

IN THIS ISSUE:

2011 YEAR-END REVIEW

TRIALS	1
OTHER CORPORATE ENFORCEMENT ACTIONS.....	3
OTHER INDIVIDUAL ENFORCEMENT ACTIONS.....	5
OTHER SIGNIFICANT ENFORCEMENT DEVELOPMENTS	6
COLUMNS	
IN THE INTERIM	2
COMPLIANCE CORNER: THE IMPORTANCE OF DISCIPLINARY PROTOCOLS IN EFFECTIVE COMPLIANCE PROGRAMS.....	3
THINGS TO WATCH	8



VISIT WWW.SIDLEY.COM
 FOR MORE INFORMATION ON SIDLEY'S
[FCPA/ANTI-CORRUPTION PRACTICE](#)

This Sidley update has been prepared by Sidley Austin LLP for informational purposes only and does not constitute legal advice. This information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. Readers should not act upon this without seeking advice from professional advisers.

Attorney Advertising. For purposes of compliance with New York State Bar rules, Sidley Austin LLP's headquarters are 787 Seventh Avenue, New York, NY 10019, 212.839.5300 and One South Dearborn, Chicago, IL 60603, 312.853.7000

Prior results described herein do not guarantee a similar outcome.

2011 YEAR-END REVIEW

FCPA enforcement continued apace in 2011, remaining a high priority for both the DOJ and SEC. The year saw an increase in the number of FCPA cases tried in courtrooms across the country, yielding a record number of defendants challenging FCPA charges at trial. But what was particularly notable about 2011 was the growth of corruption enforcement internationally. The UK Bribery Act became effective in July 2011, and the first person was charged under the law; Russia dramatically strengthened its existing anti-bribery law; and the Chinese government handed down some of its harshest bribery and corruption-related sentences. These developments highlight a trend towards a more robust anti-corruption regime worldwide, of which the FCPA is now just one component.

MAJOR ENFORCEMENT ACTIONS

Trials

Keith Lindsey and Steve Lee

On May 11, 2011, Lindsey Manufacturing, Keith Lindsey, and Steve Lee were convicted of one count of conspiracy to violate the FCPA and five counts of FCPA violations. Lindsey Manufacturing is the first company to be tried and convicted of FCPA violations. The conduct at issue focused on commission payments made by Lindsey Manufacturing to Enrique and Angela Aguilar (directors of Grupo Internacional de Asesores S.A.) that “would be used to pay bribes to Mexican officials in exchange for [Comisión Federal de Electricidad (CFE), a state-owned utility company] awarding contracts to Lindsey Manufacturing.” The trial featured extensive and illuminating motion practice concerning the meaning of “instrumentality” as used in the FCPA. Lindsey and Lee filed a post-trial motion to dismiss, alleging government misconduct involving discovery violations and false testimony by government witnesses. That motion was granted, and the indictment was dismissed with prejudice based on government misconduct. The DOJ filed an appeal on December 1.

Shot Show Defendants

On July 7, 2011, Judge Leon of the District Court for the District of Columbia declared a mistrial in one of the Shot Show cases due to jury deadlock after seven days of deliberation. The mistrial affected four of the 22 defendants who were charged with conduct related to conspiring to bribe the Gabon Minister of Defense. This case is part of the largest single investigation and prosecution against individuals in the history of the DOJ's enforcement of the FCPA and the first large-scale use of undercover law enforcement techniques to uncover FCPA violations. In this



IN THE INTERIM

9/30/11: The second of four **Shot Show** trials began before Judge Richard Leon (D.D.C.). The first trial ended in a mistrial on July 7, 2011.

10/13/11: The **SEC** filed an administrative order against **Watts Water Technologies, Inc.** and its former employee, **Leesen Chang**, to resolve violations of the FCPA's books-and-records and internal-controls violations stemming from commissions paid to government officials in China. Watts paid penalties of \$3.7 million, disgorged \$2.75 million, paid prejudgment interest of \$820,000 and paid a \$200,000 penalty.

