
2016 Mid-Year Review: Anti-corruption Trends and Other Corporate Enforcement Issues

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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. Angela 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.

Presenters



Neal Potischman

Neal is a partner in our litigation department and practices in our Menlo Park office. He represents individuals and institutions in a variety of civil, regulatory and criminal matters, including trials. He also represents parties in proceedings before the Securities and Exchange Commission. His civil litigation practice focuses on securities litigation, antitrust litigation and complex commercial disputes, including consumer class actions. He also handles internal investigations and white collar and other regulatory matters, and has significant experience with the Foreign Corrupt Practices Act. He frequently represents not only companies but also officers and directors. His high-stakes representations have spanned a variety of industries including technology, telecommunications, life sciences, media, financial services, and aviation.



James Wadham

James is a partner in Davis Polk's Litigation Department, resident in Hong Kong. His enforcement and litigation practice focuses on commercial dispute resolution and regulatory investigations and defense. James handles a broad range of regulatory investigations and advice for the financial services industry and for corporates. His commercial litigation and arbitration practice includes corporate litigation, shareholder and joint venture disputes, professional negligence defense and cross-border disputes

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.

Agenda

- **Enforcement Developments and Trends**
 - DOJ Pilot Program on Self-Reporting of FCPA Violations
 - Yates Memo: Impact Assessment
 - Developments in Global Anti-Corruption Enforcement
 - Spotlights: China and Brazil
 - Other Developments
- **Summary of 2016 FCPA Enforcement Activity**
 - 2016 FCPA Corporate Enforcement Activity
 - Other 2016 FCPA Individual Enforcement Activity
 - 1H 2016 DOJ and SEC FCPA Resolution Tracker

2016 Enforcement Activity

OVERVIEW

- 16 corporate FCPA resolutions in first half of 2016, totaling approx. \$1 billion in penalties and disgorgement
 - Includes 2 matters with DOJ declinations and ongoing SEC investigations; 2 matters with DOJ declinations and SEC NPAs; 1 DOJ declination with SEC resolution
 - DOJ / SEC action (not including declination) totals: SEC – 13; DOJ – 4
- DOJ / SEC overlap in 4 resolutions against corporate defendants
 - Compare to 0 overlap in 2015
- Industries involved were varied and include:
 - Construction / Manufacturing (Nortek; Johnson Controls)
 - Energy (Key Energy)
 - Entertainment (Las Vegas Sands)
 - Pharmaceuticals / Healthcare (Analogic / BK Medical ApS; Olympus; Nordion; Novartis AG; SciClone)
 - Tech / Telecom (Akamai; Harris Corporation; PTC Inc.; Qualcomm; SAP SE; VimpelCom)

2016 Enforcement Activity

OVERVIEW: GEOGRAPHY



DOJ Self-Reporting “Pilot Program”

OVERVIEW

- Launched in April 2016, Leslie Caldwell announced that the one-year program was designed to “promote both transparency and accountability,” by encouraging voluntary self-disclosure of FCPA-related misconduct
- Program described in April 5, 2016 DOJ policy document, “The Fraud Section’s Foreign Corrupt Practices Act Enforcement Plan and Guidance”
- Organizations that “voluntarily self-disclose, fully cooperate, and remediate” will be eligible for “significant credit” with respect to type of disposition, extent of fine reduction, and determination of need for monitor
- Pilot Program guidance refers to September 9, 2015 Yates Memo and expectation that program will “increase [DOJ]’s ability to prosecute individual wrongdoers whose conduct might otherwise have gone undiscovered or been impossible to prove”
- 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 Self-Reporting “Pilot Program”

COOPERATION STANDARD

- DOJ guidance notes that standards which must be met are “more exacting than those required under the Sentencing Guidelines”
- “Full cooperation” standard expands upon cooperation previously described in Yates Memo and includes, among other things:
 - Disclosure of all relevant facts, including those relevant to criminal activity by corporate officers or employees, or by third-party individuals and companies
 - Proactive, rather than reactive, cooperation, including affirmative disclosure of relevant facts, even when not specifically asked to do so
 - Provision of timely updates on a company’s internal investigation
 - Where requested, “de-confliction” of internal investigation with government investigation
 - Disclosure of all relevant facts gathered during an internal investigation, including attribution of facts to specific sources
 - Disclosure of overseas documents, locations where documents were found, and who found them
 - “Unless legally prohibited,” facilitation of access to foreign third-party documents and witnesses (burden is on company to establish existence of prohibition)
 - Accord DOJ statement re: “non-cooperative companies” who “make invalid assertions about particular data privacy laws in an effort to shield themselves from our investigations”

