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### NEWS

#### U.S. AUTHORITIES' STRONG (AND LIKELY GROWING) PIPELINE OF FCPA CASES

Following the highest annual Foreign Corrupt Practices Act (FCPA) corporate resolution total since its enactment, the first quarter of 2021 has been off to a slow start in terms of U.S. anti-corruption enforcement. Only one company has entered into an FCPA resolution with U.S. authorities in 2021 to date, which we discuss below. And only two individuals were charged in connection with anti-corruption related conduct, which we also discuss below.

But companies should not take the pause in splashy anti-corruption headlines as a reason to consider easing compliance efforts. Indeed, the Acting Chief of U.S. Department of Justice (DOJ) Fraud Section said in March that the government's pipeline of FCPA cases has "never been stronger." This article first briefly examines the momentary lull in resolutions in 2021 and then analyzes the likely causes for the government's current significant pipeline of anti-corruption investigations.

#### FCPA Enforcement in the First Quarter of 2021

The high corporate resolution total in 2020 — \$3.7 billion, excluding penalties paid to foreign regulators — reflects the resolution of a number of significant investigations. Given that the typical length of FCPA investigations is generally several years and that the timing of resolutions varies, there will be variances quarterly and annually in the number and dollar amount of corporate FCPA resolutions. Therefore, it is not surprising that 2021 has been slow in comparison to FCPA enforcement in recent years.

Further, COVID-19 likely affected enforcement efforts, with courtrooms and grand juries closed for portions of the pandemic. In 2020, prosecutors may have prioritized resolving more advanced investigations where document collection and witness interviews were already complete over other investigations, for example, where key witnesses could not be interviewed in person due to pandemic restrictions.

Finally, the transition to a new presidential administration may have created some delay in resolutions, as leadership changes occur within the DOJ and Securities and Exchange Commission (SEC).



*DOJ leadership indicated that the pipeline of FCPA cases has “never been stronger.”*

## DOJ and SEC’s Pipeline of FCPA Cases

Regardless of the causes of the downtick in FCPA resolutions, senior DOJ and SEC officials have continued to indicate that both agencies will continue to aggressively enforce white collar laws, including the FCPA. Indeed, DOJ leadership indicated that the pipeline of FCPA cases has “never been stronger.”

Many of the DOJ’s and SEC’s efforts in recent years have contributed to the agencies’ strong pipeline of cases. DOJ leadership indicated that the pipeline is due to three sources that U.S. authorities have been promoting for many years: (1) a steady flow of voluntary disclosures from companies, (2) whistleblowers reports, and (3) referrals from other U.S. government agencies and foreign enforcement authorities.

**Voluntary Disclosures:** DOJ’s FCPA Corporate Enforcement Policy, which began as a pilot program in 2016, provides incentives to companies that self-disclose misconduct under the FCPA, cooperate with the government’s investigation, and appropriately remediate the misconduct. More specifically, companies that meet these criteria may be able to resolve the government’s investigation through a declination. If DOJ brings an enforcement action, companies can receive up to a 50% reduction off of the low end of the U.S. Sentencing Guidelines fine range, and DOJ will not require the appointment of a monitor if a company has, at the time of resolution, implemented an effective compliance program. DOJ has attempted to be transparent about its FCPA enforcement policy, including by publicly announcing declinations to, in part, encourage other companies to voluntarily disclose misconduct.

**Whistleblowers:** The SEC whistleblower program was established under the Dodd-Frank Act and provides whistleblowers between 10% and 30% of total monetary sanctions collected as a result of a successful enforcement action. In 2020, the SEC received over 6,900 whistleblower tips, the largest annual number since the start of the program, and approximately 200 tips per year explicitly related to alleged misconduct under the FCPA. To qualify for an SEC whistleblower award, a whistleblower must voluntarily provide the SEC with original information that assists the SEC in bringing an enforcement action. Whistleblower awards can go (and have gone) to FCPA whistleblowers, but for confidentiality reasons, the agency announces awards only in general terms and does not link them to specific cases. The SEC has now awarded over \$800 million in whistleblower awards since issuing its first award in 2012. The sheer dollar amount of awards has also attracted law firms to represent whistleblowers and assist them in supporting their claims with information and documents such that they are more likely to lead to an enforcement action or, at minimum, a substantial investigation.

