

2022 YEAR IN REVIEW

FCPA Enforcement and Anti-Corruption Developments

Paul, Weiss, Rifkind, Wharton & Garrison LLP

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Executive Summary

After a very quiet year in 2021, FCPA enforcement, whether measured by the number of DOJ and SEC corporate enforcement actions or total penalty amount, increased markedly in 2022, although it still fell somewhat below pre-2021 levels on nearly every metric. While enforcement statistics continue to be below the yearly averages we saw throughout the 2010s, it appears that 2021 will be a true outlier for its significantly lower levels of FCPA enforcement.

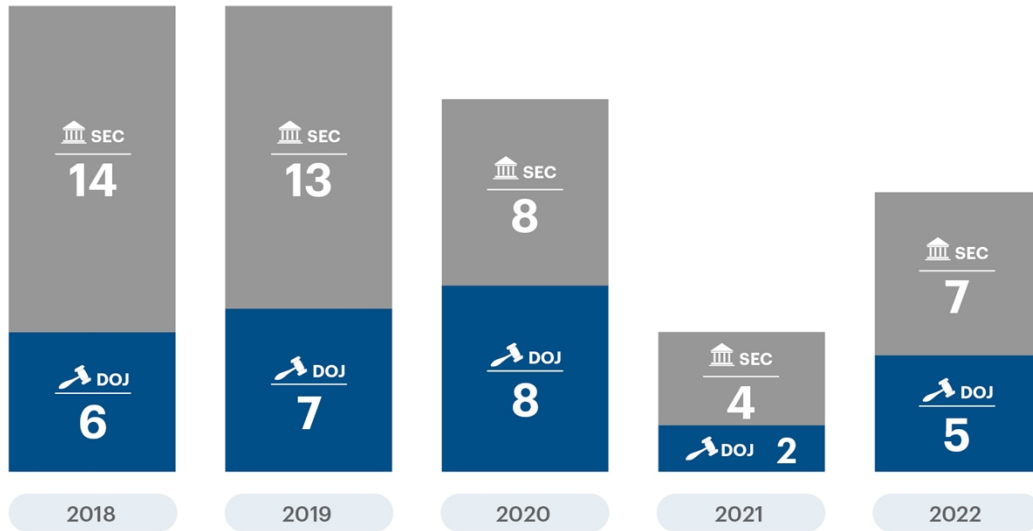
Along with this overall increase in enforcement came several important policy developments. Most notably, revisions to DOJ's Corporate Enforcement Policy first announced by Deputy Attorney General ("DAG") Lisa Monaco indicate a more aggressive and fast-paced approach to conducting investigations and pursuing charges, designed to combat steadily declining numbers of corporate prosecutions, as well as an effort to promote voluntary self-disclosure and corporate cooperation and standardize treatment across the Department.

The Biden administration also took several steps to bolster its anti-corruption efforts through means other than criminal and civil enforcement of the FCPA. Among the broad array of sanctions and regulations put in place in response to Russia's invasion of Ukraine, many were directed at addressing corruption and kleptocracy in the region and around the globe.

As we anticipated in our 2021 Year in Review, 2022 showed a substantial increase in FCPA enforcement activity. We expect this trend to continue, along with increased use of the tools available to the administration to address corruption globally. Below we highlight the year's most significant developments in anti-corruption and FCPA enforcement.

Corporate Enforcement Overview

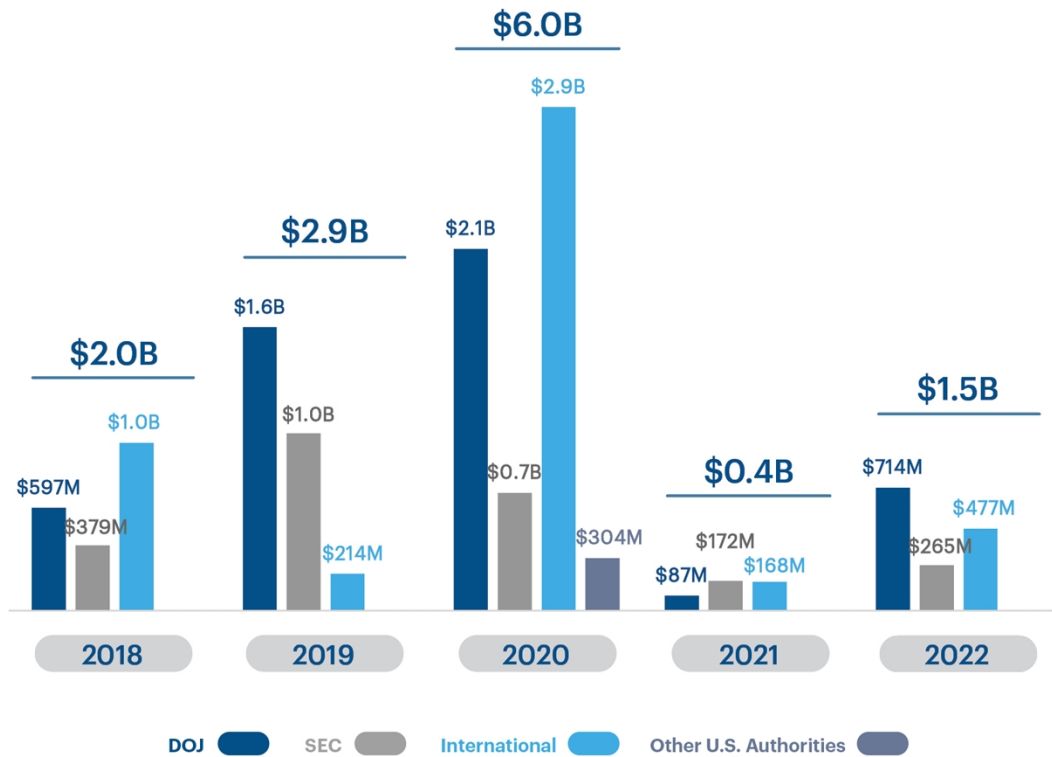
In 2022, DOJ resolved five and the SEC resolved seven FCPA corporate enforcement actions.¹ This represented a notable increase over 2021, when DOJ resolved two and the SEC resolved four such actions.



FCPA CORPORATE ENFORCEMENT ACTION RESOLUTIONS, 2018–2022

¹ The data reflected in this report counts only cases that charge one or more FCPA violations and does not include cases that may have arisen from a foreign bribery investigation but solely charge non-FCPA violations, such as money laundering, wire fraud or domestic bribery. Enforcement actions were counted based on the year they were announced. See *Related Enforcement Actions*, U.S. Dep’t of Just., <https://www.justice.gov/criminal-fraud/case/related-enforcement-actions/2022>; *SEC Enforcement Actions: FCPA Cases*, U.S. Sec. & Exch. Comm’n, <https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml>. Resolutions announced on the same day by the same enforcement agency against corporate affiliates were counted as one resolution.

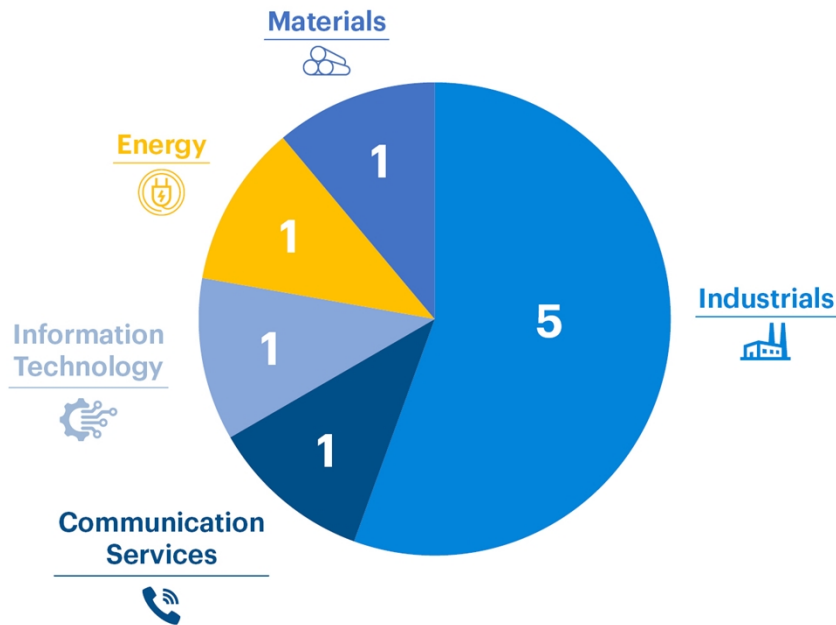
These 12 enforcement actions resulted in approximately \$1.5 billion in fines, penalties, disgorgement and prejudgment interest, of which around \$714 million was assessed by DOJ and around \$265 million by the SEC. DOJ and the SEC credited another \$477 million in penalties assessed by foreign authorities in foreign prosecutions associated with U.S. enforcement actions.



FCPA CORPORATE ENFORCEMENT ACTION PENALTIES, 2018–2022²

² To determine the total penalty amounts, we counted criminal and civil penalties, fines, disgorgement and prejudgment interest payments attributable only to the FCPA charges in a resolution with DOJ or the SEC. Thus, where a resolution included an FCPA penalty in addition to a non-FCPA penalty, only the FCPA penalty was aggregated. Additionally, the total penalty amounts account for offsets, where applicable, between the penalties assessed by DOJ and the SEC, as well as offsets between U.S. and foreign authorities. Penalty amounts for 2022 account for the full amount of the offset as announced in the resolution, while prior years accounted only for amounts settled with foreign authorities at the time of drafting. In 2020, “Other U.S. Authorities” included the Board of Governors of the Federal Reserve System and the New York State Department of Financial Services.

The corporate resolutions spanned several industries, with more than half of the companies belonging to the Industrials sector.³ Enforcement in 2022 spanned a more diverse range of industries than in 2021, which saw 2 resolutions in the Financials sector, 1 resolution in Communication Services, and 1 resolution in Industrials.⁴ This development suggests a return to pre-2021 enforcement patterns, when U.S. authorities brought more enforcement actions across a broader range of industries.



2022 FCPA CORPORATE ENFORCEMENT RESOLUTIONS BY INDUSTRY

³ Industries were defined according to the sector classifications set by S&P Global Market Intelligence, pursuant to the Global Industry Classification Standard. See *Companies, Assets and Profiles*, S&P Global (2020), <https://platform.mi.spglobal.com/web/client?auth=inherit#dashboard>; *Global Industry Classification Standard*, S&P Global (2018), https://www.spglobal.com/marketintelligence/en/documents/112727-gics-mapbook_2018_v3_letter_digitalspreads.pdf. Resolutions announced on the same day against corporate affiliates were counted as one resolution, irrespective of the enforcement agency.

⁴ Paul, Weiss, Rifkind, Wharton & Garrison LLP, *2021 Year in Review: FCPA Enforcements and Anti-Corruption Developments*, at 7 (Jan. 19, 2022), https://www.paulweiss.com/media/3981691/fcpa_enforcement_and_anti_corruption_developments2.pdf.

The map below demonstrates the range of countries that have been the locus of conduct deemed to violate the FCPA—including the location of subsidiaries implicated in the government’s allegations, of meetings concerning bribes and of the bases of operations for third-party intermediaries—based upon the allegations in the 2022 corporate resolutions. As in several recent years, the heaviest concentration of activity in corporate FCPA resolutions in 2022 was in Brazil, followed by a cluster of activity in Western and Sub-Saharan Africa.



2022 FCPA CORPORATE ENFORCEMENT ACTIONS BY LOCATION

DOJ Corporate Enforcement

Enforcement Actions Overview

In 2022, DOJ announced enforcement actions against five companies and related entities (Stericycle, Glencore, GOL Linhas Aéreas Inteligentes (GOL), ABB and Honeywell).⁵ DOJ entered into deferred prosecution agreements (“DPAs”) with four of these entities (Stericycle, GOL, ABB and Honeywell).⁶ In contrast to 2021, when neither DOJ nor the SEC brought a single enforcement action against a U.S. company,⁷ DOJ brought enforcement actions against two: Stericycle and Honeywell. These resolutions are explored in further detail below in [Review of Select Corporate Resolutions](#).

In 2022, DOJ published one FCPA declination letter, addressed to Jardine Lloyd Thompson Group Holdings Ltd. (“JLT”)—the first declination letter to be published since August 2020.⁸ A DOJ investigation found that JLT paid Ecuadorian government officials to obtain and retain contracts with the Ecuadorian state-owned and -controlled surety company.⁹ DOJ declined to prosecute JLT because, among other reasons, the company voluntarily self-disclosed the conduct; the company fully and proactively

⁵ *Related Enforcement Actions: 2022*, U.S. Dep’t of Just., <https://www.justice.gov/criminal-fraud/case/related-enforcement-actions/2022>.

⁶ *Id.*

⁷ Paul, Weiss 2021 FCPA Year in Review at 9.

⁸ *FCPA Corporate Enforcement Policy: Declinations*, U.S. Dep’t of Just., <https://www.justice.gov/criminal-fraud/corporate-enforcement-policy/declinations>.

⁹ Letter to F. Joseph Warin, Gibson, Dunn & Crutcher LLP, from the U.S. Department of Justice, Criminal Division, Re: Jardine Lloyd Thompson Group Holdings, Ltd. at 1 (Mar. 18, 2022), <https://www.justice.gov/criminal-fraud/file/1486266/download>.

cooperated with DOJ; and the company timely remediated the situation, including by separating from the executive and third-party intermediary involved.¹⁰

Based on companies' public announcements, DOJ also reportedly closed its investigations into at least one company that had been under investigation for potential corruption offenses without bringing an enforcement action or issuing a public declination letter: Tenaris, which separately settled with the SEC.¹¹ The basis for DOJ's decision was not made public, including whether there was conduct sufficient to support a prosecution.

In 2022, at least five companies disclosed FCPA-related investigations: Leidos Holdings, Inc., Millicom International Cellular S.A., Arthur J. Gallagher & Co., Boston Scientific Corporation and Ideanomics, Inc.¹²

New and Enhanced Premium on Voluntary Self-Disclosure

As discussed in more detail in [Policy Pronouncements Affecting Anti-Corruption Enforcement](#), DOJ announced significant policy changes to its corporate crime enforcement program in September 2022. The policy changes were designed to promote corporate responsibility and accountability by "clarifying, rethinking and standardizing policies on voluntary self-disclosure and corporate cooperation."¹³

International Cooperation Remains at Center Stage

DOJ continues to emphasize how relationships with foreign law enforcement partners allow it to expand its FCPA enforcement into new jurisdictions and industries.¹⁴ Assistant Attorney General Kenneth A. Polite, Jr. noted that "[t]he fight against corruption—at home and abroad—is a top priority for the Biden Administration."¹⁵ In a speech at the 39th International Conference on the Foreign Corrupt Practices Act, Acting Principal Deputy Assistant Attorney General Nicole M. Argentieri observed that, when the FCPA was passed 45 years ago, the "U.S. was one of the few countries investigating and prosecuting foreign bribery."¹⁶ In contrast, DOJ prosecutors now regularly coordinate with foreign governments on their investigations and prosecutions, including, in 2022 alone, authorities in the United Kingdom, Brazil, Malaysia, Switzerland, Ecuador, France, the Netherlands and Singapore.¹⁷

DOJ continues to try to mitigate the impact of overlapping prosecutions by wholly or partially crediting fines paid or to be paid to foreign authorities. In 2022, DOJ credited payments to foreign governments in its resolutions with Stericycle (\$17.5 million credit against fines paid to Brazil), Glencore (\$136 million credit against fines paid to the United Kingdom and \$30 million credit against fines paid to Switzerland) and GOL (\$1.7 million credit against fines paid to Brazil).¹⁸

¹⁰ *Id.*

¹¹ *S&C Advises Tenaris on SEC Settlement*, Sullivan & Cromwell (June 8, 2022), <https://www.sullcrom.com/client-highlight-sandc-advises-tenaris-on-sec-settlement>.