DOJ Self-Reporting “Pilot Program”

DECLINATIONS

“[W]hen a company not only cooperates and remediates, but also voluntarily self-discloses misconduct, it is eligible for the full range of potential mitigation credit. That means . . . [DOJ] may grant a reduction of up to 50 percent below the low end of the applicable U.S. Sentencing Guidelines fine range and generally will not require appointment of a monitor. In addition . . . [DOJ] will consider a declination of prosecution.” – Leslie Caldwell, April 5, 2016

- Three 2016 DOJ declinations described as “consistent with the FCPA Pilot Program” in letters publicly released by DOJ
 - First two declinations issued to Akamai Technologies, Inc. and Nortek, Inc., on June 7, 2016; a third, Johnson Controls, Inc., followed shortly after on June 21, 2016
 - Declination letters referenced companies’ thorough internal investigations; commitment to cooperate with ongoing individual investigations; remediation measures; compliance program enhancements; and disgorgement paid to the SEC
- Observations regarding impact of Pilot Program

Yates Memo: Impact Assessment

- On September 9, 2015, DOJ issued a guidance memorandum (the “Yates Memo”) underscoring DOJ’s focus on investigating and prosecuting individuals for roles in corporate misconduct
 - DOJ also revised the U.S. Attorneys’ Manual to account for this policy focus
 - To receive any cooperation credit, companies must provide all relevant facts about individuals involved in or responsible for corporate misconduct
- Yates Memo requirements are threshold to receiving cooperation credit; Pilot Program “helps put” requirements “into practice”
 - DOJ announcement re: requirement that companies certify—prior to finalizing settlements—that all information about individuals has been fully disclosed

“I get that our Individual Accountability Policy has changed [the] rules—slightly in some places and more significantly in others. I also understand those changes may result in some temporary uncertainty, as both prosecutors and defense attorneys adjust to the new expectations. But equilibrium will return. A new normal will exist. And with it, I expect that both the reality—and the perception—of how [DOJ] treats individual corporate wrongdoers will have been strengthened.” – Sally Yates, May 2016

Developments in Global Anti-Corruption Enforcement

INTERNATIONAL COORDINATION

- In its April 2016 guidance, DOJ stated that it is “strengthening its coordination with foreign counterparts,” taking “an international approach . . . To combat an international problem”
 - Coordination includes sharing of leads, documents, and witnesses
 - DOJ cited numerous case illustrating the results of this effort, such as Alcoa, Alstom, Hewlett-Packard, PetroTiger, Total, and VimpelCom
- **VimpelCom Limited (Feb. 2016):**
 - Three cross-border agency resolutions totaling approximately \$795.1 million in penalties for VimpelCom Limited, an Amsterdam-based telecommunication company, and Uzbek subsidiary, Unitel LLC
 - Bribery and internal controls / books and records charges arose out of >\$114 million in bribes paid to Uzbek official with influence in telecom regulation industry
 - Cross-Border regulatory cooperation and resolution among DOJ / SEC / Dutch regulatory authority, including credit by U.S. regulators for amounts paid to Dutch authority
 - Under Kleptocracy Asset Recovery Initiative, DOJ filed two civil complaints seeking total of \$850 million in forfeiture

Developments in Global Anti-Corruption Enforcement

OTHER ISSUES

- Increased international coordination also seen in proposal of global “Anti-Bribery Management System Standard,” ISO 37001
 - Proposed by International Organization for Standardization, comprised of national standards bodies from 163 member countries management standard
 - ISO 37001 drafted by an ISO committee with advisory groups from 37 countries; expected to be published in late 2016
 - Approach recommended is not “one-size-fits-all”; the standard will consider the size of the organization, the complexity of its operations, and its interactions with public officials and its regulatory duties, among other factors
 - Expected to embrace a “reasonable and proportionate” approach
- International focus, following leak of Panama Papers, on discovery of beneficial ownership and related due diligence
 - Legislation proposed in U.S. to require filing of beneficial ownership information with Treasury, with penalties for non-compliance
 - May 2016 launch by U.K. of new beneficial ownership register to require foreign companies that want to buy property or bid for central government contracts in the UK to disclose their true owners

Spotlight: China

COMPARING “ACT” REQUIREMENTS IN U.S. AND HK: *THOMAS KWOK V. THE GOVERNMENT OF HONG KONG SAR*

- Chief Secretary of HKSAR paid \$8.5 million HKD by former managing director of major Hong Kong real estate development company
- Prosecution alleges payment was a **“sweetener” to secure “favourable disposition or goodwill”** towards company during Chief Secretary’s time in office
- Trial judge instructs jury: “[T]he law does not require that any particular favour be specifically identified. . . . **The acceptance of money by a public official in return for him in a general way . . . being favourably disposed . . . is itself capable of amounting to misconduct** by virtue of the breach of the duties and obligations he owes to the public as a public official.”
- Currently on appeal whether conspiracy to commit “misconduct” can be proven based solely on agreement to be favourably disposed in return for payment

