying enforcement action and any related collateral consequences. He explained that this approach will enable the SEC "to consider the proposed settlement and waiver request contemporaneously, along with the relevant facts and conduct, and the analysis and advice of the relevant [SEC] divisions to assess whether the proposed resolution of the matter in its entirety best serves investors and the [SEC's] mission more generally."

CFTC Developments

On March 6, 2019, James M. McDonald, the Director of Enforcement of the U.S. Commodity Futures Trading Commission ("CFTC"), announced for the first time the CFTC's commitment to investigating cases involving foreign corrupt practices in violation of the Commodity Exchange Act ("CEA"), and the CFTC published a new Enforcement Advisory that announced a leniency program for companies and individuals that cooperate and self-report foreign corrupt practices to the CFTC.³⁸ Director McDonald also disclosed that the CFTC already had open investigations involving corruption in commodities markets.

³⁷ See Jay Clayton, Chairman, Sec. Exch. Comm'n, *Statement Regarding Offers of Settlement* (July 3, 2018), <https://www.sec.gov/news/public-statement/clayton-statement-regarding-offers-settlement>.

³⁸ James M. McDonald, Commodity Futures Trading Commission Director of Enforcement, *Remarks at the American Bar Association's National Institute on White Collar Crime* (Mar. 6, 2019) (hereinafter, "McDonald Remarks"), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opamedonald2>; see also Client Memorandum, Paul, Weiss, Rifkind,

The announcements characterized the CFTC's involvement in foreign bribery investigations as part of a continued effort among U.S. agencies to coordinate the investigation of foreign corrupt practices and the imposition of corporate penalties to avoid "piling on," though at the same time it marks a new programmatic effort by the CFTC to address foreign bribery in the commodities markets. In remarks at the American Bar Association's National Institute on White Collar Crime, Director McDonald emphasized coordination efforts among the CFTC, the DOJ, and the SEC, noting that the CFTC is working closely with these enforcement agencies "to avoid duplicative investigative steps."³⁹ Director McDonald said that the CFTC will not "pile onto" other existing investigations and that it will provide dollar-for-dollar credit for disgorgement or restitution payments in related actions when it imposes monetary penalties. He added that the CFTC whistleblower program, established in 2011 under the Dodd-Frank Act, will apply to CEA violations involving foreign corruption. In May 2019, the CFTC published its first whistleblower alert on how to report foreign corruption in the commodities and derivatives markets.⁴⁰

Although the CEA does not, on its face, penalize corruption, Director McDonald—a former Assistant U.S. Attorney in the Public Corruption Unit for the Southern District of New York—identified several examples of corrupt practices that "might constitute fraud, manipulation, false reporting, or a number of other types of violations under the CEA," including: bribes to secure business in connection with regulated activities like trading, advising, or dealing in swaps or derivatives; corrupt practices used to manipulate benchmarks that serve as the basis for related derivatives contracts; prices that are the product of corruption and are falsely reported to benchmarks; or corrupt practices that alter the prices in commodity markets that drive U.S. derivatives prices.⁴¹

The CFTC's commitment to investigating foreign corrupt practices is not entirely new, but arises out of the agency's efforts to charge cases in parallel with FCPA investigations.⁴² For instance, on June 4, 2018, the DOJ announced an FCPA resolution involving Société Générale S.A., a Paris-based financial services company, which agreed to pay over \$860 million in penalties to resolve criminal charges in France and the United States in connection with charges of bribery and interest rate manipulation.⁴³ On the same day, the

Wharton & Garrison LLP, DOJ, FBI, and CFTC Announce FCPA Policy Revisions and Initiatives (Mar. 15, 2019), <https://www.paulweiss.com/media/3978517/15mar19-doj-fcpa-revs.pdf>.

³⁹ McDonald Remarks, *supra*.

⁴⁰ See Commodity Futures Trading Commission, *CFTC Whistleblower Alert: Blow the Whistle on Foreign Corrupt Practices in the Commodities and Derivatives Markets* (May 2019), <https://www.whistleblower.gov/system/files/2019/11/1572624133/FCP%20WBO%20Alert%20-%20May%202019.pdf>.

⁴¹ McDonald Remarks, *supra*.

⁴² See Commodity Futures Trading Commission, *2018 Annual Report on the Division of Enforcement* at 12-13 (Nov. 2018), https://www.cftc.gov/sites/default/files/2018-11/ENFAnnualReport111418_o.pdf.

⁴³ See Deferred Prosecution Agreement, *U.S. v. Société Générale S.A.*, No. 18-CR-253 (E.D.N.Y. June 5, 2018); Press Release, Dep't of Justice, *Société Générale S.A. Agrees to Pay \$860 Million in Criminal Penalties for Bribing Gaddafi-Era Libyan Officials and Manipulating LIBOR Rate* (June 4, 2018), <https://www.justice.gov/opa/pr/soci-t-g-n-rale-sa-agrees-pay-860-million-criminal-penalties-bribing-gaddafi-era-libyan>; see also Client Memorandum, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Société Générale and Legg Mason to Pay Nearly \$650 Million to Resolve DOJ Investigation of Libyan Bribery Scheme (June 7, 2018), <https://www.paulweiss.com/media/3977841/7jun18-socgen.pdf>.

CFTC accepted a settlement offer ordering Société Générale to pay \$475 million in regulatory penalties and disgorgement in connection with similar interest rate manipulation charges.⁴⁴

The CFTC's related Advisory on Self Reporting and Cooperation for CEA Violations Involving Foreign Corrupt Practices provides incentives to report CEA violations involving foreign corrupt practices.⁴⁵ Absent aggravating circumstances, that Advisory provides a presumption that the CFTC Enforcement Division will recommend a resolution with no civil monetary penalty if a company or individual that is not registered with the CFTC timely and voluntarily self-discloses, fully cooperates, and appropriately remediates. Aggravating circumstances that may negate the presumption include, but are not limited to, involvement by executive management of the company in the misconduct, pervasiveness of the misconduct within the company, and recidivism. In all instances, the CFTC Enforcement Division will "still require payment of all disgorgement, forfeiture, and/or restitution resulting from the misconduct at issue."⁴⁶

Since issuing the enforcement advisory, the CFTC has launched at least one investigation concerning potentially corrupt practices related to commodities, but it has yet to announce any resolutions.⁴⁷

Legislative Developments

In August 2019, the Foreign Extortion Prevention Act ("FEPA") was introduced in the U.S. House of Representatives to prohibit foreign officials from demanding or receiving bribes.⁴⁸ The bipartisan bill makes it illegal for a foreign official to demand or receive anything of value in return for "being influenced in the performance of any official act" or "being induced to do or omit to do any act in violation of the official duty of such official or person." The bill has been referred to the Subcommittee on Crime, Terrorism, and Homeland Security.

Because foreign officials who demand and receive bribes may not be covered by the FCPA, if adopted, FEPA could be an important tool in aiding U.S. authorities in combating corruption.

⁴⁴ See *In re Société Générale S.A.*, CFTC No. 18-14, 2018 WL 2761752 (June 4, 2018) (consent order) (benchmark manipulation).

⁴⁵ See Commodity Futures Trading Commission, *Advisory on Self Reporting and Cooperation for CEA Violations Involving Foreign Corrupt Practices* (Mar. 6, 2019), https://www.cftc.gov/sites/default/files/2019-03/enfadvisoryselfreporting_030619.pdf.

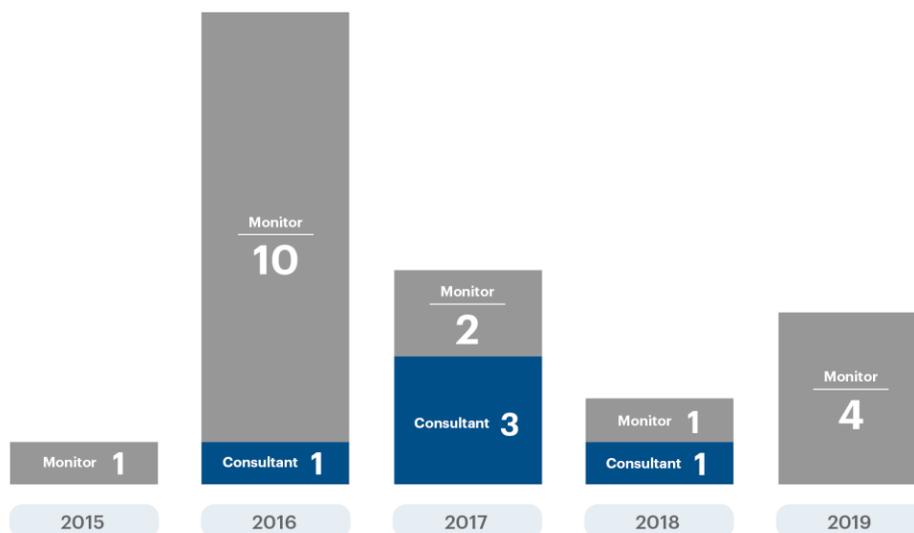
⁴⁶ Due to independent reporting obligations, futures professionals registered with the CFTC are ineligible for a resolution with no civil monetary penalty, but registrants that timely and voluntarily self-disclose, fully cooperate, and appropriately remediate will receive a recommended "substantial reduction in the civil monetary penalty." *Id.*

⁴⁷ See Press Release, Glencore plc, *Announcement re the Commodity Futures Trading Commission* (Apr. 25, 2019), <https://www.glencore.com/dam/jcr:88992a99-239b-4e93-a7c1-e5d52212817f/201904251930-CFTC-announcement-re-the-commodity-futures-trading-commission.pdf>.

⁴⁸ See Foreign Extortion Prevention Act, H.R. 4140, 116th Cong. (2019).

Compliance Monitors

In 2019, U.S. authorities imposed four compliance monitors in FCPA cases, as reflected in the chart below.⁴⁹ The DOJ and the SEC both imposed a monitor in three of the four cases (Ericsson, Fresenius Medical Care AG & Co. KGaA, and MTS), and only the DOJ imposed one in the fourth case (Walmart Inc.).⁵⁰ This marks an increase from 2018, when the DOJ imposed only one monitor and the SEC only imposed one consultant and no monitors. The increase is noteworthy given the so-called “Benzkowski Memorandum,” a 2018 memorandum which highlights factors that prosecutors should consider when deciding whether to impose a monitor and which emphasizes that a company’s remediation efforts may obviate the need to impose an independent monitor under certain circumstances.



COMPLIANCE OVERSIGHT IN CORPORATE FCPA RESOLUTIONS 2015–2019

⁴⁹ Monitors and consultants imposed in corporate resolutions are counted based on a variety of considerations. Where the resolution involves both a parent and a subsidiary and/or both the DOJ and the SEC, whether more than one monitor/consultant is counted depends upon whether one individual appears to be serving in multiple capacities or multiple individuals appear to be serving in different capacities. This analysis is based upon the corporate resolution documents and, if necessary, third-party resources.

⁵⁰ See Deferred Prosecution Agreement, *U.S. v. Telefonaktiebolaget LM Ericsson*, No. 19-cr-00884(AJN) (S.D.N.Y. Dec. 6, 2019), <https://www.justice.gov/criminal-fraud/file/1226521/download>; Press Release, SEC, *SEC Charges Multinational Telecommunications Company with FCPA Violations* (Dec. 6, 2019), <https://www.sec.gov/news/press-release/2019-254>; Non-Prosecution Agreement, *U.S. v. Fresenius Medical Care AG & Co. KGaA* (Feb. 25, 2019), <https://www.justice.gov/opa/press-release/file/1148951/download>; *In the Matter of Fresenius Medical Care AG & Co. KGaA*, Exchange Act Release No. 85468 (Mar. 29, 2019), <https://www.sec.gov/litigation/admin/2019/34-85468.pdf>; Non-Prosecution Agreement, *U.S. v. Walmart, Inc.*, No. 19-cr-192 (E.D.Va. June 20, 2019), <https://www.justice.gov/criminal-fraud/page/file/1177596/download>; Deferred Prosecution Agreement, *U.S. v. Mobile TeleSystems PJSC*, No. 19-cr-00167(JPO) (S.D.N.Y. Feb. 22, 2019), <https://www.justice.gov/criminal-fraud/file/1147381/download>; *In the Matter of Mobile TeleSystems PJSC*, Exchange Act Release No. 85621 (Mar. 6, 2019), <https://www.sec.gov/litigation/admin/2019/34-85621.pdf>.

Review of Select Corporate Resolutions

In 2019, the DOJ and the SEC resolved a combined 20 corporate enforcement actions. We summarize below select resolutions from the past year.

MTS

On March 6 and 7, 2019, the DOJ and the SEC announced settlements with MTS, Russia's largest telecommunications provider, involving violations of the FCPA.⁵¹ The resolutions, which include penalties, forfeiture, and disgorgement totaling \$850 million, relate to a scheme to bribe Uzbek officials—including Gulnara Karimova, the daughter of the former president of Uzbekistan—to obtain and retain business in Uzbekistan that is similar to the scheme that led to the \$795 million resolutions in 2016 with VimpelCom Limited, a Netherlands-based telecommunications company, and the \$965 million resolutions in 2017 with Telia Company AB, a telecommunications company based in Sweden.

