

Investigations, Compliance and Defense

Three Key Takeaways from the DOJ Fraud Section's 2020 Annual Report



By: [Andrew Weissmann](#) and [Tali R. Leinwand](#)

Last week, the Fraud Section, part of the US Department of Justice (DOJ) Criminal Division, released its annual year-in-review report.^[1] In this article, we highlight three key takeaways from the 2020 report.

The Fraud Section is an integral part of DOJ's efforts to investigate and prosecute complex white-collar crimes, particularly large national and international corporate cases. It also has exclusive jurisdiction and oversight of all Foreign Corrupt Practices Act (FCPA) matters. The Fraud Section's annual report, begun in 2015, is a look at the past year, and typically it is also a harbinger of the Fraud Section's goals and priorities for the coming year. But the recent change in administration—and with it, possible changes in white-collar priorities and resources—lends an element of uncertainty as to what we can expect in 2021.

The report details significant cases from 2020, including corporate resolutions, trials, guilty pleas, and initiatives, from across the Fraud Section's three litigating units: the FCPA Unit,^[2] the Health Care Fraud Unit, and the Market Integrity and Major Frauds Unit. It provides a helpful statistical breakdown of individual prosecutions and corporate resolutions.

1. The Statistics Are Revealing

The Fraud Section's 2020 statistics offer much to unpack. The number of individual cases declined; the number of corporate cases remained constant; and the monetary penalties in the US and abroad increased.

Specifically, in 2020, the Fraud Section publicly charged 326 individuals and convicted 213 (mainly as a result of its health care unit, as is typical each year).^[3] These figures reflect a decrease from 2019, when 478 individuals were charged and 256 individuals were convicted (a decrease of approximately 32% and 17%, respectively).^[4] Trial convictions decreased by 57% from 37 in 2019 to 16 in 2020.^[5] These numbers are not at all surprising when taking into account the restrictions and limitations imposed by the COVID-19 pandemic.^[6]

Moreover, in spite of the COVID-19 pandemic, the number of corporate resolutions remained roughly constant (decreasing from 15 in 2019 to 13 in 2020).^[7] Particularly notable is the increase in fines; last year's \$2.9 billion in US criminal fines, penalties, forfeiture, disgorgement, restitution, and victim compensation payments exceeded the total 2019 figure by \$1 billion.^[8] Likewise, the total global monetary amounts—reflecting the total enforcement action amounts payable to US and foreign criminal and civil authorities—increased dramatically from approximately \$3.2 billion in 2019 to \$8.9 billion in 2020.^[9] Two matters account for over half of that \$8.9 billion: Airbus SE, the France-based global provider of civilian and military aircraft, paid over \$3.9 billion to resolve foreign bribery and ITAR charges with US, French, and UK authorities,^[10] and Goldman Sachs paid over \$2.9 billion for its FCPA violations as part of a coordinated resolution with criminal and civil authorities in the US, UK, Singapore, and elsewhere.^[11] Brazil also played a prominent role in several resolutions, and was even publicly touted for its “significant cooperation” in DOJ's announcement of Sargeant Marine Inc.'s guilty plea to

an eight-year FCPA conspiracy.^[12] Cooperation with Brazil was reflected in other prosecutions as well: As part of Vitol Inc.'s Deferred Prosecution Agreement, DOJ credited \$45 million—approximately one-third of the company's total criminal penalty—against the amount that Vitol was required to pay to resolve an FCPA investigation by the Brazilian Ministério Público Federal,^[13] and the plea agreement for J&F Investimentos S.A. likewise provided that up to 50% of the criminal payments owed to the US would go to payments J&F was required to make to Brazilian authorities.^[14]

The increase in total global monetary amounts is significant. The nearly threefold increase from 2019 to 2020 is strong evidence that international cooperation is on the rise. The global monetary numbers do not go up organically, but because of a decision by DOJ or a foreign regulator to involve their counterparts, sometimes as a result of an effort by a company to prompt it. For the Fraud Section and a foreign country to agree to share the financial penalties indicates that both played a role in the investigation. And for the amount being allocated to the foreign country portion of the penalty to rise so significantly is a clear sign that foreign countries are increasingly involving the US in their corporate investigations and prosecutions.