¹² *2022 FCPA Year in Review*, Stanford Law School Foreign Corrupt Practices Clearinghouse, <https://fcpa.stanford.edu/fcpac-reports/2022-fcpa-year-in-review.pdf>.

¹³ *Principal Associate Deputy Attorney General Marshall Miller Delivers Remarks at the American Bankers Association Financial Crimes Enforcement Conference*, U.S. Dep't of Just. (Dec. 6, 2022), <https://www.justice.gov/opa/speech/principal-associate-deputy-attorney-general-marshall-miller-delivers-remarks-american> [hereinafter "Miller Remarks"].

¹⁴ *Acting Principal Deputy Assistant Attorney General Nicole M. Argentieri Delivers Remarks at the 39th International Conference on the Foreign Corrupt Practices Act*, U.S. Dep't of Justice (Dec. 1, 2022), <https://www.justice.gov/opa/speech/acting-principal-deputy-attorney-general-nicole-m-argentieri-delivers-remarks> [hereinafter "Argentieri Remarks Dec. 1, 2022"].

¹⁵ *Assistant Attorney General Kenneth A. Polite, Jr. Delivers Closing Remarks at the 20th International Anti-Corruption Conference*, U.S. Dep't of Just. (Dec. 9, 2022), <https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-closing-remarks-20th-international>.

¹⁶ Argentieri Remarks Dec. 1, 2022.

¹⁷ *Id.*

¹⁸ *Id.*; see also Press Release, U.S. Dep't of Just., *GOL Linhas Aéreas Inteligentes S.A. Will Pay Over \$41 Million in Resolution of Foreign Bribery Investigations in the United States and Brazil* (Sept. 15, 2022), <https://www.justice.gov/opa/pr/gol-linhas-reas-inteligentes-sa-will-pay-over-41-million-resolution-foreign-bribery> [hereinafter "DOJ GOL Press Release"].

Compliance Professional Gets Top Job at Fraud Section

In September 2022, Glenn Leon joined DOJ as the Chief of the Criminal Division's Fraud Section, which includes the FCPA Unit.¹⁹ Earlier in his career, Leon had served as the Fraud Section's deputy chief, but he most recently worked as HP's Chief Ethics and Compliance Officer since 2015.²⁰ Many in the industry regarded Leon's hiring as "signaling DOJ's continued emphasis on the need for effective corporate compliance programs."²¹

SEC Corporate Enforcement

Enforcement Actions Overview

In 2022, the SEC resolved seven FCPA corporate enforcement actions.²² The SEC brought more FCPA enforcement actions against corporations than DOJ, but fewer FCPA enforcement actions overall, as it brought no enforcement actions against individuals. The Chief of the SEC's FCPA unit, Charles Cain, explained that it can be difficult to establish personal jurisdiction in civil cases involving foreign bribery.²³ Additionally, the SEC has articulated a focus on internal accounting controls and protecting investor assets, naturally resulting in greater corporate enforcement.²⁴

Over half of the SEC corporate enforcement actions were joint actions with DOJ (Stericycle, GOL, ABB and Honeywell).²⁵ The SEC alone brought actions against Tenaris, a Luxembourg steel manufacturer and supplier; KT Corporation, a South Korean telecommunications company; and Oracle, a computer technology corporation headquartered in Austin, Texas.²⁶ As noted in *DOJ Corporate Enforcement*, DOJ declined to bring criminal charges against Tenaris,²⁷ while KT Corporation and its executives were criminally indicted by South Korean authorities but not by DOJ.²⁸ There is currently no public information about a resolution between DOJ and Oracle.²⁹ These resolutions are explored in further detail in *Review of Select Corporate Resolutions*.

General Enforcement Trends and FCPA Unit Updates

The SEC further acknowledged that, although the number of SEC FCPA enforcement actions brought in 2022 is greater than in 2021, it is still lower than in previous years.³⁰ In announcing the enforcement results for 2022, the SEC stated that it "remains committed to enforcing the Foreign Corrupt Practices Act (FCPA) against issuers of securities traded in the United States that engage in bribery and other prohibited corrupt practices abroad."³¹

¹⁹ Ben Penn, *New DOJ Fraud Chief Lands On Cusp of Pivotal White-Collar Change*, Bloomberg Law (Sept. 14, 2022), <https://news.bloomberglaw.com/us-law-week/new-doj-fraud-chief-lands-on-cusp-of-pivotal-white-collar-change>.

²⁰ *Id.*; see also Dylan Tokar, *Hewlett Packard Enterprise Executive to Lead Justice Department's Fraud Section*, Wall St. J. (June 7, 2022), <https://www.wsj.com/articles/hewlett-packard-enterprise-executive-to-lead-justice-departments-fraud-section-11654609305>.

²¹ See, e.g., Anthony J. Burba and John E. Kelly, *Impact of Compliance Professional as New Fraud Section Chief*, Nat'l L. Rev. (June 13, 2022), <https://www.natlawreview.com/article/impact-compliance-professional-new-fraud-section-chief>.

²² *SEC Enforcement Actions: FCPA Cases*, U.S. Sec. & Exch. Comm'n, <https://www.sec.gov/enforce/sec-enforcement-actions-fcpa-cases>.

²³ Daniel Bernstein & Valarie Hays, *Chiefs of the DOJ and SEC's FCPA Units Take the Stage at the ACI FCPA Conference*, Arnold & Porter (Nov. 30, 2022), <https://www.arnoldporter.com/en/perspectives/blogs/enforcement-edge/2022/11/chiefs-of-the-doj-and-secs-fcpa-units-take-stage> [hereinafter "Report on ACI FCPA Conference Remarks"].

²⁴ *Id.*

²⁵ See *supra*, note 22.

²⁶ *Id.*

²⁷ *S&C Advises Tenaris on SEC Settlement*, Sullivan & Cromwell (June 8, 2022), <https://www.sullcrom.com/client-highlight-sandc-advises-tenaris-on-sec-settlement>.

²⁸ Press Release, U.S. Sec. & Exch. Comm'n, *Largest South Korean Telecommunications Co. Agrees to Pay the SEC to Settle FCPA Charges* (Feb. 17, 2022), <https://www.sec.gov/news/press-release/2022-30> [hereinafter "SEC KT Corp. Press Release"].

²⁹ *Oracle: FCPA Recidivist Part 4 – the Comeback and DOJ*, All Things Compliance Podcast (Oct. 7, 2022), <http://compliancepodcastnetwork.net/oracle-fcpa-recidivist-part-4-the-comeback-and-doj/>.

³⁰ Report on ACI FCPA Conference Remarks.

³¹ Press Release, *SEC Announces Enforcement Results for FY22*, U.S. Sec. & Exch. Comm'n (Nov. 15, 2022), <https://www.sec.gov/news/press-release/2022-206>.

Unlike DOJ, which has heavily invested in recent years in expanding its FCPA unit,³² the SEC has kept its FCPA unit at roughly the same size.³³ The SEC FCPA unit has explained that it focuses primarily on “internal accounting controls and the protection of investor assets” and considers the interests of investors when deciding what enforcement actions to bring against companies.³⁴ This focus was evident in the unit’s 2022 enforcement actions. With respect to KT Corporation, the SEC found that the company “failed to implement sufficient internal accounting controls with respect to key aspects of its business operations” for nearly 10 years.³⁵ According to the SEC, the lack of internal accounting controls allowed the company’s executives and employees to generate “funds that were used for gifts and illegal political contributions to government officials.”³⁶ Similar issues appeared in the Oracle settlement, where foreign officials were paid to attend technology conferences and take side trips to the United States.³⁷ There, the SEC concluded that Oracle was in violation of the books and records and internal accounting controls provisions of the FCPA.³⁸

SEC Whistleblower Program

In the 2022 fiscal year, the SEC received 12,322 whistleblower tips, the largest number ever received.³⁹ According to Creola Kelly, the SEC’s Chief of the Office of the Whistleblower, the “significant increase in the number of whistleblower tips and awards . . . shows that the program, with its enhanced confidentiality protections, is effectively incentivizing whistleblowers to make the often difficult decision to come forward with information about potential securities-law violations.”⁴⁰

Of the 12,322 tips received in 2022, only 202 were related to the FCPA,⁴¹ down slightly from 2021.⁴² It is notable that the dramatic uptick in whistleblower tips over the last two years has not been matched by a similar uptick in FCPA tips, which have essentially remained flat. The graph below shows the changes in whistleblower tips and FCPA-specific tips over the past six years.

³² Paul, Weiss 2021 FCPA Year in Review, at 9–10.

³³ Report on ACI FCPA Conference Remarks.

³⁴ *Id.*

³⁵ SEC KT Corp. Press Release.

³⁶ *Id.*

³⁷ Press Release, U.S. Sec. & Exch. Comm’n, *SEC Charges Oracle a Second Time for Violations of the Foreign Corrupt Practices Act* (Sept. 27, 2022), <https://www.sec.gov/news/press-release/2022-173> [hereinafter “SEC Oracle Press Release”].

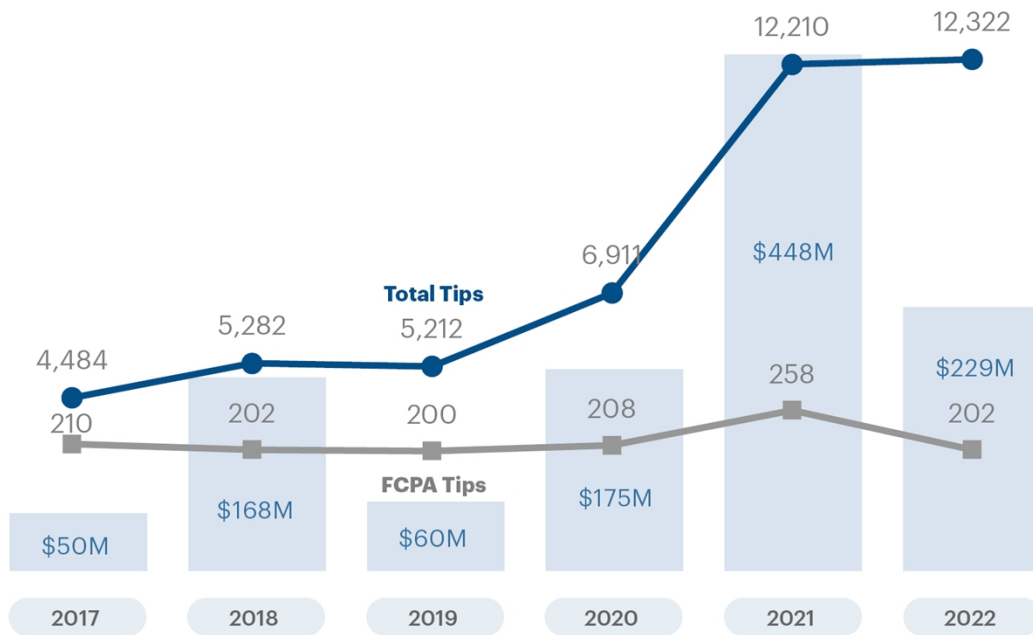
³⁸ *Id.*

³⁹ *SEC Whistleblower Office Announces Results for FY 2022*, U.S. Sec. & Exch. Comm’n (Nov. 15, 2022), https://www.sec.gov/files/2022_ow_ar.pdf.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² U.S. Sec. & Exch. Comm’n, *Annual Report to Congress: Whistleblower Program 28–29* (2021), <https://www.sec.gov/files/owb-2021-annual-report.pdf>.



SEC WHISTLEBLOWER TIPS AND TOTAL WHISTLEBLOWER AWARDS, FISCAL YEARS 2017–2022

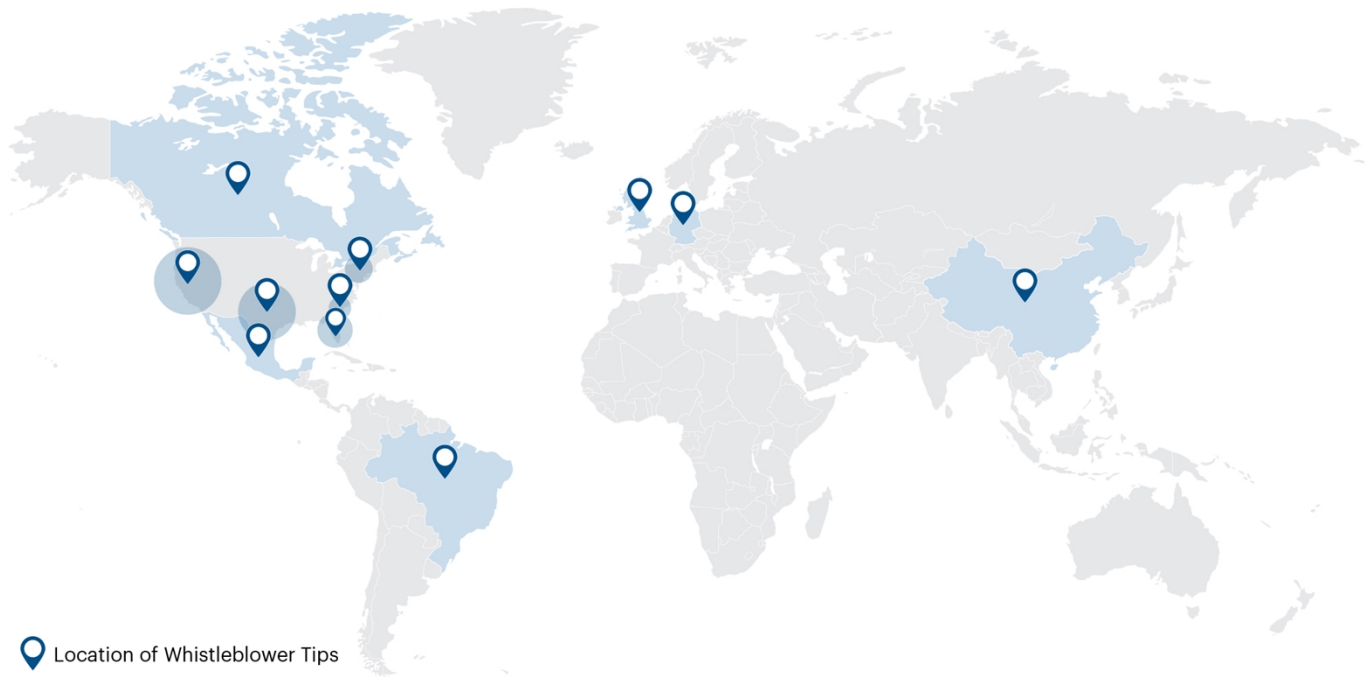
One FCPA-related tip, however, notched the largest whistleblower award of the year, \$37 million “connected to an [FCPA] settlement reached by the SEC and DOJ with a publicly traded European healthcare company.”⁴³ The award ranked among the top 10 largest payouts ever to an individual whistleblower.⁴⁴ Whether this payout will incentivize greater reporting of FCPA tips in the future remains to be seen.

The SEC noted that the whistleblower program has “become fundamentally international in character,” with a large number of tips coming from Canada, the United Kingdom, Germany, China, Mexico and Brazil.⁴⁵ The map below shows the geographic distribution of all whistleblower tips in 2022.

