GIBSON DUNN

January 5, 2015

2014 YEAR-END FCPA UPDATE

To Our Clients and Friends:

Within the last decade, Foreign Corrupt Practices Act ("FCPA") enforcement has become a juggernaut of U.S. enforcement agencies. Ten years ago, we published our first report on the state-of-play in FCPA enforcement. Although prosecutions were at the time quite modest--our first update noted only five enforcement actions in 2004--we observed an upward trend in disclosed investigations and advised our readership that enhanced government attention to the then-underutilized statute was likely. From the elevated plateau of 2015, we stand by our prediction.

In addition to the traditional calendar-year observations of our year-end updates, this tenth-anniversary edition looks back and analyzes five trends in FCPA enforcement we have observed over the last decade. As always, a collection of Gibson Dunn's recent publications about the FCPA, the UK Bribery Act, and anti-corruption compliance issues, including our annual client updates from the last decade, may be found on Gibson Dunn's FCPA/UK Bribery Act Website. We thank our readers for their attention over the years, and in the years to come.

FCPA OVERVIEW

The FCPA prohibits bribery of non-U.S. public officials and sets requirements for record-keeping and internal accounting controls at corporations that are publicly traded on U.S. securities exchanges. The FCPA's anti-bribery provisions make it illegal to corruptly offer, provide, promise, or authorize the provision of money or anything of value to officers or employees of foreign governments and public international organizations, foreign political parties, foreign party officials, and candidates for foreign political office, with the intent to obtain or retain business. The anti-bribery provisions apply to "issuers," "domestic concerns," and any other person who violates the FCPA while in the territory of the United States (as well as any officer, director, employee, agent, or stockholder acting on behalf of a covered person or entity). The term "issuer" includes any business entity that is registered under 15 U.S.C. § 78l or that is required to file periodic reports under 15 U.S.C. § 78o(d). In this context, issuers include non-U.S. companies that list on U.S. stock exchanges using American Depository Receipts. The term "domestic concern" is defined broadly to include any U.S. citizen, national, or resident, as well as any business entity that is organized under the laws of a U.S. state or that has its principal place of business in the United States.

As a complement to the anti-bribery provisions, the FCPA's accounting provisions require issuers to (1) make and keep accurate books, records, and accounts that, in reasonable detail, accurately and fairly reflect the issuer's transactions and disposition of assets; and (2) devise and maintain a system of internal accounting controls that, among other things, provide reasonable assurances that unauthorized payments are not made. U.S. enforcement authorities frequently invoke the FCPA's accounting

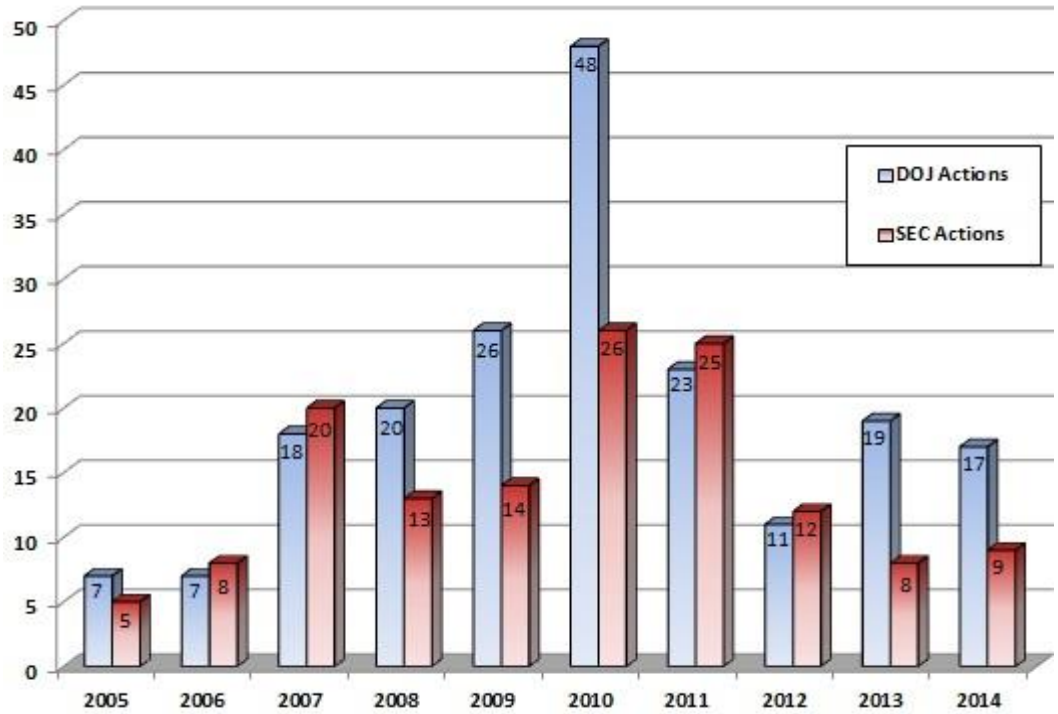
provisions when they cannot establish the elements for an anti-bribery offense or as a mechanism for compromise in settlement negotiations. Because there is no requirement that a false record or deficient control be related to a bribe, even a transaction that does violate the anti-bribery provisions can be prosecuted under the accounting provisions if inaccurately recorded or attributable to an internal controls deficiency.

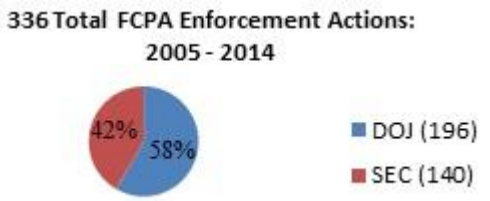
TEN-YEAR FCPA ENFORCEMENT TRENDS

I. FCPA Enforcement Actions

A mainstay of our semi-annual updates, the following table and graph detail the number of FCPA enforcement actions initiated by the statute's dual enforcers--the U.S. Department of Justice ("DOJ") and Securities and Exchange Commission ("SEC")--during each of the past ten years. These statistics detail the meteoric rise of FCPA enforcement in the late 2000s, followed by the leveling off of steady, robust enforcement over the past several years.

2005		2006		2007		2008		2009		2010		2011		2012		2013		2014	
DOJ	SEC	DOJ	SEC	DOJ	SEC	DOJ	SEC	DOJ	SEC	DOJ	SEC	DOJ	SEC	DOJ	SEC	DOJ	SEC	DOJ	SEC
7	5	7	8	18	20	20	13	26	14	48	26	23	25	11	12	19	8	17	9

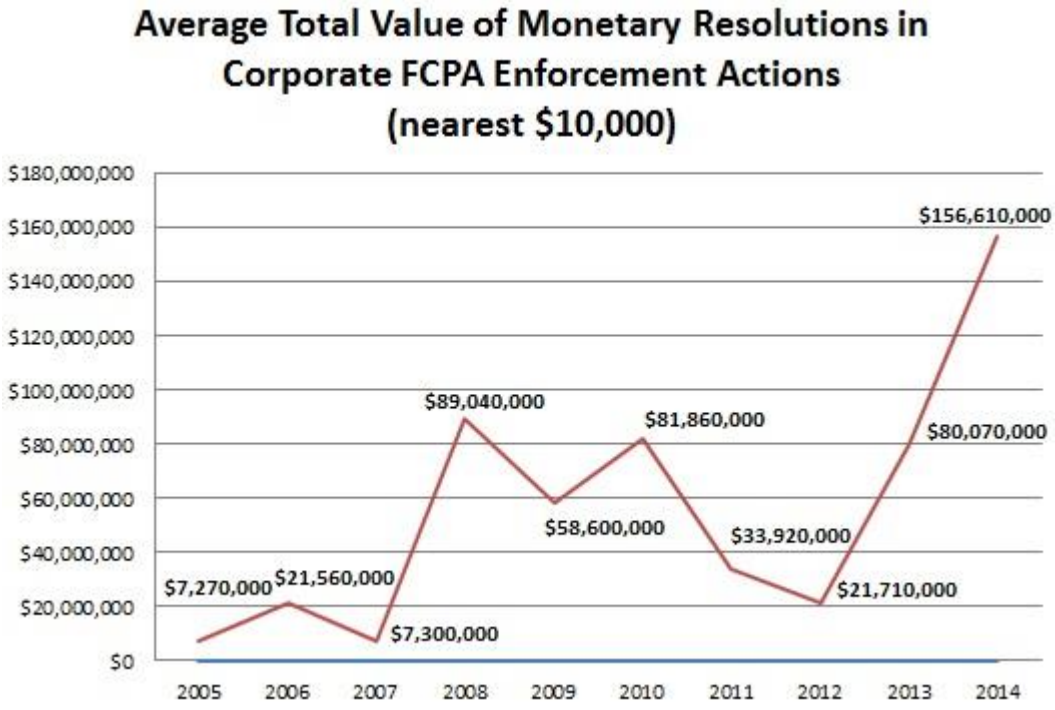




II. The Average Cost of Corporate FCPA Resolutions

When we first began reporting on FCPA enforcement activity a decade ago, the largest corporate monetary resolution in an FCPA enforcement action was $24.8 million, paid by Lockheed in 1995. Since 2004, in only two of ten years has the average value of a corporate FCPA enforcement action dipped below the $20 million mark. And the $100 million plateau--which would have been unthinkable just a short decade ago--has been eclipsed in a staggering 14 resolutions.

The following graph tracks the average combined (DOJ and SEC) resolution value of corporate FCPA enforcement actions over the past ten years:



The new Corporate FCPA Top 10 List now reads as follows:

No.	Company	Total Resolution	DOJ Component	SEC Component	Date
1	Siemens AG*	$800,000,000	$450,000,000	$350,000,000	12/15/2008
2	Alstom S.A.	$772,290,000	$772,290,000	--	12/22/2014
3	KBR/Halliburton	$579,000,000	$402,000,000	$177,000,000	02/11/2009
4	BAE Systems**	$400,000,000	$400,000,000	--	02/04/2010
5	Total S.A.	$398,200,000	$245,200,000	$153,000,000	05/29/2013
6	Alcoa	$384,000,000	$223,000,000	$161,000,000	01/09/2014
7	Snamprogetti/ENI	$365,000,000	$240,000,000	$125,000,000	07/07/2010
8	Technip S.A.	$338,000,000	$240,000,000	$98,000,000	06/28/2010
9	JGC Corp.	$218,800,000	$218,800,000	--	04/06/2011
10	Daimler AG	$185,000,000	$93,600,000	$91,400,000	04/01/2010

* Siemens's U.S. FCPA resolutions were coordinated with a €395 million ($569 million) anti-corruption settlement with the Munich Public Prosecutor.

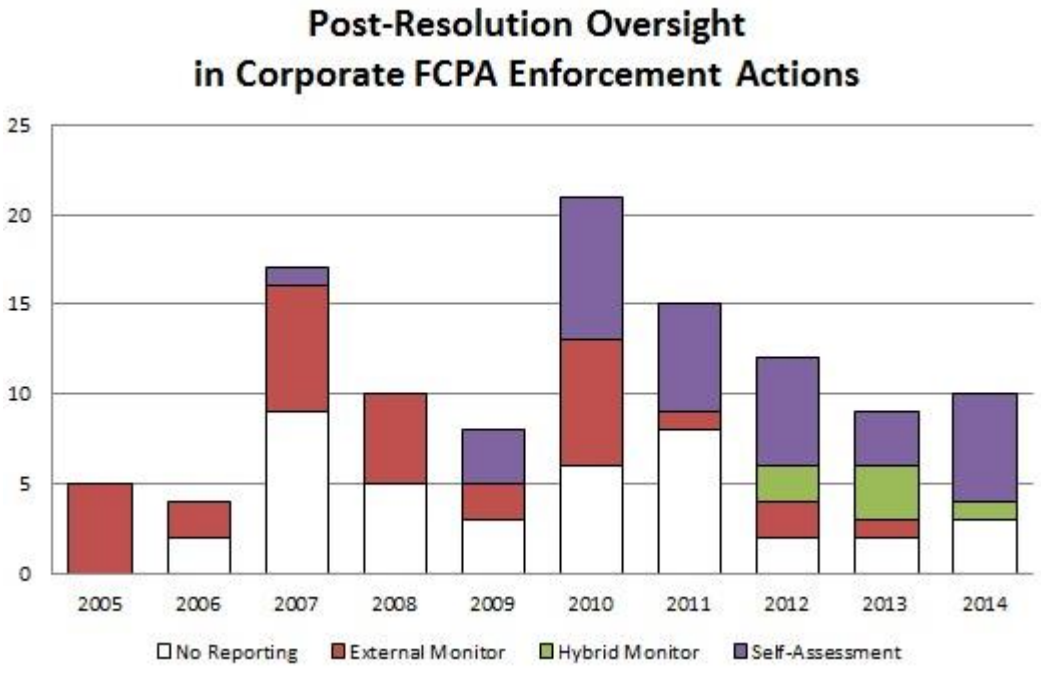
** BAE pleaded guilty to non-FCPA conspiracy charges of making false statements and filing false export licenses, but the alleged false statements concerned the existence of the company's FCPA compliance program, and the publicly reported conduct concerned alleged corrupt payments to foreign officials.

III. Post-Resolution Oversight Mechanisms

Post-resolution oversight mechanisms have long been a staple of corporate FCPA enforcement. These mechanisms can range from an agreement by the company to implement a compliance program and submit periodic self-assessment reports, to requiring the company to retain an external compliance monitor, to a "hybrid" approach whereby the company retains an external monitor for a portion of the post-resolution reporting period and then submits self-assessments for the balance of the reporting period.

