
2016 Anti-corruption Trends and Enforcement: Looking Back and Looking Forward

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Presenters



Greg Andres

Greg is a partner in our litigation department and practices in our New York office, concentrating in white collar criminal defense and representing clients in both civil and criminal trials. He has represented individuals and entities alike in a wide range of regulatory and criminal investigations involving market manipulation, insider trading, securities, procurement and tax fraud, and money laundering. He also has extensive experience in anti-corruption matters, both in private practice and at the Department of Justice; his current practice involves investigations that span the globe from China to Europe, India and Mexico. He previously served in senior government positions including most recently as a Deputy Assistant Attorney General in the Criminal Division at the Department of Justice and the Chief of the Criminal Division at the U.S. Attorney's Office in the Eastern District of New York.



Angela Burgess

Angela is a partner in our litigation department and practices in our New York office. She has represented leading clients in some of the most high-profile and complex white collar and regulatory matters in recent years. Her global practice focuses on representing companies as well as individuals in matters involving allegations of insider trading, violations of anti-bribery laws, money laundering, antitrust, fraud and other financial crimes. Ms. Burgess also routinely advises boards of directors, audit committees and companies on corporate governance and compliance matters, including the design of strategies, policies and procedures to mitigate risk.

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Jennifer Newstead

Jennifer is a partner in our Litigation Department, concentrating in regulatory enforcement investigations, white collar criminal defense, and internal investigations. She represents leading corporations and financial institutions in high-profile investigations involving allegations of foreign bribery, sanctions violations, money laundering, market manipulation, securities and accounting fraud, and other financial crimes. Jennifer has conducted anti-corruption investigations for Fortune 100 companies in the technology/media, life sciences, hospitality, consumer products, and other industries. Earlier in her career, Jennifer was a Principal Deputy Assistant Attorney General at the Department of Justice, Associate White House Counsel, and General Counsel of the White House Office of Management and Budget.



Martin Rogers

Martin is a partner in our litigation department and practices in our Hong Kong office. He is regarded as one of the market's leading litigation and financial services regulatory lawyers with over 20 years' experience in Asia, advising on complex litigation, arbitration, regulatory and white collar crime matters, with extensive experience advising leading corporations, the financial services industry and government bodies. Mr. Rogers' global enforcement and litigation practice focuses on complex regulatory matters, particularly within the financial services and investment banking industry and advises major international and Asian financial institutions and corporations, as well as regulators.

Presenters



Linda Chatman Thomsen

Linda is a partner in our litigation department and practices in our Washington, DC office. Her practice concentrates on matters related to the enforcement of the federal securities laws. She returned to the firm after serving for 14 years in various positions within the SEC. Linda joined the SEC staff in 1995 as Assistant Chief Litigation Counsel. In 1997, she was named Assistant Director of the Enforcement Division. She became an Associate Director in 2000, Deputy Director in 2002 and was named Director of the Enforcement Division in 2005, a position she held until 2009.

2016 Enforcement Activity

OVERVIEW

36 corporate FCPA resolutions

- **>\$2.48 billion** in penalties and disgorgement (\$1.87 billion in second half)
- Record in both amount of payments and number of corporations (26)
- 11 DOJ declinations, **5 “consistent” with Pilot Program**
- 12 DOJ actions*
- 24 SEC actions*
- DOJ / SEC overlap in 10 resolutions (compared to **0** overlap in 2015)

Pharmaceutical industry continued to be a focus of scrutiny

- Particularly with respect to conduct in **China**
- E.g., GlaxoSmithKline, AstraZeneca, Teva