10/25/11: **The UK SFO** filed charges against former Innospec Executive, **David Turner**, for conspiring to make corrupt payments to public officials in Indonesia and Iraq. Innospec settled dozens of criminal charges with both the US and UK in March 2010, including FCPA and U.N. Oil-for-Food charges. No individuals have been charged in the U.S.

10/25/11: **Joel Esquenazi** and **Carlos Rodriguez** were **sentenced** to 15 and 7 years

respectively for various counts of conspiracy, wire fraud, substantive FCPA counts, and money laundering for bribing officials at state-owned Telecommunications D'Haiti S.A.M. (Haiti Telco). The Judge previously denied a motion for judgment of acquittal, rejecting their argument that officers and employees of state-owned enterprises are not "foreign officials."

10/27/11: **The UK SFO** filed charges against two additional former Innospec CEOs, **Dennis Kerrison** and **Paul Jennings**, for conspiring to make corrupt payments to public officials in Indonesia and Iraq.

11/1/11: **The SEC Office of the Whistleblower** published its first list of enforcement actions that might be eligible for whistleblower rewards—including 20 FCPA-related enforcement actions—but noted that eligibility for a whistleblower reward did not mean that a payment would be made.

11/2/11: **The UK SFO** announced a whistleblower hotline, called "**SFO**

Confidential." Reports can be filed by phone or email and confidentiality is assured.

11/3/11: **Aircraft Manufacturer, Embraer SA**, announced that it is under investigation for paying bribes overseas. This was the first disclosure by an aerospace company after the aerospace industry sweep was announced.

11/8/11: **Asst. Attorney General and Criminal Division Chief, Lanny Breuer**, announced at ACI's FCPA conference in Washington, D.C. that the DOJ will be issuing guidance on the FCPA and that the DOJ would work with Congress to improve the law.

11/17/11: In a series of written questions, **Sen. Grassley** asked U.S. Attorney General Eric Holder whether forthcoming guidance on the FCPA would address concerns raised by the business community about the law's enforcement, which, they argue, puts U.S. companies at a competitive disadvantage. Holder declined to comment on the content of the upcoming guidance.

11/20/11: **Munir Patel**, the first person convicted under the UK

Bribery Act, was sentenced to six years imprisonment, including a three-year sentence for the bribery-related offenses.

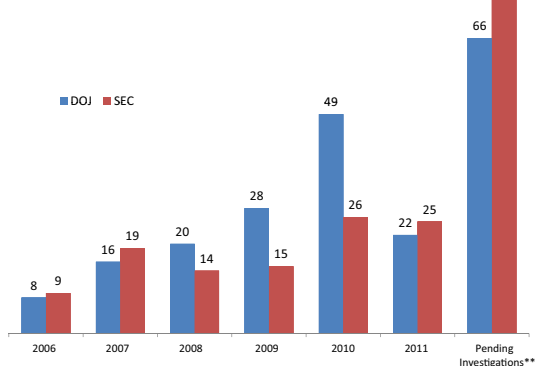
12/1/11: Judge Matz (C.D. Cal.), dismissed with prejudice the indictment against Lindsey Manufacturing, **Keith Lindsey**, and **Steve K. Lee** based on government misconduct. The DOJ has filed an appeal.

12/13/11: The DOJ indicted eight former executives of **Siemens** for a criminal conspiracy to violate the FCPA, launder money, and commit wire fraud. The defendants also face civil charges brought by the SEC for bribing government officials in Argentina. The charged conduct is the same conduct for which Germany's Siemens AG settled the **biggest FCPA case** in history with the DOJ and SEC in 2008.

12/22/11: When the prosecution closed its case after twelve weeks, Judge Leon (D.D.C.) entered judgment acquitting the second group of six of the **Shot Show** defendants of conspiracy to violate the FCPA, while allowing the substantive FCPA charges to go forward. This ruling released one defendant from the case who had been charged only with conspiracy. The defense began its case immediately after this ruling.

12/22/11: Innospec's former agent, **Ousama Naaman**, who pleaded guilty last year to bribing Iraqi officials and violating the U.N.'s Oil-for-Food program was sentenced to 30 months in federal prison and fined \$250,000. The judge rejected the DOJ's request for an incarceration term of more than seven years.

