ARNOLD & PORTER

Global Anti-Corruption Insights

Update on Recent Enforcement, Litigation, and Compliance Developments

January 2016

Editors-in-Chief: Marcus Asner, Drew Harker

Managing Editors: Daniel Bernstein, Lindsey Carson, Whitney Moore

Contributors: Ivory Bishop, Brittany Fisher, Elizabeth Fitzpatrick, Meghan Martin, Brittany McClure, James McSweeney

arnoldporter.com

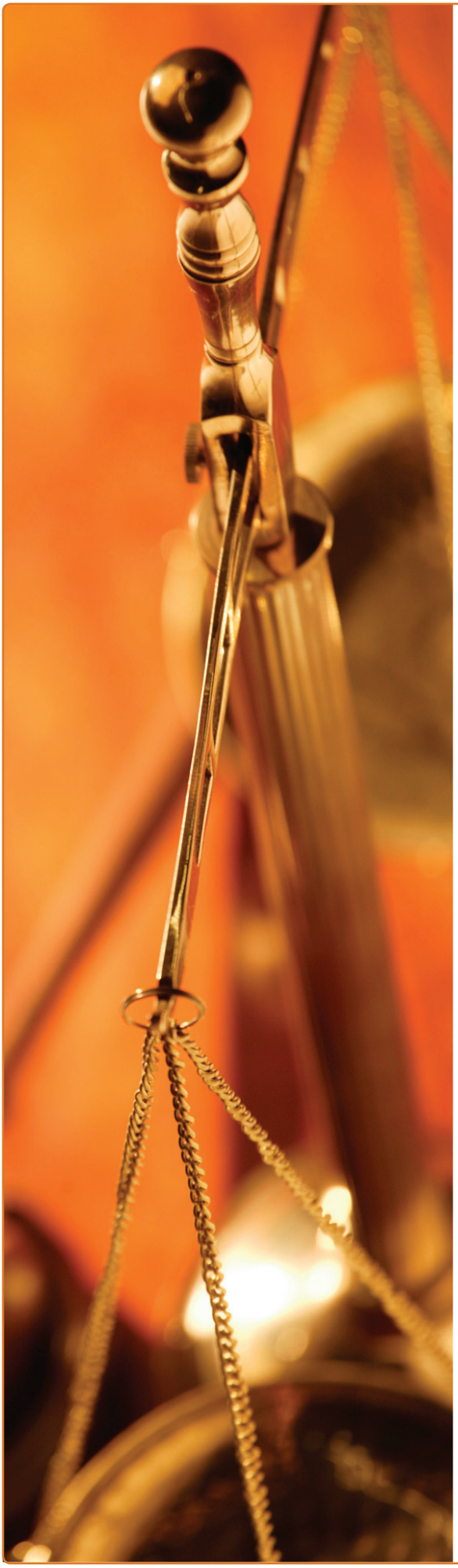


Table of Contents

EXECUTIVE SUMMARY: 2015 YEAR-END REVIEW

Enforcement of the Foreign Corrupt Practices Act (FCPA) continued to be active in the second half of 2015. Although the Department of Justice (DOJ) did not bring any new corporate enforcement actions, the DOJ did pursue FCPA prosecutions against numerous individuals. In December alone, federal judges handed down prison sentences to a technology executive who had pleaded guilty in August to conspiring to violate the FCPA, a former Russian nuclear official who had pleaded guilty in August to conspiring to launder money in connection with a scheme that violated the FCPA, and three former employees of a now-defunct broker-dealer who had pleaded guilty back in 2013 to violating the FCPA, among other statutes. A grand jury in Brooklyn also indicted sixteen more Fédération Internationale de Football Association (FIFA) officials on corruption-related charges.

We expect the DOJ to continue focusing on individual prosecutions as it adds new staff members to its FCPA unit and implements the "Yates Memorandum," a statement of agency policy issued in September, which prioritizes individual accountability for corporate wrongdoing.

On the civil side, in the second half of 2015, the Securities and Exchange Commission (SEC) settled enforcement actions with five corporations, with sanctions ranging from US$75,000 to US$19 million. Consistent with a trend seen in recent years, four of these five enforcement actions were resolved through administrative proceedings rather than in federal court.

In anti-corruption news outside the United States, the United Kingdom's Serious Fraud Office (SFO) entered into its first deferred prosecution agreement, Brazil continued to make arrests in connection with a number of bribery investigations, Swiss authorities cooperated with US officials on the FIFA case, and Germany strengthened its anti-corruption law.

We analyze these developments and more in this edition of Global Anti-Corruption Insights.

KEY ENFORCEMENT AND INVESTIGATIVE DEVELOPMENTS IN THE UNITED STATES

KEY ENFORCEMENT AND INVESTIGATIVE DEVELOPMENTS IN THE UNITED STATES

NOTABLE SEC ENFORCEMENT ACTIONS AGAINST CORPORATE ENTITIES

Bristol-Myers Squibb Wraps up Investigations into Payments by Chinese Joint Venture

On October 5, 2015, without admitting or denying the SEC's allegations, **Bristol-Myers Squibb Company** (BMS) agreed to the entry of an administrative order resolving charges, under the FCPA's books-and-records provision, that its joint venture, BMS China, improperly recorded cash payments and other benefits provided by sales representatives to healthcare providers at state-owned hospitals in China. As part of its resolution with the SEC, BMS agreed to disgorge US$11.4 million in profits, pay a US$2.75 million civil penalty, and report to the SEC for the next two years on the company's continued efforts to remediate and implement enhanced compliance measures.[1] BMS disclosed in a quarterly securities filing that DOJ had closed its investigation into the same allegations.[2]

Hyperdynamics Resolves SEC Investigation into Potential FCPA Violations

On September 29, 2015, the SEC and **Hyperdynamics Corp.** (Hyperdynamics), a Houston-based oil-and-gas exploration company, agreed to settle the SEC's investigation into possible FCPA violations in connection with the company's operations in the Republic of Guinea.[3] In the administrative proceeding, Hyperdynamics agreed to pay a penalty of US$75,000 to resolve books-and-records and internal control charges related to the company's Guinea subsidiary, but did not admit or deny the SEC's allegations. The SEC alleged that Hyperdynamics recorded payments to third-party vendors for public relations and lobbying activities without actually confirming that the services were performed and without conducting sufficient due diligence to uncover that an employee of Hyperdynamics' Guinean subsidiary actually controlled the two vendors.[4] As we previously discussed, a DOJ investigation into potential FCPA violations related to Hyperdynamics' Guinea operations was closed in May without any charges being brought against the company.[5]

Hitachi, Ltd. Resolves Corruption Charges Stemming from South African Contracts

On September 28, 2015, the SEC charged **Hitachi, Ltd.** (Hitachi) in US District Court with violations of the books-and-records and internal accounting controls provisions of the FCPA in connection with allegedly improper payments to South Africa's ruling political party.[6] Without admitting or denying the allegations, Hitachi agreed to pay US$19 million to resolve the charges that it had knowingly transferred millions of dollars in illicit payments to the African National Congress. Hitachi allegedly had transferred the illicit payments through a front company in order to secure two contracts with the South African government to build power plants, valued together at roughly US$5.6 billion.[7]

In its statement announcing the settlement, the SEC acknowledged the assistance it had received in the investigation from the African Development Bank Group (AfDB or Bank), which had financed one of the power plant projects involved in the allegedly corrupt scheme.[8] On November 30, 2015, the AfDB announced that it had reached its own settlement agreement with Hitachi to resolve charges that certain of the company's subsidiaries had engaged in "sanctionable" practices to secure the power plant contract in 2007.[9] The agreement imposes a twelve-month debarment with conditional release on Hitachi's European and South African subsidiaries, **Hitachi Power Europe GmbH** (HPE) and **Hitachi Power Africa (Pty) Ltd.** (HPA). Because the period of debarment does not exceed one year, HPE and HPA will not be subject to cross-debarment by the other multilateral development banks.[10] Debarment of the entities will

be terminated once Hitachi makes enhancements to its integrity compliance program to meet the AfDB's Integrity Compliance Guidelines. Hitachi also agreed to make a "substantial financial contribution to the AfDB" that would help fund "worthy anti-corruption causes on the African continent" and to continue to cooperate with the Bank on certain matters, including strengthening the anti-corruption compliance program.[11]

BNY Mellon Settles with SEC over Providing Internships to Family Members of Foreign Officials

On August 18, 2015, the SEC announced a US$14.8 million settlement with **The Bank of New York Mellon Corporation** (BNY Mellon) to resolve charges that BNY Mellon had provided valuable internships to family members of foreign government officials in an improper effort to secure and retain fees for managing and servicing the foreign government's sovereign wealth fund.[12]

According to the SEC, between 2010 and 2011, two foreign officials, both associated with what the SEC identified only as a "Middle Eastern Sovereign Wealth Fund," requested internships from BNY Mellon for their family members. One official referred to the internship as an "opportunity" for BNY Mellon and warned that he could secure an internship from a BNY Mellon competitor if BNY Mellon did not deliver. In response, BNY Mellon provided internships to the foreign officials' family members without following its own standard hiring procedures, which would have disqualified the family members, who lacked the minimum grade point average and relevant work experience for the positions. The SEC claimed that BNY Mellon failed to "devise and maintain a system of internal accounting controls around hiring practices" to prevent the use of valuable employment positions as a means of bribing foreign officials.[13]

As part of the settlement, BNY Mellon agreed to pay US$8.3 million in disgorgement, US$1.5 million in pre-judgment interest, and US$5 million in civil penalties. BNY Mellon did not admit or deny any wrongdoing.[14] The SEC said that, in agreeing to this resolution, it considered BNY Mellon's remediation and cooperation with the investigation.[15]

This settlement is the first to treat internships for relatives of foreign officials as the "thing of value" given to obtain or retain business in violation of the FCPA.