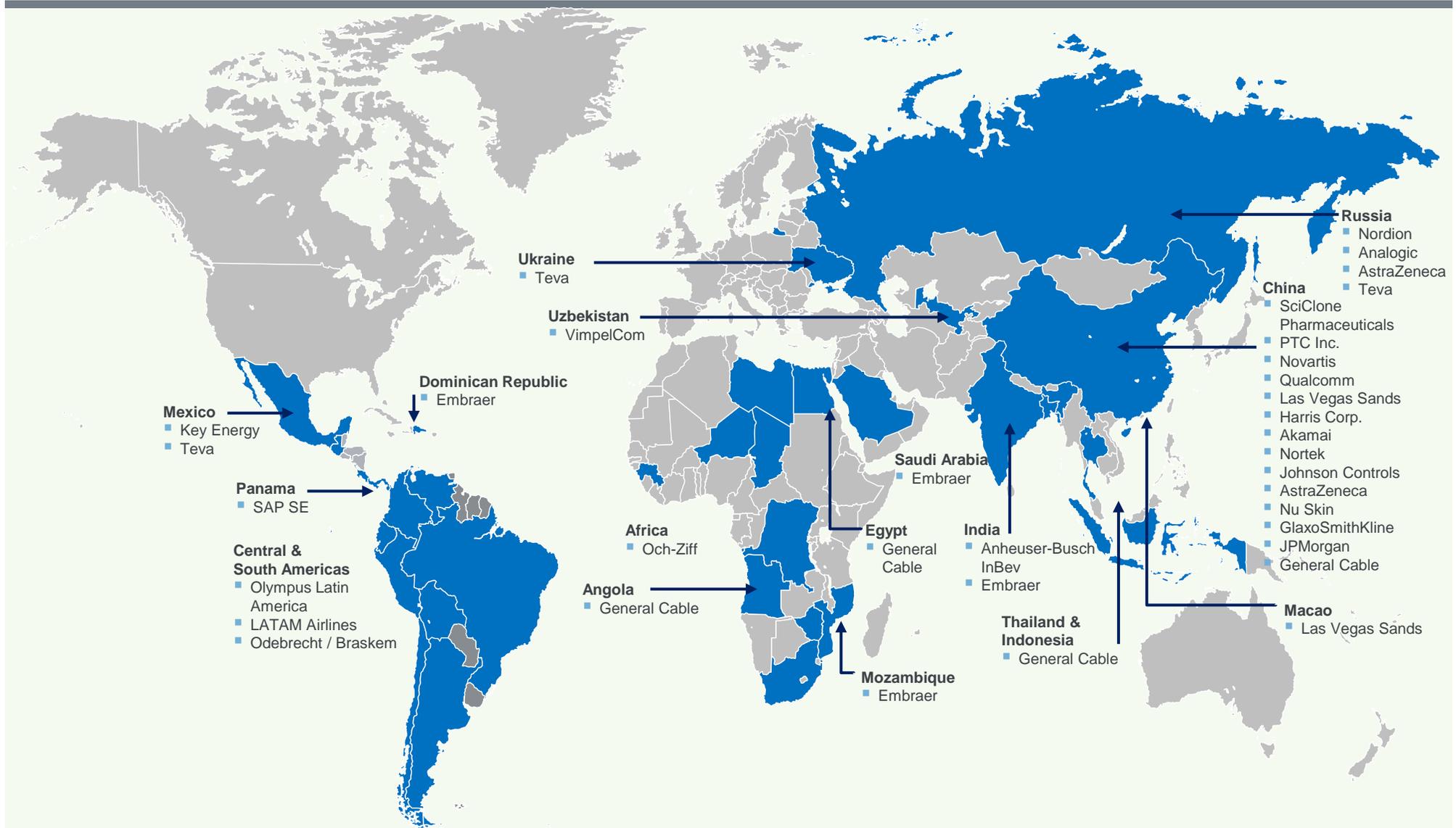
Examples of other industries

- Manufacturing: Embraer, General Cable
- Construction: Odebrecht / Braskem
- Finance: Och-Ziff, JPMorgan Chase
- Energy: Key Energy

*Not including declinations

2016 Enforcement Activity

OVERVIEW: GEOGRAPHY



DOJ Self-Reporting “Pilot Program”

BACKGROUND

- In April 2016, the one-year program was launched to “promote both transparency and accountability” by encouraging voluntary self-disclosure of FCPA-related misconduct
 - Organizations that “**voluntarily self-disclose, fully cooperate, and remediate**” will be eligible for “**significant credit**” re: type of disposition, extent of fine reduction, and need for monitor
 - Program will “increase [DOJ]’s ability to prosecute individual wrongdoers whose conduct might otherwise have gone undiscovered or been impossible to prove”
- **Three June 2016 DOJ declinations** described as “consistent with the FCPA Pilot Program” in letters publicly released by DOJ
 - Declination letters noted disgorgement paid to SEC as a factor contributing to DOJ declination; no disgorgement or other amount paid to DOJ
- DOJ to assess at end of pilot period whether to extend the duration of the program or to modify it “in light of the pilot experience”

DOJ Pilot Program: Update

“DECLINATIONS WITH DISGORGEMENT”

- **Two September 2016 declinations** for Texas-based companies described as consistent with Pilot Program required disgorgement of “all profits” to DOJ
 - **HMT LLC**: Declination plus \$2.7 million disgorgement; DOJ found that HMT, through employees and agents, paid approximately \$500,000 in bribes to officials in Venezuela and China to influence officials’ purchasing decisions
 - **NCH Corporation**: Declination plus \$335,000 disgorgement; DOJ found that employees of NCH’s Chinese subsidiary provided approximately \$44,500 in cash and other value to Chinese officials to influence officials’ purchasing decisions

“[W]e remain committed to ensuring that those who violate the law don’t profit from their crimes, even when we decline to prosecute. That is why the pilot program requires that companies disgorge the proceeds of bribery in order to be eligible for the full benefits, including possible declination, of the program. In most of our FCPA cases, we work in parallel with the SEC, and disgorgement of proceeds is usually part of the SEC resolution. Under the pilot program, even when the SEC is not involved in an investigation, disgorgement is still a prerequisite.” – Leslie Caldwell, Nov. 3, 2016

DOJ Pilot Program: Update

OTHER OBSERVATIONS

- **Non-Cooperation**: Possible increase in transparency into both cooperative and *non-cooperative* behavior:
 - Embraer S.A.: Failure to discipline a senior executive aware of alleged bribery
 - Odebrecht: Destruction of evidence of corruption after investigation made public
 - Teva Pharmaceutical Industries: “Overbroad assertions of attorney-client privilege”

- **Differing Perspectives on Effectiveness**:

“[W]hat we’re seeing is that the Pilot Program is having an effect. Although I can’t share precise figures, anecdotally we’ve seen an uptick in the number of companies coming in to voluntarily disclose potential FCPA violations.”