Spotlight: China

COMPARING “ACT” REQUIREMENTS IN U.S. AND HK: *MCDONNELL V. UNITED STATES*

- Governor of Virginia (and his wife) accepted over \$175,000 in gifts and loans from constituent who sought state assistance for his company
- Domestic bribery statute at issue (18 U.S.C. §201) makes it criminal for public official to accept anything of value in return for being “influenced in the performance of any official act”
 - **Official act:** “any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official’s official capacity, or in such official’s place of trust or profit”
- Supreme Court finds the “question” or “matter” brought before the official should be “something that is relatively circumscribed—the kind of thing that can be put on an agenda, tracked for progress, and then checked off as complete”
 - Virginia’s “economic development” was not sufficiently “focused and concrete” to qualify
 - Court also holds that “**hosting an event, meeting with other officials, or speaking with interested parties is not, standing alone,**” an official act; “Instead . . . the public official must make a decision or take an action on that question or matter, or agree to do so”
 - Accordingly, bribery conviction vacated

Spotlight: China

UPDATE ON ANTI-GRAFT CAMPAIGN

■ Public sector:

- Wang Bao'an, head of **National Bureau of Statistics** (responsible for reporting on state of Chinese economy), under investigation (January)
- Guo Boxiong, former top **army general** and vice-chairman of Central Military Commission; sentenced to **life in prison** for accepting unspecified amount of bribes (July)
- Tian Xiusi, former political commissar in **PLA Air Force** (and noted ally of Guo), under investigation (July)
- Qu Zhang Mingjie, former city development official, convicted in connection with “land swindle” of 350 million yuan (\$52.5 million USD); Prosecution recommended **death penalty** (July)

■ Private sector:

- Yang Zezhu, former financial regulator and chairman of Changjian Securities; committed suicide following investigation (January)
- Tan Dinghua, former executive at Moutai, a state-backed liquor company, under investigation (March)

Spotlight: China

REPATRIATION EFFORTS

- Concerted continuation of **Operations Foxhunt** (repatriation of fugitive officials) and **Skynet** (asset freezing)
 - Xinhua reports 141 individuals repatriated since October 2015
- Beijing pushing reluctant Western nations to sign extradition treaties; countries refusing partially due to human rights concerns (treatment of criminal suspects) and lack of proof for underlying claim
 - China proposing to begin **trials in absentia** to build better case for repatriation
 - **China will host OECD anti-corruption roundtable** at G20 summit in September
- Beijing seeking repatriation of Ling Wancheng, who allegedly possesses state secrets, from U.S.
 - Ling Jihua, his brother and aide to former president Hu Jintao, recently sentenced to life in prison for accepting 77 million yuan (\$11.6 million USD) in bribes, as well as obtaining state secrets

Spotlight: Brazil

- Recent anti-corruption enforcement and litigation surrounding Brazilian state-owned oil company, Petrobras
 - In 2016, settlements reached among Brazilian prosecutors and offshore oil and gas producer SBM Offshore, and individual executives
- In years of preparation for Olympic games, Brazil has enacted several pieces of legislation designed at combating corruption, including anti-corruption and organized crime laws
 - Brazilian anti-corruption institution created for the Olympics: Autoridade Pública Olímpica (APO)
- In May 2016, Brazil's interim president dissolved Brazil's anti-corruption enforcement agency, the Comptroller General (CGU), in an effort to consolidate various Ministries in the Executive branch
 - The CGU was replaced with a new Ministry of Transparency, Monitoring, and Control; its role in anti-corruption enforcement remains unclear

Other Developments

DOJ STAFFING AND RESOURCES

■ **Daniel Kahn announced as permanent chief of FCPA Unit**

- Former Assistant Chief of FCPA Unit since 2013; previous posts included Fraud Section (since 2010) and six years at Davis Polk & Wardwell
- Notable cases Kahn prosecuted include:
 - Alstom 2014 settlement (second largest FCPA enforcement action; \$772M)
 - Joel Esquenazi, former telecom executive convicted of bribing officials at Haiti state-owned telecom company (longest FCPA sentence imposed; 15 years)
- Kahn to be supported by five Assistant Unit Chiefs