⁴³ Mengqi Sun, *Whistleblower in Healthcare Bribery Case Won the Largest SEC Award This Year*, Wall St. J. (Dec. 19, 2022), <https://www.wsj.com/articles/whistleblower-in-healthcare-bribery-case-won-the-largest-sec-award-this-year-11671498462>.

⁴⁴ *Id.*

⁴⁵ *See supra*, note 39.



2022 FCPA SEC WHISTLEBLOWER TIPS—WORLDWIDE

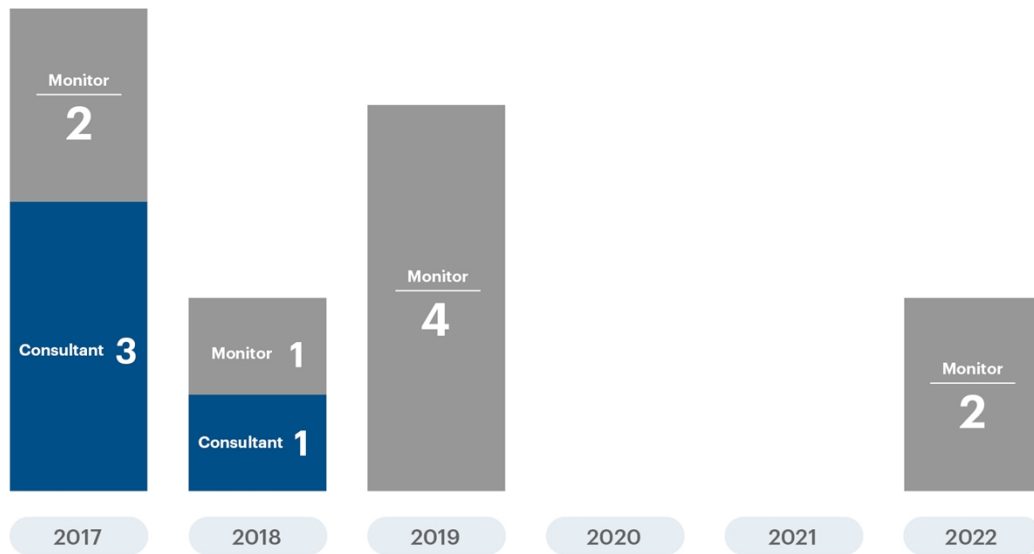
Compliance Monitors

After appointing no corporate compliance monitors in 2020 and 2021, U.S. authorities imposed two monitors as part of FCPA resolutions in 2022.⁴⁶ In the Glencore resolution, the company agreed to a monitor for a three-year term.⁴⁷ In the Stericycle resolution, the company agreed to a monitor for a two-year term.⁴⁸

⁴⁶ Monitors and consultants imposed in corporate resolutions are counted based on a variety of considerations. If the resolution involves both a parent and a subsidiary and/or both the DOJ and the SEC, whether more than one monitor/consultant is counted depends upon whether one individual appears to be serving in multiple capacities or multiple individuals appear to be serving in different capacities. This analysis is based upon the corporate resolution documents and, if necessary, third-party resources.

⁴⁷ Press Release, U.S. Dep’t of Just, *Glencore Entered Guilty Pleas to Foreign Bribery and Market Manipulation Schemes* (May 24, 2022), <https://www.justice.gov/opa/pr/glencore-entered-guilty-pleas-foreign-bribery-and-market-manipulation-schemes> [hereinafter “DOJ Glencore Press Release”].

⁴⁸ Press Release, U.S. Dep’t of Just, *Stericycle Agrees to Pay Over \$84 Million in Coordinated Foreign Bribery Resolution* (Apr. 20, 2022), <https://www.justice.gov/opa/pr/stericycle-agrees-pay-over-84-million-coordinated-foreign-bribery-resolution> [hereinafter “DOJ Stericycle Press Release”].



COMPLIANCE OVERSIGHT IN CORPORATE FCPA RESOLUTIONS, 2017–2022

Two companies continue to have active monitorships as part of a prior criminal resolution with DOJ Fraud Section’s FCPA Unit (Telefonaktiebolaget LM Ericsson, since 2020, and Mobile TeleSystems PJSC, since 2019).

On December 14, 2022, Telefonaktiebolaget LM Ericsson announced a one-year extension of its monitorship through June 2024.⁴⁹ In March 2022, DOJ notified the company that it had breached its DPA by “failing to make subsequent disclosure related to the investigation post-DPA.”⁵⁰ In March 2022, Mobile TeleSystems PJSC agreed to a one-year monitor extension through September 2023, in order to have adequate time to implement compliance enhancements and allow the monitor to complete review of the company’s remedial efforts, following delays related to a variety of factors, including the COVID-19 pandemic.⁵¹ These extensions demonstrate that the Fraud Section and its Corporate Enforcement, Compliance, and Policy Unit, which is charged with responsibility for selection and oversight of monitors and compliance and reporting obligations, is active in policing for compliance with corporate settlement terms.

Review of Select Corporate Resolutions

In this section, we summarize select FCPA resolutions with DOJ and the SEC. The summaries below are based entirely on public resolution documents, and describe the facts, allegations, and admissions as stated in the resolution documents.

⁴⁹ Press Release, Ericsson, *Ericsson Announces Extension of Compliance Monitorship* (Dec. 14, 2022), <https://www.ericsson.com/en/press-releases/2022/12/ericsson-announces-extension-of-compliance-monitorship>.

⁵⁰ Press Release, Ericsson, *Update on Deferred Prosecution Agreement* (Mar. 2, 2022), <https://www.ericsson.com/en/press-releases/2022/3/update-on-deferred-prosecution-agreement>.

⁵¹ *MTS Reports Q4 & FY 2021 Results* at 9, MTS (Mar. 3, 2022), https://s22.q4cdn.com/722839827/files/doc_financials/2021/q4/MTS-Q4-FY-2021-Results-Press-Release-final.pdf.

Stericycle

On April 20, 2022, Stericycle, an international waste management company based in Illinois, agreed to pay more than \$84 million to resolve parallel investigations by DOJ, the SEC and Brazilian authorities.⁵² DOJ stated that Stericycle engaged in a conspiracy to violate the anti-bribery and books-and-records provisions of the FCPA.⁵³ The SEC found violations of the anti-bribery, books-and-records and internal accounting controls provisions of the FCPA.⁵⁴ DOJ assessed a \$52.5 million criminal penalty, and agreed to credit up to one-third of that amount against fines paid to Brazilian authorities in related proceedings.⁵⁵ Stericycle agreed to pay nearly \$28.2 million to settle the SEC's charges, comprised of \$22.14 million in disgorgement and \$5.99 million of prejudgment interest.⁵⁶ The SEC's order allows Stericycle to receive an offset of up to approximately \$4.2 million for any disgorgement paid to Brazilian authorities.⁵⁷ DOJ and the SEC imposed an independent compliance monitor for a two-year term.⁵⁸

As described in the resolution documents, the FCPA violations arose out of Stericycle's rapid expansion in Latin America through the acquisition of local businesses in Argentina, Brazil and Mexico.⁵⁹ The SEC found that Stericycle lacked sufficient internal accounting controls for its Latin American business activities.⁶⁰ For example, Stericycle had mostly decentralized accounting systems and processes, had no centralized compliance department and failed to implement its FCPA policies prior to 2016.⁶¹ According to the SEC's order, a Stericycle executive responsible for all of Latin America, along with executives of Brazilian and Mexican subsidiaries, signed and transmitted numerous sub-certification letters falsely stating the executives were not aware of any actual or potential material events in their region, including violations of any applicable law.⁶²

DOJ noted that Stericycle conspired to offer and pay a total of approximately \$10.5 million in bribes, obtaining at least \$21.5 million in profits.⁶³ The SEC order stated that Stericycle executives in Brazil operated a bribery scheme to obtain or retain the business of approximately 25 government customers, as well as to obtain authorization for priority release of payments owed under government contracts.⁶⁴ According to the SEC, Stericycle Brazil executives authorized cash withdrawals for bribe payments to sham vendors based on false invoices.⁶⁵ Stericycle conducted a similar scheme in Mexico, according to the SEC order.⁶⁶ In Argentina, according to the SEC, Stericycle entered into a contract to provide medical waste disposal services to government customers.⁶⁷ The SEC found that Stericycle executives authorized bribe payments to government officials that typically totaled 15% of the invoice amount.⁶⁸ The resolution documents noted that, in all three countries, Stericycle tracked bribe payments through spreadsheets and used code words and euphemisms, such as "comision," "IP" or "incentive payment," and "alfa" (short for alfajores, a sweet cookie popular in Argentina).⁶⁹

⁵² DOJ Stericycle Press Release; Press Release, U.S. Sec. & Exch. Comm'n, *SEC Charges Stericycle with Bribery Schemes in Latin America* (Apr. 20, 2022), <https://www.sec.gov/news/press-release/2022-65> [hereinafter "SEC Stericycle Press Release"].

⁵³ DOJ Stericycle Press Release; SEC Stericycle Press Release.

⁵⁴ SEC Stericycle Press Release.

⁵⁵ DOJ Stericycle Press Release.

⁵⁶ SEC Stericycle Press Release; *In re Stericycle, Inc.*, Exchange Act Release No. 94760 Section IV(C) (Apr. 20, 2022), <https://www.sec.gov/litigation/admin/2022/34-94760.pdf> [hereinafter "Exchange Act Release No. 94760"].

⁵⁷ SEC Stericycle Press Release.

⁵⁸ Deferred Prosecution Agreement, *United States v. Stericycle, Inc.* ¶¶ 11–15, No. 22-CR-20156 (S.D. Fla. Apr. 18, 2022), <https://www.justice.gov/opa/press-release/file/1496416/download>; Exchange Act Release No. 94760 ¶¶ 29–32.

⁵⁹ Exchange Act Release No. 94760 ¶ 4.

⁶⁰ *Id.* ¶ 6.

⁶¹ *Id.* ¶ 6.

⁶² *Id.* ¶¶ 4, 7.

⁶³ DOJ Stericycle Press Release.

⁶⁴ Exchange Act Release No. 94760 ¶ 8.

⁶⁵ *Id.* ¶¶ 9–12.

⁶⁶ *Id.* ¶¶ 13–16.

⁶⁷ *Id.* ¶¶ 16–17.

⁶⁸ *Id.* ¶¶ 17.

⁶⁹ DOJ Stericycle Press Release; Exchange Act Release No. 94760 ¶¶ 18–19.

Glencore

On May 24, 2022, Glencore International A.G. and Glencore Ltd., multinational commodity trading and mining firms headquartered in Switzerland, pleaded guilty to resolve DOJ's investigation into FCPA and commodity price manipulation violations.⁷⁰ The pleas were part of coordinated resolutions with authorities in the United Kingdom and Brazil.⁷¹ Glencore agreed to pay over \$1.1 billion globally in fines and forfeiture and agreed to engage an independent compliance monitor for three years.⁷² In the FCPA matter, Glencore International A.G. pleaded guilty to one count of conspiracy to violate the anti-bribery provisions of the FCPA.⁷³ DOJ's press release stated that Glencore, through third-party intermediaries, facilitated bribes to officials in Nigeria, Cameroon, Ivory Coast, Equatorial Guinea, Brazil, Venezuela and the Democratic Republic of the Congo⁷⁴ to obtain certain benefits, including oil contracts and avoidance of government audits.⁷⁵ Glencore also faced charges from U.K. authorities and an investigation by Swiss authorities, and reached resolutions with Brazil's Ministério Público Federal and the CFTC.⁷⁶ In the commodity price manipulation case, the CFTC assessed a civil monetary penalty of \$865 million and \$320 million in disgorgement, offset up to \$852.8 million by the amount paid to DOJ.⁷⁷

GOL Linhas Aéreas Inteligentes S.A.

On September 15, 2022, DOJ announced a DPA with GOL, a Brazilian low-cost airline, for conspiracy to violate the anti-bribery and books and records provisions of the FCPA.⁷⁸ Pursuant to the DPA, GOL was required to pay a criminal penalty of \$17 million, subject to up to \$1.7 million in credit against an approximately \$3.4 million fine the company has agreed to pay to Brazilian authorities.⁷⁹ On the same day, the SEC announced a parallel cease-and-desist order related to violations of the anti-bribery, books and records, and internal accounting controls provisions of the FCPA, assessing \$24.5 million in disgorgement and prejudgment interest.⁸⁰ The SEC also granted a \$1.7 million credit against the anticipated fine in Brazil.⁸¹ DOJ and the SEC waived a combined \$115.5 million in fines and disgorgement due to GOL's demonstrated inability to pay the fines in full.⁸²

According to the resolution documents, the FCPA violations arose out of \$3.8 million that GOL conspired to pay to Brazilian officials in connection with an economic stimulus program.⁸³ The DOJ charged that GOL's payments aimed to secure the passage of favorable legislation involving certain payroll tax and fuel tax reductions that benefited GOL.⁸⁴ DOJ further charged that a member of GOL's board of directors caused GOL to enter into sham contracts with, and make payments to, entities connected to relevant Brazilian officials.⁸⁵ GOL's books and records falsely listed the corrupt payments as expenses for advertising and other services.⁸⁶ The SEC noted that the scheme took place in the context of insufficient internal accounting controls.⁸⁷

⁷⁰ DOJ Glencore Press Release.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ DOJ Glencore Press Release; Commodities Futures Trading Comm'n, *In re Glencore International AG, Glencore Ltd., and Chemoil Corporation*, CFTC Docket No. 22-16 (May 24, 2022), <https://www.cftc.gov/media/7291/enfglencoreorder052422/download>.

⁷⁸ DOJ GOL Press Release.

⁷⁹ *Id.*

⁸⁰ Press Release, U.S. Sec. & Exch. Comm'n, *SEC Charges Gol Intelligent Airlines, Brazil's Second Largest Airline, with FCPA Violations* (Sept. 15, 2022), <https://www.sec.gov/news/press-release/2022-164> [hereinafter "SEC GOL Press Release"].

⁸¹ *In re GOL Linhas Aéreas Inteligentes S.A.*, Exchange Act Release No. 95800 Section IV(B) (Sept. 15, 2022), <https://www.sec.gov/litigation/admin/2022/34-95800.pdf> [hereinafter "Exchange Act Release No. 95800"].

⁸² SEC GOL Press Release.

⁸³ DOJ GOL Press Release; Exchange Act Release No. 95800 ¶ 2.

⁸⁴ DOJ GOL Press Release.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ SEC GOL Press Release; Exchange Act Release No. 95800 ¶ 12.