– Leslie Caldwell, Nov. 2016

- Nb.: Texas-based Lennox International Inc. self-reported to SEC/DOJ an alleged improper payment of \$475 to a Russian customs official (Oct. 2016)
- No public statements to date regarding anticipated continuation or termination of Pilot Program

Yates Memo: Update

- September 2015 guidance memorandum (the “Yates Memo”) emphasized DOJ’s focus on **investigating and prosecuting individuals** for roles in corporate misconduct
 - To receive any cooperation credit, companies must provide “all relevant facts” about involved / responsible individuals
- In the 16 months since the Yates memo was released, the DOJ has charged twenty-five defendants with FCPA-related violations:
 - Eleven individuals
 - Fourteen companies (in ten separate enforcement actions), plus at least five declinations under the Pilot Program
 - To date, only one individual – not a corporate officer – charged by DOJ with FCPA violations in connection with corporate enforcement action (Och-Ziff)
- Rate of individual prosecutions since the Yates Memo (44%) is fairly consistent with the rate in the prior year (47%)

FCPA and Whistleblowers

- **Record Numbers for SEC Whistleblower Program:** SEC 2016 Annual Report to Congress stated that SEC received over 4,200 tips (>40% increase since FY 2012)
 - FY 2016: 238 tips related to FCPA allegations out of 4,218 total (5.6%), more than double # of tips since 2012 (115 FCPA tips out of 3,001 (3.8%))
- **First Reported FCPA Whistleblower Award (Aug. 2016):** Australian media reported that SEC made FCPA-related whistleblower award of \$3.75 million for information relating to the BHP Billiton Beijing Olympics-related settlement from May 2015
- **Fines for Chilling Whistleblowers:** SEC fined domestic and foreign companies for severance agreements that “stifle” or “chill” whistleblowers in violation of Rule 21F-17 (15 U.S.C. § 78u-6)
 - E.g., Anheuser-Busch InBev (“AB”): \$6 million settlement of charges that AB violated FCPA and chilled a whistleblower who reported the misconduct; AB to make “reasonable efforts” to inform former employees they can contact SEC re: possible violations
 - Additional 2016 fines for U.S. companies HealthNet Inc. (\$340,000), BlueLinx Holdings (\$265,000), NeuStar Inc. (\$180,000), and SandRidge Energy Inc. (\$1.4 million) for restrictive language in separation agreements

Notable U.S. FCPA Settlements

OVERVIEW

- Several notable U.S. FCPA settlements in second half of 2016, including:
 - **Och-Ziff**: First FCPA-related settlement between a hedge fund and DOJ or SEC, sixth-largest FCPA settlement to date
 - **GlaxoSmithKline**: The latest resolution by GSK (with SEC) of alleged corruption violations in China
 - **JPMorgan Chase**: Settlements with U.S. regulators resolved FCPA investigation of the “Sons and Daughters” program
 - **Odebrecht / Braskem**: Combined \$3.5 billion global settlement is “largest-ever global foreign bribery resolution”
- See Appendix for additional 2016 FCPA corporate / individual resolutions and other enforcement activity

Notable U.S. FCPA Settlements

OCH-ZIFF \$412 MILLION SETTLEMENT WITH DOJ AND SEC

- **Och-Ziff Capital Management Group (DOJ / SEC, Sept. 2016)**: DOJ DPA, Och-Ziff Africa guilty plea, \$213 million criminal penalty; SEC cease-and-desist order, \$173.2 million disgorgement plus \$25.86 million in prejudgment interest
 - Industry / Country: Hedge Fund / DRC, Libya, Chad, Niger, Zimbabwe, Guinea
 - Allegations: Och-Ziff and an African subsidiary, through third parties, paid bribes to officials in DRC to secure mining rights and in Libya to induce the Libyan sovereign wealth fund to invest at least \$300 million in Och-Ziff managed funds
 - Charges: Bribery, internal controls, books and records
 - Individuals: SEC settlements, including fines, with CEO and CFO; DOJ also charged Gabonese national Samuel Mebiame, with conspiracy to bribe African government officials to win mining rights for a joint venture involving Och-Ziff
 - Wall Street Investigation: First criminal foreign-bribery case against a major Wall Street firm after a five-year investigation of U.S. financial firms' attempts to profit from natural resources in developing countries at risk for corruption

Notable U.S. FCPA Settlements

U.S. RESOLUTION OF GSK CHINA MATTERS

- **GlaxoSmithKline (SEC, Sept. 2016)**: Cease-and-desist order, \$20 million civil penalty; DOJ declination
 - Industry / Country: Pharmaceuticals / China
 - Allegations: From 2010 to 2013, GSK's China-based subsidiaries used "pay-to-prescribe" schemes to increase sales in China by providing gifts to Chinese public officials (healthcare professionals); GSK's internal accounting controls and anti-corruption compliance programs were insufficient and ineffective in detecting and preventing the schemes
 - Charges: Internal controls, books and records
 - Whistleblower: The alleged misconduct was first revealed by a whistleblower who reported misconduct to GSK executives, GSK's auditor, and Chinese regulators; GSK allegedly attempted to bribe the Chinese regulators who received the reports
 - Self-Monitorship: Under the terms of the settlement, GSK will provide status reports to the SEC on its remediation and implementation of anti-corruption compliance measures for the next two years

Notable U.S. FCPA Settlements

U.S. RESOLUTION OF GSK CHINA MATTERS

■ GlaxoSmithKline (cont.):