■ **Increased FCPA resources**

- DOJ has announced addition of 10 prosecutors to the FCPA unit, increasing the size of the unit by more than 50%
- FBI has also established three additional squads of special agents devoted to FCPA investigations and prosecutions
- DOJ is “strengthening its coordination with foreign counterparts”

Other Developments

BREACH AND EXTENSION OF BIOMET DPA

- In June 2016, DOJ announced its determination that medical device manufacturer Biomet Inc. breached the terms of its 2012 FCPA-related DPA
 - Initial settlement included fine of \$17.3 million and DOJ DPA with three-year compliance monitor
 - In March 2015, DOJ extended DPA and monitor appointment for one additional year after SEC subpoenaed documents from Biomet per Biomet's disclosure of certain allegations months prior
 - Additional extension agreed in March 2016
 - Biomet informed of breach determination in April 2016
- June 2016 breach based on conduct in Mexico and Brazil that came to light after deal was reached
 - DOJ publicly filed status report explaining that discussions regarding possibility of resolving DPA breaches without trial are ongoing

Other Developments

DISGORGEMENT

■ **SEC v. Graham (11th Cir., May 26, 2016)**

- 28 U.S.C. § 2462 bars government from seeking “any civil fine, penalty, or forfeiture, pecuniary or otherwise,” unless case commenced within five years
- Eleventh Circuit ruling: “[F]or the purposes of § 2462 forfeiture and disgorgement are effectively synonyms; § 2462’s statute of limitations applies to disgorgement.”
- Note: Declaratory relief sought by SEC was effectively a penalty: “it serve[d] neither a remedial nor a preventative purpose; it [was] designed to redress previous infractions rather than to stop any ongoing or future harm”

■ **IRS Advice Memo No. 201619008 (May 2016)**

- Prohibited FCPA defendant from deducting an amount it had disgorged to SEC
 - Whether disgorgement is punitive (non-deductible) or compensatory (deductible) will depend on facts
 - In present case, disgorgement was not intended to compensate the SEC or the United States for actual losses
- Possible tension between IRS / SEC characterizations of disgorgement

2016 FCPA Corporate Enforcement Activity

2016 FCPA Corporate Enforcement Activity

- **SAP SE (SEC, Feb. 2016)**: Cease-and-desist order, \$3.7 million disgorgement, and settlement for SAP SE, a Germany-based software manufacturer
 - Industry / Country: Technology / Panama
 - Allegations: SAP SE's inadequate internal controls for discount approvals, failure to provide heightened scrutiny for large discounts, and indirect reporting procedures allowed executive Vicente E. Garcia to implement bribery scheme with Panamanian government officials and manipulate corporate records
 - Garcia pleaded guilty to DOJ charges of conspiracy to violate FCPA and consented to SEC cease-and-desist order plus approx. \$86,000 disgorgement and \$6,400 in prejudgment in Aug. 2015; sentenced to 22 months imprisonment in Dec. 2015
 - Charges: Internal controls, books and records
 - Cooperation: SAP conducted internal investigation; shared documents, presentations, and timelines; conducted interviews (including with Garcia); and initiated audit of local partner engaged in scheme
 - No Civil Penalty Imposed

2016 FCPA Corporate Enforcement Activity

- **SciClone Pharmaceuticals, Inc. (“SciClone”) (SEC, Feb. 2016)**: Cease-and-desist order, \$2.5 million civil penalty, \$9.43 million disgorgement plus \$900,000 in prejudgment interest, and settlement for SciClone, a California-based pharmaceuticals company
 - Industry / Country: Pharmaceuticals / China
 - Allegations: Employees of SciClone’s China subsidiaries provided gifts, vacations, expensive meals, entertainment, and other benefits to foreign officials, including healthcare professionals employed by Chinese state-owned hospitals, to obtain sales contracts; gifts and other things of value were then recorded as legitimate expenses
 - Charges: Bribery, internal controls, books and records
 - Self-Monitorship: SciClone must report to the SEC on remediation and compliance measures every nine months for three years
 - DOJ Declination: SciClone announced that DOJ completed its investigation and declined to take any action

