NEWS

SEC Reports Record-Breaking Enforcement Figures for Fiscal Year 2016

The SEC finished its 2016 Fiscal Year with a continued emphasis on bringing enforcement actions across numerous areas of the federal securities laws. As discussed in the last edition of the SEC Enforcement Quarterly, the Commission had a record-breaking fiscal year, finishing FY2016 with a total of 868 enforcement actions. These results represent the third year in a row that the SEC’s Division of Enforcement has increased its number of enforcement actions. (The Commission brought 755 enforcement actions in 2014 and 807 enforcement actions in 2015.) Although the number of enforcement actions has been steadily increasing over the last three years, the monetary amount collected in the form of civil penalties and disgorgement flat-lined in 2016. The SEC collected $4.16 billion in penalties and disgorgement in 2014 and collected $4.19 billion in such sanctions in 2015, but collected only “over $4 billion” in penalties and disgorgement in 2016. The decrease in penalties and disgorgement, coupled with the increase in the number of enforcement actions, suggests that the SEC placed a greater emphasis on sanctioning smaller violations and consequently obtained smaller overall awards in 2016 than in previous years.

ENFORCEMENT RESULTS: FISCAL YEARS 2014 – 2016

<table>
<thead>
<tr>
<th>FISCAL YEAR</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
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</thead>
<tbody>
<tr>
<td>Independent or Standalone Enforcement Actions</td>
<td>413</td>
<td>507</td>
<td>548</td>
</tr>
<tr>
<td>Follow-on Administrative Proceedings</td>
<td>232</td>
<td>168</td>
<td>195</td>
</tr>
<tr>
<td>Delinquent Filings</td>
<td>110</td>
<td>132</td>
<td>125</td>
</tr>
<tr>
<td>Total Actions</td>
<td>755</td>
<td>807</td>
<td>868</td>
</tr>
<tr>
<td>Disgorgement and Penalties Ordered</td>
<td>$4.16 billion</td>
<td>$4.19 billion</td>
<td>Over $4 billion</td>
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SEC Touts Focus on Actions Concerning FCPA Violations and Investment Advisers

In its press release regarding its FY2016 results, the Commission underscored the Enforcement Division’s actions relating to violations of the Foreign Corrupt Practices Act (“FCPA”) and investment adviser obligations. The SEC’s Enforcement Division capped off 2016 on a strong note when it came to enforcing the FCPA, with several notable cases against a range of companies. These actions included a first-of-its-kind enforcement action against a hedge fund for alleged FCPA violations in Africa, where the hedge fund allegedly used intermediaries to pay bribes to high-ranking government officials in a number of countries to secure significant business opportunities. In the investment-advisor space, FY2016 was a record-setting year for the SEC, with more cases involving investment advisers or investment companies (160 in total) filed than ever before.

FY2016 also saw a continued focus on insider-trading cases brought by the SEC, with actions brought against 78 parties. This pace represents a bit of a decrease from FY2015, where the Commission brought actions against 87 parties. However, it closely mirrors the results in FY2014, when the SEC brought insider-trading actions against 80 parties.

INSIDER TRADING ACTIONS: FISCAL YEARS 2014–2016


Whistleblower Awards Continue to Grow

The SEC continued to promote its whistleblower program in 2016 and enjoyed a record-breaking year, awarding $57 million to 13 whistleblowers—more than all previous years combined. The SEC’s 2016 Annual Report to Congress on the Dodd-Frank Whistleblower Program explained that each whistleblower award was granted as a result of a whistleblower who “provided new information of which the agency was previously unaware that either led to the opening of the investigation or significantly contributed to the successful enforcement action.” As can be seen in the chart below, six of the 10 largest whistleblower awards were given out in fiscal year 2016, though the largest award to date is still the $30 million award that was granted in FY2014.

