NEWS

THERE’S MORE THAN JUST THE FCPA

Companies operating globally face compliance with a host of different laws and regulations, and understanding the overlap among them can lead to more cost-effective and efficient compliance programs. For companies subject to U.S. jurisdiction, laws covering three areas—anti-corruption, anti-money laundering and economic sanctions—often intersect. In addition to substantive similarities, these areas also all involve substantial penalties and are the current focus of significant U.S. government enforcement attention and resources. In fact, U.S. authorities have increasingly pursued combination enforcement actions, where charges have involved more than one of these laws. Violations in these areas are routinely uncovered together during investigations, as they implicate many of the same risk areas. Whether designing compliance programs, training employees or conducting pre-acquisition due diligence, companies often should be considering these sets of laws together.

In recent years, we have seen multiple instances where U.S. authorities have brought these kinds of combination cases. In 2013, for instance, oilfield services company Weatherford International agreed to pay $252.7 million in penalties and fines related to foreign bribery and transactions with sanctioned countries including Cuba, Iran, Sudan and Syria. Major banks also have been hit with combined money laundering and sanctions-related charges. For example, in 2015, a major European bank paid $1.45 billion for doing business with sanctioned countries and failing to have adequate money laundering controls, while in 2012, HSBC PLC paid nearly $2 billion to settle allegations of money laundering and sanctions violations. U.S. authorities have also brought combination actions against individuals, such as Lawrence Hoskins, the former employee implicated in a Department of Justice (DOJ) enforcement action against Alstom S.A. who was charged with Foreign Corrupt Practices Act (FCPA) and money laundering violations.

Recent Scandal

One of the biggest corruption scandals in recent years—the investigation of state oil company Petrobras by the Brazilian federal police—also involves various allegations of both bribery and related money laundering. The scandal implicates leaders at Petrobras, top executives at Brazil’s major construction companies and Brazilian politicians in a massive multi-year corruption scheme that allegedly involved more than $5 billion in bribes and kickbacks. The investigation actually began as a probe into money laundering;
Anti-Corruption QUARTERLY

Corruption and money laundering can also go hand in hand, as laundering of the proceeds of corruption is often a step in disguising an illegitimate source of funds.

It was nicknamed “Operation Car Wash” because some money was being laundered through an actual car wash. The investigation soon expanded to cover allegations of corruption. Among the most recent developments, in January, the police probed allegations that construction company, OAS SA, and the bankers’ housing cooperative, Bancoop, used real estate properties in Brazil to launder money received from kickbacks. As part of the probe, police are investigating whether former President Luiz Inacio Lula da Silva owned one of the properties.

It is not surprising that FCPA, anti-money laundering and sanctions violations often occur together. While they do not relate to the same specific activity, they typically involve a breakdown of internal controls and a weak overall compliance environment. In the Weatherford case, for instance, lax controls allowed employees to funnel bribes to foreign officials via sham consultancy agreements, as well as to engage in schemes to conceal sales to sanctioned countries, including creating false books and records. Corruption and money laundering can also go hand in hand, as laundering of the proceeds of corruption is often a step in disguising an illegitimate source of funds. In its FCPA Resource Guide, DOJ explicitly notes that “many FCPA cases also involve violations of anti-money laundering statutes.” Money laundering is often an easy “add-on” to FCPA charges because transferring money within the U.S. in furtherance of the corrupt scheme can generally be charged as money laundering. Bringing money laundering charges in an FCPA case may also allow the government to extend its jurisdictional reach to include individuals not covered under the FCPA and bolster settlement leverage by increasing the potential for higher sentences and fines.

Leveraging Compliance Programs to Avoid Risk

While there are obviously specific requirements unique to each of these areas of law, some of which apply only to certain companies and not to others, there are aspects of compliance programs that companies can leverage to address all three areas. In particular, DOJ and the Departments of State and Treasury have long endorsed a risk-based approach to compliance. A risk assessment that covers all three areas can be a cost-effective first step in designing a compliance program or in periodically assessing an existing one. Many risks—use of third-party agents, operations in particular jurisdictions—will be relevant to all three sets of laws.