Mead Johnson Resolves FCPA Allegations Stemming from Payments in China

On July 28, 2015, the SEC brought administrative proceedings against **Mead Johnson Nutrition Company** (Mead Johnson) alleging violations of the FCPA's books and records and internal controls provisions in connection with payments by employees of Mead Johnson's Chinese subsidiary **Mead Johnson Nutrition (China) Co., Ltd.** (Mead Johnson China).[16] The SEC alleged that Mead Johnson China employees improperly paid healthcare professionals at state-owned hospitals to recommend Mead Johnson infant formula to new and expectant parents.[17] The Cease and Desist Order noted that Mead Johnson has internal controls and policies requiring FCPA compliance, including policies that prohibit payments to healthcare professionals to recommend Mead Johnson products.[18] The funds used in the payments were designated for sales and marketing efforts by third-party vendors, but Mead Johnson China employees allegedly had some control over how the funds were spent, and the SEC alleged that Mead Johnson's books and records failed to accurately reflect more than US$2 million in improper payments during a five-year period. Mead Johnson did not admit or deny the charges but agreed to pay approximately US$12 million to resolve the matter, including a US$3 million penalty.[19]

NOTABLE JUSTICE DEPARTMENT AND SEC ENFORCEMENT ACTIONS AGAINST INDIVIDUALS

Former SAP Executive Sentenced to Two Years in Prison for Conspiracy to Violate the FCPA

After pleading guilty on August 12, 2015, to one criminal count of conspiring to violate the FCPA, **Vicente Garcia** — a former regional director of Europe-based technology company **SAP SE** (SAP), which lists American Depository Shares on the New York Stock Exchange — was sentenced to 22 months' imprisonment on December 17, 2015, for participating in a scheme to bribe Panamanian officials to secure government contracts for SAP.[20]

In a parallel enforcement action announced by the SEC on August 12, 2015, Garcia also agreed to settle charges

that he violated the civil anti-bribery and internal controls provisions of the FCPA. According to US officials, between 2009 and 2013, Garcia "orchestrated a scheme to pay $145,000 in bribes to one government official and promised to pay two others to obtain four contracts to sell SAP software to the Panamanian government,"[21] including a US$14.5 million technology upgrade contract that included $2.1 million in SAP software licenses.[22] Garcia's scheme involved deeply discounting sales of SAP software to a Panamanian partner who used the savings to create a slush fund to pay bribes to Panamanian government officials and pass along kickbacks to Garcia. Through the entry of an administrative cease-and-desist order, Garcia agreed to pay disgorgement of US$85,965, plus prejudgment interest of US$6,430.[23]

This is not the first time in the high-tech sector that US authorities have taken an interest in deep discounts to local middlemen where the savings created from the discounts may have been used to pay bribes. Back in 2012, the SEC and **Oracle Corporation** (Oracle) resolved an enforcement action involving similar issues with Oracle's Indian subsidiary.[24]

Former Russian Nuclear Energy Official Sentenced to Four Years in Prison for Money Laundering Conspiracy Involving FCPA Violations

On December 15, 2015, **Vadim Mikerin**, a former Russian nuclear official living in Maryland, was sentenced to four years in prison for conspiracy to commit money laundering for his role in arranging more than US$2 million in bribes to help US companies do business with **JSC Techsnabexport** (TENEX), a Russian state-owned nuclear energy corporation.[25] The US District Court in the District of Maryland also ordered him to forfeit over US$2.1 million. As director of the Pan-American department of TENEX, Mikerin oversaw the sale of Russian uranium from decommissioned nuclear weapons to the United States for use by American power plants. Mikerin admitted that, through this "Megatons to Megawatts" program, he engaged in a conspiracy with multiple individuals to secure corrupt payments in exchange for influencing the awarding of contracts with TENEX. Two of his co-conspirators pleaded guilty to related charges in June 2015: **Daren Condrey** pleaded guilty to conspiracy to violate the FCPA and conspiracy to commit money laundering,[26] while **Boris Rubizhevsky** pleaded guilty to conspiracy to commit money laundering.[27] Both were awaiting sentencing as of January 2016.

Three More Former Employees of Direct Access Partners Sentenced to Prison

In December 2015, three more former employees of the now defunct broker-dealer **Direct Access Partners** (DAP) were sentenced by a US District Court Judge in Manhattan for violating the FCPA by bribing a Venezuelan banking official to receive lucrative bond trading business. **Ernesto Lujan**, a DAP managing partner and head of its Miami office, was sentenced to two years in prison and ordered to forfeit US$18.5 million;[28] **Tomas Clarke Bethancourt**, a former senior vice president of DAP, was sentenced to two years in prison and ordered to forfeit US$5.8 million;[29] and **Jose Alejandro Hurtado** was sentenced to three years in prison and ordered to forfeit approximately US$11.9 million.[30] As we previously reported, in March 2015 two other former DAP executives were sentenced to four years in prison each for their roles in the bribery scheme.[31] The Venezuelan banking official at the center of this scheme also pleaded guilty to US crimes and is awaiting sentencing.

DOJ Announces Indictments of 16 New Suspects in FIFA Corruption Case

Six months after the DOJ announced a 47-count indictment charging nine **FIFA** officials and five corporate executives with various offenses in connection with decades of alleged corruption in organized international soccer,[32] on December 3, 2015, a 92-count superseding indictment was unsealed in federal court in Brooklyn,

New York.[33] The superseding indictment charges an additional sixteen defendants with racketeering, wire fraud, bribery, and money laundering conspiracies, among other offenses, in connection with a number of schemes allegedly involving over US$200 million in bribes and kickbacks in connection with media and marketing rights to international soccer tournaments.[34]

These new defendants include high-ranking officials of FIFA as well as the current presidents of the Confederation of North, Central American and Caribbean Association Football (CONCACAF) and the Confederación Sudamericana de Fútbol (CONMEBOL), two of FIFA's six continental confederations, and the current and/or former presidents of the soccer federations of Bolivia, Brazil, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, and Peru.[35]

Authorities also announced that eight defendants, including three of the fourteen defendants indicted last May, had pleaded guilty in the case and agreed to forfeit more than US$40 million.[36]

Former Employee of Defense Contractor IAP Jailed Over Kuwait Bribery

On October 15, 2015, a federal judge in Virginia sentenced a former employee of defense contractor **IAP Worldwide Services Inc.** (IAP) to 120 days in prison after he admitted to conspiring to violate the FCPA in connection with alleged bribes paid to secure a surveillance contract in Kuwait.[37] Under the sentencing guidelines, **James Rama** could have received to up to 57-60 months in prison. The government nevertheless requested a one-year sentence[38] because Rama had cooperated with the government during its investigation and had been professionally and financially ruined as a result of the scandal.[39] As we previously discussed, in June, IAP entered into a non-prosecution agreement with the DOJ and agreed to pay a US$7.1 million penalty to resolve the government's investigation into the alleged Kuwaiti bribery scheme.[40]

Former Siemens Executive Pleads Guilty

In September, the former chief financial officer for **Siemens S.A. − Argentina** became the first individual to plead guilty to criminal charges for his role in a bribery scheme that funneled US$100 million in bribes to Argentine officials in connection with a US$1 billion national identity card project (the DNI project). **Andres Truppel**, who had been charged with seven other Siemens executives in a December 2011 indictment, pleaded guilty in a Manhattan federal court to one count of conspiracy to commit bribery, falsify corporate books and records, circumvent internal controls, and commit fraud. His agreement includes a commitment to cooperate with authorities. At his sentencing, to be scheduled in early 2016, Truppel faces a maximum sentence of five years in prison and three years of supervised release.[41] In February 2014, Truppel also agreed to pay US$80,000 to the SEC to resolve civil charges related to the DNI project.[42] None of the other seven individuals charged in the criminal indictment has entered a plea, but two of them, **Ulrich Bock** and **Stephan Signer**, were ordered to pay a combined US$1.46 million in the SEC's civil case.[43] In 2008, Siemens AG agreed to pay US$1.6 billion to US and German officials to settle sweeping bribery charges involving the DNI project as well as others around the world.

Two More Executives Sentenced in PetroTiger FCPA Case

On September 10, 2015, two more individuals involved in the bribery scandal at **PetroTiger Ltd.** (Petrotiger) — a British Virgin Islands-based oil and gas company — were sentenced in federal court in New Jersey. Former Petrotiger co-CEO **Knut Hammarskjold** pleaded guilty in February 2014 to conspiring to violate the FCPA and wire fraud statute. US District Court Judge Joseph Irenas sentenced Hammarskjold to supervised release and time served (Hammarskjold had already spent nearly a month in prison). The judge also sentenced now-disbarred lawyer and former Petrotiger general counsel **Gregory Weisman** to two years of probation, which followed Weisman's plea of guilty in November 2013 to one count of conspiracy to violate the FCPA and wire fraud statutes.[44] As we

previously reported, Weisman had cooperated with the DOJ, including recording conversations with former Petrotiger CEO **Joseph Sigelman** and testifying at Sigelman's trial where, after pleading guilty mid-trial to conspiring to violate the FCPA, the former chief executive officer was sentenced to three years of probation and fines and restitution totaling US$339,000.[45]

The convictions in this case stem from bribes to a Colombian official in exchange for help securing approval from Colombia's state-owned and -controlled oil company for an oil services contract worth US$45 million.[46]

Former Terra Executive Denied a New Trial

On September 2, 2015, US District Court Judge Jose Martinez denied the motion for a new trial filed by former **Terra Telecommunications Corp.** Vice President **Carlos Rodriguez**, who had been convicted for his role in the scheme to pay bribes to officials of Telecommunications D'Haiti (Haiti Teleco). The District Court ruled that Rodriguez's motion was time-barred as well as meritless because the newly discovered evidence Rodriguez sought to put forward served only impeachment purposes.[47] Prior to this ruling, Rodriguez's conviction had been affirmed by the US Court of Appeals for the Eleventh Circuit and his petition for a writ of certiorari had been denied by the US Supreme Court.

