

2021 Year in Review

FCPA



GOODWIN

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Introduction

A. Basic Overview of Statute

The Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, *et seq.* (FCPA), makes it unlawful for U.S. persons and entities and others who act within the jurisdiction of the U.S. to make payments to foreign government officials to assist in obtaining or retaining business. It consists of two parts: the anti-bribery provisions and the accounting provisions.

The anti-bribery provisions prohibit persons and entities from making corrupt offers, payments, or promises of payment of money, or anything of value, to foreign officials to obtain or retain business. Since 1977, the anti-bribery provisions have applied to all U.S. persons and certain foreign issuers of securities, but the provision was expanded in 1998 to apply to foreign firms and persons within the United States who cause the furtherance of corrupt payments.

The FCPA's accounting provisions consists of two main requirements. The first, known as the "books and records component," requires companies to make and keep books and records that accurately and fairly reflect the corporation's transactions. The second, known as the "internal controls component," requires companies to create and maintain an adequate system of internal accounting controls.

The U.S. Securities and Exchange Commission (SEC) and the U.S. Department of Justice (DOJ) have concurrent jurisdiction to enforce different portions of the statute. Over the decades, these regulators have charged hundreds of companies and individuals with violations of the FCPA, resulting in billions of dollars in monetary sanctions, with significantly more enforcement activity in the past 20 years than in previous decades.

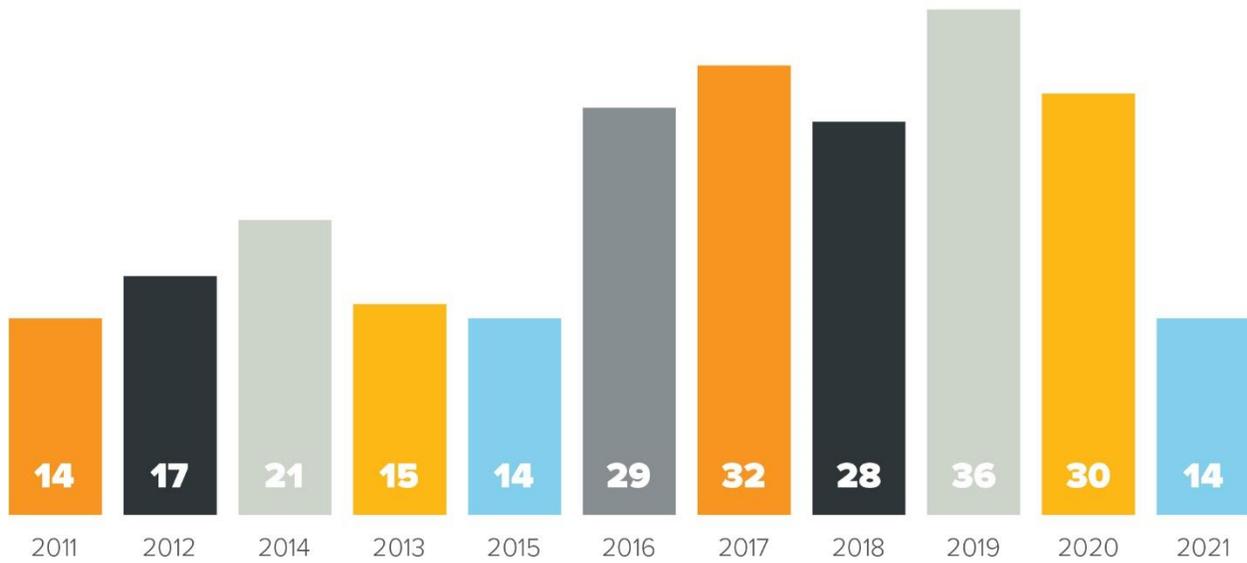
B. 2021 Statistics¹

1. Number of Actions by DOJ

a. The DOJ resolved 14 cases in the past year.

Number of Actions by DOJ 2011–2021

The DOJ resolved 14 cases in 2021.



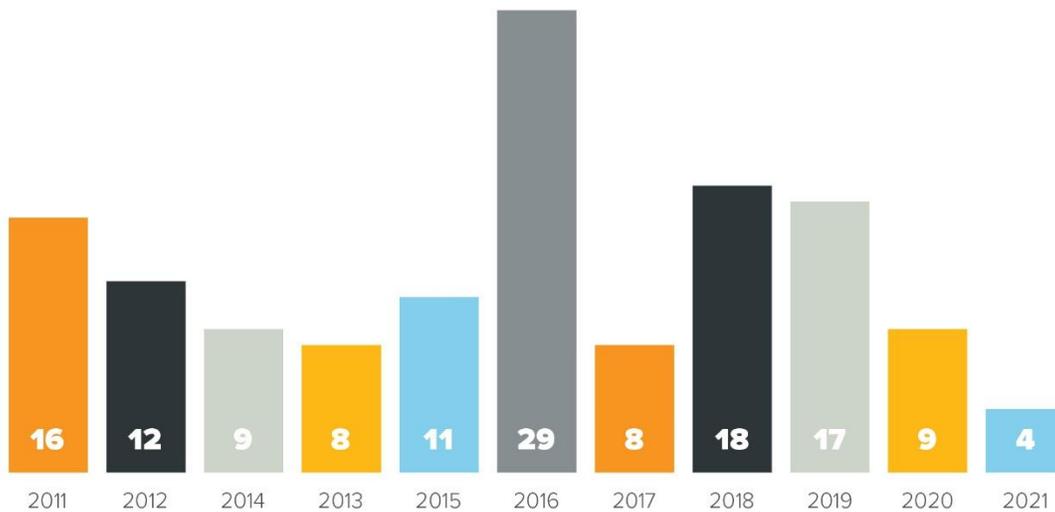
¹ Unless otherwise noted, the statistics used herein and the method for calculating such statistics come from Stanford Law School's Foreign Corrupt Practices Act Clearing House: <http://fcpa.stanford.edu/index.html>