- DOJ Declination: At the time of the misconduct, GSK was under a “Corporate Integrity Agreement” that required “major changes” to business practices and compensation programs, but GSK received a declination from DOJ nonetheless
- Parallel Actions: GSK received a \$490 million fine from Chinese regulators in 2014 following a conviction for bribery, which included the convictions and deportation of four top executives; U.K.’s Serious Fraud Office opened an investigation into GSK’s “commercial practices” in 2014
- Pervasive Misconduct: SEC Order highlighted that bribes were “condoned” by regional and district managers, citing a sales plan that included delivery of gifts in exchange for guaranteed amount of prescribed GSK product every month

Notable U.S. FCPA Settlements

JPMORGAN “SONS AND DAUGHTERS” SETTLEMENT

- **JPMorgan Chase (DOJ / SEC / Federal Reserve, Nov. 2016):** DOJ NPA, \$72 million criminal penalty; SEC cease-and-desist order, \$105.5 million in disgorgement plus \$25 million in prejudgment interest; Federal Reserve Board of Governors cease-and-desist order, \$61.9 million civil penalty
 - Industry / Country: Investment Banking / Asia
 - Allegations: From 2006 to at least 2012, JPMorgan, through a Hong Kong subsidiary, used a “Sons and Daughters” program to hire individuals referred by government officials and clients; approximately 100 individuals referred by foreign officials were hired to entry-level positions and paid the same as investment bankers, despite deficient qualifications and performance of only ancillary work; in return, JPMorgan entered into transactions with referring officials, resulting in at least \$100 million in revenue
 - Charges: Bribery, internal controls, books and records, conspiracy
 - Cooperation Credit: No disclosure credit because JPMorgan did not “voluntarily and timely disclose” the FCPA offenses; JPMorgan did receive full credit for cooperation with the DOJ’s criminal investigation (25% aggregate discount for cooperation and remediation, including firing 6 employees and disciplining 23)
 - Federal Reserve: Issuance of consent order pursuant to Federal Deposit Insurance Act

Notable U.S. FCPA Settlements

RECORD GLOBAL SETTLEMENT OF BRAZILIAN CORRUPTION MATTERS

- **Odebrecht / Braskem (DOJ / SEC, Dec. 2016)**: Global settlement of criminal FCPA charges for Brazilian company Odebrecht and affiliate Braskem; combined total of at least \$3.5 billion to authorities in U.S., Brazil, and Switzerland
 - Industry / Country: Construction / Petrochemicals / Brazil
 - Allegations: For more than a decade, Odebrecht used a specialized division to pay bribes to foreign government officials and political parties in several Latin American and African countries; the alleged bribery scheme relied on offshore entities to wire funds, and cash payments delivered in packages or suitcases
 - Charges: Books and records, conspiracy; internal controls (Braskem only)
 - Petrobras Investigation: The enforcement actions are the result of a long-running investigation, dubbed “Operation Car Wash,” into Brazil’s state energy company, Petrobras, which has implicated several companies
 - Credit for Foreign Settlements: DOJ will credit amounts paid to Brazil and Switzerland; U.S. to receive 10% of Odebrecht’s penalty and 15% of Braskem’s penalty; second time this year credit applied for payments to Brazilian authorities (see Embraer S.A., Oct. 2016)

Notable U.S. FCPA Settlements

RECORD GLOBAL SETTLEMENT OF BRAZILIAN CORRUPTION MATTERS

■ Odebrecht / Braskem (DOJ/SEC, Dec. 2016) (cont'd):

■ “Record” Numbers:

- According to DOJ, combined \$3.5 billion global settlement with both companies represents the “largest-ever global foreign bribery resolution”
- Second-largest total disgorgement in corruption matter (\$325 million), although only \$65 million of Braskem’s disgorgement goes to SEC
- Combined \$419.8 million settlement with DOJ/SEC is fifth-largest FCPA settlement to date

■ Cooperation Analysis: Neither company voluntarily disclosed conduct; Odebrecht credited for full cooperation with investigation (25% reduction off U.S.S.G.), Braskem for “partial” cooperation (15% reduction)

■ Monitor: Despite credit for significant remediation efforts, both companies must retain an independent corporate monitor for at least three years

■ “Inability to Pay”: The criminal penalty is also subject to an “inability to pay” analysis based on Odebrecht’s representation that it can pay only \$2.6 billion

Asia Update

CHINA: ANTI-CORRUPTION: CAMPAIGN UPDATE AND ARCHITECTURE

- **Xi Jinping's anti-corruption campaign:** Since 2012, campaign led by CCDI has resulted in estimated >100,000 convictions for corruption offenses, discipline or jail time for hundreds of thousands more
 - Campaign has focused primarily on **public sector**, including current and former politicians and military personnel
- No major private sector corruption cases to report from 2016
 - Query: *GSK* more of an isolated case than a continuing trend?
- **No signs of slowdown in 2016 or looking ahead:**
 - Government to launch anti-graft supervision commissions to oversee all public servants
 - New Party guidelines ask members of Central Committee (high-ranking political body) to report on one another for disciplinary violations
 - Wang Qishan (head of CCDI) published warning in *People's Daily*: “Absolute power leads to absolute corruption, and thus unsupervised power is extremely dangerous”
 - China campaign run by Communist Party itself based on Party disciplines; after initial Party investigation, indictable offenses then to be handled by the Procuratorate

■ 2016 draft amendments to Anti-Unfair Competition Law (“AUCL”)