The DOJ filed a two-count criminal information in the U.S. District Court for the Southern District of New York charging MTS, a foreign “issuer” within the meaning of the FCPA, with conspiracy to violate the FCPA and violations of the books and records and internal controls provisions of the FCPA. MTS entered into a deferred prosecution agreement with the DOJ and agreed to pay a criminal fine and forfeiture in the amount of \$850 million. KolorIt Dizayn Ink LLC (“KolorIt”), a wholly-owned subsidiary of MTS, pleaded guilty to a charge of conspiracy to violate the FCPA. The \$850 million penalty includes a criminal fine of \$500,000 plus forfeiture of an additional \$40 million that MTS agreed to pay on KolorIt's behalf. MTS also consented to the SEC's order finding that it violated the FCPA's anti-bribery, books and records, and internal accounting control provisions, and requiring it to pay a \$100 million civil penalty. Pursuant to the DOJ's policy against “piling on,” the DOJ agreed to credit the \$100 million penalty that MTS pays to the SEC. Under the deferred prosecution agreement with the DOJ and under the SEC's order, the company must also retain an independent compliance monitor for at least three years.

Combined with the resolutions with VimpelCom and Telia, the resolution with MTS brings the total fines, criminal forfeiture, and disgorgement assessed by the DOJ and the SEC against bribe payors in the Uzbekistan telecommunications market scandal to over \$2.6 billion. Those resolutions relied on extensive international cooperation between the U.S. enforcement agencies and authorities in numerous European countries.

In addition, the DOJ brought FCPA and money laundering conspiracy charges against a former executive of Uzdurobita LLC, a telecommunications operator in Uzbekistan and an MTS subsidiary.⁵² The DOJ also

⁵¹ See Letter from Robert A. Zink, et al. to Gary DiBianco, et al. (Feb. 22, 2019), <https://www.justice.gov/opa/press-release/file/1141631/download>; *In the Matter of Mobile TeleSystems PJSC*, Exchange Act Release No. 85261 (Mar. 6, 2019), <https://www.sec.gov/litigation/admin/2019/34-85261.pdf>; see also Client Memorandum, Paul, Weiss, Rifkind, Wharton & Garrison LLP, *Mobile TeleSystems PJSC Reaches \$850 Million Resolutions With DOJ and SEC Over FCPA Violations* (Mar. 12, 2019), <https://www.paulweiss.com/media/3978492/12mar19-mts-fcpa.pdf>.

⁵² See Indictment, *U.S. v. Karimova*, No. 19-CR-165 (S.D.N.Y. Mar. 7, 2019).

brought money laundering charges, but not FCPA charges, against Karimova, who is serving a prison sentence in Uzbekistan for embezzlement and extortion.⁵³ The United States does not have an extradition agreement with Uzbekistan. Additionally, the DOJ filed civil complaints seeking forfeiture of \$850 million held in bank accounts in Switzerland, Belgium, Luxembourg, and Ireland, which the DOJ alleges constitute bribe payments made by MTS, VimpelCom and Telia to Karimova.⁵⁴

Telefônica Brasil

On May 9, 2019, the SEC assessed a \$4.1 million civil penalty against Telefônica Brasil to resolve allegations that the company's internal accounting controls failed to protect sufficiently against the risk that things of value, including World Cup tickets and related hospitality, would be given improperly to government officials, and that the company inaccurately recorded such expenses in its books and records, all in violation of the accounting provisions of the FCPA.⁵⁵ Telefônica Brasil agreed to settle the allegations without admitting or denying the SEC's findings.

The SEC alleged that Telefônica Brasil, a subsidiary of Telefônica S.A., a Spanish multinational broadband and telecommunications provider, failed to devise and maintain sufficient internal accounting controls regarding a hospitality program that the company hosted in connection with the 2014 World Cup and the 2013 Confederations Cup. Telefônica Brasil, a foreign issuer whose American Depositary Receipts ("ADRs")—certificates issued by U.S. banks representing a number of shares of investment in a foreign company's stock—trade on the New York Stock Exchange, allegedly offered and provided tickets and hospitality to government officials who were directly involved with, or in a position to influence, government actions affecting the company's business. In total, Telefônica Brasil allegedly provided World Cup and Confederations Cup tickets and related hospitality with a combined total value of nearly \$740,000 to approximately 127 government officials between 2012 and 2014.

According to the SEC, although Telefônica Brasil had in place a general code of ethics that prohibited these gifts to public officials, it was not followed due to a lack of internal accounting controls, a compliance breakdown, and a deficient internal audit function. Additionally, the SEC alleged that, because the company recorded the ticket purchases and hospitality as being for general advertising and publicity purposes, when in fact the tickets and related hospitality were given to government officials, Telefônica

⁵³ See Lisa Lambert & Chris Sanders, *U.S. Indicts Gulnara Karimova in Uzbek Corruption Scheme*, REUTERS (Mar. 7, 2019), <https://www.reuters.com/article/us-mob-telesystems-usa/u-s-indicts-gulnara-karimova-in-uzbek-corruption-scheme-idUSKCN1QO2GL>.

⁵⁴ See Verified Compl., *U.S. v. All Funds Held in Account Number CH140876000050335300 at Lombard Odier Darier Hentsch & CIE Bank, Switzerland, on Behalf of Takilant Ltd., and any Property Traceable Thereto, et al.*, No. 1:16-cv-01257-ALC (S.D.N.Y. Feb. 18, 2016); Press Release, Dep't of Justice, *Former Uzbek Government Official and Uzbek Telecommunications Executive Charged in Bribery and Money Laundering Scheme Involving the Payment of Nearly \$1 Billion in Bribes* (Mar. 7, 2019), <https://www.justice.gov/usao-sdny/pr/former-uzbek-government-official-and-uzbek-telecommunications-executive-charged-bribery>.

⁵⁵ See *In the Matter of Telefônica Brasil S.A.*, Exchange Act Release No. 85819 (May 9, 2019), <https://www.sec.gov/litigation/admin/2019/34-85819.pdf>; see also Client Memorandum, Paul, Weiss, Rifkind, Wharton & Garrison LLP, SEC Fines Telefônica Brasil S.A. \$4.125 Million Relating to World Cup Tickets Given to Government Officials (May 13, 2019), <https://www.paulweiss.com/media/3978643/13may19-telefonica-brasil.pdf>.

Brasil's books and records did not, in reasonable detail, accurately and fairly reflect the disposition of the company's assets.

The Telefônica Brasil settlement demonstrates that providing travel and hospitality to government officials without adequate controls and oversight is a high-risk activity from an FCPA perspective. This settlement also reflects the SEC's willingness to bring enforcement actions exclusively under the FCPA's accounting provisions—even if there is no evidence of a quid pro quo or any improperly awarded business or government action—when the SEC is not satisfied that the issuer's internal accounting controls and anti-corruption compliance program are sufficient to manage corruption risks. That is, the SEC may bring an enforcement action when it believes that anti-corruption compliance controls leave an unacceptable level of risk of bribery.

Walmart

On June 20, 2019, the DOJ and the SEC announced long-awaited resolutions with Walmart for violations of the books and records and internal accounting provisions of the FCPA.⁵⁶ In addition to entering into a three-year non-prosecution agreement and agreeing to the imposition of a compliance monitor for two years, Walmart agreed to pay approximately \$138 million to settle the DOJ's criminal charges and \$144 million to resolve parallel civil charges brought by the SEC. Walmart also consented to the SEC's finding that it violated the books and records and internal accounting provisions of the FCPA. In connection with the resolution, WMT Brasilia, S.a.r.l. ("WMT"), Walmart's wholly-owned Brazilian subsidiary, pleaded guilty to a one-count criminal information charging it with a violation of the FCPA's books and records and internal accounting provisions.

The DOJ and the SEC alleged that, from 2000 until 2011, Walmart personnel responsible for implementing and maintaining the company's internal accounting controls were aware of certain compliance failures, including relating to potentially improper payments to government officials. The internal controls failures allowed Walmart's foreign subsidiaries in Brazil, China, Mexico, and India to hire third-party intermediaries without sufficient controls to prevent those intermediaries from making improper payments to government officials in return for store permits and licenses. In a number of instances, shortcomings in Walmart's internal accounting controls at these foreign subsidiaries were reported to senior Walmart executives. The internal controls failures allowed the foreign subsidiaries to open stores faster than they otherwise would have been able, enabling Walmart to earn additional and improper profits through these subsidiaries.

According to the DOJ, these violations were attributable, at least in part, to a policy that favored rapid international expansion over compliance. As AAG Benczkowski observed, "Walmart profited from rapid

⁵⁶ See Letter from Robert Zink to Karen P. Hewitt (June 20, 2019), <https://www.justice.gov/opa/press-release/file/1175791/download>; *In the Matter of Walmart, Inc.*, Exchange Act Release No. 86159, ¶¶ 48-51 (June 20, 2019), <https://www.sec.gov/litigation/admin/2019/34-86159.pdf>; see also Client Memorandum, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Walmart Agrees to Pay \$282 Million to Resolve DOJ and SEC FCPA Charges (June 25, 2019), <https://www.paulweiss.com/media/3978734/25jun19-walmart.pdf>.

international expansion, but in doing so chose not to take necessary steps to avoid corruption.”⁵⁷ These compliance failures precipitated an eight-year internal investigation and extensive remediation, as well as numerous lawsuits, generating legal fees and other expenses nearing \$1 billion, excluding the \$282 million settlement. Indeed, in fiscal years 2016 through 2018 alone, the company spent more than \$265 million on investigations and compliance enhancements.⁵⁸

The DOJ and SEC settlements with Walmart were based on violations of the FCPA’s accounting provisions, without any anti-bribery charges. Neither the DOJ nor the SEC charged actual knowledge or even willful blindness of actual bribery on the part of Walmart, despite the numerous allegations in the charging documents of knowledge of improper payments made to foreign officials, of deficient controls, and of awareness that Walmart was expanding internationally at an expedited rate. Although the amount of Walmart’s settlements with the DOJ and the SEC may seem small compared with recent large settlements, such as MTS (\$850 million), the SEC settlement alone is substantial when compared with other “risk of bribery” cases, such as the SEC’s recent settlement with Telefônica Brasil (\$4.1 million). The significant expenditures the company incurred as a result of the misconduct serve as an important reminder of the value of having a clear and well-established compliance program in place before expanding abroad, and especially in countries in which corruption risk is substantial.

TFMC

On June 25, 2019, the DOJ announced a resolution with Technip FMC PLC (“TFMC”), a London-headquartered, global provider of oil and gas technology and services that is listed on the New York Stock Exchange, for conspiracy to violate the FCPA’s anti-bribery provisions.⁵⁹ Subsequently, on September 23, TFMC entered into a cease-and-desist order with the SEC for alleged violations of the FCPA’s anti-bribery, books and records, and internal accounting controls provisions.

TFMC entered into a three-year deferred prosecution agreement with the DOJ and agreed to pay a combined total criminal fine of more than \$296 million to resolve charges with the DOJ and with the Advogado-Geral da União (“AGU”), the Controladoria-Geral da União (“CGU”), and the Ministério Público Federal (“MPF”) in Brazil.⁶⁰ TFMC agreed to pay approximately \$82 million in fines to the DOJ, which also

⁵⁷ Press Release, Dep’t of Justice, *Walmart Inc. and Brazil-Based Subsidiary Agree to Pay \$137 Million to Resolve Foreign Corrupt Practices Act Case* (June 20, 2019), <https://www.justice.gov/opa/pr/walmart-inc-and-brazil-based-subsidiary-agree-pay-137-million-resolve-foreign-corrupt>.

⁵⁸ See Walmart Inc., Annual Report, Form 10-K, 80 (Mar. 30, 2018), https://s2.q4cdn.com/056532643/files/doc_financials/2018/annual/WMT-2018_Annual-Report.pdf.

⁵⁹ See Deferred Prosecution Agreement, *U.S. v. TechnipFMC plc*, No. 19-CR-278 (E.D.N.Y. June 25, 2019); see also Client Memorandum, Paul, Weiss, Rifkind, Wharton & Garrison LLP, *TechnipFMC Agrees to Pay \$296 Million in Global Settlement to Resolve Criminal FCPA Charges; SEC Civil Charges Pending* (July 2, 2019), <https://www.paulweiss.com/media/3978757/2july19-technipfmc.pdf>.