2. Number of Actions by SEC

- a. The SEC resolved 4 FCPA cases in 2021. According to the Division of Enforcement's 2021 Annual Report, issued in November 2021, its FCPA enforcement actions represented 1% of its cases for the year. [Addendum to Division of Enforcement Press Release, Fiscal Year 2021 at 1, available at <https://www.sec.gov/files/2021-238-addendum.pdf>]

Number of Actions by SEC 2011–2021

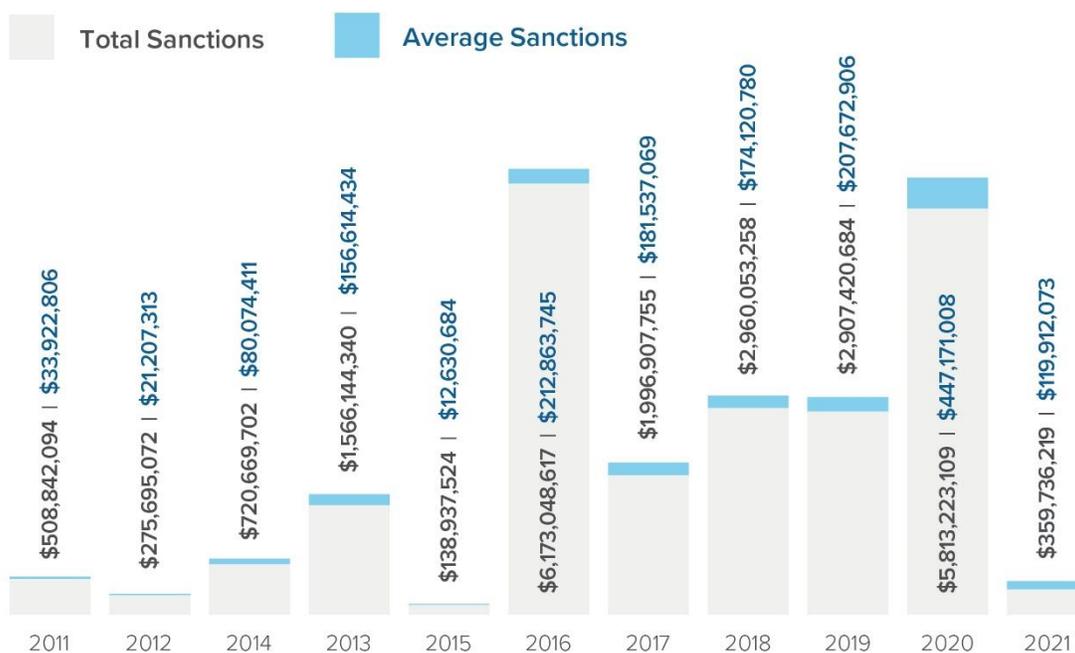
The SEC resolved 4 FCPA cases in 2021.



3. Aggregate number of cases where multiple regulators acted:
 - a. DOJ/SEC – three actions in 2021
 - b. U.S./Foreign regulators – two actions in 2021
4. Aggregate total fines = \$359.74 million

Aggregate + Average Fines 2011–2021

Total aggregate fines equal approximately \$23.4 billion.



5. SEC’s Office of the Whistleblower

The SEC’s Division of Enforcement has announced that, in FY2021,² it received more than 12,200 overall whistleblower tips, an approximate 76% increase from FY2020, and made more whistleblower awards in a single year (2021) than in all prior years of the program combined (2011-2020). SEC 2021 Annual Report: Whistleblower Program at p. 28, available at https://www.sec.gov/files/2021_OW_AR_508.pdf. The number of FCPA specific tips also increased, from 258 in FY2021, as compared with 208 in FY2020, and 200 in FY2019. *Id.* at Appendix A. Thus, in a year where enforcement as measured by number of actions brought appeared to be at its lowest point in a decade, the relatively notable increase in whistleblower tips and awards potentially suggests a corresponding increase in number of investigations in the pipeline.

² While this Year in Review primarily includes information related to calendar year 2021, the SEC’s published statistics regarding its whistle blower program related to the SEC’s 2021 fiscal year, which is from October through September.

C. Countries Implicated by Corrupt Conduct in 2021 Resolutions

Countries Implicated by Corrupt Conduct in 2021 Resolutions:



D. Interesting Trends and Developments

Last year reflected a steep decline in the overall number of FCPA enforcement actions by both the DOJ and SEC, as the world continued to navigate the ongoing impact of COVID-19 and associated business and operational disruptions. But, while the overall number of FCPA enforcement actions in 2021 was down to its lowest point in a decade, other indicators suggest that the DOJ and SEC remain committed to and focused on aggressive FCPA enforcement. Among other things, the Biden administration and DOJ officials announced the development of several new policies broadening and prioritizing global anti-corruption enforcement efforts.

Overall, we note the following trends and developments:

Geographies and Industries

The geographic focus of FCPA enforcement continues to be relatively diverse, with no clear trend in 2021 towards any specific country. Business activity in South America, Asia, and Africa has been a consistent source of FCPA enforcement actions, and 2021 continued that trend, with eight of the total enforcement actions involving alleged acts of bribery in South America, four enforcement actions involving alleged acts of

bribery in Africa, and one in China. However, looking at trends regionally, Latin America accounted for approximately 50% of FCPA-related actions.

The 2021 FCPA enforcement actions also arose from a diverse set of industries, with the extraction industries and financial services in particular giving rise to a number of cases.

DOJ's continued use of "FCPA-related" charges

The DOJ also continues to bring a significant number of "FCPA-related" charges, including money laundering, mail and wire fraud, Travel Act violations, tax violations, and false statements, in addition to, or sometimes instead of, FCPA charges. Consistent with this, as seen in enforcement actions in 2020, the DOJ now seeks to pursue both the briber and the recipient of bribes, frequently using money laundering theories to charge foreign officials who are not themselves subject to the FCPA.