- Pending for review before Standing Committee of National People’s Congress
- Applies to corporations, organizations, or individuals engaged in for-profit sale of goods or provision of services in China
- **Clarifies** that commercial bribery includes:
 - “Economic benefits”
 - Undocumented or misrepresented kickbacks or rebates
- **Expands** the scope of liability for commercial bribery by including:
 - **Promise to provide** “economic benefits”
 - Payment or promise of payment to **third party** with influence on the transaction to the detriment of other business operators or consumer’s lawful rights
 - **Vicarious liability** for employers (unless employees acted in contravention to employer’s interest)
- **Increased supervisory and investigatory powers for SAIC**
- **Increased penalties** (10%-30% of illegally obtained revenue)

■ 2016 Bribery and Corruption Interpretation

- Jointly issued by Supreme People's Court and Supreme People's Procuratorate
- Clarifies 2015 amendments to Criminal Law dealing with bribery and corruption
 - Establishes monetary thresholds; minimum of RMB 30,000 (\$4,313 USD) bribe must be offered for most offenses
 - “Money and property” that may constitute a bribe includes “property-like benefits” such as “home renovation, debt relief...membership services, travel”
 - Bribes may also include:
 - Payments or gifts to officials *after* the official has acted on behalf of the briber (rather than before)
 - Payments or gifts to officials without an *explicit* request for the official to act on behalf of the briber (i.e., where there is an unspoken understanding)
 - Payments or gifts to “specific interested person[*s*,” including *family members* of officials
 - Leniency potentially available for “relatively minor crime” offenders who assist with a “major” case or exhibit “major meritorious behavior” during investigation

Asia Update

CHINA: INDIVIDUAL REPATRIATION/EXTRADITION

- Continuation of **Operations Foxhunt** (repatriation of fugitive officials) and **Skynet** (asset freezing)
 - **Yang Xiuzhu**: #1 on China's "100 Most Wanted" list; former official alleged to have received \$39 million USD in improper income from construction industry
 - Returned in November from **U.S.**
 - **Yan Yongming**: #5 on "100 Most Wanted" list; former chairman of Tonghua Golden-Horse Group, SOE pharmaceutical company, alleged to have embezzled over \$100 million USD
 - Reportedly returned in October from **New Zealand**
- **International Cooperation**
 - **France**: First repatriations of Chinese fugitives in September and November under new extradition treaty
 - **Australia**: Parliament currently reviewing extradition treaty
 - **Canada**: Agreed to talks in September to negotiate an extradition treaty
 - **U.S.**: Reportedly in expedited talks on returning four wanted former officials although no extradition treaty in force

Case Law Updates

■ Expansion of FCPA Jurisdiction?

- SEC v. Straub, et al., No. 11-9645 (S.D.N.Y. Sept. 30, 2016)
 - Part of Magyar Telekom FCPA matter ongoing since December 2011
 - SDNY ruled—in favor of the SEC—that a foreign issuer’s EDGAR filings can form the basis for establishing FCPA jurisdiction
 - Case decided on summary judgment by District Court Judge Richard Sullivan
 - Validated SEC theory that defendants used an instrumentality of interstate commerce “by participating in the preparation of falsified SEC filings that were posted to and accessible from the SEC’s EDGAR internet web site”
 - Another potential jurisdictional hook for U.S.-based charges / litigation; prior examples include, e.g., transactions conducted in U.S. dollars, or communications conducted using email accounts on U.S.-based servers (see, e.g., VimpelCom, Feb. 2016)

Case Law Updates

■ Constitutionality of SEC Administrative Courts

- Tilton v. SEC, No. 15-2103 (2d Cir. June 1, 2016) (individual must first raise constitutional challenge in SEC administrative court)
 - U.S. Supreme Court has rejected Tilton's application for a stay of SEC proceeding (Tilton v. SEC, No. 16A242 (U.S. Sept. 27, 2016))
- Raymond James Lucia Cos. v. SEC, No. 15-1345 (D.C. Cir. Aug. 9, 2016) (first appellate court finding that SEC administrative courts are constitutional)
- Bandimere v. SEC, No. 15-9586 (10th Cir. Dec. 27, 2016) (rejection of SEC's use of administrative law judges as unconstitutionally appointed)

■ Statute of Limitations for SEC Disgorgement

- SEC v. Kokesh, No. 15-2087 (10th Cir., Aug. 23, 2016) (holding that disgorgement is neither penalty nor forfeiture and thus not subject to 5-year statute of limitations under 28 U.S.C. § 2462)
 - Split with ruling in SEC v. Graham (11th Cir. May 26, 2016) that limitations period applies because "forfeiture and disgorgement are effectively synonyms"

Developments in Global Anti-Corruption Enforcement

FOREIGN DEVELOPMENTS

- **New French Legislation (“Sapin II Bill”) (Nov. 2016)**
 - Allows DPAs; maximum fine = 30% of company’s annual revenue
- **Increased Anti-Corruption Activity in Israel**
 - First Enforcement Action under Bribery of Foreign Public Officials Statute: Nikuv International Projects Ltd. agreed to guilty plea, fine of ~\$1.2 million (Nov. 2016)
 - Guinea Bribe Investigation: Beny Steinmetz placed under house arrest (later released), in connection with bribery allegations involving Steinmetz conglomerate’s BSG Resources (“BSGR”) in Guinea
 - First U.S. FCPA Enforcement Action Against Israeli Company: Teva Pharmaceutical Industries, Inc. (see Appendix) is fourth-largest FCPA enforcement action to date
- **Continued Enforcement by Brazilian Authorities**
 - Petrobras: Brazil’s former president charged with spearheading corruption and kickback scheme tied to Petrobras contracts (Sept. 2016); former House speaker arrested for allegedly pocketing bribes from company seeking contracts with Petrobras (Oct. 2016)
 - Parallel enforcement activity by U.S. authorities and Brazilian Ministerio Publico Federal in Embraer S.A. and Odebrecht / Braskem matters, as well as credit in DOJ resolutions for amounts paid to Brazil