Third-party due diligence should also be a cornerstone of any compliance program designed to address all three of these areas of law. Third parties are a common vehicle not only for transmitting bribes but for assisting in other illicit conduct. A robust due diligence process and strong controls around the use of third parties (written contracts, payment controls, relevant compliance certifications) lower the risk of anti-corruption, money laundering or economic sanctions violations.

In an increasingly active enforcement environment, companies are well advised to think of compliance beyond the FCPA, as well as the cost savings associated with designing compliance programs that address interrelated and often jointly-enforced areas of law.

CHANGES IN DOJ POLICIES

The Yates Memo and Additional Guidance

On September 9, 2015, Deputy Attorney General Sally Quillian Yates announced a new DOJ policy placing greater emphasis on identifying culpable individuals in corporate investigations. While individual culpability has been a stated goal of DOJ expressed by numerous officials in recent years, the Yates Memo changes the dynamic wherein a corporation may receive cooperation credit and requires—as a minimum threshold—that a corporation “identify all individuals involved in or responsible for the misconduct at issue.”
Even prior to the Yates Memo, DOJ officials had expressed the opinion that targeting individuals was part of DOJ’s standard operating procedure in white collar cases. In a 2014 speech, DOJ Principal Deputy Assistant Attorney General Marshall Miller bluntly stated that, “[i]f you want full cooperation credit, make your extensive efforts to secure evidence of individual culpability the first thing you talk about when you walk in the door to make your presentation. Make those efforts the last thing you talk about before you walk out.” And Leslie Caldwell, Assistant Attorney General for DOJ’s Criminal Division succinctly said in a 2015 address that “if a company wants cooperation credit…we expect [it] to identify culpable individuals…and provide the facts about their wrongdoing.”

Cooperation Credit
To any company facing millions of dollars in potential penalties—particularly if the penalty will affect the company’s ability to continue to operate—receiving cooperation credit is paramount. In emphasizing cooperation and identifying culpable individuals, DOJ officials have highlighted the potential financial impact of receiving cooperation credit. For example, in December 2014, Alstom S.A. pleaded guilty to violating the FCPA and agreed to pay $772 million, the largest FCPA fine in history. In resolving the matter, DOJ considered Alstom’s failure to voluntarily disclose the misconduct, and its refusal to cooperate in DOJ’s investigation for several years, among other factors. Patrick Stokes, deputy chief of DOJ’s Fraud Unit, stated that “if [Alstom] stepped forward with its scheme and cooperated with investigations, prosecutors would have sought as little as $207 million, or 73 percent less.” By contrast, in January 2014, DOJ applauded the efforts of Petrotiger, which engaged Sidley Austin to conduct an internal investigation into allegations of bribery in Colombia and to represent it before DOJ. During that investigation, Petrotiger “self-disclosed” and “fully cooperated with the Department’s investigation of misconduct,” including by providing extensive evidence against individuals developed during the internal investigation. Certain individuals were convicted of a variety of bribery and fraud offenses, but the company itself was rewarded for its disclosures with a complete declination of prosecution and has been held out as a model for effective corporate cooperation with a criminal investigation.

Notably, Alstom and Petrotiger were settled pre-Yates Memo. The new guidance differs in that it takes an all-or-nothing approach to corporate cooperation, while previously cooperation credit was given on a “sliding scale of sorts and companies could still receive at least some credit for cooperation, even if they failed to fully disclose all facts about individuals.”

Recent DOJ-Settled FCPA Matters
Post-Yates Memo, DOJ has settled some FCPA-related matters that provide insight into what steps a company should take to receive cooperation credit. In February 2016, DOJ and SEC brought parallel actions against PTC Inc., a Massachusetts-based technology company, and two Chinese subsidiaries for providing improper travel benefits to the United States for Chinese foreign officials, with approximately $28 million in combined penalties, disgorgement and prejudgment interest. The two Chinese subsidiaries entered into a non-prosecution agreement. According to the agreement, the subsidiaries provided “all relevant facts known to them, including information about individuals involved,” but received cooperation credit of only 15 percent because they “did not voluntarily disclose relevant facts known to PTC Inc. at the time of the initial disclosure” until after DOJ uncovered additional information independently.