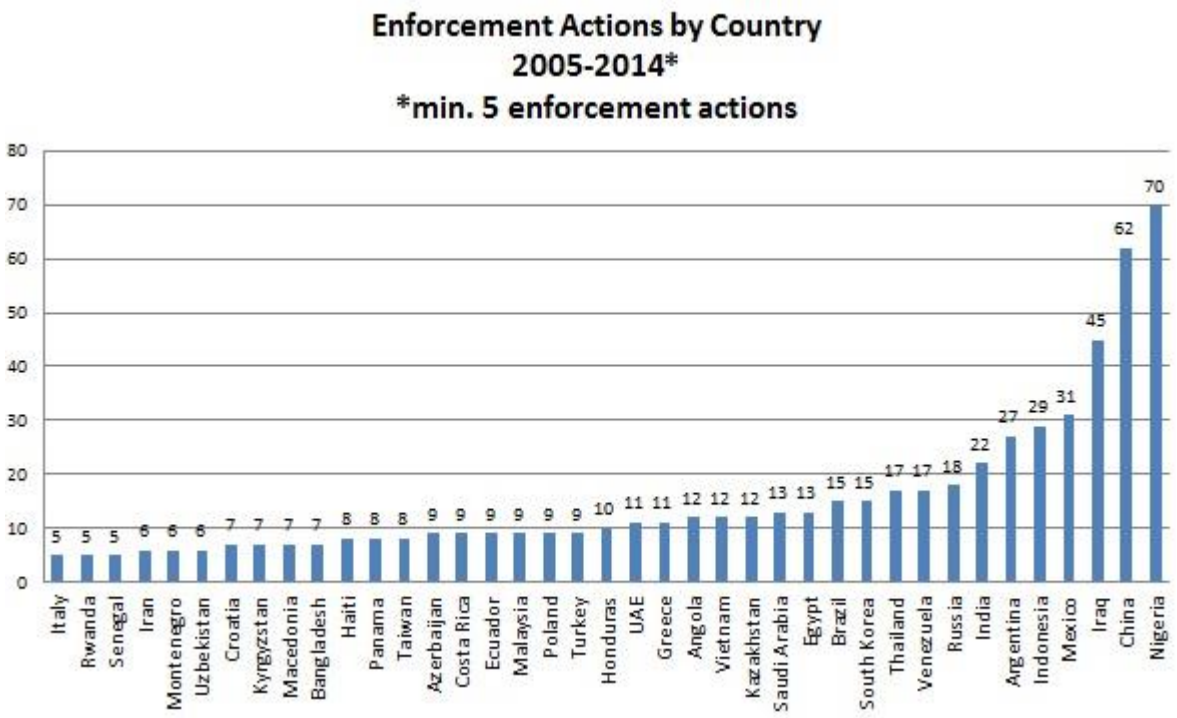
As demonstrated in the below chart, approximately three out of every five corporate FCPA resolutions over the past ten years have required some form of ongoing reporting or monitoring of the company's compliance program during a post-resolution period. But the frequency and mix of the various types of reporting obligations (or lack thereof) has changed substantially over time. From 2005 to 2009, it was more common for companies to escape an FCPA resolution without any form of post-resolution supervision. But in those cases where supervision was imposed, it was nearly always in the form of an independent compliance monitor. The 2007 settlement with Textron, Inc. was the first resolution of which we are aware that contained aspects of self-reporting, with the SEC requiring the company to certify that it had completed certain remedial actions that were ongoing as of the time of the resolution. Then, once Helmerich & Payne, AGCO, and UTStarcom received self-assessment obligations as part of their 2009 FCPA resolutions, full-blown monitorships became less common. But the more graduated options of self-assessments and hybrid monitorships have filled the void, and it is now very rare for a company to avoid post-resolution oversight obligations altogether.

The compliance undertakings DOJ requires of settling companies also have increased dramatically over time. In its earliest manifestations, standard post-resolution undertakings typically numbered nine. In more recent settlements, DOJ has imposed 18 separate post-settlement requirements, including "periodic reviews and testing of [the company's] anti-corruption compliance code, policies, and procedures . . . taking into account relevant developments in the field and evolving international and industry standards." In effect, the 18 articulated requirements serve as DOJ's template for an effective anti-corruption compliance program.



IV. Enforcement Actions by Country

Over the past decade, our FCPA updates have tracked the long-arm of U.S. regulators in enforcement actions involving corruption from Albania to Yemen. But in these ten years, three countries--Nigeria, China, and Iraq--have risen above the rest as the nation states most frequently cited in FCPA resolutions. Of this group, China stands out as the situs for by far the most independent investigations leading to FCPA enforcement actions. The majority of the Nigerian actions can be attributed to two investigations, involving the construction of a liquefied natural gas facility on Bonny Island and a customs sweep of oil and oil-service companies; the vast bulk of the Iraqi actions arise out of a single investigation stemming from the United Nations Oil-for-Food Program.



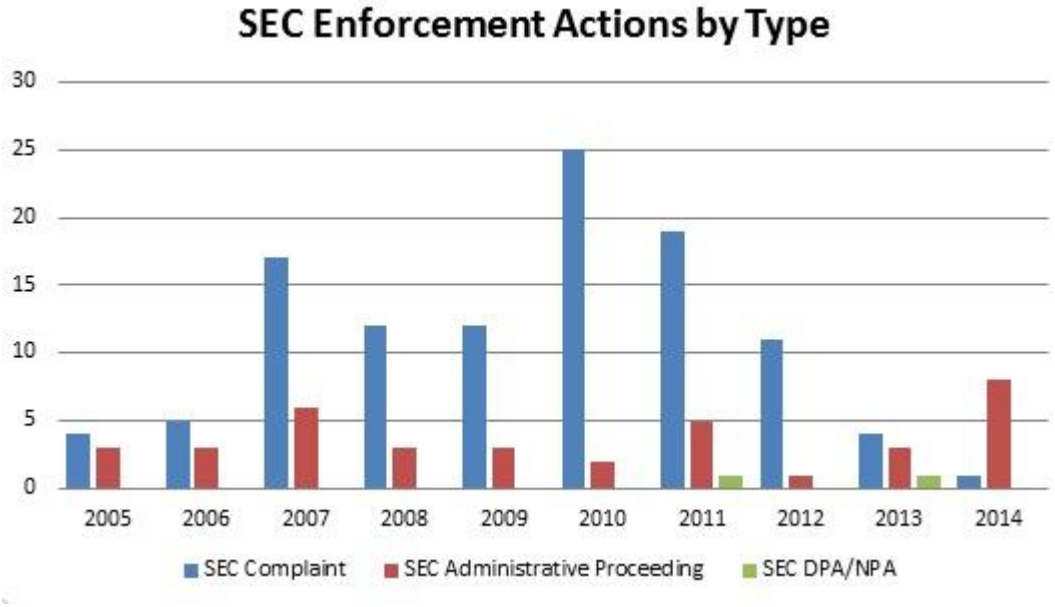
V. The SEC's Move Toward Administrative Proceedings

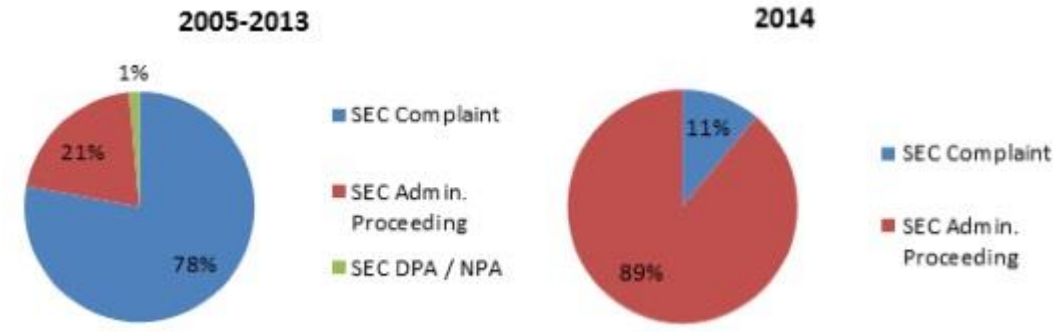
In a late-breaking trend, there has been much discussion of late in the SEC enforcement community regarding the Commission's move towards the use of in-house administrative proceedings--rather than civil complaints filed in federal district court--to effectuate its enforcement mandate. That trend is starkly evidenced by a comparison of 2012 to 2014 SEC FCPA enforcement actions: in 2012, the SEC filed 11 civil complaints as opposed to one administrative proceeding; in 2014, it was administrative proceedings that outnumbered civil complaints eight-to-one. Indeed, SEC FCPA Unit Chief Kara Brockmeyer recently remarked that the Commission's use of the more streamlined administrative proceeding process should be "the new normal" in FCPA enforcement actions.

The Commission also has dipped its toe into the water of alternative prosecution vehicles, such as deferred and non-prosecution agreements, although not nearly to the extent those resolution types have

been employed by DOJ. Since the SEC announced its "Cooperation Initiative" in 2010, the Commission has entered into one FCPA-related deferred prosecution agreement (Tenaris, 2011) and one FCPA-related non-prosecution agreement (Ralph Lauren, 2013). In announcing both of these resolutions, SEC Enforcement Staff praised the company for its voluntary disclosure, thorough internal review and remediation, and complete cooperation with the SEC's investigation.

The below charts illustrate the SEC's move toward administrative proceedings in 2014 FCPA enforcement actions. For more on this development, please see our 2014 Year-End Securities Enforcement Update, forthcoming on January 12, 2015.





2014 FCPA ENFORCEMENT ACTIONS (since July 1)

After a DOJ-heavy first half of the year, the SEC has led the enforcement charge since our 2014 Mid-Year FCPA Update. But there is no indication that either agency is taking its foot off the pedal--quite to the contrary, with the blockbuster Alstom and Avon enforcement actions described below, the two agencies pulled in more than $900 million in fines, penalties, and disgorgement in the last two weeks of 2014 alone.

Corporate Enforcement Actions

Alstom S.A.

DOJ's long-running investigation of French power company Alstom was no secret to our readership. We have been reporting on related enforcement actions since 2013, including an $88 million guilty plea resolution with Japanese trading company and Alstom partner Marubeni Corporation described in our 2014 Mid-Year FCPA Update and criminal charges against four Alstom executives (Lawrence Hoskins, Frederic Pierucci, William Pomponi, and David Rothschild) as first covered in our 2013 Mid-Year FCPA Update. Moreover, Alstom-related corruption investigations in multiple countries, including France, Italy, Poland, and the United Kingdom, foreshadowed what would become DOJ's largest FCPA enforcement action to date.

On December 22, 2014, DOJ announced criminal plea agreements with Alstom, two of its U.S. subsidiaries, and one of its Swiss subsidiaries. Pursuant to these agreements, Alstom pleaded guilty and agreed to pay a criminal fine of $772,290,000 to resolve a two-count criminal information charging violations of the FCPA's books-and-records and internal controls provisions. A Swiss subsidiary pleaded guilty to a single count of conspiring to violate the FCPA's anti-bribery provisions, and two U.S. subsidiaries each entered into deferred prosecution agreements to resolve anti-bribery conspiracy charges. Although Alstom will have to report to DOJ periodically throughout the next three years, it will avoid an independent monitor provided that it satisfactorily complies with the oversight terms of its already existing monitor that was imposed as part of a 2012 resolution with the World Bank Integrity Vice Presidency. A sentencing hearing currently is scheduled before Judge Janet Bond Arterton in the U.S. District Court for the District of Connecticut on June 23, 2015.

According to the charging documents, between 2000 and 2011, Alstom and its subsidiaries paid approximately $75 million in consultancy fees to third parties to secure approximately $4 billion worth of projects in the Bahamas, Egypt, Indonesia, Saudi Arabia, and Taiwan that netted the company $296 million in profits, all while knowing that at least a portion of the consultant payments would be used to bribe foreign officials in these nations. Alstom's alleged practices included the implementation of an "unwritten policy" to retain consultants in a manner that would avoid U.S. jurisdiction, including by retaining foreign-located consultants with offshore, non-U.S. dollar denominated bank accounts.

The dollar value of the Alstom resolution--DOJ's largest ever in the FCPA context--is more than enough reason to take note of this case. But embedded deep within the plea documents are a host of other interesting nuggets for the FCPA professional. First, although Alstom ceased being a U.S. issuer in 2004--more than 10 years ago--the parent company's charges were for books-and-records and

internal controls violations, which do not apply to non-issuers. Although the specific charging paragraphs of the criminal information do not extend beyond 2004, the statement of facts and (it appears) the conduct used in determining the massive fine extended well beyond. Speaking of the fine, $772 million appears to exceed the statutory maximum of twice the alleged gain from the offense ($296 million). DOJ takes the somewhat novel position in the plea papers that it is able to seek twice the gain from each charge against Alstom, thus effectively doubling the statutory maximum with each additional count, even though the underlying course of conduct is the same. Third, although it was very clear from DOJ's public statements announcing the resolution that DOJ believed this fine was appropriate due to Alstom's initial lack of cooperation with DOJ's investigation, the factors set forth in the plea papers provide interesting insight into how DOJ viewed this alleged lack of cooperation. The first factor DOJ listed was that Alstom failed to voluntary disclose its misconduct to DOJ even after one of its U.S. subsidiaries settled a corruption investigation with Italian authorities. Notably, Alstom disclosed the Italian investigation in its public securities filings.

DOJ's insistence on a parent corporation plea of guilty rather than a deferred prosecution seems to follow a DOJ pattern in other highly-visible prosecutions, including Credit Suisse and BNP Paribas. A common theme in these prosecutions is that the corporations were criticized for their failure to cooperate in the investigations. It appears that Alstom's saving grace was that its parent corporation was not charged with bribery but rather with violations of the books-and-records and internal controls provisions. This structure may assist Alstom in avoiding parent company government contracting debarment.

Avon Products, Inc.

