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2015 YEAR IN REVIEW

From a Foreign Corrupt Practices Act (FCPA) enforcement perspective, 2015 may be most remembered as the year in which authorities refocused their priorities and efforts. In 2015, the Department of Justice (DOJ) made identifying individuals responsible for corrupt behavior within business organizations a top priority and indicated a refocus of its enforcement resources on “bigger, higher impact” FCPA cases. As a result of this refocusing, 2015 was not a banner year for FCPA enforcement “by the numbers.” While anti-corruption enforcement in the U.S. may have been subdued, authorities in other countries picked up the slack. Perhaps most notably, last year saw a significant uptick in anti-corruption enforcement in Brazil, including the highly publicized investigation into corrupt practices at Petróleo Brasileiro S.A. (Petrobras).

In 2015, 12 companies settled FCPA-related cases with the DOJ and Securities and Exchange Commission (SEC). This was the fewest settlements in the past decade and marked a significant decline from the 30 cases announced in 2014. Combined, those 12 companies paid nearly $145 million in penalties for FCPA violations, the lowest amount in fines collected since 2006. Rather than indicating that FCPA enforcement is slowing down, this decline signals a change in how the DOJ and SEC intend to prosecute corruption. As Assistant Attorney General Leslie Caldwell suggested in November, the DOJ is focusing on pursuing culpable individuals and on “high-impact cases.” Because such matters take significantly more resources, Caldwell announced in November that DOJ plans to add 10 new line prosecutors to its FCPA Unit, increasing the office’s size by 50 percent. Earlier in 2015, the FBI announced it would form three dedicated international corruption squads to investigate foreign bribery and kleptocracy-related crimes.

The DOJ has long stressed the importance of pursuing charges against those individuals in companies who are responsible for criminal violations. However, as the director of the SEC’s Division of Enforcement, Andrew Ceresney, noted in a November speech, U.S. authorities face “formidable challenges” to holding individuals accountable for corrupt acts beyond U.S. borders. In most FCPA cases, he noted, those most directly responsible for corrupt acts are foreign nationals who live outside of the United States. It is difficult for U.S. authorities to gain custody of these individuals and access to witnesses and documents needed for trial.

To address these challenges, DOJ Deputy Attorney General Sally Yates issued new guidance to line prosecutors in September. Known as the “Yates Memo,” the guidance includes three novel
features. First, to get “any” credit for cooperation, a company must provide “all” information about individual wrongdoers to the government. Second, before a prosecutor may resolve a case against a company, he or she must document what was done to establish a case against individuals. Third, prosecutors are now being instructed to bring civil actions against individuals regardless of their ability to pay any damages or fines. These features are likely to require significant changes to how a company conducts internal investigations and “cooperates” with the government. For more information on the Yates Memo, please see our prior update.

In 2015, the DOJ and SEC announced charges against nine individuals for FCPA violations and secured six guilty pleas. While slightly lower than the previous year, this number fails to capture the full picture of individuals ensnared in federal corruption investigations. It does not include, for example, the 39 individuals who have been charged as part of the DOJ’s investigation into corruption in the Fédération Internationale de Football Association (FIFA), one of DOJ’s “high-impact cases.” For more information on the DOJ’s FIFA investigation, please see our prior article in the Anti-Corruption Quarterly.

The DOJ settled only two matters involving corporations for a combined $24.2 million in penalties, while the SEC settled 10 for a total of $117.9 million. There were no parallel DOJ and SEC corporate settlements. Eight of the 10 SEC matters were resolved through administrative cease-and-desist orders. Administrative proceedings pose unique challenges for companies because there is a lower burden of proof to show a violation occurred, the SEC may avoid traditional rules of evidence, and judicial review and approval of the terms of the settlement are not required.

These changes in policy, enforcement actions and trends, along with other major developments related to anti-corruption in 2015, are discussed in more detail below.

DOJ Emphasizes Individual Accountability

On Nov. 16, 2015, Deputy Attorney General Yates reported that the principles outlined in the September Yates Memo had been incorporated into the U.S. Attorneys’ Manual (USAM). The USAM, which applies to all DOJ personnel, is considered “one of the most important documents” in the department. In her announcement, Yates highlighted three important changes to the USAM.

First, Yates indicated that the DOJ had added to the USAM the threshold requirement that organizations must identify individual wrongdoing to receive any cooperation credit. This is likely to be the most significant revision to the USAM. While companies were always encouraged to provide information about the conduct of individuals, there may be new consequences for not doing so. Previously, according to Yates, “cooperation credit was a sliding scale of sorts where companies could receive at least some credit for cooperation, even if they failed to fully disclose all facts about individuals.” As Yates made clear, “[t]hat’s changed now.” Under the new policy, companies must “provide complete information about individuals involved in wrongdoing [as] a threshold hurdle that must be crossed before we’ll consider any cooperation credit.” Yates noted, however, that cooperation does not require the company to characterize anyone as culpable: “[W]e’re not asking companies to pin a scarlet letter on their employees.” Rather, companies must provide “all facts about the individuals involved.”