ABB

On December 2, 2022, DOJ announced a DPA and \$315 million in criminal penalties with ABB, a Switzerland-based technology company focused on electrification, automation, motion and robotics.⁸⁸ DOJ agreed to credit up to one-half of the fine amount against payments the company makes in related proceedings with the SEC and authorities in South Africa, Switzerland and Germany. DOJ charged ABB with violations of the FCPA's anti-bribery and books and records provisions, as well as conspiracy to violate those provisions.⁸⁹ In addition, ABB's Swiss and South African subsidiaries each pleaded guilty to one count of conspiracy to violate the anti-bribery provisions of the FCPA.⁹⁰ The DOJ resolution was coordinated with the SEC, as well as with authorities in South Africa and Switzerland.⁹¹ The SEC and ABB agreed to a \$75 million civil penalty in a cease-and-desist order settling charges that ABB violated the anti-bribery, books and records, and internal accounting controls provisions of the FCPA.⁹² The SEC also ordered ABB to pay over \$72 million in disgorgement and prejudgment interest, but deemed the amount satisfied by ABB's disgorgement of its ill-gotten gains to the South African government in a related civil settlement.⁹³

According to the resolution documents, the FCPA violations arose out of bribes paid to a South African government official to obtain a contract worth approximately \$160 million.⁹⁴ ABB executives learned that Eskom, a South African electricity public utility, was considering replacing a contractor at a power plant run by Eskom.⁹⁵ The SEC order stated that an ABB "capture team" developed relationships with Eskom officials, learned confidential information about the bidding process and entered into a bribery scheme whereby ABB South Africa would use a third-party service provider to pay an Eskom official in exchange for awarding the contract to ABB.⁹⁶ DOJ noted that ABB conducted sham negotiations to obtain contracts at inflated prices that ABB had prearranged with the official on the condition that ABB employ a subcontractor associated with the official.⁹⁷ Eskom awarded the \$160 million contract to ABB South Africa.⁹⁸

As described in the SEC order, ABB contracted with a service provider without competitive bidding, contrary to company policy, with an advance payment provision designed to provide the Eskom official with an upfront payment.⁹⁹ The arrangement nearly came undone due to a conflict between the Eskom official and the service provider's chair, so ABB and the official entered a new arrangement with a service provider operated by a close friend of the official.¹⁰⁰ The arrangement functioned through abuse of "variation orders" provided for in the contract, which allowed Eskom to make changes to the contract and resulted in ABB South Africa claiming additional costs that were inflated, unnecessary or unjustified.¹⁰¹ Eskom paid the third-party service provider, which sent money to the Eskom official and his family members from the payments.¹⁰² In total, according to the SEC, ABB directed more than \$37 million in bribe payments through third-party service providers with whom the Eskom official had close personal relationships.¹⁰³

⁸⁸ Press Release, U.S. Dep't of Just., *ABB Agrees to Pay Over \$315 Million to Resolve Coordinated Global Foreign Bribery* (Dec. 2, 2022), <https://www.justice.gov/opa/pr/abb-agrees-pay-over-315-million-resolve-coordinated-global-foreign-bribery-case> [hereinafter "DOJ ABB Press Release"].

⁸⁹ DOJ ABB Press Release.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Press Release, U.S. Sec. & Exch. Comm'n, *ABB Settles SEC Charges That It Engaged in Bribery Scheme in South Africa* (Dec. 2, 2022), <https://www.sec.gov/news/press-release/2022-214> [hereinafter "SEC ABB Press Release"].

⁹³ SEC ABB Press Release; *In re ABB Ltd.*, Exchange Act Release No. 96444 Section IV(C) (Dec. 3, 2022), <https://www.sec.gov/litigation/admin/2022/34-96444.pdf> [hereinafter "Exchange Act Release No. 96444"].

⁹⁴ Exchange Act Release No. 96444 ¶ 1.

⁹⁵ *Id.* ¶¶ 17–19.

⁹⁶ *Id.* ¶¶ 18–23.

⁹⁷ DOJ ABB Press Release.

⁹⁸ Exchange Act Release No. 96444 ¶ 25.

⁹⁹ *Id.* ¶ 26.

¹⁰⁰ *Id.* ¶¶ 28–29.

¹⁰¹ *Id.* ¶ 30.

¹⁰² *Id.* ¶ 30.

¹⁰³ SEC ABB Press Release.

DOJ highlighted its resolution with ABB as an example of a company's voluntarily self-disclosing FCPA misconduct. ABB had previously entered into FCPA resolutions with DOJ in 2004 and 2010, under which it implemented a compliance program that ultimately detected the misconduct that formed the basis of the 2022 resolution.¹⁰⁴ According to DOJ, in addition to taking "active steps to self-disclose the wrongdoing," the company also provided "A+ cooperation, including the production of significant materials located overseas."¹⁰⁵

Principal Associate Deputy Attorney General Marshall Miller noted that a DPA for a repeat offender is rare, as "successive NPAs and DPAs for the same company are strongly disfavored."¹⁰⁶ He went on to say that "[t]hose who are tracking whether the department will walk the walk when it comes to rewarding voluntary self-disclosure should look very carefully at the ABB case — because far from taking a narrow, technical approach, the department assigned significant weight to ABB's documented efforts to self-disclose in arriving at the ultimate result."¹⁰⁷

Honeywell

On December 19, 2022, DOJ announced a \$160 million DPA with Honeywell UOP, a U.S. subsidiary of Honeywell International Inc., related to one count of conspiracy to violate the anti-bribery provisions of the FCPA due to conduct in Brazil.¹⁰⁸ The SEC concurrently announced a resolution with Honeywell International Inc. for violating the anti-bribery, books and records, and internal accounting controls provisions of the FCPA, relating to conduct in Brazil and Algeria.¹⁰⁹ Honeywell is a U.S.-based global manufacturer of aerospace technologies, building technologies and automation products.¹¹⁰ Pursuant to the resolutions, Honeywell agreed to pay a criminal penalty of approximately \$79 million to DOJ and approximately \$81 million in disgorgement and prejudgment interest to the SEC.¹¹¹ DOJ agreed to credit up to approximately \$39.6 million of the criminal penalty against amounts the company is expected to pay to Brazilian authorities in a related investigation.¹¹²

As stated in the resolution documents, the FCPA violations arose out of an effort to obtain business from the Brazil state-owned oil and gas company Petrobras, as well as the Algerian state-owned oil and gas company Sonatrach.¹¹³ The DOJ resolution related to the conduct in Brazil, while the SEC's order related to both the Brazil and Algeria conduct. DOJ's press release stated that, in Brazil, Honeywell offered an approximately \$4 million payment to a Petrobras executive to help the company win an approximately \$425 million contract to design and build an oil refinery.¹¹⁴ Honeywell entered into an agency agreement with a Brazilian sales company for the purpose of funding and delivering the payment.¹¹⁵ The DPA stated that the Petrobras executive provided Honeywell with business advantages, and the company ultimately earned approximately \$106 million in profits from the improperly obtained business.¹¹⁶ The SEC's press release noted that, in Algeria, Honeywell's Belgian subsidiary paid approximately \$75,000 to an Algerian government official to obtain and retain business with Sonatrach.¹¹⁷ According to the SEC order, during a dispute over a contractual construction schedule, Algeria threatened to transfer Honeywell's construction

¹⁰⁴ Miller Remarks.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Press Release, U.S. Dep't of Just., *Honeywell UOP to Pay Over \$160 Million to Resolve Foreign Bribery Investigations in U.S. and Brazil* (Dec. 19, 2022), <https://www.justice.gov/opa/pr/honeywell-uop-pay-over-160-million-resolve-foreign-bribery-investigations-us-and-brazil> [hereinafter "DOJ Honeywell Press Release"].

¹⁰⁹ Press Release, U.S. Sec. & Exch. Comm'n, *SEC Charges Honeywell with Bribery Schemes in Algeria and Brazil* (Dec. 19, 2022), <https://www.sec.gov/news/press-release/2022-230> [hereinafter "SEC Honeywell Press Release"].

¹¹⁰ SEC Honeywell Press Release.

¹¹¹ DOJ Honeywell Press Release.

¹¹² *Id.*

¹¹³ SEC Honeywell Press Release.

¹¹⁴ DOJ Honeywell Press Release.

¹¹⁵ Honeywell DPA ¶ 10.

¹¹⁶ *Id.*

¹¹⁷ SEC Honeywell Press Release.

contract to a competitor.¹¹⁸ The SEC stated that Honeywell engaged a consultant to pay a Sonatrach official, and used a Monaco-based agent to repay the consultant through a series of transactions.¹¹⁹ After the first payment, according to the SEC, Honeywell and Sonatrach amended the contract, ending the protracted disagreement over the construction schedule.¹²⁰ According to the SEC, in connection with the conduct in Algeria, Honeywell obtained approximately \$3.12 million in profits.¹²¹

Tenaris

On June 2, 2022, the SEC announced a resolution with Tenaris, a Luxembourg-based manufacturer and supplier of steel pipes, related to a bribery scheme involving Petrobras.¹²² The matter concerned approximately \$10.4 million in payments funded on behalf of a Tenaris Brazilian subsidiary by companies affiliated with Tenaris's controlling shareholder.¹²³ Tenaris agreed to pay \$78 million, consisting of approximately \$42.8 million in disgorgement, \$10.3 million in prejudgment interest and a \$25 million civil penalty.¹²⁴ The SEC charged violations of the anti-bribery, books and records, and internal accounting controls provisions of the FCPA.¹²⁵

According to the SEC, Tenaris's Brazilian subsidiary, Confab, entered into an understanding with a Brazilian government official that the official would use his authority to influence Petrobras to forgo an international tender process for certain contracts for pipes and tubes, continue Confab's status as the only domestic supplier and allow direct negotiations with Confab.¹²⁶ In exchange, according to the SEC, the official received approximately 0.5% of revenues from the contracts.¹²⁷ The SEC order explained that the official recruited an associate to conceal the payments through a Uruguayan shell company, in coordination with Confab.¹²⁸ According to the SEC order, the participants concealed the payments by executing fake contracts for purported consultancy and advisory services.¹²⁹

Oracle Corporation

On September 27, 2022, the SEC announced a resolution with Oracle Corporation, a Texas-based technology company, in connection with violations of the anti-bribery, books and records, and internal accounting controls provisions of the FCPA.¹³⁰ Oracle agreed to pay \$23 million, consisting of approximately \$7.1 million in disgorgement, \$791,000 in prejudgment interest and a \$15 million civil penalty.¹³¹

According to the SEC press release, the violations concerned improper payments by Oracle subsidiaries in Turkey, the United Arab Emirates and India.¹³² The Turkish and UAE subsidiaries also used the funds to pay for officials to attend technology conferences, in violation of company policies.¹³³ The SEC press release noted that, in some instances, employees of the Turkish subsidiary used the funds to pay for officials' families to accompany them on trips to international conferences or to take side

¹¹⁸ *In re Honeywell International Inc.*, Exchange Act Release No. 96529 ¶ 28 (Dec. 19, 2022), <https://www.sec.gov/litigation/admin/2022/34-96529.pdf> [hereinafter "Exchange Act Release No. 96529"].

¹¹⁹ Exchange Act Release No. 96529 ¶ 27–31.

¹²⁰ *Id.* ¶ 28.

¹²¹ *Id.* ¶ 32.

¹²² Press Release, U.S. Sec. & Exch. Comm'n, *SEC Charges Global Steel Pipe Manufacturer with Violating Foreign Corrupt Practices Act* (June 2, 2022), <https://www.sec.gov/news/press-release/2022-98> [hereinafter "SEC Tenaris Press Release"].

¹²³ *In re Tenaris S.A.*, Exchange Act Release No. 95030 ¶ 1 (June 2, 2022), <https://www.sec.gov/litigation/admin/2022/34-95030.pdf>.

¹²⁴ *Id.* Section IV(B).

¹²⁵ *Id.* ¶ 1.

¹²⁶ *Id.* ¶¶ 9–10.

¹²⁷ *Id.* ¶ 10.

¹²⁸ *Id.* ¶¶ 11–12.

¹²⁹ *Id.* ¶¶ 14–15.

¹³⁰ SEC Oracle Press Release; *In re Oracle Corporation*, Exchange Act Release No. 95913 ¶ 1 (Sept. 27, 2022), <https://www.sec.gov/litigation/admin/2022/34-95913.pdf> [hereinafter "Exchange Act Release No. 95913"].

¹³¹ Exchange Act Release No. 95913, Section IV(B).

¹³² SEC Oracle Press Release.

¹³³ *Id.*

trips to California.¹³⁴ According to the SEC order, these benefits, as well as cash payments to Turkish officials, helped Oracle obtain government contracts.¹³⁵ The order further stated that, in the UAE, Oracle employees made improper payments to a UAE official in return for six different contracts.¹³⁶ In India, Oracle employees allegedly directed money into an entity with a reputation for paying relevant government officials.¹³⁷ The SEC order explained that Oracle employees generated the funds by obtaining approval for larger discounts than necessary for legitimate business reasons, through an internal system that did not require documentation, despite company policy that mandated that all discount requests be supported by accurate information.¹³⁸ Additionally, the SEC order noted that Oracle employees submitted purchase orders that included false marketing reimbursements, increasing the amount of money held in the accounts.¹³⁹ Previously, in 2012, the SEC entered a resolution with Oracle for its Indian subsidiary's creation of side funds, which created the risk that the funds could be used for illicit purposes.¹⁴⁰

Enforcement Actions against Individuals

Based on publicly filed charging documents, in 2022, DOJ brought criminal FCPA charges against four individuals.¹⁴¹ This reflects a modest decrease from 2021 in individual FCPA prosecutions brought by DOJ, and the lowest number of FCPA prosecutions of individuals since 2014, continuing a marked downward trend in individual prosecutions despite repeated pronouncements regarding the priority placed on individual accountability. For the second year in a row, the SEC did not charge a single individual with an FCPA violation, making fairly clear the relative low priority that the SEC places on such actions relative to corporate FCPA enforcement actions.

¹³⁴ *Id.*

¹³⁵ Exchange Act Release No. 95913 ¶¶ 13–18.

¹³⁶ *Id.* ¶¶ 19–20.

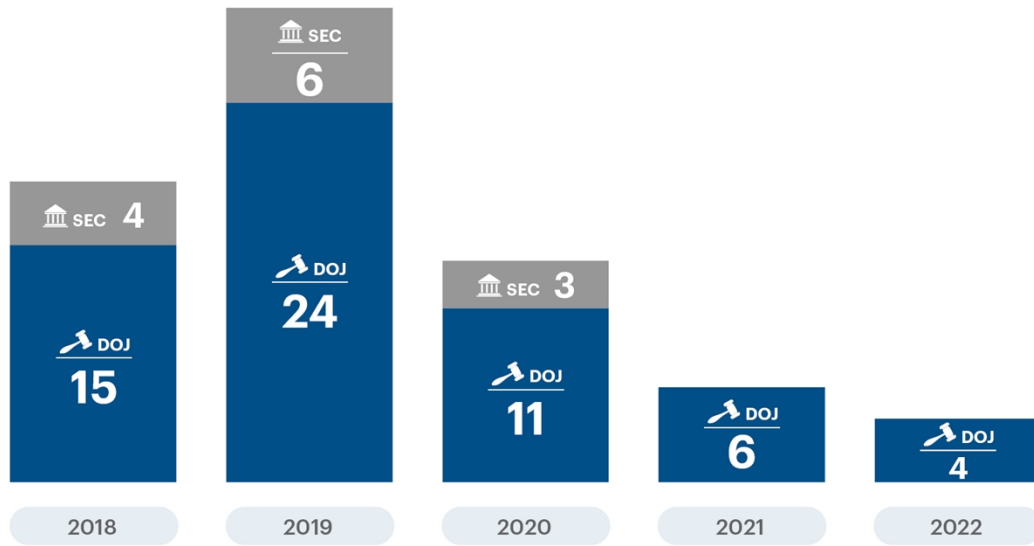
¹³⁷ *Id.* ¶ 21.

¹³⁸ *Id.* ¶¶ 7–8.

¹³⁹ *Id.* ¶¶ 9–10.

¹⁴⁰ SEC Oracle Press Release.

¹⁴¹ Included in these totals are individual prosecutions and enforcement actions for FCPA charges, but not for other charges, such as money laundering or racketeering. Actions are listed in the year of the initial filing of FCPA charges, even if unsealed in a later year, which may result in changes to the totals for past years, as indictments from past years are unsealed.



