We are pleased to present the 2014 edition of Jenner & Block’s *Foreign Corrupt Practices Act (FCPA) Business Guide*. This *Guide* provides the latest guidance on how best to confront the reality of corruption in the world’s marketplaces with practical tips for addressing FCPA issues both before and after the government is involved, if that occurs. If you have any questions about this *Guide*, or the FCPA in general, please feel free to contact any of the attorneys listed in the Practice Member Biographies section of this publication.

In addition, we would like to thank the following for their invaluable contributions to this year’s edition of the *Guide*: Larry P. Ellsworth, Eddie A. Jauregui, Michael W. Khoo, Jessie K. Liu, Michael K. Lowman, Coral A. Negron, Thomas C. Newkirk and Reid J. Schar.
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Introduction to the Guide

The U.S. Department of Justice ("DOJ") and U.S. Securities and Exchange Commission ("SEC") got off to a slow start in 2013, with no reported enforcement actions until April. Nevertheless, several of last year’s enforcement actions were highly significant. For example, in May, the DOJ entered into a deferred prosecution agreement (and the SEC concluded a civil settlement) with the French oil and gas giant Total S.A. The nearly $400 million in monetary penalties and disgorgement in that case represents one of the largest FCPA settlements in history. In November, the DOJ, the SEC, and various other agencies settled actions against oil and gas services company Weatherford International that resulted in penalties of more than $250 million.

In addition, the DOJ and SEC broke new ground in many ways. In April, the SEC entered into its first-ever non-prosecution agreement with a corporation, in connection with an enforcement action against Ralph Lauren Corporation for bribing Argentine customs officials. And in June, the DOJ and SEC announced criminal and civil complaints against employees of a broker-dealer, representing a foray into an industry – financial services – that long has been predicted to be a future focus of FCPA enforcement but that had not generated much activity until now. And, of course, 2013 was an opportunity for companies and commentators to continue to digest the DOJ and SEC’s Resource Guide to the U.S. Foreign Corrupt Practice Act (Nov. 14, 2012) ("Resource Guide") for insight into the agencies’ enforcement theories and practices.

Moreover, the DOJ and the SEC have been active in the first month of the new year. Less than a week into 2014, DOJ announced charges against three former executives of PetroTiger, Ltd., a British Virgin Islands oil and gas services company with offices in New Jersey. Shortly after, a subsidiary of global aluminum company Alcoa, Inc., Alcoa World Alumina, LLC, pleaded guilty to FCPA charges, and Alcoa, Inc., settled a civil suit with the SEC, agreeing to pay a total of $384 million to resolve the matters. If January is any indication, 2014 is likely to be another banner year for FCPA enforcement.

As with past versions, the 2014 edition of Jenner & Block’s FCPA Business Guide describes and analyzes the latest developments in FCPA enforcement and provides practical guidance. We also provide an overview of the statute and address typical questions that a company operating in the international marketplace may have about how to avoid running afoul of the statute. Naturally, the information presented herein is not intended to be legal advice in any specific situation. Such advice could only be provided after a full evaluation of all of the facts and circumstances of a particular matter.
The Statutory Framework

The FCPA’s anti-bribery provisions prohibit payments to foreign officials for the purpose of obtaining or retaining business. See 15 U.S.C. § 78dd-1, 78dd-2, and 78dd-3. The statute’s accounting provisions require the maintenance of reasonably accurate books and records and adequate internal controls.

The Anti-Bribery Provisions

Substantive Prohibitions

The FCPA’s anti-bribery provisions make it unlawful:

1) Corruptly to make use of the mails or any means or instrumentality of interstate commerce, or, for non-U.S. citizens and foreign non-issuers, to commit any act, while in the territory of the United States;

2) In furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to any of the following:
   (i) a foreign official;
   (ii) a foreign political party or official thereof;
   (iii) a candidate for foreign political office; or
   (iv) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any of the above;

3) For the purposes of:
   (i) influencing any act or decision of such foreign official in his official capacity;
   (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official;
   (iii) securing any improper advantage; or
   (iv) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality;

4) In order to assist such issuer or domestic concern in obtaining or retaining business for or with, or directing business to, any person.

1 For convenience, the foregoing terms will hereinafter be referred to collectively as “foreign official.”
Some comments regarding certain key elements:

**Corruptly.** The FCPA requires that the pertinent acts be committed “corruptly.” The Act’s legislative history reflects that the payments “must be intended to induce the recipient to misuse his official position.” H.R. Rep. No. 95-640, at 8 (1977).

“An act is ‘corruptly’ done if done voluntarily and with a bad purpose of accomplishing either an unlawful end or result, or a lawful end or result by some unlawful method or means.” United States v. Liebo, 923 F.2d 1308, 1312 (8th Cir. 1991); see also Stichting Ter Behartiging Van de Belangen Van Oudaandeelhouders In Het Kapitaal Van Saybolt Int’l B.V. v. Schreiber, 327 F.3d 173, 181-83 (2d Cir. 2003) (a “bad or wrongful purpose and an intent to influence a foreign official to misuse his official position” satisfy this element).

In a 2008 decision, United States v. Kozeny, 582 F. Supp. 2d 535 (S.D.N.Y. 2008), a federal district court considered whether a defendant may obtain a jury instruction that corrupt intent could be absent because the bribe was the result of extortion. The court agreed that “true extortion” can be a viable defense to an FCPA charge and held that, where a defendant presents sufficient evidence on that point, the court should instruct the jury as to what constitutes true extortion such that a defendant cannot be found to have the requisite corrupt intent. The Kozeny court was not called upon to decide the precise parameters of “true extortion,” but concluded that it must involve more than a simple demand for payment. Citing the FCPA’s legislative history, the court stated: “While the FCPA would apply to a situation in which a ‘payment [is] demanded on the part of a government official as a price for gaining entry into a market or to obtain a contract,’ it would not apply to one in which payment is made to an official ‘to keep an oil rig from being dynamited’….“ Kozeny, 582 F. Supp. 2d at 539.

**Use of . . . Interstate Commerce . . . In Furtherance of an Unlawful Payment.** This provision requires a nexus between an issuer’s or a domestic concern’s use of interstate commerce and the unlawful payment.\(^2\) In most cases it is easily met – for example, by email or telephonic communications relating to the payments, or by the wiring of money or other payment mechanisms. Importantly, the DOJ reads the provision as encompassing a much broader range of circumstances. An example is the 2008 AGA Medical Corporation matter, which involved the payment of improper “commissions” to doctors and patent agents in China in connection with sales of and patent approvals for certain medical devices. While the charging documents described email communications relating to the payments, the DOJ also deemed that shipping the products to China qualified as the use of interstate commerce in furtherance of the unlawful payment. Further, a federal district court held last year that even email sent and received in foreign locations may satisfy the interstate commerce requirement if the messages were routed through U.S.-based servers. SEC v. Straub, 921 F. Supp. 2d 244, 262-64 (S.D.N.Y. 2013).

\(^2\) If the person is a non-U.S. person or the entity a foreign non-issuer, the interstate commerce nexus is unnecessary. Rather, such a defendant can be liable for any act within the United States in furtherance of an unlawful element.
Something of Value. In analyzing whether something of value has been offered to a foreign official, the courts have looked not only to objective value but also to “the value the [official] subjectively attaches to the items received.” United States v. Gorman, 807 F.2d 1299, 1305 (6th Cir. 1986). Things of value under the statute include both tangible and intangible objects. See, e.g., United States v. Girard, 601 F.2d 69, 71 (2d Cir. 1979). In addition to cash and cash equivalents (e.g., stock, stock options), things of value in the FCPA context have included: travel and entertainment, see Information, United States v. Diebold, Inc., No. 5:13 CR 464 (N. D. Ohio Oct. 22, 2013); charitable contributions, see Complaint, SEC v. Schering-Plough Corp., No. 04-cv-945 (D.D.C. June 9, 2004); college scholarships, see United States v. McDade, 827 F. Supp. 1153 (E.D. Pa. 1993), aff’d in part, 28 F.3d 283 (3d Cir. 1994); the services of a prostitute, see Girard, 601 F.2d at 71, and United States v. Marmolejo, 89 F.3d 1185, 1193 (5th Cir. 1996); and offers of future employment, see Girard, 601 F.2d at 71.

Authorization of Unlawful Payments. The FCPA prohibits not only the making but also the “authorization” of any payment or giving of anything of value to a foreign official. 15 U.S.C. § 78dd-1(a). As discussed at more length at FAQ 3, infra, authorization does not have to be explicit.

The Payment Need Not Be Consummated. The statute also prohibits not only improper payments but offers or promises to make such payments; thus, the payment need not actually be made in order for a violation to occur.

Knowing. The statute defines the term “knowing” broadly. Knowledge of a relevant circumstance exists “if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.” 15 U.S.C. § 78dd-1(f)(2)(B). Willful blindness to circumstances indicating a high probability of unlawful activity thus will satisfy the knowledge requirement.

Improper Purpose. A promise, payment, or offer to a foreign official must be given for one of four purposes in order to violate the FCPA: (1) to influence any act or decision of such foreign official in his official capacity; (2) to induce such foreign official to do or omit to do any act in violation of the lawful duty of such official; (3) to secure any improper advantage; or (4) to induce such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

These purposes encompass nearly every act a foreign official might take that could benefit the party making the promise, payment, or offer. The first applies when the foreign official has some sort of discretion within the laws of the pertinent foreign country, and the promise, payment, or offer was made in order to influence the exercise of that discretion. The second comes into play when a foreign official breaks the laws of the pertinent foreign country. The third purpose, “securing any improper advantage,” broadly concerns “something to which the company concerned was not clearly entitled, [such as] an operating permit for a factory which fails to meet the statutory requirements.” United States v. Kay, 359 F.3d 738, 754 (5th Cir. 2004) (“Kay I”). Any advantage that was not readily available to other competitors and that was secured by a payment could be deemed to fall
within the scope of this provision. See id. at 750-55. The fourth purpose focuses on the foreign official’s use of his or her influence within the foreign government. For example, in the 2006 Statoil matter, U.S. authorities brought an enforcement action against a foreign oil company that entered into a $15 million consulting agreement with an Iranian official, the purpose of which was to induce the official to use his influence to assist the company in obtaining a contract. See Statoil ASA, Exchange Act Release No. 54599 (Oct. 13, 2006).

To Obtain or Retain Business. The leading case on this issue is Kay I, in which the Fifth Circuit held that this statutory requirement was satisfied by payments designed “to secure illegally reduced customs and tax liability,” because lower tax payments would “more generally help[] a domestic payor obtain or retain business for some person in a foreign country.” Kay I, 359 F.3d at 756. Thus, the “obtain or retain business” provision will be read broadly.

Exception and Affirmative Defenses

The breadth of the FCPA is reinforced by the relatively narrow nature of the exception and affirmative defenses to liability. Kay I, 359 F.3d at 756 (“Furthermore, by narrowly defining exceptions and affirmative defenses against a backdrop of broad applicability, Congress reaffirmed its intention for the statute to apply to payments that even indirectly assist in obtaining business or maintaining existing business operations in a foreign country.”).

Facilitating Payments Exception

The FCPA does not apply “to any facilitating payment or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action.” 15 U.S.C. § 78dd-1(b). This so-called “facilitating” or “grease” payment exception is designed to permit companies to accelerate the normal operations of government without receiving special exercises of discretion by foreign officials. As such, it is meant to cover routine, nondiscretionary “ministerial activities performed by mid- or low-level foreign functionaries,” see Kay I, 359 F.3d at 750-51, such as:

a) Obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;

b) Processing governmental papers;

c) Providing police protection, mail pickup and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods;

d) Providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products; or

e) Actions of a similar nature so long as the official’s decision does not involve whether, or on what terms, to award new business to or to continue business with a particular party.
By carving out these narrow categories of payments from the FCPA’s coverage, Congress sought to differentiate between those acts “that induce an official to act ‘corruptly,’ i.e., actions requiring him ‘to misuse his official position’ and his discretionary authority,” and those acts that are “essentially ministerial,” and merely move a particular matter toward an eventual act or decision or which do not involve any discretionary action.” Kay I, 359 F.3d at 747. The key is discretion – a payment that convinces an official to bestow his good graces upon a company is suspect, whereas a payment that merely expedites a routine action is less so.

Those who seek to justify a payment under the “facilitating payment” exception should focus on the amount at issue and whether the official in question must exercise any discretion or judgment in deciding whether to take the requested action. Companies that permit such payments should ensure that they are reviewed and approved in advance by in-house or other counsel and that they are recorded properly in their books and records.

**Affirmative Defenses**

The FCPA contains two affirmative defenses to anti-bribery liability.

First, it is an affirmative defense that “the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official’s, political party’s, party official’s, or candidate’s country.” 15 U.S.C. § 78dd-1(c)(1). Note that the payments must be legal under the written laws or regulations of the foreign country and that such authorization must be express. While a country’s laws may acknowledge the existence of certain payments – for example, by making provision in the tax code for how to treat them – this defense requires something much more: an explicit authorization for the payment itself.

Kozeny addressed the scope of this affirmative defense. In that case, the defendant was alleged to have paid bribes in Azerbaijan related to obtaining business with SOCAR, the state oil company. The defendant argued that the alleged payments were legal under local law because he had reported the payments to Azeri authorities, and under Azeri law, the payor of a bribe is relieved from punishment if he makes such a report. See 582 F. Supp. 2d at 538. The court disagreed, concluding that the Azeri legal provision may waive punishment but does not render the payment itself lawful. “[T]here is no immunity from prosecution under the FCPA if a person could not have been prosecuted in the foreign country due to a technicality.” Id. at 539.

Second, it is an affirmative defense that the payment or thing of value “was a reasonable and bona fide expenditure, such as travel and lodging expenses . . . and was directly related to . . . the promotion, demonstration, or explanation of products or services; or . . . the execution or performance of a contract . . . .” 15 U.S.C. § 78dd-1(c)(2). This provision creates a limited exception for expenses associated with ordinary product demonstration and testing by companies seeking government contracts or for ongoing inspections related to the execution of such a contract.
What is clear from the DOJ Opinion Releases\(^3\) is that any expenditures must be closely tailored to the payor’s legitimate goals. For example, in connection with a product demonstration, the host may pay for foreign officials’ non-extravagant travel, lodging, and meals for a period closely related to the length of time required to demonstrate the product. See Opinion Release 07-02 (approving expenses paid directly to providers for domestic air travel and other expenses of delegation of six junior to mid-level foreign officials for educational program at company’s U.S. headquarters); Opinion Release 07-01 (approving domestic expenses for four-day trip by six-person delegation of the government of an Asian country). The DOJ may permit some digression for the officials’ entertainment. In Opinion Release 07-02, for example, it approved payment for a modest four-hour city sightseeing tour for the six visiting foreign officials. But expenses cannot resemble added “perks” for the officials. In general, airfare should be economy class, see Opinion Release 07-02, but business class travel may be appropriate for higher-ranking officials, see Opinion Release 12-02. It must also be clear from the overall expense plan that the trip is for the purposes outlined in the statute and that the vast majority of expenses are advancing those ends.\(^4\) Finally, although there may be situations in which an official’s family members may be included, see Opinion Release 83-02 (approving payment of less than $5,000 to pay for the wife of a foreign official to travel with the official while in the United States visiting company sites), that is rarely appropriate and should be avoided.

**Applicability**

FCPA jurisdiction is broad and extends to all U.S. companies or persons, as well as to foreign companies that are registered with the SEC and foreign companies or persons that act in furtherance of an improper payment or offer while in the United States.

Territorial-based jurisdiction extends to any “issuer,” “domestic concern,” officer, director, employee, or agent of such issuer or domestic concern, or stockholder acting on behalf of such issuer or concern, that makes use of any instrumentality of interstate commerce in furtherance of any improper payment or offer of payment. 15 U.S.C. § 78dd-1(a); id. § 78dd-2(a).\(^5\) An “issuer” is any company – American or foreign – that either issues securities within the United States or is required to file

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\(^3\) Under 15 U.S.C. § 78dd-1(e), the Attorney General is obligated to have in place an opinion procedure by which the Department of Justice provides “responses to specific inquiries by issuers concerning conformance of their conduct with the” FCPA. The opinion releases are available on the Department’s website.