FCPA-Related Cases*

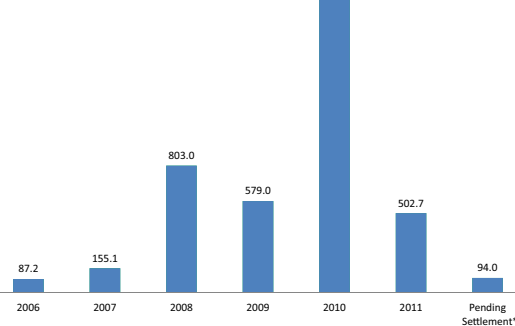


* New criminal or civil cases (settled or contested) instituted by year

** Based upon public disclosures of investigations

Corporate FCPA-Related Penalties*

(in U.S. millions)



* Includes disgorgement; does not include non-U.S. fines

** Includes publicly disclosed reserves for future FCPA settlements

2011 YEAR-END REVIEW

CONT. FROM COVER PAGE

case, undercover FBI agents posed as representatives or procurement officers for the Minister of Defense of an unnamed African country. Pankesh Patel, one of the 22 individuals indicted for engaging in a scheme to bribe foreign government officials, was managing director of a UK company that acts as a sales agent for companies in the law enforcement and military product industries. Of note, Judge Leon granted Patel's acquittal motion at the close of the DOJ's case, rejecting the government's jurisdictional argument based solely on the fact that Patel sent a DHL package from the UK to Washington, D.C. The retrial is scheduled to begin on May 29, 2012.

On December 22, after the prosecution closed its evidence following a twelve-week jury trial, Judge Leon entered judgment acquitting the second group of six of the Shot Show defendants of conspiracy to violate the FCPA, while allowing the substantive FCPA charges to go forward. This ruling released one defendant from the case who had been charged only with conspiracy.

Earlier this year on April 28, 2011, Haim Geri, one of the Shot Show defendants, pleaded guilty in the District of Columbia to one count of conspiracy to violate the FCPA. In March, Daniel Alvarez pleaded guilty to two counts of conspiracy to violate the FCPA, and Jonathan Spiller pleaded guilty to one FCPA conspiracy count. These defendants have not been sentenced.

There are nine defendants who are awaiting trial, not including the four who will be retried.

Other Corporate Enforcement Actions***JGC Corporation***

On April 6, 2011, JGC Corporation (Japan) settled charges with the DOJ for \$218.8 million for its participation in a decade-long scheme to bribe Nigerian government officials. This was the sixth largest FCPA settlement of all time. The DOJ charged JGC with one count of conspiracy and one count of aiding and abetting FCPA violations. This case illustrates the widening jurisdictional scope of the FCPA. JGC is the first Japanese company ever charged under the FCPA, and it is notable that, unlike its partners in the Nigerian TSKJ joint venture who were issuers or subsidiaries of issuers, JGC had no apparent commercial connection with the United States at all. Instead, jurisdiction was based on JGC's role in aiding and abetting a domestic concern and conspiring to execute the bribery scheme with co-conspirators who were domestic concerns or issuers.

Tenaris

Last year, the SEC signaled that it would use Deferred Prosecution Agreements to encourage individuals and companies to provide information about misconduct and assist with an SEC investigation. On May 17, 2011,

COMPLIANCE CORNER**The Importance of Disciplinary Protocols in Effective Compliance Programs**

According to both the U.S. Sentencing Commission and the OECD Good Practice Guidance for Anti-Bribery Compliance Programs, one of the essential elements of any effective compliance program is the presence of appropriate disciplinary protocols to address violations of laws against foreign bribery at all levels of the company. The Principles of Federal Prosecution of Business Organizations demonstrate the government's willingness to take into account whether the company has taken meaningful remedial measures when deciding whether or not to prosecute FCPA violations—in large part, because a company's response indicates its overall attitude towards such misconduct.

Well-crafted disciplinary protocols set the ground rules for appropriate employee behavior and make clear that there will be significant consequences for those employees, whatever their position, who violate the company's compliance program. That is not to say, however, that companies must draft detailed disciplinary sanctions, providing X punishment for Y offense. Although such rigid rules may provide certainty, their one-size-fits-all approach may not provide sufficient flexibility or allow consideration of the multiple relevant factors of a given case.

