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# 2018 Year-End Review: Anti-Corruption Trends and Other Corporate Enforcement Issues

January 29, 2019

**Davis Polk**

Davis Polk & Wardwell LLP

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# Agenda



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- *Hoskins*



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## Areas to Watch

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# Presented by

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Angela T. Burgess



James W. Haldin



Neil H. MacBride



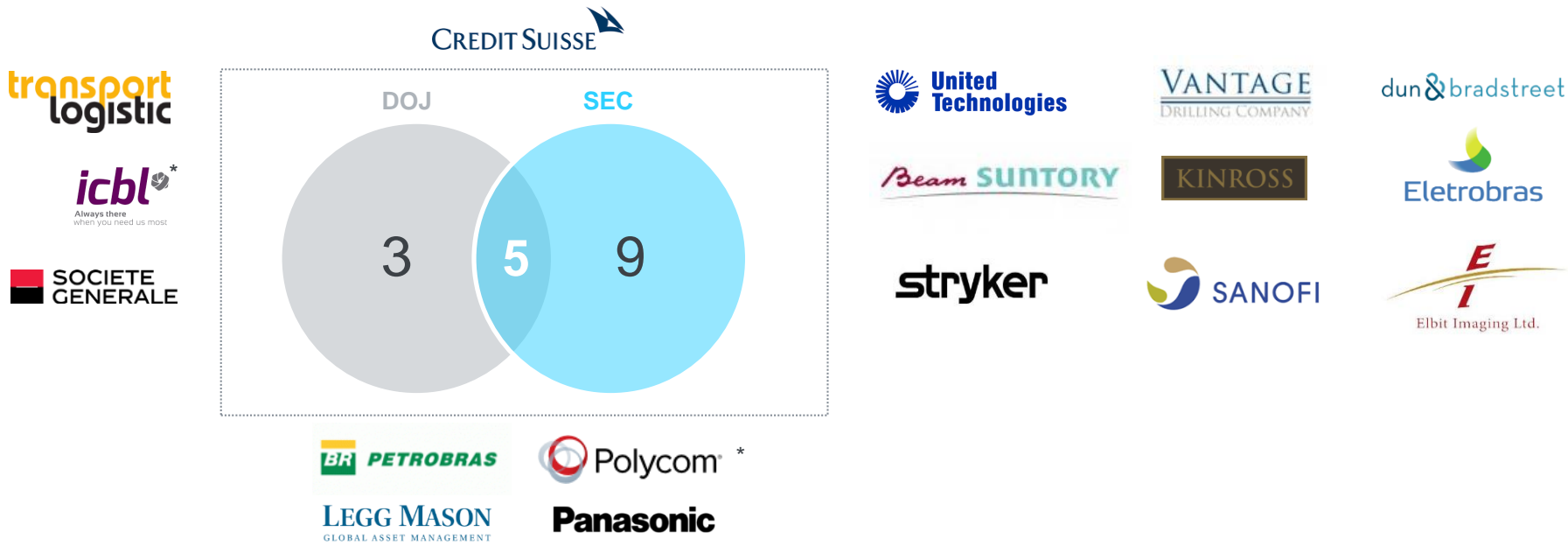
Tatiana Martins



Patrick S. Sinclair

# 2018 Facts and Figures

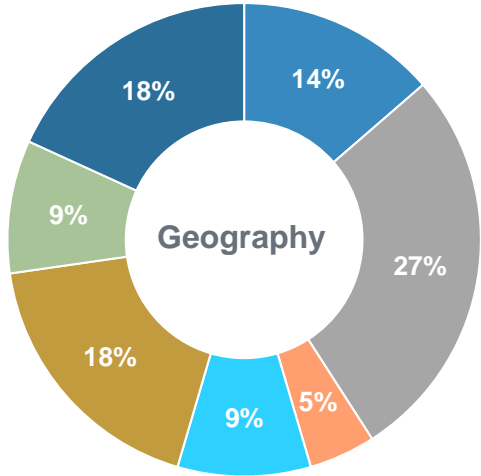
## CORPORATE ENFORCEMENT ACTIONS



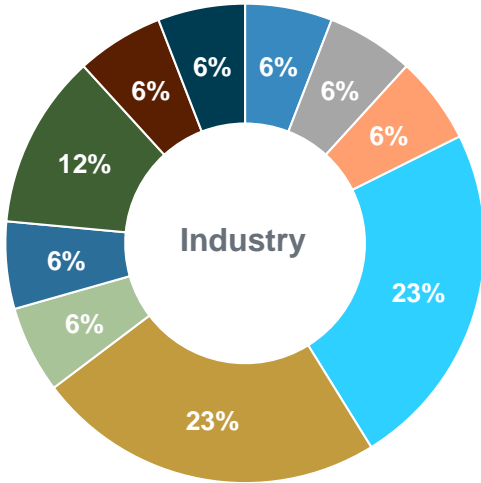
\* DOJ resolved via a declination with disgorgement.

# 2018 Facts and Figures

## CORPORATE ENFORCEMENT ACTIONS



- Africa
- Europe
- Middle East
- Latin America & Caribbean
- China & East Asia
- Russia & Central Asia
- India