TOP 10 SEC WHISTLEBLOWER AWARDS

Since the program’s inception, the SEC has awarded $111 million to 34 whistleblowers

<table>
<thead>
<tr>
<th>Month</th>
<th>Amount Received</th>
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<tbody>
<tr>
<td>September</td>
<td>$30 million</td>
</tr>
<tr>
<td>August</td>
<td>$22 million</td>
</tr>
<tr>
<td>June</td>
<td>$17 million</td>
</tr>
<tr>
<td>September</td>
<td>$14 million</td>
</tr>
<tr>
<td>May</td>
<td>$5 million to $6 million</td>
</tr>
<tr>
<td>September</td>
<td>$4 million</td>
</tr>
<tr>
<td>May</td>
<td>$3.5 million</td>
</tr>
<tr>
<td>July</td>
<td>$3 million</td>
</tr>
<tr>
<td>March</td>
<td>$2 million</td>
</tr>
<tr>
<td>April</td>
<td>$1.4 million to $1.6 million</td>
</tr>
</tbody>
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In Highly Anticipated Decision, Supreme Court Rejects Narrow View of “Personal Benefit” in Insider Trading

In December 2016, the Supreme Court decided its first insider trading case in nearly two decades, resolving a split between the Second and Ninth Circuits over the “personal benefit” standard for insider trading under the federal securities laws. In the highly anticipated decision, Salman v. United States, No. 15-628 (U.S. Dec. 6, 2016), the Court affirmed the Ninth Circuit’s interpretation of the Dirks v. SEC “personal benefit” standard, upholding a conviction for insider trading for an individual who received a tip from a family member, despite the fact that the tipper received no tangible or financial benefit from the exchange. According to the unanimous decision, “a personal benefit includes the benefit one would obtain from simply making a gift of confidential information to a trading relative.”

Salman presented a relatively simple scheme: an investment banker gave information about pending mergers and acquisitions to his brother, who then traded on the information. The brother who received the information tipped others who then traded on the information, including the tippee’s brother-in-law. The original tipper knew that his brother traded on the inside information but did not know that his brother passed the information on to others.

Because of the close family relationship between the investment banker and his brother, the Ninth Circuit concluded that the tipper had gained sufficient personal benefit to adequately establish a breach of duty owed to his bank’s clients. In reaching that decision, the Ninth Circuit relied on Dirks v. SEC, where the Supreme Court established that, when a corporate insider who cannot trade on confidential information instead shares it with a tippee who trades on it, the tippee’s trading can violate the federal securities laws if the tipper receives some “personal benefit” as a result. The Dirks opinion went on to conclude that a “personal benefit” exists “when an insider makes a gift of confidential information to a trading relative or friend.” There had been some dispute about how that test should be applied in practice, and the Ninth Circuit, in an opinion written by Judge Jed Rakoff of the U.S. District Court for
the Southern District of New York (sitting by designation on the Ninth Circuit), concluded that *Dirks* was best read as adopting a broad interpretation of a “personal benefit.”

In his appeal to the Court, Salman argued that a close family relationship alone is insufficient to qualify as “personal benefit.” He cited the Second Circuit’s decision in *United States v. Newman*, which read *Dirks* to establish a more narrow definition of “personal benefit”—one that requires “an exchange that is objective, consequential, and represents at least a potential gain of a pecuniary or similarly valuable nature.”

After granting certiorari to resolve this split, the Supreme Court held that the Ninth Circuit had appropriately applied *Dirks*, concluding that *Dirks* “makes clear that a tipper breaches a fiduciary duty by making a gift of confidential information to ‘a trading relative,’” and thus “easily resolves the narrow issue presented here.” Specifically, the Court wrote that “when a tipper gives inside information to a ‘trading relative or friend,’ the jury can infer that the tipper meant to provide the equivalent of a cash gift [because] giving a gift of trading information is the same thing as trading by the tipper followed by a gift of the proceeds.” In doing so, the Court rejected the requirement in *Newman* that there be a concrete or tangible pecuniary or other financial benefit to the tipper, finding that such a requirement is inconsistent with *Dirks*.