Less than one week earlier, on December 17, 2014, DOJ and the SEC announced another long-anticipated resolution of FCPA charges--that against New York-based cosmetics company Avon Products. According to the charging documents, between 2004 and 2008, Avon's Chinese subsidiary provided more than $8 million in cash, gifts, and improper travel and entertainment benefits to secure various benefits from Chinese government officials. In the early 2000s, China announced plans to lift its ban on direct sales to consumers, provided that companies first obtain a license from the State by demonstrating and thereafter maintaining "a good business reputation." The government alleged that employees of Avon's Chinese subsidiary aggressively courted various decision-makers in the regulatory process, providing them with cash and other items of value, such as all-expenses paid trips within China and to Europe and North America, tickets to sporting events, and Avon products. After receiving the first direct selling licenses ever issued by China, in 2005 and 2006, the government concluded that employees of Avon's Chinese subsidiary continued to bestow improper benefits upon Chinese officials to avoid regulatory fines and negative publicity that could have harmed the company's public image and thereby endanger its license, including by purchasing advertising and sponsoring contests in state-owned media publications.

The charging documents provide detailed, blow-by-blow recounts of how Avon's Internal Audit and Legal departments flagged FCPA concerns in 2005 but did not ensure that the recommended remedial actions were carried out. The matter then resurfaced in 2006 without effective remedial action being taken. Finally, after Avon's CEO received a letter from a putative whistleblower in 2008, the matter

was referred to Avon's Board of Directors and a full investigation and disclosure to DOJ and the SEC followed.

Avon entered into a deferred prosecution agreement to resolve a books-and-records conspiracy charge and internal controls violation, and its Chinese subsidiary pleaded guilty to a criminal charge of conspiring to violate the books-and-records provision. Together the companies will pay criminal fines of $67.65 million. To resolve the SEC's charges, Avon consented to the filing of a settled civil complaint in the U.S. District Court for the Southern District of New York that also charges violations of the FCPA's accounting provisions, and agreed to pay $67.37 million in disgorgement plus prejudgment interest. Avon also is required to retain an independent compliance monitor for at least the first 18 months of the three-year term of its deferred prosecution agreement.

The resolutions mark an expensive, six-year ordeal. Since first disclosing the misconduct more than six years ago, Avon has lost a CEO, dealt with multiple shareholder suits, and reportedly spent more than $344 million on internal investigation costs alone--not counting the settlement. In the words of Assistant Attorney General Leslie R. Caldwell, "[p]ublic companies that discover bribes paid to foreign officials, fail to stop them, and cover them up do so at their own peril."

Bruker Corporation

In another FCPA enforcement action arising out of China--albeit one more modest by magnitudes--on December 15, 2014, the SEC announced FCPA books-and-records and internal controls charges against Bruker, a Billerica, Massachusetts manufacturer of scientific instruments. The SEC alleged that between 2005 and 2011, several Bruker subsidiaries in China provided approximately $120,000 in improper travel and entertainment benefits to employees of Chinese state-owned entities, including for trips to Austria, the Czech Republic, Italy, France, Germany, Norway, Sweden, Switzerland, and the United States, as well as more than $110,000 paid to Chinese government officials pursuant to purported "collaboration agreements" that had no legitimate business purpose.

To resolve the charges, and without admitting or denying the allegations, Bruker consented to the filing of a settled administrative proceeding and agreed to pay just over $2 million in disgorgement and prejudgment interest, plus a $375,000 civil penalty. In setting the size of the penalty, the SEC acknowledged Bruker's cooperation and voluntary disclosure, which occurred shortly after the company discovered the improper payments as part of an internal investigation into misappropriated company funds. Although Bruker reported prior to the resolution that it was cooperating with both DOJ and the SEC, there is no indication that DOJ intends to take action in this matter.

The Bruker resolution offers some insights into the SEC's expectations for building compliance programs to account for the risk of conducting business in China. With regard to Bruker's purported internal controls deficiencies, the SEC focused on the company's failure to translate its training materials and compliance policies into Mandarin and other local languages and to implement adequate oversight, by persons outside of China, of the expense processes for senior Chinese executives.

The Bruker investigation and settlement underscore the costs of FCPA investigations. In its securities filings, Bruker has disclosed that it recorded more than $24 million from 2011 through 2014 for legal

and other professional services incurred in relation to the investigation. As a risk/reward analysis, less than $2 million in profits led to direct expenses of more than $26 million inclusive of investigation and settlement expenses, not to mention the diversion of substantial management focus and attention.

Dallas Airmotive, Inc.

On December 10, 2014, DOJ announced an FCPA resolution with the aptly named Dallas Airmotive, a Texas-based provider of aircraft engine maintenance, repair, and overhaul ("MRO") services. According to the two-count criminal information, which charges both substantive and conspiracy-related violations of the FCPA's anti-bribery provisions, between 2008 and 2012 Dallas Airmotive and its Brazilian subsidiary arranged for the payment of bribes to secure MRO business from foreign officials in Argentina, Brazil, and Peru.

To resolve these charges, Dallas Airmotive entered into a three-year deferred prosecution agreement with DOJ that requires the payment of a $14 million criminal fine. In reaching an agreed-upon fine that is below the bottom of the advisory Guidelines range, DOJ considered Dallas Airmotive's "substantial cooperation" in the investigation, as well as improvements and continued commitment to its compliance program and the company's agreement to report to DOJ on its remedial efforts for the duration of the agreement.

Dallas Airmotive is the third MRO-provider to resolve FCPA charges in recent years. As reported in our 2012 Mid-Year and Year-End FCPA updates, DOJ previously brought FCPA enforcement actions against BizJet International Sales and Support, Inc. and The NORDAM Group, Inc.

Bio-Rad Laboratories, Inc.

On November 3, 2014, DOJ and the SEC announced a joint FCPA resolution with California-based medical device company Bio-Rad Laboratories. The DOJ documents allege that between 2005 and 2010, a Bio-Rad subsidiary paid third parties 15-30% commissions on its Russian sales while knowing that the third parties did not--indeed, lacked the capability to--perform the services described for those commissions. The SEC's charging document goes farther, alleging that the Bio-Rad subsidiary "demonstrated a conscious disregard for the high probability that [the Russian third parties] were using at least a portion of [the] commission payments to bribe Russian government officials in exchange for awarding the company profitable government contracts." The SEC also alleged actual corrupt payments were made during this same period in Thailand and Vietnam.

To resolve the criminal charges, Bio-Rad entered into a non-prosecution agreement with DOJ that alleges violations of the FCPA's books-and-records and internal controls provisions and requires that Bio-Rad pay a $14.35 million criminal fine. To resolve the SEC proceeding, which alleges FCPA bribery as well as accounting violations, Bio-Rad agreed to pay $40.7 million in disgorgement and prejudgment interest. Both agreements require Bio-Rad to report to the government on its remediation and compliance efforts for the next two years, and both acknowledge Bio-Rad's voluntary disclosure and substantial cooperation in the DOJ and SEC investigations.

Perhaps most interesting about this settlement is the SEC's theory for charging parent company Bio-Rad with bribery. Although the SEC appeared not to have actual evidence of bribery in Russia, it alleged that two "Emerging Markets managers"--who were both employees of the parent company and both based in the United States for most of the relevant period--ignored numerous "red flags." These alleged "red flags" included that the agents "did not have the resources to perform the contracted-for services," the "commissions were excessive and were paid to banks in Latvia and Lithuania," the commission payments were structured so as to avoid higher-level internal review protocol within Bio-Rad, and one of the Emerging Markets managers instructed a subordinate to "talk with codes" when referring to the agents.

Another noteworthy aspect of the Bio-Rad settlement is that it is the first DOJ FCPA corporate settlement agreement to require executives to certify, prior to the end of the reporting period, that the company has met its disclosure obligations. As noted above in the Ten-Year Trend section, post-resolution reporting obligations, including an affirmative obligation to disclose new misconduct, have long been a common feature of FCPA resolutions. But Bio-Rad's is the first agreement to insert a provision requiring that prior to the conclusion of the supervisory period, the company CEO and CFO "certify to [DOJ] that the Company has met its disclosure obligations," subject to penalties under 18 U.S.C. § 1001.

Layne Christensen Co.

On October 27, 2014, the SEC announced a settled administrative proceeding against Texas-based construction and drilling company Layne Christensen. According to the charging document, which the company neither admitted nor denied, between 2005 and 2010 Layne Christensen subsidiaries authorized and made an array of improper payments totaling more than $1 million to government officials in the African nations of Burkina Faso, Congo, Guinea, Mali, Mauritania, and Tanzania. These improper expenditures, which allegedly ranged from $4 customs clearance payments to six-figure payments to lawyers who provided no services, secured approximately $3.9 million worth of improper benefits for Layne Christensen through reduced tax liabilities, customs clearances, work permits, and relief from inspection by immigration and labor officials.

The SEC alleged that Layne Christensen violated the FCPA's anti-bribery, books-and-records, and internal controls provisions. To settle the charges, Layne Christensen paid $4.75 million in disgorgement and prejudgment interest, as well as a $375,000 civil penalty. The SEC credited Layne Christensen's self-disclosure, cooperation, and remedial efforts in determining the settlement terms, which include a two-year period in which Layne Christensen must report to the SEC regarding its compliance program. Layne Christensen's CEO announced after the SEC settlement that the company understands "that our voluntary disclosure, cooperation and remediation efforts have been recognized and appreciated by the staff of the DOJ and that the resolution of the investigation reflects these matters."

The SEC's theory that Layne Christensen violated the anti-bribery provisions by making improper payments to "obtain favorable tax treatment, customs clearance for its equipment, and a reduction in its customs duties" exemplifies the government's broad enforcement view of the FCPA's "obtain or retain

business" element. This view follows from a 2004 decision of the U.S. Court of Appeals for the Fifth Circuit in *United States v. Kay*, where the court held that "bribes paid to foreign officials in consideration for unlawful evasion of customs duties and sales taxes could fall within the purview of the FCPA's proscription," provided that "the bribery was intended to produce an effect . . . that would 'assist in obtaining or retaining business.'"

Smith & Wesson Holding Corp.

On June 19, 2014, Smith & Wesson announced publicly that DOJ had declined to pursue FCPA charges against the company. While DOJ held its fire, little over a month later, on July 28, 2014, the SEC took aim and announced a settled FCPA enforcement action against the Massachusetts-based firearms and law enforcement products manufacturer. The SEC's charges stem from alleged improper payments made or offered by international sales staff and third-party agents as the company was seeking to expand into international markets. According to the SEC's order, between 2007 and early 2010, Smith & Wesson made or offered improper payments to government officials in Bangladesh, Indonesia, Nepal, Pakistan, and Turkey. Despite the breadth of these efforts, only one tainted contract resulted, for the sale of 548 pistols to the Pakistani police force.

To resolve these charges, and without admitting or denying the facts alleged therein, Smith & Wesson agreed to settle an administrative proceeding filed by the SEC alleging anti-bribery, books-and-records, and internal controls violations. Smith & Wesson agreed to pay $128,892 in disgorgement and prejudgment interest arising from the completed Pakistani deal, as well as a civil penalty of just over $1.9 million. Smith & Wesson also is required to submit self-assessment reports on the status of its compliance program over the course of the next two years. Although the SEC alleged that Smith & Wesson's FCPA compliance program was inadequate at the time of the misconduct--particularly for a company that was looking to expand into international markets for the first time--it did credit Smith & Wesson's cooperation in the investigation and remediation efforts, which included firing its entire international sales force.

The Smith & Wesson enforcement action makes clear that the U.S. government will pursue attempted--not just completed--bribery attempts. Indeed, although still modest by today's standards, the $1.9 million civil penalty derived from the entire course of conduct exceeded the gain on the single contract corruptly obtained by more than 17-fold.

Also notable is that this enforcement action appears to be a derivative of the infamous "SHOT Show" sweep of 22 FCPA-related arrests in 2010. SHOT Show defendant Amaro Goncalves was during the relevant period Smith & Wesson's Vice President of International Sales, the position to which the SEC attributes much of the corrupt conduct in the Smith & Wesson Order. As discussed in our 2012 Mid-Year FCPA Update, DOJ dismissed charges against Goncalves and his SHOT Show co-defendants after failing to obtain a conviction in either of the first two trial groupings, although it should be noted that the criminal trials pertained only to a government-created sting operation and not the real-world conduct described in the Smith & Wesson settlement.

Individual Enforcement Actions

FLIR Systems Defendants

After more than two years without filing charges against a single individual defendant, on November 17, 2014 the SEC initiated a settled administrative proceeding against Stephen Timms and Yasser Ramahi, former employees of the Middle East branch office of Oregon-based defense contractor FLIR Systems Inc. Alleging a fact pattern that could have been lifted straight from an "FCPA 101" training program, the SEC charged that Timms and Ramahi turned a contractually-authorized "Factory Acceptance Test" trip for officials of the Saudi Ministry of Interior into a 20-day "world tour." In total, Timms and Ramahi spent nearly three weeks entertaining the Saudi officials in Beirut, Boston, Casablanca, Dubai, New York, and Paris, with only about 8-10 hours spent completing the facility inspection and related business meetings in Billerica, Massachusetts. The SEC further alleged that Timms provided five Saudi officials with watches worth approximately $1,425 each. When FLIR's Finance Department initiated an audit of these expenses, Timms and Ramahi allegedly provided false "cover" explanations, complete with fraudulent documentation and drafting false responses on behalf of FLIR's agent.

To settle the matter, Timms and Ramahi neither admitted nor denied the allegations but consented to the filing of an administrative proceeding charging violations of the FCPA's anti-bribery and accounting provisions. Timms and Ramahi also will pay civil penalties of $50,000 and $20,000, respectively.

No charges have been announced against Timms' and Ramahi's former employer. In the administrative proceeding, the SEC highlighted that FLIR's company code of conduct clearly prohibited their misconduct and that both received FCPA-related training from the company during the relevant period.