Judge Rejects Accomplice Theory of FCPA Liability in Case Against Former Alstom Executive

On August 14, 2015, a Connecticut federal judge ruled that the criminal provisions of the FCPA reach a nonresident foreign national who does not commit any relevant act on US territory only if the individual is an agent of a "domestic concern," i.e., a US company or US individual. In so ruling, Judge Janet Arterton rejected the accomplice theory of liability that the US government had asserted against **Lawrence Hoskins**, a British national and former senior vice president of French energy company **Alstom Holdings SA** (Alstom). Judge Arterton concluded that, in light of the text, structure, and legislative history of the FCPA, Congress "did not intend to impose accomplice liability on non-resident foreign nationals who were not subject to direct liability."[48]

While Judge Arterton agreed with Hoskins on the issue of accomplice liability, she declined to dismiss all FCPA-related charges against him. As a result, prosecutors now must prove at trial that Hoskins acted as an agent for the US-based affiliate of Alstom in connection with an alleged conspiracy to bribe Indonesian officials to secure a valuable power contract. Hoskins' trial is set to begin on April 18, 2015.[49]

The *Hoskins* decision on accomplice liability is not binding on other federal judges. However, if other judges decide to follow it, the government may have a much harder time bringing FCPA-related charges against non-resident foreign nationals for conduct that took place outside the United States. Showing that an individual conspired with or aided and abetted a "domestic concern" may not be sufficient to subject that individual to the FCPA.

As we previously reported, three other former Alstom employees have pleaded guilty to FCPA-related charges, and in December 2014 Alstom agreed to pay a US$772 million penalty to resolve FCPA charges — the largest criminal fine ever imposed and the second largest combined civil and criminal penalty.[50] On November 13, 2015, Alstom was formally sentenced in federal court in Connecticut.[51]

OTHER FCPA AND CORRUPTION-RELATED ENFORCEMENT NEWS

Analogic May Have to Pay US$15 Million to Settle with SEC and DOJ

On December 9, 2015, Massachusetts-based equipment maker **Analogic Corporation** (Analogic) disclosed that the SEC and DOJ separately had proposed resolutions of FCPA investigations that would require the company to pay a total of about US$15 million in sanctions. Analogic first disclosed in 2011 that certain transactions involving its Danish subsidiary, **BK Medical ApS** (BK Medical), and certain of its foreign distributors raised questions concerning compliance with the FCPA and Danish law. Analogic voluntarily disclosed the transactions to US and Danish authorities, and has been actively pursuing a resolution of the resulting government investigations. The transactions involved excess payments by the foreign distributors to BK Medical, which transferred funds to

third parties the distributors had identified. Analogic reports that it has been unable to ascertain the ultimate beneficiaries or purposes of these transfers to third parties. Nevertheless, Analogic has terminated the employment of certain BK Medical employees and also terminated its relationships with the BK Medical distributors that were involved in the questionable transactions. In September 2015, Analogic reported that the SEC had rejected an offer to settle the matter for US$1.6 million.[52]

DC Circuit Reverses FCA Verdict Against MWI Arising out of Ex-Im Bank Project in Nigeria

On November 24, 2015, the United States Court of Appeals for the District of Columbia Circuit reversed a US$7.5 million jury verdict (US$22.5 million in trebled damages) for False Claims Act (FCA) violations arising out of **MWI Corporation** (MWI)'s allegedly false certifications to the Export-Import Bank (Ex-Im Bank) that the company had paid only "regular commissions" to a sales agent responsible for the contract used to secure Ex-Im Bank loans to Nigeria.[53] The court held that, under the FCA's objective knowledge standard, the government failed to prove that MWI knowingly made a false claim because the term "regular commissions" was ambiguous, MWI reasonably interpreted the term to mean that a commission was "regular" if it was consistent with past payments to the sales agent, and the government had not provided guidance or notice to MWI that it used an industry-wide standard in determining whether commissions were "regular."[54] The court remanded the case to the district court with instructions to enter judgment for MWI.[55] While not an FCPA enforcement action, the MWI case demonstrates that the use of third parties to obtain contracts financed in some manner by the US Government can also subject companies to liability beyond the FCPA.

PTC Inc. Sets Aside US$28.2 Million to Resolve FCPA Investigation

On November 23, 2015, Massachusetts-based technology company **PTC Inc.** (PTC) reported that it had recorded a total liability of US$28.2 million as a result of agreements in principle to resolve an investigation by the DOJ and SEC into potential FCPA violations in China. The government's investigation, which was prompted by PTC's voluntary disclosure in 2011, reportedly concerns expenditures by PTC's China business and business partners in China, including for travel and entertainment.[56]

Uzbekistan Bribery Investigations Lead to Challenges for VimpelCom

VimpelCom Ltd. (VimpelCom) continues to face negative fallout related to bribery allegations in connection with its operations in Uzbekistan and its dealings with an offshore company linked to the daughter of the Uzbek president. In March 2014, the Amsterdam-based telecommunications company announced that it was under investigation by the SEC and Dutch Public Prosecution Service,[57] as well as the DOJ.[58] Over the summer of 2014, US authorities took steps to seize approximately US$1 billion in assets related to bribes that VimpelCom and two other telecom companies allegedly funneled to businesses controlled by **Gulnara Karimova**, a daughter of Uzbekistan's President **Islam Karimov**, in order to secure wireless frequencies and other business deals in that country.[59]

In November 2015, VimpelCom announced that it was setting aside US$900 million for liabilities the company might face in connection with the US and Dutch investigations into its Uzbekistan operations,[60] and, later that month, Bloomberg reported that the telecom company was in negotiations with US authorities to pay US$775 million to resolve the case.[61] If accurate, that US$775 million penalty would be the second-largest levied by US officials for FCPA violations, surpassing the US$772 million criminal fine imposed by the DOJ on Alstom SA last year and falling just short of the US$800 million penalty paid by Siemens AG in 2008. Finally, in December, shareholders filed a putative class action against VimpelCom and its directors for alleged violations of securities laws over the company's 60 percent decline in stock prices since the March 2014 revelations of the Uzbekistan bribery investigations by US and Dutch officials.[62]

DOJ, SEC Investigate Corruption Allegations at Canadian Gold Mining Company

In October 2015, **Kinross Gold Corporation** (Kinross), the world's fifth-largest gold producer, announced that it was under investigation by the DOJ and the SEC for alleged corruption at the company's West African facilities.[63] The Toronto-based Kinross stated that the subpoenas from

the SEC and DOJ related to allegations of improper payments to government officials and internal control deficiencies that the company had been investigating internally, with the assistance of outside counsel, since 2013. The SEC subpoenas reportedly requested records of communications and payments to officials and contractors at the mining company's operations in Mauritania and Ghana.[64] Kinross said that the company was cooperating fully with the SEC and DOJ while continuing to pursue its own internal investigation.

DOJ Joins SEC in Investigation of Alexion Pharmaceuticals

In October 2015, the DOJ made a formal request to **Alexion Pharmaceuticals, Inc.** (Alexion) for a voluntary production of documents concerning the Connecticut-based pharmaceuticals maker's compliance with the FCPA. The DOJ request follows a subpoena that the SEC sent Alexion in May 2015, seeking information relating to, among other things, whether the company's grant-making activities complied with the FCPA.[65] The subpoena specifically referred to Alexion's activities in four countries — Japan, Russia, Turkey, and Brazil — but requested information about Alexion's worldwide operations. The company has said it is cooperating with both the DOJ and SEC.[66]

SciClone Pharmaceuticals Announces Potential Settlement with SEC

On August 10, 2015, **SciClone Pharmaceuticals** (SciClone) disclosed that it had reached an agreement in principle with the staff of the SEC to resolve FCPA-related charges for US$12.8 million.[67] SciClone had disclosed back in August 2010 that the SEC was investigating a range of matters including the company's interactions with regulators and government-owned entities in China and other activities relating to sales in China. The DOJ is also conducting its own investigation into the company.[68]

Flowserve Corp Subpoenaed Over Possible FCPA Violations

Flowserve Corp (Flowserve), a Texas-based maker of valves and pumps, has received a subpoena from the SEC relating to potential FCPA violations.[69] As we previously reported, Flowserve disclosed in February 2015 that it had "uncovered actions involving an employee based in an overseas subsidiary that violated [its] Code of Business Conduct and may have violated the Foreign Corrupt Practices Act."[70] According to Flowserve, the employee was terminated and the company self-reported the potential violation to the DOJ and SEC.

SEC Declines to Take Enforcement Action Against Brookfield Asset Management

In June 2015, the SEC informed **Brookfield Asset Management** (Brookfield), a Canadian investment firm, that it had concluded its investigation into allegations of bribery by the firm's Brazilian subsidiary and did not intend to recommend an enforcement action. In 2012, the SEC had notified Brookfield of an investigation into certain payments made to obtain permits and other benefits in Brazil. According to Brookfield, the firm has cooperated with the SEC and with the DOJ, which opened its own investigation in 2013. Brazilian authorities, meanwhile, are continuing to pursue a civil action against Brookfield's Brazilian subsidiary. The firm denies any wrongdoing.[71]

FCPA-RELATED CIVIL LITIGATION

Rio Tinto RICO Claims Against Vale, BSGR Dismissed

In November, a federal judge in New York dismissed **Rio Tinto PLC**'s corruption lawsuit against competitors **Vale S.A., BSG Resources Limited** (BSGR), and other parties alleging that Vale and BSGR, along with others, conspired to steal Rio Tinto's mining rights in the Republic of Guinea in violation of the Racketeer Influenced and Corrupt Organizations Act (RICO).[72] The district court found that Rio Tinto's RICO claims were barred by the relevant four-year statute of limitations. As we have previously discussed, BSGR is under investigation in numerous jurisdictions for related allegations of bribery in connection with Guinea's assignment of valuable mining concessions in 2008.[73] In March, press reports indicated that US authorities could soon issue indictments against multiple BSGR executives, but no indictments have been issued as of our writing this report in January 2016.[74]