Yates emphasized that the new policy will not require companies to waive attorney-client privilege. She stressed, however, that only “legal advice is privileged” and “[f]acts are not.” Responding to concerns about the new policy’s implications for the attorney-client privilege and attorney work product doctrine, Yates acknowledged that notes and memos from a lawyer’s interview of a corporate employee during an internal investigation “may be protected.” However, she noted that “to earn cooperation credit, the corporation does need
Changes in DOJ and SEC

Second, the USAM now divides a corporation’s voluntary disclosure and its willingness to cooperate as separate factors to be considered when deciding whether to charge a company. Yates noted that this change was designed to emphasize that “they are distinct factors” and are “to be given separate consideration in charging decisions.” Yates stated: “In recognition of the significant value early reporting holds for us, prompt voluntary disclosure by a company will be treated as an independent factor weighing in the company’s favor.” The revisions make it clear that self-reporting will not necessarily result in a declination to prosecute, but treating voluntary disclosure as a separate factor may result in a clearer understanding of its value.

Third, the DOJ changed portions of the USAM regarding parallel proceedings and civil cases. Yates stated that “in the area of corporate wrongdoing, it is particularly important to have our criminal prosecutors and our civil attorneys working together.” She also emphasized a new principle that DOJ attorneys should consider civil actions even if the individual may be unable to pay any damages or fines, stating “[j]ust because wrongdoers are judgment-proof, doesn’t mean they should escape judgment.”

SEC Requires Self-Reporting for Certain Types of Resolutions

On Nov. 17, SEC Enforcement Director Andrew Ceresney announced that going forward, “a company must self-report in order to be eligible for the Division [of Enforcement] to recommend a DPA [deferred prosecution agreement] or NPA [non-prosecution agreement].” Ceresney stated that he is “hopeful that this condition on the decision to recommend a DPA or NPA will further incentivize firms to promptly report FCPA misconduct to the SEC.” Citing voluntary disclosure as “critical” to the SEC, Ceresney noted that there are “significant benefits available to companies who self-report violations and cooperate fully with our investigations.” Ceresney also noted that companies that do not voluntarily disclose take the chance that the SEC will learn of misconduct through other means and the consequences for a company “will likely be worse and the opportunity to earn additional cooperation credit may well be lost.”

Ceresney also reaffirmed the SEC’s commitment to pursue individuals for violating the FCPA, despite significant difficulties in doing so, including the fact that most individuals and evidence are located abroad. Ceresney noted that unlike international requests for information from DOJ, requests from the SEC to foreign authorities do not toll the statute of limitations. Nonetheless, he noted that over 20 percent of the SEC’s FCPA cases in the past fiscal year (which runs from Oct. 1 to Sept. 30) were brought against individuals. He stated that the SEC has seen a “transformation in the ability to get meaningful and timely assistance from international partners.”

The DOJ Reportedly Mulls a Sea Change in FCPA Enforcement

The DOJ is reportedly contemplating a potentially significant transformation in its approach to FCPA enforcement. The Washington Post reported that DOJ has written a draft policy designed to reduce the number of FCPA cases prosecutors pursue if companies voluntarily disclose misconduct to the department and cooperate in its investigation. The guidance apparently is still being finalized, and details could change. The DOJ has declined to comment on the draft.

The proposed policy, if the report is correct, may provide a clear understanding of additional steps companies must take to obtain a declination from federal prosecutors. The DOJ has been criticized for years for its perceived lack of transparency in its exercise of prosecutorial
discretion to decline to bring FCPA cases. Clarity regarding the benefits of self-reporting and cooperating with the DOJ may be even more valuable in light of the Yates Memo. This proposed policy would be in line with comments recently made by Assistant Attorney General Caldwell in November 2015. Without confirming the reported policy change, Caldwell discussed voluntary disclosure and cooperation in FCPA investigations. Noting her desire of “increasing transparency regarding charging decisions in corporate prosecutions,” she stated that “if companies know the consideration they are likely to receive from self-reporting or cooperating in the government’s investigation, we believe they will be more likely to come in early, disclose wrongdoing and cooperate.”

It is unclear under the alleged proposed policy whether and when companies would be able to avoid liability altogether. According to the Washington Post, the proposal contemplates that a DOJ decision not to pursue charges may still be accompanied by a fine in the form of forfeiture of ill-gotten gains. But such a settlement may have reduced fines and may not include publication of the company’s alleged misconduct.

In addition, the potential new FCPA policy reportedly addresses the longstanding criticism that the tangible benefits the DOJ has promised companies for their voluntary disclosure of FCPA violations are unclear at best or illusory at worst. As such, the policy would reflect Caldwell’s statement that “voluntary self-disclosure in the FCPA context does have particular value” to DOJ, and the department wants to make it clear that it “does provide a tangible benefit.”

In illustrating the benefits of early self-reporting and cooperation, Caldwell cited a recent DOJ declination against PetroTiger, which engaged Sidley Austin to conduct an internal investigation into allegations of bribery in Colombia and to represent it before the DOJ. The former co-CEO pleaded guilty in June to a scheme to bribe Colombian officials to secure an oil-services contract. Caldwell stated that DOJ “declined to prosecute the company, or to seek any NPA or DPA with it, even though we clearly could have done so” because PetroTiger voluntarily disclosed the misconduct and fully cooperated with DOJ’s investigation.