And in March, Olympus Latin America Inc. (OLA)—as part of a larger enforcement action involving Olympus Corporation of the Americas (OCA)—agreed to pay a $22.8 million penalty for providing improper payments to health officials in Central and South America, in violation of the FCPA. OLA entered into a deferred prosecution agreement that noted that OLA received 20 percent credit for its cooperation, “including conducting an extensive
internal investigation, translation of numerous foreign language documents, analyzing and
organizing voluminous evidence.”

These matters and statements by DOJ officials provide companies guidance on how DOJ
views what is necessary to receive maximum cooperation credit. First, DOJ wants a company
to voluntarily self-disclose within a reasonable time after becoming aware of an FCPA
violation, and disclose all relevant facts about the individuals involved. Second, DOJ wants a
company to conduct a thorough and tailored investigation, analyze and organize evidence,
and provide DOJ (when necessary) translations of foreign language documents and
assistance with witness interviews. Lastly, DOJ wants the company to remediate, which could
include enhancing its compliance program and terminating certain business relationships.

Conclusion

The Yates Memo and recent settlements seem to illustrate that when a company decides to
self-report misconduct, it must be prepared to fully disclose all relevant facts, including facts
related to culpable individuals. This emphasis makes the decision whether to disclose and how
to disclose to the government more difficult. One challenge in particular is the scale and scope
of an internal investigation. DOJ has indicated that it does not expect companies to “boil the
ocean” and embark on a “multimillion-dollar investigation” and offers itself as a resource to
discuss the proper scope of an investigation. But that seems to be in tension with the newly
broadened requirement that a company both investigate and disclose all facts relevant to
individual culpability. Deputy Attorney General Yates acknowledged that in “diffuse”
corporate structures, identifying individuals responsible for wrongdoing may be difficult, but
she nevertheless placed the onus directly on the corporation, stating that “[i]f they don’t know
who is responsible, they need to find out.” Establishing culpability for any one individual can
be challenging, particularly in cases involving internal controls violations. Thus, given the
potential financial ramifications of receiving cooperation credit, and DOJ’s all-or-nothing
approach, a company facing an FCPA issue should engage experienced counsel to determine
the appropriate scope of an investigation.

ENFORCEMENT ACTIONS AGAINST INDIVIDUALS

Airline CEO Settles FCPA Charges

On February 4, 2016, Ignacio Cueto Plaza, the CEO of South America-based LAN Airlines,
agreed to settle civil FCPA charges with SEC. Part of the significance of this settlement is its
rarity: the target was a current executive—indeed, a current CEO—of a major corporation.
While the civil penalty in this settlement is relatively light—$75,000—SEC’s targeting of a
CEO stresses the government’s movement to focus on individuals. Moreover, it highlights
the need for all employees, including even the highest-level executives, to receive
appropriate anti-corruption compliance training and to appreciate the consequences of
non-compliance not only for the company but for themselves. They can and will be held
personally liable for their actions.

According to SEC, Cueto approved payments to a third-party consultant, knowing
that the consultant could pass money to union officials to resolve wage disputes with local
airline employees.

LAN, now a part of LATAM Airlines, was a publicly traded company headquartered in
Santiago, Chile. In 2005, LAN expanded into Argentina after agreeing to hire 600 to 800
Argentine union employees and adopting the unions’ collective bargaining agreements.
LAN encountered strong demands for wage increases that threatened the company’s
viability as soon as it entered the country.
In early 2006, LAN executives were approached by a consultant who also served as an honorary official in the Argentine Department of Transportation. The consultant provided advice on dealing with the airline unions, in the summer of 2006, the consultant offered to negotiate directly with union representatives on behalf of LAN. Cueto’s staff believed that the consultant had strong union connections and recommended that Cueto retain him.

Cueto, serving as president and chief operating officer of LAN at the time, allegedly approved $1.15 million in payments to the consultant pursuant to an unsigned consulting agreement for a potentially fictitious air route study, while knowing that the consultant might pass some of the money to union officials to obtain a favorable wage agreement. Based on back-dated invoices, the payments were made through an unrelated LAN subsidiary to the consultant’s brokerage account in Virginia. In addition, Cueto allegedly was aware of a $58,000 payment to a company owned by the consultant’s wife and son.