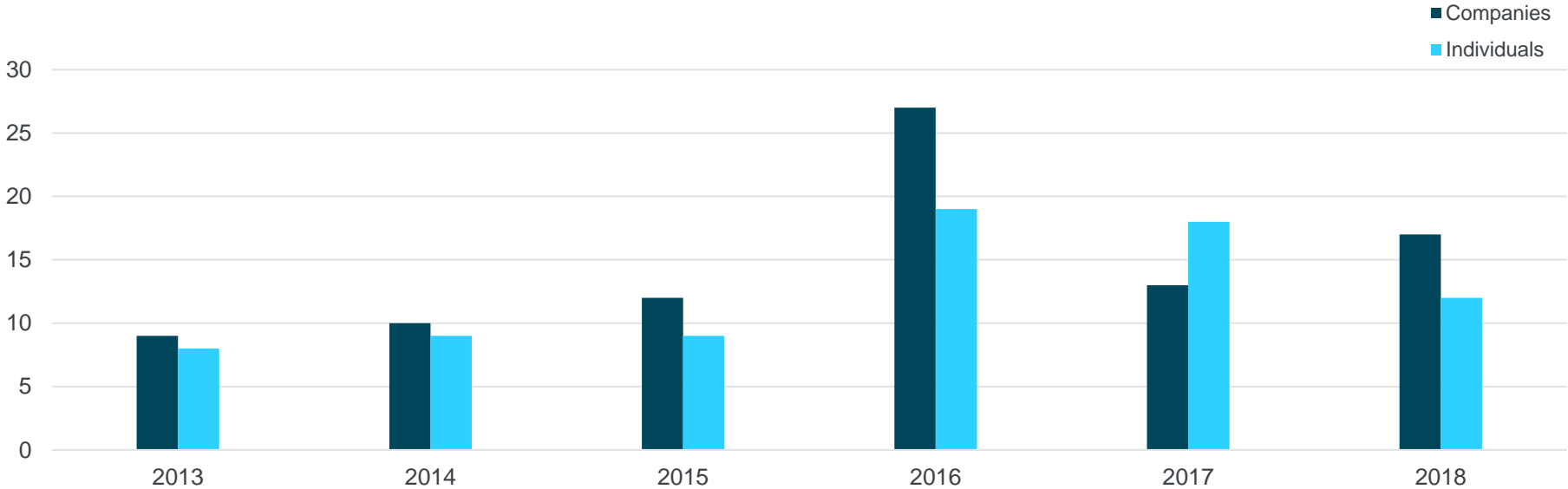


- Transportation & Logistics
- Real Estate
- Entertainment & Aerospace
- Insurance
- Manufacturing
- Beverages
- Healthcare & Pharmaceuticals
- Telecommunications
- Financial Services

# 2018 Facts and Figures

## ENFORCEMENT ACTIONS (2013-2018)

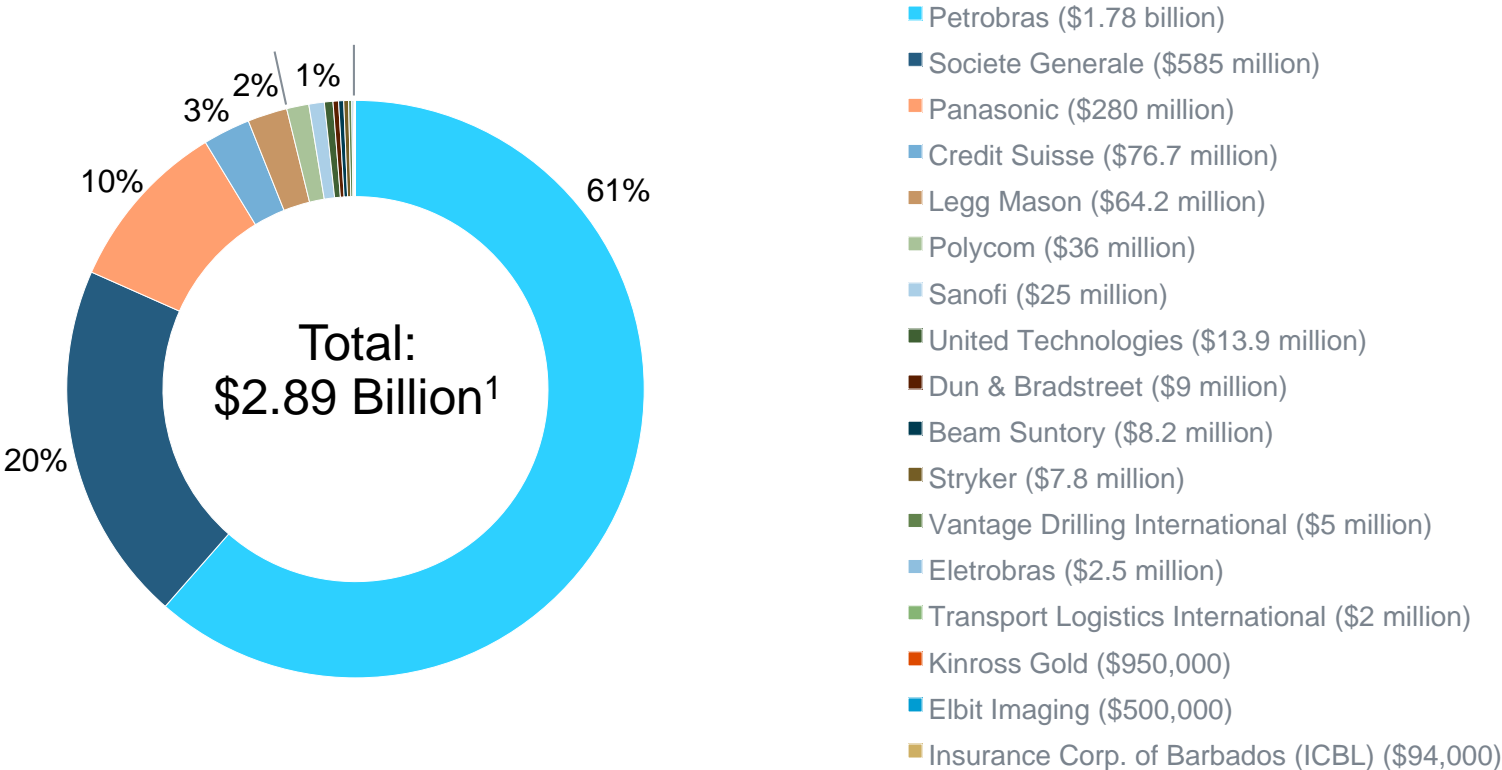
### Companies and Individuals Resolving FCPA Enforcement Actions by Year<sup>1</sup>



<sup>1</sup> Resolutions involving subsidiaries are not counted separately from parent companies. Parallel enforcement actions brought by the SEC and DOJ are counted as one enforcement action.

