
2017 Mid-Year Review: Anti-Corruption Trends and Enforcement

Presented by

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Davis Polk

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Presenters



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.



Paul J. Nathanson

Paul is counsel in our Litigation Department, practicing in the Washington DC office. His practice focuses on white collar criminal defense matters and government and internal investigations. Paul is a former law clerk to Chief Justice John G. Roberts Jr., and an experienced trial lawyer. He joined Davis Polk after serving as Deputy Chief of the Financial Crimes and Public Corruption Unit of the U.S. Attorney's Office for the Eastern District of Virginia, and prior to that, he served at the U.S. Treasury Department.

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Patrick Sinclair

Patrick is a partner in our Litigation Department, resident in Hong Kong. His practice focuses on white collar criminal defense matters and government and internal investigations. 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.



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.

Presenters



Kenneth Wainstein

Ken is a partner in our Litigation Department, practicing in the Washington DC office. His practice focuses on corporate internal investigations and civil and criminal enforcement proceedings. With experience in significant positions in the U.S. government in the areas of criminal enforcement and national security, he brings clients a deep understanding of the substantive and procedural issues involved in white collar defense. His 20 years of public service garnered him an intimate knowledge of Justice Department policy, extensive crisis management skills, credibility among prosecutors and regulators, and strong relationships with Congress, the District of Columbia bench and bar and U.S. Attorneys around the country.

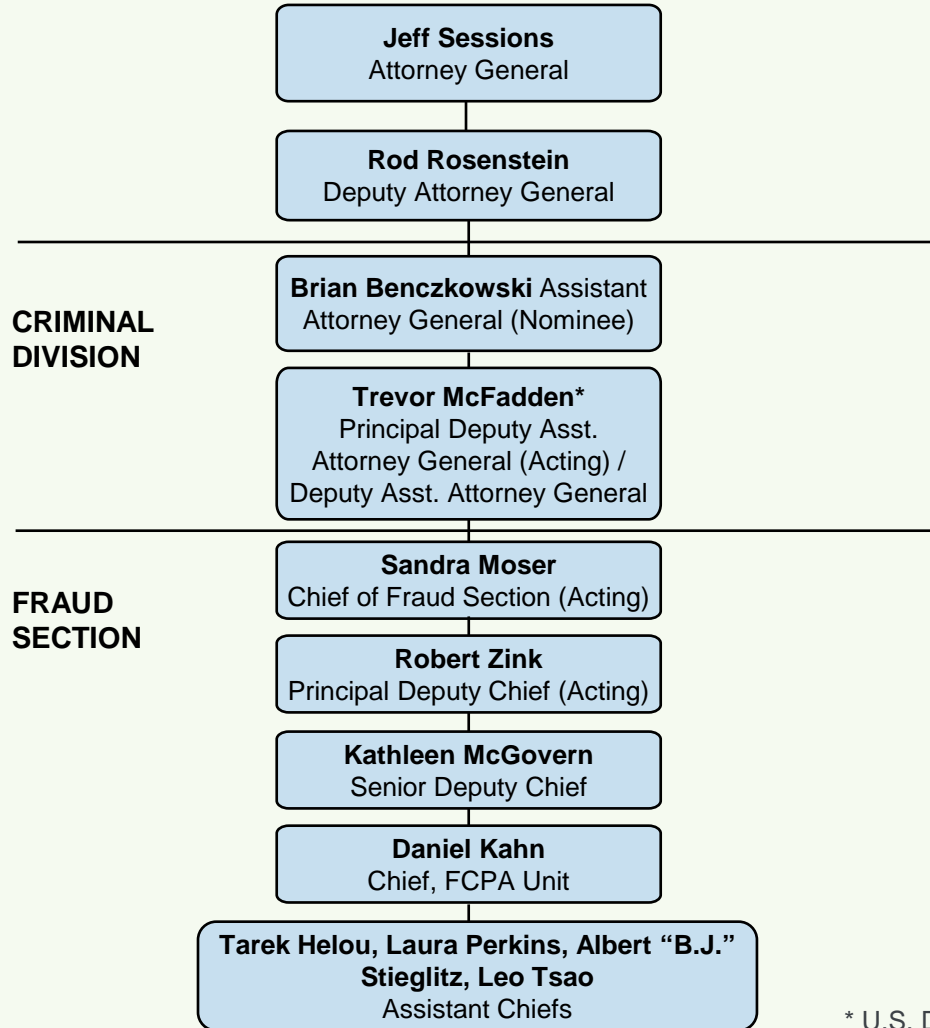
Contents

- New Administration
- Overview of 2017 FCPA Enforcement Activity
- DOJ FCPA “Pilot Program” Update
- New DOJ Guidance for Corporate Compliance Programs
- Key U.S. Case Law Developments
- 2017 SEC Whistleblower Update
- Asia Update
- Other International Developments
- Appendix: 2017 U.S. Enforcement Activity

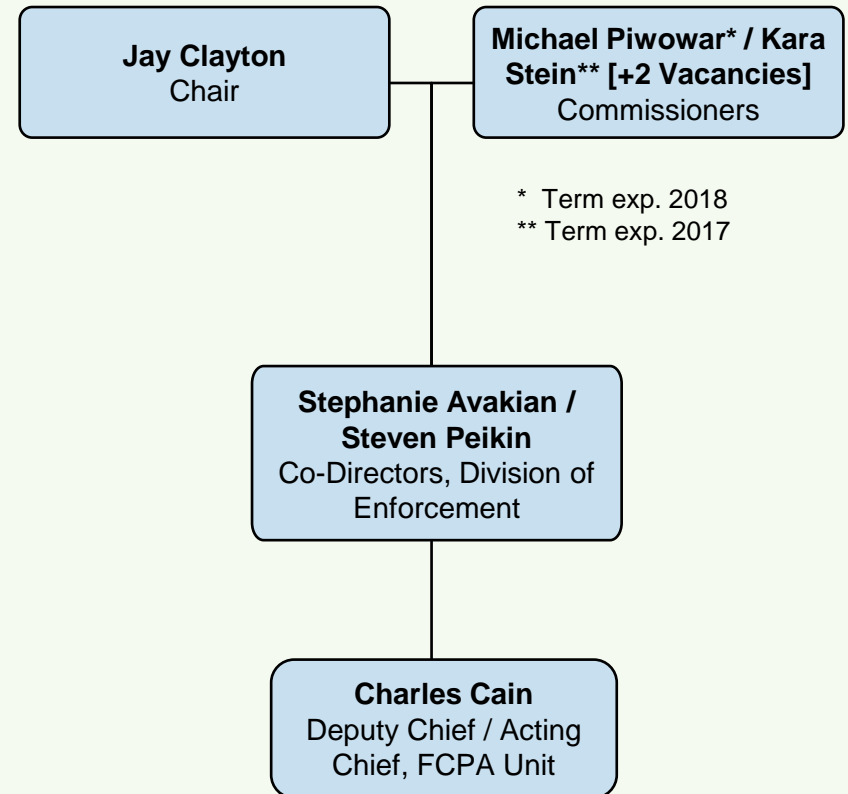
New Administration

OVERVIEW

Department of Justice



Securities and Exchange Commission



* U.S. District Court Nominee

New Administration

DOJ PRIORITIES

DOJ will continue to “strongly enforce” the FCPA

“Our department wants to create an even playing field for law-abiding companies. We will continue to strongly enforce the FCPA and other anti-corruption laws. Companies should succeed because they provide superior products and services, not because they have paid off the right people.” – Jeff Sessions, Apr. 24, 2017