SEC charged Cueto with causing LAN to violate the FCPA's accounting provisions by authorizing subordinates to make payments that were improperly recorded in LAN’s books and records and that circumvented LAN's internal accounting controls. Causing liability under the federal securities laws is a form of secondary liability similar to aiding-and-abetting liability, but easier for SEC to establish. Without admitting or denying SEC’s findings, Cueto agreed to cease and desist from future violations, attend anti-corruption training, certify to LATAM’s policies, and pay a $75,000 penalty to settle the charges.

Despite the relatively light penalty, Cueto’s settlement should put executives, including CEOs, on notice of the emphasis the government is now placing on individual culpability. Further, the action should highlight for companies the broad reach of the FCPA’s accounting provisions and remind companies that illegal and concealed payments can create liability where the anti-bribery provisions may fall short.

FCPA PILOT PROGRAM

DOJ Announces a One-Year FCPA Enforcement Pilot Program

On April 5, 2016, DOJ announced a one-year FCPA enforcement pilot program designed to incentivize companies to voluntarily self-report FCPA misconduct to DOJ. Under the program, companies may receive expanded credit from DOJ for making an early, voluntary disclosure to DOJ, fully cooperating with DOJ’s investigation and taking prompt remedial action. The substantial benefits that companies may receive under this program range from a full declination of prosecution to, if charges are brought, a 50 percent reduction from the bottom of the applicable Sentencing Guidelines’ fine range and no imposition of a corporate monitor. In contrast, should a company decline to voluntarily self-report, it would be eligible for, at most, a 25 percent reduction from the bottom of the Sentencing Guidelines fine range.

In announcing this program, Assistant Attorney General Leslie Caldwell stated that it was “designed to motivate companies to voluntarily self-disclose FCPA-related misconduct, fully cooperate with the [DOJ Criminal Division] Fraud Section, and, where appropriate, remediate flaws in their controls and compliance programs.” Caldwell suggested the program was, in part, a response to criticisms that DOJ was not transparent enough in identifying the credit that companies receive for self-disclosure, cooperation and remediation, and what fines and other resolution components may be imposed.

Caldwell also stated that the plan is designed to build upon the September 2015 Yates Memo, which emphasizes individual accountability. For more details on the Yates Memo, please see our prior Sidley Update. DOJ is encouraging companies to self-report early in the process, when prosecutors are likely to have more time to make a case against individuals within the statute of limitations and DOJ may be able to leverage a corporation’s relationship with employees and third parties to obtain more information.
Steps to Achieve Additional Credit

As noted, the enforcement plan articulates three steps a company must take to receive additional credit. This credit will affect DOJ’s decisions on the type of disposition. Where these three steps are met, “the Fraud Section’s FCPA Unit will consider a declination of prosecution,” provided the company disgorges all profits from the misconduct at issue. In addition, where charges are pursued, these steps will determine the extent of any reduction in fines above and beyond what is provided for under the Sentencing Guidelines.

- **The company must voluntarily self-report its misconduct.** According to the enforcement plan, to qualify as a voluntary self-report, the disclosure must (1) be prior to an imminent threat of disclosure or government investigation; (2) be within a reasonably prompt time after the company becomes aware of the offense; and (3) include all relevant facts known to the company, including all relevant facts about the individuals involved in any FCPA violation. DOJ noted that the burden is on the company to demonstrate the timeliness of any self-reporting.

- **The company must fully cooperate with DOJ in its investigation.** The enforcement plan states that a company must fully cooperate in DOJ’s investigation and articulated several specific guidelines in this regard.

  First, the enforcement plan includes guidelines to be considered cooperative that encourage providing federal prosecutors with relevant documents. DOJ counsels companies to (1) preserve, collect and disclose relevant documents within a company’s control; (2) disclose overseas documents, including the location where they were found and who found them; (3) where requested, provide translations of relevant documents in foreign languages; and (4) facilitate third-party production of documents.