# 2018 Facts and Figures

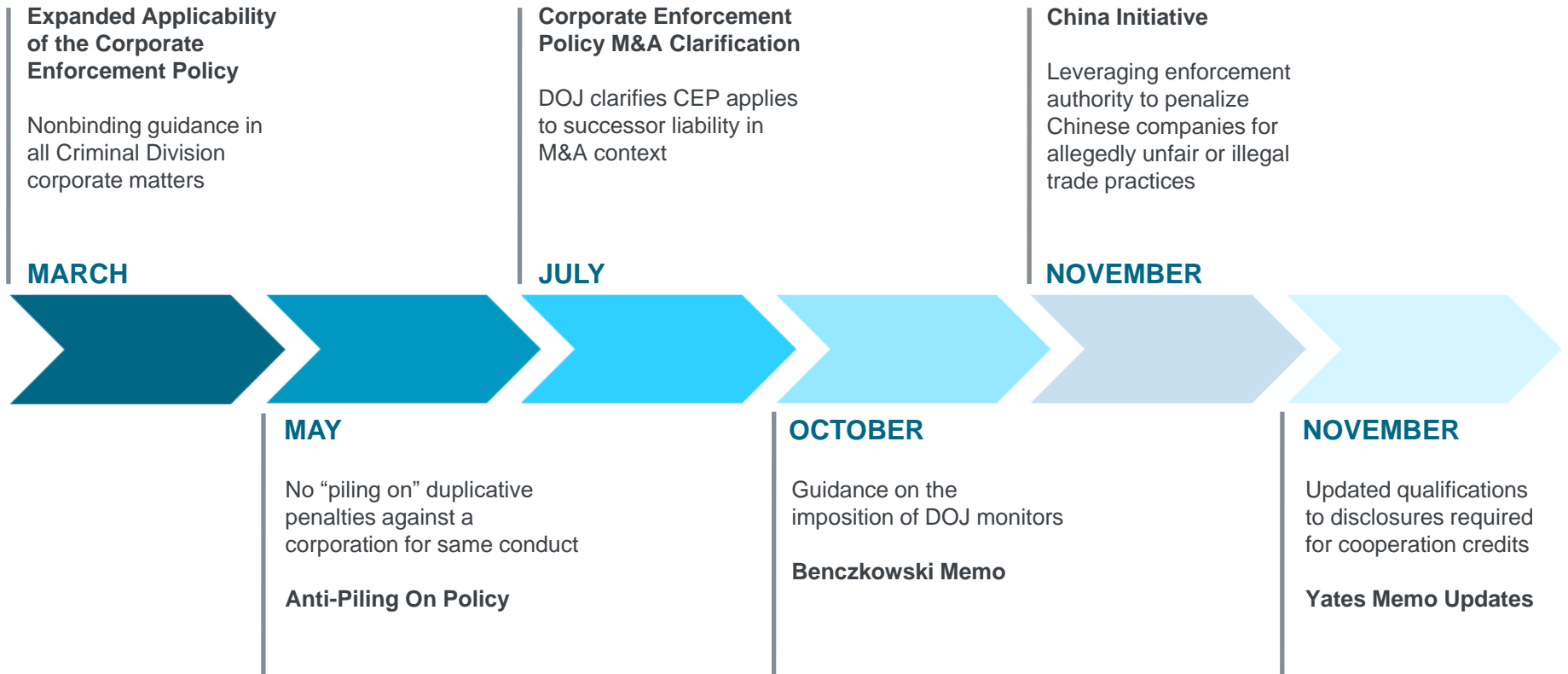
## AMOUNTS PAID IN CORPORATE ENFORCEMENT ACTIONS



<sup>1</sup> Amount includes all penalties, fines, disgorgement, and prejudgment interest paid to U.S. and non-U.S. regulators.

# DOJ Developments

## 2018 POLICY ANNOUNCEMENTS





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# DOJ Policy Announcements

BENCZKOWSKI MEMO | OCTOBER 12, 2018

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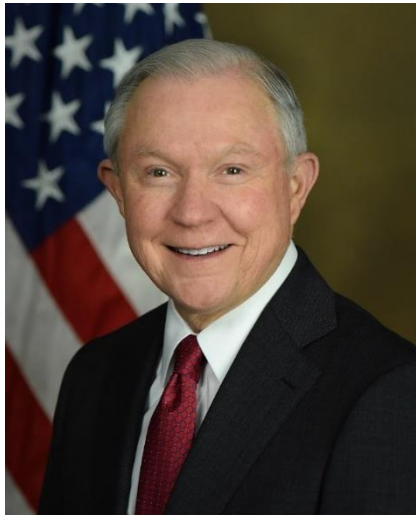


“ [T]he imposition of a monitor will not be necessary in many corporate criminal resolutions, and the scope of any monitorship should be appropriately tailored to address the specific issues and concerns that created the need for the monitor. ”

– Assistant Attorney General for the Criminal Division Brian A. Benczkowski,  
October 11, 2018

# DOJ Policy Announcements

CHINA INITIATIVE | NOVEMBER 1, 2018



**The Attorney General has set the following goals for the Initiative:**

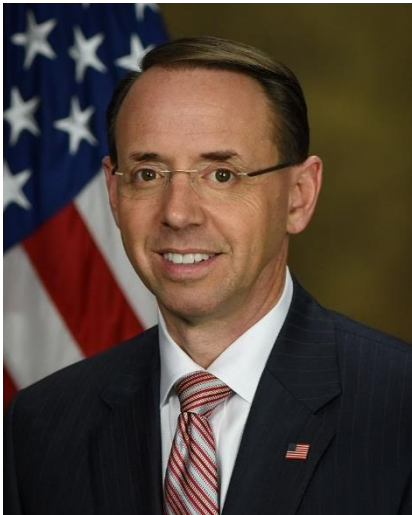
Identify Foreign Corrupt Practices Act (FCPA) cases involving Chinese companies that compete with American businesses . . .