Substantial FCPA and FCPA-Related Enforcement Efforts Against Individuals

In 2021, the DOJ continued to emphasize its increased focus on individual accountability and liability for FCPA violations. These cases included a mix of executive and corporate managers, intermediaries, bribers, and recipients of bribes. However, consistent with the overall decrease in enforcement actions, the number of individuals criminally prosecuted for FCPA-related offenses also declined in 2021. In addition, consistent with a trend over the past several years, none of the individual defendants criminally charged in 2021 were connected to the large companies that account for the most significant FCPA violations and fines. Instead, the majority of individuals criminally charged in 2021 appear to be either connected to small or privately held companies with no parallel DOJ enforcement actions, or the foreign officials alleged to have accepted bribes.

Biden administration updates on enforcement priorities and guidance

Notwithstanding the decline in FCPA enforcement actions brought in 2021, recent updates and guidance from the DOJ, as well as the corresponding and expansive use of FCPA-related charges and investigative tools, suggests that the U.S. government remains focused on and committed to aggressive anti-bribery and anti-corruption enforcement.

For instance, on June 3, 2021, President Biden issued a National Security Study Memorandum that established the fight against corruption as a core national security interest of the United States. The memorandum requested that federal departments and agencies conduct an interagency review of existing U.S. government anti-corruption efforts and to identify and seek to rectify persistent gaps in the fight against corruption.

Following the findings of this review, on December 6, 2021, the Biden administration released a strategy memorandum entitled "United States Strategy on Countering Corruption" that includes a comprehensive approach for how the United States will work domestically and internationally to prevent, limit, and respond to corruption and related crimes. The strategy is divided into the following five pillars:

- "Modernizing, coordinating, and resourcing U.S. government efforts to fight corruption;"
- "Curbing illicit finance;"

- “Holding corrupt actors accountable;”
- “Preserving and strengthening the multilateral anti-corruption architecture;” and
- “Improving diplomatic engagement and leveraging foreign assistance resources to achieve anti-corruption policy goals.”

Likewise, in an October 21, 2021 speech at the American Bar Association’s White Collar Crime Institute, Deputy Attorney General Lisa Monaco announced a new, more ambitious approach to white-collar crime under the Biden administration. The announced changes can be summarized in the following four main points, although to date DOJ has yet to issue formal guidelines reflecting these policy changes or even a press release announcing them:

1. The DOJ will now assess “the full range of past misconduct by a company when considering corporate resolutions, allowing prosecutors to consider past enforcement actions initiated by divisions across the DOJ when considering possible sanctions.” This includes prior misconduct that is dissimilar to that which is being presently investigated.
2. The DOJ will increase its prosecution of individual employees and executives alongside the business organization being investigated. Companies will not qualify for cooperation credit under the policy if they do not provide information on all employees or executives believed to have participated in certain crimes (namely bribery and fraud). Previously, only information about “substantially involved” employees needed to be disclosed.
3. The DOJ will use independent corporate monitors with greater frequency. Guidance disfavoring monitorships will be rescinded. This is in stark contrast to DOJ policy under the Trump administration where officials stated that monitorships were both costly and disruptive and therefore needed only in exceptional cases.
4. An advisory group will be created to study issues of chronic wrongdoing among certain corporations, and the group will reconsider whether tools like non-prosecution agreements (NPAs) and deferred prosecution agreements (DPAs) should be available to such repeat offenders.

New OECD Recommendation

In late November 2021, the Organization for Economic Cooperation and Development (OECD) published a new Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions that replaces an earlier 2009 recommendation. The new recommendation is aimed at strengthening global antibribery enforcement measures and includes an entirely new section on the “demand” side of bribery that encourages member countries to stop the solicitation and acceptance of bribes by public officials. The new recommendation also suggests that member countries consider using various forms of resolutions when resolving criminal, administrative, and civil cases, including non-trial resolutions such as DPAs and NPAs, and offers a framework for the use of such non-trial resolutions.

The new recommendation also encourages government agencies to consider a company’s internal controls and compliance programs “in their decisions to grant public advantages, including public subsidies, licenses, public procurement contracts, contracts funded by official development assistance and officially supported export credits.” Lastly, the new recommendation encourages countries “direct coordination in concurrent or

parallel investigations and prosecutions” and to “pay due attention to the risk of prosecuting the same . . . person in different jurisdictions for the same criminal conduct.”

United States v. Deutsche Bank Aktiengesellschaft, No. 20-CR-00584 (E.D.N.Y.)

On January 8, 2021, Deutsche Bank Aktiengesellschaft (Deutsche Bank), a multi-national financial services company headquartered in Frankfurt, Germany, agreed to pay more than \$120 million to resolve the DOJ and SEC investigations into alleged violations of the FCPA. Pursuant to the DPA, Deutsche Bank will pay a total criminal penalty of \$79.56 million to resolve the DOJ's investigation, and an additional \$43.3 million in disgorgement and prejudgment interest to simultaneously resolve the SEC's investigation.

Between 2009 and 2016, Deutsche Bank allegedly engaged foreign officials, their relatives, and their associates to act as third-party intermediaries, business development consultants (BDCs), and finders to obtain and retain global business. According to the DPA, Deutsche Bank employees conspired to pay millions of dollars to BDCs acting as proxies for foreign officials in Saudi Arabia, Italy, and the United Arab Emirates to obtain lucrative business for the bank.

As part of the DPA, in addition to paying the criminal fine, Deutsche Bank agreed to cooperate fully for a period of three years following the execution of the DPA. Deutsche Bank also agreed to a corporate compliance program, as well as a review of its existing internal accounting controls, policies, and procedures regarding compliance with the FCPA and other applicable anti-corruption laws, including establishing new policies where necessary.

The SEC's cease-and-desist order required Deutsche Bank to pay disgorgement of \$35 million and prejudgment interest of \$8 million. In light of Deutsche Bank's criminal fine in connection with the DPA, the SEC did not impose a civil penalty.

United States v. Kohut, No. 21-cr-115 (E.D.N.Y.)

