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# Anti-Corruption Enforcement Review

## Emerging Issues and Developments

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In the U.S., Foreign Corrupt Practices Act (FCPA) enforcement remains an area of emphasis for the U.S. Department of Justice (DOJ) and the U.S. Securities and Exchange Commission (SEC), with the latter agency aggressively expanding its reach over global operations of U.S. issuers, in part through its increased reliance on whistleblowers as sources of information. Outside the U.S., including in several major markets for multinational businesses, foreign regulators have initiated a number of high-profile anti-bribery investigations or actions, sometimes in coordination with U.S. authorities. In this review, we focus on recent developments and emerging issues in anti-corruption enforcement and their implications for multinational companies, including those engaged in M&A activity.

### I. Recent Significant FCPA Enforcement Actions

The DOJ and SEC's recent FCPA enforcement actions against issuers have been significant in several respects, not only because of the staggering size of the penalties.[1] Issuers had plenty to digest, including:

- The SEC's increased willingness to impose liability under the FCPA's accounting provisions on parent companies for conduct occurring at foreign subsidiaries;
- The increased focus on the role of legal and compliance officers in reviewing third-party transactions; and
- The DOJ's continued attempts to highlight leniency for cooperating corporations that voluntarily disclose FCPA allegations.

#### *Focus on Compliance and Overseas Internal Controls*

The SEC's settlements with Alcoa Inc. (Alcoa)[2] and the Hewlett-Packard Co. (HP)[3] highlighted the agency's view that parent companies are accountable for accounting violations at the subsidiary level when the agency believes that the parent company failed to establish adequate anti-corruption policies and internal controls at the subsidiary. In both Alcoa and HP, the SEC charged the parent companies with violating the FCPA's books and records provision, 15 U.S.C. §78m(b)(2)(A), based on false accounting entries made by foreign subsidiaries regarding commission payments through third parties, and additionally, in the case of Alcoa, sales to a purported distributor, when the transactions were actually designed to conceal improper payments to government officials. The SEC also held both Alcoa and HP liable under the FCPA's internal controls provision, 15 U.S.C. §78m(b)(2)(B), for "failing to devise and maintain" adequate internal controls over the financial and accounting operations of the relevant subsidiaries.[4] In Alcoa, the settlement further reflected that the parent-issuer was liable for a violation of the anti-bribery provision of the FCPA, 15 U.S.C. §78dd-1, on the theory that the relevant subsidiaries where the conduct occurred were "agents" of the parent company because the parent "exercised control" over them by managing the alumina business segment that ran through these subsidiaries.[5] Similarly, in a recent enforcement action against the Goodyear Tire & Rubber Company (Goodyear), the SEC again found an issuer liable for FCPA accounting violations based on conduct that occurred entirely overseas.[6]

Another noteworthy feature of both matters was the focus on the importance of ensuring robust due diligence by in-house compliance and legal officers when reviewing high-risk transactions, particularly with third parties. In Alcoa, the SEC and DOJ noted that in-house counsel did not follow-up on perceived FCPA "red flags" associated with transactions using a third-party consultant's companies as a distributor of alumina to a state-owned smelter in Bahrain.[7] In HP, the company's existing policies and procedures were deemed insufficient where they did not generate further review of red flags that arose during due diligence regarding the use of third-parties in connection with a government contract in Russia and during review of an unusually high commission rate for a third-party in a transaction in Mexico.[8] Likewise, in their FCPA enforcement actions against Avon Products, Inc. (Avon), the DOJ and SEC highlighted the fact that Avon's internal auditors and the General Counsel's office were aware of the practice in Avon's subsidiary in China of giving corrupt payments, gifts and hospitality to government officials to obtain direct selling licenses in China. The SEC further noted that the legal department did not pursue the issues raised by the internal auditors.[9] Similarly, the DOJ noted that Avon's management did not "put in place controls to prevent the conduct" identified by the auditors.[10] The SEC imposed civil liability on the parent corporation for violations of the FCPA's books and records and internal control provisions, 15 U.S.C. §§78m(b)(2)(A) and (B), and the DOJ required that Avon's Chinese subsidiary plead guilty to conspiring to violate the FCPA's books and records provision.[11]