⁶⁰ The DOJ also recognized the significant assistance provided by the governments of Australia, France, Guernsey, Italy, Monaco, and the United Kingdom. See Press Release, Dep’t of Justice, *TechnipFMC PLC and U.S.-Based Subsidiary Agree to Pay Over \$296 Million in Global Criminal Fines to Resolve Foreign Bribery Case* (June 25, 2019) (hereinafter, “DOJ TFMC Press Release”), <https://www.justice.gov/usao-edny/pr/technipfmc-plc-and-us-based-subsidiary-agree-pay-over-296-million-global-criminal-fines>.

credited the \$214 million that TFMC agreed to pay to the Brazilian authorities. As part of the DOJ resolution, Technip USA, Inc., TFMC's wholly-owned U.S. subsidiary, pleaded guilty to one count of conspiracy to violate the FCPA's anti-bribery provisions.⁶¹ The DOJ also announced that Zwi Skornicki, formerly a consultant to TFMC, pleaded guilty in the Eastern District of New York to a one-count criminal information charging him with conspiracy to violate the FCPA.⁶²

The charges arose from two bribery schemes: one by TFMC's pre-merger predecessor company, Paris-based Technip S.A., to pay bribes to Brazilian officials, and one by its other pre-merger predecessor, Houston-based FMC Technologies, Inc., to pay bribes to Iraqi officials.⁶³ From 2003 to 2013, TFMC allegedly conspired with others, including Keppel Offshore & Marine Ltd. ("KOM")—which entered into its own settlement with the DOJ for related FCPA violations in December 2017—to make corrupt payments in Brazil. TFMC, Technip USA, KOM, and Skornicki are charged with conspiring to pay more than \$69 million in bribes to employees of *Petróleo Brasileiro SA* ("Petrobras"), the Brazilian state-owned energy company, as well as to certain Brazilian political candidates and their political party, in return for contracts related to oil and gas projects. TFMC also is charged with conspiring with others to bribe officials at the Iraqi Ministry of Oil and at the South Oil Company and the Missan Oil Company, both state-owned oil companies, from 2008 to 2013, to win contracts to provide metering technologies for oil and gas production measurement to the Iraqi government.

Three months after TFMC entered into the deferred prosecution agreement, the company consented to a cease-and-desist order with the SEC and agreed to pay over \$5 million in disgorgement and prejudgment interest to resolve related charges.⁶⁴ In light of TFMC's settlement with the DOJ, the SEC did not impose a civil penalty. As a condition of settlement, TFMC agreed to self-report compliance for three years, with particular attention focused on the company's due diligence of third-party consultants and vendors, FCPA training, and the collection and analysis of compliance data.

These resolutions highlight the perils associated with successor liability. TFMC inherited significant FCPA liabilities in the course of its 2017 merger. In 2010, Technip S.A., ADRs of which traded on the New York Stock Exchange between August 2001 and November 2007, entered into a two-year deferred prosecution agreement and a \$240 million settlement with the DOJ for participating in a scheme to bribe Nigerian government officials to obtain engineering, procurement, and construction contracts.⁶⁵ Certain of the

⁶¹ See Plea Agreement, *U.S. v. Technip USA, Inc.*, No. 19-CR-279 (E.D.N.Y. June 25, 2019), <https://www.justice.gov/opa/press-release/file/1177306/download>.

⁶² See DOJ TFMC Press Release, *supra*.

⁶³ *Id.*

⁶⁴ See *In the Matter of TechnipFMC plc.*, Exchange Act Release No. 87055 (Sept. 23, 2019), <https://www.sec.gov/litigation/admin/2019/34-87055.pdf>.

⁶⁵ See Criminal Information, *U.S. v. TechnipFMC plc*, No. 19-CR-278, ¶ 3; see also Press Release, Dep't of Justice, *Technip S.A. Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay \$240 Million Criminal Penalty* (June 28, 2010), <https://www.justice.gov/opa/pr/technip-sa-resolves-foreign-corrupt-practices-act-investigation-and-agrees-pay-240-million>.

company's offenses in Brazil and Iraq occurred during the pendency of the 2010 deferred prosecution agreement and while Technip S.A. was subject to the oversight of a corporate compliance monitor.⁶⁶

SHI

On November 22, 2019, the DOJ announced a three-year non-prosecution agreement with Samsung Heavy Industries Company Ltd. ("SHI") relating to a scheme to pay millions of dollars in bribes to officials of Petrobras in order to cause Petrobras to charter one of SHI's oil drillships.⁶⁷ SHI agreed to pay approximately \$75 million to settle the DOJ's criminal charges, of which 50 percent will be paid to the DOJ and the remaining 50 percent to Brazilian authorities. In related proceedings in Brazil, SHI entered into a memorandum of understanding and a complementary agreement for the negotiation of a leniency agreement with the Brazilian authorities.

The DOJ alleged that, from 2007 to 2013, SHI conspired to pay approximately \$20 million to Brazilian intermediaries as commissions, while knowing that some of the money would be paid as bribes to certain Petrobras officials. At the center of the bribery scheme was a contract between SHI and Pride International, Inc. ("Pride"), a Houston-based offshore oil drilling company. SHI and Pride entered into an option agreement for the purchase of one of SHI's newly constructed oil drillships. Pride's purchase of the ship was contingent on Petrobras's agreeing to charter it from Pride. By agreeing to these terms, the parties incentivized SHI to bribe Petrobras so Pride, in turn, would exercise its option. Pride self-reported this matter to the DOJ and the SEC in 2015, after learning of an internal audit report at Petrobras into the negotiations of the chartering agreement and after conducting its own internal investigation.⁶⁸

The \$75 million criminal penalty reflects a 20-percent reduction off the bottom of the applicable U.S. Sentencing Guidelines fine range due to SHI's cooperation with the DOJ. SHI did not receive voluntary disclosure credit, but it received credit for conducting a thorough internal investigation, making presentations to the DOJ, voluntarily making foreign-based employees available for interviews, and producing relevant documents and translations of key foreign documents where needed. SHI would have received full credit for its cooperation, but, according to the deferred prosecution agreement, the company failed to meet "reasonable deadlines" imposed by the DOJ.

The SHI resolution is part of the continued fallout from Operation Lava Jato (also known as Operation Car Wash), the Brazilian corruption investigation centered on illegal payments to executives at Petrobras that

⁶⁶ See Deferred Prosecution Agreement, *U.S. v. TechnipFMC plc*, No. 19-CR-278 (E.D.N.Y. June 25, 2019), ¶ 4(i).

⁶⁷ See Deferred Prosecution Agreement, *U.S. v. Samsung Heavy Industries Co. Ltd.*, No. 1:19-CR-328 (E.D. Va. Nov. 22, 2019) 16, <https://www.justice.gov/opa/press-release/file/1219891/download>; Press Release, Dep't of Justice, *Samsung Heavy Industries Company Ltd Agrees to Pay \$75 Million in Global Penalties to Resolve Foreign Bribery Case* (Nov. 22, 2019), <https://www.justice.gov/opa/pr/samsung-heavy-industries-company-ltd-agrees-pay-75-million-global-penalties-resolve-foreign>; see also Client Memorandum, Paul, Weiss, Rifkind, Wharton & Garrison LLP, *Samsung Heavy Industries Agrees to Pay \$75 Million to DOJ and Brazilian Authorities to Resolve FCPA Charges* (Dec. 5, 2019), <https://www.paulweiss.com/media/3979170/5dec19-samsung-heavy.pdf>.

⁶⁸ See Enco plc, Quarterly Report (Form 10-Q), at 22 (Oct. 29, 2015), <https://www.sec.gov/Archives/edgar/data/314808/000031480815000204/esv-9302015x10q.htm#s3E7EAA3DF9632E8D607D8450322D1B39>.

has been ongoing for nearly five years. The SHI resolution demonstrates that U.S. authorities are actively enforcing the FCPA against foreign companies that have a nexus to the United States. The resolution further demonstrates the potential risks of option contracts that are dependent on favorable government actions.

Enforcement Actions Against Individuals

Based on publicly filed charging instruments, as reflected below, in 2019, the DOJ brought FCPA charges against 22 individuals—the highest number in recent years—and the SEC brought charges against six individuals.⁶⁹ Both authorities have continued to emphasize individual accountability, with now former Deputy Assistant Attorney General Matthew Miner stressing the importance of “holding individuals accountable [in order to] maximize deterrence,”⁷⁰ and the SEC Division of Enforcement issuing a press release highlighting its “focus on individual accountability” as a core priority.⁷¹ As in recent years, in 2019, the DOJ was more active than the SEC in bringing FCPA actions against individuals. The number of individual prosecutions brought by the DOJ under the FCPA is considerably higher than last year, but overall both the DOJ and the SEC numbers are in line with fluctuations in recent years.



FCPA INDIVIDUAL ENFORCEMENT ACTIONS 2015–2019

⁶⁹ Included in these totals are individual prosecutions and enforcement actions for FCPA charges, but not for other charges, such as money laundering or racketeering. Actions are listed in the year of the initial filing of FCPA charges, even if unsealed in a later year, which may result in changes to the totals for past years, as indictments from past years are unsealed.

⁷⁰ See, e.g., Matthew S. Miner, Deputy Assistant Att’y General, *Remarks at the 6th Annual Government Enforcement Institute* (Sept. 12, 2019), <https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-matthew-s-miner-delivers-remarks-6th-annual-government>.

⁷¹ See Press Release, *SEC Division of Enforcement Publishes Annual Report for Fiscal Year 2019* (Nov. 6, 2019), <https://www.sec.gov/news/press-release/2019-233>.

In 2019, FCPA charges were unsealed against four individuals.⁷² Three of these individuals (Andrew Pearse, Surjan Singh, and Detelina Subeva) were charged in December 2018 with conspiracy to violate the FCPA, although all three ultimately pleaded guilty to non-FCPA charges.⁷³ The three individuals, investment bankers who reside in the United Kingdom, were charged in connection with allegations that they facilitated bribe payments to government officials in Mozambique and circumvented the internal accounting controls of a foreign investment bank that arranged two of the loans to the government officials.⁷⁴

Thirteen individuals pleaded guilty to FCPA charges in 2019.⁷⁵ Among these individuals was Robin Longoria, the manager of an international program at an Ohio-based adoption agency, who pleaded guilty to one count of conspiracy to violate the FCPA, one count of conspiracy to commit wire fraud, and one count of conspiracy to commit visa fraud.⁷⁶ Longoria pleaded guilty in connection with her role in a

⁷² See Order to Unseal Indictment, *U.S. v. Boustani*, No. 1:18-cr-00681 (E.D.N.Y. Mar. 6, 2019); Order Granting Mot. to Unseal Case, *U.S. v. Padron-Acosta*, No. 16-cr-437 (S.D. Tex. June 27, 2019).

⁷³ See Brendan Pierson, *Ex-Credit Suisse Banker Pleads Guilty to U.S. Charge Over Mozambique Loan*, REUTERS (May 20, 2019), <https://www.reuters.com/article/us-mozambique-credit-suisse-charges/ex-credit-suisse-banker-pleads-guilty-to-u-s-charge-over-mozambique-loan-idUSKCN1SQ2E1>; Brendan Pierson, *Second Ex-Credit Suisse Banker Pleads Guilty in Mozambique Loan Scheme*, Reuters (July 19, 2019), <https://www.reuters.com/article/us-mozambique-credit-suisse-charges/ex-credit-suisse-banker-pleads-guilty-to-u-s-charge-over-mozambique-loan-idUSKCN1SQ2E1>; Patricia Hurtado, *Former Credit Suisse Banker Pleads Guilty in Money-Launder Scam*, Bloomberg Law (Sept. 6, 2019), <https://news.bloomberglaw.com/banking-law/former-credit-suisse-banker-pleads-guilty-in-money-launder-scam>.

⁷⁴ See Indictment, *U.S. v. Boustani*, No. 18-CR-681 (E.D.N.Y. Dec. 19, 2018); Press Release, Dep't of Justice, *Mozambique's Former Finance Minister Indicted Alongside Other Former Mozambican Officials, Business Executives, and Investment Bankers in Alleged \$2 Billion Fraud and Money Laundering Scheme That Victimized U.S. Investors* (Mar. 7, 2019), <https://www.justice.gov/opa/pr/mozambique-s-former-finance-minister-indicted-alongside-other-former-mozambican-officials>.