*– Attorney General Jeff Sessions Announces New Initiative to Combat Chinese Economic Espionage, November 2018*

# DOJ Policy Announcements

YATES MEMO UPDATES | NOVEMBER 29, 2018



“

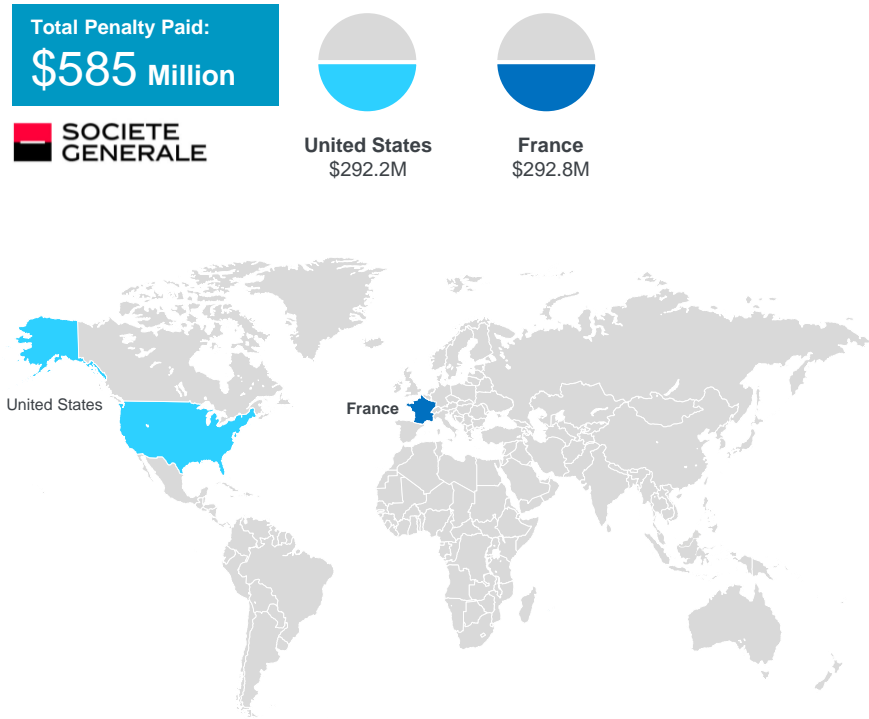
In order for a company to receive any consideration for cooperation under this section, the company must identify all individuals **substantially** involved in or responsible for the misconduct at issue, regardless of their position, status or seniority, and provide to the Department all relevant facts relating to that misconduct.

”

– Department of Justice U.S. Attorney's Manual § 9-28700  
(updated November 2018)

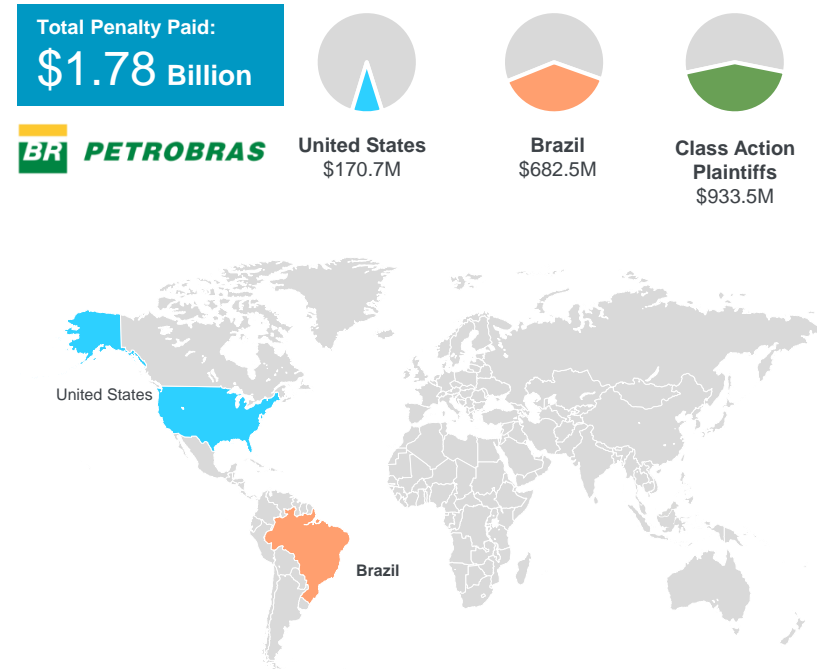
# Notable DOJ Enforcement Actions

## SOCIETE GENERALE | JUNE 4, 2018



U.S. regulators "credited" the amounts paid to French regulators in agreeing to \$292.2M

## PETROBRAS | SEPTEMBER 27, 2018



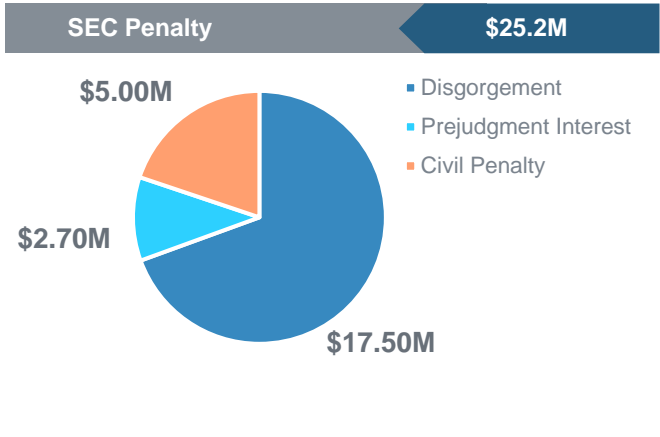

U.S. regulators "credited" the amounts paid to Brazilian regulators and class action plaintiffs in agreeing to \$170.7M

# Notable SEC Enforcement Actions

SANOFI | SEPTEMBER 4, 2018

**Violations:**

- Books and Records
- Internal Controls



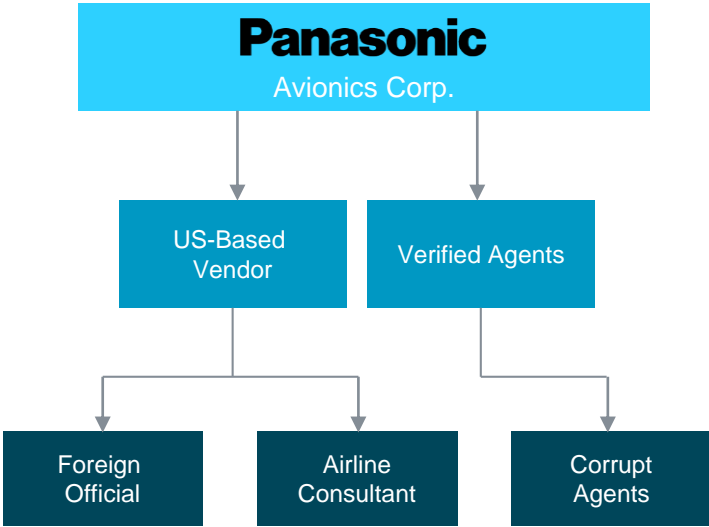
While bribery risk can impact any industry, this matter illustrates that more work needs to be done to address the particular risks posed in the pharmaceutical industry.