2016 FCPA Corporate Enforcement Activity

- **PTC Inc. (DOJ / SEC, Feb. 2016)**: SEC cease-and-desist order, \$11.9 million disgorgement plus \$1.7 million in pre-judgment interest, and settlement for PTC Inc.; DOJ NPA and \$14.5 million in criminal penalties for two subsidiaries (collectively, “PTC China”)
 - Industry / Country: Technology / China
 - Allegations: PTC China made and disguised \$1.5 million in improper payments and gifts to employees of Chinese state-owned entities in exchange for software sales contracts, earning \$11.85 million in profits
 - Charges: Internal controls, books and records
 - First SEC FCPA-related DPA with Individual: The SEC also entered into a deferred prosecution agreement with Yu Kai Yuan, a PTC China sales executive, for causing PTC’s violations of FCPA’s books and records and internal controls provisions
 - Only Partial Cooperation Credit Received: DOJ gave PTC China only 15% partial cooperation credit; failure to disclose all relevant facts at time of initial self-reporting disqualified the company from full voluntary disclosure credit
 - Jurisdictional Breadth: The SEC invoked the FCPA’s jurisdiction over U.S. issuers to bring action only against PTC, the U.S.-listed parent company; DOJ invoked the FCPA’s territorial jurisdiction to bring action only against PTC’s two Chinese subsidiaries

2016 FCPA Corporate Enforcement Activity

- **VimpelCom Limited (DOJ / SEC, Feb. 2016)**: Three cross-border agency resolutions totaling approximately \$795.3 million in penalties for VimpelCom Limited, an Amsterdam-based telecommunication company, and Uzbek subsidiary, Unitel LLC
 - Resolutions:
 - DOJ: DPA, three-year monitor and \$230.3 million criminal penalty (including \$40 million forfeiture) for VimpelCom Limited; guilty plea for Unitel LLC
 - SEC: \$167.5 million in disgorgement and pre-judgment interest
 - Public Prosecution Service of the Netherlands (Openbaar Ministerie / OM): \$397.5 million penalty (\$230 million criminal penalty plus \$167.5 forfeiture)
 - Industry / Country: Telecommunications / Uzbekistan
 - Allegations: Over \$114 million in bribes paid to Uzbek official with influence in telecom regulation industry to gain assets and continue operations
 - Charges: Bribery, internal controls, and books and records

2016 FCPA Corporate Enforcement Activity

■ VimpelCom Limited (DOJ / SEC, Feb. 2016) (cont'd):

- Jurisdiction: U.S. jurisdiction based on transactions conducted in U.S. dollars, as well as communications concerning transactions conducted, in part, using email accounts on U.S.-based servers
- Cross-Border Regulatory Cooperation:
 - DOJ offset \$460.3 million criminal penalty by the \$230 million criminal penalty paid to OM
 - SEC offset \$375 million disgorgement by \$167.5 million for forfeiture paid to OM and \$40 million forfeiture paid to DOJ
- Kleptocracy Asset Recovery Initiative: DOJ filed two civil complaints seeking total of \$850 million in forfeiture

2016 FCPA Corporate Enforcement Activity

- **Novartis AG (“Novartis”) (SEC, Mar. 2016)**: Cease-and-desist order, \$2 million civil penalty, \$21.5 million disgorgement plus \$1.5 million in prejudgment interest, two-year self-reporting period, and settlement for Novartis, a Switzerland-based pharmaceutical company
 - Industry / Country: Pharmaceuticals / China
 - Allegations: Employees of two Novartis China-based subsidiaries provided money and gifts to foreign officials and healthcare professionals, resulting in several million dollars in sales to Chinese state health institutions, and falsely recorded transactions as legitimate expenses
 - Charges: Internal controls, books and records
 - Self-Monitorship: Novartis must report to the SEC on implementation of compliance policies and procedures at least every nine months for two years
 - Foreign Investigation: Novartis’ April 2016 Form 6-K disclosed that Korean authorities had initiated criminal investigation earlier that year into allegations that Korean subsidiary used medical journals to “provide inappropriate economic benefits” to healthcare professionals

2016 FCPA Corporate Enforcement Activity

- **Olympus Latin America (DOJ, Mar. 2016)**: DPA, three-year compliance monitor, and \$22.8 million resolution for Olympus Latin America (“OLA”), the Miami-based subsidiary of Olympus Corporation of the Americas (“OCA”), the largest U.S. distributor of endoscopes and related equipment
 - Industry / Country: Healthcare / Central and South Americas
 - Allegations: Provided nearly \$3 million in unlawful payments and gifts to physicians employed at government hospitals and clinics in exchange for product sales, resulting in \$7.5 million in profits
 - Charges: Bribery
 - Parallel DOJ Resolution for Parent OCA:
 - Anti-Kickback Statute: \$312.4 million criminal penalty
 - False Claims Act: \$310.8 million civil penalty including settlement of former chief compliance officer’s whistleblower suit
 - DPA requiring, among other things, adoption of enhanced compliance measures
 - Three-year compliance monitor (same monitor as OLA)