FCPA INDIVIDUAL ENFORCEMENT ACTIONS, 2017–2022

The individual prosecutions charging violations of the FCPA did not relate to prior corporate enforcement actions. However, DOJ brought other criminal charges for conduct arising out of corporate bribery schemes. For example, in connection with the solicitation and receipt of \$10 million in bribe payments from Odebrecht S.A.—which pleaded guilty in 2016 to FCPA violations—DOJ charged Carlos Ramon Polit Faggioni, the former Comptroller General of Ecuador, with one count of conspiracy to commit money laundering, three counts of money laundering and two counts of engaging in transactions in criminally derived property.¹⁴²

DOJ charged four individuals with FCPA violations in two criminal actions. On March 31, 2022, DOJ charged Charles Hobson of Tennessee, a former vice president of a Pennsylvania coal company, with facilitating bribes to government officials in Egypt in connection with contracts from Al Nasr Company for Coke and Chemicals, an Egyptian state-owned and -controlled coal company.¹⁴³ The indictment alleged that Hobson paid bribes to Al Nasr officials in Egypt to obtain approximately \$143 million in coal contracts via an intermediary, transferred the payments through a U.S. bank account and received kickbacks for himself.¹⁴⁴ On July 19, 2022, a grand jury returned an indictment charging Esteban Eduardo Merlo Hidalgo (of Miami), Christian Patricio Pintado Garcia (of Costa Rica) and Luis Lenin Maldonado Matute (of Costa Rica) with conspiring to pay bribes to officials of Ecuador’s state-owned insurance companies.¹⁴⁵ The defendants allegedly sought to obtain and retain business through the bribe payments and launder proceeds of the bribe scheme to and from bank accounts in Florida for their personal benefit.¹⁴⁶

¹⁴² Indictment, *United States v. Carlos Ramon Polit Faggioni*, No. 22-cr-20114-KMW (S.D. Fla. March 25, 2022), <https://www.justice.gov/criminal-fraud/file/1489111/download>.

¹⁴³ Press Release, U.S. Dep’t of Just., *Former Coal Company Vice President Arrested and Charged with Foreign Bribery, Money Laundering, and Wire Fraud* (Mar. 31, 2022), <https://www.justice.gov/opa/pr/former-coal-company-vice-president-arrested-and-charged-foreign-bribery-money-laundering-and>.

¹⁴⁴ *Id.*

¹⁴⁵ Press Release, U.S. Dep’t of Just., *Three Men Charged in Ecuadorian Bribery and Money Laundering Scheme* (July 19, 2022), <https://www.justice.gov/opa/pr/three-men-charged-ecuadorian-bribery-and-money-laundering-scheme>.

¹⁴⁶ *Id.*

Additionally, FCPA indictments against three individuals from 2020 were unsealed in 2022. One unsealed indictment charged two Marshall Island nationals, Cary Yan and Gina Zhou, with using funds of a New-York based NGO to bribe elected officials in the Marshall Islands to secure favorable legislation.¹⁴⁷ On December 1, 2022, Yan and Zhou both pleaded guilty to one count of conspiracy to violate the anti-bribery provisions of the FCPA.¹⁴⁸ The other unsealed indictment charged former Goldman Sachs executive Asante Berko with FCPA violations, alleging he had orchestrated bribes to be paid to help win a contract to build and operate a power plant in Ghana.¹⁴⁹ Berko had previously resolved charges based on similar conduct with the SEC in 2021, agreeing to pay \$329,000 to the Commission.¹⁵⁰ Berko was arrested in November 2022 in connection with these charges.¹⁵¹

Although the SEC did not bring any new charges against individuals for violations of the FCPA, it did secure a default judgement against the former managing director of a Chinese subsidiary of Herbalife, Yanlian Li, in connection with a 2019 SEC complaint alleging violations of the anti-bribery and accounting provisions of the FCPA. Li failed to respond to the SEC's November 2019 complaint, leading a federal judge in the Southern District of New York to grant the SEC's request for summary judgment and order Li to pay \$550,092 in civil penalties.¹⁵²

Policy Pronouncements Affecting Anti-Corruption Enforcement

Policies in Response to the War in Ukraine

U.S. government agencies have taken a variety of steps in response to the war in Ukraine that implicate FCPA enforcement. Of particular note are a series of initiatives, including sanctions, targeting Russian kleptocracy.¹⁵³ These pronouncements make it clear that Russia has been elevated as a top priority for U.S. enforcement authorities and that the relationship between the sanctions and FCPA enforcement regimes is stronger than ever.

On March 2, 2022, Attorney General Merrick Garland announced the launch of a DOJ task force called "Task Force KleptoCapture."¹⁵⁴ Task Force KleptoCapture is an interagency law enforcement task force designed to enforce sanctions, export restrictions and economic countermeasures that the United States and its allies and partners have imposed in response to Russia's invasion of Ukraine.¹⁵⁵ Although the task force is not focused on FCPA enforcement, FCPA violations may well be discovered through the task force's efforts.

¹⁴⁷ Press Release, U.S. Dep't of Just., *Former Heads of New York-Based Non-Governmental Organization Charged with Bribing Elected Officials of the Marshall Islands Extradited to the United States from Thailand* (Sept. 2, 2022), <https://www.justice.gov/opa/pr/former-heads-new-york-based-non-governmental-organization-charged-bribing-elected-officials>.

¹⁴⁸ Press Release, U.S. Dep't of Just., *Former Heads of New York-Based Non-Governmental Organization Plead Guilty to Conspiring to Bribe Elected Officials of the Marshall Islands* (Dec. 1, 2022), <https://www.justice.gov/opa/pr/former-heads-new-york-based-non-governmental-organization-plead-guilty-conspiring-bribe>.

¹⁴⁹ See Indictment, *United States v. Berko*, No. 1:20-cr-00328 (E.D.N.Y. Aug. 26, 2020).

¹⁵⁰ See Press Release, U.S. Sec. & Exch. Comm'n, *SEC Obtains Final Judgment Against Former Executive of Financial Services Company*, (June 23, 2021), <https://www.sec.gov/litigation/litreleases/2021/lr25121.htm>.

¹⁵¹ See Patricia Hurtado, *Ex-Goldman Banker Arrested Over Alleged Ghana Bribery Scheme*, Bloomberg (Nov. 9, 2022), <https://www.bloomberg.com/news/articles/2022-11-09/ex-goldman-banker-charged-with-paying-bribes-to-ghana-officials?leadSource=verify%20wall>.

¹⁵² Opinion and Order Granting Summary Judgement, *S.E.C. v. Li*, 19-cv-10562 (S.D.N.Y. June 27, 2022).

¹⁵³ For a comprehensive review of developments in economic sanctions and anti-money laundering enforcement, see generally Paul, Weiss, Rifkind, Wharton & Garrison LLP, *2022 Year in Review: Economic Sanctions and Anti-Money Laundering Developments* (Mar. 1, 2023), https://www.paulweiss.com/media/3983111/economic_sanctions_and_anti_money_laundering_developments_2022_year_in_review.pdf.

¹⁵⁴ Press Release, U.S. Dep't of Just., *Attorney General Merrick B. Garland Announces Launch of Task Force KleptoCapture* (Mar. 2, 2022), <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-announces-launch-task-force-kleptocapture>.

¹⁵⁵ See *id.*

In line with the Biden Administration's focus on Russian corruption and a prior June 3, 2021, policy proclamation "establishing the fight against corruption as a core United States national security interest,"¹⁵⁶ the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") issued an Advisory to financial institutions on kleptocracy and public corruption, urging financial institutions to be more stringent in preparing Suspicious Activity Reports in connection with suspected kleptocracy.¹⁵⁷ Notably, the Advisory categorizes Russia as a kleptocracy and describes the nexus between corruption, including bribery of Russian officials, and Russia's armed interventions abroad, including Russia's ability to finance its invasion of Ukraine.¹⁵⁸

In the Advisory, FinCEN identifies a number of "red flag indicators of kleptocracy and foreign public corruption" that financial institutions should consider in their detection efforts, indicators that are also common FCPA red flags, such as: transactions involving services provided to state-owned companies or public institutions by companies registered in high-risk jurisdictions; transactions involving public officials related to high-value assets that are not commensurate with the reported source of wealth for the public official or that fall outside of that individual's normal pattern of activity or lifestyle; transactions involving public officials and funds moving to and from countries with which the public officials do not appear to have ties; and use of third parties to shield the identify of foreign public officials.¹⁵⁹

It is clear that DOJ views the sanctions and FCPA enforcement regimes as closely related. At an April 2022 New York City Bar Association event, DAG Monaco described sanctions as the "new FCPA."¹⁶⁰ This was not merely a passing remark. In her remarks during the keynote address at 2022 GIR Live: Women in Investigations, Monaco described how DOJ intends to build sanctions enforcement on top of its FCPA enforcement history.¹⁶¹ As Monaco stated, "Just as the last decade saw the world of FCPA enforcement expand to foreign partners and counterparts, the months and years ahead will see the department's sanctions team work hand-in-glove with civil and law enforcement agencies across the world."¹⁶² Monaco linked future enforcement of sanctions with future FCPA enforcement by stating that the "multilateral growth in FCPA and sanctions enforcement has also allowed [DOJ] to go after those who profit from corruption and crime around the world—whether they are sanctions-evading oligarchs or office-holding bribe recipients."¹⁶³

DOJ's Revised Guidance on Corporate Enforcement Policies—the "Monaco Memo"

On September 15, 2022, Monaco announced changes to DOJ's corporate criminal enforcement policies in a 15-page memorandum (the "Monaco Memo").¹⁶⁴ The Monaco Memo emphasizes individual accountability, consideration of a company's history of misconduct, incentivization of voluntary self-disclosure of wrongdoing, the use of corporate monitors, the culture of corporate compliance and transparency in enforcement actions.¹⁶⁵

¹⁵⁶ The White House, *Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest* (June 3, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/03/memorandum-on-establishing-the-fight-against-corruption-as-a-core-united-states-national-security-interest/>.

¹⁵⁷ See FinCEN, *Advisory on Kleptocracy and Foreign Public Corruption*, FIN-2022-A001 (Apr. 14, 2022), <https://www.fincen.gov/sites/default/files/advisory/2022-04-14/FinCEN%20Advisory%20Corruption%20FINAL%20508.pdf>.

¹⁵⁸ See *id.* at 2.

¹⁵⁹ See *id.* at 8–10.

¹⁶⁰ Dylan Tokar, *Sanctions Turn Into New Priority for Justice Department*, Wall St. J. (Apr. 27, 2022), https://www.wsj.com/articles/sanctions-turn-into-new-priority-for-justice-department-11651097156?mod=article_inline.

¹⁶¹ Lisa O. Monaco, Deputy Att'y Gen. of the U.S. Dep't of Just., *Remarks at 2022 GIR Live: Women in Investigations* (June 6, 2022), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-delivers-keynote-remarks-2022-gir-live-women>.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Lisa O. Monaco, Deputy Att'y Gen. of the U.S. Dep't of Just., *Memorandum on Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group* (Sept. 15, 2022), available at <https://www.justice.gov/opa/speech/file/1535301/download> [hereinafter "Monaco Memo"].

¹⁶⁵ See *id.*

While the new policies signal a renewed focus by DOJ on corporate criminal investigations and prosecutions, the changes from prior policies are incremental rather than groundbreaking. Almost a year before her 2022 memo, in an October 28, 2021, memorandum and accompanying speech, Monaco previously outlined similar policies.¹⁶⁶

First, in an effort to root out the individuals responsible for misconduct, the Monaco Memo restates DOJ’s policy that corporations must disclose to DOJ *all* relevant, non-privileged facts about individual misconduct. The Monaco Memo also emphasizes the need for companies to disclose this information on a timely basis, prioritizing the most relevant information. This approach is designed to allow prosecutors to complete investigations of individuals before entering into a resolution with a company.¹⁶⁷

Second, the Monaco Memo reiterates that prosecutors should consider a company’s full history of prior misconduct—not only criminal misconduct, but also a company’s civil and regulatory history—when evaluating a proper resolution for a matter. However, the memo recognizes that “[n]ot all instances of prior misconduct . . . are equally relevant or probative” and that “prosecutors should consider the form of prior resolution and the associated sanctions or penalties, as well as the elapsed time between the instant misconduct, the prior resolution, and the conduct underlying the prior resolution.”¹⁶⁸ The memo also notes that prior misconduct committed by a company that was acquired by another company should not be given great weight so long as the acquiring entity has a “well-designed compliance program,” addresses the root cause of the misconduct before the conduct currently being investigated by DOJ occurred and completed a full and timely remediation within the acquired entity before the conduct currently being investigated by DOJ occurred.¹⁶⁹

Third, the Monaco Memo emphasizes voluntary self-disclosure by corporations that discover misconduct. As with the guidance on individual accountability, here, too, the memo emphasizes the importance of promptness in corporations’ self-disclosure. In her speech announcing the new policy, Monaco stated that “[i]n many cases, voluntary self-disclosure is a sign that the company has developed a compliance program and has fostered a culture to detect misconduct and bring it forward.”¹⁷⁰

Fourth, compliance programs are a central focus of the revised guidelines. As the Monaco Memo explains, “[a]lthough an effective compliance program and ethical corporate culture do not constitute a defense to prosecution of corporate misconduct, they can have a direct and significant impact on the terms of a corporation’s potential resolution with [DOJ].”¹⁷¹ The memo requires prosecutors to determine the adequacy and effectiveness of a corporation’s compliance program both at the time of the offense being investigated and at the time of a charging decision.¹⁷² The Monaco Memo identifies a number of factors that bear on whether a compliance program is effective. These include whether the compliance program is well designed, adequately resourced, empowered to function effectively and works in practice.¹⁷³

Fifth, the Monaco Memo provides guidance on when a corporate monitor is appropriate, how a monitor should be selected and what type of oversight over a monitor’s work is appropriate to increase the likelihood of the monitorship’s success.¹⁷⁴ The Monaco Memo provides 10 “non-exhaustive” factors for prosecutors to consider. The factors are broad and look to issues such

¹⁶⁶ Lisa O. Monaco, Deputy Att’y Gen. of the U.S. Dep’t of Just., *Memorandum on Corporate Crime Advisory Group and Initial Revisions to Corporate Criminal Enforcement Policies* (Oct. 28, 2021), [https://www.justice.gov/media/1173646/dl?inline=](https://www.justice.gov/media/1173646/dl?inline=;); Lisa O. Monaco, Deputy Att’y Gen. of the U.S. Dep’t of Just., *Address at ABA’s 36th National Institute on White Collar Crime* (Oct. 28, 2021), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-gives-keynote-address-abas-36th-national-institute>.

¹⁶⁷ Monaco Memo, at 3.

¹⁶⁸ *Id.* at 5.

¹⁶⁹ *Id.* at 5–6.

¹⁷⁰ Lisa O. Monaco, Deputy Att’y Gen. of the U.S. Dep’t of Just., *Remarks on Corporate Criminal Enforcement* (Sept. 15, 2022), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-delivers-remarks-corporate-criminal-enforcement> [hereinafter “Monaco Remarks”].

¹⁷¹ Monaco Memo, at 9.