### *The Importance of Cooperation in FCPA Cases*

In an FCPA settlement involving Bio-Rad Laboratories, Inc. (Bio-Rad), notwithstanding evidence of the involvement of U.S.-based managers in the scheme to pay bribes to Russian government officials, the DOJ appeared to reward the parent company with leniency because of its voluntary disclosure, cooperation and remediation.[12] Although Bio-Rad was required to pay a penalty of $14.35 million, it resolved its FCPA liability through a non-prosecution agreement. Conversely, the DOJ imposed a criminal penalty of over $772 million on Alstom S.A. (Alstom), the largest criminal FCPA penalty to date, and required the parent corporation to plead guilty to violations of the FCPA's accounting provisions in part because of its perceived lack of cooperation in the DOJ's investigation.[13] In recent public remarks, the Chief of the FCPA Unit at the DOJ's Fraud Section stated that if Alstom had received credit for self-disclosure and cooperation, its penalty range under the U.S. Sentencing Guidelines would have been reduced to between $296 million and $592 million.[14]

## II. DOJ Guidance on FCPA Liability Arising From M&A Activity

In 2012, in the *Resource Guide to the U.S. Foreign Corrupt Practices Act*, the DOJ and SEC acknowledged that acquirers do not become liable under principles of successor liability for pre-acquisition conduct of a foreign company whose conduct was not previously subject to the FCPA's jurisdiction. In 2014, the DOJ again addressed the question of successor liability in FCPA Opinion Release 14-02, which concerns an acquisition by a U.S.-based public, multi-national company ("the Requestor") of a foreign (non-U.S. issuer) seller and its wholly-owned subsidiary (collectively, the "Target").

According to the Opinion Release, the Requestor's pre-acquisition due diligence had identified over $100,000 in suspect transactions, many of which involved payments or gifts to government officials in connection with permits and licenses. The Requestor represented to the DOJ that none of the payments to government officials had any discernable nexus to the U. S.[15] Consistent with its previous guidance in the *Resource Guide*, the DOJ opined that it did not intend to take any enforcement action against the Requestor with respect to the Target's pre-acquisition bribery because the conduct was not subject to the FCPA's jurisdiction.[16]

At the same time, the DOJ indicated that an acquirer could become liable for ongoing corrupt conduct committed by a target post-acquisition. The DOJ stated that it was important to implement the acquiring company's anti-corruption policies, engage in training and remediation, conduct an "FCPA-specific audit" of the target's operations, and disclose to the DOJ any corrupt payments "*as quickly as practicable*" post-closing.[17] According to the DOJ, "[a]dherence to these elements . . . may, among several other factors, determine whether and how [the DOJ] would seek to impose post-acquisition [acquirer] liability in case of a putative violation."

Notably, in the SEC's recent enforcement action against Goodyear, the SEC held the company liable for violating the FCPA's books, records and internal control provisions, 15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B), based on alleged bribes involving two African subsidiaries in which Goodyear had previously acquired a controlling or ownership interest.[18] The bribes occurred after Goodyear had acquired control of the subsidiaries, but did not involve any of Goodyear's U.S. operations. Nevertheless, the SEC noted that Goodyear had not "conduct[ed] adequate due diligence when it acquired" one of the subsidiaries and had not "implement[ed] adequate FCPA compliance training and controls" at both subsidiaries once it controlled them.[19] As part of the settlement, Goodyear agreed to disgorge over $14 million in profits, to pay over $2 million in prejudgment interest, *and*, as a remedial measure, to divest its interest in both subsidiaries.[20] Goodyear also must self-report to the SEC on its remediation efforts for a three-year period.[21]

Neither the DOJ nor the SEC have issued specific guidance regarding the time for conducting and completing post-acquisition due diligence and remediation, and Opinion Release 14-02 simply reaffirmed the guidance in the *Resource Guide* that such steps should be taken "as quickly as practicable."[22] Previously, in FCPA Opinion Release 08-02 (June 13, 2008), the DOJ suggested that FCPA post-acquisition high-risk due diligence be completed within 90 days, that medium risk due diligence be completed within 120 days, and that lower risk due diligence be completed within 180 days of closing.[23] The fact that, in Opinion Release 14-02, the DOJ did not find the Requester's one-year plan inadequate suggests that the timelines in Opinion Release 08-02 should be viewed as advisory rather than mandatory.