*The SEC has now awarded over \$800 million in whistleblower awards since issuing its first award in 2012.*

**Other Enforcement Authorities:** The DOJ and SEC’s FCPA pipeline has also been assisted in recent years by the growth of anti-corruption enforcement efforts by foreign countries, as well as referrals from other U.S. government agencies. Collaboration between U.S. and foreign authorities in anti-corruption cases continues to grow. Indeed, in one FCPA resolution last year, DOJ highlighted its cooperation with nine other U.S. and foreign authorities, the largest number ever in a foreign corruption case.

The incentives for companies to voluntarily disclose misconduct and the rise in whistleblower reports and referrals from other authorities are very likely to continue to increase the FCPA caseloads at the DOJ and SEC. Given this, it is critical for companies to continue to evaluate and enhance their compliance programs to avoid being next in the government’s FCPA enforcement pipeline.



## IN THE INTERIM

**1/8/2021:** A major international bank agreed to pay nearly \$80 million to resolve the DOJ's FCPA investigation. The charges arose out of payments made to third-party intermediaries falsely recorded on the bank's books and records, as well as related internal accounting control violations. According to admissions in court documents, between 2009 and 2016, the bank, acting through its employees and agents, knowingly and willfully conspired to maintain false books, records, and accounts to conceal, among other things, payments to a business development consultant who was acting as a proxy for a foreign official and payments to a consultant that were actually paid to a decisionmaker in order to obtain lucrative business for the bank.

In a related matter with the SEC, the bank will pay approximately \$43 million in disgorgement and prejudgment interest. According to the SEC order, the bank engaged foreign officials, their relatives, and their associates as third-party intermediaries, business development consultants, and finders to obtain and retain global business. The order found that the bank lacked sufficient internal accounting controls related to the use and payment of such intermediaries. The order further found that these payments were inaccurately recorded as legitimate business expenses and involved invoices and documentation falsified by the bank's employees.

<https://www.sec.gov/litigation/admin/2021/34-90875.pdf>

**3/2/2021:** John Luzuriaga Aguinaga and Jorge Cherrez Miño were each charged with one count of conspiracy to commit money laundering in complaints filed in the Southern District of Florida. As alleged in the complaints, between approximately 2014 and 2020, Cherrez, an investment adviser, paid more than \$2.6 million in bribes to officials at Ecuador's public police pension fund (ISSPOL), including at least \$1,397,066 to Luzuriaga, ISSPOL's Risk Director and a member of ISSPOL's Investment Committee, to obtain and retain investment business from ISSPOL. Cherrez allegedly obtained approximately \$65 million in profits from one aspect of the scheme.

<https://www.justice.gov/opa/pr/two-men-charged-ecuadorian-bribery-and-money-laundering-scheme>

**3/3/2021:** Grupo Mecánica del Vuelo Sistemas, S.A.U., a Spain-based engineering and technical consulting services company, received a 3.5-year debarment in connection with collusive, corrupt, and fraudulent practices relating to the World Bank Group's Danang Sustainable City Development Project and the Hanoi Urban Transport Development Project in Vietnam. According to the World Bank press release, certain members of the company's former management team colluded with two design consultants to gain unfair competitive advantages in two tendering processes, agreed to pay a commission to an agent for the consultants to improperly influence the tendering process to a contract, and failed to disclose its involvement in the drafting of the tendering documents for the two projects. The settlement agreement provided for a significantly reduced period of debarment with conditional release in light of the company's extraordinary cooperation, an agreement to voluntarily refrain from World Bank projects during the pendency of a World Bank audit, and voluntary remedial actions, including compliance program enhancements.