Companies that do not cooperate with federal prosecutors already face severe consequences. In December 2014, Alstom, a French power company, pleaded guilty to violating the FCPA and paid $772 million in penalties, the most ever imposed in a foreign bribery case. In assessing the fine, Caldwell noted that DOJ considered Alstom’s failure to voluntarily disclose the misconduct and its reluctance to cooperate with the investigation.

While the existence of the policy and its content are currently unclear, such a transformation would be in line with DOJ’s recent comments and may finally offer companies a tangible way to weigh the benefits of disclosure. Given that under the Yates Memo companies must pass a certain threshold requirement to gain any benefit from cooperating with the government, the adoption of such a policy may enable companies to discern the value of crossing that threshold.
profits to a foreign official through the local partner. According to the SEC, had PBSJ “conducted meaningful due diligence at the time,” it would have discovered that a foreign official had a beneficial interest in the local partner. Once PBSJ was awarded the contract, Hatoum offered a Qatari official an “agency fee” of 1.8 percent of the contract amount and agreed to pay half of the salary of the official’s wife, who worked for the local partner. On another bid for a Moroccan hotel resort, Hatoum offered a foreign official an “agency fee” of 3 percent to obtain the contract. The SEC alleged that PBSJ “ignored multiple red flags” that should have led it to uncover these payment schemes.

PBSJ became aware of the conduct when its general counsel inquired as to how Hatoum was able to win two contracts, within a fairly short period of time, bidding against companies with more international expertise. PBSJ launched an internal investigation and self-reported the potential violations. PBSJ also offered “substantial” cooperation, including making witnesses available for interviews and providing factual chronologies, timelines, internal summaries and full forensic images. PBSJ also negotiated a termination of the light-rail project. According to the SEC, PBSJ earned approximately $2.9 million in illicit profits because it continued to work on the project until a replacement company could be found. The SEC fine was based on disgorgement of this amount and a civil penalty.

Goodyear Tire & Rubber Company

On Feb. 24, the SEC charged Goodyear Tire & Rubber Company with violating the books and records and internal controls provisions of the FCPA for the conduct of its subsidiaries in Kenya and Angola. The case was resolved through an administrative cease-and-desist proceeding as opposed to a traditional district court action. Goodyear agreed to pay more than $16 million in fines to settle the charges. The penalty was designed to ensure Goodyear forfeited all illicit profits from business obtained through bribes. Goodyear was charged with violating the books and records and internal controls provisions of the FCPA. Goodyear neither admitted nor denied the SEC’s findings.

According to the SEC order, Goodyear failed to prevent or detect more than $3.2 million in bribes paid by two Goodyear subsidiaries in two countries over the course of four years. The SEC alleged that Goodyear “failed to conduct adequate due diligence when it acquired” one subsidiary. In both subsidiaries, according to the SEC, Goodyear “failed to implement adequate FCPA compliance training and controls after the acquisition.” As part of its remedial efforts, Goodyear divested its interest in both subsidiaries.

The SEC order cites bribes to employees of both private companies and government-owned entities, and both were used to calculate Goodyear’s fine. Goodyear also must report its FCPA remediation efforts to the SEC for the next three years. For more information on the SEC’s settlement with Goodyear, see our prior Anti-Corruption Quarterly.

BHP Billiton

On May 20, the SEC charged BHP Billiton (BHPB), a global resources company, with violating the books and records and internal controls provisions of the FCPA for sponsoring the attendance of foreign officials at the Beijing Summer Olympics. BHPB was an official sponsor of the Olympics and supplied the materials used to make the Olympic medals. The case against the company was pursued through an SEC administrative cease-and-desist proceeding. BHPB agreed to pay a $25 million fine to settle the charges. BHPB was charged with violating the books and records and internal controls provisions of the FCPA. The company neither admitted nor denied the SEC’s charges.

The charges stemmed from hospitality packages that BHPB offered to 176 officials of state-owned enterprises primarily from countries in Africa and Asia to attend the Olympics. Sixty officials, as well as 24 spouses and guests, ultimately accepted these packages, which included event tickets, luxury hotel accommodations and sightseeing excursions valued at
$12,000 to $16,000 per package. The SEC order notes that BHPB recognized that these packages posed a “heightened risk of violating anti-corruption laws” but found the company’s efforts to address this risk “insufficient.” Specifically, the SEC found there was inadequate training and supervision of the business units that sought hospitality packages, which caused the company to invite government officials who were connected with pending contracts or regulatory dealings.

Notably, the SEC did not charge BHPB with violating the anti-bribery provisions of the FCPA. In addition to the fine, BHPB is also required to regularly report on its anti-corruption compliance program for the next year. As part of its remediation, BHPB has already created a compliance group, enhanced its policies and procedures for hospitality and other high-risk areas and embedded independent anti-corruption managers into its business.

IAP Worldwide Services Inc.