## III. FCPA Legal Jurisprudence

The FCPA's prohibition on corrupt payments to foreign officials extends to officers and employees of an "instrumentality" of a foreign government, but until last year, no federal appellate court had issued an opinion regarding the definition of "instrumentality." In May 2014, the Eleventh Circuit set forth a two-part, case-specific test to determine whether an entity is in fact an "instrumentality" of a foreign government within the meaning of the FCPA. The court held that an "instrumentality" is (1) "an entity controlled by the government of a foreign country" that (2) "performs a function the controlling government treats as its own." For further analysis of this ruling and its implications for businesses dealing with foreign state-owned or controlled entities, please refer to our FCPA Alert issued on May 22, 2014: http://www.weil.com/~/media/files/pdfs/white_collar_defense_alert_may_2014.pdf

## IV. Other International Anti-Corruption Enforcement Activities

Recent developments strongly suggest that the increased focus on anti-corruption enforcement in countries outside the U.S. is likely to continue.

In China, there continues to be significant uncertainty over Chinese regulators' enforcement of commercial and public anti-corruption laws, with significant enforcement actions being brought against multinational firms. For example, GlaxoSmithKline's subsidiary in China was ordered to pay a record $480 million penalty for bribing Chinese healthcare professionals, conduct that is also being investigated by U.S. and U.K. anti-corruption authorities.[24] Moreover, Chinese authorities have shown they are willing to prosecute politically connected former managers of state-run enterprises on corruption charges, such as the former head of China's National Petroleum Corp.,[25] and executives of foreign multinationals.[26]

In Canada, prosecutors recently announced charges against SNC-Lavalin Group, Inc. (SNC-Lavalin), a Montreal-based construction and engineering firm, under the Corruption of Foreign Public Officials Act (CFPOA),[27] for bribery of high-ranking officials in Libya after a former senior executive of the firm pled guilty to bribery charges.[28] Canadian prosecutors also obtained a three-year prison sentence against the agent of a Canadian security company in connection with a bribery scheme involving officials of Air India, the first-ever prison sentence imposed under the CFPOA.[29] Prosecutors have already obtained significant fines against companies under the CFPOA.[30]

In March 2014, the Canadian government amended its procurement policies to provide that if any corporation or its subsidiaries committed an "integrity offense"—which includes the CFPOA and the U.S. FCPA—the corporation may be debarred from procurement contracts for up to 10 years. This will undoubtedly create uncertainty for multinationals considering entering into FCPA settlements with the DOJ that also do business with the Canadian government. In that regard, it has been reported that Canadian officials are reviewing the circumstances of HP's FCPA resolution with the DOJ to see if it would trigger debarment in Canada.[31] It remains to be seen how prosecutors will resolve charges against SNC-Lavalin, given that a conviction under the CFPOA could result in debarment of the engineering giant in Canada.

Brazil's new Clean Companies Act (CCA) became effective in January 2014, and made it illegal for corporations to engage in bribery of public agents, including international bribery outside of Brazil. The CCA applies to any corporation domiciled in Brazilian territory and to foreign entities with affiliates or branch offices in Brazil. The CCA imposes civil administrative liability on companies engaged in corruption, and sanctions include fines that can be as high as 20 percent of the corporation's gross revenues from the preceding fiscal year.[32] The CCA does permit companies to seek "leniency agreements" if they disclose violations and cooperate with investigating officials.[33] Currently, prosecutors in Brazil are pursuing a massive criminal corruption probe involving state-controlled oil company Petrobas and numerous politicians and private businessmen.[34] It remains to be seen whether anti-corruption regulators will also start to bring cases against businesses under the new CCA.

In addition to the foregoing, some Western European countries that have not traditionally been seen as leaders in the global anti-corruption enforcement effort appear to be stepping up their own enforcement efforts. The DOJ credited French prosecutors with cooperation in their investigation of Total S.A. (Total), which recently entered into an FCPA resolution, and the Prosecutor's office in Paris indicated it was examining the role of Total and its former CEO under French corruption laws (prior to his death late last year in an airplane accident).[35] In Italy, prosecutors are currently investigating Eni SpA, a major, state-backed Italian oil firm, and its former and current CEO for allegations of corruption surrounding the purchase of a Nigerian oil field.[36] In Germany, prosecutors cooperated with the DOJ's investigation into bribe payments to Russian officials by HP's Russian subsidiary and charged three HP employees in that scheme.[37]

## V. Dodd-Frank Whistleblower Program Developments

Two whistleblower awards in 2014 under the SEC's Dodd-Frank whistleblower program highlighted the expansive nature of the program and its consequences for issuers.[38] On August 29, 2014, the SEC announced its first-ever whistleblower award (of more than $300,000) to a company employee who performed audit and compliance functions,[39] demonstrating that previously-raised concerns about the implications of whistleblower awards to compliance and audit personnel were well-founded. [40] The implications of this award and recommendations for handling internal whistleblower complaints were discussed in greater detail in a previous Weil Alert.[41]