\(^4\) See also Opinion Release 82-01 (approved reasonable travel, meals, and entertainment); Opinion Release 81-02 (approved provision of product samples to government officials for testing and quality assurance); Opinion Release 83-02 (approved travel and entertainment expenses for official’s wife) (note, however, that more recent enforcement actions suggest that companies should not pay any expenses for an official’s family); Opinion Release 85-01 (approved payment of travel expenses for French ministry inspection tour in United States); Opinion Release 92-01 (approved annual expenditures of $250,000 for training expenses of Pakistani officials); and Opinion Release 96-01 (approved $15,000/year training costs for ten officials).

\(^5\) Interstate commerce includes making use of the mail, telephones, email, and any form of interstate travel. See, e.g., United States v. Brika, 487 F.3d 450, 455 (6th Cir. 2007) (telephone); United States v. Hausmann, 345 F.3d 952, 959 (7th Cir. 2003) (interstate mail and wire communications systems); Doe v. Smith, 429 F.3d 706, 709 (7th Cir. 2005) (email and internet).
reports with the SEC. *Id.* § 78c(a)(8). A “domestic concern” is a U.S. citizen, national, or resident, or a corporation or other business entity with its principal place of business in the United States or organized under the laws of the United States. *Id.* § 78dd-2(h).

Another type of territorial-based jurisdiction extends to foreign citizens and foreign companies (or more specifically, foreign companies that are not issuers) that, while in the territory of the United States, commit any act in furtherance of an improper payment or offer. See 15 U.S.C. § 78dd-3(a).

Finally, nationality-based jurisdiction renders the FCPA anti-bribery provisions applicable, based on U.S. nationality alone, to acts outside the United States in furtherance of an improper payment or offer by any of the following: (1) any issuer organized under the laws of the United States; (2) U.S. persons who are officers, directors, employees, agents, and stockholders of such issuer and are acting on behalf of such issuer; (3) any other corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship organized under the laws of the United States; or (4) any other citizen or national of the United States. See 15 U.S.C. § 78dd-1(g); *id.* § 78dd-2(i). Thus, U.S. companies and citizens are subject to the FCPA regardless of where the act in furtherance of an improper payment or offer takes place, and, if the act takes place overseas, even if no means of interstate commerce is used.

**The Books-and-Records Provisions**

The books-and-records provisions of the FCPA work in tandem with the anti-bribery provisions. They require public companies to accurately account for and report expenditures, as well as to maintain accurate records to support accounting entries and expenditures. The books-and-records provisions apply regardless of whether any improper payments have been made.

**Substantive Requirements**

The books-and-records provisions require that an issuer:

(A) Make and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and

(B) Devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that –

i) transactions are executed in accordance with management’s general or specific authorization;

ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;
iii) access to assets is permitted only in accordance with management’s general or specific authorization; and

iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

15 U.S.C. § 78m(b)(2). These provisions make clear that issuers must compile records in accordance with generally accepted accounting standards. These requirements are not based on any sense of “materiality” as that term is generally used in securities laws. Rather, the requirement is grounded in the concept of reasonableness and accuracy – what a business manager would reasonably want and expect in his day-to-day operation of a business. There is no de minimis exception. The books-and-records provisions apply to all transactions, both large and small.

Because liability under the books-and-records provisions does not depend on an improper payment, they may be used to sanction a company in cases involving suspected improper payments in which, for whatever reason, the government is unable to prove, or chooses not to pursue, an anti-bribery charge. For example, the SEC brought a settled civil enforcement action against Oracle Corporation where an Indian subsidiary of Oracle created slush funds for the purpose of paying future bribes to foreign government officials even though there were no bribes offered or currently contemplated. SEC v. Oracle Corp., No. CV-12-4310 (N.D. Cal. Aug. 13, 2012). Companies should avoid all arrangements which cannot be or are not openly recorded in the books.

**Applicability**

The books-and-records provisions apply only to issuers – that is, entities that have a class of securities registered pursuant to 15 U.S.C. § 78l and entities that are required to file reports with the SEC pursuant to 15 U.S.C. § 78o(d). See 15 U.S.C. § 78m(b)(2).

There is no “jurisdictional” requirement for civil liability for failure to maintain adequate books and records or internal controls pursuant to 15 U.S.C. § 78m(b)(2). Any “issuer” within the meaning of the statute must comply with the statute’s requirements to maintain accurate books and records and adequate internal controls, wherever the books and records may be kept. Where a subsidiary’s financial results are consolidated with a parent issuer’s financial statements, these requirements have been found to apply to books-and-records or internal control deficiencies occurring at the subsidiary. Thus, inaccurate books-and-records or internal control failures at the subsidiary level can trigger civil liability for the parent issuer without any U.S. nexus (beyond issuer status of the parent). See SEC v. Hohol, 2:14-CV-00041(RTR) (E.D. Wis. Jan. 14, 2014), SEC Litigation Release No. 22906.

Knowing violation of the books-and-records or internal controls requirements can trigger both civil and criminal liability. See 15 U.S.C. § 78m(b)(5) (“No person shall knowingly circumvent or knowingly fail to implement a system of internal
accounting controls or knowingly falsify any book, record, or account . . .” of an issuer); 15 U.S.C. § 78m(b)(4) (imposing criminal liability for books-and-records violations where the defendant knowingly circumvented, or failed to adopt, internal controls, or falsifies any book, record, or accounting entry). On its face, there is no jurisdictional requirement built into this provision. But the jurisdictional limits of this section have not been fully tested in the courts; thus, for example, it is not entirely clear whether it would apply to a foreign non-issuer defendant who acts entirely outside the United States to knowingly falsify an issuer’s books and records. The government is likely to argue, however, that a U.S. prosecution of such conduct would fall within established principles of extraterritorial jurisdiction, insofar as Congress clearly intended this provision to have extraterritorial reach and that the conduct at issue inherently has an impact on the United States (or the U.S. securities market) because it involved the books and records of an issuer. See, e.g., SEC v. Panalpina, Inc., 4:10-cv-4334 (S.D. Tex. Nov. 4, 2010), SEC Litigation Release No. 21727 (settled enforcement action against a foreign company that paid bribes for issuers and provided inaccurate invoices to support the improper payments).

Section 78m(b)(5) was utilized in the 2008 Siemens FCPA matter to bring criminal charges against Siemens AG, a foreign issuer directly subject to this provision. Specifically, Siemens AG pleaded guilty to failing to address internal controls and books-and-records problems in the face of information that it had grave issues with its internal controls and with accuracy in books and records as a result of its ongoing engagement in bribery. No U.S. jurisdictional nexus was alleged. Undoubtedly, it was deemed unnecessary. In addition, one of Siemens AG’s foreign subsidiaries, Siemens Argentina, pleaded guilty to conspiracy to knowingly falsifying and causing to be falsified the books and records of an issuer (i.e., of its parent corporation, Siemens AG), in violation of 18 U.S.C. § 371 (the conspiracy statute). In order to bring this conspiracy charge, a jurisdictional hook was required, and in this case the DOJ alleged two meetings in the United States and a bank transfer of bribe funds that went through a U.S. correspondent bank account. See, e.g., United States v. MacAllister, 160 F.3d 1304, 1307 (11th Cir. 1998) (the United States may prosecute an extraterritorial conspiracy if there is an overt act within the United States in furtherance of the conspiracy).
Consequences of FCPA Violations

Violations of the FCPA's provisions can result in monetary penalties, extensive costs associated with conducting an internal investigation and/or defending against government inquiries, harm to reputation, imposition of onerous compliance programs, and the risk of imprisonment.

The maximum statutory penalties per violation of the anti-bribery provisions are a $2,000,000 criminal fine and a $16,000 civil penalty for a corporate entity. For individuals, the maximum criminal fine per violation is $250,000, and the maximum civil penalty per violation is $16,000. In addition, a criminal fine of up to twice the amount of the benefit obtained may be levied under the Alternative Fines Statute. And finally, individuals may be sentenced to up to five years’ incarceration per violation. See 15 U.S.C. §§ 78ff(c)(1), 78dd-2(g), 78dd-3(e); 18 U.S.C. § 3571.

There are three tiers of civil penalties for violations of the books-and-records provisions, depending on a series of aggravating factors. The penalties range from $7,500 to $160,000 per violation for individuals and $75,000 to $775,000 (these were adjusted for inflation in 2013) per violation for corporate entities or may be calculated based upon the gross amount of the pecuniary gain. In addition, the SEC typically seeks disgorgement of any ill-gotten gains. Violations of the books-and-records provisions are civil violations unless they are committed willfully, in which case they are punishable as criminal offenses. See 15 U.S.C. § 78m(b)(4)-(5). Criminal violations carry maximum penalties of a $25 million fine per violation for entities and a $5 million fine per violation and 20 years’ incarceration for natural persons. See 15 U.S.C. § 78ff(a).

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6 The Federal Sentencing Guidelines also provide that the fine range under the Guidelines may be up to two times the amount of the benefit sought to be obtained.
7 This penalty requires a "willful" violation. But, the Fifth Circuit has held that this element requires only that the defendant “acted intentionally, and not by accident or mistake” and “with the knowledge that he was doing a ‘bad’ act under the general rules of law.” United States v. Kay, 513 F.3d 432, 447-48 (5th Cir. 2007).
In some cases, the government also will require the appointment of an independent compliance monitor, at the company's expense, for some period of time (typically two or three years). The independent monitor is charged with making recommendations for FCPA compliance with which the company generally must comply and with reporting the state of the company's compliance to the government. Unsurprisingly, the independent monitor requirement is an expensive and burdensome proposition for any company subject to it. In other cases, the government will refrain from imposing an outside compliance monitor, but will require a company to self-review and self-report on its FCPA compliance for a period of time after a settlement, e.g., for two or three years.
Frequently Asked Questions

1) **Who Is Subject To The FCPA?**

Potentially anyone. The anti-bribery provisions spell out three classes of possible offenders: “issuers,” 15 U.S.C. § 78dd-1, “domestic concerns,” id.§ 78dd-2, and all other persons, id. § 78dd-3. An “issuer” is any company that issues securities within the United States or files reports with the SEC. A “domestic concern” is a U.S. citizen, national, or resident, or a business entity with its principal place of business in the United States or organized under U.S. law. The third, catch-all section applies to everyone else, which generally means foreign non-issuers, including non-U.S. nationals. Liability under the accounting provisions is limited to issuers.

2) **When Is An American Company Liable For The Acts Of A Foreign Subsidiary?**

A company can be liable for its subsidiary’s improper payments under two theories: (1) because the parent authorized or knew of the payments or (2) because the subsidiary acted as the parent’s agent in making the payments. The DOJ and the SEC endorse both theories of parent liability. See Resource Guide at 27-28.

In this context, the parent company’s potential liability does not turn on majority versus minority ownership. Instead, liability will arise under the anti-bribery provision if the parent authorizes a corrupt payment, or if the parent provides funds to the subsidiary while “knowing” that the monies are to be used for a corrupt purpose. Recently, both the DOJ and the SEC have taken fairly aggressive positions with respect to a parent’s liability for its subsidiary’s actions. In 2013, both agencies reached non-prosecution agreements with Ralph Lauren Corporation for alleged bribes paid by an Argentine subsidiary to expedite customs clearances. The government did not allege actual knowledge or participation by the parent in the subsidiary’s conduct. Rather, liability appeared to be premised on the fact that Ralph Lauren Corporation was the sole owner of the subsidiary and had appointed its general manager. See DOJ Non-Prosecution Agreement with Ralph Lauren Corp. (Apr. 22, 2013); SEC Non-Prosecution Agreement with Ralph Lauren Corp. (Apr. 22, 2013).

Moreover, it is important to be aware that a foreign subsidiary may be considered an “agent” of its parent, a situation which could trigger FCPA liability for both the foreign subsidiary and/or the parent corporation. The statute makes “agents” of
issuers as well as “agents” of domestic concerns subject to the FCPA. In addition, under U.S. common-law principles of vicarious liability, a corporation can be held liable for the conduct of its agent. See In re Alcoa Inc., Securities Exchange Act Release No. 71261 (Jan. 9, 2014).

Neither the FCPA nor its legislative history define the term “agent” as used in that statute, but it has an accepted common-law meaning. An agent is a person or entity that has been either explicitly or implicitly authorized to act on behalf of another person or entity (the principal). When an agent acts within the scope of its authority, the principal can be held liable for the agent’s actions. See generally Jonathan M. Purver, Liability of Parent Corporation for Acts of Subsidiary § 2, in Am. Jur. Proof of Facts 2d (2009). The term “agent” in the anti-bribery provision of the FCPA likely will be deemed to have the same scope as the common-law concept.

Under common-law principles, the existence of an agency relationship between a parent and its subsidiary is anything but presumed. The parent corporation must have exercised sufficient control over that subsidiary as to “render the subsidiary a mere conduit or instrumentality of the parent corporation.” Id. § 1. Nonetheless, the 2005 DPC Tianjin case is an example of how broadly the government views both the FCPA statutory term “agent” and the common-law principles of agency. In DPC Tianjin, an issuer’s foreign subsidiary had engaged in improper payments. The DOJ charged the foreign subsidiary as an “agent” of the U.S. issuer without making any specific allegation in the charging papers as to what rendered the foreign subsidiary an agent of its parent. For its part, the SEC charged the parent corporation on a theory of vicarious liability, alleging that the improper payments at issue were made by the parent “through” its subsidiary even though the SEC’s complaint alleged no actions at the parent level (other than stopping the payments and instituting remediation once they were discovered). As a result, the fact that the subsidiary had sent an email to the United States that contained a budget including the improper payments – creating an interstate commerce jurisdictional hook – sufficed to render both the parent and the subsidiary liable.

Finally, an issuer may be liable for the acts of those foreign subsidiaries under its control for violations of the books-and-records and internal controls provisions. Even where an issuer owns 50 percent or less of the voting power of a subsidiary, it must make “good faith” efforts to “use its influence, to the extent reasonable under the issuer’s circumstances, to cause such domestic or foreign firm to devise and maintain a system of internal accounting controls consistent with” the FCPA. 15 U.S.C. § 78m(b)(6).

3) What Does It Mean To “Authorize” An Improper Payment?

The FCPA does not define the term “authorization,” and as with many aspects of the statute, the case law is undeveloped. The legislative history makes clear that authorization can be implicit or explicit. See H.R. Rep. 95-640 (Sept. 28, 1977) (“[I]n the majority of bribery cases . . . some responsible official or employee of the U.S. parent company had knowledge of the bribery and either explicitly or implicitly approved the practice . . . . [S]uch persons could be prosecuted.”); see also Business Accounting and Foreign Trade Simplification Act: Joint Hearings on S.
In past enforcement actions, the government has charged parent companies with directly authorizing improper payments. In last year’s *Diebold* matter, the SEC explicitly charged the parent company with knowledge and approval of corrupt payments, including for gifts and hospitality, made by its subsidiaries in China, Indonesia, and Russia. See *SEC v. Diebold, Inc.*, No. 1:13-cv-01609 (D.D.C. Oct. 22, 2013). And yet, in 2011, the DOJ settled charges against Maxwell Technologies based on a subsidiary’s allegedly corrupt conduct in China but without clearly alleging prior knowledge or approval by the parent. See *United States v. Maxwell Techs., Inc.*, No. 3:11-cr-00329 (S.D. Cal. Jan. 31, 2011). The government did allege, however, that Maxwell executives discovered suspicious payments and that, subsequently, the payments actually increased, leading to a possible inference of at least implicit authorization.

### 4) What Is A Facilitating Or “Grease” Payment?

The FCPA does not apply “to any facilitating payment or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action.” 15 U.S.C. § 78dd-1(b). This exception for what are colloquially referred to as “grease payments” is designed to cover routine, nondiscretionary “ministerial activities performed by mid- or low-level foreign functionaries,” *Kay I*, 359 F.3d at 750-51, such as obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country; processing governmental papers; or providing general governmental services, such as police protection, mail, power, or water. See 15 U.S.C. § 78dd-1(f).

This narrow exception exempts from liability only those acts that are “essentially ministerial [and] merely move a particular matter toward an eventual act or decision or which do not involve any discretionary action.” *Kay I*, 359 F.3d at 747. In their *Resource Guide*, the DOJ and the SEC emphasize that the size of the payment is not determinative of whether it qualifies for the facilitating payment exception. See *Resource Guide* at 25. For example, in a 2009 matter brought against oilfield company Helmerich & Payne, Inc., the DOJ cited a series of infrequent payments to Venezuelan customs officials, each of which was less than $2,000 and which, together, totaled only $7,000. See *In re Helmerich & Payne, Inc.*, Non-Prosecution Agreement (July 29, 2009). In that case, however, the payments were allegedly made to avoid customs regulations and inspections rather than to obtain routine, non-discretionary action.