On April 6, 2021, Defendant Raymond Kohut (Kohut), a Canadian citizen, pled guilty to a single count of money laundering in connection with his role in a years-long international bribery and money laundering scheme. According to the indictment, from 2012 until August 2020, Kohut, along with his co-conspirators, engaged in a scheme to bribe Ecuadorian officials to win business from Petroecuador, Ecuador's state-owned oil company. During the relevant time period, Kohut lived in the Bahamas and worked in business development for "Trading Company", a European energy trading company with subsidiaries around the world, including in the U.S. The news media later reported that "Trading Company" is Gunvor Group, Ltd., a multinational commodity trading company with its main trading office in Geneva, Switzerland.

Starting in 2012, Petroecuador allegedly entered into a series of contracts with two Asian state-owned oil and gas companies (the State Owned Entities) under which the State Owned Entities would pay loans to Petroecuador secured by oil to be delivered over several years. Trading Company, in turn, allegedly entered into agreements with the State-Owned Entities to market and sell the oil products pursuant to those contracts. During the same time period, Kohut, along with certain other Trading Company employees and consultants, allegedly began to pay bribes to Ecuadorian officials to secure improper advantages for Trading Company in obtaining Petroecuador business. Specifically, according to the indictment, Kohut and his co-conspirators bribed Ecuadorian officials to award contracts to the State-Owned Entities under favorable terms so that Trading Company could enter into related marketing agreements with the State Owned Entities. Kohut and his co-conspirators also allegedly bribed Ecuadorian officials to provide them with Petroecuador's non-public, confidential information to give Trading Company an unfair advantage in obtaining Petroecuador's business for the State-Owned Entities.

The indictment states that Kohut and his co-conspirators took multiple steps to conceal the illegal proceeds of the bribery scheme, including by facilitating sham consulting contracts between Trading Company consultants and Trading Company's Singaporean subsidiary and routing the bribe payments and the proceeds from the scheme through domestic and offshore bank accounts in the names of shell companies. Kohut allegedly specifically coordinated the negotiation of contracts between the State-Owned Entities and Petroecuador via his personal email account, using code names for the various parties to the conspiracy. He also met in Miami with an Ecuadorian official as well as two Trading Company consultants to discuss one of the Petroecuador contracts for which bribes would be paid.

In connection with his plea, Kohut has represented that he informed his supervisors at Trading Company that the proceeds from the scheme were "consulting fees." In total, Kohut and his co-conspirators made payments to Ecuadorian officials on behalf of Trading Company totaling at least \$22 million. Trading Company terminated Kohut's employment prior to the DOJ's investigation, and has since banned the use of consulting agents for business development. Trading Company has not been charged in connection with the Petroecuador scheme and reports that it has been cooperating with the DOJ's investigation. As part of Kohut's plea deal, he has agreed to pay \$2.2 million in forfeiture.

United States v. Luis Berkman, et al., No. 21-mj-6320-AOV (S.D. Fla.); United States v. Arturo Carlos Murillo Prijic, No. 21-mj-03013 (S.D. Fla.)

On May 26, 2021, the DOJ announced that it had filed two related FCPA enforcement actions against two Bolivian nationals and three U.S. citizens arising out of their alleged involvement in a bribery and money laundering scheme designed to secure a Bolivian government contract for a U.S.-based company.

The DOJ alleges that, from November 2019 through April 2020, U.S. citizen Bryan Samuel Berkman and his father Luis Berkman conspired with another U.S. citizen, Philip Lichtenfeld, to pay \$582,000 in bribes to Sergio Rodrigo Mendez Mendizabal and Arturo Carlos Murillo Prijic, two officials in the Bolivian Ministry of Government, in order to obtain a contract for Bryan Samuel Berkman's company to supply tear gas and tactical equipment to the Bolivian Ministry of Defense. The three U.S. citizens are further alleged to have paid an additional \$20,000 to an unnamed individual in the Bolivian Ministry of Defense for the same purpose. The contract awarded to Berkman's company was valued at \$5.65 million and yielded a profit of \$2.3 million.

The DOJ assembled its case using text and voice messages sent via WhatsApp showing the delivery of \$714,000 to a relative of Lichtenfeld, who then delivered \$582,000 to Mendez Mendizabal and Prijic. Other texts and voice messages showed the transfer of \$20,000 in bribery payments using bank accounts in the U.S.

Prijic was serving as the Minister of Government of Bolivia during the alleged bribery scheme. The DOJ asserts that both Prijic and Mendizabal were "foreign officials" under the FCPA.

These enforcement actions remain pending.

SEC v. Asante K. Berko, No. 1:20-CV-01789 (E.D.N.Y.)

On June 23, 2021, the SEC obtained a final judgment against a former Executive Director of Goldman Sachs International, Asante Berko, for his role orchestrating a bribery scheme to help a Turkish energy company obtain a government contract in Ghana to build and operate an electrical power plant. Pursuant to the final judgment, Berko agreed to be permanently enjoined from violating the anti-bribery provision of the FCPA, and to pay \$275,000 as disgorgement and \$54,163 in prejudgment interest.

According to the complaint, between 2015 and 2016, Berko allegedly schemed to bribe various Ghanaian government officials so that his firm's client, a Turkish energy company, could win a contract to build and operate an electrical power plant in Ghana. Specifically, the SEC alleged that Berko arranged for the Turkish energy company to funnel between \$3 million to \$4.5 million to a Ghana-based company to effectively bribe various government officials responsible for approving the power plant. To effectuate the scheme, Berko allegedly paid the bribes through an intermediary company, who in turn paid the government officials. To avoid detection by his firm, Berko allegedly only used his personal email account and instructed his co-conspirators to do the same. As alleged in the complaint, Berko and the energy company timed the largest transfers of funds to coincide with key milestones in the approval process of the power plant project so that funds would be available to bribe the corrupt officials who were in positions to help accomplish those milestones.