On June 16, DOJ announced an NPA with IAP Worldwide Services Inc. (IAP), a Florida-based defense and government contracting company, for conspiring to bribe Kuwaiti officials. This was the DOJ’s only FCPA NPA in 2015. IAP agreed to pay a $7.1 million criminal penalty.

In 2004, Kuwait’s Ministry of Interior launched a security project designed to provide nationwide surveillance capabilities, primarily through closed-circuit television. The project was divided into feasibility and installation phases. Revenues from the installation phase were expected to be substantially greater than from the feasibility phase. To obtain installation contracts, IAP sought to deceive Kuwaiti officials during the feasibility phase. Specifically, IAP established a seemingly independent shell company that bid on and obtained a $4 million contract to work as a consultant during the feasibility phase. The shell company was to direct revenue on installation contracts to IAP. To ensure that IAP received installation contracts, over $1.7 million of the consulting contract was funneled to a third party with the understanding that some or all would be offered as bribes to Kuwaiti officials. Citing IAP’s cooperation, the DOJ announced it had entered into a NPA with the company. The NPA requires IAP to review its existing internal controls, policies and procedures and make modifications to ensure the company has accurate books and records and a rigorous anti-corruption compliance program. IAP is also required to periodically report its remediation and improvements to its compliance program.

Louis Berger International Inc.

On July 17, Louis Berger International Inc. (LBI), a New Jersey construction management company, entered into a DPA with the DOJ to resolve charges that it bribed foreign officials in four countries to secure government contracts. This was the only FCPA-related DPA that DOJ entered into in 2015. LBI agreed to pay a $17.1 million criminal penalty. LBI also agreed to accept a corporate compliance monitor for at least three years.

According to admissions made by LBI, from 1998 until 2010, LBI and its employees orchestrated $3.9 million in bribe payments to foreign officials in India, Indonesia, Vietnam and Kuwait. These payments were concealed using descriptions such as “commitment fee,” “counterpart per diem,” “marketing fee” and “field operation expense.” Employees also submitted inflated or false invoices to generate cash to use as bribes.

Mead Johnson Nutrition Company

On July 28, the SEC announced that Mead Johnson Nutrition Company agreed to settle charges that its Chinese subsidiary made improper payments to healthcare professionals at government-owned hospitals to influence decisions to recommend the company’s infant formula to new or expecting mothers. The SEC used an administrative cease-and-desist proceeding to resolve this matter. Mead Johnson agreed to pay $12 million in fines to settle the SEC’s charges. Mead Johnson was charged with violating the books and records and
internal controls provisions of the FCPA. The company settled without admitting or denying the findings.

The SEC alleged that employees categorized improper payments as “distributor allowances” to third parties who sold the company’s products in China. The SEC noted that although the distributor allowances belonged to the distributors, Mead Johnson exercised some control over how the money was spent. The third parties provided cash and other incentives to healthcare distributors to recommend Mead Johnson products and provide information on expecting mothers so Mead Johnson could advertise directly to them. The SEC alleged that over a five-year period, Mead Johnson paid nearly $2.1 million in bribes and received nearly $7.8 million in resulting profits.

The SEC charged Mead Johnson with violating FCPA books and records and internal controls provisions. The SEC order noted that Mead Johnson conducted an initial internal investigation in 2011, but failed to uncover that distributor allowances were being used to funnel improper payments. Nonetheless, the Company still opted to discontinue distributor allowances.

BNY Mellon
On Aug. 28, the SEC charged BNY Mellon with violating the FCPA by providing “valuable” student internships to family members of foreign government officials affiliated with a sovereign wealth fund. The SEC used an administrative cease-and-desist proceeding to bring this case. During the relevant time period, BNY Mellon managed roughly $55 billion in assets from the sovereign wealth fund and sought to increase the amount under its custody. BNY Mellon agreed to pay $14.8 million to settle the charges. BNY Mellon was charged with violating the anti-bribery and books and records provisions of the FCPA. The company settled without admitting or denying the charges.

The SEC found that family members of officials of the sovereign wealth fund requested the internships, which were provided without the same “stringent hiring standards” required for other internship applicants. The SEC order noted that despite an anti-corruption compliance policy, there were few internal controls around the hiring of relatives of customers. Specifically, legal and compliance staff did not review hires approved by sales staff and client relations managers. The SEC found that BNY Mellon’s internal controls were “insufficiently tailored to the corruption risks inherent in the hiring of client referrals.”

The company has enhanced its anti-corruption policy to address the hiring of relatives of foreign officials.

Hyperdynamics Corporation
On Sept. 29, the SEC charged Hyperdynamics Corporation with violating the FCPA by failing to accurately record payments made by a subsidiary in Guinea. The SEC brought the case using an administrative cease-and-desist proceeding. Hyperdynamics agreed to pay a civil fine of $75,000 to settle the matter. Hyperdynamics was charged with violating the books and records and internal controls provisions of the FCPA. The Company settled without admitting or denying the findings.