Federal Court Refuses to Dismiss Retaliatory Termination Claims Against Teva

A Florida federal court has refused to dismiss retaliation claims filed against **Teva Pharmaceuticals USA, Inc.** (Teva) by a former regional director of finance who alleges that the company terminated her after she cooperated with DOJ and SEC investigations into potential FCPA violations in Teva's Latin America region.[75] Teva previously disclosed in its February 2015 annual report that it had discovered business practices and transactions that "likely" violated the FCPA and/or local laws, including potential violations in Latin America.[76] The former employee, **Keisha Hall**, a certified public accountant and certified fraud examiner, alleged in a complaint filed in July 2015 that she was terminated shortly after returning from maternity leave in November 2014 in violation of the Dodd-Frank Act's whistleblower protections, the Family and Medical Leave Act, and Florida's Whistle-Blower Act.[77] After the court refused to dismiss Hall's retaliation claims, Teva filed an Answer in December 2015 that denied Hall's claims.[78]

Bio-Rad Continues to Face Private Lawsuits Stemming from its Resolution of FCPA Enforcement Actions

On October 23, 2015, a federal magistrate judge in California denied the motion of California-based **Bio-Rad Laboratories, Inc.** (Bio-Rad) and its CEO to dismiss claims brought by former Bio-Rad general counsel, **Sanford Wadler**, who had alleged that he was fired — in violation of the whistleblower protections of the Sarbanes-Oxley Act, Dodd-Frank Act, and California state law — for investigating and reporting to Bio-Rad's upper-level management possible FCPA violations in China. Notably, the court agreed with Wadler (and the SEC, which had filed a supporting amicus brief) that Dodd-Frank's anti-retaliation protection extends to internal whistleblowers, as well as to individuals who have brought information concerning possible securities law violations to the attention of the SEC. The court did trim Wadler's suit, however, by dismissing as untimely the Sarbanes-Oxley claims asserted against Bio-Rad directors.[79]

Bio-Rad also faces a number of shareholder lawsuits in state courts alleging misconduct related to FCPA violations.[80] As we have previously reported, in November 2014 Bio-Rad paid US$55 million to resolve DOJ and SEC enforcement actions focused on improper payments in Russia, Thailand, and Vietnam.[81]

Petrobras Continues to Face US Civil Litigation Relating to Bribery Scandal

Majority state-owned Brazilian energy company **Petroleo Brasileiro S.A.** (Petrobras) faces a growing number of civil lawsuits in the United States stemming from highly publicized allegations of wide-spread corruption. On September 24, 2015, the **Bill and Melinda Gates Foundation Trust** and **WGI Emerging Markets Fund LLC** sued Petrobras and its auditor in federal court in New York for violations of federal securities laws, alleging that corruption hurt Petrobras' share price and caused them tens of millions of dollars in losses.[82] On November 16, 2015, **Alaska's Department of Revenue and Permanent Fund Corporation** filed a securities suit claiming losses suffered after investigations revealed that Petrobras had falsely booked billions of dollars in bribes and kickbacks as assets.[83] These cases have been referred to US District Court Judge Jed Rakoff, who is overseeing a consolidated set of securities cases involving the oil giant. In the consolidated action, UK pension fund **Universities Superannuation Scheme Ltd.**, the **North Carolina Department of State Treasurer**, the **Employees' Retirement System of the State of Hawaii**, and German asset manager **Union Asset Management Holding AG** are seeking to certify classes of investors under federal securities laws.[84]

Wal-Mart Continues to Defend Against Shareholder Suits

As **Wal-Mart Stores Inc.** (Wal-Mart) remains under a federal criminal investigation into allegations of corruption at the retail giant's Mexican, Indian, and Chinese operations,[85] private civil litigation stemming from the allegations continues to wind through federal and state courts around the country. In a federal securities case in Arkansas, a Michigan pension fund suing Wal-Mart for allegedly concealing the extent of the company's possible bribery of Mexican and other foreign government officials is seeking to have the case certified as a class action.[86] Meanwhile, other Wal-Mart investors are asking the US Court of Appeals for the Eighth Circuit to revive their shareholder derivative suit, which a federal judge in

Arkansas had dismissed last year on the ground that the plaintiffs failed to satisfy the procedural requirements for pursing a derivative suit on the company's behalf.[87] Wal-Mart also continues to battle shareholder derivative litigation in Delaware Chancery Court.[88]

Och-Ziff Facing Derivative Suit in Connection with FCPA Allegations

In September, a shareholder brought a derivative suit against the directors of hedge fund **Och-Ziff**, alleging that the directors breached their fiduciary duties by allowing FCPA violations to occur in several African countries and then failing to disclose those violations to investors despite DOJ and SEC subpoenas regarding those activities. The suit also asks the court to appoint a special master to supervise Och-Ziff's response to the government's ongoing investigation.[89] As we previously discussed, Och-Ziff also moved to dismiss a separate shareholder suit in federal court that alleged that the company and certain of its officers violated US securities laws by failing to disclose violations of the FCPA in Libya and the Republic of the Congo.[90] The motion to dismiss is currently pending.

Federal Judge Dismisses Bribery-Related Securities Class-Action Complaint Against PetroChina

On August 3, 2015, a federal judge in New York granted a motion by Chinese state-run oil company **PetroChina Company, Ltd.** (PetroChina) to dismiss a class action complaint alleging that PetroChina and three of its officers had violated US securities laws by concealing bribery, political corruption, and related-party transactions, which, the plaintiffs claimed, caused a decline in the company's share price when news reports of corruption surfaced. Judge Edgardo Ramos ruled that the plaintiffs' second amended class action complaint had failed to show that PetroChina made specific false statements about its corporate governance practices or its internal controls, and that the individual defendants knew of or recklessly disregarded the alleged corruption at PetroChina.[91]

TOP US ENFORCEMENT OFFICIALS COMMENT ON FCPA ENFORCEMENT ACTIVITY

DOJ, SEC Raise the Bar on Corporate Self-Reporting and Cooperation

In September, Deputy Attorney General Sally Quillian Yates issued a policy memorandum for federal prosecutors (the Yates Memo) stating, among other things, that (i) companies under investigation may not earn credit for cooperation unless they first expose corporate executives or employees who engaged in wrongdoing, and (ii) federal prosecutors may not resolve a corporate criminal or civil case without a clear plan to prosecute responsible individuals or a written justification for not charging individuals (and approval from the Assistant Attorney General or US Attorney supervising the case).[92] This new "all or nothing" rule makes clear that, to be eligible for cooperation credit, "corporations must provide to the Department [of Justice] all relevant facts about the individuals involved in corporate misconduct."[93] The Yates Memo has the potential to make it more difficult for companies to conduct internal investigations and offer meaningful cooperation to the DOJ, but it also could induce the government to consider more carefully whether a corporate case should be brought when prosecutors are forced to think about the obstacles to a winnable case against individuals. These concerns are discussed in more detail in Arnold & Porter's advisory highlighting key takeaways from the memo, "All or Nothing: Highlights and Areas of Concern from DOJ's New Guidance on Individual Culpability in Civil and Criminal Investigations" (September 2015).

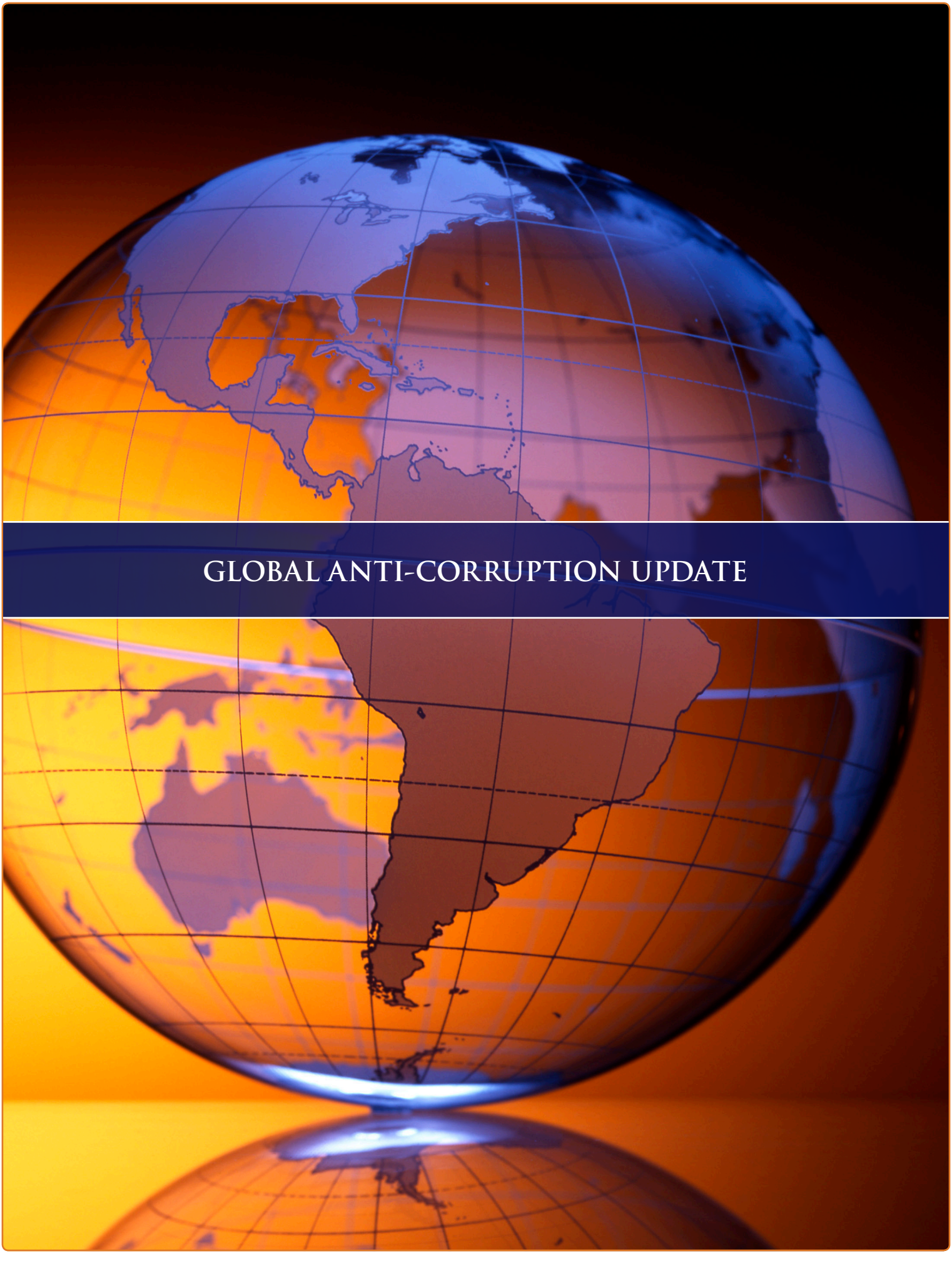
On November 16, 2015, Yates provided further guidance on the DOJ's new policy while speaking at a Money Laundering Enforcement Conference in Washington, DC.[94] Her prepared remarks noted, among other things, that the DOJ was revising the US Attorney's Manual in several ways, including updating the agency's "Principles of Federal Prosecution of Business Organizations" to stress the "primacy in any corporate case of holding individual wrongdoers accountable," as well as to "list a variety of steps that prosecutors are expected to take to maximize the opportunity to achieve that goal." She confirmed that companies that want cooperation credit will be expected to provide "all non-privileged information" about individuals involved in the activities under investigation, including facts that are discovered during otherwise privileged interviews conducted by counsel, although she specifically noted that interview memos and notes that are protected by the attorney work-product doctrine and attorney-client privilege need not be provided. She also noted that cooperation credit was no longer going to be a "sliding scale" where companies could receive some credit for cooperation "even if they failed to fully disclose all facts about individuals." Instead, she said companies must provide full information about individuals as a threshold before cooperation credit would be considered at all. She also indicated that the DOJ would treat timely voluntary disclosure and corporate cooperation as two distinct factors in charging decisions, rather than make one determination that took into account both factors. Prosecutors are now citing the Yates Memo to encourage companies to fully cooperate in ongoing investigations. While prosecutors' emphasis on cooperation is not a new development, it has become a renewed point of emphasis in the aftermath of the Yates Memo and Yates' subsequent comments.