The Supreme Court did not, however, address how the *Dirks* standard would apply to situations where there is a non-familial relationship between tipper and tippee, “because [Salman] involves precisely the gift of confidential information to a trading relative that *Dirks* envisioned.” In addition, this decision does not seem to alter the Second Circuit’s holding in *Newman* that the government must prove that the tippee knew that the tipper disclosed the confidential information for a personal benefit. This knowledge requirement is bound to take on greater weight as *Salman* is likely to drive more aggressive enforcement in cases where there has been no tangible benefit in exchange for tips.

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**OCIE Warns of Increased Focus on Policies That Could Affect Whistleblowers**

In October 2016, SEC’s Office of Compliance Inspections and Examinations (“OCIE”) issued a new Risk Alert stating that OCIE staff is reviewing whether registered investment advisers and broker-dealers are complying with a rule that prevents companies from impeding whistleblowers from contacting the SEC. OCIE is examining, among other things, company compliance manuals, codes of conduct, employment agreements and severance agreements to determine whether those documents may deter whistleblowers from communicating with the SEC. The Risk Alert also cites five recent enforcement actions based on this rule.

Since the passage of Dodd-Frank, Section 21F of the Securities Exchange Act of 1934 provides for incentives and protections to whistleblowers who report corporate misconduct to the SEC. In implementing Section 21F, the SEC adopted Rule 21F-17, which provides that “[n]o person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement...with respect to such communications.” Rule 21F-17 went into effect on August 12, 2011.

The OCIE Risk Alert noted that recent OCIE examinations uncovered agreements between companies and employees that impeded employees and former employees from communicating possible securities law violations to the SEC. When such agreements were found, OCIE required a variety of remedial actions including: (1) revising documents on a going-forward basis, (2) providing general notice to employees who signed such agreements that they may contact the SEC or other authorities, or (3) contacting former employees who...
signed such agreements to inform them that the company does not prohibit former employees from communicating with the SEC or seeking a whistleblower award.

OCIE’s examinations in this regard are not limited just to employment agreements and severance agreements. OCIE is also reviewing compliance manuals and codes of conduct. During these examinations, OCIE will look for clauses that not only affirmatively seek to restrict an employee or former employee from contacting the SEC but also fail to include exceptions to general language requiring confidentiality. Thus, the Risk Alert also notes that certain confidentiality provisions may be considered problematic when they do not contain an exception for voluntary communications to the SEC concerning possible securities laws violations, such as clauses that: (1) prohibit disclosure of confidential information, (2) require an employee to notify and/or obtain consent prior to disclosing confidential information or (3) purport to limit disclosures of confidential information only as required by law.

When OCIE has recommended enforcement action, companies that were aware of the “potential chilling effect” of the problematic language in their documents faced stiffer punishments. Two recent enforcement actions under Rule 21F-17 are illustrative.

On December 19, 2016, the SEC brought an administrative action against NeuStar, Inc. for violating Rule 21F-17 as a result of a nondisparagement clause in its severance agreements. The clause called for former employees “not to engage in any communication that disparages, denigrates, maligns or impugns NeuStar...including but not limited to the Securities and Exchange Commission.” A separate provision compelled forfeiture of all but $100 of any severance in the event of a breach of this clause. According to the SEC, at least one former employee was impeded by the clause from communicating with the SEC. NeuStar replaced these provisions with one that affirmatively advised former employees of their ability to contact regulators with concerns about potential securities laws violations. The SEC required NeuStar to contact former employees who signed the old severance agreement and provide them with a link to the SEC’s Order and a statement that NeuStar does not prohibit former employees from contacting the SEC. The SEC fined NeuStar $180,000 for the violation.