  Second, in line with the Yates Memo, DOJ advises that cooperating companies (1) timely disclose all facts relevant to the wrongdoing, including all facts relevant to the involvement of the company’s officers, employees or agents; (2) make company officers and employees available for DOJ interviews, including those located overseas and former officers or employees; (3) identify the specific source of facts in the disclosure of all relevant facts where such identification does not violate attorney-client privilege; and (4) facilitate DOJ interviews with third-party witnesses in foreign jurisdictions. Importantly, DOJ stressed that “eligibility for full cooperation credit is not predicated upon waiver of the attorney-client privilege or work product protection and none of the requirements above require such waiver. Nothing in the Guidance or the [Yates Memo] on Individual Accountability alters that policy, which remains in full force and effect.”

  Third, the guidelines also counsel on the nature of the relationship between the cooperating company and federal prosecutors. Companies are advised to (1) be proactive rather than reactive in their disclosure and, specifically, to identify opportunities for the government to obtain relevant evidence not in the company’s possession; (2) provide timely updates on the company’s internal investigation, including rolling disclosures; and (3) where requested, stop any action in the company’s internal investigation that conflicts with the government investigation.

- **The company must engage in timely and appropriate remediation.** While noting that the Fraud Section’s new compliance counsel is assisting DOJ’s FCPA Unit in refining its benchmarks for assessing compliance programs and for evaluating an organization’s remediation efforts, the pilot program articulates three items required to receive credit for remediation.

  First, the company must implement an effective compliance program that will be periodically updated. In assessing the program, DOJ will look at (1) whether the company has established a culture of compliance; (2) whether the company dedicates sufficient
resources to the compliance function; (3) the quality and experience of the compliance personnel; (4) the independence of the compliance function; (5) whether the company has performed effective risk assessments and tailored the compliance program based on risks; (6) how a company’s compliance personnel are compensated and promoted compared to other employees; (7) whether the compliance program is audited; and (8) the reporting structure of compliance personnel.

Second, the company must appropriately discipline employees responsible for misconduct. DOJ advises that companies implement a system that provides for the possibility of also disciplining those with oversight of the responsible individuals and adjusts compensation based on disciplinary infractions and failure to supervise adequately.

Third, the company should take “[a]ny additional steps to demonstrate recognition of the seriousness of the corporation’s misconduct, acceptance of responsibility for it, and the implementation of measures to reduce the risk of repetition of such misconduct, including measures to identify future risks.”

Additional Announcement Relating to Increased FCPA Enforcement Resources

In announcing the pilot program, Caldwell highlighted that DOJ is adding resources to investigate and prosecute FCPA cases. Ten prosecutors are being added to DOJ Fraud Section’s FCPA Unit, increasing its size by more than 50 percent. She also noted that the Federal Bureau of Investigation has established three new squads of special agents devoted to FCPA investigations. Further, Caldwell stated that DOJ is “strengthening our coordination with foreign counterparts—sharing leads, making available essential documents and witnesses, and more generally working together to reduce criminals’ ability to hide behind international borders.”

Conclusion

While DOJ has always emphasized the importance it places on voluntary self-reporting, cooperation and remediation, this pilot enforcement program articulates the tangible benefits a company can expect to receive for fulfilling all three. It remains unclear, however, how the new pilot program will be implemented. Under it, companies may receive “up to” a 50 percent reduction, but whether and how often a company will gain the full benefit is uncertain. Questions also linger about how the plan will work in practice. For example, it remains to be seen how DOJ anticipates that a company will balance protecting attorney-client privilege with full disclosure of relevant information. It is also unknown whether the enforcement plan will be revised or extended beyond April 5, 2017.

IN THE INTERIM

January 6, 2016: Ensco plc, a UK-based oil and gas services company, told SEC that its customer, Petrobras, had cancelled a contract for a DS-5 drillship. The SEC filing indicates that Petrobras believed the services contract for the DS-5 drillship was void, potentially as a result of alleged payment irregularities involving a former third-party marketing consultant.