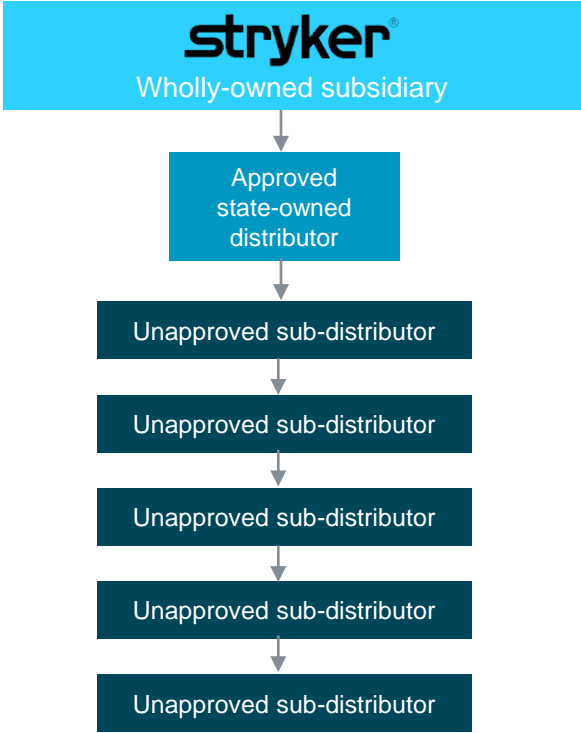
– Charles Cain, FCPA Unit Chief, SEC Enforcement Division

# Notable SEC Enforcement Actions

PANASONIC | APRIL 30, 2018



STRYKER | SEPTEMBER 28, 2018

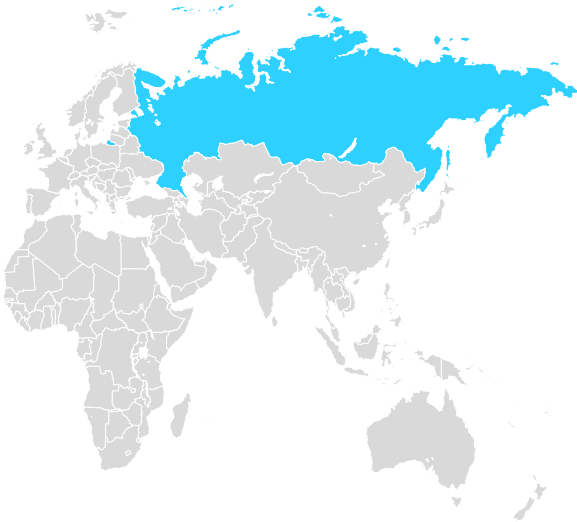
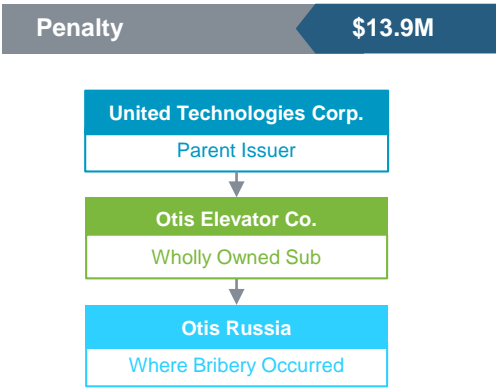