Instead of attempting to construct an itemized code of specific penalties for specific violations, the disciplinary protocol should be more generally worded. General standards emphasize the importance of compliance and the inevitability

**2011 YEAR-END REVIEW**

the SEC entered its first-ever DPA with Luxembourg-based pipe manufacturer Tenaris for \$5.4 million related to bribes paid to the Uzbekistan government. The SEC viewed Tenaris as an “appropriate candidate” for a DPA because of its cooperation with the government, including voluntary disclosure, and its efforts in strengthening its internal anti-corruption policies. Under the terms of the DPA, the SEC will refrain from prosecuting Tenaris in a civil action for its violations if the company complies with certain undertakings. For more information about the Tenaris DPA, see our [2nd Quarter 2011 Anti-Corruption Quarterly](#).

Niko Resources

On June 28, 2011, Niko Resources, a publicly traded oil and gas company based in Calgary, became the first defendant to enter into a plea agreement under Canada’s overseas anti-bribery law—the Corruption of Foreign Public Officials Act. Niko was fined \$9.2 million after pleading guilty to bribing a Bangladeshi minister. This case may signal the beginning of much stricter enforcement of the CFPOA. Indeed, prior to the Niko plea agreement, the only prior conviction under the CFPOA—in 2005 against Hydro Kleen—resulted in a \$24,000 fine. The Niko fine sets the new benchmark for CFPOA fines in Canada.

Bridgestone Corporation

On September 15, 2011, Bridgestone Corporation, a Japanese company and the world’s largest manufacturer of tires and rubber products, agreed to plead guilty and to pay a \$28 million criminal fine for its role in conspiracies to rig bids and to make corrupt payments to foreign government officials in Latin America related to the sale of marine hose and other industrial products. The company was charged with two criminal counts for conspiring to violate the Sherman Act and the FCPA. Of significance, the DOJ grounded jurisdiction over Bridgestone by alleging that e-mails or faxes were sent between Japan and the United States in connection with the bribery scheme. Also of note is that the SEC has abstained from involvement in the Bridgestone case. Because Bridgestone has ADRs that are traded in the United States over the counter, the SEC could have (and traditionally has) asserted FCPA books-and-records and internal-controls jurisdiction based on such a listing.

Magyar Telekom PLC and Deutsche Telekom

On December 29, 2011 Magyar Telekom PLC paid a \$59.6 million criminal penalty and Deutsche Telekom, Europe’s largest phone service provider and 60 percent Magyar owner, paid a separate \$4.36 million penalty to the DOJ to resolve FCPA charges. Magyar also paid \$31.2 million in disgorgement and prejudgment interest to settle civil charges with the SEC. This is the ninth largest FCPA settlement of all time.

Magyar was charged with violations of both the anti-bribery provision and the books-and-records provisions. The charges relate to “sham consultancy contracts with entities owned and controlled by a Greek inter-

COMPLIANCE CORNER

of significant consequences where misconduct is identified, but they are still flexible enough to provide the company some latitude in responding to the nuances of the particular case. This gives companies the opportunity to consult with counsel about what disciplinary action is appropriate in a given situation. Sometimes, termination might be the only option. But other times, adoption of other safeguards may be sufficient. The implementation of substantial remedial measures short of termination could be used to rebut any argument that a company was not taking the violation seriously.

In choosing among the panoply of disciplinary actions—ranging from oral reprimand, written reprimand, probation, suspension, transfer to a different position without contact with government officials, enhanced supervision, additional training, reduction in pay, demotion, termination, referral to a regulatory or law enforcement agency, or some combination of these—companies should evaluate the relevant facts and circumstances on a case-by-case basis.

Making justifiable and judicious disciplinary decisions involves asking some basic questions about both the aggravating and mitigating factors of any given offense. First, how serious was the infraction? Did it constitute a clear violation of the FCPA? Second, how definitive is the evidence of the violation? Has the employee admitted it? Is there irrefutable or only circumstantial evidence? Third, how culpable was the employee? Was he acting purposefully, knowingly, recklessly, or merely negligently? Fourth, what is the employee’s disciplinary history? Is this his or her first offense or have there

2011 YEAR-END REVIEW

mediary” to pay almost €5 million which Magyar knew or should have known would be passed on to Macedonian officials. The sham contracts were recorded as legitimate in Magyar’s and Deutsche Telekom’s financial statements.