2014 YEAR-END CHECK-IN ON ENFORCEMENT LITIGATION

PetroTiger Defendants

In our 2014 Mid-Year FCPA Update, we reported on DOJ's FCPA enforcement actions against several former executives of British Virgin Islands oil and gas company PetroTiger Ltd. As of our last check-in, both former co-CEO Knut Hammarskjold and former general counsel Gregory Weisman had pleaded guilty to dual-purpose conspiracy charges covering FCPA and wire-fraud schemes in connection with the bribery of an official of Colombian state-owned petroleum company Ecopetrol S.A. and, separately, the acceptance of kickbacks from a PetroTiger acquisition target company. The second half of 2014 saw the third PetroTiger defendant, co-CEO Joseph Sigelman, begin to put the government to its burden of proof.

In July 2014, Sigelman moved to dismiss two counts of the indictment, arguing that DOJ improperly joined two unrelated offenses--kickback and bribery--in the same counts. Judge Joseph E. Irenas of the U.S. District Court for the District of New Jersey denied Sigelman's motion. In September, Sigelman moved to suppress evidence the government obtained from Weisman on the ground that it is either privileged or was obtained in violation of the Due Process Clause insofar as DOJ used Weisman-

-who served as Sigelman's personal attorney in addition to his role as PetroTiger's general counsel--as a secret informant to report on and, on one occasion, surreptitiously record his conversations with Sigelman. Other motions filed by Sigelman include a motion to dismiss his honest-services wire fraud charges for failure to state an offense, his motion to strike prejudicial surplusage from the indictment, and Sigelman's challenge to DOJ's contention that Ecopetrol is an "instrumentality" whose employees constitute "foreign officials" under the FCPA.

On December 30, 2014, Judge Irenas held a three-hour hearing on Sigelman's motions and immediately thereafter issued a one-page order denying all of them, save the honest-services wire fraud motion, which was deferred. It is not clear whether Judge Irenas will later publish a written opinion providing the Court's analysis.

Sigelman's trial is presently set for April 2015. Sentencing for Weisman and Hammarskjold also has been pushed back into 2015, because the government expects them both to testify at the Sigelman trial.

Alstom Defendants

The corporate Alstom settlement that closed out 2014 was preceded by criminal charges against four former Alstom executives--Lawrence Hoskins, Frederic Pierucci, William Pomponi, and David Rothschild--as well as one of the recipients of Alstom's bribery campaign, Asem Elgawhary. As of our 2014 Mid-Year FCPA Update, Pierucci and Rothschild had each pleaded guilty in 2013 and the remainder of the group was headed towards trial.

On July 17, 2014, Pomponi switched course and pleaded guilty to a single count of conspiring to violate the FCPA. Then, on December 4, 2014, Elgawhary followed suit and pleaded guilty to non-FCPA mail fraud, conspiracy, and tax charges. Both are scheduled for sentencing--Pomponi before Judge Janet Bond Arterton in the U.S. District Court for the District of Connecticut and Elgawhary before Judge Deborah K. Chasanow in the U.S. District Court for the District of Maryland--in 2015.

Hoskins, on the other hand, is vigorously challenging his charges. Notably, on July 31, 2014, Hoskins filed a motion to dismiss the indictment arguing both that DOJ's charges are untimely because Hoskins resigned from Alstom in 2004, thus removing himself from any alleged conspiracy more than five years prior to the 2013 indictment, and that in any event he was not an "agent" of a "domestic concern" for purposes of the FCPA's anti-bribery provisions because his employment was with the French parent company, not the U.S. subsidiary. DOJ's opposition argued principally that these claims are inherently fact-based and thus not amenable to resolution by motion to dismiss. Regarding Hoskins's withdrawal from the conspiracy, DOJ countered that Hoskins met with Alstom executives and received company contributions after his resignation, which show that he continued to benefit from and/or support the conspiracy. Regarding the agency argument, DOJ critiqued Hoskins's "formalistic notions of agency law," arguing that as a matter of fact he was "authorized to act" on behalf of the U.S. subsidiary and that a ruling that Hoskins was not an agent of the U.S. subsidiary would transform foreign nationals "at the highest reaches of business organizations [into] a special class of persons immune from FCPA prosecution."

On December 29, 2014, Judge Arterton denied Hoskins's motion to dismiss, agreeing with DOJ that these issues require the resolution of factual disputes that must be put to the jury with the benefit of a full evidentiary record. Trial remains on the Court's calendar for June 2015.

United States v. Cilins

We reported in our 2014 Mid-Year FCPA Update on the guilty plea by Frederic Cilins to obstruction of justice charges. Cilins admitted that he attempted to bribe Mamadie Touré--the widow of former Guinean President Lansana Conté--to destroy evidence of his employer BSG Resources Ltd.'s scheme to bribe Guinean officials to obtain lucrative mining rights.

On July 25, 2014, the Honorable William H. Pauley III of the U.S. District Court for the Southern District of New York sentenced Cilins to serve two years of imprisonment, to pay a fine of $75,000, and to forfeit approximately $20,000 that was seized from Cilins upon his arrest. In rejecting Cilins' request for a sentence of time served (approximately 17 months), Judge Pauley noted that Cilins had engaged in "the kind of criminal conduct that screams for general deterrence" and that "strikes at the heart of the criminal justice system." Judge Pauley nonetheless concluded that a sentence within the recommended Guidelines range of 37-to-46 months was "more than [what] is necessary" under the circumstances.

BizJet Defendants

We last discussed the indictment of four executives of BizJet International Sales and Support, Inc. in our 2013 Year-End FCPA Update. At that point, two of the executives--Peter DuBois and Neal Uhl--had pleaded guilty and been sentenced to probationary, non-jail sentences for their role in the alleged bribery of government officials in Brazil, Mexico, and Panama to secure MRO contracts for their employer, which resolved its own FCPA charges in 2012. The remaining two executives--Bernd Kowalewski and Jald Jensen--were believed to be fugitives residing outside of the United States.

On July 24, 2014, DOJ unsealed a plea agreement with Kowalewski, who had been taken into custody in Amsterdam in March 2014 and was cooperating with DOJ. Then, on November 18, 2014, Judge Gregory K. Frizzellon of the U.S. District Court for the Northern District of Oklahoma sentenced Kowalewski to time served while detained in the Netherlands and a $15,000 fine for his role in the bribery scheme. Although touted by Assistant Attorney General Caldwell as a reminder that "the reach of the law extends beyond U.S. borders," the Kowalewski case also represents the third former BizJet executive to avoid U.S. prison for his FCPA violations. The fourth executive--Jensen--appears still to be at large.

Direct Access Partners Defendants

In each of our semi-annual reports since our 2013 Mid-Year FCPA Update we have been reporting on the prosecution of several former executives of New York broker-dealer Direct Access Partners LLC for their scheme to pay kickbacks to an official of a Venezuelan state-owned bank. On December 17, 2014, the two former executives who had yet to resolve their charges--Benito Chinea and Joseph DeMeneses--pleaded guilty to one count each of a dual-purpose conspiracy to violate the FCPA's anti-

bribery provisions and the Travel Act. Sentencing for each defendant, as well as those who previously pleaded guilty, is currently set for March 2015. A separate fraud case brought by the SEC against the Direct Access Partner defendants remains stayed, although it seems more likely to proceed in the future given the apparent conclusion of DOJ's criminal case.

Magyar Telekom Defendants

We have been reporting for several years now on the long-running civil enforcement case brought by the SEC against three former executives of Magyar Telekom, Plc.--Andras Balogh, Tamas Morvai, and Elek Straub. The second half of 2014 saw modest developments, but no conclusion to the case pending in the Southern District of New York.

As reported in our 2014 Mid-Year FCPA Update, Judge Richard J. Sullivan issued May 29, and June 30, 2014 rulings resolving a dispute as to whether defendants could continue to invoke their Fifth Amendment rights in refusing to answer deposition questions without forfeiting their civil case. He required the defendants to submit to depositions by the end of July that would remain under seal until December 2014, when defendants agree that the criminal statute-of-limitations will have run out. Balogh and Straub appear to have submitted to their depositions, but the SEC and Morvai reported to the Court that they had entered into settlement negotiations and therefore received an extension of the deposition deadline. The public docket does not indicate any further reports as to the status of settlement negotiations.

The other major ongoing issue in this case has been the parties' joint effort to utilize the Hague Convention to obtain discovery from more than 30 witnesses spread across Germany, Greece, Hungary, and Macedonia. Reflecting the many challenges presented in obtaining international discovery in FCPA cases, the Hungarian Ministry of Justice wrote to Judge Sullivan on August 18, 2014, expressing concern with the scope of testimony sought through the parties' letters rogatory--encompassing witnesses residing in the territory of eight different Hungarian district courts--and questioning whether it was possible to find a solution for obtaining that testimony under Hungarian law.

Perhaps in an effort to avoid some of the international discovery difficulties, on July 17, 2014, the SEC filed an amended complaint that "narrow[ed] the factual allegations it will pursue at trial . . . to the allegations relating to bribery in Macedonia, but not the allegations relating to bribery in Montenegro." All three defendants filed answers to the SEC's first amended complaint on August 4, 2014. Discovery is scheduled to conclude in January 2015 and no trial date currently is yet on the calendar.

Cert. Denied

Three petitions for final review in FCPA matters wound their way up to the United States Supreme Court this year and once, twice, three times they were denied.

Far and away the highest-profile of the three was defendants' petition to review the Eleventh Circuit's decision interpreting the scope of the FCPA's "instrumentality" provision in *United States v.*

Esquanazi, discussed in our 2014 Mid-Year FCPA Update. Notwithstanding the attention this case drew within the FCPA community, or the several amicus briefs in support of petitioners, the Court denied the petition without comment on October 6, 2014. This leaves the Eleventh Circuit's two-part, fact-intensive examination of whether the enterprises (1) are "controlled" by a foreign government and (2) "perform[] a function the controlling government treats as its own" as the dominant standard until and unless another court reaches a different result.

Also discussed in our 2014 Mid-Year FCPA Update was the Third Circuit's *In re: Grand Jury Subpoena* decision applying the "crime-fraud" exception to permit *in camera* questioning of an attorney regarding otherwise privileged communications between him and his client, the target of an FCPA-related grand jury investigation, based on a finding that the target was using the attorney's advice to determine how to carry out a crime he had already decided to commit. Notwithstanding the circuit split cited in the unnamed target's petition, the Court denied certiorari on November 10, 2014.

Finally, we reported in our 2013 Mid-Year FCPA Update on the efforts of Korean national Han Yong Kim, one of six former executives and representatives of Control Components, Inc. indicted on FCPA charges in April 2009, to make a special appearance through counsel to challenge the indictment without submitting himself to the custody of U.S. authorities. This application was denied initially by Judge James V. Selna of the U.S. District Court for the Central District of California, and then upheld by the Ninth Circuit on Kim's writ of mandamus, notwithstanding the Court's acknowledgment of a circuit split concerning the scope of the "fugitive disentitlement" doctrine. The Supreme Court denied certiorari on October 20, 2014.

Kleptocracy Forfeiture Actions

DOJ's Kleptocracy Asset Recovery Initiative, first announced by Attorney General Eric H. Holder, Jr. in 2010, was quite active in 2014. In November 2014 remarks to the Arab Forum on Asset Recovery, Deputy Attorney General James M. Cole emphasized the program's dual purposes of "protect[ing] the integrity of the U.S. financial system and its institutions from the destructive influence of corruption proceeds and . . . deny[ing] kleptocrats safe haven to hide and enjoy their ill-gotten gains." 2014 developments in kleptocracy forfeiture actions include:

- On August 6, 2014, Judge John D. Bates of the U.S. District Court for the District of Columbia ordered the forfeiture of more than $480 million in assets from now-deceased Nigerian dictator Sani Abacha, including from bank accounts held in France, Ireland, the Bailiwick of Jersey, and the United Kingdom. DOJ's claim against an additional $148 million held in various UK investment portfolios remains pending.

- On September 3, 2014, DOJ announced the unsealing of an additional forfeiture complaint against alleged proceeds of corruption involving former South Korean President Chun Doo Hwan. This complaint, which relates to approximately $500,000 held in a Pennsylvania limited partnership held by Chun's daughter-in-law, follows the April 2014 forfeiture action against more than $700,000 in proceeds from the sale of a house in Newport Beach, California, as reported in our 2014 Mid-Year FCPA Update.

- On October 10, 2014, DOJ announced that it has reached a settlement to conclude the 2011 forfeiture action against Teodoro Nguema Obiang Mangue, the sitting Second Vice President of the Republic of Equatorial Guinea. As first reported in our 2011 Year-End FCPA Update, DOJ filed civil forfeiture complaints against approximately $70 million worth of property believed to be held by Obiang in the United States. The settlement requires Obiang to relinquish property worth approximately half of that amount, including a $30 million Malibu mansion, a Ferrari, and certain Michael Jackson memorabilia, all allegedly purchased by Obiang through "a corruption-fueled spending spree in the United States."

- On November 7, 2014, DOJ announced an unsealed forfeiture complaint against $106,488 in a South African bank account held by Mahamoud Adam Bechir, who from 2004 to 2014 served as Chad's Ambassador to the United States and Canada. The complaint alleges that the bank account holds what is left of $2 million in bribes Bechir received from oil and gas company Griffiths Energy International Inc. in exchange for Bechir's use of his position to influence the award of oil development rights in Chad. As reported in our 2013 Year-End FCPA Update, Griffiths Energy pleaded guilty to violations of Canada's Corruption of Foreign Public Officials Act in February 2013. On December 11, 2014, Bechir filed a Verified Claim asserting an interest in the seized property and demanding its return.