# Notable SEC Enforcement Actions

UNITED TECHNOLOGIES CORP. | SEPTEMBER 12, 2018

**Violations:**

- Bribery
- Books and Records
- Internal Controls



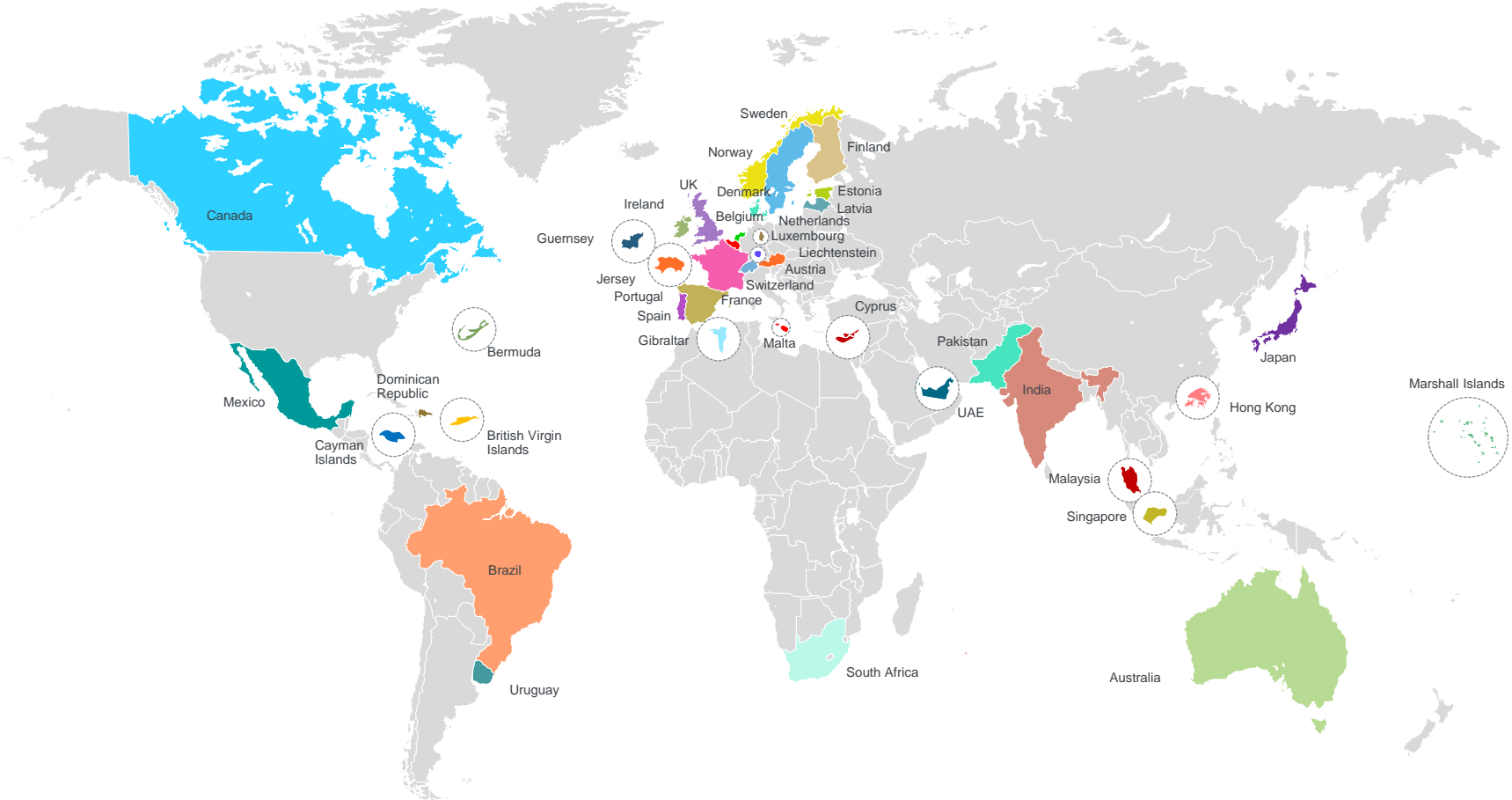
[A]ny issuer or domestic concern which **engages** in bribery of foreign officials indirectly through any person or entity would itself be liable under the [FCPA].



– C.H.R. Conf. Rep. 831, 94<sup>th</sup> Cong., 1<sup>st</sup> Sess, 1977

# Global Developments

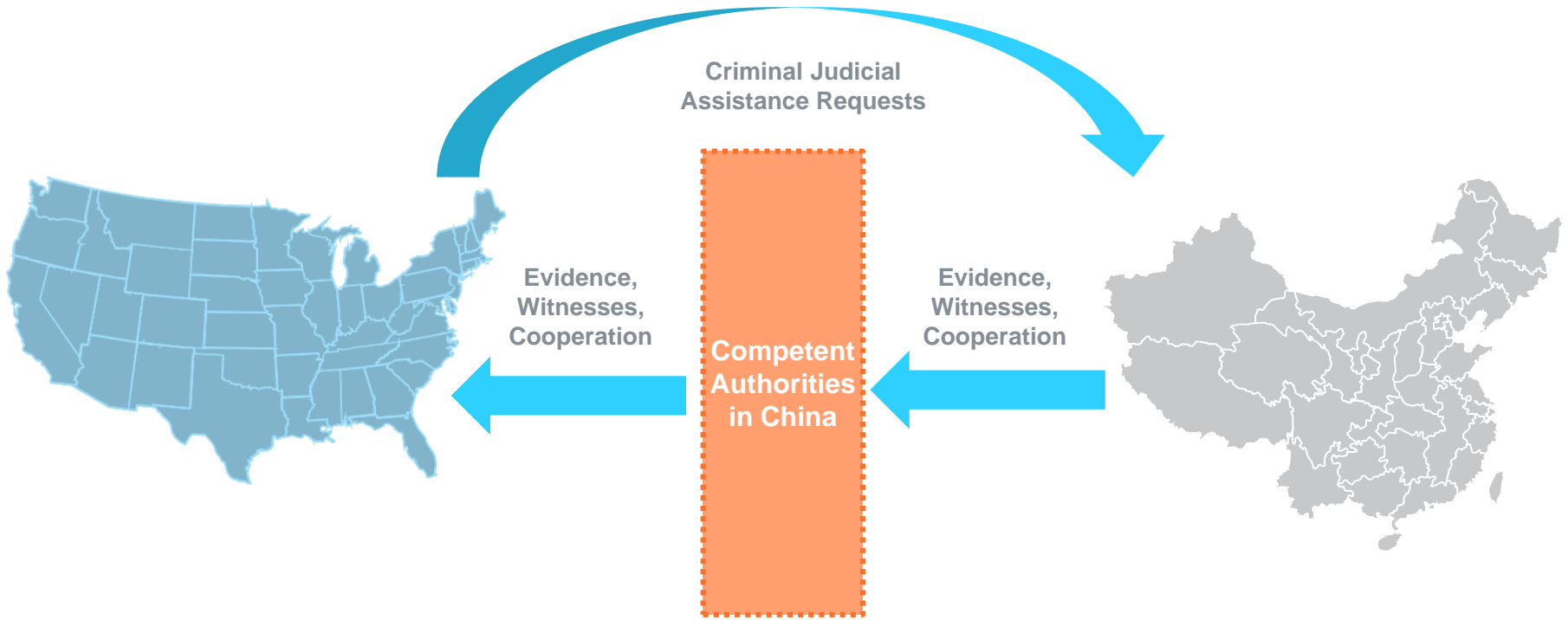
## CROSS-BORDER COOPERATION (2015 – 2018)





# Global Developments

## PRC INTERNATIONAL CRIMINAL JUDICIAL ASSISTANCE (ICJA) LAW



# Global Developments

## ICJA GROUNDS TO REJECT THE REQUEST



Underlying act does not constitute a crime in China



Matter is subject to or disposed by proceedings in China, or is time barred



Request concerns political or military crimes



Request is discriminatory based on ethnic, racial, religious, gender or political factors