On September 22, 2014, the SEC announced an award of more than $30 million to a foreign whistleblower,[42] the fourth award distributed to a whistleblower living in a foreign country.[43] In issuing its order, the SEC distinguished a recent Second Circuit case holding that the anti-retaliation provisions of Dodd-Frank do not protect overseas whistleblowers, [44] stating that the rationale of the ruling did not apply to the Dodd-Frank whistleblower award provisions:

> In our view, there is a sufficient U.S. territorial nexus whenever a claimant's information leads to the successful enforcement of a covered action brought in the United States, concerning violations of the U.S. securities laws, by the Commission, the U.S. regulatory agency with enforcement authority for such violations. When these key territorial connections exist, it makes no difference whether, for example, the claimant was a foreign national, the claimant resides overseas, the information was submitted from overseas, or the misconduct comprising the U.S. securities law violation occurred entirely overseas.[45]

The SEC's award highlights the risks a company with international operations can face if it fails to take measures to bolster its compliance programs and mechanisms for internal reporting abroad.

In yet another development, on April 1, 2015, the SEC announced its first whistleblower enforcement action against an employer for purportedly violating Dodd-Frank Whistleblower provision Section 21F and its implementing Rule 21F-17, which prohibits an employer from requiring employees to sign confidentiality agreements that "impede" employees from communicating with the SEC about "a possible securities law violation." [46] In a recent order against KBR, Inc. (KBR), the SEC stated that KBR violated Rule 21F-17 by requiring employees interviewed during internal investigations to sign confidentiality statements that prohibit them from "discussing any particulars regarding the interview and the subject matter discussed during the interview, without the prior authorization of the Law Department," and threatening discipline or termination if the employee did so. The SEC found that such a confidentiality agreement "impedes" employees from "discussing the substance of their interview" with the SEC in violation of Rule 21F-17(a).[47] Going forward, companies should ensure that employee confidentiality statements and agreements clearly indicate that employees are not prohibited from reporting violations of federal laws to any federal agency, including the DOJ and SEC.[48]

## VI. Conclusion

Recent FCPA enforcement activity and policy actions reflect a number of noteworthy developments and trends, all arguably aimed at further expanding the scope and reach of FCPA enforcement activity. These developments also coincide with an increase in anti-corruption enforcement in other countries, including those with significant markets for U.S. issuers, further demonstrating the need for robust anti-corruption compliance.

Predictably, the DOJ and SEC have continued to tout the benefits of voluntary disclosure and cooperation, encouraging companies to "come clean" when they detect a potential issue. While the nature and extent of the "credit" companies can expect remains uncertain, recent enforcement actions reveal that a lack of meaningful cooperation can yield less favorable outcomes, including substantially greater penalties. At the same time, U.S. regulators have sharpened their focus on the adequacy of a company's compliance efforts at the time of the alleged violations and, in some cases, on the role of in-house legal and compliance professionals in the underlying conduct itself. This coincides with the issuance of detailed guidance concerning regulators' expectations regarding compliance, including recent guidance in the area of successor liability for companies involved in an acquisition.

Finally, while voluntary disclosure undoubtedly remains a significant source of investigations for both the DOJ and the SEC, the SEC has aggressively promoted its Dodd-Frank whistleblower program as another means of detecting potential violations. Recent developments, including payment of substantial rewards, vividly demonstrate that the SEC is intent on encouraging and using whistleblower reports from employees of U.S. issuers located around the world to pursue allegations of corruption and other violations of federal laws. This coincides with the SEC's increased willingness to impose liability on U.S. issuers for violating the accounting provisions of the FCPA based on conduct occurring at overseas subsidiaries, even when there appears to be little if any nexus with the parent company or the U. S..

All of this suggests that the anti-corruption enforcement landscape will remain challenging for the foreseeable future.

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1 In January 2014, the DOJ and SEC imposed the fifth largest combined penalty on Alcoa Inc. and its subsidiary, and in December 2014, the DOJ imposed the largest FCPA criminal penalty ever on a corporation against Alstom. *See United States v. Alcoa World Alumina LLP*, Case No. 14-cr-0007 (W.D. Pa. Jan. 9, 2014) (combined criminal and forfeiture penalties of $223 million); Administrative Cease-and-Desist Order, *In re Alcoa Inc.*, Exchange Act Release No. 71261 (Jan. 9, 2014) (ordering disgorgement of $175 million, less $14 million paid in forfeiture, for a total of $161 million); *United States v. Alstom S.A.*, Case No. 14-cr-0246 (D. Conn. Dec. 22, 2014) (criminal penalty of $772,290,000).