Developments in Global Anti-Corruption Enforcement

INTERNATIONAL COOPERATION

- **U.S. / China Cooperation in Criminal Investigations**
 - Per Leslie Caldwell (Nov. 3, 2016), U.S. and China are cooperating on several criminal cases, including cases involving alleged corruption, cybercrime, and intellectual property
- **DOJ Will Second a Lawyer to the U.K.'s Financial Conduct Authority and Serious Fraud Office**
- **Increased Cooperation Between U.S. and Dutch Authorities**
 - Resolutions totaling over \$1 billion since 2014 (VimpelCom, SBM Offshore)

“[I]n the 21st century, no nation can fight corruption on its own. . . . [I]nternational cooperation is more important than ever in dismantling transnational schemes, thwarting attempts to hide ill-gotten assets, and bringing perpetrators to justice.” – Loretta Lynch, Oct. 20, 2016

APPENDIX

Other 2016 FCPA Corporate Enforcement Activity

2016 FCPA Corporate Enforcement Activity

- **Key Energy Services, Inc. (SEC, Aug. 2016):** SEC cease-and-desist order, \$5.5 million disgorgement, no civil penalty
 - Industry / Country: Energy / Mexico
 - Allegations: Subsidiary Key Mexico hired a consulting firm to extend and amend contracts with PEMEX. A Key Mexico official was aware of connections between the consulting firm and officials at PEMEX and was aware and intended that payments made to the consulting firm be funneled to the PEMEX official. Between 2010 and 2014, Key Mexico paid the consulting firm over \$500,000. In 2012, Key Energy approved Key Mexico's contribution of ~\$118,000 of gifts to PEMEX's Christmas party raffle, not knowing Key Mexico planned to give at least \$55,000 of these gifts to specific PEMEX officials
 - Charges: Internal controls, books and records
 - Cooperation: SEC did not impose a civil penalty, citing Key's cooperation in the investigation, as well as its financial condition and need to maintain cash reserves to fund operations and meet liabilities
 - DOJ Declination (May 2016)

2016 FCPA Corporate Enforcement Activity

- **AstraZeneca PLC (SEC, Aug. 2016)**: SEC cease-and-desist order, \$4.325 million disgorgement, \$822,000 prejudgment interest, \$375,000 civil penalty
 - Industry / Country: Pharmaceuticals / China
 - Allegations: AstraZeneca's Chinese subsidiary made improper payments, including gifts and entertainment, to healthcare providers to incentivize their purchase and prescribing of AstraZeneca pharmaceuticals; the subsidiary used spreadsheets to track payments and engaged travel vendors to provide inflated invoices
 - AstraZeneca's Russian subsidiary made improper payments using a similar system
 - Charges: Bribery, internal controls, books and records
 - Cooperation: SEC gave "significant credit" and reduced the penalty amount in recognition of AstraZeneca's cooperation (Andrew Ceresney – Nov. 30, 2016)
 - Statute of Limitations: The alleged misconduct ended in 2010, but the order maintains that AstraZeneca waived statute of limitations defenses, even though the statute of limitations for FCPA offenses is five years (28 U.S.C. § 2462)

2016 FCPA Corporate Enforcement Activity

- **Nu Skin Enterprises, Inc. (SEC, Sept. 2016)**: SEC cease-and-desist order, \$465,000 disgorgement/prejudgment interest, and \$300,000 civil penalty
 - Industry / Country: Cosmetics / China
 - Allegations: Nu Skin's China-based subsidiary made a \$150,000 payment to a charity so that a Chinese Communist party official would intervene in an ongoing investigation of the company by a provincial agency; two days after the donation, the agency informed Nu Skin that it would neither charge nor fine the subsidiary
 - Charges: Internal controls, books and records
 - Charitable Donation: This is only the second FCPA enforcement action based solely on a charitable donation (the other case in 2004 involved Schering-Plough)
 - Controls: SEC order recognized that Nu Skin was aware that a charitable donation could raise FCPA concerns and sought to include anti-corruption language in the charity agreement; that language, however, was ultimately removed from the final agreement, unbeknownst to Nu Skin

2016 FCPA Corporate Enforcement Activity

- **Wal-Mart Stores Inc. (DOJ/SEC, Sept. 2016)**: Wal-Mart rejected a \$600 million settlement offer with the DOJ and SEC to resolve FCPA allegations
 - Industry / Country: Retail / Mexico, India and Brazil
 - Allegations: Wal-Mart paid Mexican officials over ten years to fast-track store openings; the officials sped up zoning and building permits for the stores; similar misconduct was discovered in India and Brazil
 - Proposed Settlement: The proposed settlement amount reportedly accounts for profits Wal-Mart earned as a result of the “fast-track” openings
- **Class Action**
 - City of Pontiac General Employees’ Retirement System v. Walmart Stores Inc., No. 12-05162 (W.D. Ark. Sept. 20, 2016): Federal district court ruled that Wal-Mart must face a class action for alleged concealment of the bribery from shareholders