No substantive connection between the assistance requested and the subject matter of the case



Other reasons that can justify refusal

# Case Law Updates

KOKESH AND HOSKINS

## KOKESH

U.S. SECURITIES AND EXCHANGE COMMISSION

### Annual Report

Division of Enforcement

“

We estimate the decision may cause us to forego up to approximately \$900 million in disgorgement, of which a substantial amount likely could have been returned to retail investors

”

– SEC Division of Enforcement Annual Report 2018

## HOSKINS

In September 2018, the Second Circuit placed an outer limit on FCPA enforcement against non-U.S. individuals in *United States v. Hoskins*

“

[T]he FCPA does not impose liability on a foreign national who is not an agent, employee, officer, director, or shareholder of an American issuer or domestic concern—*unless* that person commits a crime within the territory of the United States . . . [t]he government may not expand the extraterritorial reach of the FCPA by recourse to the conspiracy and complicity statutes.

”

– *United States v. Hoskins*, 902 F.3d 69, 96-97 2d Cir. 2018

# Areas to Watch

## LATIN AMERICA



Andrés Manuel  
López Obrador



Iván Duque  
Márquez



Sergio Moro



# Areas to Watch

## 2019 FCPA WATCH LIST

### Long-Standing Investigations



- DOJ/SEC investigation since 2013
- Unknown scope



- DOJ/SEC investigation since 2013
- Conduct in "various countries," likely including Hungary



- DOJ/SEC investigation since 2011
- Countries include Brazil, China, and India
- Set aside \$283 million

### Recent Investigations



- Three former CS bankers charged in connection with Mozambique loan scandal



- Two former Goldman bankers charged in connection with 1MDB scandal



- Grand Jury purportedly investigating possible bribes in connection with the signing of international players

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# Thank you!

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For more information, please visit our FCPA webpage:

<https://www.davispolk.com/practices/litigation/anticorruption-and-fcpa/>



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# Questions

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# Appendix



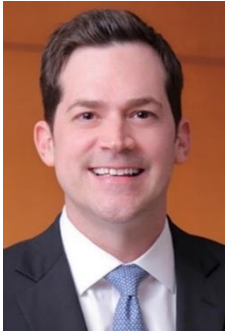
# Presenters

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## Angela T. Burgess

Angela is a partner in Davis Polk's Litigation Department and co-chair of the firm's Global Enforcement and Investigations Group. 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.



## James W. Haldin

James is counsel in our Litigation Department and a member of the firm's Global Enforcement and Investigations Group. He represents financial institutions and other multinational corporations in criminal, regulatory and internal investigations with a particular focus on Foreign Corrupt Practices Act (FCPA) matters. He has conducted FCPA investigations in Bangladesh, Brazil, China, Hong Kong, India, Mexico, Russia and the United Kingdom for clients in a range of industries, including banking, life sciences and technology.

# Presenters

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## Neil H. MacBride

Neil is a partner in our Litigation Department and co-chair of the firm's White Collar Criminal Defense and Government Investigations Group. He is based in Washington DC and his practice focuses on government enforcement actions and internal investigations on matters including FCPA, economic sanctions and cybersecurity issues. He is an experienced trial lawyer, having litigated more than 25 jury trials and dozens of bench trials over the course of his career. Before joining Davis Polk in 2014, Neil served as the U.S. Attorney for the Eastern District of Virginia. In addition to his experience as U.S. Attorney, Neil has held a number of other government positions, including with the Department of Justice and the Senate Judiciary Committee.



## Tatiana R. Martins

Tatiana is a partner in the firm's Litigation Department, with extensive experience representing clients in white-collar criminal defense matters, including FCPA-related investigations. Prior to rejoining the firm in 2018, she was an Assistant U.S. Attorney in the Southern District of New York, where she most recently served as Chief of the Public Corruption Unit. As Chief of Public Corruption, Tatiana led a team of over 20 prosecutors and other professionals, overseeing several major investigations and prosecutions including those against Michael D. Cohen, NCAA basketball coaches, and numerous prominent public officials. She is also an experienced trial lawyer, having personally prosecuted multiple high-profile cases.

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# Presenters

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## Patrick S. Sinclair









Patrick is a partner in our Litigation Department, resident in Hong Kong, and is a member of the firm's Global Enforcement and Investigations Group. Patrick has more than a decade of experience representing U.S.-based and international corporations, audit committees, banks, individuals, and the government in corporate criminal investigations. He regularly leads internal investigations for multinational corporations in Asia, and has represented a number of individuals in Asia who were the subject of inquiries from U.S. Attorneys' Offices, the SEC, CFTC, and other U.S. regulators. From 2007 to 2014, Patrick was a prosecutor in the U.S. Attorney's Office for the Eastern District of New York. He was appointed Deputy Chief of the General Crimes Section in 2013.






















# 2018 DOJ and SEC FCPA

Fourth Quarter Resolution Tracker





Target	Enforcer	Resolution	Alleged FCPA Violation	Industry	Geography	Allegations
Joo Hyun (Dennis) Bahn	SEC (09/06/2018)	\$225K (cease & desist order)	 	Real Estate	South Korea, Qatar, Vietnam	Attempted to bribe officials to obtain consideration of real estate proposal
	DOJ	Pled guilty; 6 months in prison				
Elbit Imaging Ltd.	SEC	\$500K (no-admit, no-deny, cease & desist order)	 	Real Estate	Romania	Made and failed to prohibit unverified payments by subsidiary for services relating to real estate development
Transport Logistics International, Inc.	DOJ	\$2M (DPA)		Shipping/ Freight/ Transportation	Russia	Conspired to bribe official of state-owned nuclear power company for transport contract
Eberhard Reichert (Siemens AG)	DOJ	Pled guilty; sentencing not yet scheduled	  	Technology/ Electronics	Argentina	Conspired to bribe officials to obtain contract to create national identity cards
Kinross Gold Corporation	SEC	\$950K (no-admit, no-deny, cease & desist order)	 	Natural Resources	Mauritania, Ghana	Failed to implement or maintain adequate controls to prohibit bribery