¹⁷² *See id.*

¹⁷³ *See id.*

¹⁷⁴ *See id.* at 11–15.

as voluntary self-disclosure, the effectiveness of the compliance program, the pervasiveness of the misconduct, investigative or remedial measures taken by the corporation to address the misconduct, the risk profile of the corporation and the amount of oversight from industry regulators to which the corporation is subject.¹⁷⁵ As for monitor selection, the memo emphasizes transparency and describes procedures to further this goal.¹⁷⁶

Lastly, the DAG made clear in her remarks announcing the policy revisions that this DOJ is “not done” with developing policies to enhance the effectiveness of its corporate enforcement goals.¹⁷⁷ Additional developments in this space are expected and should be closely monitored given their potential to significantly affect FCPA enforcement.

DOJ’s January 2022 FCPA Opinion Procedure Release

On January 21, 2022, DOJ issued its first FCPA Opinion Procedure Release (“OPR”) since 2020, concluding that a U.S.-based company that made the OPR request (the “Requestor”) would not be subject to an enforcement action under the FCPA’s anti-bribery provisions for making a payment to a foreign official if the payment were for the purpose of avoiding an imminent threat to the safety of company personnel.¹⁷⁸

The facts giving rise to the OPR arose from “Country A’s” detention of the captain and crew of a ship owned by the Requestor. Using incorrect anchoring coordinates, the ship mistakenly anchored in Country A’s waters while intending to anchor in a different country. Country A took the ship’s captain to jail and detained the crew on board the ship.¹⁷⁹ Importantly, the captain was suffering from serious medical conditions that would have been exacerbated by the conditions of his detention, creating a significant risk to the captain’s life and physical well-being.¹⁸⁰ Following this detention, an individual purporting to represent Country A’s Navy (the “Third-Party Intermediary”) approached the Requestor and offered to release the captain and permit the crew and ship to leave Country A in return for a payment of \$175,000. The Third-Party Intermediary repeatedly rejected requests by the Requestor and its agent for documentation substantiating the charges or fine amount in order to ensure the payment would be properly made pursuant to a penalty resulting from a legal or regulatory violation.¹⁸¹ As an alternative to the payment, the Requestor also sought the assistance from other U.S. government agencies, but this avenue did not result in the release of the captain, crew or ship.¹⁸²

DOJ concluded that the proposed payment would not violate the FCPA because the payment was not motivated by an intent to obtain or retain business or to direct business to another entity, as required for an FCPA violation.¹⁸³ DOJ noted that the Requestor had no ongoing or anticipated business with Country A, the only reason the ship was in Country A was due to error, the Requestor did not attempt to conceal the payment and the Requestor first sought other avenues of relief before considering the payment.¹⁸⁴

Changes to SEC Whistleblower Program Rules

On August 26, 2022, the SEC adopted two amendments to Rule 21F-3 governing its whistleblower program that expand the ability for financial recoveries under the program.¹⁸⁵ The first amendment allows the SEC to pay whistleblower awards up to

¹⁷⁵ See *id.* at 12–13.

¹⁷⁶ See *id.* at 13–14.

¹⁷⁷ Monaco Remarks.

¹⁷⁸ See U.S. Dep’t of Just., *Foreign Corrupt Practices Act Review Opinion Procedure Release No. 22-1* (Jan. 21, 2022), <https://www.justice.gov/criminal-fraud/page/file/1466596/download>.

¹⁷⁹ See *id.* at 1.

¹⁸⁰ See *id.* at 2.

¹⁸¹ See *id.*

¹⁸² See *id.*

¹⁸³ See *id.*

¹⁸⁴ See *id.* at 3.

¹⁸⁵ See Press Release, U.S. Sec. & Exch. Comm’n, *SEC Proposed Changes to Two Whistleblower Program Rules* (Feb. 10, 2022), <https://www.sec.gov/news/press-release/2022-23>; Press Release, U.S. Sec. & Exch. Comm’n, *SEC Amends Whistleblower Rules to Incentivize Whistleblower Tips* (Aug. 26, 2022), <https://www.sec.gov/news/press-release/2022-151>.

\$5 million for certain actions brought by other entities, including certain designated federal agencies, in cases where those awards might otherwise be available under the other federal entity's whistleblower program.¹⁸⁶ The second amendment addressed Rule 21F-6 and confirmed the SEC's authority to consider the dollar amount of a potential award for the limited purpose of increasing an award but eliminated the SEC's authority to consider the dollar amount of a potential award for the purpose of lowering the amount of an award.¹⁸⁷

At the time of the proposals, SEC Chair Gary Gensler stated that "[t]hese amendments, if adopted, would help ensure that whistleblowers are both incentivized and appropriately rewarded for their efforts in reporting potential violations of the law to the Commission."¹⁸⁸ Describing the proposals, Gensler stated that "[t]he first proposed rule change is designed to ensure that a whistleblower is not disadvantaged by another whistleblower program that would not give them as high an award as the SEC would offer. Under the second proposed rule change, the SEC could consider the dollar amounts of potential awards only to increase the whistleblower's award. This would give whistleblowers additional comfort knowing that the SEC could consider the dollar amount of the award only in such cases."¹⁸⁹ On August 26, 2022, the SEC adopted these proposed amendments.¹⁹⁰

Legal Developments Affecting Enforcement Tools

In 2022, significant legal developments continued to affect DOJ's and the SEC's tools for enforcing the FCPA and resolving cases.

United States v. Hoskins

On August 12, 2022, the U.S. Court of Appeals for the Second Circuit affirmed a district court's acquittal of a foreign defendant on grounds that he lacked an agency or employee relationship with a U.S. subsidiary covered by the FCPA. According to DOJ, API, a U.S. subsidiary of Alstom Power, a French power and transportation services company, hired two consultants to bribe Indonesian officials to help secure a \$118 million power plant construction contract from the Indonesian government.¹⁹¹ Lawrence Hoskins, who was employed by Alstom's UK subsidiary and assigned to work for its French subsidiary, was allegedly responsible for approving the selection of the consultants and authorizing payments to them.¹⁹²

In July 2013, the government charged Hoskins under conspiracy and aiding and abetting theories because of his relationship with API, which is a "domestic concern" covered by the FCPA.¹⁹³ On interlocutory appeal in 2018, the Second Circuit held that Hoskins could not be liable as an accomplice or co-conspirator for an FCPA crime that he was incapable of committing as a principal.¹⁹⁴ The 2018 decision found that the FCPA does not provide "jurisdiction over a foreign national who acts outside the United States, but not on behalf of an American person or company as an officer, director, employee, agent, or stockholder."¹⁹⁵

On remand to the district court, the DOJ revised its theory, arguing that Hoskins's work for API made him an "agent" of a domestic concern, leading to Hoskins's conviction on seven counts of FCPA violations and four counts of money laundering.¹⁹⁶

¹⁸⁶ Press Release, U.S. Sec. & Exch. Comm'n, SEC Amends Whistleblower Rules to Incentivize Whistleblower Tips (Aug. 26, 2022), <https://www.sec.gov/news/press-release/2022-151>.

¹⁸⁷ See *id.*

¹⁸⁸ Press Release, U.S. Sec. & Exch. Comm'n, SEC Proposed Changes to Two Whistleblower Program Rules (Feb. 10, 2022), <https://www.sec.gov/news/press-release/2022-23>.

¹⁸⁹ *Id.*

¹⁹⁰ Press Release, U.S. Sec. & Exch. Comm'n, SEC Amends Whistleblower Rules to Incentivize Whistleblower Tips (Aug. 26, 2022), <https://www.sec.gov/news/press-release/2022-151>.

¹⁹¹ *United States v. Hoskins*, 44 F.4th 140, 146 (2d Cir. 2022).

¹⁹² *Id.* at 145.

¹⁹³ *Id.*

¹⁹⁴ *United States v. Hoskins* 902 F.3d 69, 76 (2d Cir. 2018).

¹⁹⁵ *Id.* at 85.

¹⁹⁶ *Hoskins*, 44 F.4th at 145.

Hoskins successfully moved for acquittal on the FCPA counts, arguing that he was not an agent within the meaning of the FCPA, prompting DOJ to appeal to the Second Circuit.

In the 2022 decision, the Second Circuit found that there was no explicit or implied agency or employee relationship between Hoskins and API establishing the elements of an agency relationship beyond a reasonable doubt.¹⁹⁷ Hoskins was employed by a non-U.S. Alstom subsidiary, and Hoskins and his API counterparts operated under separate, parallel employment structures.¹⁹⁸ Although some evidence showed direction from API and its executives to Hoskins, these communications were insufficient to make Hoskins an agent within the meaning of the FCPA.¹⁹⁹

United States v. Ng Chong Hwa

On March 28, 2022, the U.S. District Court for the Eastern District of New York denied a motion by Ng Chong Hwa, also known as Roger Ng, a former managing director of various subsidiaries of the Goldman Sachs Group, for a judgment of acquittal. The Court issued a written opinion explaining the decision on April 8, 2022.²⁰⁰ Count Two of the Second Superseding Indictment charged Ng with conspiracy to circumvent Goldman Sachs's internal accounting controls in violation of the FCPA.²⁰¹ The government alleged that Ng withheld accurate information and provided inaccurate information to Goldman Sachs oversight committees regarding the involvement of his co-defendant, Low Taek Jho, in 1Malaysia Development Berhad ("1MDB") bond deals in order to obtain authorization for the deals.²⁰²

After the government rested its case, Ng moved for a judgment of acquittal, arguing, among other things, that internal "accounting" controls are a "limited and defined set of controls" within the company's overall control system, and should be distinguished from legal, risk management, compliance and other controls.²⁰³ Ng argued that (1) the government failed to present evidence that any accounting controls were violated, as "no evidence" showed that the alleged conduct had any impact on the accuracy of Goldman's accounting or financial reporting as an issuer of securities; (2) there was no FCPA violation because the transactions were authorized by the appropriate committees and executed with that authorization; and (3) the government's broad theory would sweep an enormous swath of conduct within the scope of the FCPA, exceeding Congress's intent and rendering the internal accounting controls provision unconstitutionally vague as applied.²⁰⁴

The Court disagreed with Ng. Judge Brodie found that the plain language of the statute encompassed Ng's conduct. The Court ruled that the FCPA "defines an adequate system of internal accounting controls by reference to [] objectives," including (1) reasonable assurances of accurate internal accounting for purposes of external financial reporting and (2) reasonable assurances that the company is adequately controlled.²⁰⁵ According to the district court, 15 U.S.C. § 78m(b)(2)(B) subsections (i) and (iii) indicate that the second objective requires controls that reliably ensure that transactions are executed, and access to assets is permitted, with "management's general or specific authorization."²⁰⁶

The Court's reading of the FCPA means that liability for circumventing internal controls extends beyond those controls strictly related to "accounting." Ng was convicted by a federal jury on April 8, 2022 for conspiring to commit bribery, to circumvent internal accounting controls, and to commit money laundering.²⁰⁷

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 150–51.

²⁰⁰ *United States v. Ng Chong Hwa*, No. 18-CR-538 (MKB), 2022 WL 1062704 (E.D.N.Y. Apr. 8, 2022).

²⁰¹ *Id.* at *1.

²⁰² *Id.*

²⁰³ *Id.* at *4.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.* (quoting statute).

²⁰⁷ Press Release, U.S. Dep't of Just., *Former Goldman Sachs Investment Banker Convicted in Massive Bribery and Money Laundering Scheme* (Apr. 8, 2022), <https://www.justice.gov/opa/pr/former-goldman-sachs-investment-banker-convicted-massive-bribery-and-money-laundering-scheme>.

Foreign Jurisdictions Investigating and Prosecuting Corruption

Other countries took significant strides to investigate and prosecute corrupt actors in 2022. As many countries loosened or lifted COVID-19 restrictions, their lawmakers and regulators faced corruption challenges accompanying renewed economic activity and robust market expansion, in addition to distinctive bribery and corruption cases emerging from the near-global shutdown that resulted in record government spending levels.

Authorities in numerous countries announced investigations and prosecutions of allegedly corrupt officials, and a startling number of current and former foreign government officials, including former heads of state, were convicted and sentenced in connection with corruption charges. Foreign authorities in several jurisdictions also continued to pursue corporate enforcement actions. In addition, a number of foreign jurisdictions acted to enhance their anti-corruption laws. What follows is just a selection of notable developments.

Africa

In **South Africa**, on June 22, 2022, the Judicial Commission of Inquiry into Allegations of State Capture, Corruption, and Fraud in the Public Sector including Organs of State published its report finding that “state capture” occurred through the public procurement system under former President Zuma’s administration.²⁰⁸ It made over 350 recommendations, including establishing an independent anticorruption agency and legislation to introduce deferred prosecution agreements, a “failure to prevent” offense similar to Section 7 of the U.K. Bribery Act, and whistleblower rewards and enhanced protections. In October, President Cyril Ramaphosa announced a series of anti-corruption reforms in response to the report.²⁰⁹

In **Angola**, in November 2022, Attorney General Hélder Pitta Grós announced that authorities were seeking the arrest of Isabel dos Santos, the daughter of the former president of Angola and herself the former head of the state-owned oil company Sonangol, after investigating allegations that she enriched herself with state resources.²¹⁰

Asia

In **China**, after the 20th National Congress of the Chinese Communist Party (“CCP”), the government reaffirmed its efforts to combat corruption and brought several high-profile cases, including against Shanghai’s chief prosecutor and the deputy governor of the People’s Bank of China.²¹¹ In 2022, the Central Commission for Discipline Inspection (“CCDI”) and CCP’s National Security Commission investigated Liu Yanping, former Vice Minister of Public Security and former Secretary of the CCDI, resulting in his guilty plea to taking 234 million yuan (\$32.8 million) in bribes.²¹² In August, the Independent Commission Against Corruption brought charges against 30 Hong Kong contractors and airport officials for alleged bribery in connection with the Three-Runway System Project at the Hong Kong International Airport.²¹³

²⁰⁸ Judgments, Judicial Comm’n of Inquiry into Allegations of State Capture, Corruption & Fraud in the Pub. Sector including Organs of State, *Final Reports* (June 22, 2022), <https://www.statecapture.org.za/> [hereinafter “Zondo Commission Report”].

²⁰⁹ Newsletter, The Presidency, Republic of S. Africa, *Address by President Cyril Ramaphosa on the Response to the Zondo Commission Report* (October 23, 2022), <https://www.thepresidency.gov.za/newsletters/address-president-cyril-ramaphosa-response-state-capture-commission-report%2C-union-buildings%2C-tshwane>; see also Documents, The Presidency, Republic of S. Africa, *Response by President Cyril Ramaphosa to the Recommendations of the Zondo Commission Report* (October 2022), <https://www.thepresidency.gov.za/>.

²¹⁰ John Eligon, *The Woman Once Considered Africa’s Richest Faces Arrest in Graft Inquiry*, N.Y. Times (Nov. 29, 2022), <https://www.nytimes.com/2022/11/29/world/africa/angola-isabel-dos-santos-arrest-warrant.html>.

²¹¹ Michelle Gon, *Anti-Corruption 2023: Trends and Developments*, Chambers & Partners, <https://practiceguides.chambers.com/practice-guides/anti-corruption-2023/china/trends-and-developments>.

²¹² Yew Lun Tian, *China Expels Ex-national Security Official from Communist Party*, Reuters (Sept. 1, 2022), <https://www.reuters.com/world/china/china-expels-former-national-security-official-communist-party-post-2022-09-01/>; Yang Zekun, *Former Senior Discipline Inspector Charged with Taking Bribes*, China Daily (Nov. 17, 2022), <https://www.chinadaily.com.cn/a/202211/17/WS63761cdba31049175432a636.html>.

²¹³ Press Release, Indep. Comm’n Against Corruption, *ICAC Arrests 30 for Alleged Corruption over Three-runway System Project* (Aug. 18, 2022), https://www.icac.org.hk/en/press/index_id_1405.html.