2016 FCPA Corporate Enforcement Activity

- **Qualcomm Inc. (SEC, Mar. 2016)**: Cease-and-desist-order, two-year self-reporting period, \$7.5 million disgorgement, and settlement for Qualcomm Inc., a California-based mobile chipmaker
 - Industry / Country: Telecommunications / China
 - Allegations: Qualcomm Inc. hired relatives of Chinese officials for full-time employment and paid internships to influence officials to obtain or retain business; and provided gifts, travel, and entertainment to try to influence officials at government-owned telecom companies
 - December 2009: Whistleblower allegations to audit committee of Company's Board of Directors and to the SEC
 - April 2014: SEC recommended enforcement action
 - Charges: Bribery, internal controls, books and records
 - DOJ Declination: According to Qualcomm, DOJ has declined to take action in this case

2016 FCPA Corporate Enforcement Activity

- **Nordion (Canada) Inc. (“Nordion”) (SEC, Mar. 2016)**: Cease-and-desist-order, \$375,000 civil penalty, and settlement for Nordion, a medical isotope and sterilization technology provider
 - Nordion is the successor to Nordion, Inc., which traded on NYSE when bribery in Russia occurred
 - Industry / Country: Pharmaceuticals / Healthcare / Russia
 - Allegations: Nordion lacked sufficient controls and due diligence to prevent employee from conducting bribery scheme with Russian officials to approve distribution of Nordion’s liver cancer treatment
 - Charges: Internal controls, books and records
 - Individual Settlement for Former Employee: Cease-and-desist-order, nearly \$180,000 in fines and disgorgement and settlement for former engineer Mikhail Gourevitch, who arranged bribes to Russian officials and received kickbacks
 - Self-Reporting of Employee Misconduct Considered:
 - “Once Nordion discovered evidence of misconduct by Gourevitch, the company self-reported to the SEC, cooperated extensively with the investigation, and took immediate steps to remedy the problems. Nordion was ultimately unable to distribute [the product] in Russia and thus earned no profits from the scheme.”

2016 FCPA Corporate Enforcement Activity

- **Las Vegas Sands Corp. (“LVSC”) (SEC, Apr. 2016)**: Cease-and-desist-order, \$9 million civil penalty, two-year independent consultant retention, and settlement for LVSC, a Nevada-based entertainment company
 - Industry / Country: Entertainment / China and Macao
 - Allegations: LVSC and its subsidiaries made \$62 million in payments to Chinese consultant to obscure LVSC’s role in business transactions without proper authorization or documentation; LVSC also failed to keep proper accounting and reimbursed employees without proper documentation
 - Charges: Internal controls, books and records
 - Independent Consultant: LVSC must retain independent consultant for two years

2016 FCPA Corporate Enforcement Activity

- **Harris Corporation (DOJ, May 2016)**: Declination for Harris Corporation, a technology, communications, and defense contracting company
 - Industry / Country: Technology, communications, defense / China
 - Relevant History: After acquiring Carefx Corporation and its subsidiaries in 2011, Harris Corporation learned of potential improper payments and accounting and subsequently initiated internal investigation; Harris Corporation voluntarily disclosed results to DOJ and the SEC; both agencies then initiated investigations
 - DOJ Declination: Harris Corporation reported that DOJ informed the company that it had determined not to take any action
 - According to company's Form 10-Q, DOJ's decision "was based on its overall view of the evidence as to our level acquisition due diligence and integration efforts, our voluntary disclosure to the DOJ and SEC, our remediation efforts and our cooperation throughout the investigation . . ."
 - SEC Investigation Ongoing

2016 FCPA Corporate Enforcement Activity

- **Key Energy Services Inc. (“Key Energy”) (DOJ, May 2016)**: Declination for Key Energy, a Houston-based energy company
 - Industry / Country: Energy / Mexico
 - DOJ Declination: Key Energy reported in a Form 8-K that DOJ closed its investigation
 - Self-Reporting: In 2014, Key Energy self-disclosed bribery allegations regarding its Mexico operations and its subsequent internal investigation to DOJ and the SEC
 - SEC Settlement Reached “In Principle”: Key Energy announced it reached agreement on terms of offer of settlement regarding potential FCPA violations involving its Russia business, noting it “has accrued a liability in the amount of \$5 million”

2016 FCPA Corporate Enforcement Activity

- **Akamai Technologies (“Akamai”) (DOJ / SEC, June 2016)**: DOJ Declination; SEC NPA, approx. \$650,000 disgorgement plus \$19,000 in interest for Akamai, a Massachusetts-based online cloud-sharing services company
 - Industry / Country: Technology / China
 - Allegations: Akamai’s subsidiary facilitated provision of \$40,000 in funds and gifts to employees of government-owned entities to induce purchase of more services than actually required
 - Charges: Internal controls, books and records
 - No Civil Penalty Imposed: SEC only required disgorgement and interest
 - DOJ Declination: DOJ sent letter to Akamai’s counsel one day before SEC announced NPA, informing counsel of its decision to close inquiry “[c]onsistent with the FCPA Pilot Program”