As one example, in mid-April 2015, Berko allegedly learned that the energy company and the Ministry of Power of Ghana had reached an agreement in principle on the terms of the power plant's purchase agreement. The following week, at the request of the intermediary company, Berko and the energy company had arranged for the energy company to transfer \$500,000 to the intermediary company, which the intermediary company then used to bribe a senior Ghanaian government official who represented the Ministry of Power during its negotiations with the energy company.

The complaint further alleged that Berko personally paid more than \$60,000 to members of the Ghanaian parliament and other government officials. According to the complaint, Berko took deliberate measures to prevent his employer from detecting his bribery scheme, including misleading his employer's compliance personnel about the true role and purpose of the intermediary company.

Berko allegedly sought to profit from the bribery scheme in two ways. First, the complaint alleged that he knew his firm would earn over \$10 million in fees if the energy company secured the power plant project and his firm organized financing for it, which in turn would enhance Berko's performance and stature within the firm. Second, according to the complaint, Berko allegedly learned that the energy company would secretly compensate him for arranging the bribe scheme. As alleged in the complaint, unbeknownst to his firm, between September 2016 and February 2017, the energy company paid Berko \$2 million for successfully coordinating the bribery scheme.

U.S. v. Amec Foster Wheeler Energy Ltd., No. 21-CR-298 (E.D.N.Y.); In the Matter of Amec Foster Wheeler Ltd., No. 3-20373

On June 25, 2021, SEC and DOJ jointly announced resolutions with UK-based global engineering company, Amec Foster Wheeler Energy Limited (Amec Foster Wheeler or the Company), a subsidiary of John Wood Group plc (Wood).

Amec Foster Wheeler admitted to conspiring with others to bribe decision-makers at Petróleo Brasileiro S.A. (Petrobras), the state-owned Brazilian multinational petroleum corporation, in order to secure a \$190 million contract to design a gas-to-chemical complex in Brazil. Specifically, between 2011 and 2014, Amec Foster Wheeler paid approximately \$1.1 million in bribes through third-party agents, including an Italian sales agent affiliated with a Monaco-based intermediary. Prior to retaining the Italian sales agent, Amec Foster Wheeler received a due diligence report that stated investigators were not able to verify any information presented on his curriculum vitae. Despite this, Amec Foster Wheeler permitted the agent to proceed on an “unofficial” basis working on behalf of an intermediary company. The intermediary company was provided a two percent commission on the contract Amec Foster Wheeler ultimately won with Petrobras, which in turn provided Amec Foster Wheeler with approximately \$12.9 million in profits.

DOJ Resolution

DOJ entered into a DPA with Amec Foster Wheeler through which it agreed to pay nearly \$18.4 million in penalties for violations of the FCPA. The fine reflected a number of factors, including that the company failed to voluntarily and timely disclose the conduct that triggered the investigation, and that the scheme involved a high-level executive. However, because the company fully cooperated with the DOJ investigation and took remedial actions, it received in exchange a 25% reduction off the applicable U.S. Sentencing Guidelines.

The DPA also provided that it will credit up to 25% of the criminal penalty owed to the U.S. to payments Amec Foster Wheeler makes pursuant to the resolution of a related proceeding with the UK’s Serious Fraud Office, and up to 33% of the criminal penalty to payments the company makes pursuant to resolution with Brazilian authorities for the same conduct.

Amec Foster Wheeler also agreed to continue to cooperate with the U.S. government in any ongoing or future criminal investigations concerning the company, its executives, employees, or agents. Accordingly, additional indictments arising out of the scheme may be forthcoming.

SEC Resolution

The SEC’s enforcement action incorporated the unlawful scheme that underpinned the DOJ action. Amec Foster Wheeler agreed to pay \$22.7 million in disgorgement and prejudgment interest to the SEC as a result of its violations of the anti-bribery, books and records, and internal accounting controls provisions of the FCPA. Similar to the DPA, the SEC’s order provides for offsets for up to \$9.1 million of any disgorgement paid to the Brazil regulatory authorities, and up to \$3.5 million of any disgorgement paid to the UK’s Serious Fraud Office. Therefore, the company’s minimum payment to the SEC would be approximately \$10.1 million.

United States v. Anthony Stimler, No. 21-cr-00471-PKC (S.D.N.Y.)

On July 26, 2021, the DOJ filed an FCPA enforcement action against a UK resident and citizen, Anthony Stimler, arising out of his involvement in a bribery and money laundering scheme designed to secure oil contracts and more lucrative grades of oil on favorable delivery terms from the Nigerian state-owned and state-controlled oil company, National Petroleum Corporation (NNPC).

The DOJ alleges that, from at least 2007 through 2018, Stimler and other unidentified individuals paid millions of U.S. dollars in bribes through intermediaries on behalf of the UK-based subsidiary of an unnamed commodity trading and mining company with global operations. The DOJ assembled its case from emails using coded language to discuss bribe payments to foreign officials in Nigeria and elsewhere. One email allegedly shows that Stimler requested and received approval for a \$500,000 payment to an intermediary company with the intent that a portion of the payment pass to a foreign official in Nigeria. In exchange, the subsidiary allegedly received certain business advantages, including eligibility to purchase oil cargoes from the NNPC. Stimler is further alleged to have transferred approximately \$300,000 to a foreign official through a bank in the Southern District of New York in connection with a then-upcoming political election. The payment was followed by an email asking a co-conspirator to ensure that NNPC “perform.” Other emails purport to show Stimler participating in a scheme to make bribery payments of \$50,000 per oil cargo for various cargoes of NNPC oil in 2015.

This action remains pending.

United States v. Naman Wakil, No. 21-CR-20406 (S.D. Fla.)

On July 29, 2021, a federal grand jury indicted a U.S. legal permanent resident with Syrian citizenship for his alleged role in a conspiracy to bribe Venezuelan officials to obtain and retain contracts and business advantages for his food and oil companies, and to launder such bribes and proceeds related to the scheme into and through U.S. bank accounts. According to the indictment, defendant Naman Wakil (Wakil) allegedly bribed officials of the Corporacion de Abastecimiento y Servicios Agricola (CASA), Venezuela's state-owned and state-controlled food company tasked with purchasing food for the people of Venezuela as well as officials of Petroleos de Venezuela, S.A. (PDVSA), Venezuela's state-owned and state-controlled oil company. Wakil owned and controlled various food companies that received funds from CASA (the Wakil Food Companies) as well as several oil companies that allegedly received funds from PDVSA subsidiaries (the Wakil Oil Companies).