Finally, it should be noted that the U.K. Bribery Act of 2010 does not contain a facilitating payments exception. The scope of the U.K. Bribery Act is quite broad, covering not only U.K. concerns but any companies conducting business in the United Kingdom, even where the charged conduct occurred elsewhere.
5) Are American Companies Liable For The Prior Illegal Acts Of Companies They Purchase?

Yes, in some circumstances. An American company may be held liable for or suffer other consequences from the prior illegal acts of a company that it acquires or with which it becomes associated as the result of a merger. A company may mitigate its risk by conducting due diligence prior to an acquisition or merger or, sometimes, immediately following an acquisition or merger, but that is not a legal defense and the company still may be legally susceptible to criminal prosecution because the DOJ takes an aggressive approach to successor liability.

The DOJ and the SEC devote substantial space in their Resource Guide to this topic, in which they claim that they do not typically take action against acquiring companies in cases where the acquirer discovers and quickly remedies possible violations. Resource Guide at 29. Rather, actions against the acquiring or successor company are generally reserved for cases “involving egregious or sustained violations or where the successor company directly participated in the violations or failed to stop the misconduct from continuing after the acquisition.” Id. at 28; see, e.g., SEC v. Alliance One Int’l, Inc., No. 1:10-cv-01319 (D.D.C. Aug. 6, 2010) ($19.5 million in penalties and disgorgement paid by successor company and foreign subsidiaries). Consequently, the Resource Guide recommends that companies conduct extensive due diligence prior to acquisition and quickly integrate the target company into the parent’s compliance program and internal controls. See id. at 28.

Nevertheless, even where enforcement authorities do not take direct action against the acquiring company, actions against the acquired subsidiary can still have significant consequences for all parties. In 2007, eLandia International Inc. discovered after the fact that its recently acquired subsidiary, Latin Node Inc., had paid as much as $2.2 million in bribes to officials in state-owned telecommunications firms in Honduras and Yemen. As a result of the ensuing investigation and remediation, Latin Node’s viability was severely weakened and the company was eventually wound down. The DOJ brought a single FCPA charge against Latin Node, which pleaded guilty and agreed to pay a $2 million fine. See United States v. Latin Node, Inc., No. 09-cr-20239 (S.D. Fla. Mar. 23, 2009). Although eLandia was spared a criminal charge and conviction of its own, it nevertheless was obligated to pay defunct Latin Node’s fine and, of course, saw its investment wiped out.

In Opinion Release 08-02, the DOJ advised a company regarding the amount of post-acquisition due diligence required on a target company when pre-acquisition due diligence could not be undertaken. The DOJ permitted a “grace period” for the acquiring company to identify and disclose potential risk areas, and required a complex and far-reaching internal investigation. The DOJ likewise indicated that it still would hold the company liable not only for ongoing violations by the target company not uncovered during the first 180 days of due diligence, but also for prior violations by the target company disclosed to the DOJ to the extent that such violations were not “investigated to conclusion within one year of closing.”
6) **Can The U.S. Government Prosecute Foreign Companies Under The FCPA?**

Yes. Foreign companies that issue securities in the United States or that are required to file reports with the SEC are considered “issuers” and treated just as any U.S. issuer would be. And prosecution of foreign companies has been a growing enforcement trend. To date, eight of the top ten largest FCPA enforcement actions, measured by dollar volume of total penalties and disgorgements, have been brought against foreign companies.

Furthermore, even non-issuer foreign companies and individuals are subject to the FCPA if they commit any act in furtherance of an improper payment while within the territory of the United States. See 15 U.S.C. § 78dd-3(a). The DOJ has advanced aggressive theories to support jurisdiction over such defendants. For example, in the 2003 **Syncor Taiwan** matter, the DOJ asserted jurisdiction over a foreign non-issuer company based on one of its officer’s sending an email while in the United States that contained a budget referring to the improper payments, thereby committing a relevant act “while in . . . the United States.” But in 2011, a federal court rejected an even more aggressive theory that a British national had acted within the United States when he mailed from London to the United States a purchase agreement related to an alleged bribery scheme. Finding no conduct within the United States under these circumstances, the court dismissed a substantive FCPA count against the British defendant. See **United States v. Patel**, No. 1:09-cr-00335 (D.D.C. July 7, 2011).

7) **Can A Company Be Liable For The Acts Of Third Parties?**

Yes. The FCPA prohibits the “authorization” of improper payments, 15 U.S.C. § 78dd-1(a), which could include payments made by agents and business partners. Furthermore, the act specifically prohibits payments to third parties “while knowing” that all or a portion of the payment will be used as an illegal bribe. 15 U.S.C. § 78dd-1(a)(3).

Not surprisingly, companies have been held liable for the acts of their agents and service providers in a number of past enforcement actions. For example, last year, Parker Drilling Co. settled charges that it had channeled more than $1 million to Nigerian officials through an in-country agent, and Weatherford International was charged with sending payments to Angolan government officials through joint ventures and a freight-forwarding agent.

While agents facilitate a company’s own direct sales, distributors typically purchase goods and re-sell them to other end-users. Because of this distinction, any illegal payments a distributor makes subsequent to taking title to the goods generally cannot be attributed to the original seller, absent a prior specific conspiratorial agreement to make the payment or an ongoing relationship between the seller and the distributor in which the seller knowingly benefits from the illicit activity. For example, in **Opinion Release 87-01**, the DOJ took no action on an American company’s sale of a product to a foreign company that planned to resell the
product to its government on terms to be negotiated. The American company represented that it was not aware of any illegal payment plans.

Nevertheless, distributor relationships are not immune to risk. Where a company is aware or reasonably suspects that its distributor is offering or making improper payments to government officials, the company can be liable for the distributor’s actions. Last year, Weatherford International settled charges that stemmed in part from a distributor arrangement. The government alleged that Weatherford offered up to $15 million in “volume discounts” to a distributor in an unnamed Middle Eastern country, believing that the discounts would be used to pay illegal bribes to employees of the national oil company.

In addition, foreign governments often require that an American contractor hire a local entity to do some portion of the work on a contract. A company should carefully monitor and document such arrangements because a corrupt subcontractor easily could pad its subcontract price to include improper payments. An American company, as the original source for those payments, therefore may be liable if some portion is subsequently offered or paid to a foreign official. Accordingly, margins should be reasonable.

Note that it is not necessary that a company affirmatively authorize improper payments by its agents, vendors, distributors, or subcontractors in order for liability to attach. Simple knowledge of such payments will suffice, and, critically, knowledge is defined broadly enough to include even well-founded suspicions. For purposes of the FCPA, a person’s awareness “of a high probability of the existence of [a] circumstance” is sufficient to demonstrate knowledge of the circumstance. 15 U.S.C. § 78dd-1(f)(2)(B). Companies therefore should be alert to possible warning signs, such as, for example, when a government official directs the use of a specific third party; where a provider’s services are unclear or ill-defined; or where payments are made through non-traditional channels.

Thus, while one might believe that it is safest to know as little as possible about what service partners and third parties do with the payments they receive, exactly the opposite is true. Under the FCPA liability framework, U.S. companies should closely monitor and document their third-party relationships to ensure that they are not viewed as taking a “head in the sand” approach should payments ultimately be redirected to government officials.

8) What Provisions Should An Agreement With A Foreign Representative Contain?

Agreements with foreign representatives should include the elements outlined in the DOJ’s Opinion Release 81-01, its most comprehensive pronouncement on the subject:

1. A requirement that all company payments be (a) by check or bank transfer, (b) to the foreign representative by name, (c) at its business address in-country (or where services were rendered), and (d) upon the written instructions of the foreign representative;
2. A requirement that the foreign representative independently represent its familiarity with and commitment to adhere to the FCPA. In addition to promising to make no illegal payments, the agreement should also require the representative to notify the company of any request it receives for improper payments from any company employee;

3. A provision requiring a representation that no member of the entity is a government official, an official of a political party, a candidate for political office, a consultant to a government official, or affiliated with the government official (with limited exceptions);

4. A provision confirming that the agreement is lawful in the foreign country;

5. A requirement that any assignment by the representative of any right, obligation and/or services to be performed under the agreement must be approved in writing by the company;

6. A provision permitting the company to terminate the agreement upon a belief that the entity has violated any of its provisions;

7. A provision permitting the company to disclose the agreement to anyone, including government organizations;

8. Provisions mandating the existence of adequate controls over reimbursable expenses. See, e.g., Opinion Release 81-01 (describing provisions requiring entertainment and business meetings to occur on the same day; written approval of travel expenses; that gifts be lawful and customary in the country and be under $500; and that all reimbursements be on a detailed invoice, subject to company audit); and

9. Provisions demonstrating that representatives are well-established entities, with sufficient resources to perform the work. The agreement should also refer to the company’s selection criteria for representatives, which should include: years in operation; size and adequacy of support staff; business outlook; reputation; professional and/or technical expertise and familiarity with and willingness to adhere to the FCPA. See Opinion Release 97-01 (documenting depth of due diligence).

A country’s reputation for bribery also should be considered in assessing the sufficiency of steps taken to minimize risk in the selection of agents.

In addition to these recommendations, companies should consider adopting a separate policy containing these guidelines and other procedures for conducting due diligence with respect to retaining and working with foreign agents. All employees involved with international agreements should be familiar with both this policy and with the FCPA itself. The policy should contain a statement from senior management emphasizing the company’s commitment to FCPA compliance.

Finally, although a company may conclude that it will not undertake the same degree of due diligence for service providers and distributors, those persons or
entities must also be selected and managed so as to address FCPA risk, as payments to service providers or distributors can be used as a vehicle for improper payments to foreign officials.

9) If Necessary, How Should A Company Make Overseas Payments?

Ideally, by wire transfer to a business partner’s bank account in its home country or the location where the work was done. See, e.g., Opinion Release 81-01 (citing these factors in support of a decision against taking enforcement action). The DOJ and the SEC insist on visibility and transparency in payments made to agents and other business partners abroad. Therefore, wire transfers are preferable to checks because they provide proof that funds were sent to an agent’s primary business account. If checks are used, they should be retained to show the place of deposit. Companies should ensure that payments to business partners are accurately recorded in their books, and domestic parents should require their subsidiaries to follow American accounting rules regarding business expenditures.

10) Who Is A Foreign Official?

Under the FCPA, the term “foreign official” includes elected and appointed government officials; officials of international organizations such as the International Monetary Fund, the World Bank, and the Red Cross; and employees of any “government instrumentality,” which the DOJ and the SEC generally interpret to include state-owned or -controlled companies.

Whether a state-affiliated entity qualifies as a “government instrumentality” can present a difficult question. Indeed, the issue is currently before the U.S. Court of Appeals for the Eleventh Circuit in United States v. Esquenazi, which was argued in October 2013, and in which a decision is expected imminently. In the meantime, the clearest guidance on the topic can be found in the Resource Guide, which distilled the jury instructions in a number of cases to produce a non-exclusive list of factors that should be considered in evaluating that issue:

- The foreign state’s extent of ownership and control over the entity;
- The foreign state’s characterization of the entity and its employees;
- The entity’s history, purpose, obligations, and privileges, including the extent to which the entity provides services to the foreign state’s residents;
- The extent of the entity’s power to administer its designated functions;
- The extent of financial support provided by the foreign state to the entity;
- The extent to which the foreign state’s policies express the governmental end or purpose sought to be achieved;
- The extent to which the entity is perceived to perform official or governmental functions.
Under these factors, those state-affiliated entities that most resemble private-sector companies – that is, those in which the government’s ownership stake is small and government funding is minimal, and that compete in the open marketplace – have the strongest argument that they are not an “instrumentality” of a foreign government.

Members of royal families also present particular difficulty. Often, such individuals have no official role in government, but occupy important ceremonial roles and wield significant influence. In Opinion Release 12-01, the DOJ set out the following factors for assessing whether a royal is a foreign official: (1) the degree of control or influence the individual has over the levers of governmental power, execution, administration, finances, and the like; (2) whether the foreign government characterizes the individual as having governmental power; and (3) whether and under what circumstances the individual may act on behalf of, or bind, a government. Applying these factors, the DOJ concluded that the royal family member in Opinion Release 12-01 was not a foreign official because he had no official or unofficial role in his country’s government and no authority to bind the relevant governmental decision-makers.

The FCPA also defines “foreign official” as including “any person acting in an official capacity” on behalf of a foreign government. Thus, consultants and unofficial advisors to government officials, or others outside the formal government apparatus, may be deemed to be government officials under certain circumstances, particularly where they have decision-making authority or significant influence with respect to governmental actions. For example, in the 2006 Statoil ASA matter, Statoil was charged with making improper payments to the President of the National Iranian Oil Company. The DOJ did not allege, however, that this position in itself rendered him a foreign official, relying instead on assertions that he was an “advisor to the Iranian Oil Minister” and a “very important guest”; that his family “controlled all contract awards within oil and gas in Iran”; and that Statoil had tested his influence by having him send a message back to Statoil through the Iranian Oil Minister. See United States v. Statoil ASA, No. 1:06-cr-00960 (S.D.N.Y. Oct. 13, 2006); Opinion Release 10-03, discussed infra, also touches on this issue.

Finally, it is worth noting that the FCPA bans corrupt payments not only to foreign officials, but to foreign political parties, candidates for foreign political office, or any person, knowing that any portion of the payment will be passed on to a foreign official, political party, or political candidate.

**11) May A Company Make Charitable/Educational Contributions At The Request Of A Foreign Official?**

Yes, but it should be very careful when doing so. The DOJ and the SEC have both advised that legitimate charitable donations do not violate the FCPA. See Resource Guide at 19; see also Opinion Release 10-02 (declining to take enforcement action where requestor undertook adequate due diligence of recipient and imposed significant controls on the grant); Opinion Release 97-02 (declining to take enforcement action where facts demonstrated that donation would be given
directly to a government entity – “and not to any foreign government official” – for the purposes of building a school).

But the government will nevertheless closely scrutinize donations made to charitable organizations or for educational purposes to ensure that any officials requesting donations, or otherwise associated with the donees, have no possible role in reviewing matters for, or providing preferential treatment to, the donating business. For example, in 2012 the SEC brought an FCPA enforcement action against Eli Lilly & Co., alleging that a subsidiary of the pharmaceutical company made $39,000 in donations to a Polish charity. The SEC claimed the donation had been made at the request of a government official who had influence over pharmaceutical purchases in Poland. See SEC v. Eli Lilly & Co., No. 1:12-cv-02045 (D.D.C. Dec. 20, 2012). And in 2004, the SEC brought a similar action against Schering-Plough Corp. involving donations of $76,000 to the same Polish charity given at the request of the same Polish government official. See SEC v. Schering-Plough Corp., No. 1:04-cv-00945 (D.D.C. June 4, 2004).

12) May A Company Sponsor An Educational Trip For Foreign Officials Or Provide Other Hospitality?

Yes, but only under strict conditions. The FCPA itself provides an affirmative defense for “reasonable and bona fide expenditures, such as travel and lodging expenses” when directly connected with legitimate promotions or product demonstrations or when a required part of contract performance. 15 U.S.C. § 78dd-1(c)(2); see also Resource Guide at 24.

Nevertheless, caution must be taken to ensure that expenses are reasonable, relate to legitimate educational or training needs, and are not provided in circumstances indicating an attempt to induce favorable treatment with regard to the company’s business. In Opinion Release 11-01, the DOJ stated that it would not take enforcement action against a requestor company that planned to provide economy-class airfare and other expenses for two foreign officials to travel to the United States to learn more about the company’s business. The company represented that it had no non-routine business before the relevant foreign agencies; its routine business was governed by well-established rules and standards; the foreign government would choose which officials would travel; no expenses would be paid for the officials’ spouses or family members; all payments would be made directly to service providers and not to the officials; souvenirs would be of nominal value and would reflect the company’s business or logo; the company would not fund side trips, entertainment, or leisure activities; and the duration of the visit would be limited to the amount of time necessary to educate the officials about the company’s operations.

The issues surrounding educational trips provide a sound framework to consider gifts and hospitality generally. Hospitality and gifts may be extended if they are reasonable, have a sound business purpose, and are not intended to influence a government official to use his authority improperly to the business advantage of the company. These common-sense guidelines dictate that reasonable entertainment expenses (e.g., meals) are usually acceptable if connected to conducting business.
Similarly, low-value tangible gifts (e.g., marketing items with company logos, such as pens, caps, cups, and shirts) may be given, provided such gifts are acceptable under the applicable government rules of the officials’ home country and are permitted by the U.S. company’s ethics policies. The DOJ and the SEC have advised that “[t]he larger or more extravagant the gift . . . the more likely it was given with an improper influence.” Resource Guide at 15.