2016 FCPA Corporate Enforcement Activity

- **Siemens AG (FCC, Sept. 2016)**: FCC fined Siemens \$175,000 for failing to disclose corporate felony convictions arising from Siemens AG's FCPA settlements with DOJ and SEC in 2008
 - Industry / Country: Manufacturing and Electronics / U.S.
 - Allegations: Siemens, Siemens Medical, and subsidiaries failed to disclose the felony convictions on license applications filed between 2007 and 2015; per FCC requirements, wireless license holders are required to disclose any felony convictions in their license applications
 - Prior Charges: Three Siemens subsidiaries, located in Argentina, Bangladesh, and Venezuela, pleaded guilty to FCPA charges in 2008
 - Compliance Plan: FCC required Siemens to adopt a compliance plan to prevent future failures to disclose convictions on future license applications; must also designate a senior manager as a compliance officer, develop a compliance training program, and report to the FCC regularly on compliance

2016 FCPA Corporate Enforcement Activity

- **Cisco Systems Inc. (DOJ/SEC, Sept. 2016)**: DOJ and SEC issued declinations for Cisco Systems, a networking company
 - Industry / Country: Networking / Russia
 - Regulatory Request: In March 2014, Cisco disclosed that at the request of the DOJ and SEC, it was investigating allegations of FCPA violations related to the business activities of Cisco and some of its resellers in Russia and elsewhere in the Commonwealth of Independent States
 - Cooperation: Cisco reported that it fully cooperated with both investigations and that it fully disclosed the results of its internal investigation

2016 FCPA Corporate Enforcement Activity

- **Anheuser-Busch InBev (SEC, Sept. 2016)**: SEC cease-and-desist order, \$2.7 million in disgorgement, \$292,000 in interest, and a \$3 million penalty
 - Industry / Country: Brewing / DRC, Libya, Chad, Niger, Zimbabwe, Guinea
 - Allegations: Anheuser-Busch InBev, through its Indian subsidiary, used outside sales promoters to bribe government officials in India to increase sales and production of AB products
 - Charges: Internal controls, books and records, conspiracy to violate anti-bribery provisions
 - Separation Agreement: AB entered into a separation agreement that prevented an employee from continuing to voluntarily communicate with the SEC, “chilling” the whistleblower
 - Self-Monitoring: For two years, AB must report its FCPA compliance efforts to the SEC and make reasonable efforts to inform former employees that they can contact the SEC about possible violations

2016 FCPA Corporate Enforcement Activity

- **Embraer S.A. (DOJ / SEC, Oct. 2016)**: DOJ DPA, \$107 million criminal penalty; SEC civil settlement and cease-and-desist order, \$98 million disgorgement / prejudgment interest
 - Industry / Country: Aircraft / Dominican Republic, Mozambique, India, Saudi Arabia
 - Allegations: Embraer's U.S.-based subsidiary, through third-party agents, paid more than \$10 million in bribes to officials in the Dominican Republic, Saudi Arabia, Mozambique, and India in order to help sell aircraft; the company received over \$83 million in profits from the bribes
 - Charges: Bribery, internal controls, books and records
 - Monitor: DPA requires Embraer to retain a corporate monitor for three years
 - Failure to Discipline: DPA cited Embraer's failure to discipline a senior executive who was aware of alleged bribery as a factor in its resolution
 - Disgorgement Credit: SEC settlement provided that Embraer could receive up to \$20 million credit for disgorgement paid to Brazilian authorities in a parallel proceeding; Embraer later settled with Brazilian authorities for \$20 million, including \$18.5 million in disgorgement; if Embraer receives a credit of \$18.5 million, it will disgorge \$79.5 million to SEC—the tenth-biggest FCPA disgorgement

2016 FCPA Corporate Enforcement Activity

- **Grifols S.A. (DOJ, Oct. 2016)**: Declination for Grifols, a Spanish pharmaceutical company
 - Industry / Country: Pharmaceuticals / Spain
 - DOJ Declination: Grifols reported in an SEC filing that it had been notified that DOJ closed its inquiry into all possible FCPA violations since 2009
 - Cooperation: DOJ declination acknowledged the full cooperation of Grifols in the investigation
 - Prior Investigation and Declination: Grifols disclosed that Talecris, which it bought in 2010, was subject to an investigation into its sales in Belarus, Russia, Brazil, China, Georgia, Iran, Libya, Poland, Turkey and Ukraine that started in 2009; Grifols reported that the Talecris investigation ended in a DOJ declination in 2012