The government alleges that from 2010 until at least September 2017, Wakil paid bribes to Venezuelan officials, including high ranking officials of CASA and PDVSA subsidiaries in order to secure their assistance in awarding contracts to the Wakil Food Companies and Wakil Oil Companies. Wakil allegedly used the Wakil Food Companies, the Wakil Oil Companies, and bank accounts controlled by Wakil in the U.S., the Cayman Islands, Switzerland, Panama and elsewhere to effectuate the bribery scheme and conceal the nature and purpose of the proceeds.

With respect to the alleged bribes to CASA officials, Wakil allegedly utilized various bank accounts owned by the Wakil Food Companies to wire money to Venezuelan co-conspirators, who in turn transferred the funds to relevant CASA officials in order to secure food supply contracts. According to the indictment, to conceal the bribes, Wakil provided false invoices to his banks stating that the payments were for, among other things, logistical services and customs paperwork. In total, the Wakil Food Companies allegedly received approximately \$250 million from the Republic of Venezuela and transferred approximately \$11.75 million from the Wakil Food Companies' bank accounts in Switzerland and the Cayman Islands through bank accounts in South Florida. Of the \$250 million received from the Republic of Venezuela, Wakil allegedly transferred at least \$50 million to his personal account in Switzerland. From those funds, Wakil is alleged to have wire-transferred at least \$20 million to personal accounts in Miami, which he used to purchase, among other things, ten apartment units in South Florida, a \$3.5 million plane and a \$1.5 million yacht.

With respect to the bribes to PDVSA officials, Wakil allegedly used various bank accounts owned by the Wakil Food Companies to make corrupt payments to PDVSA officials via Venezuelan co-conspirators. In a related scheme, Wakil allegedly received an additional \$7.7 million in connection with a contract with Petromiranda, S.A., a joint venture between PDVSA and a Russian oil company after transferring approximately \$350,000 to a PDVSA official via Panamanian and U.S. bank accounts controlled by one of the Wakil Oil Companies.

The case against Wakil is ongoing. If convicted, Wakil faces a maximum penalty of 80 years in prison.

In the Matter of WPP plc., No. 3-19718

On September 24, 2021, the SEC announced that it had entered into a settlement agreement with WPP plc (WPP), the world's largest advertising group, for violating the anti-bribery, books and records, and internal accounting controls provisions of the FCPA through the conduct of four subsidiaries based in India, China, Brazil, and Peru.

According to the SEC, WPP implemented an aggressive acquisition strategy through 2018 focused on obtaining controlling interests in a number of small, localized agencies around the world. In a number of instances, WPP permitted the local agency's founder to continue as the chief executive officer of the WPP-controlled entity. WPP centrally coordinated the entities' financial matters, reporting, control, treasury, legal affairs, and internal audit functions from its headquarters in London.

The SEC found that, despite the corruption and fraud risk inherent in its acquisitions, WPP lacked sufficient internal accounting controls and meaningful coordination between its legal and internal audit departments and management of the new subsidiaries. Further, WPP had no compliance department in place. This resulted in a number of subsidiaries circumventing WPP's compliance policies and engaging in various bribery schemes.

India Subsidiary

The SEC stated that one such scheme was executed by an India-based subsidiary acquired by WPP in 2011 (India Subsidiary). Approximately half of India Subsidiary's revenue was attributable to the Indian states of Telangana and Andhra Pradesh's Departments of Information and Public Relations (DIPR). The SEC found that, between July 2015 and September 2017, WPP received numerous anonymous complaints alleging two bribery schemes related to India Subsidiary's work for DIPR, and failed to take appropriately robust steps to identify and/or remedy the concerns.

China Subsidiary

The SEC similarly noted the presence of red flags relating to certain misconduct at WPP China Subsidiary that, if properly investigated, could have led to the prevention or detection of improper payments. Specifically, in November 2018, a China-based subsidiary acquired by WPP in 2014 (China Subsidiary) was able to avoid paying \$3.3 million in taxes to a Chinese tax authority by making payments to a vendor identified by tax officials and providing \$2,000 worth of gifts and entertainment to tax officials during the same time period. A China Subsidiary employee falsified documentation to justify the transaction, and WPP did not uncover the scheme until early 2019 while conducting an unrelated review.

Peru Subsidiary

The SEC also found that in 2013, a Peru-based subsidiary acquired by WPP in 1996 (Peru Subsidiary) agreed to act as a conduit for a bribery payment of an unspecified amount to the mayor of Lima's political campaigns. Specifically, at the CEO's direction, the company facilitated a construction company's bribe to the mayor in exchange for contract awards. The CEO disguised the corrupt source of the funds used for the mayor's campaign by funneling the construction company's payments to Peru Subsidiary through WPP subsidiaries in Colombia and Chile. Consequently, the WPP subsidiaries in Colombia and Chile falsely recorded that they received money in return for services performed for the construction company, and Peru Subsidiary maintained

no records indicating that the construction company paid for a portion of the mayor of Lima's political campaigns. WPP did not uncover Peru Subsidiary's role in the bribery scheme until a Peruvian criminal proceeding highlighted the conduct in 2019.

Brazil Subsidiary

Lastly, the SEC found that a Brazil-based subsidiary acquired by WPP in 2016 ("Brazil Subsidiary") made improper payments to vendors in connection with securing government contracts at the direction of the Brazil Subsidiary's CEO. It is highly probable that a portion of the payments were passed on to government officials with the authority to award government contracts. To disguise the fact that these payments related to obtaining or retaining government contracts, Brazil Subsidiary falsified books and records to reflect that the vendors performed bonafide services, such as marketing or IT related services.