January 11, 2016: Smith and Ouzman Ltd., a UK printing company that specializes in printing security documents, such as ballot papers, was ordered to pay approximately $3.2 million comprising $1.9 million in fines, $1.28 million to satisfy a confiscation order and $36,000 in costs. In mid-December 2014, the company and two executives were found guilty of paying about $600,000 in bribes to public officials in Kenya and Mauritania.
January 25, 2016: In connection with Brazil’s ongoing Petrobras corruption investigation, the CEO and a supervisory board member of SBM Offshore, an offshore energy company, have agreed to an out-of-court settlement with Brazilian authorities. Both the CEO and board member agreed to pay fines of approximately $60,000. In mid-February, SBM Offshore announced that DOJ had re-opened its investigation, previously closed in November 2014, into alleged bribery of government officials in Angola, Brazil and Equatorial Guinea.

February 1, 2016: SAP SE, a software manufacturer, settled allegations by SEC that it paid $145,000 in bribes to a senior Panama official in exchange for sales contracts in violation of the internal controls and books and records provisions of the FCPA. SAP agreed to disgorge $3.7 million in profits and pay $188,896 in prejudgment interest to settle the charges.

February 4, 2016: U.S.-based SciClone Pharmaceuticals agreed to pay $12.8 million, comprising $2.5 million in penalties, $9.426 million in disgorgement of profits and $900,000 in prejudgment interest, to settle charges with SEC. SEC alleged that SciClone’s employees in China had inflated sales by making improper payments, in the form of money, gifts, trips and golf games, to employees of state health institutions in violation of the anti-bribery, books and records and internal control provisions of the FCPA.

February 4, 2016: The CEO of LAN Airlines paid a $75,000 penalty to settle charges with SEC that he violated the FCPA's internal controls and books and records provisions. SEC alleged that the CEO had authorized $1.15 million in improper payments to a third-party consultant in relation to LAN’s attempt to settle labor disputes between one of its subsidiaries and its employees. (See article, page 4)

February 16, 2016: Two Chinese subsidiaries of PTC Inc., a Massachusetts-based software company, entered into a non-prosecution agreement with DOJ and paid a $14.5 million criminal penalty to resolve an investigation into payments for recreational travel by Chinese government officials. The travel was supposed to be for training at PTC Inc.’s headquarters in Massachusetts, but was primarily recreational travel to other parts of the United States. PTC Inc. also reached a civil settlement with SEC that required the parent company to disgorge $11.8 million in profits.

In connection with the same investigation, in the agency’s first-ever deferred prosecution agreement with an individual in an FCPA case, SEC settled with Yu Kai Yuan, a former employee at one of PTC’s Chinese subsidiaries. SEC deferred Yuan’s civil charges as a result of the “significant cooperation he provided during SEC’s investigation.” According to SEC, Yuan caused PTC Inc. to violate the books and records and internal control provisions of the FCPA.

February 19, 2016: A London court ordered the international construction and professional services firm Sweett Group plc to pay confiscation of £851,152 and a fine of £1.4 million for bribing an official in the United Arab Emirates. The company had pleaded guilty in December 2015 to a charge of “failing to prevent” an act of bribery intended to secure a contract with Al Ain Ahlia Insurance Company in violation of Section 7 of the UK Bribery Act. This is the first time the Serious Fraud Office (SFO) has obtained a conviction under Section 7 of the Bribery Act. The SFO said that its investigation into individuals is ongoing.

February 19, 2016: The Illinois-based snack food company Mondelēz International, Inc. disclosed that the company had received a Wells notice from SEC recommending an enforcement action against the company for violations of the books and records and internal controls provisions of the FCPA, in connection with operations in India and a factory it
bought from Cadbury there. Kraft Foods, Inc. acquired Cadbury in 2010 and then in 2012 changed its name to Mondelez after spinning off Kraft’s North American grocery business.

February 22, 2016: HSBC Holdings disclosed that SEC is investigating “multiple financial institutions, including HSBC, in relation to hiring practices of candidates referred by or related to government officials or employees of state-owned enterprises in Asia-Pacific.” HSBC said that the company cannot predict “the resolution of this matter, including the timing or any possible impact on HSBC, which could be significant.”

February 25, 2016: China released draft amendments to its Anti-Unfair Competition Law that, among other things, would more precisely define commercial bribery, including: liability for bribes paid through third parties; vicarious liability for employers for the actions of their employees; and significantly increased penalties for commercial bribery for companies and for those facilitating or turning a blind eye to bribes.