The SEC order charges Hyperdynamics with spending $130,000 through its subsidiary for “public relations and lobbying services” in Guinea. The SEC found these payments were made to two companies controlled by a Hyperdynamics employee, and there was no evidence the funds were used on legitimate public relations or lobbying activities. The SEC noted that Hyperdynamics did not have a due diligence and monitoring process in place to vet third-party vendors. The SEC did not allege that any of the money was used to offer bribes.

Tokyo-Based Conglomerate
On Sept. 28, the SEC charged a Tokyo-based conglomerate with inaccurately recording improper payments to South Africa’s ruling party in connection with contracts to build two
multibillion-dollar power plants. The SEC brought its case against the company in U.S. district court. The company agreed to pay $19 million to settle the charges without admitting or denying the allegations. The company was charged with violating the books and records and internal controls provisions of the FCPA but not the anti-bribery provisions.

The SEC alleged that the company sold a 25 percent stake in a South African subsidiary to a company serving as a front for the African National Congress (ANC), the ruling party in South Africa. This arrangement gave the company the ability to share any profits with the ANC. The company was ultimately awarded two contracts and provided roughly $5 million in dividends to the ANC front company. The company paid the front company an additional $1 million in “success fees” that were recorded as consulting fees.

As part of the announcement, the SEC’s FCPA unit chief stated: “[w]e particularly appreciate the assistance we received from the African Development Bank’s Integrity and Anti-Corruption Department and hope this is the first in a series of collaborations.” The SEC also noted the cooperation of the South African Financial Services Board.

**Bristol-Myers Squibb**

On Oct. 5, the SEC announced charges against New York-based pharmaceutical company Bristol-Myers Squibb for charges relating to a joint venture in China that made cash payments to healthcare providers at state-owned and state-controlled hospitals in exchange for prescription sales. This case was pursued through an SEC administrative cease-and-desist proceeding. Bristol-Myers Squibb agreed to pay more than $14 million to settle the charges. Bristol-Myers Squibb was charged with violating the books and records and internal controls provisions of the FCPA. The Company settled the charges without admitting or denying the findings.

The SEC’s order alleges that sales representatives from a majority-owned Chinese joint venture sought to secure and increase sales by providing healthcare providers with “investments” or cash, jewelry and other gifts, meals, travel, entertainment and sponsorships for conferences. Despite operating in China since 1982, the company did not implement a formal FCPA compliance program there until 2006. The SEC alleged that once a compliance program was implemented, compliance assessments and audits revealed weaknesses in approving and documenting expenditures. The SEC order states that these internal control deficiencies were not timely remediated. The SEC also described compliance resources in China as “minimal,” noting that responsible officers “rarely traveled to China.”

Bristol-Myers Squibb terminated over 90 employees and disciplined an additional 90 employees who failed to comply with relevant policies. Most of the officers of the Chinese joint venture were replaced to enhance the “tone at the top.” The company also implemented a 100 percent pre-reimbursement review of all expense claims. Bristol-Myers agreed to report to the SEC on its remediation and improved compliance measures for two years.

**Standard Bank plc**

On Nov. 30, the SEC announced charges against Standard Bank for failing to disclose payments in connection with debt issued by the government of Tanzania. The SEC brought the case using an administrative cease-and-desist proceeding. Standard Bank agreed to pay a $4.2 million penalty to the SEC.

As part of a “coordinated global settlement,” the announcement came on the same day as the UK’s Serious Fraud Office (SFO) announced a DPA with Standard Bank for violating the UK Bribery Act. While the SEC did not have jurisdiction to bring an FCPA charge against the company because it was not an “issuer” as defined by the FCPA, the SEC used the same underlying facts to bring a charge under Section 17(a)(2) of the Securities Act of 1933. Section 17(a)(2) is the antifraud provision and prohibits any person in the offer or sale of a
security from obtaining money by a materially untrue statement or omission. As part of the SEC’s announcement, Gerald Hodgkins, associate director of the SEC’s Division of Enforcement, stated, “when suspicious payments made anywhere in the world result in tainted securities offerings in the United States, the SEC is fully committed to taking action against the responsible parties.”

In addition to the civil penalty, the SEC also required Standard Bank to disgorge $8.4 million. However, the SEC deemed this payment satisfied by payment of an equal amount in the UK matter. If Standard Bank pays less than $8.4 million in disgorgement to the UK, any remaining balance will be due to the SEC.

Dmitrij Harder

On Jan. 6, 2015, Dmitrij Harder, the former president of a Pennsylvania financial consulting firm, the Chestnut Group, was indicted for his alleged scheme to pay bribes to European banking officials in violation of the FCPA and the Travel Act. Harder was also charged with laundering the proceeds of those crimes. He is awaiting trial in Philadelphia.

Harder allegedly made five payments totaling more than $3.5 million to the sister of an official at the European Bank for Reconstruction Development to influence the official’s decisions in favor of applications by Chestnut Group clients. According to the indictment, when two clients received financing from the bank, the Chestnut Group allegedly earned $8 million in “success fees.” The payments were made to the official’s sister for consulting and other services, allegedly to disguise their true nature.