2 *In re Alcoa*, *supra* note 1.

3 Administrative Cease-and-Desist Order, *In re Hewlett-Packard, Co.*, Exchange Act Release No. 71916 (Apr. 9, 2014).

4 *In re Alcoa*, *supra* note 1, at 10; *In re Hewlett-Packard, Co.*, *supra* note 3, at 12. HP involved the circumvention of internal controls by officers at HP's Russian and Mexican subsidiaries in connection with the retention of consultants to indirectly pay bribes to government officials and, at HP's Polish subsidiary, to conceal, through false accounting, cash payments to government officials in Poland, among other violations. *See In re Hewlett-Packard, Co.*, *supra* note 3, at 3.

5 *In re Alcoa*, *supra* note 1, at 9. Alcoa World Alumina LLC's guilty plea to anti-bribery charges also demonstrated the DOJ's willingness to impose criminal corporate liability for violation of the anti-bribery provisions of the FCPA based entirely on a theory of willful blindness. *See generally United States v. Alcoa World Alumina LLC*, *supra* note 1.

6 We discuss this enforcement action below in our discussion of FCPA due diligence in M&A transactions. *See supra* note 18 and text.

7 *See In re Alcoa*, *supra* note 1, at 5-7; *United States v. Alcoa*, *supra* note 1, Information at ¶¶ 49-50, 67.

8 *In re HP*, *supra* note 3, at 4-6, 9-10.

9 *United States v. Avon Products, Inc.*, Case no. 14-cv-9956, SEC Compl. ¶¶ 22-25 (S.D.N.Y. Dec. 17, 2014) (noting that senior legal officers suppressed findings of potential FCPA violations in China by internal auditors).

10 *United States v. Avon Products Inc.*, Case no. 14-cr-0828 (S.D.N.Y. Dec. 17, 2014) (noting that "high-level executives, attorneys, and internal auditors" learned of the practice of bribery in China but that "[i]nstead of ensuring the practice was halted, disciplining the culpable individuals, and implementing internal controls," the "executives and employees . .. took steps to conceal" these corrupt practice and inaccuracies in the books and records of Avon China), at Crim. Compl. ¶ 35. One of Avon's internal control failings cited by the DOJ was its inadequate due diligence process for the retention of third-party agents. *Id.* at ¶ 28.

11 *See Avon Products*, *supra* note 9; *United States v. Avon Products (China) Co. Ltd.*, Case No. 14-cr-0828 (S.D.N.Y. Dec. 17, 2014) (guilty plea of Avon China to conspiracy to violate the FCPA's books and records provision). Notably, neither the DOJ nor the SEC cited Avon, the parent company, for violations of the FCPA's anti-bribery provisions, demonstrating that even if evidentiary or other issues may impede an anti-bribery charge, the DOJ and SEC will still pursue an investigation based on the conduct of management and the legal and compliance department if they fail to appropriately respond to such allegations, conduct adequate due diligence, and remedy weaknesses in internal controls.

12 *See* Non-Prosecution Agreement between the Department of Justice and Bio-Rad Laboratories, Inc., Nov. 3, 2014, and attached statement of facts. In announcing the resolution, the DOJ noted that "[t]he department entered into a non-prosecution agreement with the company due, in large part, to Bio-Rad's self-disclosure of the misconduct and full cooperation with the department's investigation. That cooperation included voluntarily making U.S. and foreign employees available for interviews, voluntarily producing documents from overseas, and summarizing the findings of its internal investigation. In addition, Bio-Rad has engaged in significant remedial actions, including enhancing its anti-corruption policies globally, improving its internal controls and compliance functions, developing and implementing additional due diligence and contracting procedures for intermediaries, and conducting extensive anti-corruption training throughout the organization." Press Release, United States Department of Justice, Bio-Rad Laboratories Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay $14.35 Million Penalty (Nov. 3, 2014), http://www.justice.gov/opa/pr/bio-rad-laboratories-resolves-foreign-corrupt-practices-act-investigation-and-agrees-pay-1435.