- *DOJ “remains committed to enforcing the [FCPA] and to prosecuting fraud and corruption more generally. . . . [DOJ] continues to prioritize prosecutions of individuals who have willfully and corruptly violated the FCPA . . . [and] regularly takes into consideration voluntary self-disclosures, cooperation and remedial efforts when making charging decisions involving business organizations.” – Trevor McFadden, May 24, 2017*
- *“[O]ur hope is that companies and individuals voluntarily comply with anti-corruption laws, and I believe transparency and clarity from regulators encourages this compliance. . . . Fraud Section’s ‘Pilot Program’ is an example of an effort to provide more transparency and consistency for our corporate resolutions.” – Trevor McFadden, May 24, 2017*
- *“We are also making a concerted effort to move corporate investigations expeditiously, and we expect cooperating companies to do so as well. . . . [T]he Fraud Section leadership and I are focused on wrapping up old investigations. . . . My intent is for our FCPA investigations to be measured in months, not years.” – Trevor McFadden, Apr. 18, 2017*

Overview of 2017 FCPA Enforcement Activity

U.S. CORPORATE ENFORCEMENT

Following active 2016 and large number of DOJ / SEC resolutions in January 2017, no litigated or settled corporate proceedings to date

- January 2017 was the busiest January ever for FCPA corporate resolutions
- During a ten-day period (January 9-19), six companies settled FCPA-related offenses, paying a total of \$256.5 million to DOJ (4 settlements) and/or the SEC (4 settlements):
 - Mondelēz Int'l, Inc. f/k/a Kraft Foods, Inc. (SEC)
 - Zimmer Biomet, f/k/a Biomet (DOJ / SEC)
 - Sociedad Quimica y Minera de Chile S.A. (DOJ / SEC)
 - Las Vegas Sands Corp. (DOJ)
 - Rolls-Royce plc (DOJ)
 - Orthofix Int'l (SEC)
- Since January, no additional corporate charges by DOJ or the SEC
 - **But:** two DOJ declinations involving disgorgement to DOJ by U.S. companies:
 - Linde North America Inc., Linde Gas North America LLC (June 16, 2017)
 - CDM Smith Inc. (June 21, 2017)

Overview of 2017 FCPA Enforcement Activity

U.S. INDIVIDUAL ENFORCEMENT

There have been several prosecutions of individuals stemming from resolutions or investigations under the prior administration

- The last month of the prior administration saw actions relating to former executives of Orthofix and individuals involved in bribery scheme relating to Petróleos de Venezuela
 - Orthofix: Four former executives paid penalties to the SEC for their roles in FCPA violations; one additional former executive reimbursed the company for bonuses received
 - PDVSA: Guilty pleas by two U.S. energy executives arising out of allegations of improper payments to PDVSA officials
- Since January 20: actions against former executives of Och-Ziff, Magyar Telekom, and JP Morgan, and an individual involved in bribery of Telecommunications D'Haiti officials
 - Och-Ziff: The SEC filed a lawsuit against two former Och-Ziff executives for directing bribery efforts to secure mining deals in various African nations
 - Magyar Telekom: Three former Magyar executives settled SEC charges for their role in FCPA violations in Macedonia and Montenegro
 - JP Morgan: Federal Reserve Board seeking fines against individuals who ran the “princeling” program at JPM, for which JPM agreed to pay \$264.4 million in penalties to various regulators
 - Telecommunications D'Haiti: FCPA “fugitive” and former director of Florida-based telecommunications companies Amadeus Richers arrested in February 2017 for his alleged role in bribery of officials at Telecommunications D'Haiti (Esquenazi matter)

Overview of 2017 FCPA Enforcement Activity

INDUSTRIES OF NOTE

Industries subject to FCPA enforcement and investigation activity are familiar areas of regulatory interest

- Continued heightened activity in telecommunications sector
 - Two actions against former telecom executives
 - Large resolutions expected to result this year from investigations into telecom companies initiated by the prior administration
- According to public information, in addition to telecommunications, high number of ongoing investigations in industries typically prone to FCPA-related issues, including oil and gas, healthcare / pharmaceuticals

DOJ FCPA “Pilot Program” Update

BACKGROUND AND STATISTICS

■ **Pilot Program Continues:**

- In March 2017, Acting Assistant Attorney General for the DOJ’s Criminal Division Kenneth Blanco stated that DOJ’s FCPA Pilot Program, announced in April 2016, “will continue in full force” while DOJ evaluates its utility and efficacy

■ **Twenty-Two Voluntary Disclosures** in the first year of the Pilot Program

- These cases, however, began before the implementation of the program
- Increase from 13 voluntary disclosures in the year preceding the Pilot Program

■ **Seven Declinations** issued by DOJ “consistent with” Pilot Program, although for cases initiated before the program started

- Five actions in 2016, including three “declinations with disgorgement”

“As you may know, in the last year as part of the FCPA Pilot Program, the Fraud Section has begun publishing information on cases we have declined to prosecute, where we would have brought criminal cases but for the companies’ voluntary self-disclosure, full cooperation, and comprehensive remediation. There have already been five such cases. Of course, this number does not include the many cases we routinely decline for various reasons including insufficient evidence of corporate criminal misconduct. This is part of our long-standing effort to lay out transparent and clear guidelines and benefits for those companies and individuals subject to the FCPA.”