Certainly, hospitality, travel, and entertainment that are unconnected to bona fide business activities or that include luxurious or extravagant expenses create potential risks under the FCPA. In 2013, both the DOJ and the SEC brought enforcement actions against Diebold, Inc., for providing leisure trips to Las Vegas and Disneyland, entertainment, and gifts to Chinese and Indonesian officials. See SEC v. Diebold, Inc., No. 1:13-cv-01609 (D.D.C. Oct. 22, 2013); United States v. Diebold, Inc., No. 5:13-cr-00464 (N.D. Ohio Oct. 22, 2013).

13) Can A U.S. Company Do Business With An Entity In Which A Foreign Official Is A Participant?

Yes, but it should exercise great care in doing so. An American company does not violate the FCPA merely by doing business with an entity in which a foreign official is a passive owner. In general, a foreign official’s participation in such an entity should be legal under the laws of his country and transparent to his government agency, and he should recuse himself from any decision or transaction involving the U.S. company with which the entity interacts.

The DOJ has issued a number of Opinion Releases addressing this issue. For example, in Opinion Release 08-01, the DOJ took no enforcement action where a U.S. company entered into a joint venture with an entity in which a foreign official was a principal, because the U.S. company had (1) conducted extensive due diligence and made disclosures; (2) obtained representations and warranties that its joint venture partner had not and would not violate anti-corruption laws; and (3) retained a broad contractual right to terminate the joint venture agreement in the event of a violation of anti-corruption laws. Similarly, upon assurances of compliance and other prophylactic measures, the DOJ took no action when an American firm sought to establish an agency agreement with a foreign company whose principals were related to and managed the affairs of a foreign country’s head of state. See Opinion Release 84-01.

Indeed, an employee of an American concern even can become a foreign official. In Opinion Release 80-02, a foreign employee of an American subsidiary wanted to run for an office in his country. The DOJ took no action based on assurances that the company would pay him only for his work as an employee; his duties at the company did not involve advocacy or representation to the government; it was customary in that country to hold outside employment; he would notify his government of his recusal from any matters involving the company’s business; and local law was not violated.
14) Can A U.S. Company Make Payments, Contributions, or Donations To Foreign Government Entities?

Yes, but it should be very careful when doing so. The FCPA prohibits payments to government officials, but not to government entities themselves. Nonetheless, a payment to a government entity may be improper where it appears that it is substantially benefitting a particular government official. For example, last year, the SEC brought an enforcement action against medical device manufacturer Stryker Corporation. Among the alleged improper payments was a $200,000 donation to a Greek public university to fund a laboratory to be established by the director of two public medical clinics with influence over the purchase of Stryker products. See Stryker Corp., Cease-and-Desist Order, Admin. Proc. Rel. No. 34-70751 (Oct. 24, 2013).

Moreover, there is an inherent risk that any payment to a foreign government ultimately may be diverted to an individual official. Accordingly, any payments to government entities should be made to accounts clearly identified as such, in the country where the government operates, and supported by clear documentation. Such payments should be made only on written direction of the government entity. Compare Opinion Release 06-01 (approving payments to African customs department to develop incentive program for law enforcement to improve anti-counterfeiting measures), and Opinion Release 97-02 (permitting $100,000 donation to government entity to build a school), with Opinion Release 98-01 (stating DOJ's intention to initiate a criminal investigation if proposed payments of "fines" and "modalities" were made to foreign officials rather than to an agency account).

Thus, it is important to exercise caution when making payments, contributions, or donations to foreign governments, even when acting with the best of intentions. As the DOJ and the SEC warn, “companies contemplating contributions or donations to foreign governments should take steps necessary to ensure that no monies are used for corrupt purposes, such as the personal benefit of individual foreign officials.” Resource Guide at 20.

15) Does The FCPA Forbid Corrupt Payments To Obtain Business Advantages Such as Lower Taxes and Customs Duties?

Yes. The FCPA forbids corrupt payments to influence foreign officials to use their positions to assist “in obtaining or retaining business.” This prohibition is not limited to commercial transactions between a U.S. company and a foreign government, such as the award or renewal of contracts. After a lengthy analysis of the statute’s legislative history, the Fifth Circuit held in Kay I, 359 F.3d at 748, that the FCPA prohibits payments “intended to assist the payor” either directly or indirectly in obtaining or retaining business, and that it “encompass[es] the administration of tax, customs, and other laws and regulations affecting the revenue of foreign states.” The court thus concluded that payments to Haitian officials to understate quantities of imported grain so as to obtain reduced import taxes violated the FCPA. See id.
16) Are There Benefits To Voluntary Disclosure?

Probably, but the extent of these benefits is not entirely clear, and they must be weighed against the potential costs. The DOJ and the SEC encourage companies to come forward with violations of the FCPA and promise leniency in exchange. They write in the Resource Guide, for example, that they “place a high premium on self-reporting, along with cooperation and remedial efforts, in determining the appropriate resolution of FCPA matters.” Resource Guide at 54. Even before the publication of the Resource Guide, the agencies had made increased efforts to demonstrate that they give credit for voluntary disclosures by being somewhat more transparent about the benefits that companies have received for self-reporting. Nonetheless, the rewards of voluntary disclosure in the FCPA context are nowhere near as clear-cut as those that inure under certain programs, such as the DOJ Antitrust Division’s amnesty program, which can confer amnesty on a company that is “first in” to report participation in antitrust activity.

Whether a voluntary disclosure is advisable in any given situation is highly fact-specific. As noted above, self-reporting companies likely receive some benefit, but often it is not clear how much. A company that makes a voluntary disclosure is more likely to obtain a deferred or non-prosecution agreement than a company that does not disclose. But there may be many circumstances in which such an agreement will not be afforded even though there has been a disclosure. And, while preferable to a guilty plea, deferred or non-prosecution agreements do not provide ironclad insulation against criminal prosecution. Indeed, a 2008 FCPA prosecution came about because the company – Aibel Group Ltd. – was found to have violated an FCPA deferred prosecution agreement from 2004. Furthermore, voluntary disclosure does not guarantee protection against substantial monetary penalties.

Moreover, there can be significant downsides to voluntary disclosures. First, they frequently result in potential FCPA violations becoming public even before they are resolved, often through SEC filings that are reported in the press. Such publicity can lead to shareholder suits and reputational damage. Second, self-reporting can increase a company’s legal costs, as the DOJ and the SEC typically require additional investigation in the wake of a disclosure, sometimes encompassing business units or geographic areas well beyond those involved in the potential violations initially identified.

Thus, any company contemplating a voluntary disclosure should ensure that it has conducted an exhaustive internal investigation, and once it has done so, should carefully weigh the costs and benefits of voluntary disclosure in light of all the relevant facts.

17) Can Foreign Bribery Violate Any Statutes Other Than The FCPA?

Yes. The federal money laundering statutes make it a felony to conduct a financial transaction knowing that the funds are the proceeds of “specified unlawful activity.” 18 U.S.C. § 1956(a)(1). The term “specified unlawful activity” expressly includes
“any felony violation of the Foreign Corrupt Practices Act.” Id. § 1956(c)(7)(D). Accordingly, financial transactions that involve the proceeds of an FCPA violation (e.g., profits derived from an illicit payment) or improper payments to an agent that aid or abet money-laundering activities under 18 U.S.C. § 2, may give rise to criminal liability beyond that imposed by the FCPA itself. The DOJ also has used the mail and wire fraud statutes, 18 U.S.C. §§ 1341, 1343, and the Travel Act, 18 U.S.C. § 1952, to prosecute bribery of foreign government officials. In addition, the Travel Act, unlike the FCPA, can reach foreign commercial bribery.

18) **Can An Individual Be Liable Under The Books-And-Records Provisions?**

Yes. By their terms, the books-and-records and internal controls provisions apply to issuers only. But natural persons can be subject to criminal or civil liability as aiders and abettors; for causing an issuer’s books-and-records violations; and for knowingly falsifying books and records or circumventing or failing to implement adequate internal controls. They also can be subject to civil liability as control persons. Individuals have been charged with either criminal or civil violations of the books-and-records or internal controls provisions in a number of recent cases. For example, in 2012, a former managing director of Morgan Stanley pleaded guilty to conspiracy to circumvent internal controls in connection with a scheme to bribe a Chinese official. In 2011, the former CEO of Innospec, Inc. was charged civilly with aiding and abetting violations of the books-and-records and internal controls provisions, circumventing internal controls, falsifying books and records, making false statements to accountants, and signing false certifications. And in 2009, two executives of Nature’s Sunshine Products were charged civilly, as control persons of the company, with violations of the books-and-records and internal controls provisions.

19) **Under What Circumstances Will The DOJ And The SEC Decline To Take Enforcement Action In An FCPA Matter?**

Obviously, a declination is a highly fact-specific decision, and it is rarely entirely clear why the DOJ and the SEC decide not to take enforcement action in a particular case. But in the Resource Guide, the agencies sought to shed more light on their decision-making process, offering six anonymized examples of past declinations. The examples shared several common features:

- Either a voluntary disclosure or the provision of the results of an internal investigation to the government;
- Prompt and thorough internal investigations;
- Cooperation with the government’s investigation; and
- Significant remedial action, such as improved training and internal controls and termination of employees and business partners involved in wrongdoing.
Other factors included the small size of improper payments and potential profits and the strength of the company’s preexisting compliance program. See Resource Guide at 77-79.
2013 DOJ Opinion Release

Opinion Release 13-01

In this Opinion Release, the U.S. Department of Justice ("DOJ") concluded that it would not take enforcement action where the Requestor, a partner at a U.S. law firm, sought to pay certain medical expenses for the daughter of a foreign official. The Requestor and the Requestor’s firm have represented the foreign official’s government in international arbitrations and may do so in the future. The foreign official has, however, no role in the selection of the Requestor or the law firm as counsel. In addition, while the Requestor has participated in pitching business to the foreign government, he is not the firm’s relationship attorney or originating attorney for the attorney-client relationship with the foreign government.

During the course of past representations, the Requestor became a personal friend of the foreign official, who works at the foreign country’s Office of the Attorney General ("OAG"). The official’s daughter suffers from a medical condition that cannot be effectively treated in her home country. The cost of treatment in another country, which the Requestor wants to pay from his personal funds, will be between $13,500 and $20,500. Under the law of the foreign country, a government agency, such as the OAG, that hires an outside law firm must publish a reasoned decision justifying the engagement, and it is a crime for any public servant to engage in corrupt behavior in connection with such contracting. In addition, the foreign official and the Requestor each discussed the proposed payment of medical expenses with their respective employers, and those employers have no objection. The OAG has provided a certified letter stating that the proposal will not violate local laws and is acceptable to the OAG. Finally, the expenses will be paid directly to the medical provider.

The DOJ concluded that these circumstances indicated an “absence of corrupt intent and provide adequate assurances that the proposed benefit to Foreign Official’s daughter will have no impact on Requestor’s or Requestor’s Law Firm’s present or future business with Foreign Country A.”
2013 and January 2014 FCPA Enforcement Activity

The summaries below, presented in alphabetical order, collect the significant events in FCPA cases during 2013 and the first month of 2014, including all new complaints and resolutions of ongoing matters. Over 2013, the DOJ brought 23 new FCPA criminal actions and the SEC brought or settled eight new FCPA civil enforcement actions. In January 2014, the DOJ announced FCPA charges against three individuals, and the DOJ and SEC brought and settled a criminal prosecution and parallel civil action against a company and its subsidiary.

Alcoa Inc.
Alcoa World Alumina LLC

Department of Justice and Securities and Exchange Commission
Guilty Plea as to Alcoa World Alumina LLC
Civil Settlement as to Alcoa Inc.
January 9, 2014

Nature of Conduct: Global aluminum company Alcoa, Inc.’s (Alcoa) subsidiary Alcoa World Alumina LLC (Alcoa World Alumina) paid commissions to a London-based consultant from which the consultant then paid over $110 million in bribes for a period ending in 2009 to government officials in Bahrain to maintain a key source of business.

Amount of Alleged Improper Payments: $110 million.

Benefit Obtained: $175 million in sales.

Type of Resolution and Sanction: Alcoa World Alumina pleaded guilty to criminal charges in the Western District of Pennsylvania; Alcoa settled an SEC action, agreeing to the entry of a civil injunction and the implementation of a global enhanced anti-corruption compliance program. The companies also agreed to pay $384 million to settle the parallel DOJ and SEC charges. This consisted of a criminal fine of $209 and forfeiture to the IRS of $14 million, which was credited toward payment of an SEC disgorgement judgment for $175 million.

10 This figure counts several related actions as separate prosecutions and does not include actions brought during 2013 that were not announced until after the end of the year. It includes two actions that resulted in non-prosecution agreements.
Of Note: The DOJ plea agreement and filings acknowledge Alcoa's current financial condition as a factor, as well as Alcoa's and Alcoa World Alumina’s extensive cooperation and subsequent anti-corruption remedial efforts. Both the DOJ and SEC payments are to be made in five annual installments. The civil forfeiture to the IRS appears to be a new feature in FCPA settlements. Additionally, the SEC Order “makes no findings that any officer, director or employee of Alcoa knowingly engaged in bribery,” but rests Alcoa’s liability on the theory that its subsidiaries acted as its agents.

Alfred C. Toepfer International Ukraine Ltd.
Archer Daniels Midland Company

Department of Justice and Securities and Exchange Commission
Guilty Plea and Civil Settlement as to Alfred C. Toepfer International Ukraine Ltd.
Non-Prosecution Agreement and Civil Settlement as to Archer Daniels Midland Company
December 20, 2013

Nature of Conduct: From 2002 to 2008, an indirect subsidiary of Archer Daniels Midland Company (ADM) in Ukraine, Alfred C. Toepfer International Ukraine Ltd. (ACTI Ukraine), together with another ADM subsidiary, Alfred C. Toepfer International G.m.b.H. (ACTI Hamburg), allegedly (i) made payments to third-party vendors to pass on to Ukrainian government officials to secure and expedite the release of value-added tax (VAT) refunds that were owed to ACTI Ukraine; and (ii) recorded the transactions as insurance premiums and other business expenses.

Amount of Alleged Improper Payments: Approximately $22 million.

Benefit Obtained: Approximately $41 million in VAT refunds.

Type of Resolution and Sanction: ACTI Ukraine pleaded guilty to one count of conspiracy to violate the anti-bribery provisions of the FCPA and agreed to pay $17.8 million in criminal fines. In a parallel action, ACTI Ukraine consented to a proposed final judgment with the SEC that orders the company to pay approximately $36.5 million in disgorgement and prejudgment interest. ADM entered into a non-prosecution agreement with the DOJ which requires it periodically to report its compliance efforts and continue implementing enhanced compliance programs and internal controls designed to prevent and detect FCPA violations.

Of Note: Neither the DOJ information nor the SEC complaint disputed that ACTI Ukraine was entitled to VAT refunds from the Ukrainian government. Indeed, they explicitly stated that at certain times from 2002 to 2010, the Ukrainian government delayed or avoided making the VAT refunds it owed, during which period ACTI Ukraine accumulated large receivables for VAT refunds of up to $46 million.
Alstom Executives (Lawrence Hoskins, Frederic Pierucci, William Pomponi, and David Rothschild)

Department of Justice
Indictments as to Hoskins and Pomponi; Indictment and Guilty Plea as to Pierucci
Information and Guilty Plea as to Rothschild

Nature of Conduct: Four current and former executives of a U.S. subsidiary of a French power company (reported by the media to be Alstom, S.A.) allegedly participated with other employees and a Japanese consortium partner in a scheme to secure a valuable power contract by using outside consultants to make payments to Indonesian officials. The DOJ alleged that when Hoskins, Pierucci, Pomponi, and others determined that the first consultant hired was “not effectively bribing key Indonesian officials,” they hired a second consultant and paid him an unusually large amount up-front so he could “get the right influence.”

- Lawrence Hoskins, former senior vice president for the Asia region, was charged in a second superseding indictment filed on July 30, 2013, with one count of conspiring to violate the anti-bribery provisions of the FCPA, six counts of violating the anti-bribery provisions of the FCPA, one count of conspiracy to launder money, and four counts of money laundering.