⁷⁵ See Press Release, Dep't of Justice, *Micronesian Government Official Arrested in Money Laundering Scheme Involving Foreign Bribery* (Feb. 12, 2019), <https://www.justice.gov/opa/pr/micronesian-government-official-arrested-money-laundering-scheme-involving-foreign-bribery>; Press Release, Dep't of Justice, *Business Executive Pleads Guilty to Foreign Bribery Charges in Connection With Venezuela Bribery Scheme* (May 29, 2019), <https://www.justice.gov/opa/pr/business-executive-pleads-guilty-foreign-bribery-charges-connection-venezuela-bribery-scheme>; Press Release, Dep't of Justice, *Technipfmc PLC and U.S.-Based Subsidiary Agree to Pay Over \$296 Million in Global Criminal Fines to Resolve Foreign Bribery Case* (June 25, 2019), <https://www.justice.gov/usao-edny/pr/technipfmc-plc-and-us-based-subsidiary-agree-pay-over-296-million-global-criminal-fines>; Press Release, Dep't of Justice, *Two Former Venezuelan Officials Charged and Two Businessmen Plead Guilty in Connection With Venezuela Bribery Scheme* (June 27, 2019), <https://www.justice.gov/opa/pr/two-former-venezuelan-officials-charged-and-two-businessmen-plead-guilty-connection-venezuela>; Press Release, Dep't of Justice, *Texas Woman Pleads Guilty to Conspiracy to Facilitate Adoptions From Uganda Through Bribery and Fraud* (Aug. 29, 2019), <https://www.justice.gov/opa/pr/texas-woman-pleads-guilty-conspiracy-facilitate-adoptions-uganda-through-bribery-and-fraud>; Press Release, Dep't of Justice, *Oil Executives Plead Guilty for Roles in Bribery Scheme Involving Foreign Officials* (Oct. 30, 2019), <https://www.justice.gov/opa/pr/oil-executives-plead-guilty-roles-bribery-scheme-involving-foreign-officials>; ECF 51, *U.S. v. Pinto-Franceschi et al.*, No. 4:19-cr-00135 (July 31, 2019); ECF 64, *U.S. v. Pinto-Franceschi et al.*, No. 4:19-cr-00135 (Aug. 21, 2019); Plea Agreement, *U.S. v. Jose Luis De La Paz Roman*, No. 19-20004-CR-COOKE (Jan. 25, 2019); Plea Agreement, *U.S. v. Edward Thiessen*, No. 19CR181(JBA) (D. Ct. July 10, 2019); Plea Agreement, *U.S. v. Larry E. Puckett*, No. 19CR150(JBA) (D. Ct. June 10, 2019).

⁷⁶ See Plea Agreement, *U.S. v. Longoria*, No. 1:19-cr-00482-CAB (N.D. Ohio Oct. 9, 2019); Press Release, Dep't of Justice, *Texas Woman Pleads Guilty to Conspiracy to Facilitate Adoptions From Uganda Through Bribery and Fraud* (Aug. 29, 2019), <https://www.justice.gov/opa/pr/texas-woman-pleads-guilty-conspiracy-facilitate-adoptions-uganda-through-bribery-and-fraud>.

scheme to facilitate adoptions of Ugandan children through bribery of Ugandan officials and to defraud U.S. adoptive parents and the U.S. Department of State.

Three individuals settled civil FCPA charges with the SEC in 2019.⁷⁷ Among these individuals was Timothy Leissner, the former chairman of Goldman Sachs in Southeast Asia, who settled charges relating to his role in the 1Malaysia Development Berhad (“1MDB”) scandal, the ongoing investigation in Malaysia stemming from accusations that Najib Razak, the former Prime Minister of Malaysia, and other government officials illegally misappropriated \$4.5 billion from 1MDB, a state-owned strategic development company.⁷⁸ Leissner agreed to a permanent ban from the securities industry and payment of \$44 million in disgorgement. He pleaded guilty to criminal FCPA charges for the same conduct in 2018.

Four individuals were convicted at trial of FCPA violations.⁷⁹ Following a three-week jury trial, Mark Lambert, the former president of Transportation Logistics Inc., was convicted of four counts of violating the FCPA, one count of conspiracy to violate the FCPA, two counts of wire fraud, and one count of conspiracy to commit wire fraud.⁸⁰ Lambert was convicted of participating in a scheme to bribe a Russian official at JSC Techsnabexport, a subsidiary of Russia’s State Atomic Energy Corporation and the sole supplier and exporter of Russian Federation uranium and uranium enrichment services to nuclear power companies, in order to secure contracts. Following a two-week jury trial, as discussed further below, Lawrence Hoskins, a British national, was convicted of, among other things, violating the FCPA.⁸¹ Hoskins was found guilty in relation to a scheme to bribe government officials in various countries, including Indonesia, in order to obtain government contracts. Following a two-week jury trial, Roger Boney, the chairman and CEO of an investment firm, and Joseph Baptiste, a member of the investment firm’s board of directors, were convicted of one count of conspiracy to violate the FCPA and the Travel Act. Boney and

⁷⁷ See *In the Matter of Sridhar Thiruvengadam*, Exchange Act Release No. 86963 (Sept. 13, 2019), <https://www.sec.gov/litigation/admin/2019/34-86963.pdf>; *In the Matter of Westport Fuel Systems, Inc. and Nancy Gougarty*, Exchange Act Release No. 87138 (Sept. 27, 2019), <https://www.sec.gov/litigation/admin/2019/34-87138.pdf>; *In the Matter of Tim Leissner*, Exchange Act Release No. 87750 (Dec. 16, 2019), <https://www.sec.gov/litigation/admin/2019/34-87750.pdf>.

⁷⁸ See *In the Matter of Tim Leissner*, Exchange Act Release No. 87750 (Dec. 16, 2019), <https://www.sec.gov/litigation/admin/2019/34-87750.pdf>; Callum Burroughs & Yusuf Khan, *The Bizarre Story of 1MDB, the Goldman Sachs-Backed Malaysian Fund That Turned Into One of the Biggest Scandals in Financial History* (Aug. 9, 2019), <https://www.businessinsider.com/1mdb-timeline-the-goldman-sachs-backed-malaysian-wealth-fund-2018-12>.

⁷⁹ See Brian A. Benczkowski, Assistant Attorney General, Criminal Division, U.S. Dep’t of Justice, Remarks at the American Conference Institute’s 36th International Conference on the Foreign Corrupt Practices Act (Dec. 4, 2019), <https://www.justice.gov/opa/speech/assistant-attorney-general-brian-benczkowski-delivers-remarks-american-conference#pkey=pw2>.

⁸⁰ See Press Release, Dep’t of Justice, *Former President of Transportation Company Found Guilty of Violating the Foreign Corrupt Practices Act and Other Crimes* (Nov. 22, 2019), <https://www.justice.gov/opa/pr/former-president-transportation-company-found-guilty-violating-foreign-corrupt-practices-act>.

⁸¹ See Press Release, Dep’t of Justice, *Former Senior Alstom Executive Convicted at Trial of Violating the Foreign Corrupt Practices Act, Money Laundering and Conspiracy* (Nov. 8, 2019), <https://www.justice.gov/opa/pr/former-senior-alstom-executive-convicted-trial-violating-foreign-corrupt-practices-act-money>.

Baptiste were convicted of conspiring to pay millions of dollars in bribes to Haitian officials in order to develop a shipping port in Haiti.⁸²

An FCPA trial against two individuals is scheduled to commence in 2020.⁸³

Legal Developments Affecting Enforcement Tools

In 2019, significant legal developments affected the DOJ's and the SEC's tools for enforcing the FCPA and resolving cases. *First*, in *In re: Sealed Case*, the U.S. Court of Appeals for the District of Columbia held that a purely foreign bank's choice to maintain correspondent accounts in the United States was sufficient for the court to sustain personal jurisdiction. *Second*, in *United States v. Hoskins*, based on an agency relationship—the first such case tried to verdict—a jury convicted a foreign national who did not work for a U.S. company and had never visited the United States of violating the FCPA. *Third*, in *Liu v. SEC*, the U.S. Supreme Court granted certiorari to review the question whether the SEC may obtain disgorgement in judicial enforcement actions, such as those frequently used in enforcement actions under the FCPA. These legal developments and their potential implications are discussed below.

In re: Sealed Case

On July 30, 2019, the U.S. Court of Appeals for the District of Columbia affirmed civil contempt orders by the U.S. District Court for the District of Columbia against three Chinese banks for their failure to produce documents in response to U.S. government subpoenas relating to an investigation of North Korea's financing of its nuclear weapons program.⁸⁴ The D.C. Circuit concluded that there was personal jurisdiction over all three banks because two of the banks consented to jurisdiction when they opened branches in the United States and the third bank's choice to maintain correspondent accounts in the United States was sufficient to sustain jurisdiction. The Circuit further concluded that comity principles did not require that the subpoenas be quashed because the district court exercised appropriate discretion in finding that the comity concerns identified by the banks—including that compliance with the subpoenas would put the banks in breach of Chinese law—were outweighed by the national security interests of the United States.

Now that the D.C. Circuit has affirmed the district court's decision, the three Chinese banks must decide whether to petition for *en banc* review or review by the U.S. Supreme Court, to comply with the subpoenas and produce the documents, or to decline to produce the subpoenaed documents and risk court penalties and potential action by the U.S. government for non-compliance. Notably, in the prior similar case of *Nike v. Wu*, in the face of fines for non-compliance, six Chinese banks—all of which have U.S. branches—opted

⁸² See Press Release, Dep't of Justice, *Two Businessmen Convicted of International Bribery Offenses* (June 20, 2019), <https://www.justice.gov/opa/pr/two-businessmen-convicted-international-bribery-offenses-0>.

⁸³ See *U.S. v. Coburn et al.*, No. 2:19-CR-00120-KM (D.N.J. 2019).

⁸⁴ See *In re: Sealed Case*, No. 19-5068 (D.C. Cir. Aug. 6, 2019); see also Client Memorandum, Paul, Weiss, Rifkind, Wharton & Garrison LLP, D.C. Circuit Upholds Decision Requiring Three Chinese Banks to Produce Documents Located in China to the U.S. Government (Aug. 12, 2019), <https://www.paulweiss.com/media/3978814/12aug19-three-bank-subpoena.pdf>.

to comply with the third-party subpoenas by making productions with the assistance of the Chinese Ministry of Justice, rather than take an appeal to the Second Circuit.⁸⁵

The D.C. Circuit decision likely will embolden the DOJ to seek bank records located in China and other countries, even in the absence of a mutual legal assistance treaty or an unwillingness on the part of a foreign government to provide legal assistance. Among other things, the opinion provides an expansive reading of the scope of the U.S. government's subpoena authority pursuant to 31 U.S.C. § 5318(k), extending such authority in some circumstances to include overseas records related to funds transfers that did not pass through a U.S. correspondent account.⁸⁶

An articulated goal of the DOJ's China Initiative is "to improve Chinese responses to requests under the Mutual Legal Assistance Agreement ('MLAA') with the United States."⁸⁷ It remains to be seen whether the district court's contempt order will incentivize China to become more responsive to the MLAA process. If, however, no further review is obtained and the three Chinese banks comply with the subpoenas, the Court of Appeals' decision will have precedential effect in the Circuit, a commonly-used venue for the Money Laundering and Asset Recovery Section of the DOJ's Criminal Division. The Circuit's decision may lead to the DOJ's use of compulsory process as a workaround in lieu of using the U.S.-China MLAA.

United States v. Hoskins

On November 8, 2019, a jury in the District of Connecticut found Hoskins, a British national and former executive of Alstom S.A., a French power and rail transportation company, guilty of participating in a scheme to make improper payments to Indonesian officials in violation of the FCPA, as well as three counts of money laundering and two counts of conspiracy.⁸⁸ The U.S. government's prosecution of Hoskins led to a seminal decision by the Second Circuit that reined in the FCPA's extraterritorial reach over foreign nationals who do not engage in acts on American soil, which held that such individuals cannot be directly

⁸⁵ See *Nike, Inc. v. Wu*, 349 F. Supp. 3d 346 (S.D.N.Y. 2018); Letter addressed to Magistrate Judge Debra C. Freeman from David G. Hille re: the Banks' Production of Documents in Response to Subpoenas Issued by Plaintiff-Assignee Next Investments and in Accordance with Judge McMahon's November 19, 2018 Order, *Nike, Inc. v. Wu*, No. 1:13-CV-08012, Dkt. 184 (S.D.N.Y. Dec. 17, 2018).

⁸⁶ Because the third Chinese bank did not have a branch in the United States, the subpoena issued to that bank was made pursuant to 31 U.S.C. § 5318(k)(3)(A), a USA Patriot Act provision that authorizes the Attorney General and the Treasury Secretary to issue a "subpoena to any foreign bank that maintains a correspondent account in the United States and request records related to such correspondent account, including records maintained outside of the United States relating to the deposit of funds into the foreign bank."

⁸⁷ See *Attorney General Jeff Session[s]'s China Initiative Fact Sheet*, U.S. Dep't of Justice (Nov. 1, 2018), <https://www.justice.gov/opa/speech/file/1107256/download>.

⁸⁸ See Press Release, Dep't of Justice, *Former Senior Alstom Executive Convicted at Trial of Violating the Foreign Corrupt Practices Act, Money Laundering and Conspiracy* (Nov. 8, 2019), <https://www.justice.gov/opa/pr/former-senior-alstom-executive-convicted-trial-violating-foreign-corrupt-practices-act-money>; see also Client Memorandum, Paul, Weiss, Rifkind, Wharton & Garrison LLP, *Jury Convicts Foreign National of FCPA Violations Under Agency Theory* (Nov. 21, 2019), <https://www.paulweiss.com/media/3979161/21nov19-fcpa-hoskins-trial-alert.pdf>.

liable under the FCPA based on secondary liability theories, such as conspiracy and aiding and abetting.⁸⁹ The Second Circuit, however, found that Hoskins—even if he was never present in the United States—could have acted as an agent of an issuer or a domestic concern and therefore could have conspired with employees of a U.S. subsidiary or other foreign nationals who conducted acts while in the United States. The Second Circuit accordingly allowed the government to proceed to trial against Hoskins under the theory that Hoskins acted as an agent of Alstom Power, Alstom’s U.S. subsidiary, in connection with the bribery scheme.