The SEC also sued three former Magyar employees, including the former CEO, alleging that they violated or aided and abetted violations of the anti-bribery, books-and-records, and internal-controls provisions of the FCPA; knowingly circumvented internal controls and falsified books and records; and made false statements to the company’s auditor. The SEC is seeking disgorgement and civil penalties against them. All three are Hungarian citizens and residents.

Other Individual Enforcement Actions***Jeffrey Tessler***

On March 11, 2011, more than two years after he was indicted, Jeffrey Tessler, a former consultant to KBR as part of the TSKJ consortium, pleaded guilty to two counts related to the FCPA. Tessler, a UK citizen, spent the better part of the last two years unsuccessfully fighting his extradition to the United States all the way up to and including the UK High Court. As part of the plea, Tessler agreed to forfeit \$149 million and also faces up to five years in prison on each count. Tessler’s forfeiture is the largest against any individual in the history of the FCPA.

Paul Jennings

On January 24, 2011, the SEC settled charges against Paul Jennings, the former Innospec CEO, for falsely certifying to auditors that he had complied with Innospec’s FCPA compliance policy. The SEC’s complaint also alleged that Jennings approved bribes to Iraqi officials and was aware of bribes to Indonesian officials. Jennings will disgorge \$116,092 plus pre-judgment interest of \$12,945 and pay a civil penalty of \$100,000.

Miguel Angel Rodriguez

On April 27, 2011, a Costa Rican court sentenced Miguel Angel Rodriguez, the former president of Costa Rica, to five years in prison for receiving bribes from Alcatel, a French telecom company. Rodriguez allegedly received more than \$800,000 in bribes from Alcatel during his presidency in exchange for helping the company get a \$149 million contract to provide cell phone lines. Last year, Alcatel-Lucent agreed to pay \$137 million in penalties in settlements with the SEC and the DOJ over payments the company made in Costa Rica, Honduras, Malaysia, and Taiwan to secure contracts.

Jorge Granados

On May 19, 2011, Jorge Granados, the former CEO of Latin Node Inc., pleaded guilty to conspiring to pay bribes to government officials in Honduras. In September, he was sentenced in federal court in Miami to 46 months in prison.

COMPLIANCE CORNER

been other incidents in the past? Fifth, did the employee attempt to correct the compliance issue? Did he self-report? Even if he didn’t make the initial report, did he cooperate fully in the ensuing investigation? In addition, companies must also be cognizant of their standing with U.S. regulators. If the company is under a current government investigation or is going to make a voluntary disclosure of a potential FCPA issue, then, in certain cases, it may want to consult with U.S. regulators as to whether there is a need for the employee’s continued cooperation and whether that should be factored into the disciplinary action taken.

Even if there is not an ongoing or imminent government investigation, companies should be cognizant of how disciplinary action would be viewed by government regulators if the matter came to their attention. Companies should act swiftly, yet prudently, to implement the personnel, operational, and organizational changes necessary to send the clear signal that unlawful conduct will not be tolerated. In doing so, the company also will be demonstrating to regulators the effectiveness of its compliance program in handling potential FCPA violations.

In addition, in determining what disciplinary and remedial measures to take when an employee has committed a violation, companies should also consider their potential liability under the FCPA if the offending employee commits a subsequent similar violation. If the company does not take appropriate remedial and disciplinary action and an employee violates the FCPA a second time, U.S. regulators could take the view that the company implicitly authorized the employee’s subsequent miscon-

2011 YEAR-END REVIEW***Munir Patel***

On August 31, 2011, Munir Patel, an administrative clerk at a London Magistrates' Court, became the first person charged under the UK Bribery Act of 2010. Patel was charged with soliciting and accepting a £500 domestic bribe.