13 *United States v. Alstom S.A.*, Case no. 14-cr-0246 (D. Ct. Dec. 22, 2014) (guilty plea by Alstom S.A. to violating the FCPA's books and records and internal control provisions, 15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)). The DOJ's press release announcing the settlement noted: "The plea agreement cites many factors considered by the department in reaching the appropriate resolution, including: Alstom's failure to voluntarily disclose the misconduct even though it was aware of related misconduct at a U.S. subsidiary that previously resolved corruption charges with the department in connection with a power project in Italy; Alstom's refusal to fully cooperate with the department's investigation for several years; the breadth of the companies' misconduct, which spanned many years, occurred in countries around the globe and in several business lines, and involved sophisticated schemes to bribe high-level government officials; Alstom's lack of an effective compliance and ethics program at the time of the conduct; and Alstom's prior criminal misconduct, including conduct that led to resolutions with various other governments and the World Bank." Press Release, United States Department of Justice, Alstom Pleads Guilty and Agrees to Pay $772 Million Criminal Penalty to Resolve Foreign Bribery Charges (Dec. 22, 2014), *available at* http://www.justice.gov/opa/pr/alstom-pleads-guilty-and-agrees-pay-772-million-criminal-penalty-resolve-foreign-bribery.

14 Dylan Tokar, *Self-Disclosure and Cooperation Could Have Saved Alstom $565m, Stokes Says,* Main Justice (Mar. 13, 2015), *available at* http://www.mainjustice.com/justanticorruption/2015/03/13/self-disclosure-and-cooperation-could-have-saved-alstom-565m-stokes-says.

15 Specifically, it was represented that none of the payments occurred in the U.S., there was no involvement by any U.S. issuer or person in the payments, the Target was a foreign company with negligible sales and business in the United States, and the Target had never issued securities in the U.S. Another significant fact represented by the Requestor was that no other contracts or assets acquired through the Target's bribery would continue to operate and provide financial benefit to the Requestor post-acquisition. *See* Op. Release 14-02.

16 Op. Release 14-02 at 3 (citing *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (2012), at 31).

17 *Id*. The Requestor represented to the DOJ that it intended to take up to one year from the date of closing to integrate the Target's operations (which encompassed 5,000 employees and annual gross sales in excess of $100 million), upgrade the Target's admittedly deficient accounting and compliance procedures, institute anti-corruption training, and review high-risk business relationships. The DOJ noted that it "expresses no view as to the adequacy or reasonableness" of the Requestor's integration plan. *Id.*

18 *In re Goodyear Tire & Rubber Co*., Exchange Act Release Order No. 74356 (Feb. 24, 2015). For a more detailed discussion of the SEC's enforcement action, please refer to our White Collar Defense & Investigations Alert dated March 2, 2015, *available at* http://www.weil.com/~/media/files/pdfs/2015_03_02_white_collar.pdf.

19 *In re Goodyear Tire & Rubber Co*., Exchange Act Release Order No. 74356 (Feb. 24, 2015).

20 *Id*. at 5-6.

21 *Id*. at 6.

22 *Resource Guide*, *supra* note 13, at 29.

23 In Opinion Release 08-02, the DOJ also suggested timelines for: (1) voluntarily disclosing to the DOJ any issues that might be discovered during post-closing due diligence; (2) completing FCPA training of the Target's personnel (the DOJ opined that all officers and higher risk employees, including those in accounting and sales, should receive training within 60 days after closing and other relevant employees should receive training within 90 days after closing); and (3) implementing necessary remedial measures regarding wrongful conduct, including terminating relationships with culpable actors (the DOJ suggested this should be completed no later than 180 days after closing).

24 On September 19, 2014, the Changsha Intermediate People's Court in Hunan province found that GSK had "offered money or property to nongovernment personnel in order to obtain improper commercial gains." Press Release, GlaxoSmithKline, GSK China Investigation Outcome (Sept. 19, 2014), *available at* http://www.gsk.com/en-gb/media/press-releases/2014/gsk-china-investigation-outcome. GSK is reported to have "engaged in widespread bribery to sell drugs in China" by paying for doctors' travel and other expenses. US and UK investigators continue to look into the allegations. Hester Plumridge & Laurie Burkitt, *GlaxoSmithKline Found Guilty of Bribery in China*, Wall Street Journal (Sep. 19, 2014), *available at* http://www.wsj.com/articles/glaxosmithkline-found-guilty-of-bribery-in-china-1411114817. Although the Chinese penalty was based on "commercial bribery," the fact that some of the health-care professionals who received bribes were employees of public hospitals also implicates the FCPA. *See* Christopher Matthews & Jessica Hodgson, *GlaxoSmithKline Probes Bribe Allegations in China*, Wall Street Journal (June 12, 2013), *available at* http://www.wsj.com/articles/SB10001424127887324798904578529413574312372.