- Frederic Pierucci, an executive and former vice president of global sales, pleaded guilty on July 29, 2013, to one count of conspiracy to violate the anti-bribery provisions of the FCPA and one count of violating the FCPA. Pierucci, a French national, was initially indicted on November 27, 2012, but the indictment was not unsealed until April 16, 2013, two days after he was arrested at a New York airport. Two weeks later, on April 30, 2013, the DOJ filed a superseding indictment. In addition to the charges to which Pierucci pleaded guilty, he had faced additional counts of violating the FCPA, conspiring to launder money, and money laundering.

- William Pomponi, former vice president of regional sales, was initially indicted on April 30, 2013, but also charged, along with Hoskins, in a second superseding indictment filed on July 30, 2013. Pomponi was charged with one count of conspiring to violate the anti-bribery provisions of the FCPA, six counts of violating the anti-bribery provisions of the FCPA, one count of conspiracy to launder money, and four counts of money laundering.

- David Rothschild, former vice president of regional sales, pleaded guilty on November 2, 2012, to one count of conspiracy to violate the anti-bribery provisions of the FCPA. Rothschild was involved only until 2002, when Pomponi allegedly took over his role on the project. Because the guidelines sentencing range for Rothschild exceeded the statutory maximum sentence of five years’ imprisonment, the government agreed to recommend a five-year sentence. The plea agreement does not address
the recommended amount for a fine. The documents were unsealed on April 16, 2013.

**Amount of Alleged Improper Payments:** Payments to the first consultant allegedly totaled $666,880 between 2005 and 2009, and of that amount, $360,000 was allegedly wired from the consultant’s bank account in Maryland to a bank account in Indonesia to pay a member of the Indonesian Parliament. The amounts of the payments to the second consultant are not identified.

**Benefit Obtained:** The contract obtained was valued at approximately $118 million.

**Type of Resolution and Sanction:** Hoskins and Pomponi are contesting the charges. Pierucci and Rothschild pleaded guilty and are awaiting sentencing.

**Of Note:** Media reports suggest that a consortium partner involved in the conduct, described as a trading company headquartered in Japan, is Marubeni Corporation. In 2012, Marubeni entered into a two-year deferred prosecution agreement for FCPA violations in Bonny Island, Nigeria.

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**Bilfinger SE**

*Department of Justice*

*Deferred Prosecution Agreement*

*December 9, 2013*

**Nature of Conduct:** From late 2003 through June 2005, Germany-based engineering and services company Bilfinger SE conspired with its joint venture consortium partner Willbros International, Inc. and others to make more than $6 million in improper payments to Nigerian government officials to obtain and retain contracts valued at approximately $387 million related to the development of a natural gas pipeline system in the Niger Delta. Bilfinger and Willbros inflated their bid for the pipeline project by 3% to cover the cost of the bribes. At one point in the conspiracy, Bilfinger lent $1 million to Willbros when Willbros was unable to obtain the money to make its share of the improper payments.

**Amount of Alleged Improper Payments:** More than $6 million in cash payments to Nigerian officials.

**Benefit Obtained:** The contracts obtained were valued at approximately $387 million.

**Type of Resolution and Sanction:** Bilfinger entered into a three-year deferred prosecution agreement with the DOJ and agreed to pay a $32 million penalty. Bilfinger also agreed to retain an independent corporate compliance monitor for at least 18 months.
Of Note: As discussed in the mid-year update, the DOJ has been prosecuting cases in connection with the Niger Delta pipeline bribery scheme since 2006. Between 2006 and 2009, the DOJ charged four former Willbros executives and consultants with FCPA violations for their involvement in the conspiracy. In 2008, Willbros Group and Willbros International, Inc. agreed to pay a $22 million fine to settle allegations related to the bribery scheme in Nigeria and a separate scheme in Ecuador.

BizJet Executives (Peter DuBois, Jald Jensen, Bernd Kowalewski, and Neal Uhl)

Department of Justice
Indictments as to Jensen and Kowalewski
Guilty Pleas and Sentencings as to DuBois and Uhl
Filed January 5, 2012; Unsealed April 5, 2013

Nature of Conduct: Four executives were charged and two pleaded guilty to FCPA violations for their roles in a scheme to make payments to government officials in Mexico, Panama, and Brazil to help secure contracts for BizJet International Sales and Support Inc. (BizJet) to perform aircraft services. Some of these payments were made directly to government officials, and others were funneled through a shell company operated out of Jensen’s residence.

- Peter DuBois, the former vice president of sales and marketing, pleaded guilty to one count of violating the anti-bribery provision of the FCPA and one count of conspiring to do the same.
- Jald Jensen, the former sales manager, was indicted on one count of conspiring to violate the anti-bribery provision of the FCPA, six counts of aiding and abetting such a violation, one count of conspiracy to launder money, and three counts of aiding and abetting money laundering.
- Bernd Kowalewski, the former president and CEO, was indicted on one count of conspiring to violate the anti-bribery provision of the FCPA, six counts of aiding and abetting such a violation, one count of conspiracy to launder money, and three counts of aiding and abetting money laundering.
- Neal Uhl, the former vice president of finance, pleaded guilty to one count of conspiring to violate the anti-bribery provision of the FCPA.

The defendants were involved in approving, paying, and directing the manner and means of the payments. These charges stem from the same conduct for which BizJet entered a deferred prosecution agreement and paid an $11.8 million penalty in 2012.

Amount of Alleged Improper Payments: More than $500,000.
Benefit Obtained: BizJet received contracts to perform aircraft maintenance, repair, and operations (MRO) contracts for government agencies in Mexico and Panama. According to the deferred prosecution agreement with the company, the value of the benefits BizJet obtained exceeded $7 million.

Type of Resolution and Sanction: Kowalewski and Jensen are believed to remain abroad. DuBois and Uhl were sentenced to probation and eight months of home detention, which represents a significant reduction from their guidelines sentences based on their cooperation. Uhl also agreed to pay a $10,000 fine.

Of Note: Although the charges and guilty pleas relating to these four executives were unsealed in April 2013, they were filed and entered in January 2012, before the company resolved the charges against it in March 2012.

Frederic Cilins

Department of Justice
Criminal Complaint
April 15, 2013

Nature of Conduct: Frederic Cilins, a citizen of France, was charged with obstructing an investigation into whether a mining company paid bribes to obtain mining rights in the Republic of Guinea. Cilins worked as an agent for a non-U.S. business entity that media reports identify as BSG Resources Ltd., which is in the mining industry. BSG’s Guinean subsidiary allegedly entered into several contracts with a company owned at the time by a Guinean official’s wife, now a cooperating witness. The contracts provided, among other things, that the wife’s company would assist the Guinean subsidiary in obtaining permits for mining research. The complaint alleges that Cilins offered to pay the wife for the original contracts, which were the subject of a grand jury subpoena, so that he could destroy them, and to sign a statement asserting that there had been no such contracts. Shortly after the official’s wife asked for an advance payment, Cilins was arrested carrying $20,000. Cilins was charged with tampering with a witness, obstructing a criminal investigation, and destroying or falsifying documents in a federal investigation.

Amount of Alleged Improper Payments: The Guinean subsidiary allegedly entered into contracts with the official’s wife’s company through which it paid at least $7 million, in addition to percentages of the Guinean subsidiary’s capital and stock. Cilins allegedly offered the official’s wife a payment of up to $5 million to provide him with the original contracts.

Benefit Obtained: Lucrative mining rights in the Simadou region of Guinea.

Type of Resolution and Sanction: Cilins has pleaded not guilty, and the case is ongoing.
Diebold Inc.

Department of Justice and Securities and Exchange Commission
Deferred Prosecution Agreement and Civil Settlement
October 22, 2013

Nature of Conduct: In connection with the sale of ATMs, Diebold, Inc. (Diebold), an Ohio-based manufacturer of ATMs and bank security systems, made corrupt payments and falsified documents in China, Indonesia, and Russia. Between 2005 and 2010, employees of Diebold’s subsidiaries in China and Indonesia provided gifts, entertainment, and non-business travel to influence employees of state-owned banks to purchase Diebold products. The gifts in China included annual cash gifts of $100 to $600. The total value of gifts, entertainment, and travel provided to Chinese officials was approximately $1.6 million and to Indonesian officials was approximately $147,000. From 2005 through 2008, employees of Diebold’s Russian subsidiary paid $1.2 million to a distributor for services the distributor did not perform. The distributor passed some of the money along to employees of privately-owned banks to influence those banks to purchase ATM products. The payments to private employees were not actionable under the FCPA’s anti-bribery provision, which targets payments to government officials. Both the DOJ and the SEC, however, charged Diebold with alleged books-and-records violations in connection with the payments. The payments in China and Indonesia were likewise falsely recorded in the company’s books and records. The method used to conceal the payments included sending payments to third parties designated by the banks and improperly labeling non-business travel as training.

Amount of Alleged Improper Payments: More than $1.8 million in travel, entertainment, and gifts to officials of government-owned banks in China and Indonesia; $1.2 million in payments to officials of private banks in Russia.

Benefit Obtained: The contracts obtained or retained in China and Indonesia were valued at approximately $281 million.

Type of Resolution and Sanction: Diebold entered into a three-year deferred prosecution agreement (DPA) with the DOJ and agreed to pay a $25.2 million penalty. Diebold also agreed to retain an independent corporate compliance monitor for at least 18 months. In its settlement agreement with the SEC, Diebold agreed to pay an additional $22.97 million in disgorgement and prejudgment interest.

Of Note: Diebold agreed to appoint an independent corporate compliance monitor for at least 18 months. If the monitor certifies at the end of 18 months that Diebold’s “compliance program is reasonably designed and implemented to detect and prevent violations of the anti-corruption laws and is functioning effectively” and the DOJ agrees, the monitorship will be terminated and Diebold will be allowed to self-report to the DOJ for the remainder of the term of the DPA. Prior to this case, the DOJ had not created this monitorship/self-reporting structure in the FCPA context. In addition, the SEC used the books-and-records provisions to reach conduct not covered by the FCPA: The alleged payment of bribes to officials of a
private foreign business. According to the SEC’s allegations, the alleged bribes were recorded as payments under a services contract, and were designed to hide the true nature of the payments.

Direct Access Partners Executives and Related Parties (Tomas Alberto Clarke Bethancourt, Iuri Rodolfo Bethancourt, José Alejandro Hurtado, Haydee Leticia Pabon, María de los Ángeles González Hernandez, and Ernesto Lujan)

Department of Justice and Securities and Exchange Commission
Civil and Criminal Complaints
Criminal Complaints Filed Under Seal March 12, 2013; Unsealed June 10, 2013
Civil Complaints Filed May 7, 2013, and June 12, 2013

Nature of Conduct: Three employees of a U.S. broker-dealer, Direct Access Partners (DAP) and a senior official in the Venezuelan state economic development bank, Banco de Desarrollo Económico y Social de Venezuela (BANDES) were charged with FCPA violations for their alleged roles in a bribery scheme related to the direction of trading business from BANDES to DAP. The SEC filed civil charges against the former employees and two other individuals as described below.

- On March 12, 2013, criminal charges were brought against Tomas Alberto Clarke Bethancourt (Clarke), José Alejandro Hurtado (Hurtado) and María de los Ángeles González de Hernandez (González) for their roles in the scheme. Clarke and Hurtado were members of DAP’s Global Markets Group, which offered fixed-income services to institutional clients, including BANDES. González was a BANDES official who oversaw the development bank’s overseas trading activity.

- The complaint alleges that González directed trading business to DAP in exchange for a percentage of the commission payments that DAP earned on the deals. Some of the trades executed by DAP for BANDES allegedly made no sense from a business perspective, and were entered into only to earn commissions that the co-conspirators then split. In addition, payments to González were disguised through use of intermediary corporations and offshore accounts. Clarke and Hurtado allegedly helped devise the commission split and also received a percentage of the proceeds.

- According to the separately-filed SEC complaint, see infra, Hurtado served as the intermediary between DAP and González: he was paid more than $6 million in kickbacks from DAP – disguised as salary payments – and he remitted a portion of that money to González. Hurtado’s wife, Haydee Leticia Pabon, also received approximately $8 million in markups or markdowns on BANDES trades that were funneled to her from DAP in the form of sham finders’ fees. Ernesto Lujan, a managing partner at DAP and the branch manager of its Miami offices who established the Global
Markets Group, oversaw the scheme. González allegedly received a total of at least $5 million in improper payments. Clarke, Hurtado and González were arrested in Miami on May 3, 2013, and Lujan was arrested on June 12, 2013.

- Clarke, Hurtado and Lujan were charged with conspiracy to violate the FCPA and the Travel Act, as well as substantive violations of both statutes. González was charged with conspiracy to violate the Travel Act and violation of the Travel Act.

- The SEC charged Clarke, Hurtado and Lujan with fraud for their roles in the scheme on May 7 and June 12, 2013. On June 12, 2013, the SEC also brought fraud charges against Iuri Rodolfo Bethancourt (who lives in Panama), alleging that he received more than $20 million in fraudulent proceeds from DAP through a Panamanian shell company, a portion of which he then paid González. Hurtado’s wife, Haydee Leticia Pabon, was also charged with fraud on May 7, 2013, for her role in the scheme.

**Amount of Alleged Improper Payments:** Total payments to González were allegedly in excess of $5 million.

**Benefit Obtained:** The BANDES trades generated more than $66 million in revenue for DAP from transaction fees.

**Type of Resolution and Sanction:** The SEC’s complaint charges Clarke, Bethancourt, Hurtado, and Pabon with fraud and seeks final judgments that would require them to return ill-gotten gains with interest and pay financial penalties. The SEC did not allege FCPA violations, but rather brought other types of fraud charges under the federal securities laws. The SEC’s investigation is ongoing. The criminal cases against González, Clarke, Hurtado and Lujan are pending.

**IBM Corporation**

*Securities and Exchange Commission*

*Approval of Civil Settlement*

*July 26, 2013*

**Nature of Conduct:** More than two years after IBM Corporation (IBM) and the SEC first reached a $10 million FCPA settlement agreement, a U.S. district judge finally signed off on the deal. The parties had originally struck the deal in March 2011, but not until July 26, 2013, did Judge Richard Leon of the U.S. District Court for the District of Columbia approve it. He did so only after IBM further agreed to make annual reports to him and the SEC regarding its FCPA compliance efforts and to immediately report any potential FCPA violations – or even the fact that it is the subject of an investigation – to the court and the SEC. The settlement resolved the SEC’s allegations that employees of IBM’s subsidiaries in China and South Korea paid government officials substantial sums of money and entertained
government officials in order to win government contracts and obtain confidential information.

**Amount of Alleged Improper Payments:** $207,000.

**Benefit Obtained:** $5.3 million.

**Type of Resolution and Sanction:** IBM settled with the SEC agreeing to the entry of an injunction against violating the books and records and internal control provisions of the FCPA, and the payment of the disgorgement of $5,300,000, prejudgment interest of $2,700,000, and a $2,000,000 civil penalty.

**Of Note:** This was the second significant FCPA settlement that Judge Leon held up awaiting such assurances, having previously delayed an agreement between the SEC and Tyco. Judge Leon may have applied increased scrutiny to the two settlements because IBM and Tyco were repeat offenders.

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**In the Matter of Koninklijke Philips Electronics N.V.**

*Securities and Exchange Commission
Offer and Settlement
April 5, 2013*

**Nature of Conduct:** Koninklijke Philips Electronics N.V. (Philips), a Netherlands-based electronics maker, entered into an Offer and Settlement with the SEC relating to improper payments allegedly made by its Polish subsidiary (Philips Poland) to government-employed healthcare officials in order to secure public tender offers from Polish healthcare facilities seeking to purchase medical equipment. From 1999 through 2007, representatives of Philips Poland entered into arrangements with officials of various Polish healthcare facilities whereby Philips submitted the technical specifications of its medical equipment to officials drafting the tenders who incorporated the specifications of Philips’ equipment into the contracts. Incorporating the specifications of Philips’ equipment in the tenders’ requirements greatly increased the likelihood that Philips would be awarded the bids. Certain of the healthcare officials involved in the arrangements with Philips also decided to whom to award the tenders, and when Philips won the contracts, the officials were given the improper payments by employees of Philips Poland. At times, Philips Poland employees also kept a portion of the improper payments as a “commission.” The Philips Poland employees involved in the improper payments often utilized a third party agent to assist with the improper arrangements and payments to Polish healthcare officials. The improper payments made by employees of Philips Poland to Polish healthcare officials were falsely characterized and accounted for in Philips’ books and records as legitimate expenses. At times those expenses were supported by false documentation created by Philips Poland employees and/or third parties.
Amount of Alleged Improper Payments: The improper payments made by employees of Philips Poland to the Polish healthcare officials usually amounted to 3% to 8% of the contracts’ net value.