Walid Hatoum

On Jan. 22, 2015, the SEC charged Walid Hatoum, a former officer at PBSJ Corporation, using an SEC administrative cease-and-desist proceeding. Hatoum was charged with violating the antibribery, books and records and internal controls provisions of the FCPA by offering or authorizing bribes to Qatari government officials. Hatoum agreed to settle the SEC charges by paying a penalty of $50,000.

According to the SEC’s order, Hatoum offered or authorized nearly $1.4 million in bribes to secure government contracts from Qatari officials. When Qatar discovered the involvement of one of its officials, it rescinded one of the contracts. The SEC alleged that Hatoum then secretly offered to employ another Qatari official to influence that official to reinstate the contract. The SEC order also notes that during PBSJ’s internal investigation, Hatoum began deleting emails and other records. While Hatoum did not participate in PBSJ’s FCPA training until after the scheme was uncovered, the SEC noted that he was aware of the FCPA’s prohibitions from training he received at a former employer.

Louis Berger International Employees

Two senior vice presidents of Louis Berger International each pleaded guilty to one count of conspiracy to violate the FCPA and one count of violating the FCPA as a result of DOJ’s investigation into the company. Richard Hirsch, of Makaati, Philippines, was previously responsible for the company’s operations in Indonesia, Thailand, the Philippines and Vietnam. James McClung, of Dubai, United Arab Emirates, led the company’s operations in India and, following Hirsch, Vietnam.

The DOJ alleged that Hirsch not only knew that bribes were being concealed by employees as “commitment fees” or “counterpart per diems,” but also attempted to discourage an employee connected with Indonesia from speaking with the company’s internal investigators. Hirsch stopped payments to the employee to make it appear that she was no longer with the company. Hirsch also passed along a false email from the employee claiming she did not want to be interviewed given the “long time” since she worked for the
company, her age, and her health and memory problems. Hirsch also discouraged alleged co-conspirators from sending emails about the scheme on company servers for fear the communications may raise red flags. DOJ alleged that McClung was aware of and authorized improper payments in Vietnam and India.

Following the DOJ’s announcement, authorities in India began an investigation. In September, the Gao police formally filed charges against four public officials and two Louis Berger employees for violating domestic anti-corruption laws. One additional Indian official is expected to be added to the charges.

**Russian Atomic Energy Corporation Scheme**

On Aug. 31, a Russian official residing in Maryland pleaded guilty to conspiring to commit money laundering, under the federal money laundering statute, in connection with an FCPA violation. The case highlights that while foreign officials are not subject to the FCPA, they may be prosecuted under separate statutes for accepting bribes.

The DOJ considered Vadim Mikerin, 56, of Chevy Chase, Maryland, a Russian official because he worked for subsidiaries of the Russian Atomic Energy Corporation—specifically Tenex and Tenam. Tenex acts as the sole supplier and exporter of Russian uranium and uranium enrichment services to nuclear power plants across the globe. Tenam, based in Maryland, is the wholly owned subsidiary and the official representative of Tenex in the United States. Mikerin was the president of Tenam and a director of Tenex.

According to court documents, between 2004 and 2014, Mikerin conspired with executives of Tenex customers to transmit corrupt payments from Maryland to offshore shell companies to influence Tenex’s business decisions. Over $2.1 million was ultimately wired to offshore bank accounts as part of the scheme. Mikerin, as part of his settlement, agreed to forfeit that amount. On Dec. 15, Mikerin was sentenced to 48 months in prison.

Daren Condrey, 50, of Glenwood, Maryland, and Boris Rubizhevsky, 64, of Closter, New Jersey, each pleaded guilty to violating the FCPA in connection with the scheme. Condrey was an owner and executive of what was identified as “Transportation Company A” in court filings. Rubizhevsky was the owner and sole employee of “Consulting Company Two.” Both companies made improper payments to Mikerin to influence Tenex business decisions.

**James Michael Rama**

On June 16, James Michael Rama, a vice president of special projects and programs for IAP Worldwide Services, pleaded guilty to conspiring to violate the FCPA. Rama pursued a feasibility contract with the Kuwaiti government, intending to steer the subsequent and more lucrative installation contract to IAP. At the direction of Kuwaiti officials, Rama set up a shell company to bid on the feasibility contract to hide IAP’s involvement and agreed to funnel roughly 50 percent back to a Kuwaiti consultant to pay bribes to Kuwaiti officials.

**UK’s First Deferred Prosecution Agreement**

On Nov. 30, a senior judge formally approved the UK’s first DPA. Legislation providing for DPAs in the UK entered into force in February 2014. Standard Bank plc, a UK-regulated bank, agreed to pay $32.2 million in penalties to settle allegations of violating Section 7 of the UK Bribery Act, which obligates companies operating in the UK to prevent bribery. This was the first use of Section 7 by the SFO in a prosecution. The allegations centered around failure to prevent bribery in connection with a deal to raise $600 million for the government of Tanzania. Roughly $6 million in payments to government officials were made as part of the transaction. In reaching the settlement, the SFO noted that Standard Bank self-reported the violations and fully cooperated in the investigation. For more information on this DPA, please see our prior update.
Brazil’s “Car Wash” Investigation Continues to Expand

In 2014, Brazilian prosecutors and federal police uncovered what might be the largest ever corruption scandal in the nation’s history. According to prosecutors, from 2004 until 2014, officials of Brazil’s state-owned oil conglomerate, Petrobras, colluded with a cartel of construction companies to overcharge Petrobras for contracts and use the excess money to pay bribes to Brazilian government officials. In an April 2015 filing with the SEC, Petrobras estimated that the Company overpaid more than $2.5 billion in costs for property, facilities, and equipment, and used the money to fund improper payments to government officials. The Company also reported it has received subpoenas from the SEC.