– Trevor McFadden, Remarks at Anti-Corruption, Export Controls & Sanctions 10th Compliance Summit (Apr. 18, 2017)

DOJ FCPA “Pilot Program” Update

2017 DECLINATIONS WITH DISGORGEMENT

- **Two additional “declinations with disgorgement” in June 2017:**
 - Linde North America Inc. received a declination on June 16, 2017 requiring disgorgement of \$7.82 million in profits and forfeiture of \$3.415 million in proceeds that were withheld from being paid to companies owned by corrupt Georgian government officials
 - CDM Smith Inc. received a declination on June 21, 2017 requiring disgorgement of approximately \$4.0 million in illegal proceeds arising out of bribes paid by subsidiary employees to Indian officials
 - Elements of both declinations included:
 - “timely, voluntary self-disclosure”
 - “thorough, comprehensive investigation”
 - “full cooperation in this matter (including . . . provision of all known relevant facts about the individuals involved in or responsible for the misconduct)” (and in the case of Linde, “agreement to continue to cooperate in any ongoing investigations of individuals”)
 - disgorgement of illicit profits (and in the case of Linde, forfeiture of proceeds to be paid to government officials)
 - steps that each company “has taken and continues to take to enhance its compliance program and its internal accounting controls”
 - “full remediation”

DOJ FCPA “Pilot Program” Update

OBSERVATIONS

- Under the Pilot Program, cooperation and self-disclosure credit are limited to 25% each off the bottom of the U.S. Sentencing Guidelines ranges

“[I]n circumstances where no voluntary self-disclosure has been made, the Fraud Section's FCPA Unit will accord at most a 25% reduction off the bottom of the Sentencing Guidelines fine range. . . . When a company has voluntarily self-disclosed misconduct in an FCPA matter . . . ; has fully cooperated . . . ; has met the additional stringent requirements of the pilot program; and has timely and appropriately remediated, the company qualifies for the full range of potential mitigation credit. In such cases, if a criminal resolution is warranted, the Fraud Section's FCPA Unit: may accord up to a 50% reduction off the bottom end of the Sentencing Guidelines fine range”

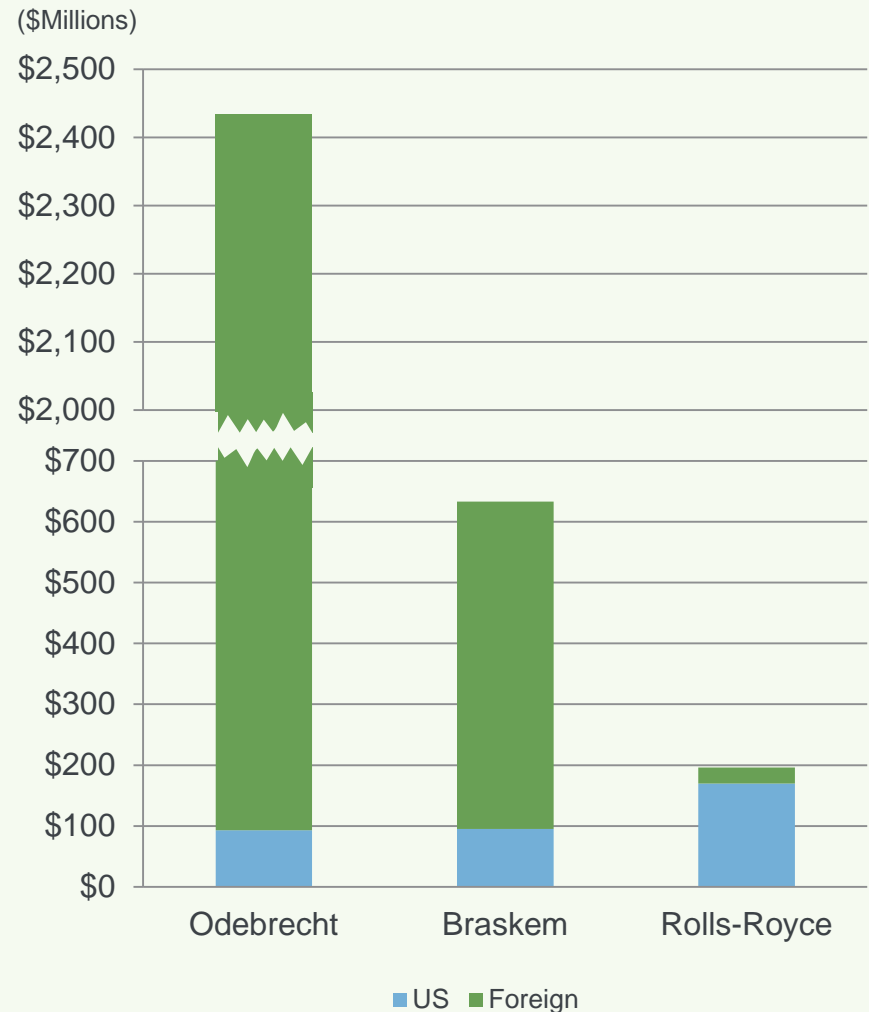
– The Fraud Section's Foreign Corrupt Practices Act Enforcement Plan and Guidance (Apr. 5, 2016)

- Improved transparency of credit, as increased rate of reductions given through explicit cooperation or self-disclosure credits applied to Guidelines range

DOJ FCPA “Pilot Program” Update

OBSERVATIONS (CONT.)

- Total global penalties post-Pilot Program have increased significantly, but DOJ has applied credits for payments made to foreign regulators
 - Odebrecht: DOJ credited \$2.34 billion paid to Brazilian and Swiss regulators
 - Braskem: DOJ credited \$538 million paid to Brazilian and Swiss regulators
 - Rolls-Royce: DOJ credited \$26 million paid to Brazilian regulators



New DOJ Guidance for Corporate Compliance Programs

In February 2017, the DOJ Fraud Section published the Evaluation of Corporate Compliance Programs, guidance setting forth the criteria the Fraud Section uses to assess the effectiveness of a corporation's compliance program

- The Evaluation is the first formal guidance for compliance programs released since DOJ hired its first-ever Compliance Counsel, Hui Chen
 - Chen resigned in May, and has not yet been replaced
- The guidance emphasizes the importance of individualized compliance programs, the independence and funding of compliance personnel, and remediation of misconduct
- The Evaluation covers eleven “sample topics,” including: Remediation of Misconduct, Senior Personnel, Autonomy and Resources, Policies and Procedures, Risk Assessment, Training, Reporting and Investigation, Incentives and Disciplinary Measures, Periodic Testing and Review, Third Party Management, and M&A

Key U.S. Case Law Developments

KOKESH v. SEC

In June 2017, the Supreme Court decided *Kokesh v. SEC*, resolving a circuit split regarding the availability of a statute of limitations to limit the SEC’s ability to seek disgorgement in enforcement proceedings

- Under 28 U.S.C. § 2462, “an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise” must be brought within five years of when the claim first accrues
- The SEC has typically characterized disgorgement as “equitable” relief, maintaining that no statute of limitations applies to the remedy
- The cert. petition noted a circuit split on the issue, in particular in view of the Eleventh Circuit’s decision in *SEC v. Graham* (11th Cir. 2016), which likened disgorgement to “forfeiture” and applied the five-year limitations period

Key U.S. Case Law Developments

KOKESH v. SEC (CONT.)