<https://www.worldbank.org/en/news/press-release/2021/03/03/world-bank-group-debars-grupo-mecanica-del-vuelo-sistemas-sau>



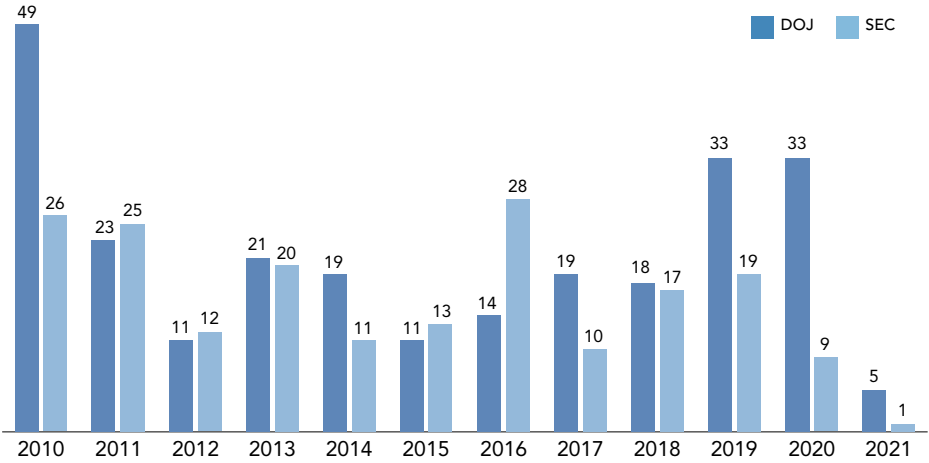
**3/12/2021:** Braskem S.A., the Brazil-based petrochemical company that resolved FCPA investigation in 2016 for approximately \$160 million, disclosed that it is investigating bribery allegations made last year by Emilio Lozoya, the former chief executive officer of Petróleos Mexicanos (Pemex), Mexico's state-run oil company. In its filing, Braskem said the allegations of illicit payments centered on an ethylene project with Pemex. Last year, Lozoya provided testimony to Mexico's Attorney General's Office stating that he had accepted bribes from Odebrecht S.A., Braskem's parent company. In response, Braskem and a joint-venture subsidiary in Mexico opened an investigation into allegations in compliance with its global compliance and governance policies.

[https://www.sec.gov/Archives/edgar/data/0001071438/000129281421000877/bak20210311\\_6k4.htm](https://www.sec.gov/Archives/edgar/data/0001071438/000129281421000877/bak20210311_6k4.htm)



## FCPA GOVERNMENT INVESTIGATIONS AND CORPORATE SETTLEMENTS

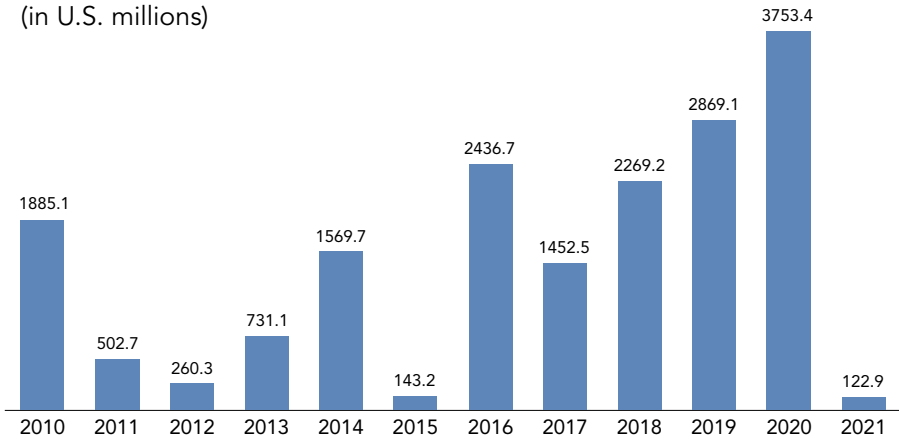
### FCPA-Related Cases\*



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

### Corporate FCPA-Related Penalties\*

(in U.S. millions)



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





## THE FCPA/ANTI-CORRUPTION PRACTICE OF SIDLEY AUSTIN LLP

Our FCPA/Anti-Corruption practice, which involves over 90 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.

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