During the two-week trial, the DOJ portrayed Hoskins as playing a vital role as an agent of Alstom Power in negotiating contracts and choosing the consultants to carry out the bribe payments. The DOJ contended that Alstom’s formal corporate structure, which showed Hoskins working for the French parent company, did not by itself demonstrate which employees were in control of the scheme.⁹⁰ Instead, the DOJ relied on testimony from former employees of Alstom Power, as well as Hoskins’s communications with employees at Alstom Power, to prove that Hoskins acted as an agent of the U.S. subsidiary. The DOJ also argued that the evidence at trial demonstrated that Alstom Power had final authority over compensation for the consultants that paid the bribes and that Hoskins negotiated with the consultants on behalf of Alstom Power.

In instructing the jury regarding the meaning of agency, the court relied on the traditional definition, as cited in the Second Restatement of Agency and Connecticut common law, instructing that to find that Hoskins acted as an agent of Alstom Power, the jurors needed to conclude that “there must be, one, a manifestation by the principal that the agent will act for it; two, acceptance by the agent of the undertaking; and, three, an understanding between the agent and the principal that the principal will be in control of the undertaking.”⁹¹ Although Hoskins was not an issuer, a domestic concern, or a person whose own conduct in U.S. territory brought him within the ambit of the FCPA, the jury found him liable as an agent of Alstom Power, which was a domestic concern.

Hoskins has appealed the jury’s verdict, urging the district court to vacate his convictions or grant a new trial on the grounds that the evidence presented at trial was not sufficient to show that he was an agent of Alstom Power.⁹²

Following the *Hoskins* trial, AAG Benczkowski clarified that the DOJ “is not looking to stretch the bounds of agency principles beyond recognition” and will not automatically seek to impose agency liability on

⁸⁹ *U.S. v. Hoskins*, 902 F.3d 69, 97-98 (2d Cir. 2018); see Client Memorandum, Paul, Weiss, Rifkind, Wharton & Garrison LLP, The Second Circuit Rejects FCPA Liability for Foreign Persons Under Accessory Liability Theories (Aug. 27, 2018), <https://www.paulweiss.com/media/3977977/27aug18-fcpa-us-v-hoskins.pdf>.

⁹⁰ See Transcript of Jury Trial at 1339, *U.S. v. Hoskins*, No. 3:12-CR-238 (D. Conn. Oct. 28, 2019).

⁹¹ *Id.* at 1246-47.

⁹² See Mem. of Law in Support of Rule 29(c) Mot. for a Judgment of Acquittal and Rule 33 Mot. for a New Trial, *U.S. v. Hoskins*, No. 12-CR-238 (Nov. 29, 2019).

parent companies for FCPA violations by subsidiaries, joint ventures, and affiliates.⁹³ AAG Benczkowski explained that the DOJ instead will favor prosecution in cases where corporate structures are used to try to shield a parent or an individual from liability. Nevertheless, Hoskins's trial and conviction suggest that, while the government may not be able to rely on conspiracy or aiding and abetting theories of liability to extend the reach of the FCPA against non-U.S. persons or companies, it may still rely on an agency theory for such a purpose.

Notably, however, in *United States v. Firtash*, the U.S. District Court for the Northern District of Illinois declined to follow the Second Circuit's *Hoskins* decision and denied the defendant's motion to dismiss on the basis that the indictment failed to allege that he was an agent of a domestic concern or a qualified foreign national.⁹⁴ Although the decision has yet to be appealed, this may create a circuit split should the Seventh Circuit affirm the decision.

Liu v. SEC

In 2017, in *Kokesh v. SEC*, the Supreme Court characterized disgorgement as a "penalty" rather than an equitable remedy.⁹⁵ In that decision, the Supreme Court expressly flagged, but did not address, whether the SEC may obtain disgorgement from a court for securities law violations. On November 1, 2019, the Supreme Court granted certiorari in *Liu v. SEC*, to address this important question, agreeing to consider whether the SEC has authority to collect disgorgement pursuant to its statutory authority to obtain equitable relief.⁹⁶ The Supreme Court's ruling, which is expected in 2020, could have significant implications for the scope of remedies available to the SEC in FCPA enforcement actions, among other cases.

In *Liu*, an SEC civil enforcement action alleging violations of the federal securities laws, the U.S. District Court for the Central District of California granted summary judgment to the SEC and ordered petitioners to disgorge over \$26 million.⁹⁷ On appeal to the Ninth Circuit, petitioners challenged the disgorgement order. Citing *Kokesh*, petitioners argued that the SEC does not have the authority to seek disgorgement.⁹⁸ The Ninth Circuit affirmed the district court's disgorgement order, explaining that it was

⁹³ See Brian A. Benczkowski, Assistant Attorney General, Criminal Division, U.S. Dep't of Justice, Remarks at the American Conference Institute's 36th International Conference on the Foreign Corrupt Practices Act (Dec. 4, 2019), <https://www.justice.gov/opa/speech/assistant-attorney-general-brian-benczkowski-delivers-remarks-american-conference#pwkey=pw2>.

⁹⁴ 392 F. Supp. 3d 872 (N.D. Ill. 2019).

⁹⁵ See Client Memorandum, Paul, Weiss, Rifkind, Wharton & Garrison LLP, U.S. Supreme Court Holds That Five-Year Statute of Limitations Applies to Claims for Disgorgement Brought by the SEC (June 6, 2017), <https://www.paulweiss.com/media/3977137/6june17-kokesh.pdf>.

⁹⁶ See Petition for Writ of Certiorari, *Liu v. SEC*, No. 18-1501 (U.S. May 31, 2019); see also Client Memorandum, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Supreme Court to Consider if the SEC May Collect Disgorgement in Civil Enforcement Proceedings (Nov. 4, 2019), <https://www.paulweiss.com/media/3979109/4nov19-liu-v-sec.pdf>.

⁹⁷ Petition for Writ of Certiorari at 4, *Liu v. SEC*, No. 18-1501 (U.S. May 31, 2019).

⁹⁸ See *SEC v. Liu*, 754 F. App'x 505, 509 (9th Cir. 2018), cert. granted sub nom. *Liu v. SEC*, No. 18-1501, 2019 WL 5659111 (U.S. Nov. 1, 2019).

bound by Circuit precedent because the *Kokesh* Court declined to address whether the SEC was authorized to seek disgorgement as a remedy, so *Kokesh* was not “clearly irreconcilable” with the Circuit’s “longstanding precedent on this subject.”

Petitioners filed a petition for a writ for certiorari, asking the Supreme Court to review the question “[w]hether the Securities and Exchange Commission may seek and obtain disgorgement from a court as ‘equitable relief’ for a securities law violation even though this Court has determined that such disgorgement is a penalty.”

Shortly after the Supreme Court granted certiorari in *Liu*, the U.S. House of Representatives passed legislation that would explicitly authorize the SEC to seek disgorgement and extend the statute of limitations on disgorgement claims to fourteen years.⁹⁹ The bipartisan bill has been approved by the House and referred to the U.S. Senate. If enacted, the bill effectively will overturn *Kokesh* and moot *Liu*.

Resolution of this issue will have significant implications for the SEC, which has relied on disgorgement as a powerful tool in judicial and administrative enforcement actions, including in FCPA settlements. In 2019 alone, the SEC collected approximately \$3.2 billion in disgorgement across all cases, as compared with \$1.1 billion in civil monetary penalties.¹⁰⁰ The SEC estimates that the *Kokesh* ruling has caused the Commission to forgo approximately \$1.1 billion in disgorgement.¹⁰¹

Multi-Jurisdictional Coordination

As in prior years, senior officials in U.S. enforcement agencies affirmed publicly their agencies’ commitments to coordinating with foreign authorities, including in transnational bribery cases. For example, then-Deputy Attorney General Rod Rosenstein explained that “international cooperation is essential to prohibit corruption by multinational corporations.”¹⁰²

Consistent with this commitment, U.S. authorities coordinated with and leveraged the resources of their foreign counterparts, as demonstrated by the resolutions with MTS, TFMC, and SHI. However, many of these resolutions closed out investigations started prior to 2015, with one even dating back to 2011. Notably, there was a substantial decline in the penalties assessed in 2019 by foreign authorities in connection with U.S. corporate resolutions, with foreign authorities assessing \$214.3 million in 2019 as compared with \$975 million—\$3.7 billion in 2016–2018. Although we caution against reading too much into this data, we are monitoring whether the decline in foreign penalties may signal a broader decline in cooperation between

⁹⁹ H.R. 4344, 116th Cong. (2019) (as passed by House, Nov. 18, 2019).

¹⁰⁰ See U.S. Securities and Exchange Commission, *2019 Annual Report* 16 (2019), <https://www.sec.gov/files/enforcement-annual-report-2019.pdf>.

¹⁰¹ *Id.* at 21.

¹⁰² See Rod J. Rosenstein, Deputy Att’y Gen., Dep’t of Justice, *Keynote Address on FCPA Enforcement Developments* (Mar. 7, 2019), <https://www.justice.gov/opa/speech/deputy-attorney-general-rod-j-rosenstein-delivers-keynote-address-fcpa-enforcement>.

U.S. and foreign authorities. Indeed, in September 2019, SEC Chairman Clayton remarked that he has “not seen meaningful improvement” in international cooperation regarding anti-corruption efforts.¹⁰³

Foreign Jurisdictions Investigating and Prosecuting Corruption

In addition to U.S.-led enforcement, other jurisdictions took significant strides to investigate and prosecute corrupt actors. Authorities in numerous countries announced investigations and prosecutions of allegedly corrupt officials and a startling number of current and former government officials, including former heads of state, were convicted and sentenced in connection with corruption charges. Foreign authorities in several jurisdictions also continued to pursue corporate enforcement actions. In addition, a number of foreign jurisdictions acted to enhance their anti-corruption laws.

Africa

In **Angola**, Augusto Da Silva Tomas, Angola’s former transport minister, was sentenced to fourteen years in prison after being found guilty of corruption, embezzlement, and money laundering.¹⁰⁴

Asia

In **China**, Meng Hongwei, the former chief of Interpol, pleaded guilty to receiving bribes in exchange for favors.¹⁰⁵ Wang Xiaoguang, a former provincial vice-governor in southern China, pleaded guilty to bribery, embezzlement, and insider trading charges, and was sentenced to twenty years in jail and fined \$26 million, a record in China for bribery and embezzlement charges.¹⁰⁶ Liu Shiyu, the former head of the China Securities Regulatory Commission, was removed from his position as deputy party chief of a Chinese supply cooperative after a corruption probe. Due to his cooperation with authorities, he will not lose his party membership or face trial.¹⁰⁷ According to news reports, the Central Commission for Discipline Inspection,

¹⁰³ See Jay Clayton, Chairman, Sec. Exch. Comm’n, *Remarks to the Economic Club of New York* (Sept. 9, 2019), <https://www.sec.gov/news/speech/speech-clayton-2019-09-09>.

¹⁰⁴ See AFP, *Angola Ex-Transport Minister Jailed for 14 Years for Graft*, MACAU BUSINESS (Aug. 16, 2019), <https://www.macaubusiness.com/angola-ex-transport-minister-jailed-for-14-years-for-graft/>.

¹⁰⁵ See Philip Wen, *Former Interpol Chief Admits to Taking Bribes, Chinese Court Says*, WALL ST. J. (June 20, 2019), <https://www.wsj.com/articles/former-interpol-chief-admits-to-taking-bribes-chinese-court-says-11561024497>.

¹⁰⁶ See William Zheng, *Chinese Ex-Official Who Collected Rare Orchids and Mao-tai Liquor Jailed for 20 Years for Corruption*, SOUTH CHINA MORNING POST (Apr. 23, 2019), <https://www.scmp.com/news/china/politics/article/3007384/chinese-ex-official-who-collected-rare-orchids-and-mao-tai>.

¹⁰⁷ See Yilei Sun & Chen Aizhu, *China Removes Former Head of Securities Regulator From Government Post After Corruption Probe*, REUTERS (Oct. 4, 2019), <https://www.reuters.com/article/us-china-corruption/china-removes-former-head-of-securities-regulator-from-government-post-after-corruption-probe-idUSKBN1WJ1N>; Jun Mai, *The Curious Corruption Case of China’s Former Securities Chief Liu Shiyu and His Lenient Treatment*, SOUTH CHINA MORNING POST (Oct. 21, 2019), <https://www.scmp.com/news/china/politics/article/3033774/curious-corruption-case-chinas-former-securities-chief-liu>.

the Communist Party's top anti-graft agency, is investigating Hu Huaibang, former chairman of China Development Bank, for allegedly channeling bribes to a party official on behalf of an energy company.¹⁰⁸

In **Hong Kong**, Catherine Leung Kar-cheung, a former JPMorgan executive, pleaded not guilty to bribery charges as part of the "sons and daughters" bribery case.¹⁰⁹

In **Japan**, Satoshi Uchida, a former executive of Mitsubishi Hitachi Power Systems Ltd., was sentenced to an 18-month prison term, suspended for three years, after being found guilty of bribery of a Thai official.¹¹⁰ Separately, Tsukasa Akimoto, a former member of Japan's Parliament and the governing Liberal Democratic Party, was arrested on suspicion of taking bribes from 500.com Ltd., a New York listed, China-based online betting company.¹¹¹ Akimoto allegedly accepted approximately \$27,500 in cash as well as other gifts.