2. No Independent Compliance Monitors Were Installed in 2020

Notwithstanding the vigor with which the Fraud Section has continued to pursue white-collar investigations and prosecutions, the report is notable for its absence of cases where an independent compliance monitor was installed. That downturn reflects the de-emphasis on monitors, and corporate compliance in general, that marked the Trump administration.

There may be individual reasons in any particular resolution as to why a monitorship was not required. For example, as part of the Airbus SE resolution noted above, a French regulator ostensibly assumed a significant prospective oversight role.^[15] But in other instances, like the resolution involving Goldman Sachs noted above—which resulted in the largest FCPA penalty ever^[16]—or the JPMorgan resolution involving tens of thousands of episodes of unlawful trading,^[17] the decision not to install an independent compliance monitor is more telling of administration priorities. It would not be surprising to see a renewed interest in monitorships and compliance generally under the Biden administration.

3. The Formation of the Special Matters Unit

Around May 2020, the Fraud Section announced the creation of the Special Matters Unit (SMU), which is primarily tasked with identifying and handling issues related to privilege at all stages of criminal investigations and litigations.^[18] The SMU conducts filter reviews to ensure that prosecutors are not exposed to potentially privileged material, litigates privilege-related issues in connection with Fraud Section cases, and provides training and guidance to Fraud Section prosecutors.

Previously, the Fraud Section established a dedicated taint team to filter through privileged materials recovered from searches and seizures; prior to that, prosecutors not assigned to the case at issue would review any seized materials for privileged information.^[19] The formalization of this work through the creation of a separate and independent unit reflects the growing need to address privilege issues raised by massive leaks of information, e.g., the leak of the Panama Papers in April 2016, large-scale document productions, and judicial interest in filter practices.^[20]

The Fraud Section, armed with this new unit, as well as its data analytics and large number of discovery personnel (and large budget), clearly is continuing to position itself to be the locus in DOJ for large-scale, cross-border corporate matters, whether teamed with a local US Attorney's Office (as it was in the Volkswagen matter) or on its own (as in the Libor suite of cases).

Looking ahead to 2021, combatting fraud in connection with the Paycheck Protection Program (PPP)—which was created by Congress as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act in late March 2020 to help American businesses suffering from the economic impact of the COVID-19 pandemic—is likely to be a central initiative. To that end, the report notes a 12-person increase in the number of individuals charged in PPP-related cases in the first two months of 2021; the number of PPP-related cases increased from 67 to 74 in that same timeframe.^[21] Those cases have been brought in over 20 different federal districts, emphasizing not only the Fraud Section’s reach but also its focus on COVID-19 relief fraud.^[22]

Taken together, the three statistical snapshots for 2020—individual cases, corporate cases, and monetary penalties—show that the Fraud Section’s trajectory in recent years, and especially in 2020, contrasts with the nation-wide statistics of white-collar crime enforcement, which has declined during the Trump administration.^[23] It remains to be seen whom President Biden will nominate to be the assistant attorney general for the Criminal Division; that person will undoubtedly play a key role in determining the Fraud Section’s priorities. But the 2020 annual report makes clear that the pursuit of significant international economic crime matters will continue apace by the career prosecutors in the Fraud Section.

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[1] Fraud Section, “Year in Review: 2020” (Feb. 24, 2021), <https://www.justice.gov/criminal-fraud/file/1370171/download> [hereinafter Fraud Section 2020 Report].

[2] For a discussion of key FCPA developments and trends from 2020, see Jenner & Block, Anti-Corruption Enforcement 2020 Year in Review, https://jenner.com/system/assets/publications/20600/original/Jenner_and_Block-Anti_Corruption_Enforcement-2020_Year_in_Review.pdf?1610730806 [hereinafter Jenner 2020 FCPA Guide].

[3] Fraud Section 2020 Report, at 5. The published statistics exclude sealed cases.

[4] Fraud Section, “Year in Review: 2019” (2019), <https://www.justice.gov/criminal-fraud/file/1245236/download>, at 4 [hereinafter Fraud Section 2019 Report].