Benefit Obtained: Philips Poland’s improper payments to healthcare officials related to at least 30 public tenders over a period of eight years.

Type of Resolution and Sanction: Philips entered into an Offer and Settlement with the SEC to resolve books and records and internal controls violations, agreeing to pay $4.5 million in disgorgement and prejudgment interest for books and records violations.

Of Note: The SEC described Philips as having “self-reported” even though Philips went to U.S. authorities to report its conduct only after the Polish subsidiary was being prosecuted by Polish authorities for misconduct in government contracting. According to the SEC settlement documents, the individuals in the Polish prosecution were indicted for violating laws related to public tenders for the purchase of medical equipment, and the Polish indictment described the same payments that led to the SEC’s FCPA charges against Philips.

Paul G. Novak

Department of Justice
Sentencing
May 3, 2013

Nature of Conduct: Novak was sentenced for his role in a bribery scheme involving Willbros International, Inc. (Willbros), a subsidiary of Willbros Group Inc. Novak and his alleged co-conspirators (former Willbros executives Kenneth Tillery, Jason Steph, Jim Bob Brown, and others) agreed to pay more than $6 million in bribes to government officials in Nigeria. They facilitated the payments by causing Willbros to enter “consultancy agreements” with two consulting companies Novak represented, purportedly in exchange for consultancy services. In return, Willbros secured a construction contract to build a natural gas pipeline system in the Niger Delta. The indictment charged Novak with one count of conspiracy to violate the FCPA’s anti-bribery provisions, two counts of violating the FCPA’s anti-bribery provisions, and one count of conspiring to launder money.

Amount of Alleged Improper Payments: More than $6 million in the overall scheme.

Benefit Obtained: Obtaining and retaining a natural gas pipeline system in the Niger Delta valued at approximately $387 million.

Type of Resolution and Sanction: Novak had pleaded guilty in 2008 to one count of conspiring to violate the anti-bribery provisions of the FCPA and one count of violating the anti-bribery provisions of the FCPA. He was sentenced to 15 months’
imprisonment followed by two years of supervised release and ordered to pay a $1 million fine.

Of Note: Willbros Group Inc. and Willbros International entered into a deferred prosecution agreement in 2008 and agreed to pay a $22 million penalty. The companies satisfied their obligations under the agreement, and the charges were dismissed in 2012. Jim Bob Brown and Jason Steph were sentenced for their roles in the conspiracy in 2006 and 2007, respectively. Alleged co-conspirator Kenneth Tillery was charged in an indictment unsealed in 2008 but remains a fugitive.

Parker Drilling Company

Department of Justice and Securities and Exchange Commission
Deferred Prosecution Agreement and Civil Settlement
April 16, 2013

Nature of Conduct: Panalpina World Transport (Nigeria) Limited, working on behalf of Parker Drilling Company (Parker Drilling), fraudulently avoided paying customs fees by submitting false paperwork claiming that Parker Drilling’s rigs had been exported and re-imported into Nigeria, when in fact they remained in place. Based on that conduct, a Nigerian government commission determined Parker Drilling had violated Nigeria’s customs laws and assessed a $3.8 million fine. To avoid paying the fine, Parker Drilling allegedly contracted through its law firm to retain an intermediary agent who used the money he received to, among other things, entertain government officials. Senior executives allegedly recorded the intermediary agent’s payments in the company’s books with vague explanations. Subsequently, the Nigerian commission reduced the fine against Parker Drilling to $750,000 without a factual basis for doing so. The DOJ charged Parker Drilling with violating the FCPA’s anti-bribery provisions, and the SEC charged the company with violations of the FCPA’s books and records and internal controls provisions.

Amount of Alleged Improper Payments: From January to May 2004, Parker Drilling paid an agent $1.25 million, which the agent reportedly spent on, among other things, entertaining government officials.

Benefit Obtained: The customs fine against the company was reduced by $3.05 million. Resolving the dispute with the government commission also allowed Parker Drilling to nationalize and then sell its Nigerian rigs, but the filings do not quantify that benefit.

Type of Resolution and Sanction: Parker Drilling entered into a three-year deferred prosecution agreement with the DOJ and agreed to pay a $11.76 million penalty. In entering into the agreement, the DOJ considered Parker Drilling’s extensive, multi-year investigation and widespread remediation. As part of the settlement with the SEC, Parker Drilling agreed to the entry of a civil injunction and to pay $3.05 million in disgorgement and $1.04 million in prejudgment interest.
Of Note: The investigation of Parker Drilling stemmed from a previous investigation of Panalpina (and other oil and gas companies and subsidiaries) that resulted in criminal penalties totaling $156 million.

PetroTiger Executives (Knut Hammarskjold, Joseph Sigelman, and Gregory Weisman)

Department of Justice
Criminal Complaints as to Hammarskjold and Sigelman
Guilty Plea as to Weisman
Filed November 8, 2013; Unsealed January 6, 2014

Nature of Conduct: According to the charging papers, Hammarskjold, Sigelman, and Weisman, the former co-CEOs and former general counsel, respectively, of PetroTiger, Ltd. (PetroTiger), a British Virgin Islands oil and gas services company with offices in New Jersey, caused PetroTiger to make several payments in late 2010 to an official of the Colombian state-owned oil company, Ecopetrol S.A. (Ecopetrol). In exchange, the official influenced Ecopetrol to approve PetroTiger’s contract with another company to perform oil-related services in Colombia. The government alleges that the three executives initially attempted to funnel the payments to the official through his wife, who submitted invoices to PetroTiger for consulting services that she never performed. After the transfer to the wife’s bank account was rejected for various reasons, the executives sent the money directly to an account in the official’s name.

Amount of Alleged Improper Payments: More than $330,000.

Benefit Obtained: Contract worth $39.6 million, which has generated approximately $3.5 million in profits to date.

Type of Resolution and Sanction: Not applicable as to Hammarskjold and Sigelman. Guilty plea as to Weisman.

Of Note: These are the latest in a long line of FCPA enforcement actions related to the oil industry. Notably, however, PetroTiger is a relatively small player, at least compared to behemoths like Total, S.A., and Weatherford International. In addition, it is highly unusual for a company’s general counsel to be charged as a direct participant in an FCPA conspiracy.
Ralph Lauren Corporation

Department of Justice and Securities and Exchange Commission
Non-Prosecution Agreements
April 22, 2013

Nature of Conduct: The manager of Ralph Lauren Corporation's (Ralph Lauren) subsidiary in Argentina bribed customs officials with payments and gifts over a five-year period in order to obtain paperwork necessary for goods to clear customs (including prohibited goods) or to avoid inspections of goods. The payments were made through a customs clearance agency, which created fake invoices to justify the improper payments. During the five-year period in which the payments were made, the company did not have an anti-corruption program and did not provide any anti-corruption training or oversight for its Argentine subsidiary.

Amount of Alleged Improper Payments: Approximately $568,000 in payments and gifts of perfume, dresses and handbags.

Benefit Obtained: Favorable treatment during customs process.

Type of Resolution and Sanction: Ralph Lauren entered into non-prosecution agreements (NPAs) with both the DOJ and the SEC, agreeing to pay an $882,000 penalty to the DOJ and $734,846 in disgorgement and prejudgment interest to the SEC.

Of Note: This was the first SEC NPA obtained by a corporation in an FCPA matter.

Alain Riedo

Department of Justice
Indictment
October 15, 2013

Nature of Conduct: Riedo, a Swiss citizen, was Vice President and General Manager, and then a Senior Vice President and officer, of Maxwell Technologies, Inc.'s Swiss subsidiary, Maxwell Technologies S.A. (Maxwell). According to the indictment, Riedo conspired with another executive and a third party agent to add a 20% mark-up to the price of high-voltage/high-tension capacitors sold by Maxwell to Chinese state-owned and -controlled companies. After the companies paid the marked-up amount, Riedo caused Maxwell to wire the mark-up to accounts controlled by the agent, who then passed the funds on to certain of the state-owned and -controlled companies' employees to secure sales to those companies. Riedo also arranged for the payments to the agent to be recorded in Maxwell's books as commissions, sales expenses, or consulting fees. The indictment charged Riedo with eight counts of FCPA violations, including conspiracy and substantive anti-bribery and internal controls/books and records violations.

Amount of Alleged Improper Payments: More than $2 million.
Benefit Obtained: Sales contracts worth over $15 million in revenue and $5.6 million in profits.

Type of Resolution and Sanction: Not applicable.

Of Note: Maxwell Technologies, Inc., entered into a three-year deferred prosecution agreement with the DOJ in January 2011, agreeing to pay an $8 million criminal penalty. It also settled an SEC civil action and agreed to pay more than $6.2 million in disgorgement and prejudgment interest.

Stryker Corporation

Securities and Exchange Commission
Offer and Settlement
October 24, 2013

Nature of Conduct: Stryker Corporation (Stryker), a Michigan-based medical technology company, allegedly provided $2.2 million in unlawful cash payments, gifts, hospitality, and charitable donations for the benefit of foreign government officials while describing the payments as legitimate expenses in the company’s books and records. The charged conduct concerned Stryker’s subsidiaries in Mexico, Poland, Romania, Argentina, and Greece. The SEC faulted Stryker for not adequately implementing its corporate anti-corruption policies at its foreign subsidiaries. The improper gifts and hospitality included paying for vacations and, in at least one case, lodging for a foreign official to attend a conference abroad, where the officials were viewed as key to Stryker obtaining business. The SEC also found a charitable donation to fund a public university research lab to be corrupt, where the lab was of particular interest to a research physician viewed as key to obtaining business from the university.

Amount of Alleged Improper Payments: $2.2 million in cash payments, gifts, travel, hospitality, and charitable donations.

Benefit Obtained: The SEC alleged Stryker made profits of $7.5 million on sales obtained as a result of the improper payments and benefits.

Type of Resolution and Sanction: Stryker entered into an Offer and Settlement with the SEC for a total of $13 million, comprised of $7.5 million in disgorgement, plus a civil penalty and prejudgment interest.

Of Note: While payments and donations made directly to public entities—as opposed to individual public officials or employees—are typically not covered by the FCPA, in this case SEC found that a $200,000 donation to a public university in Greece was improper where it would be used to establish a laboratory considered the “pet project” of a physician who could influence the purchase of Stryker products by two university medical clinics.
**Total S.A.**

*Department of Justice and Securities and Exchange Commission*

*Deferred Prosecution Agreement and Civil Settlement*

*May 29, 2013*

**Nature of Conduct:** Total, S.A. (Total), a French oil and gas company, made corrupt payments to the National Iranian Oil Company (NIOC) to obtain development contracts in 1995 and 1997. Seeking to re-enter the Iranian oil and gas market in 1995, Total began negotiating with an Iranian official who served as the chairman of an Iranian state-owned and -controlled engineering company. Total entered into a purported consulting agreement with the engineering company, pursuant to which Total made corrupt payments to an intermediary designated by the official, to secure NIOC’s signing of a development agreement with Total for two oil and gas fields, Sirri A and E. Total was awarded the contract and made approximately $16 million in corrupt payments pursuant to the consulting contract.

In 1997, Total sought to negotiate a contract with NIOC to develop a portion of the South Pars gas field and again entered into a purported consulting agreement for the purpose of making corrupt payments. In September 1997, Total was awarded a 40 percent interest in developing phases two and three of the South Pars field and over the following seven years made approximately $44 million in corrupt payments.

**Amount of Alleged Improper Payments:** Approximately $60 million.

**Benefit Obtained:** Contracts for the development of oil and gas fields (Sirri A and E, and a portion of South Pars).

**Type of Resolution and Sanction:** Total agreed to pay a $245.2 million monetary payment to the DOJ, which entered into a three-year deferred prosecution agreement with the company. Total also agreed to cooperate with the DOJ and foreign law enforcement and to retain an independent corporate compliance monitor for a period of three years. In addition, Total entered into a settlement agreement with the SEC agreeing to the entry of a cease and desist order and the payment of an additional $153 million in disgorgement and prejudgment interest.

**Of Note:** Charges for violations of French law were also recommended by the prosecutor of Paris (François Molins, Procureur de la République) of the Tribunal de Grande Instance de Paris.
Uriel Sharef

Securities and Exchange Commission
Civil Settlement
April 15, 2013

Nature of Conduct: Uriel Sharef, a former officer and board member of Siemens AG and a dual citizen of Israel and Germany, was indicted in 2011 for allegedly participating in Siemens’ decade-long scheme to bribe senior officials in Argentina in order to retain a government contract to provide national identity cards to all Argentine citizens. Sharef was the most senior officer charged in connection with the scheme. He allegedly met with payment intermediaries in the United States and enlisted subordinates to conceal the payments by circumventing the company’s internal accounting controls. The SEC charged Sharef with knowingly violating the books-and-records and internal controls provisions of the FCPA and aiding and abetting Siemens’ books-and-records and internal controls violations. In addition, the DOJ charged Sharef with conspiracy to violate the FCPA’s anti-bribery provisions, conspiracy to commit wire fraud, and substantive money laundering and wire fraud offenses.

Amount of Alleged Improper Payments: According to the SEC, the scheme involved over $100 million in payments to government officials, $31.3 million of which were paid after Siemens became subject to U.S. securities laws by becoming an issuer. Sharef allegedly agreed to make $27 million of those payments.

Benefit Obtained: The payments were made to secure and then retain a $1 billion contract to produce national identity cards for Argentine citizens.

Type of Resolution and Sanction: Without admitting or denying the charges against him, Sharef agreed to a civil settlement with the SEC enjoining him from violating the anti-bribery and internal controls provisions of the FCPA. He also agreed to pay a civil penalty of $275,000, the second-largest civil penalty ever assessed against an individual in an FCPA case. The DOJ’s case against Sharef remains pending.

Of Note: Siemens AG settled the charges against it in 2008 by paying a total of over $1.6 million in fines, penalties, and disgorgement to the DOJ, the SEC, and the German government.

Weatherford International

Department of Justice and Securities and Exchange Commission
Deferred Prosecution Agreement and Civil Settlement
November 26, 2013

Nature of Conduct: Employees of three subsidiaries of Swiss oil services company Weatherford International (Weatherford) made corrupt payments or
otherwise engaged in “corrupt conduct” in order to obtain contracts from officials in Africa and the Middle East. In one scheme, employees established and operated a joint venture with two local entities in Angola controlled by foreign officials and their relatives from 2004 through at least 2008. The foreign officials selected the local entities, and Weatherford employees knew from the outset that their “real partners” were the foreign officials themselves. Although the local entities did not contribute capital, expertise, or labor to the joint venture, Weatherford distributed dividends to the entities, knowing that the dividends would be directed to the foreign officials. In exchange for the payments, foreign officials awarded lucrative contracts to Weatherford, provided inside information to Weatherford regarding competitors’ pricing, and took contracts away from Weatherford’s competitors and awarded them to the joint venture.

In a second scheme, also in Angola, Weatherford employees funneled bribery payments to a foreign official through a freight forwarding agent in 2006 in order to obtain the official’s approval for renewal of a contract between Weatherford and another private company. (Local law required that the contract renewal be ratified by an instrumentality of the national government.) Weatherford retained the freight forwarding agent through a consultancy agreement; notably, the agent refused to sign an initial draft of the consultancy agreement that prohibited giving anything of value to a government official. According to the criminal information filed by DOJ, the agent rejected the clause, stating that “in view of the nature of the business I cannot accept the original wording.” Ultimately, Weatherford paid the agent for services it never performed, and the agent forwarded some of those monies to the foreign official.

Finally, in a third scheme, Weatherford employees in an unnamed Middle Eastern country awarded improper “volume discounts” to a distributor who supplied Weatherford products to a government-owned national oil company, believing that those discounts were being used to create a slush fund for purposes of bribing decision-makers at the national oil company. Between 2005 and 2011, Weatherford paid approximately $15 million in volume discounts to the distributor, which was chosen by the foreign official and was owned, in part, by the country’s royal family. Weatherford did not conduct any due diligence on the distributor, notwithstanding the fact that (a) the distributor provided goods directly to an instrumentality of the government; (b) Weatherford was specifically directed by a foreign official to contract with the distributor; and (c) Weatherford executives knew that a member of the country’s royal family had an ownership interest in the distributor.