By the end of 2014, charges had been filed against 35 individuals, and in 2015, that number expanded to 173, with 75 convictions. The investigation has also spilled into other countries. Brazilian prosecutors note that they have received 85 requests for cooperation from 37 countries, including the United States, to investigate companies allegedly involved in corrupt practices with Petrobras. These numbers are expected to increase as the investigation continues.

U.S. companies have already been implicated in parts of what has been dubbed Operation Car Wash. For example, Brazilian prosecutors are investigating Petrobras’ purchase of a Pasadena, Texas, refinery through a series of transactions that began in 2006 in which the Company paid more than 30 times the amount the refinery had sold for in 2005.

Large multinational companies have also been ensnared in Operation Car Wash. For example, Rolls-Royce was named in Brazilian documents in 2015 for allegedly paying bribes to secure a $100 million contract for equipment for Petrobras oil rigs. The world’s largest offshore oil rig contractor, Transocean Ltd., was recently linked to improper payments to a former Petrobras executive.

Several multinational businesses are already under scrutiny from prosecutors in their home countries. For example, in August 2015, Italian oil and gas services firm Saipem confirmed that Milan prosecutors are investigating a contract award from Petrobras in 2011. Other companies are launching internal investigations and voluntarily disclosing the results to local prosecutors. In October 2015, Sevan Marine ASA, a Norwegian company that specializes in design, engineering and construction of offshore oil and gas projects, released a statement that it likely paid improper payments to Petrobras and self-reported to Norwegian prosecutors.

While allegations initially appeared focused on construction companies that obtained contracts from Petrobras, Operation Car Wash has since expanded to include a variety of industries. The investigation uncovered evidence of fraud in Brazil’s health ministry and state-owned bank, Caixa Economica Federal. In July, Brazilian authorities arrested the president of Electronuclear, the nuclear power subsidiary of Brazil’s state-controlled electric utility, Centrais Electricas Brasileiras SA (Electrobras). Brazilian prosecutors are investigating possible cartel activity involved in the construction of nuclear power plants.

Most recently, Operation Car Wash has expanded into banking and finance. Following reports that many individuals implicated in the scandal used Swiss bank accounts to funnel the money, the Swiss attorney general froze $400 million in assets. In November, Brazilian police arrested André Esteves, a billionaire controlling shareholder of BTG Pactual SA, a Brazilian investment finance company that has entered into major deals with Petrobras. More recently, Brazil’s federal tax authority stated that it was investigating more than a dozen foreign and local banks for potentially laundering money related to the scheme.

Given how rapidly Operation Car Wash has spread to include additional industries and corporations, companies with operations in Brazil should consider reviewing their risk profile in the country and conducting internal investigations, where warranted, to be better positioned to respond should they be implicated in the investigation. And companies with ties to Brazilian industries should carry out reviews to determine if their ties to the country raise potential issues of liability.
August 25, 2015: The attorney general of Switzerland announced criminal proceedings against FIFA’s president, Joseph Blatter. Blatter is being investigated for criminal mismanagement and misappropriation. Blatter was interviewed that same day, and searches were conducted of FIFA’s headquarters and Blatter’s home.

August 29, 2015: Hyperdynamics Corp. settled charges with the SEC concerning alleged violations of the FCPA’s books and records and internal controls provisions. Hyperdynamics paid a penalty of $75,000. The investigation related to public relations and lobbying expenses in the Republic of Guinea that were improperly supported.

August 30, 2015: Andres Truppel, former chief financial officer of Siemens Argentina, pleaded guilty for conspiring to pay $100 million in bribes to senior Argentine officials to secure and maintain a contract to provide national identity cards. He faces a maximum sentence of five years in prison. Charges against seven other individuals are still pending. In 2008, Siemens and Siemens Argentina entered guilty pleas to violating the FCPA and agreed to pay fines of $448.5 million and $500,000, respectively.

FCPA-Related Cases*

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<tr>
<td>2015</td>
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* New criminal or civil cases (settled or contested) instituted by year

** Based upon public disclosures of investigations

Corporate FCPA-Related Penalties*

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

** Includes publicly disclosed reserves for future FCPA settlements
October 2, 2015: Canadian mining company Kinross Gold Corp. disclosed that it had received subpoenas from DOJ and SEC seeking information regarding improper payments and deficiencies in internal control in the company’s operations in West Africa.