Najib Razak, the former prime minister of **Malaysia**, was charged with three counts of money laundering in connection with the 1MDB scandal. In November, the High Court found that the prosecution had established its case against Razak on charges of abuse of power, breach of trust and money laundering. The trial is still ongoing.¹¹² Separately, Malaysia's Attorney General filed criminal charges against Richard John Gnodde, CEO of Goldman Sachs International and former vice chairman of Goldman Sachs, and John Michael Evans, former vice chairman of Goldman Sachs and current president of Alibaba Group, for their roles as directors of Goldman Sachs during the 1MDB scandal.¹¹³

In **Pakistan**, the National Accountability Bureau arrested Miftah Ismail, Pakistan's former finance minister, and Sheik Imran ul-Haque, the former managing director of Pakistan State Oil, for corruption.¹¹⁴

¹⁰⁸ See Zhou Xin, *China's Ex-'Super Bank' Chief Faces Probe as Beijing's Financial Sector Corruption Crackdown Continues*, SOUTH CHINA MORNING POST (July 31, 2019), <https://www.scmp.com/economy/china-economy/article/3020826/chinas-ex-super-bank-chief-faces-probe-beijings-financial>.

¹⁰⁹ See Joanne Chu, *Former JPMorgan Banker Pleads Not Guilty in 'Sons and Daughters' Bribery Case*, WALL ST. J. (July 18, 2019), <https://www.wsj.com/articles/former-jpmorgan-banker-pleads-not-guilty-in-sons-and-daughters-bribery-case-11563443700?ns=prod/accounts-wsj>.

¹¹⁰ See Kyodo News & Online Reporters, *Japanese Exec Sentenced for Bribing Thai Official*, BANGKOK POST (Sept. 13, 2019), <https://www.bangkokpost.com/thailand/general/1749469/japanese-exec-sentenced-for-bribing-thai-official>.

¹¹¹ See Naomi Tajitsu, David Dolan & Daniel Leussink, *Explainer: Bribery Scandal Casts Shadow on Japan's Big Casino Gamble*, REUTERS (Dec. 26, 2019), <https://www.reuters.com/article/us-japan-casino-corruption-explainer/explainer-bribery-scandal-casts-shadow-on-japans-big-casino-gamble-idUSKBN1YUOC8>.

¹¹² See Eileen Ng, *Malaysian Ex-PM Najib Ordered to Enter Defense in 1MDB Case*, AP NEWS (Nov. 11, 2019), <https://apnews.com/9af8bc7eda82475c96ca18ed85640918>.

¹¹³ See Sui-Lee Wee, *Malaysia Charges Goldman Sachs Executives in 1MDB Scandal*, N.Y. TIMES (Aug. 9, 2019), <https://www.nytimes.com/2019/08/09/business/1mdb-goldman-sachs-malaysia.html>.

¹¹⁴ See Ismail Dilawar, *Pakistan Anti-Graft Agency Arrests Ex-Finance Minister Ismail*, BLOOMBERG (Aug. 7, 2019), <https://www.bloomberg.com/news/articles/2019-08-07/pakistan-anti-graft-agency-arrests-ex-finance-minister-ismail-jz15frut?srnd=markets-vp>; Aamir Saeed, *Pakistan's Ex-Finance Minister Held Over \$16bn Qatar Gas Deal*, ARAB NEWS (Aug. 7, 2019), <https://www.arabnews.com/node/1537121/world>.

The Supreme Court of **South Korea** in August set aside and ordered a retrial for part of the conviction of Park Geun-hye, the former president of South Korea who in 2018 was convicted of, among other things, bribery, extortion, and abuse of power, and sentenced to 25 years in prison. The Supreme Court found that a separate verdict should have been reached on the bribery allegations and sent the case to a lower court to reach a new verdict, without instructions to consider whether Park might be innocent.¹¹⁵ Separately, Samsung heir Lee Jae-yong is being re-tried on bribery charges related to payments to Park after the Supreme Court found that the lower court's interpretation of what constituted bribes by Samsung to Park was too narrow. The trial is ongoing, with a verdict expected in 2020.¹¹⁶

Europe and the Middle East

In **Belgium**, the foreign minister, Didier Reynders, has been accused of trying to cover up an investigation into allegedly illicit payments that he received from construction of an embassy in Kinshasa, an arms deal with Kazakhstan, and the release of frozen funds to Libya.¹¹⁷

The Supreme Court of Appeals in **France** has ordered that former president Nicolas Sarkozy must stand trial on corruption charges.¹¹⁸ A trial date has been set for October 2020.¹¹⁹ Lamine Diack, a former president of the International Association of Athletics Federations, was ordered to stand trial in France in January 2020 on charges of corruption and money laundering.¹²⁰ Tsunekazu Takeda, the president of Japan's Olympic Committee and chairman of the International Olympic Committee's marketing commission, was indicted in France on charges related to Tokyo's bid to host the 2020 Summer Olympics.¹²¹

¹¹⁵ See *S Korea Ex-Leader Park and Samsung Heir Lee Face Bribery Retrials*, BBC (Aug. 29, 2019), <https://www.bbc.com/news/world-asia-49507401>.

¹¹⁶ See *id.*; Heekyong Yang, *Judge Asks Samsung Heir to Be Humble at Bribery Trial*, REUTERS (Oct. 24, 2019), <https://www.reuters.com/article/us-southkorea-corruption-samsung/judge-asks-samsung-heir-to-be-humble-at-bribery-trial-idUSKBN1X4o4K>.

¹¹⁷ See Robin Emmott, *Belgium's Pick for EU Commission Faces New Graft Accusation*, REUTERS (Oct. 1, 2019), <https://www.reuters.com/article/us-eu-jobs-belgium/belgiums-pick-for-eu-commission-faces-new-graft-accusation-idUSKBN1WG4G9>.

¹¹⁸ See Emmanuel Jarry & Richard Lough, *France's Sarkozy Loses Bid to Avoid Corruption Trial*, REUTERS (June 19, 2019), <https://af.reuters.com/article/worldNews/idAFKCN1TK1ND>; Andrew Heavens, *Top French Court Rejects Bid by Sarkozy to Avoid Trial Over 2012 Campaign*, REUTERS (Oct. 1, 2019), <https://www.reuters.com/article/us-france-sarkozy/top-french-court-rejects-bid-by-sarkozy-to-avoid-trial-over-2012-campaign-idUSKBN1WG3U7>.

¹¹⁹ See Merrit Kennedy, *Former French President Sarkozy to Face Trial for Alleged Graft*, NPR (Jan. 8, 2020), <https://www.npr.org/2020/01/08/794628821/former-french-president-sarkozy-to-face-trial-for-alleged-graft>.

¹²⁰ See Sean Ingle, *Lamine Diack to Stand Trial for Money Laundering and Corruption*, Guardian (June 24, 2019), <https://www.theguardian.com/sport/2019/jun/24/lamine-diack-trial-money-laundering-corruption-iaaf>; AFP, *Date Set for First IAAF Corruption Trial*, DAILY NATION (Oct. 29, 2019), <https://mobile.nation.co.ke/sports/athletics/Date-set-for-first-IAAF-corruption-trial/3112514-5328382-3poikoz/index.html>.

¹²¹ See Ben Dooley, *Japan's Olympic Chief to Step Down Amid Corruption Investigation*, N.Y. TIMES (Mar. 19, 2019), <https://www.nytimes.com/2019/03/19/business/japan-olympics-bribery-corruption.html>; Tariq Panja & Hiroko Tabuchi, *Japan's Olympics Chief Faces Corruption Charges in France*, N.Y. TIMES (Jan. 11, 2019), <https://www.nytimes.com/2019/01/11/world/europe/japan-olympics-corruption-tsunekazu-takeda.html>.

In addition, authorities have opened a corruption investigation into the circumstances resulting in Qatar being awarded the 2022 World Cup.¹²²

In **Italy**, the Parliament approved a bill aimed at combating corruption in Italy's public sector, which came into force in January.¹²³ The bill expands the definition of corruption-related crimes, clarifies the statute of limitations for criminal actions, imposes additional penalties on political parties involved in corruption-related crimes, and requires that political parties disclose the curricula vitae and criminal background of candidates within two weeks prior to electoral contests of any type in all municipalities with at least 15,000 inhabitants.

Royal Dutch Shell is currently standing trial, alongside Eni, an Italian energy company, on bribery charges relating to a \$1.3 billion oil deal in Nigeria. Italian prosecutors also are investigating obstruction of justice charges against Eni.¹²⁴

In **Romania**, Laura Codruta Kovesi, the former chief of Romania's anti-corruption agency, was indicted on bribery, abuse of office, and false testimony charges.¹²⁵ Romania has lifted the travel ban that it previously placed on Kovesi, and she has been appointed to lead the European Public Prosecutor's Office.¹²⁶

Switzerland filed its first indictment in the Petrobras-Odebrecht investigation.¹²⁷ Swiss prosecutors indicted Beny Steinmetz, an Israeli businessman with extensive mining interests, and two of his associates

¹²² See Tariq Panja, *France to Investigate How Qatar Got the World Cup*, N.Y. Times (Dec. 11, 2019), <https://www.nytimes.com/2019/12/11/sports/soccer/qatar-world-cup-michel-platini.html>.

¹²³ See *Italy: New Anti-Corruption Legislation Comes Into Force*, U.S. LIB. OF CONG. (Feb. 26, 2019), <https://www.loc.gov/law/foreign-news/article/italy-new-anti-corruption-legislation-comes-into-force/>.

¹²⁴ See Stanley Reed, *Shell May Face Charges in Netherlands Tied to Nigerian Oil Deal*, N.Y. TIMES (Mar. 1, 2019), <https://www.nytimes.com/2019/03/01/business/shell-netherlands-nigeria-charges.html>; Emilio Parodi, *Italy Widens Probe Into Alleged Obstruction in Nigeria Graft Case*, REUTERS (July 4, 2019), <https://www.reuters.com/article/eni-shell-nigeria-obstruction/italy-widens-probe-into-alleged-obstruction-in-nigeria-graft-case-idUSL4N24230K>.

¹²⁵ See Luiza Ilie & Jan Strupczewski, *Romania Files Charges Against Former Chief Anti-Corruption Prosecutor*, REUTERS (Mar. 29, 2019), <https://www.reuters.com/article/us-romania-corruption/romania-files-charges-against-former-chief-anti-corruption-prosecutor-idUSKCN1RA1GD>; Kit Gillet, *Leading Prosecutor for E.U. Anticorruption Job Is Barred From Leaving Romania*, N.Y. TIMES (Mar. 29, 2019), <https://www.nytimes.com/2019/03/29/world/europe/romania-corruption-prosecutor-eu.html>.

¹²⁶ See *Romania Lifts Travel Ban on Former Anti-Corruption Chief*, DW (Apr. 4, 2019), <https://www.dw.com/en/romania-lifts-travel-ban-on-former-anti-corruption-chief/a-48193119>; Luiza Ilie, *'Great Expectations', But EU's First Fraud Prosecutor Undaunted by Challenge*, REUTERS (Oct. 28, 2019), <https://www.reuters.com/article/us-eu-corruption/great-expectations-but-eus-first-fraud-prosecutor-undaunted-by-challenge-idUSKBN1X717Z>.

¹²⁷ See Hugo Miller, *First Petrobras Indictment Filed in Long-Running Swiss Probe*, BLOOMBERG (Oct. 22, 2019), <https://www.bloomberg.com/news/articles/2019-10-22/first-petrobras-indictment-filed-in-long-running-swiss-probe>.

on bribery charges related to mining rights in Guinea.¹²⁸ Separately, prosecutors settled charges of corruption against commodities trading house Gunvor Group Ltd. for approximately \$95 million.¹²⁹

In the **Ukraine**, former President Petro Poroshenko announced the launch of a special court to try corruption cases, along with the appointment of 38 new judges to that court.¹³⁰ The High Anti-Corruption Court started work in early September.¹³¹

In the **United Kingdom**, the Serious Fraud Office (“SFO”) published a five-page document on Corporate Cooperation Guidance, describing steps a company can take if it wants to cooperate with prosecutors in an investigation.¹³²

David Lufkin, a former Petrofac executive, pleaded guilty to eleven counts of bribery related to payments Petrofac made to win contracts in Iraq and Saudi Arabia worth more than \$4 billion.¹³³ Basil Al Jarrah, a former partner at Unaoil Group in Iraq, pleaded guilty to five counts of corruption.¹³⁴ Three former executives of metalworking technology company Sarclad Ltd. were found not guilty of conspiring to commit corruption offenses.¹³⁵ The SFO fined shipping and logistics company F.H. Bertling Ltd. \$1.1 million for alleged bribe payments made in Angola.¹³⁶ The SFO also fined a British subsidiary of Alstom S.A.