In **Japan**, on June 1, 2022, a partial amendment to its Whistleblower Act took effect, requiring companies of more than 300 employees to establish an internal reporting system and designate a person to investigate whistleblower reports or face administrative action by the Consumer Affairs Agency.²¹⁴ In December, the former chairman of Aoki Holdings pleaded guilty to bribing a former Tokyo Olympic organizing committee executive in exchange for being selected as an Olympic games sponsor.²¹⁵

In **Indonesia**, in September 2022, the KPK, Indonesia's anti-corruption body, arrested a Supreme Court judge for his alleged involvement in bribery,²¹⁶ and the governor of Papua province was accused of misappropriating at least 560 billion rupiah (\$37 million).²¹⁷

In **Malaysia**, in August 2022, the highest court upheld the 12-year sentence of former Prime Minister Najib Razak for receiving \$9.4 million from 1MDB.²¹⁸ In September, his wife, Rosmah Mansor, was sentenced to 10 years' imprisonment for bribery involving a 1.25 billion ringgit (\$279 million) project and still faces 17 charges for allegedly seeking 187.5 million ringgit and receiving 6.5 million ringgit in connection with a solar energy project.²¹⁹

In **India**, in June 2022, the Central Bureau of Investigation ("CBI") filed charges with the Special CBI Court alleging that a former state of Maharashtra minister directed senior Mumbai police personnel to extort bars and restaurants, one of the most high-profile corruption enforcement actions ever brought by the CBI.²²⁰ In April, the CBI brought its first case from the anti-corruption watchdog *Lokpal* against a construction company owner and an officer of a Ministry of Culture institution relating to alleged irregularities in the award of a construction contract.²²¹

Europe

In **France**, in March 2022, the *Agence Française Anticorruption* ("AFA") and *Parquet National Financier* ("PNF") jointly issued the *Guide pratique: Les enquêtes internes anticorruption*,²²² their first guide on how companies should conduct internal investigations and report wrongdoing related to bribery and corruption. The 2019 European Whistleblowing Directive was also implemented in French law, expanding reportable events to "any crime, offense or violation of law or regulation"; changing the reporting procedure; and allowing whistleblowers to report to authorities first.²²³

In July 2022, the PNF approved two *Conventions Judiciaires d'Intérêt Public* (equivalent to DPAs) after investigations based on information from its U.S. and U.K. counterparts, indicating increased international enforcement cooperation. Idemia Group and

²¹⁴ Nagashima Ohno & Tsunematsu, *Whistleblowing Systems Required by the Amended Whistleblower Protection Act*, The Legal 500 (Mar. 24, 2022), <https://www.legal500.com/developments/thought-leadership/whistleblowing-systems-required-by-the-amended-whistleblower-protection-act/>.

²¹⁵ Kanako Takahara, *Aoki Holdings Founder Pleads Guilty to Bribery Related to Tokyo Games*, The Japan Times (Dec. 22, 2022), <https://www.japantimes.co.jp/news/2022/12/22/national/crime-legal/hironori-aoki-bribery-case/>.

²¹⁶ Reuters, *Indonesia Anti-graft Body Arrests Supreme Court Judge Over Bribery Scandal*, Reuters (Sept. 23, 2022), <https://www.reuters.com/world/asia-pacific/indonesia-anti-graft-body-arrests-supreme-court-judge-over-bribery-scandal-2022-09-23/>.

²¹⁷ Anne Barker, *Corruption Allegations Engulfing Indonesian Provincial Governor Lukas Enembe Spread to Perth Casino*, Australian Broad. Corp. News (Sept. 28, 2022), <https://www.abc.net.au/news/2022-09-29/indonesia-lukas-enembe-corruption-scandal-spreads-to-australia/101468024>.

²¹⁸ Eileen NG, *Malaysia ex-PM Najib Goes to Jail After Losing Graft Appeal*, AP News (Aug. 23, 2022), <https://apnews.com/article/malaysia-najib-razak-government-and-politics-9c44461884b82b690485b95e50707bdf>.

²¹⁹ Zubaidah Abdul Jalil & Yvette Tan, *Rosmah Mansor: Wife of Ex-Malaysian PM Najib Gets 10 Years Jail for Bribery*, BBC (Sept. 1, 2022), <https://www.bbc.com/news/world-asia-62747420>.

²²⁰ PTI, *CBI Files Charge-sheet Against Former Maha Minister Anil Deshmukh in Corruption Case*, The Econ. Times (Jun. 3, 2022), <https://economictimes.indiatimes.com/news/india/cbi-files-charge-sheet-against-former-maha-minister-anil-deshmukh-in-corruption-case/articleshow/91966925.cms>.

²²¹ PTI, *CBI Registers First FIR on Lokpal Directive*, The Times of India (Mar. 31, 2022), <https://timesofindia.indiatimes.com/india/cbi-registers-first-fir-on-lokpal-directive/articleshow/90577131.cms>.

²²² Agence Française Anticorruption & Parquet National Financier, *Guide Pratique: Les Enquêtes Internes Anticorruption* (Mar. 2022), https://www.agence-francaise-anticorruption.gouv.fr/files/files/Projet%20de%20guide%20enqu%C3%AAte%20interne%20_Mise%20en%20consultation.pdf.

²²³ Stéphane de Navacelle, Thomas Lapierre & Julie Zorilla, *The Practitioner's Guide to Global Investigations - Seventh Edition: France*, Glob. Investigations Rev. (Jan. 4, 2023), <https://globalinvestigationsreview.com/guide/the-practitioners-guide-global-investigations/2023/article/france>.

Doris Group S.A. agreed to pay over €7 million and €3 million, respectively, and undergo audits for three years to settle bribery allegations related to government contracts.²²⁴

In November 2022, a Paris court approved an agreement under which Airbus will pay €15.9 million to end a bribery investigation into aircraft and satellite sales to Libya and Kazakhstan, after paying a record €3.6 billion to the United States, United Kingdom and France in 2020 to resolve bribery charges involving military technology export licenses.²²⁵ In December, former President Sarkozy's appeal of his 2021 conviction on corruption charges began.²²⁶

In **Germany**, in December 2022, the *Bundestag* passed *Hinweisgeberschutzgesetz (HinSchG)*, implementing the EU Whistleblower Directive; companies with at least 50 employees are required to set up an internal reporting office or pay up to €20,000.²²⁷ Earlier in the year, the Neuruppin public prosecutor's office ("PPO") investigated allegations that a *Bundestag* member bribed an investor who donated to the then-mayor's party in order to facilitate a real estate transaction, and the Frankfurt PPO charged a member of the PPO itself with accepting €280,000 in bribes from a company delivering expert opinions in criminal proceedings.²²⁸

In the **United Kingdom**, in June 2022, the Law Commission published 10 reform options to improve the law on corporate criminal liability, including widening the identification doctrine to attribute liability to corporations for senior management conduct and new financial penalties and reporting requirements.²²⁹ In May, the government published guidance designed to help businesses ensure their organizations and supply chains are free from bribery and corruption.²³⁰

In June, the Financial Conduct Authority announced a resolution under which JLT Specialty Limited agreed to pay £7.8 million for alleged failings in its risk management systems that allowed the payment of more than \$3 million in bribes to government officials in exchange for business.²³¹ In May, the Financial Reporting Council imposed sanctions against KPMG and an engagement partner for failures to address two payments to agents in India identified in an audit of Rolls-Royce that gave rise to bribery and corruption allegations forming two counts in an SFO DPA.²³²

²²⁴ Press Release, Procureur de la République Financier, Parquet National Financier (Jul. 7, 2022), <https://www.tribunal-de-paris.justice.fr/sites/default/files/2022-07/CP%20CJIP%20IDEMIA.pdf>; Press Release, Procureur de la République Financier, Parquet National Financier (Jul. 7, 2022), <https://www.tribunal-de-paris.justice.fr/sites/default/files/2022-07/CP%20CJIP%20DORIS.pdf>.

²²⁵ Paris AP, *Airbus to Pay \$16 Million Fine, End French Corruption Probe*, AP News (Nov. 30, 2022), [https://apnews.com/article/europe-business-france-paris-f32e769f51942aea47e55cdca2a3dcce#:~:text=PARIS%20\(AP\)%20%E2%80%94%20Paris,ago%2C%20French%20financial%20prosecutors%20said](https://apnews.com/article/europe-business-france-paris-f32e769f51942aea47e55cdca2a3dcce#:~:text=PARIS%20(AP)%20%E2%80%94%20Paris,ago%2C%20French%20financial%20prosecutors%20said).

²²⁶ Juliette Jabkhiro, *France's Sarkozy Seeks to Overturn Graft Conviction at Appeal Trial*, Reuters (Dec. 5, 2022), <https://www.reuters.com/world/europe/frances-sarkozy-seeks-overturn-corruption-conviction-appeal-hearing-2022-12-05/>.

²²⁷ Dokumente, Bundestag, *Besserer Schutz für hinweisgebende Personen im beruflichen Umfeld beschlossen* (Dec. 16, 2022), <https://www.bundestag.de/dokumente/textarchiv/2022/kw50-de-hinweisgeber-926806>.

²²⁸ Thomas Heck, Karl-Jörg Xylander & Tine Schauenburg, *Bribery & Corruption Laws and Regulations 2023: Germany*, Glob. Legal Insights (Dec. 20, 2022), <https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/germany#chaptercontent4>.

²²⁹ Press Release, Law Comm'n, *Law Commission Sets Out Options to Government for Reforming How Companies are Convicted of Criminal Offences* (June 10, 2022), <https://www.lawcom.gov.uk/law-commission-sets-out-options-to-government-for-reforming-how-companies-are-convicted-of-criminal-offences/>.

²³⁰ Guidance, U.K. Gov't, *Bribery and Corruption in Trade: Reducing the Risk* (May 20, 2022), <https://www.gov.uk/guidance/bribery-and-corruption-in-trade-reducing-the-risk>.

²³¹ Press Release, Fin. Conduct Auth., *FCA Fines Insurance Broker JLT Specialty Limited £7.8m for Financial Crime Control Failings* (June 22, 2022), <https://www.fca.org.uk/news/press-releases/jlt-specialty-limited-fined-7.8m-pounds-financial-crime-control-failings>.

²³² Press Release, Fin. Reporting Council, *Sanctions Against KPMG and Anthony Sykes* (May 24, 2022), <https://www.frc.org.uk/news/may-2022/sanctions-against-kpmg-and-anthony-sykes>.

In 2022, two more convictions were overturned in a case involving schemes to pay \$17 million in bribes to win contracts for Unaoil in Iraq. The Attorney General's Office released a report of an independent review of the SFO's handling of the case and 11 recommendations for enhanced oversight of sensitive, high-risk cases, which the SFO agreed to.²³³

In the **European Union** ("EU"), the European Public Prosecutor's Office, the first body charged with investigating and prosecuting crimes affecting the EU's financial interests, was very active in its first year. In 2022, it processed 3,318 crime reports and had 1,117 active investigations with estimated damages of €14.1 billion, leading to 87 indictments, and judges granted €359.1 million in freezing orders.²³⁴ Its first indictment in January 2022 involved a Bulgarian State Agriculture Fund official who allegedly accepted bribes from an agricultural company owner who had applied for financing from the EU's Rural Development Program.²³⁵ Further investigations linked to 120 cases in Bulgaria led to the arrest of several politicians in March 2022, including the former Prime Minister of Bulgaria.²³⁶

In December 2022, Belgian authorities arrested four individuals, including Greek Parliament member Ava Kaili, suspected of receiving gifts and favors from Qatar to influence economic and political decision-making at the European Parliament.²³⁷ Kaili was stripped of her role as a Parliament vice president and expelled from the Greek Pasok party.²³⁸ Lawmakers suspended Qatar's access to the Parliament and halted a recommendation to allow visa-free travel to the EU for Qataris that was set to be voted on in December 2022.²³⁹

Latin America

In **Brazil**, in July 2022, the government promulgated Federal Decree No. 11,129/2022 ("Decree"), amending the regulation of Brazil's 2013 Anti-Corruption Law, the Clean Company Act ("CCA").²⁴⁰ The Decree expands the criteria of the *Controladoria-Geral de União* ("CGU") in evaluating the compliance and integrity programs of companies under investigation or seeking a resolution after a potential CCA violation, including processes for third-party due diligence and mechanisms for assessing whistleblower complaints. It clarifies the procedural mechanisms for the conduct of investigations and negotiation of leniency agreement by the CGU and *Advocacia-Geral de União*. And it adjusts the ranges for fine increases for aggravating factors, such as other wrongful acts, recidivist behavior and executive management and board knowledge, and mitigating factors, such as voluntary disclosure and having an effective integrity and compliance program.

In May 2022, the *Ministerio Publico Federal* announced that Allied Technology had signed a leniency agreement and civil non-prosecution agreement with São Paulo's Public Prosecutor's Office in connection with a bribery investigation.²⁴¹ Also in May 2022, Hypera S.A. entered into a leniency agreement with the CGU and AGU in connection with illegal contributions to

²³³ Mengqi Sun, *Review of U.K.'s Serious Fraud Office Details Missteps in Unaoil Bribery Case*, The Wall Street J. (July 21, 2022), <https://www.wsj.com/articles/review-of-u-k-s-serious-fraud-office-details-missteps-in-unaoil-bribery-case-11658438504>.

²³⁴ European Pub. Prosecutor's Off., *Annual Report 2022* (Mar. 1, 2023), https://www.eppo.europa.eu/sites/default/files/2023-02/EPPO_2022_Annual_Report_EN_WEB.pdf.

²³⁵ Press Release, European Pub. Prosecutor's Office, *First EPPA Indictment in Bulgaria: Bribery of a State Fund Agriculture's Official* (Jan. 20, 2022), <https://www.eppo.europa.eu/en/news/first-eppo-indictment-bulgaria-bribery-state-fund-agricultures-official>.

²³⁶ *Bulgaria's Former PM Borissov Detained After EU Probes*, Reuters (Mar. 17, 2022), <https://www.reuters.com/world/europe/bulgarias-former-pm-borissov-detained-interior-ministry-says-2022-03-17/>.

²³⁷ Abbas Al Lawati & Mostafa Salem, *Football, Gas and Bribery Allegations How Qatar-EU Relations Deteriorated*, CNN (Dec. 21, 2022), <https://www.cnn.com/2022/12/21/middleeast/qatar-europe-bribery-scandal-mime-intl/index.html>.

²³⁸ *EU Corruption Scandal: MEP Denies Qatar Bribery After €1.5m Seized*, BBC (Dec. 13, 2022), <https://www.bbc.com/news/world-europe-63952993>.

²³⁹ *Id.*

²⁴⁰ Jonathan D. King, Ricardo Caiado Lima, Antonio Tovo, André, Sampaio Lacerda Ferraz & Mellina Bulgarini Gerhardt, *GIR Latin American Overview*, Glob. Investigations Rev. (Jan. 4, 2023), <https://globalinvestigationsreview.com/guide/the-practitioners-guide-global-investigations/2023/article/brazil>.