Other Significant Enforcement Developments***Dodd-Frank Whistleblower Provisions***

The SEC's Dodd-Frank Whistleblower provisions became effective on August 12, 2011, authorizing the SEC to award to a qualified whistleblower 10 percent to 30 percent of any monetary sanctions it recovers as a result of the whistleblower's disclosure. These monetary incentives are intended to encourage individuals to report potential violations of federal securities laws, including the FCPA, and may significantly increase the number of civil and criminal enforcement actions. The Dodd-Frank Act also protects whistleblowers by creating a private cause of action for those who allege they have been discharged or discriminated against in retaliation for their disclosure of information to the SEC. For more information about the whistleblower provisions, see the [3rd Quarter 2011 Anti-Corruption Quarterly](#).

Congressional Consideration of FCPA Reform

The U.S. Chamber of Commerce has increased its lobbying efforts, which include the retention of former U.S. Attorney General Michael Mukasey, aimed at enacting several pro-business amendments to the FCPA. On June 14, 2011, the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security held a hearing to examine the proposed amendments, receiving testimony from four witnesses, including Mukasey and Acting Assistant Attorney General Greg Andres. At the hearing, two topics received particular attention—the proposed corporate compliance defense and the FCPA's definition of a "foreign official." Although it is unclear how sweeping any amendment to the FCPA might be, there is no doubt that the Chamber of Commerce's aggressive lobbying efforts have set the stage for a long-awaited debate regarding FCPA reform. In November, Assistant Attorney General Lanny Breuer stated that the DOJ is open to working with Congress in its efforts to improve the FCPA. For more information about FCPA reform, see our November 10, 2011 update entitled ["DOJ Announces Plan To Release New FCPA Guidance."](#)

UK Bribery Act

On July 1, 2011, the UK Bribery Act became effective, following the publication of guidance by the UK Ministry of Justice in March. The MoJ guidance provides valuable insight into interpretation of the Act, including clarity on allowable entertainment expenditures, liability for joint ventures, and the degree to which a company must exercise due diligence over "associated persons" much further down the supply chain.

COMPLIANCE CORNER

duct. In fact, the FCPA's legislative history addresses this situation: "a company's continuing employment of an agent known to have made corrupt payments in the previous two years would violate the act." Therefore, if the company chooses a sanction short of termination, it must implement disciplinary and remedial measures sufficient to ensure that the employee cannot commit future violations.

Another consideration companies must take into account given the inherently international dimension of FCPA-related misconduct is whether the disciplinary sanction exposes the company to liability under local labor law. Depending on which country's laws govern the employee's employment contract, there may be certain procedural safeguards (e.g., an administrative hearing) that must be afforded before any adverse employment action can be taken by the company.

Dealing with employee discipline is never an easy task for companies. Given today's enforcement environment, it is more important than ever that companies are prepared to respond quickly and effectively with appropriate disciplinary action, specifically tailored to the facts and circumstances of the offense, when an employee engages in misconduct. **S**

2011 YEAR-END REVIEW

In addition, the guidance offered six principles that, if followed, would assist a company in establishing that it had adequate anti-bribery procedures in place. It remains to be seen, of course, to what extent the courts will adopt the view set out in the MoJ guidance. For more information on the guidance, see the [1st Quarter 2011 Anti-Corruption Quarterly](#).

Russia Anti-Corruption Amendments

In April 2011, the Russian legislature approved a bill to dramatically strengthen Russia's existing anti-bribery law. Among other things, these amendments, which took effect on May 17, 2011, expand the law's scope to include bribery by Russian nationals of foreign (i.e., non-Russian) government officials, create a new offense of acting as an intermediary for bribery, and impose substantial monetary fines of up to 100 times the amount of the bribe.

Chinese Government Hands Down Harsh Sentences, including Death Penalty, in Corruption Cases

As part of a more high-profile effort to combat corruption, the Chinese government handed down some of its harshest bribery and corruption-related sentences this year. In July, two former vice mayors of the Chinese cities Hangzhou and Suzhou were executed after being convicted of bribery, embezzlement, and abuse of pow-

er on a significant scale while in office. In another case, Luo Yaping, a relatively minor official in a northeast Chinese city, was executed for accumulating at least 100 million Yuan (approximately \$15 million) in bribes and embezzled compensation. Two former executives at China Mobile were also sentenced to death for accepting over a million dollars in bribes while working for the company.