2016 FCPA Corporate Enforcement Activity

- **Teva Pharmaceutical Industries, Ltd. (DOJ / SEC, Dec. 2016)**: DOJ DPA, \$283 million criminal penalty; SEC civil settlement and cease-and-desist order, including \$236 million in disgorgement; Russian subsidiary pleaded guilty
 - Industry / Country: Pharmaceuticals / Russia, Ukraine, Mexico
 - Allegations: Teva, the largest manufacturer of generic pharmaceutical products in the world, paid government officials in Russia, Ukraine, and Mexico millions in bribes to garner their approval of certain drugs and increase sales; Teva intentionally failed to implement internal controls that would prevent bribery; Teva made more than \$214 million in profits from the bribery
 - Charges: Bribery, internal controls, books and records; conspiracy
 - Monitor: Teva must retain an independent corporate monitor for three years
 - Settlement Size: The \$519 million settlement is the fourth-largest FCPA settlement and the second-largest SEC disgorgement ever
 - Cooperation: DOJ reduced Teva's criminal penalty by 20% for its cooperation, but did not receive full cooperation credit because of "overbroad assertions of attorney-client privilege"

2016 FCPA Corporate Enforcement Activity

- **General Cable Corporation (DOJ / SEC, Dec. 2016)**: DOJ NPA, \$20.4 million criminal penalty; SEC civil settlement, including \$55.3 million in disgorgement and prejudgment interest
 - Industry / Country: Manufacturing / Angola, Bangladesh, China, Egypt, Indonesia, Thailand
 - Allegations: Between 2002 and 2013, General Cable paid \$13 million to third-party agents and distributors, some of which was used as bribes to obtain business from foreign officials in exchange for \$51 million in profits
 - Charges: Bribery, internal controls, books and records
 - Executives: Executives at both the parent company and subsidiaries alleged to have known overseas units were bribing foreign officials and discussed the bribery in email
 - Internal Controls: General Cable had a Code of Ethics that prohibited illegal and unethical payments, but did not give adequate training to ensure FCPA compliance
 - Cooperation: DOJ gave General Cable an NPA and a 50% discount on its payment because General Cable voluntarily and timely disclosed, cooperated fully, disciplined 13 employees, and terminated relationships with 47 third-party agents and distributors

Other 2016 FCPA Individual Enforcement Activity

Other 2016 FCPA Individual Enforcement Activity

- **Jun Ping Zhang (Hunan CareFx Information Technology LLC) (SEC, Sept. 2016):**
Ping, Chairman and CEO of CareFx, a China-based subsidiary of Harris Corp. (of which Ping is a VP), received a cease-and-desist order and \$46,000 penalty
 - Industry / Country: Information Technology / China
 - Allegations: Ping authorized a practice of gift-giving to Chinese officials at state-owned hospitals. Under Ping's management, CareFx employees hid the gifts through false expense receipts, which were used to provide cash for the gifts. Ping authorized between \$200,000 and \$1 million in improper payments and in return, CareFx received over \$9.6 million in sales contracts
 - Charges: Bribery, internal controls, books and records
 - Parent Company: SEC did not charge Harris Corp., citing the company's self-policing that led to the discovery of Ping's misconduct, prompt self-reporting, and cooperation with the SEC's investigation
 - Prior Declination: Harris Corp. received a declination for similar conduct from DOJ in November 2015

Other 2016 FCPA Individual Enforcement Activity

- **Ng Lap Seng and Jeff Yin (NGO-1) (DOJ, Nov. 2016)**: Ng, founder and primary funder of NGO-1, and his assistant Yin, received a superseding indictment from DOJ
 - Industry / Country: Non-Governmental Organization (Media) / Antigua, Dominican Republic
 - Allegations: Ng paid hundreds of thousands of dollars to the Ambassadors of Antigua and the Dominican Republic in exchange for benefits to Ng's company, the Macau Real Estate Development Company; these benefits included pressure applied by the Ambassadors to other U.N. officials, including the Secretary-General; the ultimate goal of the corruption was official action regarding a billion-dollar conference center that Ng sought to build in Macau, China
 - Charges: Bribery, conspiracy, money laundering, obstruction of justice
 - Gifts: At a U.N. forum in Macau, co-hosted by Ng's company, U.N. officials and ambassadors were given gifts and one official received an interest-free loan
 - Original Indictment: In October 2015, Ng and Yin were charged with bribery, currency and tax-related crimes

Other 2016 FCPA Individual Enforcement Activity

- **Karl Zimmer (General Cable Corporation) (SEC, Dec. 2016)**: Zimmer, a senior vice president, settled FCPA allegations with the SEC and agreed to pay a \$20,000 penalty
 - Industry / Country: Manufacturing / Angola
 - Allegations: Zimmer approved excessive commission payments, totaling over \$342,000, to a third-party agent that were almost double the limit General Cable allowed for third-party commissions; the agent did not perform any documented services for some of the payments
 - Charges: Internal controls, books and records
 - Internal Controls: Zimmer's payments violated General Cable's Code of Ethics, policies for third-party commissions, and executive management instructions

Other 2016 FCPA Individual Enforcement Activity

■ Six Guilty Pleas in Mexico Bribery Scheme (DOJ, 2016)

■ Charges and Guilty Pleas:

- Four Texas businessmen pleaded guilty to FCPA violations: Douglas Ray, Victor Hugo Valdez Pinon, Kamta Ramnarine, and Daniel Perez (Oct. & Nov. 2016)
- Two former Mexican officials pleaded guilty to conspiracy to launder proceeds of the bribery schemes (Mar. & Dec. 2016)

■ Industry / Country: Aircraft Services / Mexico

- Allegations: The four Texas businessmen—who owned or were associated with U.S. aircraft services companies—paid more than \$2 million in bribes to Mexican officials in order to win aircraft maintenance, repair, and overhaul contracts with Mexican government-owned customers

■ Charges: Conspiracy