The Supreme Court unanimously held that the five-year limitations period in 28 U.S.C. § 2462 applies to SEC disgorgement, which as used by the SEC amounts to a “penalty”

- The Court focused on two principles most relevant to this determination:
 - A sanction is a “penalty” when it seeks to address a public wrong
 - A “penalty” is imposed to punish and to “deter others from offending in a like manner” and therefore contrasts with other remedies that seek to redress private wrongs and aim to compensate victims for their losses
- SEC disgorgement shares all of the “hallmarks of a penalty”
 - The SEC seeks disgorgement to remedy violations committed against the United States, rather than individuals
 - SEC disgorgement is not solely meant to compensate victims because “[s]ome disgorged funds are paid to victims; other funds are dispersed to the United States Treasury”

Key U.S. Case Law Developments

KOKESH v. SEC (CONT.)

- The Court rejected the SEC’s argument that disgorgement is not punitive and merely restores the status quo because, among other reasons, “SEC disgorgement sometimes exceeds the profits gained as a result of the violation”
- Note: At oral argument in April, multiple Justices expressed discomfort with the SEC’s lack of express statutory authority to seek disgorgement
 - Although the question of the SEC’s authority to seek disgorgement was not presented in *Kokesh*, the opinion includes a footnote making clear that the Supreme Court did not express any “opinion on whether courts possess authority to order disgorgement in SEC enforcement proceedings or on whether courts have properly applied disgorgement principles in this context”
 - Note tension between SEC position that disgorgement is an inherent *equitable* power of the courts and the Supreme Court’s characterization of SEC disgorgement as a *penalty*

Key U.S. Case Law Developments

U.S. v. HOSKINS, SECOND CIRCUIT ORAL ARGUMENTS (MAR. 2, 2017)

- Case focuses on the extent to which a foreign person can be held liable for conspiring or aiding and abetting a U.S. company to violate the FCPA
- Lawrence Hoskins, a former Alstom U.K. executive based in Paris, was charged with FCPA violations as part of an investigation into bribes paid by Alstom's U.S. subsidiary to secure contracts in Indonesia
 - Hoskins was a U.K. citizen
 - Hoskins did not reside in the U.S.
 - Hoskins did not act on U.S. soil
 - Hoskins is an executive of a non-U.S. company
- In August 2015, the U.S. District Court of Connecticut ruled in Hoskins's favor
 - Held that a nonresident who was not an agent of a U.S. company, and thus could not be found directly liable for FCPA violations, could also not be found liable for conspiring or aiding and abetting FCPA violations
- Oral arguments in the Second Circuit—the first Court of Appeals to hear the issue—were held on March 2, 2017

Key U.S. Case Law Developments

MISCELLANEOUS LAWSUITS

FCPA-related shareholder litigations have become more commonplace, alleging deficiencies relating to corporate disclosures and/or inadequate internal controls:

- VimpelCom (S.D.N.Y. Mar. 2017)
 - Shareholders ask court not to dismiss suit alleging that Vimpelcom hid the multiyear bribery scheme to inflate the company's stock price
- Braskem (S.D.N.Y. Mar. 2017)
 - Court allowed shareholder suits against Braskem and executive to move forward, while clearing the parent company Odebrecht; claim against Braskem is that it concealed the role that bribery played in dealings with Petrobras
- Qualcomm (Del. Ch. June 2017)
 - Court dismissed shareholder derivative suit that alleged that the company's board acted in bad faith in implementing internal controls to prevent FCPA violations

2017 SEC Whistleblower Update

- SEC continues to increase protections for whistleblowers in an effort to encourage disclosure of criminal conduct to regulators
 - BlackRock SEC settlement (Jan. 2017): Required employees to sign separation agreements waiving their ability to obtain whistleblower awards
 - HomeStreet SEC settlement (Jan. 2017): Steps to impede employees from talking to the SEC about its securities law violations were illegal
- Recent Whistleblower activity in FCPA cases
 - Rolls-Royce plc (Dec. 2016; announced Jan. 2017): Initial disclosure of criminal conduct reportedly came in 2013 from a whistleblower who was a former employee and alleged in a series of online comments that Rolls-Royce had bribed the son of Indonesia's former president with \$20 million and a Rolls-Royce car
 - Bio-Rad Laboratories, Inc. (Feb. 2017): After a jury trial, Bio-Rad had to pay \$10.8 million plus \$3.5 million in attorney's fees and costs for retaliating against its former general counsel for reporting FCPA violations
- In June 2017, Supreme Court granted certiorari in *Somers v. Digital Realty Trust*, to resolve a circuit split over whether whistleblower anti-retaliation provisions apply to purely internal reporting, as opposed to ultimate reporting to SEC

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
 - Campaign has focused primarily on public sector, including current and former politicians and military personnel, as well as senior officials at state-owned enterprises
 - Recent uptick in sentencing for such officials ahead of upcoming leadership transition
 - Wu Xiaohui, Chairman of Anbang Insurance Group recently detained—Anbang had been on foreign investment spree, including significant U.S. acquisitions
- Xi seen as increasingly focused on financial sector—especially regulators in high-risk sectors (e.g., insurance)
- **Medical Probe**: Public Security Bureau has launched major bribery probe in Nanjing
 - Appears to focus on doctors and **pharmaceutical sales representatives**
 - So far, scope is limited—Nanjing only, principally **focused on individuals**, not entities
 - Doesn't appear to be repeat of *GSK*—but foreign firms always face greater risks
- **Operations Foxhunt** (repatriation of fugitive officials) and **Skynet** (asset freezing) continue

Asia Update

CHINA: KEY CORRUPTION CASES/TRENDS

- **Bridgestone**: In late 2016, Shanghai AIC imposed ~\$2.5 million disgorgement penalty and ~\$20,000 fine on Bridgestone for violations of Anti-Unfair Competition Law
 - Bridgestone gave gift cards to retailers that met certain sales targets; also provided travel voucher incentives to encourage sales
 - SAIC claimed conduct violated section 8(1) of AUCL—commercial bribery that damaged fair market competition
 - Penalties imposed on other tire manufacturers for similar misconduct (e.g., Michelin, Kumho, Yokohama, etc.)
 - Basis for finding incentives to distributors / retailers anti-competitive unclear:
 - In *Michelin* and *Yokohama*, retailers were non-exclusive; in *Bridgestone* and others, not specified
 - That incentives were properly recorded didn't seem to matter, even though AUCL permits properly recorded commissions to intermediaries
 - AIC decisions did not analyze whether incentives were given to intermediaries institutionally rather than individual employees

Asia Update

CHINA: KEY CORRUPTION CASES/TRENDS (CONT.)