February 29, 2016: Massachusetts-based network and cloud services provider Akamai Technologies, Inc. disclosed that the internal investigation started a year ago into sales practices outside the U.S. is ongoing and includes a review of FCPA compliance. The company self-disclosed the investigation to DOJ and SEC in February 2015 and made a public disclosure about the investigation in an SEC quarterly filing in March 2015.

March 1, 2016: Pennsylvania-based Olympus Corporation of the Americas, a wholly-owned subsidiary of Olympus Corporation based in Tokyo, Japan, announced that the company, through its Latin American subsidiary Olympus Latin America, resolved an FCPA investigation with DOJ in a deferred prosecution agreement requiring the company to pay $22.8 million and retain a compliance monitor for three years. According to the deferred prosecution agreement, Olympus Latin America provided “cash, money transfers, personal or non-Olympus medical education travel, free or heavily discounted equipment, and other things of value” to doctors working at government hospitals and clinics in Brazil, Bolivia, Chile, Colombia, Argentina, Mexico and Costa Rica between 2006 and 2011.

March 1, 2016: Qualcomm Inc., the San Diego-based mobile chipmaker, agreed to pay $7.5 million to settle FCPA charges SEC brought in connection with the company hiring relatives of Chinese government officials. According to SEC’s administrative order, Qualcomm allegedly provided full-time employment and paid internships to foreign officials’ family members while the officials were in positions to decide whether to select Qualcomm products among increasing competition.

March 4, 2016: Nordion (Canada) Inc. and a former engineer at Nordion, Mikhail Gourevitch, settled FCPA charges with SEC in connection with bribes paid to Russian officials through a third-party agent to sell a Nordion liver cancer treatment. Nordion paid $375,000 to settle charges that it lacked adequate internal controls, and Gourevitch paid $100,000 in disgorgement, $29,950 in prejudgment interest and a $66,000 penalty. Nordion (Canada) Inc. is a privately held company that acquired Nordion Inc. in August 2014 during SEC’s investigation. Nordion Inc. was a public company until that point.

March 16, 2016: Alere, Inc., the Massachusetts-based diagnostic test maker, said in an SEC filing that it received a grand jury subpoena from DOJ for documents related to its sales in Africa, Asia and Latin America and relationship third parties, including distributors and foreign officials. The company stated that it is in the process of responding to the subpoena and intends to cooperate with the government investigation.
March 23, 2016: Abraham Jose Shiera Bastidas, the owner of multiple U.S.-based oil and gas services companies, pleaded guilty to FCPA charges for bribing officials to win contracts from Venezuela’s state-owned energy company, Petroleos de Venezuela S.A. (PDVSA). Shiera admitted that he agreed to bribe PDVSA purchasing analysts to ensure his companies were on PDVSA bid slates, and also to ensure that his companies would have payment priority on their outstanding invoices.

March 23, 2016: Novartis AG paid SEC $25 million, comprising $21.5 million in disgorgement, $1.5 million in prejudgment interest and a $2 million penalty, to settle charges that it violated the FCPA when two of its China-based subsidiaries bribed doctors and healthcare professionals to prescribe Novartis products. As part of the resolution, Novartis agreed to provide SEC with status reports on its “remediation and implementation of anti-corruption compliance measures” for the next two years.

March 29, 2016: The UK SFO charged Terrence Stuart Watson, president of Alstom’s UK operations, with conspiracy to corrupt in connection with the supply of trains to the Budapest Metro between 2003 and 2008. Watson is the seventh individual to be charged in connection with the SFO’s investigation.

FCPA-Related Cases*

Corporate FCPA-Related Penalties* (in U.S. millions)

* New criminal or civil cases (settled or contested) instituted by year
** Based upon public disclosures of investigations

* Includes disgorgement; does not include non-U.S. fines
** Includes publicly disclosed reserves for future FCPA settlements
THE FCPA/ANTI-CORRUPTION PRACTICE OF SIDLEY AUSTIN LLP

Our FCPA/Anti-Corruption practice, which involves more than 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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