2016 FCPA Corporate Enforcement Activity

- **Nortek, Inc. (“Nortek”) (DOJ / SEC, June 2016)**: DOJ Declination; SEC NPA, approx. \$290,000 disgorgement plus \$31,000 in interest for Nortek, a Rhode Island-based residential and commercial building products manufacturing company
 - Industry / Country: Construction / Manufacturing / China
 - Allegations: Nortek’s subsidiary provided approximately 400 payments totaling \$290,000 in improper cash payments, gifts, meals, travel, and entertainment to Chinese officials on systematic basis (at least one payment made each month) to receive preferential treatment, relaxed regulatory oversight, or reduced taxes and fees
 - Charges: Internal controls, books and records
 - No Civil Penalty Imposed: SEC only required disgorgement and interest
 - DOJ Declination: DOJ sent letter to Nortek’s counsel four days before SEC announced NPA, informing counsel of its decision to close inquiry “[c]onsistent with the FCPA Pilot Program”

2016 FCPA Corporate Enforcement Activity

- **Analogic Corporation and BK Medical ApS (“BK Medical”) (DOJ / SEC, June 2016)**: SEC cease-and-desist order, \$7.7 million disgorgement plus \$3.8 million in prejudgment interest, and settlement for Analogic Corporation, a Massachusetts-based medical technology company; DOJ NPA, \$3.4 million criminal penalty for Danish subsidiary BK Medical
 - Industry / Country: Healthcare / Russia
 - Allegations: Analogic Corporation failed to prevent and detect BK Medical’s improper conduct, which entailed engaging in sham transactions with distributors, issuing false invoices, and transferring excess amounts to third parties
 - Charges: Internal accounting, books and records
 - Individual Settlement for BK Medical’s Former CFO: SEC cease-and-desist order, \$20,000 civil penalty and settlement for Lars Frost
 - Agency Coordination: SEC cease-and-desist order stated that Analogic “acknowledges that the Commission is not imposing a civil penalty based in part upon BK Medical’s [criminal fine] payment” to DOJ

2016 FCPA Corporate Enforcement Activity

- **Johnson Controls Inc. (“Johnson Controls”) (DOJ / SEC, July 2016):** DOJ Declination; SEC cease-and-desist order, \$1.18 million civil penalty, \$11.8 million disgorgement plus \$1.38 million in interest for Johnson Controls, a Wisconsin-based HVAC systems provider
 - Industry / Country: Construction / Manufacturing / China
 - Allegations: Johnson Controls’ subsidiary, China Marine, provided approximately \$4.9 million in improper payments to employees of government-owned shipyards, ship-owners, and others by disguising their payments through sham vendors
 - Charges: Internal controls, books and records
 - Self-Monitorship: Johnson Controls must report to the SEC on remediation and compliance measures at least once every six months for one year
 - DOJ Declination: DOJ sent letter to Johnson Controls’ counsel three weeks before SEC announced settlement, informing counsel of its decision to close inquiry “consistent with the FCPA Pilot Program,” citing Johnson Controls’ voluntary self-disclosure, internal investigation, and cooperation

2016 FCPA Corporate Enforcement Activity

- **LATAM Airlines (“LATAM”) (DOJ / SEC, July 2016)**: SEC cease-and-desist order, \$6.74 million disgorgement plus \$2.7 million prejudgment interest; DOJ DPA, \$12.75 million criminal penalty, and 27-month monitor for LATAM, a Chilean-based airline company
 - Industry / Country: Aviation / Argentina
 - Allegations: Predecessor company, LAN Airlines S.A., entered into consulting agreement with an advisor to an Argentinian transportation official. The agreement claimed to provide for a study on Argentine airline routes, but instead the money was purportedly funneled to Argentine labor officials in an attempt to settle a union labor dispute.
 - Charges: Internal controls, books and records
 - Ignacio Cueto Plaza was President and CEO of LAN Airlines at time of bribery; settled individual charges in February 2016.
 - Cooperation: DOJ noted that because LATAM did not voluntarily disclose FCPA violations, only cooperated after press uncovered conduct, and did not “remediate adequately,” it was not entitled to discount off bottom of sentencing range