- On November 21, 2014, DOJ filed a civil forfeiture complaint against property and restaurant equipment in Jacksonville, Florida, that were allegedly purchased with monies corruptly paid to Mamadie Touré, who as mentioned above is the widow of former Guinean President Lansana Conté. Although not explicitly stated in the forfeiture complaint, the circumstances suggest that the alleged bribes were paid to Touré by BSG Resources, on whose behalf Cilins allegedly was acting when he attempted to induce Touré to destroy documents relevant to the investigation of BSG Resources. According to DOJ's complaint--which draws largely from a declaration by Touré published on a Guinean government website--Touré laundered more than $5 million in bribe payments through a limited liability company and used those monies to purchase the property that is the subject of the action.

2014 FCPA-RELATED PRIVATE CIVIL LITIGATION

Our consistent refrain in these semi-annual updates is that the FCPA provides for no private right of action. Nevertheless, there are a variety of causes of action that can and have been used--with varying degrees of success--to pursue private redress in the United States for public corruption committed abroad. Indeed, the second half of 2014 saw a continued uptick in private, collateral lawsuits arising from the announcement of FCPA investigations and resolutions, further underscoring that the risks of corruption extend beyond negotiations with the U.S. government.

RICO Actions

One of the most interesting and developing areas of FCPA-related private civil litigation involves claims brought pursuant to the Racketeer Influenced and Corrupt Organizations ("RICO") Act. Passed into law in 1970, principally as a tool to combat organized crime families, the RICO statute permits a

private litigant who has been "damaged in his business or property" by a "pattern" of "racketeering activity" to bring a suit for up to three times his loss.

More and more frequently, we have seen foreign government entities whose own officials solicited bribes, bring RICO lawsuits against the U.S. companies that allegedly paid them (leading to some ironic allegations as to which entity is truly the "corrupt organization"). Examples from 2014 include:

- On July 16, 2014, the U.S. Court of Appeals for the Second Circuit issued a summary order affirming a judgment out of the Southern District of New York dismissing a $500 million RICO lawsuit brought by Mexican state-owned oil company Petróleos Mexicanos ("PEMEX") against Siemens AG and its joint venture partner SK Engineering & Construction Co. Ltd. Like the district court below, the Second Circuit never made it to the merits of PEMEX's bribery allegations, but instead affirmed the case's dismissal on the grounds that PEMEX had failed to allege sufficient contacts with the United States to sustain U.S. jurisdiction in light of Supreme Court and Second Circuit precedent interpreting the presumptively domestic reach of U.S. laws, including RICO.

- Not to be deterred, PEMEX filed a second RICO lawsuit in U.S. court on December 2, 2014, this time in the Northern District of California and against Hewlett-Packard Co. and its Mexican subsidiary. This RICO action followed Hewlett-Packard's resolution of criminal and civil charges with DOJ and the SEC in April 2014, as reported in our 2014 Mid-Year FCPA Update, including one fact pattern involving PEMEX officials. Hewlett-Packard has yet to file a responsive pleading.

- On October 3, 2014, another Mexican government agency, Instituto Mexicano del Seguro Social, filed a RICO action against Orthofix International N.V., another company that previously resolved an FCPA enforcement action with U.S. authorities arising from corrupt payments to the plaintiff's officials. Orthofix has yet to file a responsive pleading.

Another FCPA-inspired RICO pattern that we have seen emerge in recent years involves a private company that has been damaged by corrupt payments, such as an unsuccessful bidder that allegedly lost out on a procurement because one of its competitors paid bribes. Examples from 2014 include:

- On August 18, 2014, Judge J. Paul Oetken of the Southern District of New York dismissed with prejudice RICO and related civil conspiracy claims brought by former U.S. Ambassador to Venezuela Otto J. Reich and his consulting company, Otto Reich Associates, LLC, against the principals and officers of Derwick Associates Corporation. Reich had alleged that the Derwick defendants secured high-value power plant construction contracts from the Venezuelan government by bribing Venezuelan officials. Although the Court held that Reich had alleged a sufficient U.S. nexus to survive a motion to dismiss on the Travel Act and wire fraud predicate acts (while noting that violations of the FCPA may not serve as independent RICO predicates), these acts were not sufficiently related to one another to satisfy RICO's "pattern" requirement. Following this dismissal of the RICO and civil conspiracy claims, only state law claims relating to defamation remain.

- On September 10, 2014, two private Mexican companies--Worldwide Directories, S.A. de C.V. and Ideas Interactivas, S.A. de C.V.--filed a RICO complaint in the Southern District of New York against Yahoo! Inc., its Mexican subsidiary, and the companies' law firm, Baker & McKenzie LLP, alleging that defendants corruptly influenced members of the Mexican judiciary in their successful effort to overturn a $2.7 billion judgment in plaintiffs' favor. Defendants have until January 2015 to file their first responsive pleading. Gibson Dunn represents the Yahoo! entities in this matter and will strongly contest the complaint.

- On September 30, 2014, Judge Kimba M. Wood of the U.S. District Court for the Southern District of New York dismissed a RICO lawsuit brought by former Ukrainian Prime Minister Yulia Tymoshenko and others against Ukrainian natural gas oligarch (and, as noted in our 2014 Mid-Year FCPA Update, current FCPA defendant) Dmytro Firtash. The complaint alleged that Firtash and his co-conspirators paid Ukrainian officials, using laundered funds, to unlawfully persecute and arbitrarily detain Tymoshenko and the other plaintiffs in response to Tymoshenko's political opposition to Firtash, an ally of deposed Ukrainian President Victor Yanukovych. The Court allowed plaintiffs to amend their complaint, however, to enable it to reconsider the lawsuit in light of a recent Second Circuit decision (*European Community v. RJR Nabisco, Inc.*) that restated the framework for evaluating RICO's extraterritoriality standard.

- In our 2014 Mid-Year FCPA Update, we reported on the April 30, 2014 RICO lawsuit brought by Rio Tinto PLC in the U.S. District Court for the Southern District of New York alleging that Vale, S.A., BSG Resources, and their representatives (including Cilins, who has pleaded guilty to related criminal charges as described above) conspired to steal Rio Tinto's trade secrets and employ them to corruptly procure the Guinean iron-ore mining concessions that had previously belonged to Rio Tinto. On December 17, 2014, Judge Richard M. Berman rejected the defendants' *forum non conveniens* motion to dismiss, finding that two of the defendants in the case currently maintain New York addresses and that various significant events, including a number of meetings, occurred in New York. Reportedly in response to the allegations in this suit, the Republic of Guinea has rescinded all rights to the contested mining concessions, spurring BSG Resources to register an arbitration request against the Republic of Guinea at the World Bank Group's International Centre for Settlement of Investment Disputes on September 8, 2014.

Shareholder Lawsuits

Another frequent collateral effect of the announcement of an FCPA enforcement action, or even investigation, is shareholder litigation. Indeed, it is now commonplace for a company's announcement of an FCPA event to be followed immediately by a plaintiff firm's solicitation for plaintiffs to bring a private lawsuit. Historically, this has meant either a class action lawsuit brought on behalf of shareholders whose stock value has dropped allegedly as a result of the misconduct or a shareholder derivative lawsuit brought against the company's directors for allegedly violating their fiduciary duties to run the business in a compliant manner. Sometimes, companies even find themselves the unfortunate recipients of both types of lawsuits, in addition to the underlying government

investigation. Recently, shareholders have become even more aggressive and begun filing "records inspection claims" to enforce their rights to review corporate books and records relating to FCPA investigations. If successful, the information gained in the records suit can be used to pursue the other types of actions.

Examples of shareholder lawsuits with significant developments during the second half of 2014 include:

- On July 31, 2014, the Fuchs Family Trust filed an action in Delaware Chancery Court to enforce its right to inspect Parker Drilling Company's books and records connected to Parker Drilling's April 2013 DOJ/SEC FCPA settlement, described in our 2013 Mid-Year FCPA Update. This records inspection suit follows several failed derivative actions brought against Parker Drilling, including one by the Fuchs Family Trust, arising out of the company's FCPA investigation and settlement. Trial on the records inspection claim was held on November 12, 2014, and a decision is pending.

- On August 15, 2014, a putative class of Key Energy Services, Inc. shareholders filed a securities fraud complaint in the U.S. District Court for the Southern District of Texas, alleging that the company fraudulently concealed from the market that it had been engaging in corrupt business practices in Russia. The lawsuit followed a nearly 6%, two-day drop in Key Energy's stock price after it announced that the company was under investigation for potential FCPA violations in Russia. A lead plaintiff has now been appointed and the stipulated briefing schedule calls for a consolidated complaint to be filed in February 2015.

- On September 28, 2014, Judge Paul G. Gardephe for the U.S. District Court for the Southern District of New York dismissed without prejudice a securities fraud class action brought on behalf of a class of Avon Products, Inc. shareholders. The amended complaint alleged that Avon and its officers falsely inflated stock prices by failing to disclose FCPA violations, and plaintiffs pointed to purported misrepresentations in corporate reports and disclosures that touted Avon's financial performance and its ethics and compliance procedures. But the Court held that some of the statements at issue were not actionable under the securities laws because they constituted "puffery or mere generalizations [that were] too general to cause a reasonable investor to rely upon them." With respect to the remaining statements concerning Avon's financial performance, the Court found that plaintiffs failed to establish *scienter* because there were no facts demonstrating that the statements were made with the "intent to deceive, manipulate or defraud." Judge Gardephe did permit plaintiffs an opportunity to amend, and amend they did on October 24, 2014. Avon's answer to the second-amended complaint is pending.

- On October 22, 2014, Chief Judge Donetta W. Ambrose of the U.S. District Court for the Western District of Pennsylvania gave preliminary approval to a proposed settlement agreement to resolve the 2012 lawsuit filed on behalf of shareholders of Alcoa Inc. Alcoa denied all wrongdoing, but has agreed to adopt compliance reforms that include the appointment of a chief ethics and compliance officer, the development of a corporate anti-

corruption policy, the creation of enhanced mandatory annual FCPA employee training, and the implementation of anti-corruption due diligence procedures for mergers and acquisitions--all measures that at least arguably were covered by Alcoa's settlement with DOJ and the SEC, as reported in our 2014 Mid-Year FCPA Update. Alcoa also agreed to pay $3.75 million in plaintiffs' attorneys' fees. This settlement also will resolve several derivative actions that had been pending in Pennsylvania state court. A final settlement hearing is scheduled for January 20, 2015.

- On November 30, 2014, after Cobalt International Energy, Inc. announced that it had received a "Wells Notice" indicating that SEC Staff were prepared to recommend charges against the company for alleged FCPA violations in Angola, a putative class of shareholders filed a securities fraud suit in the U.S. District Court for the Southern District of Texas. Although Cobalt had disclosed the SEC's investigation several years earlier, plaintiffs allege that both the company and its outside counsel made misleading statements describing the investigation in its securities filings and to press publications, such as "[w]e [] believe that our activities in Angola have complied with all laws, including the FCPA" (10-K) and "we are more convinced than ever that Cobalt has not violated any U.S. or Angolan laws" (outside counsel statement to Financial Times). Cobalt has yet to file a responsive pleading.

- Between December 8 and 24, 2014, Brazilian oil company Petróleo Brasileiro S.A. ("Petrobras") found itself a defendant in four separate securities fraud actions filed in the U.S. District Court for the Southern District of New York. These lawsuits follow highly-publicized corruption investigations in Brazil and the United States. Petrobras, Brazil's state-run oil company and one of the largest companies in Latin America, is subject to the U.S. securities laws because it has American Depository Receipts traded on the New York Stock Exchange.

Freedom of Information Act Lawsuit

On July 24, 2014, 100Reporters LLC, a non-profit news media organization, brought a Freedom of Information Act ("FOIA") lawsuit against DOJ in the U.S. District Court for the District of Columbia, challenging the Department's refusal to turn over records relating to its 2008 FCPA resolution with Siemens AG and the compliance monitorship that followed. Specifically, 100Reporters is seeking records relating to each of four annual monitorship reports prepared by Dr. Theo Waigel and his U.S. counsel, F. Joseph Warin of Gibson Dunn, as well as internal DOJ records relating to the company's sentencing. Within weeks of learning of the suit, Siemens and Dr. Waigel (represented by Gibson Dunn) filed motions to intervene.

On December 3, 2014, Judge Rudolph Contreras granted both motions to intervene, finding that both Siemens and Dr. Waigel have interests in this litigation that are distinct from the government's interests under FOIA. With respect to Siemens, the Court held that the company has a strong interest in the confidentiality of the information contained in the monitorship reports. With respect to Dr. Waigel, the Court held that he has an interest as the author and submitter of the documents in question. A status hearing has been set for April 2015.

Dodd-Frank Whistleblower Retaliation Lawsuit

In our 2013 Year-End FCPA Update, we reported on a Dodd-Frank whistleblower retaliation lawsuit brought against Siemens AG by former compliance officer Meng-Lin Liu, alleging that he had been wrongfully terminated as a result of his raising compliance concerns within the company. This lawsuit was dismissed by Judge William H. Pauley of the U.S. District Court for the Southern District of New York, and on August 14, 2014, this dismissal was affirmed by the Second Circuit Court of Appeals. Judge Gerard E. Lynch, writing for the unanimous panel, agreed with the district court that Dodd-Frank's anti-retaliation provision does not apply extraterritorially to this claim brought by a resident of Taiwan who was employed by the Chinese subsidiary of a German company and reported alleged misconduct in China, Hong Kong, and North Korea to supervisors in China and Germany.

Employee Defamation Lawsuit

Robert Writt continues to press a defamation suit against his former employer Shell Oil Co. in a Texas state court lawsuit that we first reported on in our 2013 Mid-Year FCPA Update. Writt alleges that Shell defamed his character by reporting to DOJ that he had "engage[d] in unethical conduct" in approving certain payments to third parties. This report was made as part of the company's presentation to DOJ of its internal investigation findings, which ultimately led to Shell's November 2010 FCPA settlement, discussed in our 2010 Year-End FCPA Update. No charges were ever brought against Writt.