October 5, 2015: SEC announced a settlement with Bristol-Myers Squibb. The company agreed to pay $14 million in penalties for conduct committed by its joint venture in China in which cash payments were given to healthcare providers in exchange for prescription sales.

October 9, 2015: James Rama, a former employee of IAP Worldwide Services, was sentenced to 120 days in prison for conspiracy to violate the FCPA. IAP Worldwide entered into a non-prosecution agreement and paid over $7 million in fines in June. Rama was given a substantial lessening of his sentence for cooperating with authorities.

November 16, 2015: Deputy Attorney General Yates announced that policy changes in DOJ’s approach to investigating business organizations, outlined in a memorandum in September 2015, had been incorporated into the USAM.

November 30, 2015: The first application for a deferred prosecution agreement by the UK SFO was approved. Standard Bank agreed to pay over $32 million, including $7 million in compensation to the Government of Tanzania and the SFO’s reasonable costs for the investigation and resolution.

December 2, 2015: The Sweett Group, an international construction company, admitted to violating Section 7 of the UK Bribery Act of 2010 following an investigation from the UK’s SFO. This was the second case the SFO has brought for failure to prevent bribery and came weeks after the first matter. Any fine imposed has yet to be agreed upon, but the company is not subject to mandatory debarment from public sector tendering under EU or UK law.

December 3, 2015: DOJ unsealed a superseding indictment charging an additional 16 defendants with racketeering, wire fraud and money laundering conspiracies in connection with DOJ’s investigation into FIFA. The new defendants held various positions in two regional FIFA confederations. In November, seven additional defendants pleaded guilty.

December 4, 2015: Ernesto Lujan, a former managing partner at the Wall Street brokerage firm Direct Access Partners LLC, was sentenced to two years in prison for participating in a conspiracy to bribe officials at Venezuela’s state-owned development bank. Lujan was also sentenced to forfeit $18.5 million.

December 8, 2015: Tomas Clarke, a former senior vice president at Direct Access Partners LLC, was sentenced to two years in prison for participating in a conspiracy to bribe officials at Venezuela’s state-owned development bank. Clarke was ordered to forfeit $5.8 million.

December 10, 2015: A Houston grand jury returned an indictment charging two individuals with conspiring to violate the FCPA by paying bribes to at least five officials of Petroleos de Venezuela SA (PDVSA), Venezuela’s state-owned and state-controlled oil company. Roberto Rincon, the president of Tradequip Services & Marine, an oil field supply company, was arrested in Houston on Dec. 16. That same day, Abraham Shiera was arrested in Miami.

December 15, 2015: A former Russian official residing in Maryland was sentenced to 48 months in prison and ordered to forfeit more than $2 million for conspiracy to commit money laundering in connection with an FCPA investigation. Vadim Mikerin worked for the subsidiary of a Russian state-owned energy company and received more than $2 million in payments to influence his decisions.
December 16, 2015: A former regional director for SAP International was sentenced to 22 months in prison for his role in a scheme to bribe Panamanian officials to secure government contracts. **Vicente Eduardo Garcia** admitted using sham contracts and false invoices to disguise bribes to obtain software licenses and other technology contracts.

### Compliance Counsel Joins DOJ Fraud Section

Hui Chen, the former global head for anti-bribery and corruption at Standard Chartered Bank in London, began working as a compliance counsel for the DOJ Fraud Section in November. Chen had previously worked as an assistant general counsel for Pfizer and Director of Legal Compliance for the Greater China Area for Microsoft. Chen began her legal career as a trial attorney in the Criminal Division of the DOJ and served as an assistant United States attorney in the Eastern District of New York. For more information on the position generally, see our previous Anti-Corruption Quarterly article.

In a roundtable discussion regarding her new position, Chen stated that she intends to bring an “in-house perspective” to the Fraud Section. Chen noted that current compliance guidelines offered by the DOJ and SEC apply at a “very high level.” Given a variety of factors that are unique to each company, Chen noted that compliance programs will vary significantly even among companies in the same industry. Chen also stressed that compliance programs are “dynamic” and should evolve to changing risks.

Chen said that one important metric to evaluating a compliance program is whether employees in the field are aware of the policies and compliant with internal controls. Referring to these employees in the field as “frontline gatekeepers,” Chen suggested that compliance personnel would benefit from visiting these individuals in person to discuss the company’s potential risks.

Chen outlined four “primary areas” she anticipates reviewing when assessing corporate compliance programs. First, she will look at whether the program is “thoughtfully designed” to address compliance issues facing the company. Second, she will look at how “operationalized” the compliance program is to the various aspects of the company’s business. Third, Chen will review how compliance personnel communicate with other stakeholders in the business. This includes not only discussions with finance, human resources and legal departments but also the “frontline gatekeepers.” Fourth, she will consider the “resources” devoted to compliance in a company, including not only funding and personnel but also “attention” and “commitment” from the company’s board and senior directors.

While it is unclear how Chen may affect DOJ’s decisions on whether to charge a company, Chief of the Fraud Section Andrew Weissmann suggested Chen will help the Fraud Section be “smarter” about compliance programs and help the DOJ avoid imposing measures on companies that may be a “waste of their resources.”
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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