25 Te-Ping Chen & James Areddy, *Jiang Jiemin Trial Links Key Officials in China's Corruption Crackdown*, Wall Street Journal, *available at* http://www.wsj.com/articles/chinas-jiang-jiemin-goes-on-trial-over-corruption-charges-1428895277?cb=logged0.1887455792872424 (last updated Apr. 13, 2015).

26 For example, in 2010, China convicted and jailed four former China-based executives of global miner Rio Tinto on charges of bribery and theft of commercial secrets. Lucy Hornby & Rujun Shen, *China Jails Rio Tinto Staff for 7-14 Years,* Reuters (Mar. 29, 2010), *available at* http://www.reuters.com/article/2010/03/29/us-china-rio-verdict-idUSTRE62S0R020100329.

27 Press Release, SNC-Lavalin, SNC-Lavalin Contests the Federal Charges by the Public Prosecution Service of Canada, and Will Enter a Non-Guilty Plea (Feb. 19, 2015), *available at* http://www.snclavalin.com/en/snc-lavalin-contests-the-federal-charges-february-19-2015.

28 Rita Trichur, *Former SNC-Lavalin Executive Pleads Guilty to Bribery, Money Laundering*, Wall Street Journal (Oct. 1, 2014), *available at* http://www.wsj.com/articles/former-snc-lavalin-executive-pleads-guilty-to-bribery-money-laundering-1412188017.

29 In May 2014, Nazir Karigar, a Canadian citizen, received a sentence of three years in prison for his role in conspiracy to bribe officials of Air India. *See* R. v. Karigar, 2014 ONSC 3093 (May 23, 2014), *available at* http://www.thelitigator.ca/litigator/wp-content/uploads/Karigar-Sentencing-Decision.pdf.

30 For example, in 2013, Toronto-based Griffith's Energy International, Inc., pled guilty to violating the CFPOA and was fined CAD 10.3 million. The case involved the payment of a CAD 2 million bribe and shares to a corporate entity owned by a foreign ambassador's wife. *See R. v. Griffiths Energy Int'l*, (2013) A.J. No. 412 (Alta. Q.B.).

31 Andy Blatchford, *Ottawa's Anti-corruption Rules on Suppliers a Threat to Canadian Economy: Study*, Canadian Business (Nov. 23, 2014), *available at* http://www.canadianbusiness.com/business-news/ottawas-anti-corruption-rules-on-suppliers-a-threat-to-canadian-economy-study/.

32 Lei No. 12.486 de 1 de Agosto de 2013 [Clean Companies Act], 1 Agosto 2013 (Braz.) *available at* http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/l12846.htm. An unofficial English translation by the law firm Trench Rossi e Watanabe is *available at* http://f.datasrvr.com/fr1/813/29143/Trench_Rossi_e_Watanabe_-_Brazil's_anti-bribery_law__12846-2013.pdf.

33 *Id*.

34 Anthony Boadle, *Former Petrobras Executive Costa Convicted in Corruption* Case, Reuters (Apr. 22, 2015), *available at* http://www.reuters.com/article/2015/04/22/brazil-petrobras-conviction-idUSL1N0XJ1TB20150422.

35 Press Release, United States Department of Justice, French Oil and Gas Company, Total, S.A., Charged in the United States and France in Connection with an International Bribery Scheme (May 29, 2013), *available at* http://www.justice.gov/opa/pr/french-oil-and-gas-company-total-sa-charged-united-states-and-france-connection-international; Geraldine Amiel & Joe Palazzolo, *Prosecutor Recommends Corruption Trial for Total, CEO*, Wall Street Journal (May 29, 2013), *available at* http://www.wsj.com/articles/SB10001424127887324682204578513230302339730.

36 Emilio Parodi & Oleg Vukmanovic, *Large Part of Eni's Nigerian Oil Deal Cash Went on Bribes – Italian Prosecutors*, Reuters (Oct. 1, 2014), *available at* http://www.reuters.com/article/2014/10/01/eni-nigeria-investigation-idUSL6N0RW40720141001.