The defamation suit was initially dismissed by the trial court on the grounds that Shell had an "absolute privilege" to make statements to DOJ during its investigation because the DOJ investigation was a "judicial proceeding." In a June 2013 decision, the Texas First District Court of Appeals reversed, holding (over a strongly-worded dissent) that statements made to DOJ during an investigation do not receive absolute immunity because a DOJ investigation is not a judicial proceeding. Shell petitioned the Texas Supreme Court, which granted certiorari in August and heard oral argument in November 2014.

Amicus submissions have come out in force in support of Shell's position, including a letter signed by six former attorneys general and a brief on behalf of the Chamber of Commerce of the United States, National Association of Manufacturers, and the American Petroleum Institute. Amici argue that denying employers immunity for statements made to law enforcement authorities will chill corporate cooperation during the investigative stage of proceedings, when it is of the most value. Gibson Dunn represents the business association amici. A decision is expected in 2015.

Auditor Lawsuit

On March 27, 2014, Direct Access Partners, LLC filed suit against its former auditing firm, Rothstein, Kass & Co., P.C., in the Superior Court of New Jersey, Essex County. Direct Access Partners, which as discussed above has had multiple executives plead guilty to FCPA violations, alleges that Rothstein Kass's negligence permitted the $66 million fraud to go undetected for three years, until its ultimate revelation was so damaging that the broker-dealer was forced to shut its doors. Judge Thomas Vena

denied the motion to dismiss on September 19, 2014, holding that the dispute would require factual development via the discovery process. The case is now in the preliminary stages of discovery.

FCPA OPINION PROCEDURE RELEASE 14-02

By statute, DOJ must provide a written opinion at the request of an issuer or domestic concern stating whether DOJ would prosecute the requestor under the anti-bribery provisions for prospective (not hypothetical) conduct it is considering. Published on DOJ's FCPA website, these releases provide valuable insights into how DOJ interprets the FCPA, although only parties who join in the requests may rely upon them authoritatively.

On November 7, 2014, DOJ issued its second FCPA opinion procedure release of 2014 (14-02) and 61st overall. The requestor was a U.S. issuer who discovered during pre-acquisition due diligence of a foreign cosmetics company that the target company had made seemingly corrupt payments and generally had lax record-keeping and control environments. The payments in question, and indeed the entirety of the target company's operations, had no discernible nexus to the United States and thus did not appear to violate the FCPA. Requestor sought an opinion from DOJ as to whether, if it went forward with the acquisition, it would be liable for the pre-acquisition corrupt payments. Noting that this issue was already "squarely addressed" by the DOJ and SEC co-authored 2012 *Resource Guide to the U.S. Foreign Corrupt Practices Act*, DOJ concluded that because "[s]uccessor liability does not . . . create liability where none existed before," the requestor would not be subject to prosecution for the pre-acquisition corrupt conduct.

DOJ declined to opine on the adequacy of the requestor's proposed steps for post-acquisition compliance integration (and thus did not go as far as it did in opinion release 08-02, discussed in our 2008 Mid-Year FCPA Update), but did set forth several recommended steps that an acquiring company can take to minimize exposure in the acquisition context:

1. conduct thorough risk-based FCPA and anti-corruption due diligence;

2. implement the acquiring company's code of conduct and anti-corruption policies as quickly as practicable;

3. conduct FCPA and other relevant training for the acquired entity's directors and employees, as well as third-party agents and partners;

4. conduct an FCPA-focused audit of the acquired entity as quickly as practicable; and

5. disclose any corrupt payments discovered through due diligence.

FCPA SPEAKERS' CORNER

U.S. government regulators were once again busy on the speaking circuit in 2014, providing the FCPA community with insights into investigative priorities and the regulators' expectations for companies that come before them.

- Assistant Attorney General Leslie R. Caldwell – Speaking at the November 2014 American Conference Institute's International Conference on the Foreign Corrupt Practices Act ("ACI FCPA Conference"), Caldwell emphasized how DOJ "increasingly find[s] [itself] shoulder-to-shoulder with law enforcement and regulatory authorities in other countries." Then, in a December op-ed in the *Huffington Post*, Caldwell and her co-author, Assistant Secretary of State for International Narcotics and Law Enforcement Affairs William R. Brownfield, described the necessity of such increasingly coordinated international anti-corruption efforts to "ensur[e] a level playing field for companies . . . and promot[e] economic and social stability, which in turn enables growth and development." Caldwell and Brownfield emphasized the necessity of international collaboration and partnership to ensure "that the rule of law triumphs over the scourge of kleptocracy and corruption."

- SEC FCPA Unit Chief Kara N. Brockmeyer – Speaking at the October 2014 American Bar Association's National Institute on International Regulation and Compliance, Brockmeyer countered the skeptic's view that voluntary disclosure isn't "worth it," pointing out that a "disproportionate number of cases we decline" involve self-reporting. Without getting into specifics, consistent with the SEC's and DOJ's longstanding commitment to keep details or statistics regarding declinations confidential, Brockmeyer offered that "declinations are not unicorns--they do exist."

- DOJ FCPA Unit Chief Patrick Stokes – Speaking at the same event, Stokes emphasized the importance of prosecuting individuals for FCPA violations, reminding the audience that DOJ will use all of its law enforcement tools (including electronic surveillance) to gather evidence against these individuals. Stokes quipped, "Corporate executives should wonder who is listening in on their calls and conversations."

- SEC Director of Enforcement Andrew J. Ceresney – Discussing the Commission's focus on enforcement actions against individuals at the ACI FCPA Conference, Ceresney touted the SEC's recent enforcement action against former employees of FLIR Systems Inc. and predicted "more cases against individuals in the coming year."

- Principal Deputy Attorney General Marshall L. Miller – In a September 2014 speech at Global Investigation Review's GIR Live New York conference, Miller emphasized the importance of companies securing and providing to DOJ evidence that can be used against individual employees if the companies wish to receive meaningful cooperation credit. Miller recommended that companies make "evidence of individual culpability the first thing [they] talk about when [they] walk in the door to make [a] presentation," as well as "the last thing [they] talk about before [they] walk out."

DOJ PERSONNEL CHANGES

As the Obama Administration enters its final years, DOJ's leadership is poised to change, from the Front Office down to the Fraud Section.

Attorney General Holder plans to step down in early 2015, with Loretta E. Lynch, the U.S. Attorney for the Eastern District of New York, nominated to take his place pending Senate confirmation. Lynch has familiarity with the FCPA, both from private practice and from overseeing her office's co-prosecution of the Ralph Lauren and Garth Peterson cases.

On May 15, 2014, highly-regarded Leslie R. Caldwell was confirmed to serve as Assistant Attorney General for the Criminal Division. Caldwell joins DOJ from private practice, and previously served DOJ in various capacities for 17 years, perhaps most notably as Director of the Enron Task Force from 2002 to 2004. The Principal Deputy Attorney General slot has been filled by Marshall Miller, who is a consummate professional with approximately 15 years of federal prosecution experience. Caldwell's new Deputy Assistant Attorney General with oversight of the Fraud Section is Sung-Hee Suh, who served as a prosecutor in the Eastern District of New York with Caldwell from 1994 to 1999.

Caldwell, Miller, and Suh will have an opportunity to shape the direction of the Fraud Section in many ways, including by hiring its new leader. Principal Deputy Fraud Section Chief William J. Stellmach is acting as the Fraud Section Chief until the position is filled. Below him, Fraud Section Deputy Chief and FCPA Unit Head Patrick Stokes is settling into his new role, having come over from the Fraud Section's Securities and Financial Fraud unit in February 2014.

2014 INTERNATIONAL ANTI-CORRUPTION DEVELOPMENTS

2014 OECD Foreign Bribery Report

This year, the Organisation for Economic Co-operation and Development ("OECD") celebrated the 20th anniversary of its Working Group on Bribery in International Business Transactions and 15th anniversary of the entry into force of its Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("OECD Anti-Bribery Convention"). The OECD marked these milestones on December 2, 2014, by publishing a comprehensive, 15-year report with fascinating statistical analyses of 427 transnational corruption cases brought by OECD Member States between February 1999 and May 2014. Among other things, the report found that:

- Bribery schemes are more likely to involve upper management than rogue, low-level employees (indeed, in 12% of cases studied, the CEO was involved in the misconduct);
- Third parties factor into almost three out of every four foreign bribery cases;
- Large, established companies are more often implicated in foreign bribery prosecutions than small- and medium-sized enterprises;

- External whistleblower activity has yet to play a significant role in anti-corruption enforcement, as only 2% of the cases surveyed came to the attention of enforcement authorities through whistleblowers;

- Combined monetary sanctions imposed in anti-corruption enforcement actions increased from just over $36 million in 2005 to $1.2 billion in 2013; and

- Of 263 cases concerning individuals that were surveyed by the report, barely 30% (80) of them saw prison time.

Enforcement by Multilateral Development Banks

Investigation and punishment of suspected misconduct by multilateral development banks ("MDBs") in connection with MDB-funded projects has continued to grow in significance. The World Bank is the largest and most influential of the MDBs. In Fiscal Year 2014, the World Bank's two member institutions committed $40.8 billion in loans, grants, and guarantees--$9.3 billion more than in the previous fiscal year. The strings attached to this money include committing to ensure that the projects it funds are free from corruption, fraud, collusion, and coercion--collectively, "Sanctionable Practices."

In Fiscal Year 2014, the World Bank sanctioned 67 firms and individuals--more than double the number of 2014 FCPA enforcement actions. Sanctioned entities can be barred from participating in projects funded by the Bank as well as other prominent MDBs through the operation of a cross-debarment agreement. Further, companies that fail at the front end are required to institute corporate compliance programs and often engage compliance monitors at the back end to regain eligibility for participation in World Bank-funded projects. Government contracting authorities and national law enforcement authorities also take note of MDB-imposed sanctions. In Fiscal Year 2014, the World Bank made 22 referrals to national law enforcement authorities.

As we noted in our 2013 Year-End FCPA Update, the World Bank has undertaken a "stock-taking" exercise to review its sanctions system for possible improvements. This evaluation solicited views from multiple external stakeholders, including Gibson Dunn. The World Bank has since announced that it has completed its final report on this first phase of a two-phase review of the Bank's sanctions system, presenting the final report to its Audit Committee on October 27, 2014. The recommendations have not yet been made public, but are expected to "go live" early this year.

Anti-Corruption Developments in the United Kingdom

2014 was a year of firsts for the UK's Serious Fraud Office ("SFO"). The SFO secured its first convictions (albeit for private corruption) under the UK Bribery Act 2010. It also secured its first contested convictions for international corruption (before securing its second, third, fourth and fifth convictions)--including the first contested conviction of a company--under the Bribery Act's predecessor statute. We expect the SFO will be buoyed by these impressive results, and with a number of high-profile investigations and prosecutions ongoing, there is every reason to expect similar results in 2015.

UK Bribery Act Convictions

On December 5, 2014, the SFO secured its first convictions under the UK Bribery Act, in connection with a Ponzi fraud scheme. As noted in prior updates, the Bribery Act is in many respects broader than the FCPA, and covers corruption and fraudulent schemes outside of the transnational bribery context. The convicted defendants were Sustainable AgroEnergy plc executive Gary West and sales agent Stuart Stone. West and Stone were sentenced to four and six years, in addition to being disqualified from serving as company directors for 15 and 10 years, respectively. A third defendant was convicted of non-Bribery Act fraud offenses and a fourth was acquitted.

Pre-Bribery Act and Non-Criminal Corruption Resolutions

On December 22, 2014, Smith & Ouzman Limited was found guilty of three counts of corruptly agreeing to make payments in violation of Section 1(1) of the *Prevention of Corruption Act 1906*, the Bribery Act's predecessor statute. The company specializes in printing secure documents such as ballot papers and certificates, and the improper payments were made between 2006 and 2010 to secure government printing contracts in Kenya and Mauritania. This was the first time that the any UK prosecuting agency had secured a guilty verdict after trial against a corporation for international corruption. Companies convicted previously all had pleaded guilty.

Four individuals also were charged, with two acquitted and two found guilty. Christopher Smith, the company's chairman, was convicted of two counts of corruptly making payments, and Nicolas Smith was convicted of three counts. The defendants were acquitted of similar charges relating to payments in Ghana and Somaliland. Sentencing is currently scheduled for February 2015.

On December 17, 2014, it was announced that Aberdeen-based oil equipment provider International Tubular Services ("iTS") paid £172,200 by way of a Civil Recovery Order after admitting bribery and corruption in Kazakhstan. iTS self-reported in November 2013 and accepted that it had benefited from unlawful conduct, namely corrupt payments made by a former employee to secure work. The payments were discovered when the company was sold to Parker Drilling Company. Few details have been released, as Scotland's Crown Office is considering charging individuals. As explained in our 2012 Year-End FCPA Update, Scotland operates a more generous self-reporting amnesty program than does England or other parts of the United Kingdom.

On July 22, 2014, former Alba CEO Bruce Hall was sentenced to 16 months' imprisonment, plus a confiscation order of £3,070,106.03 and £600,010 in compensation to Alba and prosecution costs, following his 2012 guilty plea to receiving £2.9 million in corrupt payments from Alcoa agent Victor Dahdaleh. The SFO also has launched proceedings in the High Court under Part 5 of the *Proceeds of Crime Act 2002* to recover an additional $900,000 in admitted corrupt payments that Hall has agreed to divest. Hall's guilty plea follows the very public collapse of the SFO's prosecution of Dahdaleh, as described in our 2013 Year-End FCPA Update.