- **Medtronic**: In late 2016, NDRC imposed \$17.2 million fine for violations of Anti-Monopoly Law (vertical price-fixing)
 - First such fine against foreign medical device / pharmaceutical company
 - NDRC alleged resale price maintenance throughout entire sales chain
 - Key fact was distributor's independence—distributor was independent resale link, so anti-competition concerns were triggered
 - Where distributor is an agent of the company, risk of such concerns appears to be lower
- **Evidence Collection**: Medtronic and tire cases show PRC authorities gather evidence from a wide variety of sources, such as:
 - WeChat and QQ records; NDRC “questionnaires” on sales practices; distribution/retail contracts, business records and internal policies

- **2017 Amendments to Anti-Unfair Competition Law (“AUCL”)**
 - Expands the scope of liability for commercial bribery by including:
 - Payment or promise of payment to third party with influence on the transaction
 - See increase in third-party indemnification requests
 - Employer vicarious liability
 - Employers to be liable for employee bribes insofar as aim of bribes is to “seek transactional opportunities or competitive advantage” for the employer
 - Only exception is where employer “has evidence to prove” that conduct was performed in employee’s personal capacity
 - Draft amendments do not make clear what evidence would be sufficient to show that employee was acting rogue
 - But 2017 amendments eliminate willful blindness provisions from 2016 amendments
 - Increased supervisory and investigatory powers for SAIC
 - Increased penalties (RMB 100,000 to 3 million; license revocation in serious cases)

■ Thomas Kwok Bribery Case

- Hong Kong Court of Final Appeal in mid-June rejected appeal by Thomas Kwok from lower-court conviction for conspiracy to commit misconduct in public office
- Kwok made payments to former Hong Kong Chief Secretary immediately before Chief Secretary took office
 - No *actus reus* alleged or proved, aside from Chief Secretary's "favorable disposition" while in office
- Court of Final Appeal nevertheless upheld conviction on basis that payments amounted to effort by Kwok to secure "ongoing inclination" of Chief Secretary
- Judgment expands common law definition of misconduct in public office, and could have chilling effect, especially for private sector employees who take government posts

Other International Developments

UNITED KINGDOM SERIOUS FRAUD OFFICE

- Plan to reorganize U.K. Serious Fraud Office on hold after election
 - Conservative Party had stated that Serious Fraud Office would be merged into the National Crime Agency
 - Conservatives lost parliamentary majority in June snap election
 - Merger proposal was absent in speech outlining legislative priorities after election
- Updates and developments
 - Ben Morgan, head of bribery and corruption at the SFO, indicated that there may be more deferred prosecution agreements
 - Government passed Criminal Finances Act, which allows government to seize suspicious assets
- Major enforcement actions
 - Barclays Bank PLC and four executives—including former CEO—charged with conspiracy to commit fraud (June 2017)

Other International Developments

ANTI-CORRUPTION EFFORTS IN BRAZIL

Brazilian authorities continue aggressive anti-corruption enforcement

- Brazil remains a center for FCPA activity
 - Of approximately 100 companies that have reportedly disclosed open and active FCPA-related investigations as of May 2017, 30 have involved Brazil
 - Major FCPA investigations centered on Brazil include:
 - Odebrecht (\$881 million)
 - Braskem (\$315 million)
 - Orthofix International (\$6.1 million)
- J&F Investimentos agreed to pay \$3.2 billion to Brazilian authorities, one of the biggest fines ever leveled
 - J&F controls JBS S.A., the world's largest meatpacker
 - J&F's owners admitted that they spent roughly \$180 million to bribe nearly 1,900 Brazilian politicians
 - Fine will be divided among development bank and funds for workers at state-owned entities

Other International Developments

MISCELLANEOUS GLOBAL ENFORCEMENT ACTIVITY

- Swiss prosecutors question mining billionaire Beny Steinmetz about allegations of bribery in connection with Guinean mining venture
- Nigeria's anti-graft agency brought charges against Royal Dutch Shell Plc and Eni SpA for their actions in acquiring offshore oil field
- Israeli prosecutors obtained first corporate conviction for bribery of a foreign public official after IT solutions company bribed consultant in Lesotho
- Singapore charged former BP executive with accepting bribes
- South Korea fined Novartis \$48.3 million for paying doctors kickbacks to prescribe its drugs
 - South Korea's Constitutional Court also voted to remove President Park Geun-Hye, who had already been impeached

Other International Developments

JOINT RESOLUTIONS AND PENALTY SHARING

Recent resolutions have further evidenced increasing cooperation among U.S. and foreign regulators, both in the conduct and results of investigations

- Rolls-Royce plc agreed to a \$800 million global resolution with the DOJ and U.K. and Brazilian authorities to resolve charges arising out of a multi-year scheme to bribe government officials in exchange for government contracts
 - Rolls-Royce entered into a DPA (Dec. 20, 2016) with DOJ and agreed to pay approximately \$170 million
 - Rolls-Royce entered into a DPA with SFO and agreed to pay approximately \$600 million; as well as a leniency agreement with the Brazilian Ministério Público Federal (MPF) and agreed to pay approximately \$25 million
 - The SFO initiated the inquiry into the allegations; law enforcement colleagues in Austria, Germany, the Netherlands, Singapore, and Turkey all provided cooperation and assistance
- In April 2017, DOJ lowered the penalty that Odebrecht, as part of its global \$2.6 billion settlement, would pay to the U.S. from approximately \$117 million to approximately \$93 million

Appendix: 2017 U.S. Enforcement Activity

2017 U.S. Enforcement Activity

ROLLS-ROYCE PLC (DOJ, DEC. 20, 2016, ANNOUNCED JAN. 17, 2017)

Engine maker paid \$800 million in global settlement to resolve charges based on payments for confidential information and lucrative contracts

Nature of Action	<ul style="list-style-type: none">• Corporate
Industry/Countries	<ul style="list-style-type: none">• Aerospace, marine, and energy• Angola, Azerbaijan, Brazil, Iraq, Kazakhstan, Thailand
Charges	<ul style="list-style-type: none">• Anti-bribery: conspiracy
Penalties	<ul style="list-style-type: none">• \$605 million to UK Serious Fraud Office• \$169.9 million to DOJ in criminal penalty• \$25.6 million to Brazilian Ministério Público Federal
Additional Details	<ul style="list-style-type: none">• Company and its Ohio-based subsidiary paid over \$35 million to secure business in power generation projects• DPA was signed in December 2016, and unsealed in January 2017• Rolls-Royce received a 25% reduction in penalty for cooperation and extensive remedial measures, including enhanced compliance procedures and termination of business relationships with employees and intermediaries implicated in the corrupt scheme

2017 U.S. Enforcement Activity

MONDELÉZ INTERNATIONAL, INC. & CADBURY LIMITED (SEC, JAN. 6, 2017)

Snack company resolved SEC case based on failing to monitor agent, creating a risk of improper payments to Indian officials

