

Trends in Anti-corruption Enforcement: 2015

January 27, 2016

Regulatory focus on anti-corruption enforcement continued into 2015, both in the United States and abroad. Although the U.S. Department of Justice (“DOJ”) announced fewer corporate Foreign Corrupt Practices Act (“FCPA”) resolutions in 2015 than in recent years, and fewer than the U.S. Securities and Exchange Commission (“SEC”) announced in 2015, DOJ announcements and activity in the last quarter of 2015 signal a continued focus on FCPA enforcement in the coming year. During a January 6, 2016 webcast, Davis Polk attorneys shared an overview and impressions of 2015 global enforcement activity. The webcast, which covered the following issues (among others), is available on Davis Polk’s website.

Highlights of 2015 U.S. and Global Anti-Corruption Enforcement Activity

DOJ Resolutions. In 2015, DOJ entered into only two corporate FCPA resolutions, which involved a total of approximately \$24 million in penalties. These included a deferred prosecution agreement with New Jersey-based Louis Berger International Inc. (“LBI”) and a non-prosecution agreement with Florida-based IAP Worldwide Services Inc. DOJ’s resolutions are fewer in number than the SEC’s (see below). Public statements and actions, such as DOJ’s hiring of ten new FCPA prosecutors, nonetheless suggest that DOJ will maintain a strong commitment to FCPA enforcement in 2016.

SEC Resolutions. The SEC’s 2015 FCPA corporate enforcement activity suggests an active attempt by the agency to fulfill its promise to engage in “broken windows” enforcement of the U.S. securities laws. The SEC had nine corporate FCPA resolutions in 2015, resulting in a total of approximately \$114 million in penalties and disgorgement. The resolution with financial services institution BNY Mellon was the first corporate resolution resulting from a sweep of financial services interactions with foreign sovereign wealth funds. It was also the first to identify internships for family members of clients (who happened to be government officials) as “things of value” under the FCPA.

Lack of Overlap in DOJ and SEC Charging Decisions. For the first time in recent years, there were no FCPA corporate enforcement actions involving parallel action by both DOJ and the SEC. The only overlap from an FCPA charging and resolution perspective was in the actions taken against an individual officer of the software subsidiary of German company SAP International. During our January 6 webcast, our panelists offered possible explanations for the lack of overlapping resolutions, including (a) potential legal hurdles to DOJ establishing criminal responsibility for violations of the books and records and internal controls provision of the FCPA, and (b) DOJ’s recent focus as a matter of policy on prosecuting individuals, embodied in the September 2015 memorandum issued by Deputy Attorney General Sally Quillian Yates (the “Yates Memo”).

Increased Global Anti-Corruption Activity and Spotlight on China. In 2015, regulators outside the United States continued increasing their efforts to prosecute corruption. In addition to significant developments in the U.K., Brazil, and India, 2015 was an active year for Chinese regulators. 2015 witnessed enhanced scrutiny of the Chinese financial sector, including financial regulatory officials, largely in the wake of China’s stock market turmoil in Fall 2015. China’s Central Commission for Discipline Inspection, or CCDI, the Party’s primary investigative arm, continues to be the driving force behind this anti-corruption crackdown, with its investigations into the China Securities Regulatory Commission (“CSRC”) yielding the most high-profile revelations to date. Among other things, several high-ranking CSRC officials have been expelled from their positions. In our webcast, we spotlighted

significant investigations into the conduct of high-ranking Chinese state officials and high-ranking business officials who were detained in connection with various investigations.

Key 2015 U.S. Regulatory Developments and Trends of Note

Focus on Individual Enforcement. The legal and compliance community have received the September 2015 Yates Memo with considerable interest. While the Memo is not new in concept, it memorializes DOJ's focus on individuals as a matter of policy. DOJ has for a number of years focused on individual culpability as well as the importance of full cooperation, both of which the Memo stresses. This focus is also now reflected in corresponding changes to the U.S. Attorneys' Manual. Although the Yates Memo has generated much concern, the Memo may be a boon to corporations under investigation by DOJ, including because the Memo requires greater investigative rigor of prosecutors.

DOJ Compliance Counsel. In November 2015, DOJ hired Hui Chen, former Global Head for Anti-Bribery and Corruption at Standard Chartered Bank (also hailing from legal and compliance positions at Pfizer and Microsoft) as its own "Compliance Counsel." In that position, Chen will help DOJ prosecutors judge the quality of corporate compliance programs and design the remedial measures that are incorporated into corporate resolutions. Chen's hiring may signal, among other things, both an increased focus by DOJ on corporate compliance, as well as a desire to ensure consistency to DOJ's views of compliance matters. Our webcast panelists discussed the potential risks and benefits that attend this development, and offered perspectives on the various areas of compliance risk that we believe will be of importance to companies in view of Chen's hiring.

Additional Resources and Contact Information

2015 DOJ and FCPA Resolution Tracker. To supplement our toolbox of FCPA resources, we have created a one-page FCPA Resolution Tracker that lists all 2015 enforcement actions and highlights details about each resolution including the relevant industry and geography, nature of the allegations, and key resolution terms.

The January 6, 2016 webcast can be viewed and downloaded [here](#).

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

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