Other 2016 FCPA Individual Enforcement Activity

Other 2016 FCPA Individual Enforcement Activity

- **Ignacio Cueto Plaza (LAN Airlines S.A.) (SEC, Feb. 2016)**: Cease-and-desist order, \$75,000 civil penalty, and settlement for former LAN Airlines CEO
 - Industry / Country: Aviation / Argentina
 - Allegations: Plaza authorized over \$1.15 million in payments to third-party consultant through sham consulting contract for services he knew would not be performed, knowing some portion would be wired to Argentine union officials
 - Charges: Internal controls, books and records

Other 2016 FCPA Individual Enforcement Activity

- **Abraham Jose Shiera Bastidas (“Shiera”) (DOJ, Mar. 2016) and Roberto Enrique Rincon Fernandez (“Rincon”) (DOJ, June 2016) (Petroleos de Venezuela S.A. (“PDVSA”))**: Guilty pleas for owners of multiple U.S.-based energy company owners
 - Industry / Country: Energy / Venezuela
 - Allegations: Shiera and Rincon, with others, bribed analysts to secure energy contracts with PDVSA, a Venezuelan state-owned and controlled company
 - Charges: Bribery
 - Guilty Pleas:
 - Shiera: one count of conspiracy to violate FCPA and commit wire fraud and one count of violating FCPA
 - Rincon: one count of conspiracy to violate FCPA, one count of violating FCPA, and one count of making false statements in 2010 federal income tax report
 - Other Guilty Pleas Unsealed in March 2016:
 - Former Employee Moises Abraham Millan Escobar: Conspiracy to violate FCPA
 - Three Former PDVSA Officials: Conspiracy to commit money laundering; one also pleaded guilty to making false statements on 2010 federal income tax report

Other 2016 FCPA Individual Enforcement Activity

- **Direct Access Partners Global (“DAP Global”) (SEC, Apr. 2016):** SEC issued final judgments against seven individuals from DAP Global, a New York-based broker-dealer
 - Industry / Country: Private equity / Venezuela
 - Allegations: Iuri Rodolfo Bethancourt, Benito Chinaea, Tomas Alberto Clarke Bethancourt, Joseph DeMeneses, Jose Alejandro Hurtado, Ernesto Lujan, and Haydee Leticia Pabon engaged in scheme to bribe former official of Venezuelan state-owned bank to obtain business
 - Charges: Bribery
 - Judgments: Chinaea, Clarke, DeMeneses, Hurtado, Lujan ordered to pay \$42.5 million in disgorgement and prejudgment interest; deemed satisfied by forfeiture orders in criminal cases
 - Earlier Related DOJ Guilty Pleas and Charges:
 - Chinaea and DeMeneses sentenced to four years in prison and ordered to forfeit \$3.6 million and \$2.7 million respectively
 - Hurtado sentenced to three years in prison and ordered to forfeit \$11.9 million
 - Clarke sentenced to two years in prison and ordered to forfeit \$5.8 million
 - Lujan sentenced to two years in prison and ordered to forfeit \$18.5 million

Other 2016 FCPA Individual Enforcement Activity

- **Dmitrij Harder (Chestnut Group) (DOJ, Apr. 2016)**: Harder, a Pennsylvania resident and owner and president of Chestnut Consulting Group, Inc. and Chestnut Consulting Group, Co. (“the Chestnut Group”) pleaded guilty to violating FCPA
 - Industry / Country: Finance / United Kingdom
 - Allegations: Harder engaged in a scheme to pay approximately \$3.5 million in bribes to a European Bank for Reconstruction and Development (EBRD) official to influence actions on applications for EBRD financing submitted by the Chestnut Group’s clients and to influence official to direct business to the Chestnut Group; approval of two of the Chestnut Group’s corporate clients resulted in approximately \$8 million in “success fees” for the Chestnut Group
 - Charges: Bribery

Other 2016 FCPA Individual Enforcement Activity

- **James McClung and Richard Hirsch (Louis Berger International Inc. “LBI”) (sentenced July 2016)**: McClung and Hirsch, former executives at LBI, a New Jersey-based construction management company, were sentenced in July 2016 after both pleading guilty in June 2015 to one count of conspiracy to violate FCPA and one count of violating FCPA
 - Sentences:
 - McClung: One year and one day in prison
 - Hirsch: Two years of probation plus \$10,000 fine
 - Industry / Country: Construction / India, Indonesia, Vietnam, and Kuwait
 - Allegations: Helped facilitate \$3.9 million in bribes to foreign officials to obtain government construction management contracts
 - Charges: Bribery
 - Private Civil Charges: Both McClung and Hirsch sued by LBI in connection with FCPA-related misconduct

Questions