Nature of Action	<ul style="list-style-type: none">• Corporate
Industry/Country	<ul style="list-style-type: none">• Food, snack manufacturing• India
Charges	<ul style="list-style-type: none">• Books and records: issuer• Internal controls: issuer
Penalties	<ul style="list-style-type: none">• \$13 million to SEC in civil penalty
Additional Details	<ul style="list-style-type: none">• Cadbury India paid an agent to help acquire licenses and approvals from Indian officials for a chocolate factory in Baddi• Cadbury India failed to conduct adequate due diligence and monitoring• Mondelēz, after acquiring Cadbury in 2010, commenced an internal investigation and took remedial measures• The SEC noted Mondelēz's cooperation and remedial measures in reaching the settlement

2017 U.S. Enforcement Activity

JUAN JOSE HERNANDEZ-COMERMA & CHARLES QUINTARD BEECH III (DOJ, JAN. 10, 2017)

Two U.S. energy executives pleaded guilty to charges arising out of alleged improper payments to Petróleos de Venezuela S.A. (“PDVSA”) officials

Nature of Action	<ul style="list-style-type: none">• Individual
Industry/Country	<ul style="list-style-type: none">• Energy• Venezuela
Charges	<ul style="list-style-type: none">• Anti-bribery: conspiracy, domestic concern (dd-2), aiding and abetting
Penalties	<ul style="list-style-type: none">• To be determined (sentencing on August 30, 2017)
Additional Details	<ul style="list-style-type: none">• Hernandez, a Florida-based executive, provided travel, entertainment, and cash bribes to PDVSA officials based on a percentage of contracts the officials helped to award• Beech, a Texas-based executive, paid bribes to PDVSA officials to help put his companies on PDVSA bidding panels• Three PDVSA employees and three Hernandez associates already pleaded guilty to various charges in 2015 and 2016

2017 U.S. Enforcement Activity

JOO HYUN BAHN, BAN KI SANG, MALCOLM HARRIS, & SANG WOO (DOJ, JAN. 10, 2017)

Four charged in scheme to pay \$2.5 million in bribes to facilitate the \$800 million sale of 72-story commercial building in Vietnam; one pleaded guilty

Nature of Action	<ul style="list-style-type: none">• Individual
Industry/Countries	<ul style="list-style-type: none">• Real estate• South Korea, Vietnam
Charges	<ul style="list-style-type: none">• Anti-bribery: conspiracy, domestic concern (dd-2), aiding and abetting• Money laundering• Wire fraud• Aggravated identity theft
Penalties	<ul style="list-style-type: none">• To be determined (case ongoing)
Additional Details	<ul style="list-style-type: none">• Ban and Bahn allegedly conspired to bribe a Middle Eastern official to facilitate the sale of a commercial building to a sovereign wealth fund• Woo helped Ban and Bahn obtain the bribe money• Harris claimed that he worked for a Middle Eastern official, but stole the first \$500,000 of \$2.5 million that Ban and Bahn agreed to pay• Harris pleaded guilty to wire fraud and money laundering (June 2017)

2017 U.S. Enforcement Activity

ZIMMER BIOMET HOLDINGS, INC. (DOJ/SEC, JAN. 12, 2017)

Medical device company paid more than \$30 million to DOJ and SEC after failing to comply with 2012 settlement

Nature of Action	<ul style="list-style-type: none">• Corporate
Industry/Countries	<ul style="list-style-type: none">• Medical devices• Brazil, Mexico
Charges	<ul style="list-style-type: none">• Anti-bribery: issuer (dd-1)• Books and records• Internal controls
Penalties	<ul style="list-style-type: none">• \$6.50 million to SEC in civil penalty• \$6.52 million to SEC in disgorgement and prejudgment interest• \$17.5 million to DOJ in criminal penalty
Additional Details	<ul style="list-style-type: none">• In 2012, Biomet entered into DPA with DOJ and consent decree with SEC, paying \$23 million for FCPA violations• Biomet continued to employ a Brazilian distributor known to have paid bribes to government officials, and bribed Mexican customs officials to ease importation of dental products• Biomet subsidiary that controlled Mexican business also pleaded guilty

2017 U.S. Enforcement Activity

SOCIEDAD QUIMICA Y MINERA DE CHILE, S.A. (DOJ/SEC, JAN. 13, 2017)

Chemical company resolved charges of bribing politicians with influence over the government's mining plans in Chile

Nature of Action	<ul style="list-style-type: none">• Corporate
Industry/Countries	<ul style="list-style-type: none">• Mining• Chile
Charges	<ul style="list-style-type: none">• Books and records: issuer• Internal controls: issuer
Penalties	<ul style="list-style-type: none">• \$15.5 million to DOJ in criminal penalty• \$15 million to SEC in civil penalty
Additional Details	<ul style="list-style-type: none">• SQM paid \$14.75 million in donations to dozens of foundations associated with Chilean politicians• Company admitted to concealing payments, logging them as consulting and professional services SQM never received• DOJ said that it gave SQM a 25% reduction off the U.S. Sentencing Guidelines, citing SQM's full cooperation and substantial and ongoing remediation

2017 U.S. Enforcement Activity

ORTHOFIX INTERNATIONAL (SEC, JAN. 18, 2017)

Medical device manufacturer agreed to pay \$6.1 million to SEC for payouts in Brazil; received DOJ declination

Nature of Action	<ul style="list-style-type: none">• Corporate
Industry/Countries	<ul style="list-style-type: none">• Medical devices• Brazil
Charges	<ul style="list-style-type: none">• Books and records• Internal controls
Penalties	<ul style="list-style-type: none">• \$2.9 million to SEC in civil penalty• \$3.2 million to SEC in disgorgement and prejudgment interest
Additional Details	<ul style="list-style-type: none">• Brazilian subsidiary paid doctors at government-owned hospitals to use Orthofix products, and used fake invoices to conceal payments• Payments led to \$2.9 million in profit for Orthofix Brazil• DOJ declined to prosecute• Orthofix paid \$7.4 million in 2012 to resolve FCPA violations based on business in Mexico

2017 U.S. Enforcement Activity

JEFF HAMMEL, KENNETH MACK, BRYAN MCMILLAN, & BRIAN MCCOLLUM (SEC, JAN. 18, 2017)

Four former Orthofix executives settled with SEC for accounting violations

Nature of Action	<ul style="list-style-type: none">• Individual
Industry/Countries	<ul style="list-style-type: none">• Medical devices• Brazil
Charges	<ul style="list-style-type: none">• Accounting failures relating to improper payments
Penalties	<ul style="list-style-type: none">• Orthofix: \$8.25 million to SEC in civil penalty• Hammel: \$20,000 to SEC in civil penalty• Mack: \$40,000 to SEC in civil penalty• McMillan: \$25,000 to SEC in civil penalty• McCollum: \$35,000 to SEC in civil penalty, and \$41,000 to Orthofix in bonus reimbursement
Additional Details	<ul style="list-style-type: none">• Orthofix executives paid penalty after improperly recording revenue• All four consented to the SEC's order without admitting or denying the findings• Orthofix's former CEO also reimbursed the company