On December 20, 2016, the SEC brought a similar action against SandRidge Energy, Inc. for three provisions in the company’s standard separation agreements that obligated former employees to keep information confidential from government agencies and refrain from making disparaging remarks to government agencies. According to the SEC, SandRidge appeared to have been aware that these clauses might be problematic. SandRidge modified the problematic language in at least five separation agreements when employees or their counsel raised concerns. Notably, the SEC also stressed that its enforcement action against KBR Inc. for violating Rule 21F-17 was announced in April 2015 and “SandRidge’s in-house counsel received multiple client alerts and other information about the enforcement matter,” but SandRidge did not change the language in the separation agreements. The SEC also alleged that SandRidge retaliated against one whistleblower by terminating him when he raised concerns with the company’s senior management. SandRidge agreed to pay a fine of $1.4 million.

OCIE’s Risk Alert and these recent enforcement actions counsel companies to review their relevant policies and employee agreements to determine whether any provisions may be read to impede an employee from communicating with the SEC. Failure to do so may subject the company to stiffer penalties in the future if the Commission deems the policies or agreements inadequate.
Circuit Split Raises Question About Constitutionality of ALJs at SEC

The constitutionality of the Securities and Exchange Commission’s administrative law judges (ALJs) returned to the spotlight this quarter, following an end-of-the-year ruling that created a circuit split on this issue. In an opinion filed December 27, 2016, the U.S. Court of Appeals for the Tenth Circuit held in Bandimere v. SEC that the administrative law judge who presided over an administrative enforcement action at the SEC against Petitioner David Bandimere was an inferior officer, and because that ALJ was not constitutionally appointed, the ALJ held his office in violation of the Appointments Clause. That conclusion has been repeatedly rejected by the SEC, which views ALJs as mere employees who are not subject to the Appointments Clause.

In the Tenth Circuit decision, a split panel held that the SEC’s ALJs are “inferior officers” whose appointments must be consistent with the Appointments Clause. It provided several reasons. The majority primarily relied upon Freytag v. Commissioner of Internal Revenue, 501 U.S. 868 (1991), where the Supreme Court held that the Tax Court’s special trial judges (“STJs”) were inferior officers for purposes of the Appointments Clause. The majority also considered significant the Supreme Court’s guidance that an officer is “any appointee exercising significant authority pursuant to the laws of the United States.” Buckley v. Valeo, 424 U.S. 1, 126 (1976). According to the Bandimere majority, and contrary to the SEC’s position, no precedent required every inferior officer to possess final decision-making power. Rather, whether one is an “inferior officer” depends on whether that individual has a superior.

The majority determined that SEC ALJs exercise significant authority because they “are more than mere aids” and “perform more than ministerial tasks” for the SEC. ALJs exercise significant discretion in executing “important functions” delegated to them, including imposing liability and sanctions on individuals who have violated the SEC’s rules. According to the court, although SEC commissioners have authority to review ALJs’ decisions, that supervision “does not transform [ALJs] into lesser functionaries. Rather, it shows the ALJs are inferior officers subordinate to the SEC commissioners.”

Judge McKay dissented. He voiced concerns that the majority’s opinion “would throw out of balance the teeter-totter approach to determining which of the federal officials are subject to the Appointments Clause.” Moreover, Judge McKay insisted that Freytag did not require the result reached by the majority. Judge McKay stressed that the majority’s reading of Freytag puts all federal ALJs at risk of being declared inferior officers. This, he worried, could effectively render invalid thousands of administrative actions.

The Tenth Circuit decision creates a circuit split over whether ALJs must be appointed consistent with the Appointments Clause. As we reported in the last edition of the Quarterly, on August 9, 2016, the D.C. Circuit came to the opposite conclusion in Raymond J. Lucia Cos. v. SEC. Unlike the Tenth Circuit’s opinion, the D.C. Circuit accepted the SEC’s argument that ALJs are mere “employees” rather than inferior officers. Judge Rogers, writing for a unanimous panel, explained that SEC ALJs do not exercise significant authority. Rather, ALJs have “neither have been delegated sovereign authority to act independently of the Commission nor, by other means established by Congress, do they have the power to bind third parties, or the government itself.” The D.C. Circuit highlighted that the Commission’s right of discretionary review and its regulatory scheme ensured that the politically accountable commissioners must decide whether an ALJ’s initial decision is to be the final action of the Commission.