As a result of these schemes, WPP was ordered to pay disgorgement of \$10.1 million and prejudgment interest of \$1.1 million, as well as a civil money penalty of \$8 million. The SEC's order noted that WPP cooperated with the SEC's investigation by, among other things, sharing facts developed in the course of its own internal investigations and forensic accounting reviews. The SEC further noted that WPP took a number of remedial measures, including terminating senior executives, creating 36 new positions globally to strengthen and expand its global compliance, internal investigations, risk and control functions, and creating risk committees to prevent, detect, and remediate corruption risk.

United States v. Alvaro Pulido Vargas et al., No. 21-CR-20509 (S.D. Fla.)

On October 7, 2021, a federal grand jury indicted three Colombian nationals and two Venezuelan nationals for their alleged roles in a conspiracy to commit money laundering in connection with various contracts to provide food and medicine to Venezuela that were allegedly obtained through bribes. According to the indictment, the five defendants conspired with others to launder the proceeds of an illegal bribery scheme in Venezuela — specifically, the defendants allegedly laundered the proceeds to obtain and retain inflated contracts through the Comité Local de Abastecimiento y Producción (CLAP), a Venezuelan state-owned and state-controlled food and medicine distribution program for the people of Venezuela.

Defendant Alvaro Pulido Vargas (Pulido), a Colombian citizen, controlled several companies that obtained contracts from Venezuelan state-owned entities to provide food and medicine to Venezuela. Defendant Jose Gregorio Vielma-Mora was the governor of the Venezuelan state of Tachira from 2012 through 2017 and oversaw Comercializadora de Bienes Y Servicios Del Estado Tachira (COBISERTA), which was a company owned and controlled by the state of Tachira that, among other things, purchased food for the people of Tachira. Defendant Emmanuel Enrique Rubio Gonzalez (Rubio), a Colombian citizen, is the son of Pulido. Defendant Carlos Rolando Lizcano Manrique (Lizcano) is a Colombian citizen, and defendant Ana Guillermo Luis (Guillermo) is a dual Venezuelan and Spanish citizen.

The DOJ alleges that, beginning in about July 2015 and continuing until at least 2020, Pulido, Vielma-Mora, Rubio, Lizcano, and Guillermo obtained contracts with Venezuelan entities, including COBISERTA, to import and distribute boxes of food and medicine in Venezuela through CLAP. Four of the Defendants allegedly paid bribes to Venezuelan government officials, including Defendant Vielma-Mora and a Venezuelan public official in the Ministry of Finance. According to the indictment, the Defendants and their co-conspirators inflated the costs of the contracts to both pay the bribes and unjustly enrich themselves.

Likewise, Pulido allegedly obtained two contracts with Coporacion Venezolana de Comercio Exterior (CORPOVEX) to import and distribute medicine in Venezuela through the CLAP program. Together, the total of the two contracts amounted to approximately \$140 million. As presented in the indictment, Venezuela's ability to pay foreign companies was limited due to a shortage of U.S. dollars, so Pulido engaged in a business to refine and sell gold on behalf of Venezuela. In turn, Venezuela was able to obtain additional U.S. dollars to make payments to Pulido's companies pursuant to food and medicine contracts.

Defendants Rubio, Lizcano, and Guillermo allegedly created a web of dozens of personal and corporate bank accounts in multiple countries, including Antigua, United Arab Emirates, and the United States, which they used to receive and transfer the scheme's proceeds. As a result of the scheme, Pulido, Vielma-Mora, Rubio, Lizcano, Guillermo, and their co-conspirators allegedly received approximately \$1.6 billion from the Republic of Venezuela, and transferred approximately \$180 million through or to the United States. The case is ongoing.

United States v. Jorge Cherrez Mino and John Luzuriaga Aguinaga, 1-21-cr-20528 (S.D. Fla); United States v. Luis Alvarez Villamar, 1:21-cr-20308 (S.D. Fla)

On October 15, 2021, a federal grand jury indicted two Ecuadorian citizens for their alleged roles in a conspiracy to commit money laundering in connection with a bribery scheme in Ecuador. The DOJ alleges that Jorge Cherrez Mino (Cherrez) conspired with and bribed John Luzuriaga Aguinaga (Luzuriaga), an Ecuadorian official, to obtain contracts for Cherrez and his companies to act as the business advisors for Instituto de Seguridad Social de la Policia Nacional (ISSPOL), the Ecuadorian public institution responsible for managing the financial contributions of Ecuadorian police officers towards their social security.

According to the indictment, Cherrez was the manager, president and director of the “U.S. Investment Fund Companies,” a group of companies in Florida. Cherrez also allegedly controlled two Panamanian entities. Luzuriaga, an Ecuadorian foreign official, served as the ISSPOL Risk Director and served on ISSPOL’s investment committee. Starting in 2014 until at least 2020, Cherrez and the U.S. Investment Fund Companies allegedly paid more than \$2.6 million, including approximately \$1.4 million for the benefit of Luzuriaga, in exchange for Luzuriaga and other ISSPOL officials using their positions to obtain business for the U.S. Investment Fund Companies.

Specifically, in December 2015 and January 2016, ISSPOL allegedly entered into a “swap transaction” with one of Cherrez’s Panamanian companies whereby Cherrez’s companies would obtain local Ecuadorian bonds from ISSPOL and invest them in Global Depository Notes (GDNs). According to the indictment, the GDNs made payments on a set payment schedule that included interest and principal to Cherrez’s companies. In exchange, Cherrez’s companies were to make payments to ISSPOL on a related payment schedule.

However, as part of this transaction (approved and reviewed by Luzuriaga), Cherrez’s companies allegedly received more money earlier and overall at the direct expense of ISSPOL. As a result of this corrupt swap transaction, Cherrez, through his Panamanian entities, allegedly made approximately \$65 million in profit. According to the indictment, one of his Panamanian companies received its payments from the scheme in a U.S. bank account, and a portion of those funds were transferred into the U.S. Investment Fund Companies’ bank accounts in the United States. Cherrez’s Panamanian entities also allegedly entered into bond repurchase transactions with ISSPOL (also coordinated by Luzuriaga), but failed to meet payment obligations and as of August 2020, approximately \$111 million in repurchase agreements were overdue to ISSPOL (out of a total of approximately \$205 million owed).