On November 17, 2015, SEC Division of Enforcement Director Andrew Ceresney gave the keynote address to the American Conference Institute's 32nd FCPA Conference.[95] Among other things, his prepared remarks stressed the SEC's focus on the importance of cooperation and self-reporting. He announced that companies would now be required to self-report potential violations to be eligible for the Division of Enforcement to recommend a Deferred or Non-Prosecution Agreement in an FCPA case. He also discussed the SEC's interest in holding individuals accountable for FCPA violations and predicted that there would be more cases made against individuals in the future.

DOJ Hires Compliance Expert, Boosts FCPA Staff

On November 3, 2015, the DOJ's Fraud Section announced the hiring of Hui Chen as a full-time compliance expert. Chen's role will include consulting with prosecutors to develop benchmarks for corporate compliance programs and evaluating the effectiveness of compliance programs in place at companies under investigation.[96]

In November, Assistant Attorney General Leslie Caldwell also announced that the DOJ was preparing to add 10 new prosecutors to the FCPA unit, which would increase its size by 50 percent, as well as to add three squads to the FBI's International Cooperation Unit focusing on FCPA and kleptocracy issues. Caldwell said that "[t]hese new squads and prosecutors will make a substantial difference to our ability to bring high-impact cases and greatly enhance the department's ability to root out significant economic corruption."[97]



GLOBAL ANTI-CORRUPTION UPDATE

UK Serious Fraud Office Enters into First Deferred Prosecution Agreement

On November 30, 2015, Lord Justice Leveson at the Royal Courts of Justice approved the United Kingdom (UK)'s first-ever deferred prosecution agreement (DPA) in the Serious Fraud Office's (SFO) case against **ICBC Standard Bank Plc** (Standard Bank) under Section 7 of the UK Bribery Act. The three-year DPA requires Standard Bank to pay a total of US$32.2 million in fines, disgorgement, and compensation to the Government of Tanzania; to engage an independent auditor to review its compliance procedures; and to continue cooperating with the SFO.[98]

The SFO had alleged that **Stanbic Bank Tanzania**, a former sister company of Standard Bank, made an improper US$6 million payment to a Tanzanian partner in March 2013 to induce members of the Government of Tanzania to agree to a proposal for a US$600 million private placement that generated US$8.4 million in transaction fees for Standard Bank and Stanbic Bank Tanzania. In deciding to enter into a DPA rather than pursue a prosecution, the SFO took into account Standard Bank's voluntary disclosure, cooperation with the SFO's investigation, and remedial measures, among other things. The Director of the SFO commented that "[t]his landmark DPA will serve as a template for future agreements."[99]

In resolving this enforcement action against Standard Bank, the SFO worked with the DOJ and SEC. Standard Bank agreed to pay the SEC a penalty of US$4.2 million in connection with separate but related misconduct.[100]

Sweett Group Admits Trying to Bribe UAE Officials in UK Enforcement Action

On December 2, 2015, **Sweett Group PLC** (Sweett Group) — a global provider of professional services for the construction and management of building and infrastructure projects — disclosed that it had admitted that employees paid bribes to win business in the Middle East.[101] The SFO subsequently confirmed that Sweett Group had been charged under Section 7 of the Bribery Act with failing to prevent bribery in connection with securing and retaining contracts related to the building of a hotel in Dubai.[102] As we have previously reported, allegations of bribery against Sweett Group first surfaced years ago in the *Wall Street Journal*, leading the company to conduct an internal investigation.[103]

Scottish Authorities Settle with Brand-Rex Limited for Failure to Prevent Bribery by a Third Party

On September 25, 2015, Scottish network cabling company **Brand-Rex Limited** (Brand-Rex) entered into a civil settlement with Scotland's Crown Office, admitting that it had failed to prevent bribery and had received an improper benefit in violation of Section 7 of the Bribery Act. Under the settlement order, Brand-Rex agreed to pay GB£212,800, the amount of Brand-Rex's gross profit from the bribery scheme, which involved the use of a third-party's travel tickets to influence the purchasing decisions of customers. In June 2015, following an internal

investigation, Brand-Rex self-reported the misconduct to the Crown Office.[104]

Brazil Charges 12 in Connection with Alleged Bribery Involving SBM Offshore and Petrobras

On December 17, 2015, Brazilian prosecutors reportedly filed charges against 12 individuals in connection with alleged bribery involving Dutch oil-production ship leaser **SBM Offshore NV** (SBM Offshore) and majority state-owned oil company **Petrobras**. This alleged bribery scheme, referred to as "Operation Black Blood," predated the highly publicized alleged bribery scheme known as "Operation Car Wash," which involves Petrobras and engineering firms. In November 2014, SBM Offshore agreed to pay Dutch authorities US$240 million to settle allegations that it had bribed government officials in Angola, Brazil, and Equatorial Guinea.[105]

Swiss Authorities Assist US with FIFA Investigation

In response to US legal assistance requests, Swiss authorities announced in December that they had frozen approximately US$80 million in assets and handed over to US authorities the first batch of evidence to be used in their prosecution of high-ranking **FIFA** officials. Both the frozen assets and the bank documents transmitted to the DOJ are tied to accounts allegedly used in connection with bribes to secure the marketing rights for soccer tournaments in Latin America and the United States. The statement from Switzerland's Federal Office of Justice further reported that Swiss authorities are currently reviewing other US legal assistance requests for materials, including records relating to the 2010 Swiss criminal proceedings against FIFA officials and to criminal proceedings against those in charge of the sports marketing company ISL.[106]

Italian Court Orders Saipem to Stand Trial in Algerian Bribery Case

In October, a court in Milan ordered Italian oil and gas services company **Saipem SpA** to stand trial for alleged bribery in Algeria. Three former high-ranking Saipem executives and two Algerian intermediaries also will stand trial for tax fraud and international corruption, but the court declared that there was insufficient evidence to bring charges against Saipem's parent company **Eni**, Eni's former chief executive, or its former head of North African operations. According to the prosecutors in the case, intermediaries working for Saipem paid out over US$200 million in bribes to Algerian officials to secure contracts with state-owned oil company Sonatrach worth approximately US$9 billion.[107] Under Italy's Legislative Decree 231/2001, companies can be held liable for corruption and bribery committed by their managers or those under their supervision, and firms may be subject to monetary penalties if found guilty.[108]

Germany Strengthens Anti-Bribery Laws

In November 2015, a new anti-corruption law came into force in Germany. This new law expanded the German Criminal Code to apply, for example, to bribery committed by German citizens abroad, bribery involving European public officials, additional forms of commercial bribery, and a longer list of predicate offenses for money laundering.[109]

SEC Cooperates with German Authorities in Probe Involving Ford

On August 18, 2015, Reuters reported that the SEC is helping German prosecutors investigate the alleged payment of bribes by US-based car maker **Ford Motor Company** (Ford) "to speed the passage of containers through Russian customs" at the port of St. Petersburg. Ford — along with DB Schenker, the freight business of state-owned German rail company **Deutsche Bahn AG** — has been under investigation in Germany since 2013.[110]

SNC-Lavalin and African Development Bank Settle Corruption Allegations

On October 1, 2015, the AfDB and **SNC-Lavalin Group Inc.** (SNC-Lavalin) announced the conclusion of a settlement resolving corruption allegations related to contracts awarded to the company on two AfDB-financed projects in Mozambique and Uganda.[111] In reaching the settlement, SNC-Lavalin did not contest allegations that its former employees ordered illicit payments to public officials to secure a 2008 contract to supervise the construction of a road and bridge in Mozambique and a 2010 contract to supervise a road upgrade in Uganda. Under the terms of the agreement, the AfDB imposed a conditional non-debarment on SNC-Lavalin for a period

of two years and ten months, and the company committed to maintaining an effective compliance program, subject to review by the AfDB, as well as to continuing cooperation with the Bank's Integrity and Anti-Corruption Department. In addition, SNC-Lavalin agreed to make a settlement payment of CA$1.5 million (US$1.12 million) to support activities and programs aimed at combating corruption in African countries.