37 David Crawford, *German Prosecutors Name H-P in Bribery Indictment of Employees,* Wall Street Journal (Sept. 19, 2014), *available at* http://www.wsj.com/articles/SB10000872396390443890304578006493435233584; Press Release, U.S. Department of Justice, Hewlett-Packard Russia Pleads Guilty to and Sentenced for Bribery of Russian Government Officials (Sept. 11, 2014), *available at* http://www.justice.gov/opa/pr/hewlett-packard-russia-pleads-guilty-and-sentenced-bribery-russian-government-officials.

38 The Dodd-Frank whistleblower program provides that whistleblowers who report original information to the SEC that leads to an enforcement action resulting in sanctions greater than $1 million may be awarded between ten and thirty percent of any amounts recovered by the SEC in a judicial or administrative action or related action. 15 U.S.C. § 78u-6(a)-(b). The Dodd-Frank whistleblower program prohibits employers from taking retaliatory action against a whistleblower, 15 U.S.C § 78u-6(h); *see also* 17 C.F.R. § 240.21F-2, although a federal court has ruled that this provision does not have extra-territorial application. *See supra* note 42 and text.

39 Press Release, U.S. Securities and Exchange Commission, No. 2014-180, SEC Announces $300,000 Whistleblower Award to Audit and Compliance Professional Who Reported Company's Wrongdoing (Aug. 29, 2014), *available at* http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370542799812#.VDWg4fl4pcQ.

40 *See* Steven A. Tyrrell, *SEC Whistleblowers: Boon or Bust*, 2 Bloomberg Law Reports – Risk and Compliance 17, 19 (Feb. 11, 2011).

41 *See* Steven A. Tyrrell, Holly E. Loiseau, Adam G. Safwat and Matthew Driscoll, Corporate Internal Investigations Alert: SEC Gives $300,000 Whistleblower Award to Employee Responsible for Compliance and Audit Function (Sept. 16, 2014), *available at* http://www.weil.com/~/media/white_collar_alert_sept_2014.pdf.

42 Press Release, U.S. Securities and Exchange Commission, No. 2014-206, SEC Announces Largest-Ever Whistleblower Award (Sept. 22, 2014), *available at* http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370543011290#.VCQ26vldWSo.

43 *See id.* (noting that the September 22, 2014, award was the fourth given to a foreign resident); U.S. Securities and Exchange Commission, 2013 Annual Report on the Dodd-Frank Whistleblower Program, at 22, (Nov. 2013), *available at* http://www.sec.gov/about/offices/owb/annual-report-2013.pdf (showing that the SEC received whistleblower submissions from individuals in fifty-five foreign countries) .

44 On August 14 2014, the U.S. Court of Appeals for the Second Circuit held that Dodd-Frank's anti-retaliation protections, 15 U.S.C. § 78u-6(b), which prohibit "employers from retaliating against whistleblower employees who make certain protected disclosures," could not be applied extraterritorially. *Liu Meng-Lin v. Siemens AG*, 763 F.3d 175 (2d Cir. 2014).

45 Order Determining Whistleblower Award Claim, U.S. Securities and Exchange Commission, Release No. 73174, 2 n.2 (Sept. 22, 2014), *available at* http://www.sec.gov/rules/other/2014/34-73174.pdf. The Second Circuit's ruling appeared to recognize the distinction as well: "Moreover, extraterritorial application of the bounty and anti-retaliation provisions have far different international ramifications. Providing rewards to persons, foreign or domestic, who supply information about law breaking is far less intrusive into other countries' sovereignty than seeking to regulate the employment practices of foreign companies with respect to the foreign nationals they employ in foreign countries." *Liu Meng-Lin*, 763 F.3d at 182-83.

46 Press Release, U.S. Securities and Exchange Commission, No. 2015-54, Agency Announces First Whistleblower Protection Case Involving Restrictive Language (Apr. 1, 2015), *available at* http://www.sec.gov/news/pressrelease/2015-54.html (statements made by the Director of the SEC's Enforcement Division). *See* 17 CFR 240.21F-17(a) ("No person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement . . . with respect to such communications.").

47 *Id.* at 3.

48 *See id.* (noting KBR's remedial action in amending its confidentiality statement to ensure employees understand they are not prohibited from "reporting possible violations of federal law or regulation to any government agency or entity" without "prior authorization" of KBR).

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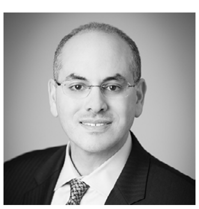

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