¹²⁸ See Stephanie Nebehay, *Geneva Prosecutors Indict Billionaire Steinmetz in Guinea Corruption Case*, Reuters (Aug. 12, 2019), <https://www.reuters.com/article/us-swiss-guinea-bsr/geneva-prosecutors-indict-billionaire-steinmetz-in-guinea-corruption-case-idUSKCN1V21HI>.

¹²⁹ See Julia Payne, *Gunvor Must Pay \$95 million for Congo Oil Corruption: Swiss Prosecutors*, Reuters (Oct. 17, 2019), <https://www.reuters.com/article/us-gunvor-grp-congo-corruption/swiss-orders-gunvor-to-pay-95-million-in-congo-oil-corruption-case-idUSKBN1WWoZ9>.

¹³⁰ See Andrei Makhovsky & Matthias Williams, *Ukraine President Rolls Out Special Court to Try Corruption Cases*, REUTERS (Apr. 11, 2019), <https://www.reuters.com/article/us-ukraine-election-imf/ukraine-president-rolls-out-special-court-to-try-corruption-cases-idUSKCN1RN1SQ>.

¹³¹ See *Ukraine’s Long Awaited Anti-Corruption Court Starts Work*, KYIV POST (Sept. 6, 2019), <https://www.kyivpost.com/ukraine-politics/bne-intellinews-ukraines-long-awaited-anti-corruption-court-starts-work.html?cn-reloaded=1>.

¹³² See Serious Fraud Office, *Corporate Co-operation Guidance* (Aug. 16, 2019), https://www.sfo.gov.uk/download/corporate-co-operation-guidance/?mod=article_inline; see also Dylan Tokar, *U.K. Fraud Agency Strikes New Tone With Cooperation Guidance*, WALL ST. J. (Aug. 8, 2019), <https://www.wsj.com/articles/u-k-fraud-agency-strikes-new-tone-with-cooperation-guidance-11565128755>.

¹³³ See *Former Petrofac Executive Pleads Guilty to Bribery*, FINANCIAL TIMES (Feb. 7, 2019), <https://www.ft.com/content/11b156e2-2ab7-11e9-88a4-c32129756dd8>.

¹³⁴ See Franz Wild, *Oil Executive Pleads Guilty in U.K.’s Iraqi Pipeline Bribes Case*, BLOOMBERG (July 19, 2019), <https://www.bloomberg.com/news/articles/2019-07-19/oil-executive-pleads-guilty-in-u-k-s-iraqi-pipeline-bribes-case>.

¹³⁵ See Dylan Tokar, *Sarclad Settlement Questioned Following Executives’ Acquittal*, WALL ST. J. (July 16, 2019), <https://www.wsj.com/articles/sarclad-settlement-questioned-following-executives-acquittal-11563316565>.

¹³⁶ See Press Release, Serious Fraud Office, *FH Bertling Sentenced for \$20m Angolan Bribery Scheme* (June 3, 2019), <https://www.sfo.gov.uk/2019/06/03/fh-bertling-sentenced-for-20m-angolan-bribery-scheme/>; see also Kristin Broughton, *F.H. Bertling Fined \$1 Million in Angola Bribery Case*, WALL ST. J. (June 3, 2019), <https://www.wsj.com/articles/f-h-bertling-fined-1-million-in-angola-bribery-case-11559601111>.

\$21.2 million after the company was convicted of paying bribes to secure a transportation contract in Tunisia.¹³⁷

The SFO concluded an investigation, which began in 2014, of GlaxoSmithKline PLC into allegations of bribery of officials in China, without bringing any charges.¹³⁸ In addition, the SFO closed an investigation, which began in 2013, of Rolls-Royce PLC into allegations that the company falsified accounts to hide the illegal use of local middlemen and paid bribes to win engine and other deals in China, Indonesia, Russia, and Thailand.

In **Israel**, Prime Minister Benjamin Netanyahu was indicted and charged with bribery, fraud, and breach of trust in November in connection with three corruption probes.¹³⁹

Latin America

In **Brazil**, there were several developments related to the Operation Lava Jato corruption scandal. A series of leaked private messages among law enforcement officials called into question the integrity of prosecutions relating to Operation Lava Jato, as the messages suggest that a prominent judge involved in hearing cases in the scandal was actively consulting with federal prosecutors and advising them on strategy.¹⁴⁰ Also, authorities arrested former President Michael Temer in connection with bribery allegations related to the investigation.¹⁴¹ He subsequently was cleared of separate charges that he tried to obstruct investigations by the Public Prosecutor's Office relating to Lava Jato.¹⁴² And Brazil's Supreme Court overturned the conviction of Aldemir Bendine, the former chief executive of Petrobras, finding he should have been permitted to make a closing argument following accusations against him from plea-bargain testimony.¹⁴³ This marks the first time a conviction has been annulled in Lava Jato. In addition, the Board of Braskem S.A., a Brazilian petrochemical company, entered into a leniency agreement with

¹³⁷ See Kristin Broughton & Olivia Bugault, *Alston Unit Ordered to Pay \$21 Million in Tunisia Corruption Case*, WALL ST. J. (Nov. 25, 2019), <https://www.wsj.com/articles/u-k-s-serious-fraud-office-orders-alston-unit-to-pay-21-million-in-tunisia-corruption-case-11574711300>.

¹³⁸ See Barney Thompson, *SFO Ends Investigations Into Rolls-Royce and GSK*, FINANCIAL TIMES (Feb. 22, 2019), <https://www.ft.com/content/4c931be4-3695-11e9-bb0c-42459962a812>; Press Release, Serious Fraud Office, *SFO Closes GlaxoSmithKline Investigation and Investigation Into Rolls-Royce Individuals* (Feb. 22, 2019), <https://www.sfo.gov.uk/2019/02/22/sfo-closes-glaxosmithkline-investigation-and-investigation-into-rolls-royce-individuals/>.

¹³⁹ See Felicia Schwartz & Dov Lieber, *Israel's Netanyahu Is Indicted on Bribery and Fraud Charges*, WALL ST. J. (Nov. 21, 2019), <https://www.wsj.com/articles/prime-minister-netanyahu-indicted-on-bribery-fraud-breach-of-trust-charges-11574353669?mod=e2tw>.

¹⁴⁰ See Ernesto Londoño & Leticia Casado, *Leaked Messages Raise Fairness Questions in Brazil Corruption Inquiry*, N.Y. TIMES (June 10, 2019), <https://www.nytimes.com/2019/06/10/world/americas/brazil-car-wash-lava-jato.html>.

¹⁴¹ See Ernesto Londoño & Leticia Casado, *Former President Michael Temer of Brazil Is Arrested in Bribery Probe*, N.Y. TIMES (Mar. 21, 2019), <https://www.nytimes.com/2019/03/21/world/americas/michel-temer-arrested-prisao.html>.

¹⁴² See Arkady Petrov, *Judge Clears Ex-President Temer in Case Linked to Joesley Batista Recording*, RIO TIMES (Oct. 17, 2019), <https://riotimesonline.com/brazil-news/brazil/politics-brazil/judge-clears-ex-president-temer-in-case-linked-to-joesley-batistas-recording/>.

¹⁴³ See Ricardo Brito, *Brazil 'Car Wash' Corruption Probe Facing 'Worst Moment' as Establishment Fights Back*, REUTERS (Sept. 4, 2019), <https://www.reuters.com/article/us-brazil-corruption-analysis/brazil-car-wash-corruption-probe-facing-worst-moment-as-establishment-fights-back-idUSKCN1VP2SR>.

Brazil's comptroller general's office and the government's solicitor general as a result of the Lava Jato investigation and inquiries into payments to Petrobras.¹⁴⁴ Separately, SBM Offshore N.V., a Dutch marine engineering company, reached a settlement in a corruption investigation related to bribes of officials at Petrobras.¹⁴⁵

Sergio Cabral, the former governor of Rio de Janeiro, testified before a Brazilian judge that he approved a \$2 million payment to Lamine Diack, the former president of the International Association of Athletics Federations, in exchange for votes so the city would be chosen to host the 2016 Olympics.¹⁴⁶ Cabral was sentenced to 33 years in prison for this conduct.¹⁴⁷

Odebrecht will pay \$50 million in charitable contributions to resolve bribery allegations under a deal reached with the Inter-American Development Bank.¹⁴⁸

Nayib Bukele, the president of **El Salvador**, launched an anti-corruption commission, the International Commission Against Impunity in El Salvador.¹⁴⁹

In **Guatemala**, the International Commission Against Impunity in Guatemala, a U.N. commission that fought political corruption, left the country in September after its mandate expired, reportedly sparking fear among judges and Guatemalan citizens that the country will take a step back in its anti-corruption efforts.¹⁵⁰ Guatemala's Constitutional Court issued an injunction stopping a probe into whether the International Commission Against Impunity had committed illegal or arbitrary acts.¹⁵¹

¹⁴⁴ See Aluísio Alves, *Braskem Board Approves Leniency Deal With Brazil's Authorities*, Reuters (May 27, 2019), <https://www.reuters.com/article/braskem-settlement-idCNE4N2iD005>.

¹⁴⁵ See *SBM Offshore Confirms Formal Closure of Brazil Legacy Case*, GLOBE NEWS WIRE (Oct. 9, 2019), <https://www.globenewswire.com/news-release/2019/10/09/1927066/0/en/SBM-Offshore-confirms-formal-closure-of-Brazil-legacy-case.html>.

¹⁴⁶ See Rodrigo Viga Gaier, *Former Rio de Janeiro Governor Tells Judge He Paid \$2 Million Bribe to Host 2016 Olympics*, Reuters (July 4, 2019), <https://www.reuters.com/article/us-brazil-corruption-olympics/former-rio-de-janeiro-governor-tells-judge-he-paid-2-million-bribe-to-host-2016-olympics-idUSKCN1U0029>.

¹⁴⁷ See Marcelo Gomes, *Sergio Cabral Is Convicted for the 12th Time and Is Sentenced to 267 Years in Prison; Judge Sees 'Fanciful' Version*, GLOBONews (Oct. 10, 2019), <https://g1.globo.com/rj/rio-de-janeiro/noticia/2019/10/10/sergio-cabral-e-condenado-a-mais-33-anos-de-prisao.ghtml>.

¹⁴⁸ See Dylan Tokar, *Brazil's Odebrecht to Pay \$50 Million to Charities Under Deal With Development Bank*, WALL ST. J. (Sept. 4, 2019), <https://www.wsj.com/articles/brazils-odebrecht-to-pay-50-million-to-charities-under-deal-with-development-bank-11567637937>.

¹⁴⁹ See Nelson Renteria, *El Salvador Launches Anti-Corruption Commission, Inspired by Guatemala*, REUTERS (Sept. 6, 2019), <https://www.reuters.com/article/us-el-salvador-corruption/el-salvador-launches-anti-corruption-commission-inspired-by-guatemala-idUSKCN1VR2QP>.

¹⁵⁰ See Sofia Menchu & Diego Oré, *Judges Sweat Over Guatemala Anti-Graft Fight After U.N. Commission's Ouster*, REUTERS (Aug. 30, 2019), <https://www.reuters.com/article/us-guatemala-corruption/judges-sweat-over-guatemala-anti-graft-fight-after-u-n-commissions-ouster-idUSKCN1VK2ED?feedType=>.

¹⁵¹ See Sandra Cuffe, *Guatemala Court Halts Inquiry of UN-Backed Anti-Corruption Body*, AL JAZEERA (Oct. 7, 2019), <https://www.aljazeera.com/news/2019/10/guatemala-court-halts-inquiry-backed-anti-corruption-body-191007234928704.html>.