DOJ Plans to Release New FCPA Guidance in 2012

For the first time since the passage of the FCPA, the DOJ will, in 2012, release "detailed new guidance" on the Act's criminal and civil enforcement provisions. Lanny Breuer, Assistant Attorney General for the Criminal Division, said that he hoped it would amount to "a useful and transparent aid" for businesses. Breuer provided few details about the guidance but rejected the idea of amending the Act. "We have no intention whatsoever of supporting reforms whose aim is to weaken the FCPA," he said in the speech first announcing the guidance. "Indeed, at this crucial moment in history, watering down the Act ... would send exactly the wrong message." Emphasizing that the United States must continue leading the charge against global corruption, he noted that "now is the time to ensure that the FCPA remains a strong tool for fighting the ill effects of transnational bribery." See ["DOJ Announces Plan to Release New FCPA Guidance."](#)

Conclusion

The past 12 months demonstrate the government's continuing commitment to FCPA enforcement, as well as the growth of anti-corruption legal regimes worldwide. The UK Bribery Act, China's reaction to high-level corruption, the amendments strengthening Russia's anti-bribery law, and Costa Rica and Canada's focus on their overseas anti-bribery laws all suggest that an increase in prosecutions of bribery abroad is likely. Given these developments, and the FCPA's continued enforcement, it is critical that all corporations worldwide, and their officers and employees, take affirmative steps to ensure that their FCPA and anti-bribery compliance programs are comprehensive and rigorously followed. **S**



**THINGS TO WATCH**

- Lanny Breuer, Assistant Attorney General for the DOJ's Criminal Division, announced on November 8, 2011 that DOJ will release general guidance on the FCPA's criminal and civil enforcement provisions.
- On November 28, 2011, Judge Rakoff (SDNY) rejected a settlement agreement between the SEC and Citigroup. The SEC had charged Citigroup with misleading investors about a \$1 billion collateralized debt obligation tied to the U.S. housing market. Judge Rakoff took issue with the size of the settlement and the standard language used in SEC settlements, in which the defendant typically "neither admits nor denies wrongdoing." This may signal a potential increase in judicial scrutiny of settlements with government agencies including additional scrutiny both of SEC settlements and, possibly, of the DOJ's deferred prosecution agreements.
- On November 30, 2011, Rep. Ed Perlmutter introduced the Foreign Business Bribery Protection Act of 2011 bill in the House of Representatives that would for the first time allow private entities to sue for damages for violations of the FCPA. Due to the narrow definition of "foreign concern" under the bill, the law would have limited application.
- On December 7, 2011, Rep. Peter Welch introduced the Overseas Contractor Reform Act. The legislation would debar federal contractors convicted of violating the FCPA and sever any existing contracts 30 days after all possible appeals of a conviction are exhausted. The Act includes a provision that exempts a violator from debarment if the head of a federal agency deems the offense as having been self-disclosed. A similar bill passed the House in 2010, but the Senate did not act on it.
- The U.S. Chamber of Commerce has been a vocal proponent of amending the FCPA to include five main propositions:
 1. Eliminate legal liability for companies that acquire businesses that have engaged in foreign bribery;

2. Enable companies that implement strong compliance programs to use those programs as a defense against possible FCPA charges;
3. Include a willfulness requirement for corporate criminal liability;
4. Limit a company's liability for acts of its subsidiaries; and
5. Define a "foreign official" under the statute.

The proposed changes have attracted support from lawmakers, including Rep. James Sensenbrenner, who has said he wants to introduce a bipartisan amendment. With increasing pressure from corporate America, Congress could become more active in this arena in the coming year. **S**

OF NOTE

- On November 15, the SEC released its 2011 Annual Report on the Whistleblower Program. 334 whistleblower tips were received from the date the Final Rules became effective, August 12, 2011, through the end of the fiscal year on September 30, 2011.
- Less than 4% of the tips received related to the FCPA. Eleven FCPA complaints were made in August and two in September for a total of 13 (3.9% of the overall tips received since the rules became effective on August 12). The most common complaint categories were market manipulation (16.2%), corporate disclosures and financial statements (15.3%), and securities-offering fraud (15.6%).
- No whistleblower awards were paid in FY2011.
- The SEC has announced that it will no longer permit companies to "neither admit nor deny" SEC charges when those companies have admitted to criminal violations with the DOJ stemming from the same conduct. **S**