²⁴¹ Press Release, Ministerio Publico Federal, *Ministérios públicos firmam acordos com empresa que ofereceu vantagem indevida a servidores públicos [Authorities Finalize Agreements with Company that Offered Bribes to Public Employees]* (May 4, 2022), <https://www.mpf.mp.br/sp/sala-de-imprensa/noticias-sp/ministerios-publicos-firmam-acordos-com-empresa-que-ofereceu-vantagem-indevida-a-servidores-publicos>.

politicians.²⁴² The agreement requires Hypera to pay a R\$110 million (\$20 million) fine, and review and improve its governance and integrity policies, which the CGU will monitor for 18 months.²⁴³

Following the 2021 annulment of President Inacio Lula da Silva's 2017 corruption conviction, in October 2022, Lula was elected president of Brazil. Lula made commitments to combat corruption and promised to reestablish anti-corruption institutions.²⁴⁴

In **Argentina**, in April 2022, a federal judge acquitted Vice President Cristina Fernández de Kirchner and over 100 businessmen and former government officials in connection with "cartelization of public works," allegations stemming from the *Cuardenos* case.²⁴⁵ In July, authorities commenced an investigation of an alleged \$1 billion corruption scheme in the awarding of 51 public works projects by de Kirchner to a family friend,²⁴⁶ as did the trial of former military commander César Milani for alleged illicit enrichment.²⁴⁷ Also in July, the Anti-Corruption Office denounced former President Mauricio Macri for his alleged involvement in bribery and money laundering schemes.²⁴⁸

In **El Salvador**, in August 2022, several former Salvadoran officials were investigated in connection with the diversion of \$184 million from the state during ex-President Salvador Sanchez Ceren's administration.²⁴⁹ In **Guatemala**, in February, President Alejandro Giammattei was accused of negotiating 20 million quetzales (\$2.6 million) in bribes from construction companies in exchange for keeping a minister in his post to continue an infrastructure corruption scheme.²⁵⁰ In December, a Guatemalan court sentenced former President Otto Pérez Molina and former Vice President Roxana Baldetti to 16 years' imprisonment on corruption and other charges.²⁵¹ In **Honduras**, President Xiomara Castro took office in January 2022, and a substantial part of her campaign focused on anti-corruption efforts.²⁵² In December, Honduras signed a preliminary agreement with the U.N. to establish an anti-corruption commission.²⁵³

²⁴² Saud Advogados, *Hypera S.A. enters into a Leniency Agreement with Brazilian Authorities* (June 9, 2022), <https://www.saudlaw.com/hypera-s-a-enters-into-a-leniency-agreement-with-brazilian-authorities/>.

²⁴³ *Id.*

²⁴⁴ Inacio Lula da Silva & Geraldo Alckmin, *Diretrizes para O Programa de Reconstrução e Transformação do Brasil* [Guidelines for Brazil's Reconstruction and Transformation Programme], https://divulgacandcontas.tse.jus.br/candidaturas/oficial/2022/BR/BR/544/candidatos/893498/5_1659820284477.pdf (last visited Mar. 10, 2023).

²⁴⁵ *Cristina Fernández de Kirchner, over 100 businessmen acquitted in branch of 'Cuardenos' Case*, Buenos Aires Times (Apr. 5, 2022), <https://www.batimes.com.ar/news/argentina/cristina-fernandez-de-kirchner-over-100-businessmen-acquitted-in-branch-of-cuardenos-case.phtml>.

²⁴⁶ *'Causa Vialidad': Chronology of the Trial of Cristina Fernández de Kirchner*, Buenos Aires Times (June 12, 2022), <https://www.batimes.com.ar/news/argentina/causa-vialidad-chronology-of-the-trial-of-cristina-fernandez-de-kirchner.phtml>.

²⁴⁷ Lucía Salinas, *Sospechas de Corrupción: Sólo Quedan el 0,0014% de los Millonarios Fondos de Santa Cruz que Recibió Néstor Kirchner por las Regalías Petroleras* [Suspensions of Corruption: Only 0.0014% of the Millions of Santa Cruz Funds that Néstor Kirchner Received for Oil Royalties Remain], Clarín (July 6, 2022), https://www.clarin.com/politica/solo-quedan-0-0014-millonarios-fondos-santa-cruz-recibio-nessor-kirchner-regalias-petroleras_0_jVucbDoMpO.html.

²⁴⁸ Irina Mauser, *La OA denunció a Mauricio Macri por maniobras para ocultar posibles coimas y lavado de dinero* [The OA Denounced Mauricio Macri for Maneuvers to Conceal Possible Kickbacks and Money Laundering], Página 12 (July 2, 2022), <https://www.pagina12.com.ar/433843-la-oa-denuncio-a-mauricio-macri-por-maniobras-para-ocultar-p>.

²⁴⁹ *El Salvador ex-officials, businessmen under investigation in \$184 mln corruption case*, Reuters (Aug. 22, 2022), <https://www.reuters.com/world/americas/el-salvador-ex-officials-businessmen-under-investigation-184-mln-corruption-case-2022-08-23/>.

²⁵⁰ José Luis Sanz, *Testigo acusa a Giammattei de Financiar su Campaña con Sobornos de Constructoras* [Witness Accuses Giammattei of Financing his Campaign with Bribes from Construction Companies], El Faro (Feb. 14, 2022), <https://www.elfaro.net/es/202202/centroamerica%20/25996/%E2%80%8B%E2%80%8BTestigo-acusa-a-Giammattei-de-financiar-su-campa%C3%B1a-con-sobornos-de-constructoras.htm>.

²⁵¹ Jeff Abbott, *Guatemala: former president sentenced to 16 years for corruption*, The Guardian (Dec. 8, 2022), <https://www.theguardian.com/world/2022/dec/08/guatemala-president-otto-perez-molina-corruption-sentence>.

²⁵² Karol Suarez, Phillip Wang & Marlon Sorto, *Xiomara Castro becomes Honduras' first female President*, CNN (Jan. 27, 2022), <https://www.cnn.com/2022/01/27/americas/xiomara-castro-honduras-inauguration-intl/index.html>.

²⁵³ *Honduras signs U.N. deal paving way for anti-corruption commission*, Reuters (Dec. 15, 2022), <https://www.reuters.com/world/americas/honduras-signs-un-deal-paving-way-anti-corruption-commission-2022-12-15/>.

In **Peru**, in February 2022, a prosecutor announced that the trial of Keiko Fujimori, the daughter of former Peruvian president Alberto Fujimori, on allegations of money laundering and leading a criminal organization was imminent.²⁵⁴ As of December 2022, former President Ollanta Humala was facing trial over allegations that he received \$3 million in bribes from a construction company during his 2011 presidential campaign.²⁵⁵ In 2022, former President Pedro Castillo was questioned in connection with allegations that he led an alleged conspiracy to receive bribes for public works contracts,²⁵⁶ and faced six criminal investigations, including for requesting and pressuring others to promote military personnel close to the government in exchange for bribes.²⁵⁷ Peru's first female President, Dina Boluarte, was sworn into office in December and asked each minister to take an anti-corruption pledge upon being sworn into office.²⁵⁸

Multilateral Development Bank Sanctions

In 2022 multilateral development banks ("MDBs") imposed a total of 161 debarments. While this number was down from 239 in 2021,²⁵⁹ there were a number of debarments imposed at least in part on the basis of corrupt practices, particularly by the Inter-American Development Bank. In 2022, the World Bank imposed 71 debarments, the Inter-American Development Bank imposed 59, the Asian Development Bank imposed 15, the European Bank for Reconstruction and Development imposed three and the African Development Bank imposed two.²⁶⁰ Of these, 11 out of 71 of the World Bank, 44 out of 59 of the Inter-American Development Bank and one out of 15 of the Asian Development Bank were based, at least in part, on corrupt practices.

²⁵⁴ Oscar Medina, *Peru Prosecutor Says Keiko Fujimori Trial May Begin By Year End*, Bloomberg (Feb. 6, 2022),

<https://www.bloomberg.com/news/articles/2022-02-06/peru-prosecutor-says-keiko-fujimori-trial-may-begin-by-year-end#xj4y7vzkg>.

²⁵⁵ *A look at years of political chaos in Peru*, Al Jazeera (Dec. 7, 2022), <https://www.aljazeera.com/news/2022/12/7/a-look-at-years-of-political-chaos-in-peru>.

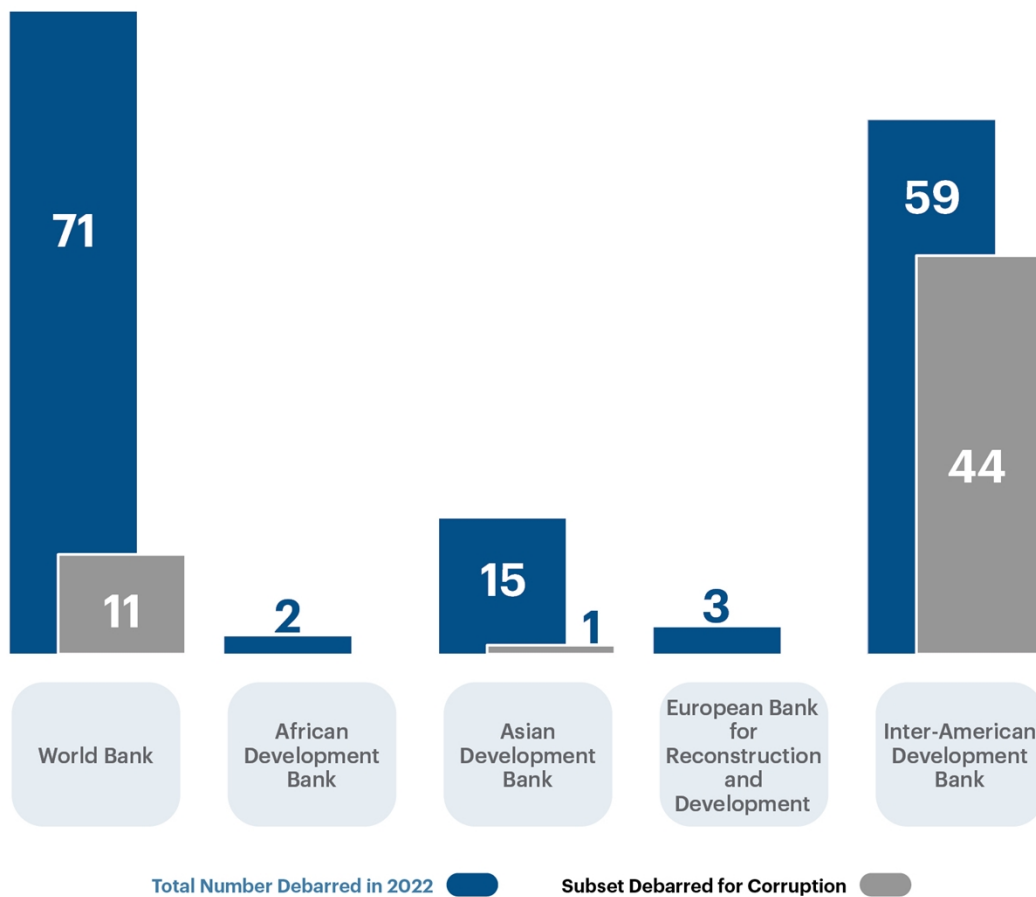
²⁵⁶ *Peruvian president faces investigation in corruption case*, AP News (June 17, 2022), <https://apnews.com/article/politics-caribbean-peru-lima-40712700a9cc157908232e5e6da22fb1>.

²⁵⁷ Regina Garcia Cano, *Challenges mount against Peru's president, his family*, AP News (Sept. 4, 2022), <https://apnews.com/article/latin-america-venezuela-peru-caribbean-4f1b9a235f21ebbbd80ff3522fe2ef98>.

²⁵⁸ Regina Garcia Cano, *Peru's president asks cabinet to take anti-corruption pledge*, AP News (Dec. 10, 2022), <https://apnews.com/article/politics-peru-caribbean-government-21aa67f45364c7d1d7226bf0884167e6>.

²⁵⁹ Paul, Weiss 2021 FCPA Year in Review, at 33.

²⁶⁰ Debarments were counted based on the data reported by each MDB, using each bank's own reporting criteria for the calendar year 2022. See *Debarment and Sanctions Procedures*, African Dev. Bank Grp., <https://www.afdb.org/en/projects-and-operations/procurement/debarment-and-sanctions-procedures/>; *Published List*, Asian Dev. Bank, <http://lnadbg4.adb.org/oga0009p.nsf/sancALLPublic?OpenView&count=999>; *Ineligible Entities*, European Bank For Reconstructr. & Dev., <https://www.ebrd.com/ineligible-entities.html> (including debarments based upon third-party findings); *Sanctioned Firms and Individuals*, Inter-American Dev. Bank, <https://www.iadb.org/en/transparency/sanctioned-firms-and-individuals>; *World Bank Listing of Ineligible Firms & Individuals*, World Bank, <https://www.worldbank.org/en/projects-operations/procurement/debarred-firms>.



MULTILATERAL DEVELOPMENT BANK DEBARMENTS, 2022

As with prior years, limited conclusions about MDB corruption investigation and enforcement can be drawn based on the information made publicly available regarding debarments. But it is clear that these organizations continue to focus on corrupt activities as a basis for debarment, particularly so in the case of the Inter-American Development Bank, which cited corrupt practices as a justification in nearly 75% of the debarments it issued.

A Renewed Focus on FCPA Enforcement and Policymaking

In its second year, the Biden administration’s pronouncements regarding its prioritization of anti-corruption enforcement efforts are beginning to bear fruit. While DOJ and SEC enforcement actions remain below pre-2021 levels, the agencies have signaled that the relatively quiet activity levels of 2021 will be an outlier. DOJ has announced several policy changes designed not only to strengthen enforcement, but also to standardize and reward voluntary self-disclosure and corporate cooperation. DOJ has made several pronouncements focused on enhancing corporate compliance programs, and encouraging companies to develop incentives to reward ethical behavior and punish misconduct. Likewise, the SEC continues to prioritize corporate enforcement

and incentivize whistleblowing. We expect that these trends will continue, leading to further significant policy and enforcement developments in 2023.

We look forward to providing you with further updates on these and other developments.

* * *

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

H. Christopher Boehning
+1-212-373-3061
cboehning@paulweiss.com

Harris Fischman
+1-212-373-3306
hfischman@paulweiss.com

Melinda Haag
+1-628-432-5110
mhaag@paulweiss.com

Brad S. Karp
+1-212-373-3316
bkarp@paulweiss.com

Lorin L. Reisner
+1-212-373-3250
lreisner@paulweiss.com

Kaye N. Yoshino
+81-3-3597-8101
kyoshino@paulweiss.com

Justin D. Lerer
+1-212-373-3766
jlerer@paulweiss.com

Walter Brown
+1-628-432-5111
wbrown@paulweiss.com

Michael E. Gertzman
+1-212-373-3281
mgertzman@paulweiss.com

Joshua Hill Jr.
+1-628-432-5123
jhill@paulweiss.com

Loretta E. Lynch
+1-212-373-3000

Richard C. Tarlowe
+1-212-373-3035
rtarlowe@paulweiss.com

Donna Ioffredo
+1-202-223-7376
dioffredo@paulweiss.com

John P. Carlin
+1-202-223-7372
jcarlin@paulweiss.com

Roberto J. Gonzalez
+1-202-223-7316
rgonzalez@paulweiss.com

Michele Hirshman
+1-212-373-3747
mhirshman@paulweiss.com

Mark F. Mendelsohn
+1-202-223-7377
mmendelsohn@paulweiss.com

Theodore V. Wells Jr.
+1-212-373-3089
twells@paulweiss.com

Peter Jaffe
+1-202-223-7326
pjaffe@paulweiss.com

Associates Jennifer K. Corcoran, Robert Klein, Chaka S. Laguerre, Benjamin J. Shack Sackler and Griffin Varner contributed to this Client Memorandum.