[5] Fraud Section 2020 Report, at 5; Fraud Section 2019 Report, at 4.

[6] Despite the decline in individual cases in the last year, the Fraud Section has seen an increase in individual prosecutions over time. Indeed, the number of publicly charged individuals and individual convictions in 2020 exceeded the 2016 numbers (326 vs. 300, and 213 vs. 201, respectively). *Compare* Fraud Section 2020 Report, at 5 *with* Fraud Section, “Year in Review: 2016” (Feb. 2016), <https://www.justice.gov/criminal-fraud/page/file/929741/download>, at 2.

[7] Fraud Section 2019 Report, at 5; Fraud Section 2020 Report, at 6. *See also* A. Weissmann and C. Braamskamp, “3 Lessons from Updated FCPA Resource Guide,” *Law360* (July 8, 2020), <https://www.law360.com/articles/1290202/3-lessons-from-updated-fcpa-resource-guide> (noting the steady enforcement of FCPA cases over the last few years).

[8] Fraud Section 2019 Report, at 5; Fraud Section 2020 Report, at 6.

[9] *Id.*

[10] Fraud Section 2020 Report, at 11.

[11] *Id.* at 11–12; Office of Public Affairs, “Goldman Sachs Charged in Foreign Bribery Case and Agrees to Pay Over \$2.9 Billion,” DOJ (Oct. 22, 2020), <https://www.justice.gov/opa/pr/goldman-sachs-charged-foreign-bribery-case-and-agrees-pay-over-29-billion>.

[12] Office of Public Affairs, “Sargeant Marine Inc. Pleads Guilty and Agrees to Pay \$16.6 Million to Resolve Charges Related to Foreign Bribery Schemes in Brazil, Venezuela, and Ecuador,” DOJ (Sept. 22, 2020), <https://www.justice.gov/opa/pr/sargeant-marine-inc-pleads-guilty-and-agrees-pay-166-million-resolve-charges-related-foreign>.

[13] Office of Public Affairs, “Vitol Inc. Agrees to Pay Over \$135 Million to Resolve Foreign Bribery Case,” DOJ (Dec. 3, 2020), <https://www.justice.gov/opa/pr/vitol-inc-agrees-pay-over-135-million-resolve-foreign-bribery-case>.

[14] Office of Public Affairs, “J&F Investimentos S.A. Pleads Guilty and Agrees to Pay Over \$256 Million to Resolve Criminal Foreign Bribery Case,” DOJ (Oct. 14, 2020), <https://www.justice.gov/opa/pr/jf-investimentos-sa-pleads-guilty-and-agrees-pay-over-256-million-resolve-criminal-foreign>.

[15] Fraud Section 2020 Report, at 11; Jenner 2020 FCPA Guide, at 18.

[16] Fraud Section 2020 Report, at 11–12.

[17] *Id.* at 35.

[18] *Id.* at 4; Ines Kagubare, “Fraud Section to Create New Privilege Unit” (May 13, 2020), <https://globalinvestigationsreview.com/just-anti-corruption/privilege/fraud-section-create-new-privilege-unit>.

[19] Adam Dobrik, “DOJ Fraud Section Sets Up Dedicated Privilege Team” (June 24, 2019), <https://globalinvestigationsreview.com/just-anti-corruption/doj-fraud-section-sets-dedicated-privilege-team>.

[20] *See, e.g., In re: Search Warrant Issued June 13, 2019*, 942 F.3d 159 (4th Cir. 2019) (reversing a district court’s refusal to enjoin a DOJ filter team’s review of materials seized from a law firm during a criminal investigation).

[21] Fraud Section 2020 Report, at 33.

[22] *Id.*

[23] *See, e.g., P. Hurtado et al., “Trump Oversees All-Time Low in White Collar Crime Enforcement”* (Aug. 10, 2020), <https://www.bloomberg.com/news/articles/2020-08-10/trump-oversees-all-time-low-in-white-collar-crime-enforcement>. According to DOJ calculations, the average annual number of white-collar defendants was down 26% for President Trump’s first three years in office from the average under President Obama. *Id.* DOJ’s statistical data for 2020 is not yet publicly available.