Unless the panel of the Tenth Circuit reconsiders its decision or the en banc court reverses the panel decision, eventual Supreme Court review seems almost certain.
Supreme Court to Address Circuit Split on Whether Statute of Limitations Limits SEC Disgorgement Orders

Almost invariably during an SEC investigation, a question will arise regarding what, if any, statute of limitations cabins the SEC’s ability to sanction years-old misconduct. There is now agreement that the general statute of limitations applicable to the federal government, which sets a five-year limitation “for the enforcement of any civil fine, penalty, or forfeiture” limits the SEC’s ability to impose civil money penalties. But what about disgorgement? That is a question the Supreme Court recently agreed to answer in light of a deepening circuit split on the issue.

The Court has agreed to review a decision from the U.S. Court of Appeals for the Tenth Circuit, *Kokesh v. SEC*, which held that the statute (28 USC § 2462) does not apply to orders for injunctive relief and disgorgement in SEC enforcement actions. In that case, the SEC alleged that Kokesh misappropriated funds from SEC-registered business development corporation for over a decade. A jury found that Kokesh knowingly and willfully converted money from the business development companies, among other violations. The U.S. District Court for the District of New Mexico entered a judgment permanently enjoining Kokesh from violating federal securities laws. It also ordered disgorgement of $34.9 million, plus prejudgment interest of $18.1 million, as a reasonable approximation of the financial gains causally connected to Kokesh’s violations. Kokesh appealed, arguing that the injunction and disgorgement ordered were subject to the five-year statute of limitations in Section 2462.

On appeal, the Tenth Circuit held that the disgorgement order and injunction in the case were neither penalties nor forfeitures under Section 2462. The Tenth Circuit reasoned that disgorgement is remedial, because it does not penalize but merely “depriv[es] the wrongdoer of the benefits of wrongdoing.” The court also rejected Kokesh’s argument that disgorgement is a “forfeiture” under Section 2462. The court concluded that although disgorgement and forfeiture are similar concepts, for purposes of Section 2462, “forfeiture” does not refer to a remedy but to a punishment; specifically, the historical punitive action of taking tangible property used in criminal activity. In its holding, the Tenth Circuit pointed to *Riordan v. SEC*, a decision from the D.C. Circuit, which held that Section 2462 does not apply to an SEC cease-and-desist order to refrain from violating securities laws.

By holding that disgorgement is not limited by Section 2462, the Tenth Circuit rejected the holding of the Eleventh Circuit’s interpretation of the statute in *SEC v. Graham*. There, the Eleventh Circuit held that the five-year statute of limitations under Section 2462 *did* apply to claims for disgorgement and declaratory relief in an SEC enforcement action. The *Graham* case originated with a January 2013 SEC civil action filed in the Southern District of Florida. The SEC alleged that the defendants had violated federal securities laws between November 2004 and July 2008 and sought declaratory relief, disgorgement of all profits with prejudgment interest, and a permanent injunction from future securities law violations. The district court held that the SEC’s claims were time-barred under Section 2462. On appeal, the Eleventh Circuit largely affirmed the district court’s decision. The Eleventh Circuit held that Section 2462 applies to declaratory relief because it is backward-looking and punitive, and is therefore a “penalty.” The court also held that Section 2462’s reference to “forfeiture” encompassed disgorgement. Unlike the Tenth Circuit, the Eleventh Circuit primarily relied on “the ordinary meaning of forfeiture.” After consulting different dictionaries, the court found “no meaningful difference in the definitions of disgorgement and forfeiture.”