**The FCPA/Anti-Corruption Practice of Sidley Austin LLP**

Our FCPA/Anti-Corruption practice, which involves over 80 of our lawyers, includes creating and implementing compliance programs for clients, counseling clients on compliance issues that arise from international sales and marketing activities, conducting internal investigations in more than 90 countries and defending clients in the course of SEC and DOJ proceedings. Our clients in this area include Fortune 100 and 500 companies in the pharmaceutical, healthcare, defense, aerospace, energy, transportation, advertising, telecommunications, insurance, food products and manufacturing industries, leading investment banks and other financial institutions.

For more information, please contact:

WASHINGTON, D.C.

Paul V. Gerlach
+1 202 736 8582
pgerlach@sidley.com

Karen A. Popp
+1 202 736 8053
kpopp@sidley.com

Joseph B. Tompkins, Jr.
+1 202 736 8213
jtompkins@sidley.com

CHICAGO

Scott R. Lassar
+1 312 853 7688
slassar@sidley.com

LOS ANGELES

Douglas A. Axel
+1 213 896 6035
daxel@sidley.com

Kimberly A. Dunne
+1 213 896 6659
kdunne@sidley.com

NEW YORK

Timothy J. Treanor
+1 212 839 8564
ttreanor@sidley.com

SAN FRANCISCO

David L. Anderson
+1 415 772 1204
dlanderson@sidley.com

LONDON

Dorothy Cory-Wright
+44 20 7360 2565
dcory-wright@sidley.com

BRUSSELS

Maurits J.F. Lugard
+32 2 504 6417
mlugard@sidley.com

FRANKFURT

Jens Rinze
+49 69 22 22 1 4020
jrinze@sidley.com

GENEVA

Marc S. Palay
+41 22 308 0015
mpalay@sidley.com

BEIJING

Yang Chen
+86 10 6505 5359
cyang@sidley.com

Henry H. Ding
+86 10 6505 5359
hding@sidley.com

SHANGHAI

Tang Zhengyu
+86 21 2322 9318
zytang@sidley.com

HONG KONG

Alan Linning
+852 2509 7650
alinning@sidley.com

SINGAPORE

Yang Ing Loong
+65 6230 3938
iyang@sidley.com

TOKYO

Takahiro Nonaka
+81 3 3218 5006
tnonaka@sidley.com

Sidley Austin Nishikawa Foreign Law Joint Enterprise

www.sidley.com

BEIJING BRUSSELS CHICAGO DALLAS FRANKFURT GENEVA HONG KONG LONDON LOS ANGELES NEW YORK
PALO ALTO SAN FRANCISCO SHANGHAI SINGAPORE SYDNEY TOKYO WASHINGTON, D.C.

Sidley Austin LLP, a Delaware limited liability partnership which operates at the firm's offices other than Chicago, New York, Los Angeles, San Francisco, Palo Alto, Dallas, London, Hong Kong, Singapore and Sydney, is affiliated with other partnerships, including Sidley Austin LLP, an Illinois limited liability partnership (Chicago); Sidley Austin (NY) LLP, a Delaware limited liability partnership (New York); Sidley Austin (CA) LLP, a Delaware limited liability partnership (Los Angeles, San Francisco, Palo Alto); Sidley Austin (TX) LLP, a Delaware limited liability partnership (Dallas); Sidley Austin LLP, a separate Delaware limited liability partnership (London); Sidley Austin LLP, a separate Delaware limited liability partnership (Singapore); Sidley Austin, a New York general partnership (Hong Kong); Sidley Austin, a Delaware general partnership of registered foreign lawyers restricted to practicing foreign law (Sydney); and Sidley Austin Nishikawa Foreign Law Joint Enterprise (Tokyo). The affiliated partnerships are referred to herein collectively as Sidley Austin, Sidley, or the firm.