2017 U.S. Enforcement Activity

LAS VEGAS SANDS CORP. (DOJ, JAN. 19, 2017)

Resort and casino operator entered into NPA with DOJ after paying Chinese consultant for no legitimate business purpose

Nature of Action	<ul style="list-style-type: none">• Corporate
Industry/Countries	<ul style="list-style-type: none">• Casinos and resorts• China
Charges	<ul style="list-style-type: none">• Books and records• Internal controls
Penalties	<ul style="list-style-type: none">• \$6.96 million to DOJ in criminal penalty
Additional Details	<ul style="list-style-type: none">• From 2006 through 2009, subsidiary paid \$60 million to Chinese consultant, including \$5.8 million for no business purpose• After warnings, corporation continued to make payments and fired employee who raised concerns• In NPA, DOJ reduced penalty by 25% because of cooperation• Las Vegas Sands paid SEC \$9 million in related proceeding in 2016

2017 U.S. Enforcement Activity

BRASKEM S.A. (DOJ, JAN. 26, 2017)

Brazilian petrochemical company pleaded guilty and agreed to \$633 million global settlement

Nature of Action	<ul style="list-style-type: none">• Corporate
Industry/Countries	<ul style="list-style-type: none">• Petrochemical• Brazil
Charges	<ul style="list-style-type: none">• Anti-bribery: conspiracy
Penalties	<ul style="list-style-type: none">• \$443 million to Brazilian Ministério Público Federal in criminal penalty• \$325 million to SEC in disgorgement• \$95 million to DOJ in criminal penalty• \$95 million to Switzerland Attorney General's office in criminal penalty
Additional Details	<ul style="list-style-type: none">• Braskem is largely owned by Odebrecht and Petrobras• From 2002 to 2014, Braskem paid \$75 million in bribes to Brazilian officials, making \$289 million in profits• DOJ allowed for 15% downward departure based on cooperation and remediation

2017 U.S. Enforcement Activity

MICHAEL L. COHEN & VANJA BAROS (SEC, JAN. 26, 2017)

Former Och-Ziff employees charged with directing tens of millions of dollars of bribes to African government officials

Nature of Action	<ul style="list-style-type: none">• Individual
Industry/Countries	<ul style="list-style-type: none">• Finance• Chad, Democratic Republic of the Congo, Guinea, Libya, Niger
Charges	<ul style="list-style-type: none">• Anti-bribery: issuer (dd-1); aiding and abetting• Books and records: falsification of accounting records; knowing violation; aiding and abetting• Internal controls: knowing violation
Penalties	<ul style="list-style-type: none">• Unknown
Additional Details	<ul style="list-style-type: none">• Cohen was head of Och-Ziff's European office; Baros was an employee• Cohen and Baros were also charged with violating the Investment Advisers Act of 1940• Och-Ziff entered into DPA, and subsidiary pleaded guilty, in September 2016

2017 U.S. Enforcement Activity

COBALT INTERNATIONAL ENERGY, INC. (DOJ, FEB. 9, 2017)

Oil exploration company received declination from DOJ two years after obtaining declination from SEC in connection with offshore drilling in Angola

Nature of Action	<ul style="list-style-type: none">• Corporate
Industry/Countries	<ul style="list-style-type: none">• Oil• Angola
Charges	<ul style="list-style-type: none">• None (declination)
Penalties	<ul style="list-style-type: none">• None
Additional Details	<ul style="list-style-type: none">• Investigation began in 2011, and focused on connection between Cobalt's Angolan partner in offshore drilling and payments to Angolan government officials• SEC issued declination to Cobalt in 2015 after sending Wells Notice the previous year

2017 U.S. Enforcement Activity

AMADEUS RICHERS (DOJ, FEB. 23, 2017)

Former director of telecommunications company, arrested almost six years after being charged with bribing Haitian officials, to plead guilty

Nature of Action	<ul style="list-style-type: none">• Individual
Industry/Countries	<ul style="list-style-type: none">• Telecommunications• Haiti
Charges	<ul style="list-style-type: none">• Anti-bribery: conspiracy, domestic concern (dd-2), aiding and abetting• Wire fraud• Money laundering
Penalties	<ul style="list-style-type: none">• To be determined (change-of-plea hearing in July)
Additional Details	<ul style="list-style-type: none">• Richers was a director of Uniplex Telecommunications and Cinergy Telecommunications, linked Florida-based telecommunications firms• Between 2001 and 2006, Richers paid officials at Haiti Teleco, Haiti's state-owned telecommunications company, \$1.4 million in bribes• Two of Richers' co-defendants were convicted at trial, and sentenced to 15 years and 7 years, and four other co-defendants pleaded guilty

2017 U.S. Enforcement Activity

CRAWFORD & COMPANY (SEC, FEB. 27, 2017)

SEC issued declination after claims management corporation self-reported potential violations discovered during regular internal audit

Nature of Action	<ul style="list-style-type: none">• Corporate
Industry/Countries	<ul style="list-style-type: none">• Claims management• Unknown
Charges	<ul style="list-style-type: none">• None (declination)
Penalties	<ul style="list-style-type: none">• None
Additional Details	<ul style="list-style-type: none">• Details revealed in company's Form 10-K filed with the SEC• Company received notice from the SEC that the SEC has concluded its investigation and did not recommend an enforcement action• Investigation began after Crawford conducted internal audit and recorded potential FCPA violations• Company paid roughly \$5 million to investigate over 2015 and 2016

2017 U.S. Enforcement Activity

VICTOR HUGO VALDEZ PINON & DOUGLAS RAY (DOJ, MAR. 6, 2017)

CEO and sales agent of Texas aviation company sentenced in connection with plot to bribe Mexican officials for airplane maintenance contracts

Nature of Action	<ul style="list-style-type: none">• Individual
Industry/Countries	<ul style="list-style-type: none">• Aviation• Mexico
Charges	<ul style="list-style-type: none">• Anti-bribery: conspiracy• Wire fraud
Penalties	<ul style="list-style-type: none">• Pinon: 12 months imprisonment, \$91,000 in restitution, \$275,000 in forfeiture• Ray: 18 months imprisonment, \$590,000 in restitution
Additional Details	<ul style="list-style-type: none">• Ray was the president and owner of Houston-based Hunt Pan Am Aviation, where Valdez worked as a sales agent• Valdez and Ray gave bribes—labeled as “commissions” or “consulting fees”—to Mexican government officials for aircraft repair and maintenance contracts in Tamaulipas state• Two Hunt Pan Am associates and two Mexican officials have been sentenced in the case