In order to conceal the proceeds, Cherrez, Luzuriaga and other co-conspirators allegedly laundered the proceeds through bank accounts in the U.S., including payments to a U.S.-based bank account in the name of one of the U.S. Investment Fund Companies for which Luzuriaga had a debit card in his own name and used for purchases and cash withdrawals. Cherrez also allegedly caused U.S.-based bank accounts of the U.S. Investment Fund Companies to pay Luzuriaga via checks, which were deposited into banks in Florida. The indictment states that the two co-conspirators also communicated about the conspiracy via text message while in Florida. The cases against Cherrez and Luzuriaga are pending.

In a related proceeding, on July 7, 2021, Luis Alvarez Villamar (Alvarez), an Ecuadorian citizen, pled guilty to his role in Cherrez’s money laundering scheme. According to the factual proffer, Alvarez was the operations manager of an Ecuadorian corporation (the Ecuadorian Entity) which operated a centralized depository for the

clearing and settlement of securities, including ISSPOL investments. Beginning in 2014 and until approximately 2019, Alvarez entered into two agreements on behalf of the Ecuadorian Entity to afford certain business advantages to Cherrez and his companies. Specifically, these agreements directed that ISSPOL securities managed by Cherrez and his companies be deposited directly with one of Cherrez's Panamanian entities rather than with a conflict-free international custodian. This arrangement allowed Cherrez to act as both the investment advisor and custodian of the assets, permitting him to invest and use the ISSPOL securities without oversight by the Ecuadorian entities.

In total, Alvarez received approximately \$3.2 million from Cherrez-controlled bank accounts as part of the bribery scheme, primarily to and from U.S.-based bank accounts. Alvarez also received an apartment in Miami as part of the proceeds of the bribery scheme. In addition, Alvarez communicated with Cherrez concerning the conspiracy while in Florida. The individual sanction against Alvarez is pending.

In the Credit Suisse Group AG, No. 3-20629

On October 19, 2021, the SEC announced that it had reached an agreement with Credit Suisse Group AG (Credit Suisse) to resolve alleged FCPA violations relating to two bond offerings and a syndicated loan that raised funds on behalf of state-owned entities in Mozambique.

The settlement arises out of an alleged corruption scheme by former Credit Suisse bankers to receive kickbacks in connection with three interconnected transactions. In 2013, Credit Suisse allegedly provided \$504 million in financing towards a \$622 million syndicated loan to a Mozambican state-owned entity known as ProIndicus S.A. (ProIndicus). Later that year, Credit Suisse is alleged to have marketed and sold to the internal bond market an \$850 million offering of interest-bearing loan participation notes to finance debt offered to a second Mozambican state-owned entity, Empresa Mocambicana de Atum S.A. (EMATUM). Then, in 2016, the SEC alleged that Credit Suisse underwrote, structured, marketed and distributed as joint lead manager along with VTB Capital plc (VTB) a bond offering by the Republic of Mozambique that allowed investors to exchange their loan participation notes for new sovereign bonds issued directly by the government of Mozambique (the Exchange Offering).

According to the SEC, the ProIndicus and EMATUM projects served as vehicles through which three former Credit Suisse bankers and intermediaries received kickbacks and corrupt Mozambique government officials obtained bribes.

As a result of this alleged conduct, Credit Suisse was ordered to pay disgorgement of \$26.23 million and prejudgment interest of \$7.82 million, as well as a civil money penalty of \$65 million. The SEC's order noted that Credit Suisse engaged in "substantial remedial efforts," including by establishing a UK Financial Crime Advisory team to conduct due diligence from a financial crimes perspective, as well as a Global Focus Client Committee to assess client risks from a compliance perspective. Credit Suisse is also reported to have worked proactively with peer banks, civil society organizations, and various international organizations on the design and establishment of a transparent lending portal program. As part of coordinated resolutions, the DOJ imposed a \$247 million criminal fine, with Credit Suisse paying, after crediting, \$175 million. Credit Suisse also agreed to pay over \$200 million in a penalty as part of a settled action with the United Kingdom's Financial Conduct Authority. For its role in this action, VTB also agreed to pay over \$2.4 million in disgorgement and interest along with a \$4 million penalty.

United States v. Frederick Cushmore Jr., No. 21-cr-00455-RJC (W.D. Penn.)

On November 3, 2021, the DOJ filed an FCPA enforcement action against a Connecticut resident and the former Head of International Sales at a Pennsylvania-based mining company, Frederick Cushmore, in connection with his alleged involvement in a bribery scheme designed to secure lucrative contracts with Al Nasr Company for Coke and Chemicals (Al Nasr), an Egyptian state-owned and state-controlled industrial manufacturing company.

The DOJ points to a series of communications exchanged among Cushmore and two other unnamed executives at the unidentified Pennsylvania mining company to allege that Cushmore conspired to provide kickbacks to members of the “high committee” at Al Nasr in order to win contracts. The mining executives, including Cushmore, are alleged to have executed a five-year agency agreement with a third-party intermediary in order to carry out the scheme. Under the terms of the agency agreement, the intermediary allegedly received a targeted commission of \$5 per metric ton of coal that the mining company sold to Al Nasr. Cushmore is further alleged to have traveled to Egypt for meetings with the agent of the intermediary and the foreign officials at Al Nasr. The parties initially communicated over email but were instructed by Cushmore to use the messaging service WhatsApp for its encryption.

In total, the Pennsylvania mining company is alleged to have made commission payments to the intermediary company in excess of \$4.8 million in order to secure \$143 million in business from Al Nasr between 2016 and 2020. A portion of these commission payments were then used to pay bribes to the foreign officials at Al Nasr.

This action remains pending.

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