How the Supreme Court will interpret Section 2462 is difficult to predict. Although the SEC’s position—that wrongdoers should not be able to benefit from their misconduct—may find some support, the Court has also reminded the SEC “that even wrongdoers are entitled to assume that their sins may be forgotten.” *Gabelli v. SEC*, 133 S. Ct. 1216, 1221 (2013).
STAFF MOVES

■ On October 6, 2016, the SEC announced that David H. Saltiel would head the Office of Analytics and Research in the Division of Trading and Markets. The office provides expertise in quantitative data analysis, trading, portfolio management and risk management and examines topics such as market structure, new products and rule filings by exchanges.

■ On October 14, 2016, the SEC named Melissa Hodgman as the Associate Director in the Commission’s Enforcement Division. Ms. Hodgman began working in the Enforcement Division in 2008 and led the Division’s Cross-Border Working Group which provides expertise and assistance of matters with international actors and implications.

■ On October 21, 2016, the SEC announced that John W. Berry had been named Associate Regional Director for Enforcement in the agency’s Los Angeles Regional Office. In this position, Berry will oversee the Los Angeles Office’s enforcement effort in southern California, Arizona, Nevada and Hawaii. He will serve alongside Associate Regional Director Alka Patel.

■ On November 2, 2016, the SEC named Marc A. Panucci as Deputy Chief Accountant in the Office of the Chief Accountant. In this role, Panucci will lead the office’s activities, obtaining investor and auditor committee perspectives and consulting with registrants and auditors on the application of internal control over financial reporting obligations, independence requirements and auditing standards.

■ On November 14, 2016, SEC Chair Mary Jo White announced that she would leave the agency at the end of the Obama Administration. White became Chair in April 2013 and was one of the Commission’s longest serving chairs. During her time as Chair, the SEC advanced more than 50 significant rulemaking initiatives and brought more than 2,850 enforcement actions.

■ On November 21, 2016, the SEC announced that Matthew C. Solomon, the Chief Litigation Counsel for the SEC’s Enforcement Division, would leave the agency in December. He led the Division’s litigation program since September 2013, overseeing nearly 150 attorneys in Washington D.C. and the agency’s 11 regional offices.

■ On November 22, 2016, the SEC announced that Chief Accountant James Schnurr would retire from the agency. He had held the position of Chief Accountant since October 2014. The SEC also named Wesley R. Bricker as the new Chief Accountant. Bricker served as the Deputy Chief Accountant since 2015 and interim Chief Accountant since July 2016.

■ On December 2, 2016, the SEC announced that Chief Economist and Director of the Division of Economic and Risk Analysis, Mark J. Flannery, would leave the agency. He held that position since September 2014. In his role, he represented the agency on the Financial Stability Board’s Standing Committee on Assessment of Vulnerabilities.

■ On December 6, 2016, the SEC announced that Keith F. Higgins, Director of the Commission’s Division of Corporate Finance, planned to leave the agency in early January. He joined the SEC in 2013 and was involved in significant rulemaking responsibilities under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

■ On December 8, 2016, the SEC announced that Enforcement Director Andrew J. Ceresney would leave the agency. Upon his departure, Stephanie Avakian, the Deputy Director, became the Acting Director.
On December 12, 2016, the SEC named Dr. Narahari Phatak as Associate Director for Policy in the Division of Economic and Risk Analysis. In this role, he will direct the development of economic analyses to support the Commission’s rulemaking and policy development activities.

On December 21, 2016, the SEC announced that Sharon B. Binger would leave the agency at the end of the year. Binger served as the Director of the Philadelphia Regional office. Following her departure, G. Jeffrey Boujoukos will serve as Regional Director.

On December 22, 2016, the SEC named Sara P. Crovitz as Deputy Chief Counsel and Associate Director in the Division of Investment Management’s Chief Counsel Office. In that role, she will assist the Chief Counsel in overseeing legal guidance under the Investment Company and Investment Advisers Acts of 1940.