On August 4, 2014, the Southwark Crown Court sentenced four former Innospec Ltd. executives for their roles in corruption conspiracies in Indonesia and Iraq, which as described most recently in our 2014 Mid-Year FCPA Update was the SFO's first contested overseas corruption prosecution, albeit

under the *Prevention of Corruption Act 1906*. Dennis Kerrison was sentenced to four years in prison, Paul Jennings was sentenced to two years in prison, Miltiades Papachristos was sentenced to 18 months in prison, and David Turner was given a 16-month suspended sentence, which includes 300 hours of unpaid work. In meting out these sentences, Judge Andrew Goymer remarked that although "[n]one of these defendants would consider themselves in the same category as common criminals[,] . . . [i]f a company registered or based in the UK engages in bribery of foreign officials it tarnishes the reputation of this country in the international arena." Both Kerrison and Papachristos appealed their convictions, but the Court of Appeals affirmed (except to reduce Kerrison's sentence to three years) on September 19, 2014.

Sentencing Guidelines for Fraud, Bribery, and Money Laundering Offenses

In our 2013 Mid-Year FCPA Update, we reported that the UK Sentencing Council had published a consultation on proposed draft sentencing guidelines for fraud, bribery, and money laundering offenses. The definitive guidelines were published on May 23, 2014, and went into effect on October 1, 2014. The guidelines apply to all individual offenders aged 18 and older and to corporations sentenced on or after October 1, 2014, regardless of the date of the offense. For individual defendants, the guidelines require the court to apply an eight-step process to determine the appropriate sentence. The steps vary for corporate offenders, reflecting different principles that apply when considering a sentence for corporations.

Relevant to Bribery Act offenses, in determining the level of harm the appropriate figure will typically be the "gross profit from the contract obtained, retained or sought as a result of the offending." In the absence of evidence as to the profit improperly obtained, the appropriate measure may be "between 10 and 20 per cent of the worldwide revenue derived from the product or business area to which the offence relates for the period of the offending." For Section 7 cases for failure to prevent corporate bribery, an alternative measure "may be the likely cost avoided by failing to put in place appropriate measures to prevent bribery." The harm is then multiplied by a factor of one, two, or three depending on the level of culpability.

The court then considers aggravating and mitigating factors, and will adjust the penalty accordingly. The clear direction to the court is that the combination of orders made, compensation, confiscation and fine ought to achieve the removal of the ill-gotten gain, appropriate additional punishment, and deterrence. The guidelines also require the court to consider a company's ability to pay and note that the fine must be substantial enough to send a message to a company's management and shareholders about the importance of following the law. Indeed, they go so far as to say that in some cases a fine large enough to put a company out of business may be "an acceptable consequence."

SFO Policy on Cooperation and Privileged Investigations

We would be remiss not to observe an interesting development concerning the SFO's policy for corporate cooperation and the waiver of legal privilege, as played out in in the context of the SFO's investigation into allegations involving the Sweet Group and improper payments in the Middle East. On November 6, 2014, the Sweet Group issued an update to the London Stock Exchange stating

that "The Group continues to cooperate with the SFO." The SFO apparently took exception to this characterization because five days later, on November 11, the Sweet Group issued an update that included the following passage: "Sweet Group believes that it is doing all that it reasonably can to cooperate with the SFO investigation while at the same time exercising its fundamental right to legal professional privilege in fulfilling its corporate and regulatory requirements. In mid-August 2014, Sweet Group took the decision on legal advice to continue its independent investigation. Consequent to that decision, the SFO no longer considered Sweet Group to be cooperating. This development suggests that the SFO views a privileged company investigation as indicative of non-cooperation in its own investigation.

The UK Anti-Corruption Plan

In December 2014, the UK government published its long-awaited policy statement on fighting corruption--the UK Anti-Corruption Plan. The Plan discusses more than 60 recommendations and provides a timetable and a government body responsible for implementation. Those that we have initially flagged as significant developments include:

- Recommendation 8: The UK government is going to consider ways of incentivizing bribery and corruption whistleblowers.

- Recommendation 36: The Ministry of Justice is going to consider adopting a new offense of a commercial organization failing to prevent economic crime, thus extending the Bribery Act's Section 7 strict-liability offense to economic crimes other than bribery. The Ministry of Justice also is to consider reforming the tests for corporate criminal liability more generally, which may aim to lower the high prosecutorial hurdle of having to show that the "controlling mind and will" of a company (usually the board) was involved in the commission of the offense.

- Recommendation 37: Calls for the creation of a central anti-bribery and corruption unit within the National Crime Agency.

- Recommendation 63: All British Overseas Territories and Crown Dependencies with financial services sectors (Bermuda, BVI, Cayman, Gibraltar, Guernsey, Jersey, Isle of Man, Turks & Caicos) should implement the United Nations and OECD conventions against bribery and corruption.

- Recommendation 64: Would require UK companies to report on payments to governments in the oil and gas, mining, and forestry industries, and provide a first Extractive Industries Transparency Initiative Report by April 2016.

Anti-Corruption Developments in Canada

Canada continues to toughen its anti-bribery regime, including most significantly the March 2014 amendment of the Department of Public Works and Government Services' Integrity Framework. The amendments make bidders for Public Works contracts ineligible if they, or an affiliated company (defined broadly to include entities sharing a common parent), have been convicted of certain crimes,

including foreign bribery, within the past ten years. Because the guidelines apply retroactively, they reportedly have already impacted several multinationals to settle FCPA cases with U.S. enforcement authorities in the last decade.

Anti-Corruption Developments in China

China grabbed global headlines this year with its prosecution and conviction of the Chinese subsidiary of British pharmaceutical company, GlaxoSmithKline plc ("GSK"). In September 2014, GSK was fined a record 3 billion yuan (approximately $489 million) for allegedly bribing doctors to sell its drugs, and former GSK China chief Mark Reilly and four other executives received prison sentences ranging from two to four years.

Meanwhile, President Xi's anti-corruption campaign continues to expand in duration and scope, reaching not only government agencies but also state-owned enterprises in the energy, transportation, telecommunication, and media sectors. Since Xi took power in 2012, more than 80,000 officials have been disciplined for breaking Chinese Communist Party rules. From January to September 2014, more than 13,000 Chinese officials were convicted of corruption and bribery. The formal arrest and expulsion from the Party of Zhou Yongkang, China's former head of domestic security, retired member of the elite Politburo Standing Committee, is easily the highest-level corruption case in PRC history. Other high-profile officials ensnared in graft investigations include former National Development and Reform Commission Vice Minister and head of National Energy Administration Liu Tienan, former General Xu Caihou, former China National Petroleum Corporation Chairman and head of the State Council's Assets Supervision and Administration Commission Jiang Jiemin, and former People's Political Consultative Conference Vice Chair Su Rong.

China also has added an extraterritorial aspect to its anti-corruption campaign. In July 2014, the Public Security Ministry launched "Operation Fox Hunt," a six-month campaign to hunt down corrupt public officials who have fled overseas, along with their stolen assets. The Ministry's estimates are staggering--18,000 corrupt officials are believed to have spirited nearly $129 billion from China. A major inhibitor to the Ministry's efforts is the lack of repatriation treaties between China and popular destination countries, including Australia, Canada, and the United States.

High-profile investigations and strong rhetoric notwithstanding, the perception that Xi's anti-graft drive is incomplete, politically motivated, and opaque remains. Further complicating the situation, many in the anti-corruption community took note of the August 8, 2014 conviction of private investigators Peter Humphrey and Yu Yingzeng, who ran a due diligence business that provided information relevant to corruption matters to multinational companies, including GSK. The husband and wife defendants were convicted of illegally obtaining citizens' personal information and sentenced to two-and-one-half and two years, respectively.

Anti-Corruption Developments in Germany

On September 1, 2014, the German Criminal Code was amended to include a new statutory offense, "Passive and Active Bribery of Members of Legislative Bodies." Before the amendment, bribery of members of legislative bodies only applied to buying or selling a vote in specific ballots or

elections. The renamed and extensively revised offense expands prohibited conduct to include the provision of immaterial benefits as well as those provided indirectly through a third party. It also broadens the statute's reach to all members of legislative bodies of the German federal parliament (*Bundestag*) and the German states, as well as elected regional authorities, the European Parliament, legislative assemblies of NGOs, and legislative organs of foreign states. But culpability under the amended statute still requires that the offender intend to induce a specific action from the representative. Accordingly, benefits given to a representative after a desired action or in furtherance of the general goodwill remain non-actionable. The amendment also calls for a review of corporate conduct guidelines and compliance controls to mitigate risks that current lobbying practices in Germany violate the new provisions.

Further, effective November 14, 2014, Germany ratified the United Nations Convention against Corruption ("U.N. Convention"). Although Germany was one of the first signatory states to the U.N. Convention in 2003, it failed to fully ratify it for over 11 years due to the shortcomings of its domestic criminal laws regarding the bribery of members of parliament. The amendment described above has addressed this problem.

Although the introduction of a "Corporate Criminal Code" (*Verbandsstrafgesetzbuch*) continues to be subject to intensive debates, the legislative process remains at a standstill. Further discussion of the proposed provisions can be found in our 2013 Year-End and 2014 Mid-Year FCPA updates. Another legislative development we are following is a plan to introduce a new criminal offense of "Passive and Active Bribery in the Healthcare Business," which would prohibit medical professionals from requesting advantages, and any person from giving or offering such advantages, in exchange for favorable treatment in the medical treatment process.

With respect to anti-corruption enforcement, on December 10, 2014, Rheinmetall AG resolved to accept a fine, including disgorgement of profits, of some $46 million to settle proceedings by the prosecutor's office in Bremen relating to bribes connected to a subsidiary's $185 million sale of antiaircraft defense systems to the Greek army. Several former employees of Rheinmetall now are facing individual bribery charges.

Anti-Corruption Developments in Greece

Near the end of November 2014, Greek prosecutors filed a nearly 2,400 page indictment with the Highest Regional Court Athena alleging corruption-related offenses stemming from a transaction between Siemens AG and OTE A.E., the Greek state-owned telecom. The indictment accuses 64 individuals, including former Siemens CEO Heinrich von Pierer and former Siemens CFO Heinz-Joachim Neubürger, of active and passive bribery and money laundering. Greek prosecutors allege that approximately $85 million in improper payments were made to secure the approximately $1.5 billion contract. The Highest Regional Court Athena has not yet decided whether and to what extent criminal proceedings will be opened. Siemens AG settled allegations for approximately €270 million in 2012 arising out of conduct in Greece.

Anti-Corruption Developments in India

The second half of 2014 began with all eyes on newly-elected Prime Minister Narendra Modi, who ran a campaign focused largely on casting the incumbent Congress party as indifferent to the myriad corruption scandals that plagued its rule. Immediately after his inauguration, Prime Minister Modi vowed to initiate sweeping reforms designed to punish companies that bribe public officials, particularly those involved in infrastructure projects. Nevertheless, Prime Minister Modi has encountered a political culture resistant to change. For example, the establishment of the *Lokpal*, an independent anti-corruption investigatory body created by historic legislation as described in our 2013 Year-End FCPA Update, remains in limbo as lawmakers contemplate changes to the law's processes for selecting the agency's members. The Prime Minister most recently has focused his energy on seeking global cooperation in the fight against "black money," funds stashed away in offshore tax havens notorious for hiding ill-gotten gains of corrupt public officials and business leaders.

On the enforcement front, Indian authorities are ramping up their investigation into alleged kickbacks paid to Indian military officials by a subsidiary of Italian defense contractor Finmeccanica S.p.A. Despite a court settlement that ended a probe by Italian prosecutors into the company, on September 22, 2014, Indian officials arrested New Delhi-based attorney Gautam Khaitan amidst allegations that he helped establish bank accounts and middlemen for the purpose of facilitating the payments. Indian officials also continue to investigate Finmeccanica's former CEO, Giuseppe Orsi, despite his acquittal in Italy, discussed below. India's Ministry of Defence has blacklisted Finmeccanica from future government defense contracts in the wake of the scandal.

Anti-Corruption Developments in Italy

On October 9, 2014, an Italian court acquitted Giuseppe Orsi, the former head of Italy's state-controlled defense and industrial group Finmeccanica, of international corruption charges related to a $712 million deal to sell 12 helicopters to India in 2010. Orsi was, however, sentenced to two years in prison for false bookkeeping in connection with the deal. Former AgustaWestland CEO Bruno Spagnolini, Orsi's co-defendant, also received two years for false bookkeeping but similarly was acquitted of the corruption charge.

Anti-Corruption Developments in Latin America

Anti-corruption developments in Latin America include continually mounting activity in Brazil, which recently adopted a tougher anti-bribery law as reported in our 2014 Mid-Year FCPA Update, and in Colombia, which is considering new anti-corruption legislation in connection with its efforts to join the OECD. As in many Latin American countries, Colombia's existing anti-bribery laws do not provide for corporate liability and the steep penalties called for by the OECD Anti-Bribery Convention. Colombia joins the growing list of countries seeking to create or enhance legislation that will allow for criminal prosecution of corporations.

Brazil has emerged as a dynamic figure on the global anti-corruption stage. The country's new anti-bribery law has garnered significant attention from companies operating there, which now are subject to corporate criminal liability and compliance requirements. And while it continues to put the

finishing touches on implementing regulations that will provide guidance on the specific requirements for compliance programs, the government has demonstrated its eagerness to begin enforcing anti-corruption laws with high-profile corporate investigations and dozens of charges filed against individuals.

On December 11, 2014, Brazilian prosecutors charged 36 individuals with bribery, money laundering, and cartel-related offenses arising out of their highly-publicized "Operation Car Wash" investigation of corruption at Petrobras. Among those charged are executives at six major Brazilian construction companies: Camargo Corrêa, Engevix, Galvão Engenharia, Mendes Junior, OAS, and UTC Engenharia. Prosecutors allege that executives at these firms colluded to inflate the price of Petrobras contracts and channel kickbacks from Petrobras to Brazilian politicians and political parties, and have demanded the return of approximately 1.18 billion BRL (approximately $448 million). Judge Sérgio Moro now must determine whether to accept the charges, in which case the individuals will face trial. To date, he has accepted the charges against executives at Engevix, Galvão Engenharia, and OAS. If found guilty, the executives charged could face incarceration for terms ranging from 11 to 51 years. On December 29, 2014, Petrobras responded to these indictments by temporarily banning 23 companies from being contracted and from taking part in bids by Petrobras.