In **Peru**, authorities arrested former President Pedro Pablo Kuczynski for allegedly helping Odebrecht win contracts in exchange for bribes disguised as consulting fees, while he was a cabinet minister.¹⁵² Former President Alan Garcia committed suicide, purportedly to avoid arrest in connection with a different Odebrecht investigation involving charges of money laundering, influence peddling, and collusion.¹⁵³ Former President Alejandro Toledo was arrested in the United States and faces extradition to Peru for allegedly receiving \$20 million from Odebrecht in exchange for helping the company to secure public works contracts in Peru.¹⁵⁴

North America

In **Canada**, SNC-Lavalin Construction, a division of SNC-Lavalin—which was at the center of a political scandal following reports that Prime Minister Justin Trudeau and his aides pressured then-Attorney General Jody Wilson-Raybould to settle the case against SNC-Lavalin—pleaded guilty to fraud as part of a deal in which all charges against SNC-Lavalin were withdrawn.¹⁵⁵ SNC-Lavalin will pay a \$211 million fine over five years, engage an independent monitor, and be subject to three years of probation. In addition, Sami Bebawi, a former executive at SNC-Lavalin, was found guilty of corruption-related charges following a six-week jury trial in Montreal.¹⁵⁶

In **Mexico**, Emilio Lozoya Austin, the former head of Pemex, was indicted by Mexican authorities for bribery, tax fraud, and conducting operations using money from illegal sources.¹⁵⁷ Arrest warrants were issued for Lozoya Austin, along with his family members.¹⁵⁸ Eduardo Medina Mora, a justice of the Mexican

¹⁵² See Mitra Taj & Guadalupe Pardo, *Peruvian Judge Orders Arrest of Ex-President Kuczynski in Bribery Probe*, REUTERS (Apr. 10, 2019), <https://www.reuters.com/article/us-peru-corruption/peruvian-judge-orders-arrest-of-ex-president-kuczynski-in-bribery-probe-idUSKCN1RM1SA>; Marco Aquino, *Peru Ex-President Kuczynski Ordered Into Pre-Trial House Arrest*, REUTERS (Apr. 28, 2019), <https://www.reuters.com/article/us-peru-corruption/peru-ex-president-kuczynski-ordered-into-pre-trial-house-arrest-idUSKCN1S4oBG>.

¹⁵³ See Andrea Zarate & Nicholas Casey, *Alan Garcia, Ex-President of Peru, Is Dead After Shooting Himself During Arrest*, N.Y. TIMES (Apr. 17, 2019), <https://www.nytimes.com/2019/04/17/world/americas/alan-garcia-dead.html>.

¹⁵⁴ See Marco Aquino & Maria Cervantes, *Peru's 'Fugitive' Ex-President Toledo Arrested in U.S., Faces Extradition*, REUTERS (July 16, 2019), <https://www.reuters.com/article/us-peru-extradition-usa/perus-fugitive-ex-president-toledo-arrested-in-u-s-faces-extradition-idUSKCN1UB2EL>.

¹⁵⁵ See Allison Lampert & Kelsey Johnson, *Update 3 – Canada's SNC-Lavalin Settles Libya Bribery Case That Shook Trudeau Government*, REUTERS (Dec. 18, 2019), <https://www.reuters.com/article/snc-lavalin-court/update-3-canadas-snc-lavalin-settles-libya-bribery-case-that-shook-trudeau-government-idUSL1N28S18S?feedType=RSS&feedName=companyNews>.

¹⁵⁶ See Kim Mackrael, *Canadian Jury Finds Former SNC-Lavalin Executive Guilty on Fraud, Corruption Charges*, WALL ST. J. (Dec. 15, 2019), <https://www.wsj.com/articles/canadian-jury-finds-former-snc-lavalin-executive-guilty-on-fraud-corruption-charges-11576428130>.

¹⁵⁷ See Kirk Semple & Azam Ahmed, *Mexico Charges Former Oil Official With Bribery in Anticorruption Drive*, N.Y. TIMES (May 28, 2019), <https://www.nytimes.com/2019/05/28/world/americas/mexico-corruption-prosecution-oil-company.html>; Robbie Whelan, *Secret Recordings Describe Extensive Bribery at Mexico's Pemex*, WALL ST. J. (Oct. 11, 2019), <https://www.wsj.com/articles/secret-recordings-describe-extensive-bribery-at-mexicos-pemex-11570804717>.

¹⁵⁸ See Rebekah F. Ward & Anthony Esposito, *Mexico Issues Arrest Warrants for Ex-Pemex CEO Lozoya, Family Members*, REUTERS (July 5, 2019), <https://www.reuters.com/article/us-mexico-pemex/mexico-issues-arrest-warrants-for-ex-pemex-ceo-lozoya-family-members-idUSKCN1Uo1No>.

Supreme Court, resigned following questions from Mexico's financial intelligence unit concerning potential allegations of corruption.¹⁵⁹

Oceania

In **Australia**, the attorney general announced that the government will present a bill to the Australian Parliament aimed at preventing and investigating foreign bribery.¹⁶⁰ Under the bill, corporations that fail to prevent foreign bribery will face the greatest of three penalties: fines up to \$14 million, 10 percent of the company's annual turnover, or three times the profit from the corrupt deal. The bill also broadens Australia's definition of "foreign official" to include politicians running for office in their home country.

Multilateral Development Bank Sanctions

In 2019, as in prior years, the World Bank Group debarred or otherwise sanctioned significantly more individuals and entities than the other multilateral development banks ("MDBs"). The World Bank Group imposed 1,011 debarments, whereas the Inter-American Development Bank imposed 45, the Asian Development Bank imposed 15, the African Development Bank imposed eight, and the European Bank for Reconstruction and Development imposed one.¹⁶¹ Twenty-six of the debarments imposed by the World Bank, twenty of the debarments imposed by the Inter-American Development Bank, three of the debarments imposed by the African Development Bank, and the sole debarment imposed by the European Bank for Reconstruction and Development were based, at least in part, on corrupt practices. The Asian Development Bank does not appear to have imposed any debarments based on corrupt practices. The number of MDBs imposing debarments based on corrupt practices is a marked increase from recent years, during which many of the MDBs did not impose any such debarments.

¹⁵⁹ See Daina Beth Solomon & Miguel Angel Gutierrez, *Mexican Supreme Court Justice Resigns Amid Corruption Questions*, Reuters (Oct. 3, 2019), <https://www.reuters.com/article/us-mexico-politics/mexican-supreme-court-justice-resigns-amid-corruption-questions-idUSKBN1WJo8K>.

¹⁶⁰ See Olivia Caisley, *Companies in the Sights of Foreign Bribery Crackdown* (Nov. 28, 2019), <https://www.theaustralian.com.au/nation/politics/companies-in-the-sights-of-foreign-bribery-crackdown/news-story/8724379e7cb7c869b637f7e2f2241b91>.

¹⁶¹ Debarments were counted based on the data reported by each MDB, using each bank's own reporting criteria. See *Debarment and Sanctions Procedures*, AFRICAN DEV. BANK GRP., <https://www.afdb.org/en/projects-and-operations/procurement/debarment-and-sanctions-procedures/>; *Published List*, ASIAN DEV. BANK, <http://lnadbg4.adb.org/ogao009p.nsf/sancALLPublic?OpenView&count=999>; *Ineligible Entities*, EUROPEAN BANK FOR RECONSTRUCT. AND DEV., <http://www.ebrd.com/ineligible-entities.html> (including debarments based upon third-party findings); *Sanctioned Firms and Individuals*, INTER-AMERICAN DEV. BANK, <http://www.iadb.org/en/topics/transparency/integrity-at-the-idb-group/sanctioned-firms-and-individuals.1293.html>; *World Bank Listing of Ineligible Firms & Individuals*, WORLD BANK, <http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984>. The World Bank Group appears to report only current debarments; the debarment totals are based upon the data reported as of January 11, 2020. The African Development Bank does not specify the grounds for its debarments; those grounds were counted based upon information reported by the Asian Development Bank and African Development Bank press releases.

Unfortunately, limited conclusions about MDB corruption enforcement can be drawn from this data. Debarments of affiliates of the same company generally are reported as separate debarments, such that debarment statistics do not reflect the number of distinct investigations that have resulted in debarments.

Looking Forward Into 2020

As we predicted last year, U.S. authorities have continued to focus on themes such as individual accountability, providing companies with incentives for self-disclosure and cooperation, corporate compliance, transparency, multi-jurisdictional coordination, and international cooperation. Statements by senior Trump administration officials, policies implemented by U.S. authorities, and recent corporate and individual enforcement trends reflect these ongoing themes. Notably, the DOJ's anti-corruption priorities appear unchanged following the confirmation of Attorney General Barr. There is little concrete evidence that the DOJ's China Initiative has had an impact on FCPA enforcement, though, given the passage of time, 2020 may bring some developments in this regard.

Looking ahead, 2020 promises to be an interesting year for FCPA enforcement. In early 2020, White House economic advisor Larry Kudlow stated that the Trump administration is "looking at" making changes to the FCPA.¹⁶² Although Kudlow declined to provide details beyond saying that the administration has heard complaints from companies and is working on a "package" of reforms, President Trump previously has expressed hostility toward the statute. In 2012, prior to becoming president, he referred to the FCPA as a "horrible law [that] should be changed" and said that "the world is laughing" at the United States for enforcing it.¹⁶³ And reportedly, in 2017, he described the FCPA as "unfair" to American companies and told then-Secretary of State Rex Tillerson and senior policy adviser Stephen Miller that he wanted to repeal the statute.¹⁶⁴ Of course, any amendments to the FCPA would require congressional action, which may be challenging in an election year, particularly given the current political landscape.

Short of legislative action, the President does have the authority to issue executive orders and take other actions that could affect how the FCPA is enforced and the level of government resources committed to the effort. We will monitor for such developments and report on them should they occur.

In addition, with two individuals scheduled for trial in 2020, and likely more to be scheduled in the coming years, we expect that judges will have an increased role in how the FCPA is enforced.

¹⁶² See Christina Wilkie, *Trump Economic Advisor Larry Kudlow Says White House is 'Looking At' Changes to Global Anti-Bribery Law*, CNBC (Jan. 17, 2020), <https://www.cnbc.com/2020/01/17/kudlow-white-house-is-looking-at-reforms-to-global-anti-bribery-law.html>.

¹⁶³ Jim Zarroli, *Trump Used to Disparage an Anti-Bribery Law; Will He Enforce It Now?*, NPR (Nov. 8, 2017), <https://www.npr.org/2017/11/08/561059555/trump-used-to-disparage-an-anti-bribery-law-will-he-enforce-it-now>; Jeanna Smialek, *Trump Tried to Kill Anti-Bribery Rule He Deemed 'Unfair,' New Book Alleges*, N.Y. TIMES (Jan. 15, 2020), <https://www.nytimes.com/2020/01/15/business/economy/trump-bribery-law.html>.

¹⁶⁴ See Jeanna Smialek, *Trump Tried to Kill Anti-Bribery Rule He Deemed 'Unfair,' New Book Alleges*, N.Y. TIMES (Jan. 15, 2020), <https://www.nytimes.com/2020/01/15/business/economy/trump-bribery-law.html>.

Finally, looking abroad, although the DOJ and the SEC recovered a record-breaking combined \$2.6 billion in corporate resolutions, the nearly \$215 million assessed by foreign authorities in those cases continues a downward trend from the record \$3.7 billion assessed by foreign authorities in 2016. Although too soon to draw firm conclusions, this decline may indicate a decrease in the willingness of foreign authorities to cooperate with U.S. authorities. While U.S. authorities received cooperation from the governments of over twenty nations in U.S. corporate enforcement resolutions in 2019, these investigations had been ongoing for several years, dating as far back as 2011. Given the significant shifts in international relations and global economic competition in the past year, it remains to be seen whether such international cooperation continues. Going forward, it may be that foreign authorities are more willing to pursue their own prosecutions than to continue cooperating with U.S. authorities.

Countries across the globe have continued to develop their domestic anti-corruption laws, and new corruption scandals and prosecutions blossom with regularity. We expect that trend to continue next year.

We look forward to providing you with further updates on these and other developments in 2020.

* * *

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

Jessica S. Carey
+ 1-212-373-3566
jcarey@paulweiss.com

Roberto Finzi
+1-212-373-3311
rfinzi@paulweiss.com

Harris Fischman
+1-212-373-3306
hfischman@paulweiss.com

Christopher D. Frey
+81-3-3597-6309
cfrey@paulweiss.com

Michael E. Gertzman
+1-212-373-3281
mgertzman@paulweiss.com

Roberto J. Gonzalez
+1-202-223-7316
rgonzalez@paulweiss.com

Michele Hirshman
+1-212-373-3747
mhirshman@paulweiss.com

Brad S. Karp
+1-212-373-3316
bkarp@paulweiss.com

Loretta E. Lynch
+1-212-373-3000

Mark F. Mendelsohn
+1-202-223-7377
mmendelsohn@paulweiss.com

Alex Young K. Oh
+1-202-223-7334
aoh@paulweiss.com

Lorin L. Reisner
+1-212-373-3250
lreisner@paulweiss.com

Jeannie S. Rhee
+1-202-223-7466
jrhee@paulweiss.com

Theodore V. Wells Jr.
+1-212-373-3089
twells@paulweiss.com

Kaye N. Yoshino
+81-3-3597-8101
kyoshino@paulweiss.com

Farrah R. Berse
+1-212-373-3008
fberse@paulweiss.com

Peter Jaffe
+1-202-223-7326
pjaffe@paulweiss.com

Justin D. Lerer
+1-212-373-3766
jlerer@paulweiss.com

Associates Meredith A. Arfa, Jonathan Silberstein-Loeb, and Juan J. Gascon and Law Clerk Jacob A. Braly contributed to this Client Memorandum.