On December 22, 2016, the SEC named Timothy Husson as Associate Director in the Division of Investment Management’s Risk and Examination Office. In this position, Husson will oversee the office’s asset management monitoring program.

FCPA CORNER

On October 24, 2016, the DOJ and SEC announced that Brazilian aircraft manufacturer Embraer S.A. had agreed to pay a total of $205 million to settle charges that it violated the FCPA in connection with bribery schemes involving foreign governments or state-owned entities in the Dominican Republic, Saudi Arabia, Mozambique and India. “Embraer paid millions of dollars in bribes to win government aircraft contracts in three different continents,” said Assistant Attorney General Leslie Caldwell. Under the global settlement, which also includes Brazilian authorities, Embraer agreed to pay approximately $107 million as part of a three-year DPA involving FCPA conspiracy and internal accounting controls charges with the DOJ. Embraer also agreed to pay about $98 million in combined disgorgement plus prejudgment interest to settle SEC charges that it violated the FCPA’s anti-bribery and accounting provisions. The SEC agreed to credit up to $20 million in disgorgement that Embraer agreed to pay to Brazilian authorities in a parallel civil proceeding. The company also agreed to retain an independent corporate monitor for three years, and as part of its settlement in Brazil, the company agreed to share the monitor’s reports with Brazilian authorities.

On December 21, 2016, Odebrecht S.A., a global construction company based in Brazil, and Braskem S.A., an affiliate petrochemical company in Brazil, agreed to pay a combined total penalty of at least $3.5 billion to enforcement authorities in the U.S., Brazil, and Switzerland in order to resolve charges arising out of bribes paid to government officials across the globe. According to Odebrecht’s admissions, the company began paying bribes in 2001 to government officials, their representatives, and political parties in various countries in order to win business. The payments to these individuals totaled approximately $788 million. Between 2006 and 2014, Braskem paid about $250 million into Odebrecht’s secret payment system. The fines could potentially have been higher, but credit was given both for cooperation during the investigation and for the extensive remedial measures undertaken by the defendants after the events came to light.

Teva Pharmaceutical Industries Ltd., the largest manufacturer of generic drugs, agreed to settlements with the DOJ and SEC on December 22, 2016. Teva’s settlements totaled $519 million; specifically, the pharmaceutical giant agreed to pay a criminal fine of $283 million to the DOJ and to disgorge $236 million to the SEC. The criminal penalty imposed on Teva is the largest criminal fine imposed against a pharmaceutical company for violations of the
FCPA. Teva’s FCPA offenses occurred in Russia, Ukraine, and Mexico. Teva admitted to bribing a high-ranking Russian government official in annual drug purchase auctions held by the Russian Ministry of Health in order to increase the sales of Teva’s multiple sclerosis drug. The official had been paid about $65 million through the business deal. In Ukraine, Teva hired a government official to influence the Ukrainian government’s approval of Teva drug registrations. Teva engaged the official as a “registration consultant” and compensated him with fees and other things of value totaling about $200,000. Teva also admitted that inadequate internal controls did not prevent certain FCPA violations in Mexico. Teva received a 20 percent reduction off the low end of the U.S. Sentencing Guidelines fine range because of its substantial cooperation and remediation. Teva did not receive a more substantial discount because it did not self-disclose the conduct to the DOJ and did not cooperate with the DOJ until after the SEC served it with a subpoena.

- Between late October and early November 2016, four individuals admitted to bribing Mexican officials in return for aircraft maintenance and repair contracts with Mexican government-owned and -controlled entities. The four individuals paid over $2 million in bribes to at least seven different Mexican officials. Victor Hugo Valdez Pinon pleaded guilty on October 26, 2016 and Douglas Ray pleaded guilty on October 28, 2016 to conspiracy to violate the FCPA and conspiracy to commit wire fraud. Kamta Ramnarine and Daniel Perez pleaded guilty on November 2, 2016 to conspiracy to violate the FCPA. Two Mexican government officials who had received bribes through this scheme, Ernesto Hernandez-Montemayor and Ramiro Ascencio-Navarez, pleaded guilty to money laundering charges in connection to those bribes.