Two Hitachi Subsidiaries Receive One-Year Debarment by the AfDB

As discussed above, in November 2015, the AfDB and Hitachi announced a settlement agreement to resolve allegations that two of the company's subsidiaries had engaged in sanctionable practices in connection with the procurement of an AfDB-financed power plant project in South Africa.[112] Under the terms of the agreement, the two subsidiaries — but not Hitachi, Ltd. — received a 12-month debarment with conditional release. Given that their debarments do not exceed one year, the Hitachi subsidiaries will not be subject to cross-debarment by the other multilateral development banks (MDBs) — i.e., the World Bank Group, Asian Development Bank, Inter-American Development Bank, and European Bank for Reconstruction and Development.[113] However, the case does highlight how, as discussed in our recent advisory, "Practice Tips: World Bank Anti-Corruption and Fraud Enforcement," more aggressive and diverse enforcement by the MDBs has heightened the risks for companies — as well as their subsidiaries and affiliates — working on MDB-financed projects.

Finally, the Hitachi cases were the first instances of collaboration between the AfDB's Integrity and Anti-Corruption Department and the SEC Enforcement Division's FCPA Unit,[114] and we will continue to monitor whether such cooperation remains just an aberration or whether a trend in mutual investigative and legal assistance between state authorities and MDBs develops in the year ahead.

For further information on anything discussed in Global Anti-Corruption Insights, please contact:

Marcus A. Asner
Partner
New York
+1 212.715.1789
marcus.asner@aporter.com

John P. Barker
Partner
Washington, DC
+1 202.942.5328
john.barker@aporter.com

James W. Cooper
Partner
Washington, DC
+1 202.942.6603
james.w.cooper@aporter.com

John A. Freedman
Partner
Washington, DC
+1 202.942.5316
john.freedman@aporter.com

Drew A. Harker
Partner
Washington, DC
+1 202.942.5022
drew.harker@aporter.com

Kathleen J. Harris
Partner
London
+44(0)20 7786 6100
kathleen.harris@aporter.com

Amy Jeffress
Partner
Washington, DC
+1 202.942.5968
amy.jeffress@aporter.com

Keith M. Korenchuk
Partner
Washington, DC
+1 202.942.5817
keith.korenchuk@aporter.com

Laura Lester
Counsel
Washington, DC
+1 202.942.6821
laura.lester@aporter.com

Arthur Luk
Partner
Washington, DC
+1 202.942.5393
arthur.luk@aporter.com

John N. Nassikas III
Partner
Washington, DC
+1 202.942.6820
john.nassikas@aporter.com

Evelina J. Norwinski
Partner
Washington, DC
+1 202.942.6474
evelina.norwinski@aporter.com

Kirk Ogrosky
Partner
Washington, DC
+1 202.942.5330
kirk.ogrosky@aporter.com

Philippe A. Oudinot
Senior Attorney
Washington, DC
+1 202.942.5736
philippe.oudinot@aporter.com

Soo-Mi Rhee
Senior Counsel
Washington, DC
+1 202.942.5312
soo-mi.rhee@aporter.com

Michael A. Rubin
Counsel
Washington, DC
+1 202.942.6171
michael.rubin@aporter.com

Mara V.J. Senn
Partner
Washington, DC
+1 202.942.6448
mara.senn@aporter.com

Craig A. Stewart
Partner
New York
+1 212.715.1142
craig.stewart@aporter.com

Michael D. Trager
Partner
Washington, DC
+1 202.942.6976
michael.trager@aporter.com

Anton A. Ware
Partner
San Francisco
+1 415.471.3312
anton.ware@aporter.com

Baruch Weiss
Partner
Washington, DC
+1 202.942.6819
baruch.weiss@aporter.com

Samuel M. Witten
Counsel
Washington, DC
+1 202.942.6115
samuel.witten@aporter.com

Endnotes

1 Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order, *In re Bristol-Myers Squibb Co.*, File No. 3-16881(Oct. 5, 2015), *available at* http://www.sec.gov/litigation/admin/2015/34-76073.pdf.

2 Bristol-Myers Squibb Co., Annual Report (Form 10-Q), at 23 (Oct. 27, 2015), *available at* http://d1lge852tjjqow.cloudfront.net/CIK-0000014272/76950fdf-5105-48c0-90bf-9a97c54becdf.pdf?noexit=true.

3 Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order, *In re Hyperdynamics Corporation*, File No. 3-16843 (Sept. 29, 2015), *available at* http://www.sec.gov/litigation/admin/2015/34-76006.pdf [hereinafter "Hyperdynamics Cease and Desist Order"]; *see also* Press Release, Hyperdynamics Corp., Hyperdynamics Announces Settlement with the SEC (Sept. 29, 2015), *available at* http://investors.hyperdynamics.com/releasedetail.cfm?ReleaseID=934289.

4 Hyperdynamics Cease and Desist Order, *supra* note 3, at 1.

5 *See discussion* at Arnold & Porter LLP, Global Anti-Corruption Insights, at 11 (Summer 2015), *available at* http://www.arnoldporter.com/resources/documents/FCPANewsletter_Summer%202015_v2.pdf [hereinafter "A&P Summer 2015 Newsletter"].

6 Press Release, SEC, SEC Charges Hitachi With FCPA Violations (Sept. 28, 2015), *available at* http://www.sec.gov/news/pressrelease/2015-212.html [hereinafter "SEC Hitachi Press Release"]; *see also* Complaint, *SEC v. Hitachi, Ltd.*, No. 1:15-cv-01573 (D.D.C. Sept. 28, 2015), *available at* http://www.sec.gov/litigation/complaints/2015/comp-pr2015-212.pdf.

7 SEC Hitachi Press Release, *supra* note 6.

8 *Id.*

9 Press Release, African Development Bank Group, Integrity in Development: AfDB and Hitachi, Ltd. conclude settlement agreement (Dec. 2, 2015), *available at* http://www.afdb.org/en/news-and-events/article/integrity-in-development-afdb-and-hitachi-ltd-conclude-settlement-agreement-15118/ [hereinafter "AfDB Press Release"].

10 Agreement for Mutual Enforcement of Debarment Decisions, Afr. Dev. Bank Grp.-Asian Dev. Bank-Eur. Bank for Reconstr. & Dev.-Inter-Am. Dev. Bank-World Bank Grp. (Apr. 9, 2010), *available at* http://lnadbg4.adb.org/oai001p.nsf/0/F77A326B818A19C548257853000C2B10/$FILE/cross-debarment-agreement.pdf, at ¶4(c) [hereinafter "Agreement for Mutual Enforcement of Debarment Decisions"].

11 AfDB Press Release, *supra* note 9.

12 Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order, *In re Bank of New York Mellon Corp.*, Release No. 75720 (Aug. 18, 2015), *available at* http://www.sec.gov/litigation/admin/2015/34-75720.pdf.

13 *Id.*, at 3, 4-6.

14 *Id.*, at 1.

15 *Id.*, at 9.

16 Press Release, SEC, SEC Charges Mead Johnson Nutrition With FCPA Violations (July 28, 2015), *available at* http://www.sec.gov/news/pressrelease/2015-154.html [hereinafter "Mead Johnson Press Release"]; Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order, *In re Mead Johnson Nutrition Co.*, Exchange Act Release No. 75332 (July 28, 2015), *available at* http://www.sec.gov/litigation/admin/2015/34-75532.pdf [hereinafter "Mead Johnson Cease and Desist Order"].

17 Mead Johnson Press Release, *supra* note 16; Mead Johnson Cease and Desist Order, *supra* note 16.

18 Mead Johnson Cease and Desist Order, *supra* note 16.

19 Id.; Mead Johnson Press Release, *supra* note 16.

20 Minute Entry, *United States v. Garcia*, No. 15-cr-366 (N.D. Cal. Dec. 16, 2015), Dkt. Entry No. 18.

21 Press Release, SEC, SEC Charges Former Software Executive With FCPA Violations (Aug. 12, 2015), *available at* http://www.sec.gov/news/pressrelease/2015-165.html [hereinafter "Garcia SEC Press Release"].

22 Press Release, DOJ, Former Executive Pleads Guilty to Conspiring to Bribe Panamanian Officials (Aug. 12, 2015), *available at* http://www.justice.gov/opa/pr/former-executive-pleads-guilty-conspiring-bribe-panamanian-officials.

23 Garcia SEC Press Release, *supra* note 21.

24 *See* Press Release, SEC, SEC Charges Oracle Corporation With FCPA Violations Related to Secret Side Funds in India (Aug. 16, 2012), *available at* http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171483848.

25 Judgment in a Criminal Case, *United States v. Mikerin*, No. 8:14-cr-00529-TDC (D. Md. Dec. 15, 2015), Dkt. Entry 117; Plea Agreement, *United States v. Mikerin*, No. 8:14-cr-00529-TDC (D. Md. Aug. 31, 2015), Dkt. Entry 103, *available at* http://www.justice.gov/opa/file/765156/download; Press Release, DOJ, Russian Nuclear Energy Official Pleads Guilty to Money Laundering Conspiracy Involving Violations of the Foreign Corrupt Practices Act (Aug. 31, 2015), *available at* http://www.justice.gov/opa/pr/russian-nuclear-energy-official-pleads-guilty-money-laundering-conspiracy-involving.

26 Plea Agreement, *United States v. Condrey*, No. 8:15-cr-00336-TDC (D. Md. June 17, 2015), Dkt. Entry 22, *available at* http://www.justice.gov/criminal-fraud/file/783886/download.

27 Plea Agreement, *United States v. Rubizhevsky*, No. 8:15-cr-00332-TDC (D. Md. June 15, 2015), Dkt. Entry 26, *available at* http://www.justice.gov/criminal-fraud/file/783851/download.

28 Judgment, *United States v. Lujan*, No. 13-cr-671 (S.D.N.Y. Dec. 7, 2015), Dkt. Entry 35.

29 Judgment, *United States v. Clarke Benthancourt*, No. 13-cr-670 (S.D.N.Y. Dec. 9, 2015), Dkt. Entry 75.

30 Judgment and Consent, *United States v. Hurtado*, No. 13-cr-00673 (S.D.N.Y. Dec. 15, 2015), Dkt. Entries 82 and 83.

31 A&P Summer 2015 Newsletter, *supra* note 5, at 8.

32 Press Release, DOJ, Nine FIFA Officials and Five Corporate Executives Indicted for Racketeering Conspiracy and Corruption (May 27, 2015), *available at* http://www.justice.gov/opa/pr/nine-fifa-officials-and-five-corporate-executives-indicted-racketeering-conspiracy-and. For further discussion, see A&P Summer 2015 Newsletter, *supra* note 5, at 16.