2017 U.S. Enforcement Activity

FANG FANG & TIMOTHY FLETCHER (FEDERAL RESERVE BOARD, MAR. 10, 2017)

Federal Reserve Board brought actions seeking fines and lifetime bans for two former J.P. Morgan managing directors for running the “Sons and Daughters Program”

Nature of Action	<ul style="list-style-type: none">• Individual
Industry/Countries	<ul style="list-style-type: none">• Finance• China
Charges	<ul style="list-style-type: none">• Violation of firm policies and FCPA
Penalties	<ul style="list-style-type: none">• To be determined• Board seeks fines of \$1 million for Fang and \$500,000 for Fletcher and lifetime bans from banking industry
Additional Details	<ul style="list-style-type: none">• Fang and Fletcher ran hiring at J.P. Morgan subsidiary and gave internships and jobs in exchange for business advantages• J.P. Morgan Securities (Asia Pacific) Limited paid a \$72 million criminal penalty to DOJ as part of non-prosecution agreement (Nov. 2016)• JPMorgan Chase & Co. also disgorged \$130.5 million to SEC, and paid \$61.9 million to Federal Reserve Board (Nov. 2016)

2017 U.S. Enforcement Activity

ELEK STRAUB, ANDRAS BALOGH, & TAMAS MORVAI (SEC, APR. 24, 2017)

Former telecom executives at Hungarian-based Magyar Telekom agreed to settle case before what was believed to be the first SEC FCPA trial

Nature of Action	<ul style="list-style-type: none">• Individual
Industry/Countries	<ul style="list-style-type: none">• Telecommunications• Macedonia, Serbia and Montenegro
Charges	<ul style="list-style-type: none">• Anti-bribery: issuer (dd-1), aiding and abetting• Books and records: knowing violation, falsification of accounting records, aiding and abetting• Internal controls: aiding and abetting
Penalties	<ul style="list-style-type: none">• Straub: \$250,000 to SEC in civil penalty• Balogh: \$150,000 to SEC in civil penalty• Morvai: \$60,000 to SEC in civil penalty
Additional Details	<ul style="list-style-type: none">• In 2005 and 2006, the three Magyar Telekom executives bribed foreign officials to prevent new competition and to ensure approval of merger agreements• Magyar Telekom settled FCPA charges in 2011, paying \$31 million in disgorgement to the SEC, and a \$60 million criminal penalty to DOJ

2017 U.S. Enforcement Activity

NEWMONT MINING CORPORATION (SEC, APR. 26, 2017)

Newmont Mining Corporation disclosed that SEC issued declination letter after company agreed to toll statute of limitations

Nature of Action	<ul style="list-style-type: none">• Individual
Industry/Countries	<ul style="list-style-type: none">• Mining• Unknown
Charges	<ul style="list-style-type: none">• None (declination)
Penalties	<ul style="list-style-type: none">• Unknown
Additional Details	<ul style="list-style-type: none">• Details revealed in company's Form 10-Q filed with the SEC• Company announced internal investigation and FCPA compliance review involving its affiliates and contractors• In 2016, Newmont agreed with SEC and DOJ to toll statute of limitations relating to the investigation (FCPA statute of limitations is five years)• Newmont has not disclosed the result of DOJ's investigation

2017 U.S. Enforcement Activity

MAHMOUD THIAM (DOJ, MAY 3, 2017)

Former Guinean Minister of Mines convicted of accepting bribes from Chinese conglomerate bidding for mining rights

Nature of Action	<ul style="list-style-type: none">• Individual
Industry/Countries	<ul style="list-style-type: none">• Mining• Guinea
Charges	<ul style="list-style-type: none">• Money laundering
Penalties	<ul style="list-style-type: none">• To be determined
Additional Details	<ul style="list-style-type: none">• Thiam convinced Guinean government to give mining rights to Chinese companies after companies paid him \$8.5 million in bribes• Thiam transferred \$3.9 million to United States, and tried to conceal origin of money• Jury in New York convicted Thiam after seven-day trial• Sentencing is scheduled for August 11, 2017

2017 U.S. Enforcement Activity

LINDE GROUP (DOJ, JUNE 16, 2017)

Two American units of Linde Group received DOJ “declination with disgorgement” for purchases from state-owned entity in Georgia

Nature of Action	<ul style="list-style-type: none">• Corporate
Industry/Countries	<ul style="list-style-type: none">• Manufacturing• Georgia
Charges	<ul style="list-style-type: none">• None (declination)
Penalties	<ul style="list-style-type: none">• \$7.8 million in disgorgement to DOJ• \$3.4 million in forfeiture to DOJ
Additional Details	<ul style="list-style-type: none">• Spectra Gases, purchased by Linde in 2006, made corrupt payments in 2006-2009 to officials at state-owned company in Republic of Georgia• Linde obtained declination letter consistent with FCPA Pilot Program, but had to disgorge profits• Forfeited funds were for the benefit of the government official, not the company

2017 U.S. Enforcement Activity

CDM SMITH, INC. (SEC, JUNE 21, 2017)

CDM Smith, Inc. agreed to disgorge \$4.03 million as part of a declination with DOJ to resolve bribery allegations in India

Nature of Action	<ul style="list-style-type: none">• Corporate
Industry/Countries	<ul style="list-style-type: none">• Construction• India
Charges	<ul style="list-style-type: none">• None (declination)
Penalties	<ul style="list-style-type: none">• \$4.03 million
Additional Details	<ul style="list-style-type: none">• CDM Smith's subsidiary in India paid bribes to government officials in India in exchange for highway construction supervision and design contracts and a water project contract• Senior management at the subsidiary were aware of the bribes• CDM received credit for its timely, voluntary self-disclosure, full cooperation, and extensive remediation

2017 U.S. Enforcement Activity

GUY PHILIPPE (DOJ, JUNE 22, 2017)

A former high-ranking official in the Haitian National Police sentenced in connection with a scheme to receive more than \$1.5 million in bribes in exchange for ensuring the safe transport of drug shipments

Nature of Action	<ul style="list-style-type: none">• Individual
Industry/Countries	<ul style="list-style-type: none">• Drug trafficking• Haiti
Charges	<ul style="list-style-type: none">• Conspiracy to commit money laundering
Penalties	<ul style="list-style-type: none">• 9 years imprisonment
Additional Details	<ul style="list-style-type: none">• Philippe was arrested in Haiti on January 5, 2017 in connection with a November 2005 indictment• Philippe was accused of conspiracy to import more than 11 pounds of cocaine into the United States and to launder money to conceal the illegal activity