In addition to these three bribery schemes, Weatherford employees paid over $1.4 million in kickbacks to the Iraqi government in order to maintain certain drilling and equipment contracts relating to the U.N. Oil-for-Food program. Weatherford recorded these kickbacks as legitimate costs and fees and concealed the payments from the United Nations.

**Amount of Alleged Improper Payments:** Over $16 million, including “volume discounts.”

**Benefit Obtained:** Profits of $54,486,410.
**Type of Resolution and Sanction:** To resolve the criminal charges, Weatherford pleaded guilty to violating the FCPA and entered into a deferred prosecution agreement that requires it retain an independent corporate compliance monitor for 18 months and to continue to implement an enhanced compliance program. The company also agreed to pay $87.2 million in criminal fines. In settling the SEC’s charges, Weatherford agreed to be enjoined from future violations of the FCPA and the internal controls and books and records provisions. In addition, Weatherford paid $90.9 million in disgorgement, $4.4 million in prejudgment interest and a $1.875 million civil penalty assessed for lack of cooperation during the SEC’s investigation. Weatherford also paid approximately $100 million to other government entities (including the U.S. Department of Commerce and the Treasury Department) for the conduct described above and other misconduct involving export control and sanctions laws.

**Of Note:** The FCPA actions by the DOJ and the SEC were part of a larger investigation of Weatherford conducted jointly with the Treasury Department’s Office of Foreign Assets Control (OFAC) and the Commerce Department’s Bureau of Industry and Security (BIS). The additional $100 million in fines noted above relate to export controls violations involving sales by Weatherford to Iran, Sudan, Cuba, and Syria. A press release stated that this was the largest settlement outside of the banking industry that the Treasury Department ever had entered and the largest civil penalty in BIS’ history. The SEC charges covered these export controls violations, as well as the misconduct in the Middle East and Africa.
2013 FCPA-Related Litigation

**Pemex v. Siemens**

In August 2013, a federal judge dismissed a RICO lawsuit brought by Pemex, the Mexican state-owned oil company, against Siemens. The suit sought damages related to a worldwide bribery scheme for which Siemens had paid a record $1.6 billion to United States and European authorities in 2008. This is the latest of several dismissals of cases in which foreign government-associated entities have attempted to assert victims’ rights in connection with FCPA offenses.

Pemex claimed in the suit that Siemens AG and a South Korean company bribed Pemex officials to secure oil refinery projects in Mexico and demanded $500 million in damages. Judge Louis Stanton of the U.S. District Court for the Southern District of New York dismissed the case on territoriality grounds (i.e., there were not sufficient contacts with the United States to support jurisdiction and RICO did not apply extraterritorially) because he determined that it was a “foreign conspiracy against a foreign victim conducted by foreign defendants participating in foreign enterprises.” In dismissing the case on these grounds, Judge Stanton did not address the question of whether Pemex was, in fact, the victim of the corruption.

**SEC v. Straub**

**SEC v. Sharef**

In February 2013, the U.S. District Court for the Southern District of New York issued two opinions addressing the question of whether, and to what extent, U.S. federal courts have personal jurisdiction over foreign business executives in civil actions brought by the SEC to enforce the FCPA. These decisions have potentially serious consequences for companies that are “issuers” within the meaning of the FCPA – that is, companies that are registered with the SEC – as they would permit FCPA civil enforcement actions against foreign national employees operating entirely outside the United States, except in fairly narrow circumstances.

In one case, SEC v. Straub, et al., the SEC alleged that three executives of the Hungarian telecommunications company Magyar Telekom, Plc. (Magyar), all foreign nationals, had engaged in a scheme to bribe Macedonian officials. According to the SEC, the defendants also signed letters to Magyar’s auditors falsely asserting that they had disclosed all relevant financial information and were unaware of any unlawful activity. The SEC claimed that Magyar’s auditors relied on these false statements in preparing their audit reports, which became part of Magyar’s annual SEC filings.

The SEC brought a civil enforcement action accusing the defendants of violating the FCPA’s anti-bribery provision and with aiding and abetting Magyar’s violations of the FCPA’s requirement that public companies maintain accurate books and records. The defendants moved to dismiss the complaint, arguing principally that the SEC failed to establish that they had sufficient minimum contacts with the
United States to justify the court’s exercise of personal jurisdiction over them consistent with the Constitution’s Due Process Clause. The court held that sufficient minimum contacts existed because the defendants made false statements to Magyar’s auditors knowing that those statements likely would affect Magyar’s financial filings with the SEC in the United States.

In another case, *SEC v. Sharef, et al.*, the SEC brought a civil enforcement action against a German national who had worked for the Argentinean subsidiary of Siemens AG. According to the SEC, the defendant participated in a scheme to bribe Argentinean officials, but did not sign any of the false certifications that ultimately resulted in the parent corporation making false SEC filings.

Nevertheless, the SEC brought a civil enforcement action against the defendant. But the court concluded that the defendant’s alleged participation in a bribery scheme by a company that filed periodic SEC reports, by itself, did not create sufficient minimum contacts with the United States to justify the exercise of personal jurisdiction. This case was different from *Straub*, the court ruled, because the defendant neither authorized the alleged bribes, nor participated in the alleged cover-up through misrepresentations to auditors, nor knew of any cover-up.

Taken together, these two cases suggest that U.S. courts will not exercise personal jurisdiction over foreign national employees of an “issuer” in FCPA civil enforcement cases merely because they participated in an alleged bribery scheme overseas, but will do so if they took some action creating a nexus with the United States (such as misrepresentations to auditors leading to false SEC filings).

**Writt v. Shell Oil Co.**

In June 2013, a Texas Court of Appeals reinstated a defamation suit brought by a former employee of Shell Oil Company (Shell) in which he claimed the company had falsely reported to government investigators that he had participated in FCPA violations. The court held that, under Texas law, Shell’s communications with the DOJ were not absolutely immune to defamation suits, but instead were actionable if made recklessly or with malice. Thus, while reports made in good faith to investigators would still be protected, companies may be forced to litigate the question of good faith rather than enjoy an absolute immunity for communications with the DOJ.

In 2007, Shell was contacted by the DOJ regarding its involvement with freight forwarder Panalpina and agreed to launch its own internal investigation of the relationship. In February 2009, the company reported to the government that former employee Robert Writt had recommended reimbursing contractors in Nigeria for what he knew had been bribe payments. About twenty months later, in November 2010, Shell’s Nigerian subsidiary, along with Panalpina and four other oil and gas companies, settled FCPA charges with the DOJ. The Shell subsidiary entered into a deferred prosecution agreement and agreed to pay a $30 million criminal penalty.
The court reasoned that “defamatory statements . . . provided by private parties to prosecutorial and law enforcement agencies prior to the initiation of criminal proceedings[] are not subject to the absolute privilege.” Although criminal proceedings were later brought against the company, the appeals court held that at the time of Shell’s report to government investigators, the prospect of criminal charges was too remote to bring Shell’s statements within the absolute privilege.
2013 Non-U.S. Foreign Corruption Cases

Technip Executives (France)

In February 2013, a Parisian court fined two former executives of French company Technip S.A. (Technip) for their roles in the KBR Nigerian bribery scheme, one of the biggest FCPA matters of all time, and one that involved tens of millions of dollars in improper payments, resulting in contracts worth tens of millions of dollars in profits, to KBR, Technip, and other companies involved in the scheme.

The French court’s approach highlights that U.S. enforcement is typically far harsher than foreign authorities’ enforcement in this area. Specifically, Technip’s former general manager, Jean-Marie Deseilligny, was ordered to pay a €10,000 fine, while the former commercial manager for Africa, Etienne Gory, was fined €5,000. The French prosecutor had requested fines of €100,000 each. No prison time was imposed. By comparison, in 2012, Jeffrey Tesler, a London-based agent through whom improper payments were channeled, was sentenced in U.S. federal court to 21 months in prison, fined $25,000, and ordered to forfeit $149 million.

Between 1995 and 2004, Technip was part of a consortium, along with KBR, Snamprogetti Netherlands B.V., and JGC Corporation, that funneled more than $180 million to Nigerian officials. The payments were routed through third parties in order to win $6 billion worth of business constructing a liquefied natural gas facility on Bonny Island in the Niger Delta. All four companies have settled actions with the DOJ. The four corporate settlements resulted in recoveries of more than $1.5 billion in penalties and disgorgement and are among the top ten largest FCPA settlements ever.
Jenner & Block’s Foreign Corrupt Practices Act Experience

Jenner & Block has one of the nation’s leading FCPA practices, representing global companies in defending FCPA claims and in all phases of compliance with the FCPA and other anti-corruption laws, including development of internal controls, training, compliance counseling, internal investigations and negotiations with the U.S. and foreign governments. Our lawyers literally wrote the book on the FCPA: They are authors and editors of a leading treatise on this topic, Practicing Under the U.S. Anti-Corruption Laws (Aspen Publishers 2010 & Supplements).

The hallmark of a strong FCPA practice is keeping clients out of trouble -- by working with in-house lawyers and business people to develop appropriate internal controls that meet the company’s specific needs and that detect and prevent violations; by designing and/or conducting regular training of company personnel; by structuring, advising on, and performing anti-corruption due diligence, whether for third-party service providers or in the context of mergers and acquisitions; and by counseling on the resolution of specific compliance issues as they arise in day-to-day business operations.

Our attorneys have developed compliance programs for major multinational companies across numerous sectors of the economy, including the defense industry, financial institutions, oil and gas, media companies, government contractors of all kinds and retail establishments, among others. We have provided training to entities with literally tens of thousands of corporate personnel as well as for smaller businesses with fewer than 500 employees. Our team also brings a nuanced understanding of the intersections of the FCPA with federal securities laws, Sarbanes-Oxley, Dodd-Frank, export control laws and other anti-corruption laws, including the U.K. Bribery Act.

When issues arise, our clients benefit from Jenner & Block’s world-class reputation and skill in conducting internal investigations. Our range and depth of experience enables us to conduct internal investigations with care and rigor, ensuring that our clients obtain the facts they need and that the investigation will withstand the strictest of scrutiny by regulators. At the same time, we understand how to operate flexibly and expeditiously and appreciate the need to conduct investigations in an efficient and flexible manner that is sensitive to the needs of our clients’ business operations. We also provide our clients with seasoned judgment to assess the gravity and veracity of the allegations and to make informed decisions under difficult, and often time-sensitive, circumstances. In addition, we advise clients on the most effective methods to mitigate the impact of any alleged misconduct, including the potential benefits and risks of voluntary disclosure when appropriate.

Jenner & Block brings longstanding experience in negotiating and resolving matters with the U.S. Department of Justice, the U.S. Securities and Exchange Commission and other authorities. We have represented many companies before these agencies, in all stages of enforcement actions, from initial investigation by the government to final resolution. We also have a deep understanding of trends in FCPA enforcement and the regulators’ approach to the issues our clients face. As
a result, we understand how to advocate effectively for our clients before the relevant government agencies to help achieve the best possible result.

We offer clients a wealth of experience, with two former U.S. Attorneys, the former Associate Attorney General of the United States (the third-ranking official in the U.S. Department of Justice) and numerous former prosecutors from jurisdictions throughout the country. In addition, our practice includes several former U.S. Securities and Exchange Commission enforcement attorneys, including the former Associate Director of the SEC’s Division of Enforcement. As a group, our lawyers have represented dozens of companies in FCPA and anti-corruption matters of all types.
Practice Member Biographies

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Ms. Bugan is a litigator who regularly represents clients in internal and government investigations, Congressional inquiries, and compliance related matters. She represents both individuals and companies in criminal and civil matters. Clients turn to Ms. Bugan to conduct sensitive, high-stakes internal investigations relating to possible violations of criminal or civil fraud statutes. She has extensive experience with the FCPA and the False Claims Act and has successfully defended clients in qui tam suits. Ms. Bugan is fluent in Spanish and French and has conducted several investigations in Spanish for multinational clients with operations in Latin America. Ms. Bugan received her J.D. in 2002 from Harvard Law School, where she served as an executive editor of the Harvard Law Review. She received her B.A. from Kenyon College, magna cum laude, in 1991.

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Mr. Fuentes is a former professional journalist and was a federal prosecutor at the Chicago U.S. Attorney’s Office for five years. His varied experience includes complex international antitrust and civil matters. These matters have entailed international internal investigations in the United States and Japan, and the management of civil and criminal litigation in India. At the U.S Attorney’s Office, Mr. Fuentes investigated and tried cases involving international narcotics smuggling, mortgage fraud, financial institution fraud, criminal tax evasion, identity theft and mail and wire fraud. In addition, Mr. Fuentes briefed and argued numerous criminal appeals in the U.S. Court of Appeals for the Seventh Circuit. Mr. Fuentes graduated cum laude from Northwestern University School of Law in 1993 and received his undergraduate degree from Northwestern’s Medill School of Journalism in 1986.

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Ms. Hardgrove-Koleno represents several clients in white-collar criminal matters, corporate internal investigations, and compliance counseling. Corporations seek her help with disputes over transactions, partnerships, licenses and contracts. In addition, she has been involved in many complex commercial litigation matters, as well as numerous cases in the arbitration arena. Ms. Hardgrove-Koleno received her B.S., magna cum laude, from the University of Illinois in 1993 and her J.D., magna cum laude, from the University of Illinois College of Law in 1996.
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Ms. Pinciak-Madden has represented both corporations and individuals in connection with federal criminal investigations involving bribery, public corruption, bid rigging, and fraud, and has counseled clients in connection with corporate internal investigations. She has advised corporations on the development and implementation of corporate compliance programs, with particular emphasis on anti-corruption and anti-bribery measures, and has worked with corporations to design and develop code of conduct provisions dealing with the conduct of ethical business practices. She is also the co-author of a manual titled *A 50-State Guide to the Laws Governing Gifts to State and Local Government Officials and Employees*, which was prepared to assist clients with monitoring compliance with applicable gratuity laws. Ms. Pinciak-Madden graduated with honors from DePaul University in 1996. She received her J.D. with high honors from Chicago-Kent College of Law in 1999, where she served as Executive Articles Editor of the *Chicago-Kent Law Review*.

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Mr. Schar is a former Assistant U.S. Attorney for the Northern District of Illinois, where he tried more than 20 criminal cases. In January 2014, the New Jersey Legislature retained Mr. Schar as special counsel for the newly created investigative committee charged with continuing the inquiry surrounding the decision to close access lanes to the George Washington Bridge. He has led domestic internal investigations and international FCPA investigations on behalf of a variety of clients. He also has extensive experience handling compliance reviews around the globe. In addition, Mr. Schar has represented clients in litigation involving civil RICO actions, fraud claims, antitrust allegations, and breach of contract disputes. He has led a number of grand jury investigations into complex corruption and financial matters and has briefed and argued ten appeals in the Seventh Circuit Court of Appeals. He was the lead prosecutor in both corruption trials of former Illinois Governor Rod Blagojevich. He graduated from Stanford University in 1994 and *cum laude* from Northwestern University School of Law in 1997, where he was elected to the Order of the Coif and served as an editor of the *Northwestern University Law Review*.

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Ms. Schrantz has extensive experience conducting internal investigations for both publicly-held and private corporate clients in a variety of industries. She has conducted investigations into potential accounting and healthcare fraud as well as international investigations and global compliance reviews involving the FCPA. Ms. Schrantz has counseled clients on remediation and compliance strategies and has assisted them in responding to Congressional inquiries and complying with consent decrees. Ms. Schrantz received her B.A. from the University of Illinois in 1997 and her J.D., *cum laude*, from the Indiana University School of Law in 2000.
Mr. Sklarsky has substantial experience in representing individuals and entities in grand jury investigations, U.S. Securities and Exchange Commission investigations and enforcement actions, criminal trials, qui tam litigation, complex civil litigation, and appearances before regulatory bodies. He is a member of the Illinois Leading Lawyers Network in the area of white collar criminal defense, is recognized by Super Lawyers as one of the top 100 lawyers in Illinois and is recognized in Chambers USA and Chambers Global as one of America’s leading lawyers for business. Mr. Sklarsky joined the firm in 1986 after serving more than eight years as an Assistant U.S. Attorney for the Northern District of Illinois and over four years as an Assistant State’s Attorney for Cook County, Illinois. Mr. Sklarsky graduated, cum laude, from Harvard College in 1968 and received his J.D. degree from the University of Wisconsin in 1973.