33 Press Release, DOJ, Sixteen Additional FIFA Officials Indicted for Racketeering Conspiracy and Corruption (Dec. 4, 2015), *available at* http://www.justice.gov/interpol-washington/pr/sixteen-additional-fifa-officials-indicted-racketeering-conspiracy-and [hereinafter "FIFA Press Release"].

34 Superseding Indictment, *United States v. Webb*, No. 1:15-cr-00252-RJD (E.D.N.Y. Nov. 25, 2015), Dkt. Entry 102, *available at* http://www.justice.gov/opa/file/796966/download.

35 *Id.*

36 FIFA Press Release, *supra* note 33.

37 Judgment, *United States v. Rama*, Case No. 1:15-cr-143 (E.D.Va. Oct. 15, 2015), Dkt. Entry 23.

38 Position of the United States with Respect to Sentencing, *United States v. Rama*, Case No.1:15-cr-143 (E.D.Va. Oct. 2, 2015), Dkt. Entry 17.

39 Defendant's Response to Position of United States with Respect to Sentencing, *United States v. Rama*, Case No. 1:15-cr-143 (E.D.Va. Oct. 5, 2015), Dkt. Entry 19.

40 Press Release, DOJ, IAP Worldwide Services Inc. Resolves Foreign Corrupt Practices Act Investigation (June 16, 2015), *available at* http://www.justice.gov/opa/pr/iap-worldwide-services-inc-resolves-foreign-corrupt-practices-act-investigation; A&P Summer 2015 Newsletter, *supra* note 5, at 5.

41 Cara Salvadore, *Former Siemens Exec Pleads Guilty To Argentine Bribery*, Law360 (Sept. 30, 2015), *available at* http://www.law360.com/whitecollar/articles/709236/former-siemens-exec-pleads-guilty-to-argentine-bribery; Press Release, FBI - New York Field Office, Former Siemens Chief Financial Officer Pleads Guilty in Manhattan Federal Court to $100 Million Foreign Bribery Scheme (Sept. 30, 2015), *available at* https://www.fbi.gov/newyork/press-releases/2015/former-siemens-chief-financial-officer-pleads-guilty-in-manhattan-federal-court-to-100-million-foreign-bribery-scheme.

42 Final Judgment as to Defendant Andres Truppel, *SEC v. Sharef*, No. 1:11-cv-09073-SAS (S.D.N.Y. Feb. 3, 2014), Dkt. Entry 48.

43 Final Judgment as to Defendants Ulrich Bock and Stephan Signer, *SEC v. Sharef*, No. 1:11-cv-09073-SAS (S.D.N.Y. Feb. 3, 2014), Dkt. Entry 48.

44 Minute Entry for Sentencing of Gregory Weisman on Sept. 10, 2015, *United States v. Weisman*, No. 13-cr-00730, Nov. 8, 2013 (D.N.J.), Dkt. Entry 23; Jeannie O'Sullivan, *PetroTiger Atty, Co-Founder Get Probation in FCPA Case*, Law360 (Sept. 10, 2015), *available at* http://www.law360.com/articles/701251/petrotiger-atty-co-founder-get-probation-in-fcpa-case.

45 Joel Schectman, *Ex-CEO Sigelman of PetroTiger Sentenced to Probation Over Bribery*, Wall St. J. (June 16, 2015), *available at* http://www.wsj.com/articles/ex-ceo-of-petrotiger-sentenced-to-probation-over-bribery-1434469990.

46 *See* Press Release, DOJ, *Former Chief Executive Officer of Oil Services Company Pleads Guilty to Foreign Bribery Charge* (June 15, 2015), *available at* http://www.justice.gov/opa/pr/former-chief-executive-officer-oil-services-company-pleads-guilty-foreign-bribery-charge.

47 Order, *United States v. Rodriguez*, Case No. 09-CR-21010 (S.D. Fla. Sept. 2, 2015), Dkt. Entry 906.

48 Ruling on Defendant's Second Motion to Dismiss the Indictment, *United States v. Hoskins*, No. 3:12-CR-238 (D. Conn. Aug. 13, 2015), Dkt. Entry 270.

49 Scheduling Order, *United States v. Hoskins*, No. 3:12-CR-238 (D. Conn. Nov. 12, 2015), Dkt. Entry 317.

50 *See* A&P Summer 2015 Newsletter, *supra* note 5, at 9; Arnold & Porter LLP, Global Anti-Corruption Insights at 6-7 (Winter 2015), *available at* http://www.arnoldporter.com/resources/documents/FCPANewsletterWinter2015.pdf, [hereinafter "A&P Winter 2015 Newsletter"].

51 Press Release, DOJ, Alstom Sentenced to Pay $772 Million Criminal Fine to Resolve Foreign Bribery Charges (Nov. 13, 2015), *available at* http://www.justice.gov/opa/pr/alstom-sentenced-pay-772-million-criminal-fine-resolve-foreign-bribery-charges.

52 Analogic Corporation, Quarterly Report (Form 10-Q), at 26-27 (Dec. 9, 2015), *available at* http://investor.analogic.com/secfiling.cfm?filingID=1193125-15-398222; Press Release, Analogic Corporation, Analogic Announces Results for the Fourth Quarter and Fiscal Year Ended July 31, 3015, Declares Quarterly Cash Dividend and Announces Fiscal 2016 Restructuring Plan (Sept. 16, 2015), *available at* http://investor.analogic.com/releasedetail.cfm?ReleaseID=931971.

53 *United States ex rel. Purcell v. MWI Corp.*, 807 F.3d 281 (D.C. Cir. 2015).

54 *Id.* at 284-85.

55 *Id.* at 291.

56 PTC Inc., Annual Report (Form 10-K), at 11 (Nov. 23, 2015), *available at* http://investor.ptc.com/secfiling.cfm?filingID=857005-15-42&CIK=857005; *see also* Stephen Dockery, *Tech Firm Sets Aside $28 Million for China Bribery Settlement*, Wall St. J. (Nov. 24, 2015), *available at* http://blogs.wsj.com/riskandcompliance/2015/11/24/tech-firm-sets-aside-28-million-for-china-bribery-settlement/.

57 VimpelCom Ltd., Report of Foreign Private Issuer (Form 6-K) (Mar. 12, 2014), *available at* https://www.sec.gov/Archives/edgar/data/1468091/000119312514094910/d692188d6k.htm.

58 VimpelCom Ltd., Report of Foreign Private Issuer (Form 6-K) (Mar. 18, 2014), *available at* https://www.sec.gov/Archives/edgar/data/1468091/000119312514103672/d694604d6k.htm.

59 Scott Patterson & David Gauthier-Villars, *U.S. Seeks to Seize $1 Billion in Telecom Probe*, Wall St. J. (Aug. 13, 2014), *available at* http://www.wsj.com/articles/u-s-seeks-to-seize-1-billion-in-telecom-probe-1439497898.

60 Press Release, VimpelCom Ltd., VimpelCom makes provision in connection with ongoing investigations (Nov. 3, 2015), *available at* http://www.vimpelcom.com/Media-center/Press-releases/2015/VimpelCom-makes-provision-in-connection-with-ongoing-investigations/.

61 Tom Schoenberg, Matt Robinson, & Stephanie Baker, *Near-Record U.S. Penalty Seen for VimpelCom in Uzbek Case*, Bloomberg Business (Nov. 25, 2015), *available at* http://www.bloomberg.com/news/articles/2015-11-25/vimpelcom-said-to-be-near-775-million-u-s-bribery-settlement.

62 Complaint, *Westway Alliance Corp. v. VimpelCom Ltd.*, Case No. 1:15-cv-09492 (S.D.N.Y. Dec. 8, 2015), Dkt. Entry 3.

63 News Release, Kinross Gold Corp., Kinross addresses regulatory review of West African operations (Oct. 2, 2015) , *available at* http://s2.q4cdn.com/496390694/files/doc_news/2015/100215-kinross-addresses-regulatory-review-of-west-africa-operations.pdf.

64 Benoît Faucon, *SEC, Justice Department Investigate Corruption Allegations at Kinross Gold*, Wall St. J. (Oct. 2, 2015), *available at* http://www.wsj.com/articles/sec-justice-department-investigate-corruption-allegations-at-kinross-gold-1443830877.

65 Alexion Pharmaceuticals, Inc., Quarterly Report (Form 10-Q), at 22 (Nov. 2, 2015), *available at* https://www.sec.gov/Archives/edgar/data/899866/000089986615000189/alxn9301510q.htm .

66 *See* Dani Kass, DOJ, *SEC Probing Alexion Over FCPA Compliance*, Law360 (Nov. 4, 2015), *available at* http://www.law360.com/articles/723339/doj-sec-probing-alexion-over-fcpa-compliance; Alexion Pharmaceuticals, Inc., Registration Statement (Form S-4), at 36 (May 29, 2015), *available at* https://www.sec.gov/Archives/edgar/data/899866/000157104915004685/t1501262-s4.htm.

67 Press Release, SciClone Pharmaceuticals, *SciClone Reports Second Quarter 2015 Financial Results; Company Reaches Agreement in Principle with SEC for Proposed Settlement; Reaffirms Revenue and EPS Guidance for 2015* (Aug. 10, 2015) , *available at* http://investor.sciclone.com/releasedetail.cfm?ReleaseID=926919.

68 SciClone Pharmaceuticals, Inc., Quarterly Report (Form 10-Q), at 13 (Aug. 9, 2010), *available at* http://investor.sciclone.com/secfiling.cfm?filingID=1193125-10-183318&CIK=880771.