On December 15, 2014, Brazilian prosecutors filed charges against three more people in connection with a separate prong of the Petrobras investigation. The allegations here are that Samsung Heavy Industries, acting through Toyo Setal executive Julio Camargo, paid $53 million in bribes to Brazilian lobbyist Fernando Soares, who then passed the money along to Nestor Cerveró, then the head of Petrobras's international division. Cerveró and Soares have both been charged with two counts of passive corruption and 64 counts of money laundering, and Camargo has been charged with two counts of active corruption, 64 counts of money laundering, and an additional seven financial offenses. Prosecutors have warned of even more charges in this investigation, as Prosecutor-General Rodrigo Janot reportedly stated that "[w]e're far from being at the end" of the investigation.

In August 2014, Brazilian authorities filed a criminal complaint in a separate investigation accusing eight current or former Embraer S.A. employees--vice presidents Eduardo Munhos de Campos and Orlando Jose Ferreira Neto, regional directors Acir Luiz de Almeida Padilha Jr., Luiz Eduardo Zorzenon Fumagalli, and Ricardo Marcelo Bester, and managers Albert Phillip Close, Luiz Alberto Lage da Fonseca, and Eduardo Augusto Fernandes Fagundes--of paying a $3.5 million bribe to a Dominican Republic Air Force official in connection with a $92 million contract to deliver attack planes.

Anti-Corruption Developments in the Netherlands

On November 12, 2014, Dutch-based oil and gas industry service provider SBM Offshore NV paid $240 million to resolve an international bribery-related enforcement action brought by Dutch prosecutors--making it one of the largest bribery settlements of the year. The settlement ended a two-and-a-half year inquiry into improper payments allegedly made by the company to sales agents and foreign officials in Angola, Brazil, and Equatorial Guinea between 2007 and 2011.

According to the Dutch Public Prosecution Service (*Openbaar Ministerie*), SBM was able to achieve the out-of-court settlement, without having to admit guilt, due to the company's (1) disclosure to the authorities (the *Openbaar Ministerie* as well as DOJ) and full investigative cooperation; (2) establishment of a new management board that took significant measures to improve the company's compliance systems; and (3) public remorse for its past failure to implement appropriate controls. In a press release, SBM stated that DOJ will not prosecute the company and has closed its inquiry.

Anti-Corruption Developments in Qatar

On November 13, 2014, FIFA published a summary of an internal investigation into allegations of corruption surrounding the bids to host the 2018 and 2022 World Cups, which were won by Russia and Qatar, respectively. The summary stated that insufficient evidence had been identified to justify stripping the tournaments from either country. But the man appointed to lead the investigation, former Southern District of New York U.S. Attorney Michael J. Garcia, responded publicly that the summary "contains numerous materially incomplete and erroneous representations of the facts and conclusions detailed in the . . . report." He also revealed his intent to appeal the decision to FIFA's Appeal Committee. In response to growing international criticism over its handling of the investigation, on November 18, 2014, FIFA asked the Swiss police to initiate its own investigation into the allegations. Public reports suggest that the Swiss are not the only ones investigating these allegations, as the U.S. FBI and UK SFO also have their own open inquiries.

Anti-Corruption Developments in the Russian Federation

Amidst the international sanctions and economic troubles, the Russian government has maintained its anti-corruption rhetoric. According to the Russian Federation's Investigative Committee, the Russian government initiated more than 21,000 corruption-related criminal cases from January to September 2014. Approximately 8,000 people reportedly were convicted of corruption-related offenses during that period, including more than 1,000 federal and local government officials, 45 members of federal and local legislatures and political candidates, and 500 law enforcement officials. The Investigative Committee's spokesman said that corruption caused approximately RUR 15 billion (approximately $255 million) in damages to the State in 2014, of which nearly one-half had been compensated through forfeiture.

But corruption continues to plague the country. A Russian non-governmental news agency recently stated that anti-corruption enforcement is too slow, and that law enforcement agencies are reluctant to expose and courts reluctant to convict powerful corrupt officials. The head of the Russian National Anti-Corruption Committee, a civic organization established to eradicate corruption in Russia, echoed the concern by claiming that nearly 30% of Russian government officials are corrupt, and that the problem is the direst in the public procurement sector, where intermediary companies are used to siphon off funds from Russian state organizations. A recent poll also showed that Russians are skeptical about the government's anti-corruption efforts, with more than 30% of respondents expressing a belief that corruption in Russia cannot be eliminated.

Anti-Corruption Developments in Tanzania

On November 26, 2014, Tanzania's Public Accounts Committee unveiled the results of an audit that accused senior government officials of authorizing fraudulent payments to offshore bank accounts under the guise of energy contracts. The audit implicated the Minister for Energy, the Attorney General, and several other high-ranking politicians. It is alleged that the fraudulent payments uncovered amount to approximately $120 million. Due to corruption concerns, 12 international aid donors have withheld $490 million in general budget support from the country, which is particularly damaging considering that 29% of the country's annual budget comes from overseas aid. On November 30, 2014, the Tanzanian parliament voted for the immediate dismissal of those implicated by the audit report. The move was backed by Prime Minister Mizengo Pinda, who stated that "[w]e are now very serious and no stone will be left unturned. All those involved will face the music." This may come as too little, too late, however, as calls for Prime Minister Pinda to himself resign over the corruption scandal are increasing.

Anti-Corruption Developments in Ukraine

Following the toppling of President Victor Yanukovych in February 2014, the new Ukrainian government has been focused on ridding Ukraine of the prior regime's corrupt legacy. These efforts culminated in the adoption of a packet of anti-corruption laws in October 2014, including the new Law on Preventing Corruption, the Law on the National Anti-Corruption Bureau, the Law on the Main Principles of State Anti-Corruption Policy in Ukraine, and the Law on Amendments to Certain Legislative Acts of Ukraine Regarding the Identification of Ultimate Beneficiaries of Legal Entities and Public Persons.

The Law on Preventing Corruption, which enters into effect on April 26, 2015, defines the mandate of a new National Anti-Corruption Agency with authority to coordinate the implementation of Ukraine's national anti-corruption strategy, which includes setting ethical conduct requirements for state officials and seeking annulment of laws, regulations, and transactions that were adopted or executed in violation of Ukraine's anti-corruption laws. The law also provides detailed guidelines regarding the restrictions on state officials to receive gifts. Finally, the law strengthens the previously existing requirements for organizations to implement anti-corruption measures, including requiring management and officers to conduct regular anti-corruption risk assessments and take measures to address the identified corruption risks, not to violate anti-corruption laws and policies, and to report any suspected or actual corruption offenses to the company's officers responsible for anti-corruption compliance, CEO, or owners (shareholders).

The Law on the National Anti-Corruption Bureau creates a national enforcement agency responsible for the prevention, termination, and investigation of corruption offenses. Ukraine's parliament will approve the head of the Bureau and can cause his or her resignation by a no-confidence vote of more than 150 members of parliament. The Beneficiaries Law requires companies to disclose their ultimate beneficiaries, *i.e.*, individuals controlling the entity or owning, directly or indirectly, more than 25% of the entity's statutory capital or voting rights.

These are seminal changes in Ukraine's stance against corruption, and we will monitor their implementation in the coming months.

CONCLUSION

For more analysis on the year in anti-corruption enforcement, please join us for our upcoming webcast presentation: **FCPA Trends in the Emerging Markets of China, India, Russia and Latin America on January 13 (to register, click here**). And as has become our semi-annual tradition, over the following two weeks Gibson Dunn will be publishing a series of enforcement updates for the benefit of our clients and friends as follows:

- Tuesday, January 6: 2014 Year-End Update on Corporate NPAs and DPAs;
- Wednesday, January 7: 2014 Year-End False Claims Act Update;
- Thursday, January 8: 2014 Year-End Criminal Antitrust and Competition Law Update;
- Monday, January 12: 2014 Year-End Securities Enforcement Update;
- Tuesday, January 13: 2014 Year-End Pharmaceutical and Medical Device Update; and 2014 Year-End Health Care Providers Update;
- Wednesday, January 14: 2014 Year-End E-Discovery Update; and
- Thursday, January 15: 2014 Year-End Sanctions Update.

■ ■ ■ ■ ■

Gibson Dunn lawyers are available to assist in addressing any questions you may have regarding these issues. We have more than 110 attorneys with FCPA experience, including a number of former federal prosecutors, spread throughout the firm's domestic and international offices. Joe Warin, a former Assistant U.S. Attorney, served as FCPA counsel to the first non-U.S. compliance monitor and as compliance monitor for another company that settled FCPA charges during 2010. In 2009, he completed his compliance consultancy for Statoil A.S.A. pursuant to its DOJ and SEC FCPA settlements. Please contact the Gibson Dunn attorney with whom you usually work, or any of the following:

Washington, D.C.
F. Joseph Warin (+1 202-887-3609, fwarin@gibsondunn.com)
Judith A. Lee (+1 202-887-3591, jalee@gibsondunn.com)
David P. Burns (+1 202-887-3786, dburns@gibsondunn.com)
David Debold (+1 202-955-8551, ddebold@gibsondunn.com)
Michael S. Diamant (+1 202-887-3604, mdiamant@gibsondunn.com)
John W.F. Chesley (+1 202-887-3788, jchesley@gibsondunn.com)
Daniel P. Chung (+1 202-887-3729, dchung@gibsondunn.com)

Maura M. Logan (+1 202-887-3617, mlogan@gibsondunn.com)
Oleh Vretsona (+1 202-887-3779, ovretsona@gibsondunn.com)
Christopher W.H. Sullivan (+1 202-887-3625, csullivan@gibsondunn.com)
Stephanie L. Connor (+1 202-955-8586, sconnor@gibsondunn.com)
Elizabeth Goergen Silver (+1 202-887-3623, esilver@gibsondunn.com)
Courtney M. Brown (+1 202-955-8685, cmbrown@gibsondunn.com)

New York
Reed Brodsky (+1 212-351-5334, rbrodsky@gibsondunn.com)
Joel M. Cohen (+1 212-351-2664, jcohen@gibsondunn.com)
Lee G. Dunst (+1 212-351-3824, ldunst@gibsondunn.com)
Mark A. Kirsch (+1 212-351-2662, mkirsch@gibsondunn.com)
Jim Walden (+1 212-351-2300, jwalden@gibsondunn.com)
Alexander H. Southwell (+1 212-351-3981, asouthwell@gibsondunn.com)
Lawrence J. Zweifach (+1 212-351-2625, lzweifach@gibsondunn.com)
Adam P. Wolf (+1 212-351-3956, awolf@gibsondunn.com)

Dallas
Evan S. Tilton (+1 214-698-3156, etilton@gibsondunn.com)

Denver
Robert C. Blume (+1 303-298-5758, rblume@gibsondunn.com)
Ryan T. Bergsieker (+1 303-298-5774, rbergsieker@gibsondunn.com)
Laura M. Sturges (+1 303-298-5929, lsturges@gibsondunn.com)
John D.W. Partridge (+1 303-298-5931, jpartridge@gibsondunn.com)

Los Angeles
Debra Wong Yang (+1 213-229-7472, dwongyang@gibsondunn.com)
Marcellus McRae (+1 213-229-7675, mmcrae@gibsondunn.com)
Michael M. Farhang (+1 213-229-7005, mfarhang@gibsondunn.com)
Douglas Fuchs (+1 213-229-7605, dfuchs@gibsondunn.com)

Orange County
Nicola T. Hanna (+1 949-451-4270, nhanna@gibsondunn.com)

San Francisco
Thad A. Davis (+1 415-393-8251, tadavis@gibsondunn.com)
Marc J. Fagel (+1 415-393-8332, mfagel@gibsondunn.com)
Charles J. Stevens (+1 415-393-8391, cstevens@gibsondunn.com)
Michael Li-Ming Wong (+1 415-393-8333, mwong@gibsondunn.com)
Winston Y. Chan (+1 415-393-8362, wchan@gibsondunn.com)

London
Patrick Doris (+44 20 7071 4276, pdoris@gibsondunn.com)
Charlie Falconer (+44 20 7071 4270, cfalconer@gibsondunn.com)

Philip Rocher (+44 20 7071 4202, procher@gibsondunn.com)
Mark Handley (+44 20 7071 4277, bmhandley@gibsondunn.com)

Paris
Benoît Fleury (+33 1 56 43 13 00, bfleury@gibsondunn.com)
Bernard Grinspan (+33 1 56 43 13 00, bgrinspan@gibsondunn.com)
Jean-Philippe Robé (+33 1 56 43 13 00, jrobe@gibsondunn.com)
Audrey Obadia-Zerbib (+33 1 56 43 13 00, aobadia-zerbib@gibsondunn.com)

Munich
Benno Schwarz (+49 89 189 33-110, bschwarz@gibsondunn.com)
Michael Walther (+49 89 189 33-180, mwalther@gibsondunn.com)
Mark Zimmer (+49 89 189 33-130, mzimmer@gibsondunn.com)
Eike W. Grunert (+49 89 189 33-121, egrunert@gibsondunn.com)

Hong Kong
Kelly Austin (+852 2214 3788, kaustin@gibsondunn.com)
Adam S. Goldberg (+852 2214 3717, asgoldberg@gibsondunn.com)
Oliver D. Welch (+852 2214 3716, owelch@gibsondunn.com)

Dubai
Peter Gray (+971 (0) 4 704 6805, pgray@gibsondunn.com)

São Paulo
Lisa A. Alfaro (+55 (11) 3521-7160, lalfaro@gibsondunn.com)