- Anheuser-Busch InBev agreed to pay $6 million to settle charges that it violated the FCPA and chilled a whistleblower who reported the misconduct. The SEC found that Anheuser-Busch InBev violated the FCPA by using third-party sales promoters to make improper payments to government officials in India and that the company lacked adequate internal controls to detect and prevent the misconduct. The SEC also found that Anheuser-Busch InBev entered into an improper separation agreement with a whistleblower-employee that would have imposed damages of $250,000 if the employee violated the agreement’s non-disclosure terms. The employee had been communicating with the SEC, but stopped after signing the agreement. The $6 million settlement consists of approximately $2.7 million in disgorgement, $300,000 in interest, and $3 million in penalties.

- Lennox International, a Texas-based heating and cooling equipment manufacturer, self-reported to the DOJ and SEC that a Russian subsidiary may have bribed a Russian customs official in the amount of 30,000 rubles, or about $475. Lennox believes the payment may have been made to secure the release of a shipment of goods worth around $68,500. The disclosure is unusual because of the small size of the possible bribe. Lennox indicated that it sought to take advantage of the DOJ Pilot Program. The DOJ and SEC are likely waiting until Lennox completes its investigation to determine if any enforcement action is necessary.

- The DOJ filed a superseding indictment in the SDNY against Ng Lap Seng, a Macau real estate developer accused of paying more than $500,000 in bribes to the former president of the U.N. General Assembly, John Ashe, and Francis Lorenzo, a then-deputy U.N. ambassador from the Dominican Republic, in order to win support for development of a conference center in Macau. Lorenzo pleaded guilty in March 2016 to bribery and money laundering charges as part of a deal to cooperate with the DOJ. Ashe died in June 2016, five days before a status conference in his own trial for bribery.
SECURITIES & DERIVATIVES ENFORCEMENT
AND REGULATORY PRACTICE OF SIDLEY AUSTIN LLP

Sidley’s Securities & Derivatives Enforcement and Regulatory group advises and defends clients in a wide range of securities- and derivatives-related matters. With more than 150 lawyers in 10 offices worldwide, we provide comprehensive regulatory, enforcement and litigation solutions in matters involving the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the Financial Industry Regulatory Authority (FINRA), self-regulatory organizations (SROs), state attorneys general and state securities regulators. Our team is distinctive in that it combines the strength of nationally recognized enforcement lawyers with the skills of equally prominent counseling lawyers. We work collaboratively to provide our clients with informed, efficient and effective representation.

Our team features many prominent practitioners and former officials from the SEC, FINRA and CFTC, as well as state regulators. Our lawyers include a former associate director of the SEC’s Division of Enforcement, a former co-head of enforcement and associate regional director of the SEC’s Northeast Regional Office, a former deputy director of the SEC’s Division of Trading and Markets, a former SEC senior trial counsel, the former head of enforcement for FINRA and the former chief of the Massachusetts Securities Division. We also understand the “inside” perspective, as our team includes former general counsels of Charles Schwab and UBS Financial (Paine Webber).

Effective representation of our clients has earned us acknowledgement in numerous industry publications, including receipt of the 2016 Chambers Award for Financial Services and Securities Regulation practice of the year, as well as top rankings annually in Chambers USA. In a recent edition, the publication noted that our practice is “highly respected in the securities regulation space, with market-leading practitioners in enforcement defense and a strong advisory capability.” Sources told Chambers that the firm has “a very strong market regulation practice with trading and markets expertise.” Sidley was also named the 2017 U.S. News–Best Lawyers® “Law Firm of the Year” for Securities Regulation.

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