69 Flowserve Corp, Annual Report (Form 10-K), at 18 (July 30, 2015), *available at* http://www.sec.gov/Archives/edgar/data/30625/000003062515000021/fls12312014financialstatem.htm.

70 Flowserve Corporation, Annual Report (Form 10-K), at 18 (Feb. 17, 2015), *available at* http://www.sec.gov/Archives/edgar/data/30625/000003062515000021/fls12312014financialstatem.htm. For discussion, *see* A&P Summer 2015 Newsletter, *supra* note 5, at 10.

71 Stephen Dockery, *SEC Declines to Take Action After Brookfield Probe*, Wall St. J. (Nov. 13, 2015), *available at* http://blogs.wsj.com/riskandcompliance/2015/11/13/sec-declines-to-take-action-after-brookfield-probe/.

72 Decision & Order, *Rio Tinto PLC v. Vale S.A.*, No. 1:14-cv-03042 (S.D.N.Y. Nov.20, 2015), Dkt. Entry 408.

73 See discussion *at* A&P Summer 2015 Newsletter, *supra* note 5, at 19; Arnold & Porter LLP, Global Anti-Corruption Insights, at 14-15 (Winter 2014) http://www.arnoldporter.com/resources/documents/FcpaNewsletterWinter2014.pdf.

74 Scott Patterson, *U.S. Probe Into Guinea Mining Rights Could Yield Six Indictments*, Wall St. J. (Mar. 19, 2015), *available at* http://www.wsj.com/articles/u-s-probe-into-guinea-mining-rights-could-yield-six-indictments-1426801975.

75 Order, *Hall v. Teva Pharm. USA, Inc.*, Case No. 0:15-cv-61536 (S.D. Fla. Nov. 9, 2015), Dkt. Entry 25.

76 See discussion *at* A& P Summer 2015 Newsletter, *supra* note 5, at 9.

77 Complaint, *Hall v. Teva Pharm. USA, Inc.*, Case No. 0:15-cv-61536 (S.D. Fla. July 28, 2015), Dkt. Entry 1.

78 Defendant Teva Pharmaceuticals USA, Inc.'s Answer and Affirmative Defenses to Plaintiff Keisha Hall's Complaint, *Hall v. Teva Pharm. USA, Inc.*, Case No. 0:15-cv-61536 (S.D. Fla. Dec. 15, 2015), Dkt. Entry 29.

79 Order Granting in Part and Denying in Part Defendants' Motion to Dismiss, *Wadler v. Bio-Rad Labs., Inc.*, Case No. 15-cv-02356 (N.D. Cal. Oct. 23, 2015), Dkt. Entry No. 53.

80 See Cara Salvatore, *Bio-Rad Investor Accuses Board Of Rampant Malfeasance*, Law360 (Aug. 18, 2015) , *available at* http://www.law360.com/whitecollar/articles/692571?nl_pk=197136cb-045f-4e2d-aba6-2a40dfe2c517&utm_source=newsletter&utm_medium=email&utm_campaign=whitecollar; A&P Summer 2015 Newsletter, *supra* note 5, at 14.

81 *See* A&P Winter 2015 Newsletter, *supra* note 5, at 8-9.

82 Complaint, *WGI Emerging Markets Fund LLC v. Petroleo Brasileiro SA*, No. 15-cv-7568 (S.D.N.Y. Sept. 24, 2015), Dkt. Entry 1.

83 Complaint, State of Alaska Dep't of Revenue, *Treasury Div. v. Petroleo Brasileiro S.A.*, Case No. 1:15-cv-08995 (S.D.N.Y. Nov. 16, 2015), Dkt. Entry 1.

84 *See* Plaintiffs' Memorandum of Law in Support of Motion for Class Certification, *In re Petrobras Secs. Litig.*, Case No. 14-cv-9662 (S.D.N.Y. Oct. 15,, 2015), Dkt. Entry 256.

85 Aruna Viswanatha and Devlin Barrett, Wal-Mart Bribery Probe Finds Few Signs of Major Misconduct in Mexico, Wall St. J. (Oct. 19, 2015), *available at* http://www.wsj.com/articles/wal-mart-bribery-probe-finds-little-misconduct-in-mexico-1445215737.

86 Memorandum of Law in Support of Lead Plaintiff's Motion for Class Certification, *City of Pontiac Gen. Emps.' Retirement Sys. v. Wal-Mart Stores, Inc.*, No. 5:12-cv-05162 (W.D. Ark. Nov. 3, 2015), Dkt. Entry 230.

87 *See* General Docket, *Cottrell v. Duke*, No. 15-1869 (8th Cir.).

88 *See* Matt Chiappardi, *Wal-Mart Urges Chancery To Toss Alleged Bribery Plot Claims*, Law360 (Nov. 12, 2015), available at http://www.law360.com/articles/726032/wal-mart-urges-chancery-to-toss-alleged-bribery-plot-claims. For further discussion see A&P Summer 2015 Newsletter, *supra* note 5, at 13-14.

89 See Jeff Zalesin, Och-Ziff Brass Hit With Derivative Suit oOr FCPA Probes, Law360 (Sept. 4, 2015), *available at* http://www.law360.com/whitecollar/articles/699201/och-ziff-brass-hit-with-derivative-suit-over-fcpa-probes.

90 See discussion at A&P Summer 2015 Newsletter, *supra* note 5, at 13.

91 Opinion and Order, *In re PetroChina Co. Ltd Secs. Litig.*, Master File No. 13-cv-6180 (S.D.N.Y. Aug. 3, 2015), Dkt. Entry 53.

92 *See* Memorandum on Individual Accountability for Corporate Wrongdoing from Sally Quillian Yates, Deputy Att'y Gen. (Sept. 9, 2015), *available at* http://www.justice.gov/dag/file/769036/download.

93 *Id.* at 3.

94 Sally Quillian Yates, Deputy Att'y Gen., Remarks at American Banking Association and American Bar Association Money Laundering Enforcement Conference (Nov. 16, 2015), *available at* http://www.justice.gov/opa/speech/deputy-attorney-general-sally-quillian-yates-delivers-remarks-american-banking-0.

95 Andrew Ceresney, Dir. SEC Division of Enforcement, Keynote Address at ACI's 32nd FCPA Conference (Nov. 17, 2015), *available at* http://www.sec.gov/news/speech/ceresney-fcpa-keynote-11-17-15.html.

96 Press Release, DOJ, New Compliance Counsel Expert Retained by the DOJ Fraud Section (Nov. 3, 2013), *available at* http://www.justice.gov/criminal-fraud/file/790236/download.

97 Leslie R. Caldwell, Assistant Att'y Gen., Remarks at American Conference Institute's 32nd Annual International Conference on Foreign Corrupt Practices Act (Nov. 17, 2015), *available at* http://www.justice.gov/opa/speech/assistant-attorney-general-leslie-r-caldwell-delivers-remarks-american-conference.

98 Press Release, SFO, SFO agrees first UK DPA with Standard Bank (Nov. 30, 2015), *available at* https://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2015/sfo-agrees-first-uk-dpa-with-standard-bank.aspx.

99 *Id.*

100 *Id.*

101 Christopher Williams, *Sweett Group admits Middle East bribery*, The Telegraph (Dec. 2, 2015) , *available at* http://www.telegraph.co.uk/finance/financial-crime/12029056/Sweett-Group-admits-Middle-East-bribery.html.

102 Press Release, SFO, SFO charges Sweett Group PLC (Dec. 9, 2015), *available at* http://sfo.gov.uk/press-room/latest-press-releases/press-releases-2015/sfo-charges-sweett-group-plc.aspx.

103 *See* A&P Summer 2015 Newsletter, *supra* note 5, at 25.

104 Media Release, Crown Office & Procurator Fiscal Service, *Glenrothes cabling company pays £212,800 after reporting itself for failing to prevent bribery by a third party* (Sept. 25, 2015), *available at* http://www.crownoffice.gov.uk/media-site/media-releases/1144-glenrothes-cabling-company-pays-212-800-after-reporting-itself-for-failing-to-prevent-bribery-by-a-third-party.

105 *Brazil prosecutors charge 12 in SBM Offshore graft scheme*, Reuters (Dec. 17. 2015), *available at* http://www.reuters.com/article/us-brazil-corruption-petrobras-sbm-idUSKBN0U017D20151218.

106 Press Release, Federal Office of Justice, FIFA: first evidence handed to US authorities (Dec. 30, 2015), *available at* https://www.bj.admin.ch/bj/en/home/aktuell/news/2015/2015-12-30.html.

107 Nicholas Torres, *Saipem, three former execs to stand trial for Algeria corruption*, Petro Global News (Oct. 7, 2015), *available at* http://petroglobalnews.com/2015/10/saipem-three-former-execs-to-stand-trial-for-algeria-corruption/.

108 D.Lgs. 8 giugno 2001, n. 231 (It.), *available at* http://www.parlamento.it/parlam/leggi/deleghe/01231dl.htm (Italian).

109 For a copy of the new law (in German), see http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&start=//*%255B@attr_id=%27bgbl115s2025.pdf%27%255D#__bgbl__%2F%2F*%5B%40attr_id%3D%27bgbl115s2025.pdf%27%5D__1451333671338.

110 *SEC joins German investigation of Ford: source*, Reuters (Aug. 18, 2015), *available at* http://www.reuters.com/article/us-ford-investigation-russia-idUSKCN0QN1NL20150818.

111 Press Release, AfDB, Integrity in Development Projects: AfDB and SNC-Lavalin settle corruption allegations (Oct. 1, 2015), *available at* http://www.afdb.org/en/news-and-events/article/integrity-in-development-projects-afdb-and-snc-lavalin-settle-corruption-allegations-14760/; Press Release, SNC-Lavalin, SNC-Lavalin arrives at settlement agreement with the African Development Bank Group (AfDB) (Oct. 1, 2015), *available at* http://www.snclavalin.com/en/snc-lavalin-arrives-at-settlement-agreement-with-the-african-development-bank-group.

112 AfDB Press Release, *supra* note 9.

113 Agreement for Mutual Enforcement of Debarment Decisions, *supra* note 11.

114 SEC Hitachi Press Release, *supra* note 6.