Mr. Stauffer represents clients in domestic and international internal investigations, compliance counseling, government investigations and complex commercial litigation on topics that include the FCPA, accounting fraud and health care fraud. He has also written a variety of articles relating to internal investigations and corporate compliance and maintains the Internal Investigations Resource Center on the firm’s website. Mr. Stauffer received his B.A., summa cum laude, in 1983 from the University of Missouri in philosophy and political science. He received his J.D., magna cum laude, in 1986 from Harvard Law School, where he served as an executive editor for the Harvard Civil Rights/Civil Liberties Law Review. From 1988 to 1990, Mr. Stauffer served as law clerk to the Honorable Ilana D. Rovner on the U.S. District Court for the Northern District of Illinois.

Mr. Sullivan has handled civil and criminal trial and appellate litigation for more than 55 years. He has been with the firm since 1954, except for his time as U.S. Attorney for the Northern District of Illinois, 1977-81. He has argued numerous cases in the Illinois Supreme Court, the U.S. Supreme Court and many federal Courts of Appeal. He has represented many indigent persons in civil and criminal litigation, including prisoners incarcerated at Guantanamo Bay, Cuba. Mr. Sullivan attended Loras College until 1949 and received his L.L.B., cum laude, from Loyola University Chicago School of Law in 1952.
Mr. Valukas focuses on major civil and white collar criminal litigation, representing individuals and corporations in contested proceedings throughout the nation. Fortune 500 companies and public entities seek his counsel on matters ranging from government contracts and health care to class actions, ethics violations and internal corporate investigations. In 2009, Mr. Valukas was appointed as the Examiner in the Lehman Brothers Holdings bankruptcy, reputed to be the largest such case in U.S. history. Mr. Valukas has also been appointed to a number of special investigative roles for the City of Chicago, the Chicago Transit Authority and the Chicago Housing Authority. Mr. Valukas received his B.A. from Lawrence University in 1965 and his J.D. from Northwestern University School of Law in 1968.

Ms. Ansari has experience in international and domestic internal investigations and healthcare litigation. Ms. Ansari has played an integral role in conducting cross-border investigations in Asia and Latin America. She is also involved in defending qui tam matters in federal court against healthcare companies. In addition to her private practice, Ms. Ansari has argued on behalf of an indigent defendant in the Illinois Supreme Court. Ms. Ansari received her B.A. from Northwestern University in 2005 and her J.D., cum laude, from University of Notre Dame Law School in 2009.

Ms. Jacobson has extensive experience in internal investigations and corporate compliance. She has worked on global compliance reviews involving the FCPA, as well investigations of potential fraud, money laundering, and theft of intellectual property. She advises clients on corporate compliance programs and has drafted compliance materials for publicly held and private corporate clients. Ms. Jacobson has also represented clients in civil litigation involving claims of tort, breach of contract, product liability, legal malpractice, misappropriation of trade secrets, and unfair competition. Ms. Jacobson obtained her B.A. from Mt. Holyoke College in 1982 and her J.D. from the University of Chicago Law School in 2007.

Mr. Kennedy has assisted clients with several different matters involving the FCPA, including conducting domestic and international internal investigations and performing compliance reviews. Mr. Kennedy received a B.A. in history, economics, and Spanish from Washington University in St. Louis in 2005. In 2008, he received his J.D. from Vanderbilt University Law School.
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Ms. Negron focuses on internal investigations and corporate compliance programs. She has experience in numerous matters involving the FCPA, including conducting international internal investigations and compliance reviews. Prior to joining Jenner & Block in 2012, Ms. Negron worked for a law firm in Washington, DC, where she was involved in a large FCPA compliance monitorship, conducted FCPA due diligence reviews, and assisted clients in revising corporate compliance policies. Ms. Negron received a B.S. from Hillsdale College in 2004 and a J.D. from Harvard Law School in 2007.

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Ms. Rakowski has been substantially involved in conducting internal investigations and corporate compliance reviews. She has also been involved in litigation at the trial and appellate levels. Ms. Rakowski received her A.B., cum laude, from Harvard University in 2003 and her J.D., cum laude, from Northwestern University School of Law in 2008.

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Mr. Abbott's broad white-collar experience includes defending corporations and corporate executives and counseling major corporations on the structure and effectiveness of their compliance programs. This often includes reviewing existing ethics and anti-corruption guidance, reporting mechanisms, and payment controls. He has substantial experience counseling clients about the FCPA and, specifically, the adequacy of the design and implementation of a global compliance program. Mr. Abbott received his B.A. in 1993 from the University of California, Irvine and his J.D., cum laude, from the Georgetown University Law Center in 2003.

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Mr. Jauregui has conducted internal investigations and handled civil and criminal matters for U.S. and foreign manufacturers, investment banks, and a Big Four accounting firm. He has also represented corporate executives and other individuals. Mr. Jauregui's matters have involved the FCPA, the Sherman Antitrust Act, RICO, tax and money-laundering crimes, health care fraud, compliance with import and export laws, and numerous other federal, state and local laws. Mr. Jauregui received his A.B. from Occidental College in 1998 and a J.D. from the Columbia University School of Law in 2007, where he was a Harlan Fiske Stone Scholar.
Mr. Barkow is an accomplished trial and appellate lawyer with experience in both criminal and civil matters. As a federal prosecutor for 12 years in Manhattan and Washington, DC, he was involved in some of the most significant international terrorism and white collar criminal cases in the country, as well as in prosecuting a wide variety of other offenses, from homicide, international narcotics trafficking, domestic violence, sexual abuse, and drug and gun street crimes, to securities fraud. Mr. Barkow also litigated civil and criminal matters under federal consumer protection statutes. During his tenure in the government, he tried more than 40 cases and briefed and argued more than ten cases on appeal. In 2005, Mr. Barkow was awarded the Attorney General’s Award for Exceptional Service, the highest award bestowed by the Attorney General within the Department of Justice. Mr. Barkow was the Executive Director of the New York University School of Law’s Center on the Administration of Criminal Law. Mr. Barkow established the nonprofit advocacy organization, which is dedicated to promoting good government practices in the criminal justice system, in 2008. He received his A.B., summa cum laude, from the University of Michigan and his J.D., cum laude, from Harvard Law School, where he served as the Notes Office Co-Chair and Supervising Editor for the Harvard Law Review.

Mr. Barofsky focuses his practice on white collar investigations, complex commercial litigation, monitorships and examinerships. He was the first Special Inspector General of the historic federal $700 billion Troubled Asset Relief Program (TARP). Previously, Mr. Barofsky spent eight years as a federal prosecutor in the U.S. Attorney’s Office for the Southern District of New York. He investigated and prosecuted some of the most significant cases in the country, including the successful investigation, trial and conviction of former Refco, Inc. officers for their promotion of and participation in a $2.4 billion securities and accounting fraud. Mr. Barofsky received his B.A. and B.S., magna cum laude, from University of Pennsylvania in 1992 and his J.D., magna cum laude, from New York University School of Law in 1995.

Ms. Jestin counsels companies and executives in criminal, regulatory, and congressional investigations, including representing clients before the U.S. Department of Justice, the U.S. Securities and Exchange Commission, and the U.S. Senate Permanent Subcommittee on Investigations. She also conducts internal investigations on behalf of corporate clients, provides counsel to senior management on FCPA and other compliance
issues, and served as counsel to the Examiner in the Lehman Brothers bankruptcy examination. She joined Jenner & Block after serving as an Assistant U.S. Attorney and a supervisor in the Criminal Division of the Eastern District of New York, where she was involved in investigations, prosecutions and trials involving fraud, money laundering and other white collar offenses. Ms. Jestin obtained her B.A. from the University of Texas in 1991 and her J.D., *cum laude*, from Georgetown University Law Center in 1996.

**Tarsha A. Phillibert, Partner**
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Ms. Phillibert has significant experience in white collar defense matters and in corporate internal investigations. Her practice includes counseling individuals and companies in criminal, regulatory, and complex civil matters. She has conducted internal investigations into financial, accounting and other fraud. Recently, she represented the court-appointed Examiner in the Lehman Brothers bankruptcy case. Ms. Phillibert received her B.A. in 1998 from Boston University and her J.D. from Case Western Reserve University in 2006.

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Mr. Pope has represented individuals and entities as defendants, targets, subjects or witnesses in criminal and regulatory investigations and proceedings, and has conducted internal investigations around the world. His matters have included insider trading, high-profile government corruption cases, tax crimes, health care fraud, the Madoff case, FCPA issues, and theft of intellectual property. His clients have ranged from hedge funds, to manufacturers, to health care providers, to the government. Before joining Jenner & Block, Mr. Pope served as Deputy Attorney General-in-Charge, Criminal Division, of the New York State Attorney General’s Office. Mr. Pope’s private sector experience includes a stint as a Vice President at Goldman Sachs, where he provided counsel on strategic business initiatives, as well as operational, compliance and product risk. Mr. Pope received his A.B., *cum laude*, from Harvard College and his J.D. from Yale Law School, where he was Notes Editor of the *Yale Law Journal*.

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Mr. Ziegler focuses his practice on complex civil litigation and government enforcement matters, including commercial and financial disputes and corporate governance counseling. Prior to joining Jenner & Block, he served as Senior Vice President, Legal Affairs and General Counsel of 3M Company, where he was responsible for, among other things, its business conduct compliance program. Before joining 3M, Mr. Ziegler was a litigation partner at Cleary, Gottlieb, Steen & Hamilton in New York for more than two decades, and previously served as an Assistant U.S. Attorney in the Southern District of New York and as Deputy Chief Appellate Attorney in that office. Mr. Ziegler has extensive experience in litigating and arbitrating complex disputes,
including white collar matters. He represented a major financial institution in its $600 million resolution of federal criminal charges and related regulatory and civil claims in the Southern District of New York and has handled numerous SEC investigations. Mr. Ziegler graduated from Yale College, summa cum laude, in 1971. He received his J.D., magna cum laude, from Harvard Law School in 1975 and was an editor of the Harvard Law Review.

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Mr. Cipolla represents corporations and individuals in criminal and regulatory matters, including before the U.S. Department of Justice, the U.S. Securities and Exchange Commission, the Financial Crisis Inquiry Commission, and the New York County and Westchester County District Attorney's Offices, as well as providing counsel for attendant civil litigations. He also conducts internal investigations and represents corporations in complex commercial litigations. Mr. Cipolla received his B.A., magna cum laude, from Columbia University in 2004 and his J.D., cum laude, from Harvard Law School in 2007.

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Ms. Giovanola has experience in internal investigations, regulatory and criminal matters, securities litigation, and complex commercial litigation. Ms. Giovanola's pro bono practice has included criminal representations as well as the successful representation of a fair housing organization in an administrative hearing against a property management company accused of discriminatory rental practices. Ms. Giovanola received her B.A. with Highest Distinction from the University of California, Berkeley in 2002 and her J.D. from Stanford Law School in 2006.

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Ms. Perry represents corporations and individuals in federal and state civil litigations, criminal cases, and investigations conducted by the U.S. Department of Justice, U.S. Securities and Exchange Commission, the Financial Industry Regulatory Authority, and the Manhattan District Attorney's office. Ms. Perry's practice also frequently involves conducting internal investigations in the financial services, manufacturing, and energy industries. In addition, she advises clients on compliance issues, including ethics, anti-corruption, and employment matters. Ms. Perry received her B.A., with distinction, from Stanford University in 2003 and her J.D. from Yale Law School in 2006.
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Mr. Ellsworth has represented a number of companies and executives in confidential securities investigations, grand jury investigations, and private class actions and derivative actions. He advises boards of directors and others with regard to internal investigations involving allegations of accounting, insider trading and FCPA violations. He recently negotiated one of the lowest money settlements ever given to an individual under the FCPA in a case involving alleged bribery of Chinese officials following the company’s payment of a substantial penalty. From 1993-2005, Mr. Ellsworth was Assistant Chief Litigation Counsel for the U.S. Securities and Exchange Commission’s Trial Unit. Mr. Ellsworth obtained his law degree from Harvard Law School, where he was an editor on the *Harvard Civil-Rights and Civil Liberties Law Review*. His undergraduate degree is in economics from Michigan State University, where he received a B.A. with Highest Honors.

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Ms. Liu represents corporations and individuals, including many government contractors, in connection with criminal and civil investigations, with a particular focus on the FCPA and the False Claims Act. Prior to rejoining the firm in 2009, Ms. Liu was an Assistant U.S. Attorney for the District of Columbia. She also held a number of senior positions in the U.S. Department of Justice, including Deputy Assistant Attorney General in the Civil Rights Division; Counsel to the Deputy Attorney General for national security affairs; and Deputy Chief of Staff in the National Security Division. Ms. Liu graduated from Harvard College, *summa cum laude*, Phi Beta Kappa, in 1995. She received her J.D. in 1998 from Yale Law School, where she was an editor of the *Yale Law Journal*.

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Mr. Lowman previously served as Assistant Chief Litigation Counsel for the U.S. Securities and Exchange Commission’s Division of Enforcement, where he was primary trial counsel in a wide variety of civil and administrative enforcement actions brought in the U.S. District Court for the Southern District of New York and elsewhere. Since joining the firm, Mr. Lowman has represented companies and officers and directors before the SEC, including those involving the FCPA, and advised companies on a variety of FCPA compliance issues and provided due diligence advice involving overseas acquisitions. While at the SEC, Mr. Lowman investigated, and where necessary tried complex financial fraud cases, matters involving insider trading, FCPA violations, market manipulation schemes and potential U.S. securities law violations by an off-shore brokerage firm and transfer agents. Mr. Lowman received

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Mr. Newkirk is Co-Chair of Jenner & Block’s Securities Litigation and Enforcement practice. He focuses on U.S. Securities and Exchange Commission enforcement matters, related internal investigations, litigation, and counseling. In 2010 and 2011, Mr. Newkirk was recognized by *Chambers USA* as one of the country’s leading lawyers in Securities/Regulation/Enforcement Law. In addition, Mr. Newkirk was recognized in *Super Lawyers for Securities Litigation*, as one of seven “Leading Lawyers” in the areas of Internal Investigations/Corporate Governance, and as one of “Washington’s Best Lawyers” by *Washingtonian* magazine in Securities Law. Previously, Mr. Newkirk was a senior official with the U.S. Securities and Exchange Commission for 19 years. Mr. Newkirk received an L.L.B with Distinction in 1966 from Cornell Law School, where he was an editor of the *Cornell Law Review*; he received his B.A. from the College of Arts and Sciences, Cornell University, in 1964.

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Mr. Perrelli founded and chairs the firm’s Government Controversies and Public Policy Litigation practice group. From 2009 to 2012, Mr. Perrelli was the Associate Attorney General of the United States, the third-ranking official at the U.S. Department of Justice. In that role, he oversaw all of the civil litigation of the United States (as well as specialized areas of criminal enforcement), including the Department’s Antitrust Division, Civil Division, Civil Rights Division, Environment and Natural Resources Division, and Tax Division. He represents companies facing litigation, regulatory compliance issues, and other problems where law, business and government regulation intersect, drawing upon a wealth of experience in government service and the Washington, DC political environment. Mr. Perrelli received his A.B. in History from Brown University in 1988 and his J.D. from Harvard Law School in 1991, where he served as Managing Editor of the *Harvard Law Review*.

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Mr. Barnaby represents clients in securities enforcement actions and in response to investigations arising under the False Claims Act and the FCPA. Most recently, Mr. Barnaby served as a key member of a team devising and implementing a multi-country operations review in response to potential FCPA violations. Mr. Barnaby received his B.A., *magna cum laude*, from the George Washington University in 2003 and his J.D., *magna cum laude*, from Harvard Law School in 2008.
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Ms. Kaplan represents clients in white collar criminal defense and complex civil litigation matters. She also has substantial experience conducting internal investigations and advising clients regarding compliance with the FCPA. Ms. Kaplan received her B.A., *summa cum laude*, from Northwestern University in 2006 and her J.D. from Yale Law School in 2009.

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Mr. Khoo focuses his practice on helping clients understand and comply with the FCPA. He has played a lead role in conducting internal investigations, performing compliance reviews, and providing employee training to clients. Mr. Khoo received a B.A. in economics from the University of Chicago in 1994. In 1998, he was awarded an M.S. in Journalism from the Columbia University Graduate School of Journalism. Mr. Khoo received his J.D. in 2008 from Yale Law School, where he was an editor of the *Yale Law Journal*. 