Target	Enforcer	Resolution	Alleged FCPA Violation	Industry	Geography	Allegations
Dun & Bradstreet Corporation	SEC	\$9.2M (cease & desist order)	 	Finance	China	Failed to prohibit improper payments and entry of same into records at Chinese subsidiaries
Panasonic Corporation	SEC	\$143.2M (cease & desist order)	  	Entertainment/ Airlines	Middle East, Malaysia, Singapore, Thailand, Vietnam	Retained and paid government official as consultant to win contracts; made and concealed improper payments to sales agents; backdated customer contracts
Panasonic Avionics Corporation	DOJ	\$137.4M and engage independent monitor (DPA)				
Société Générale S.A.	DOJ PNF (France)	\$585M (DPA)		Finance	Libya	Paid bribes through a Libyan broker in exchange for investments from state-owned financial institutions
SGA Société Générale Acceptance N.V.	DOJ (06/05/2018)	Pled guilty (06/05/2018)				
Legg Mason, Inc.	DOJ	\$64.2M (NPA)	 	Finance	Libya	Subsidiary partnered with Société Générale to pay bribes through a Libyan broker in exchange for investments from state-owned financial institutions
	SEC (08/27/2018)	\$34.5M (cease & desist order)				

Target	Enforcer	Resolution	Alleged FCPA Violation	Industry	Geography	Allegations
Beam Suntory Inc.	SEC	\$8.2M (no-admit, no-deny, cease & desist order)	 	Spirits	India	Subsidiary bribed government officials to retain business and facilitate licensing and registration renewals; improperly characterized payments
Credit Suisse Group AG	SEC	\$29.8M (cease & desist order)	  	Finance	Hong Kong, China	Hired friends and family of government officials in exchange for receipt of lucrative investment banking business from these officials
Credit Suisse (Hong Kong) Limited	DOJ	\$47M (NPA)				
Luis Carlos De Leon-Perez	DOJ	Pled guilty; sentencing pending		Natural Resources	Venezuela	Bribed officials at a state-owned energy company in Venezuela (PDVSA) in order to obtain contracts and priority payment on outstanding invoices
Insurance Corporation of Barbados Limited	DOJ	\$93.9K (declination with disgorgement)		Insurance	Barbados	Bribed a government official in order to obtain two government insurance contracts
Sanofi S.A.	SEC	\$25.2M (no admit, no deny, cease & desist order)	 	Pharma	Bahrain, Kazakhstan, Kuwait, Lebanon, Oman, Qatar, UAE, Yemen	Bribed government procurement officials and healthcare providers in order to be awarded tenders and increase

Target	Enforcer	Resolution	Alleged FCPA Violation	Industry	Geography	Allegations	
Q3 2018	United Technologies Corporation	SEC	\$13.9M (no admit, no deny, cease & desist order)	  	Industrials/ Manufacturing	Azerbaijan, China, Indonesia, South Korea, Kuwait, Pakistan, Thailand	Bribed foreign officials through third-party intermediaries to procure contracts and provided gifts and trips to retain business
	Juan Carlos Castillo Rincon	DOJ	Pled guilty; sentencing scheduled for 02/21/19		Natural Resources	Venezuela	Bribed an official at a state-owned energy company in Venezuela (PDVSA) in exchange for contracts, contract extensions, and favorable contract terms
	Patricio Contesse González	SEC	\$125K (no admit, no deny, cease & desist order)	 	Chemicals/ Mining	Chile	Caused Sociedad Química y Minera de Chile, S.A. to bribe political officials and related persons, often through falsified contracts
	Petróleo Brasileiro S.A. – Petrobras	DOJ	\$853.2M (NPA)	 	Natural Resources	Brazil	Coordinated with contractors, suppliers, and political actors to falsely inflate the cost of infrastructure projects and secure contracts for certain companies in exchange for bribes paid to top executives, political actors, and others
		SEC	\$933.5M (cease & desist order)				
Stryker Corporation	SEC	\$7.8M and engage independent consultant (no admit, no deny, cease & desist order)	 	Healthcare	China, India, Kuwait	Failed to detect or prevent potential improper payments made by third-party distributors to healthcare professionals	



Target	Enforcer	Resolution	Alleged FCPA Violation	Industry	Geography	Allegations
Tim Leissner	DOJ	Pled guilty; sentencing scheduled for 01/17/19		Finance	Abu Dhabi, Malaysia	Bribed government officials to obtain and retain bond offerings for Goldman Sachs
Vantage Drilling International	SEC	\$5M (no admit, no deny, cease & desist order)		Natural Resources	Brazil, Taiwan	Failed to conduct due diligence on a director and failed to prohibit funds paid to that director from being used for bribing officials at Petrobras
Patrick Ho	DOJ	Found guilty; sentencing scheduled for 03/14/19		Natural Resources	Chad, Hong Kong, Uganda	Offered bribe to President of Chad in exchange for opportunity to obtain exclusive oil rights; offered bribe to Minister of Foreign Affairs of Uganda in exchange for potential acquisition of a Ugandan bank
Paul A. Margis	SEC	\$75K (no admit, no deny, cease & desist order)		Aviation	(sealed)	Retained and paid government official as consultant to win contracts; made and concealed improper payments to sales agents
Takeshi "Tyrone" Uonaga		\$50K (no admit, no deny, cease & desist order)				Backdated customer contracts; made false representations to company's auditor about financial statements, internal accounting controls, and books and records

Target	Enforcer	Resolution	Alleged FCPA Violation	Industry	Geography	Allegations
Q4 2018 Polycom	DOJ	\$31M (declination with disgorgement)	 	Technology/ Electronics	China	Made and concealed improper payments to Chinese government officials in exchange for assistance in obtaining orders for Polycom's products
	SEC	\$16.3M (no-admit, no-deny, cease & desist order)				
Eletrobras	SEC	\$2.5M (no-admit, no-deny, cease & desist order)	 	Energy/Natural Resources	Brazil	Rigged bids and arranged for private construction companies to pay bribes in a project for construction of a nuclear power plant