



Foreign Corrupt Practices Act 2014 Mid-Year Update

BakerHostetler

Dear Clients and Friends,

The first half of 2014 has seen several important developments in the enforcement of the Foreign Corrupt Practices Act (“FCPA”) as well as other anti-corruption laws worldwide. The FCPA has been in existence for more than 35 years, but the enforcement of its provisions continues to evolve in an ever-global economy. As other nations continue to ramp up the enforcement of their own anti-corruption statutes, it will be more important than ever for companies doing business internationally to ensure that they are in compliance with all relevant laws, not just the FCPA. Domestically, the number of investigations undertaken by the Securities and Exchange Commission (“SEC”) and the Department of Justice (“DOJ”) this year is on pace with that of 2013, a year which saw one of the highest total dollar amounts ever for companies settling FCPA enforcement actions.

The most significant FCPA development in 2014 comes from an 11th Circuit case, *U.S. v. Esquenazi*. The anti-bribery and books and records provisions of the FCPA prohibit payments made to corruptly influence any foreign official, including “any officer or employee of a foreign government, or any department, agency, or instrumentality thereof,” and inaccurate entries in a company’s records to conceal the true nature of such payments. The *Esquenazi* case is significant because it is one of the first attempts by a court to define the “instrumentality” portion of those provisions. The 11th Circuit settled on a broad interpretation in which an instrumentality is any “entity controlled by the government of a foreign country that performs a function the controlling government treats as its own.” The court further elaborated on its definition and listed several factors which are relevant to its instrumentality analysis. How this decision affects the enforcement actions of the SEC and the DOJ will surely be an important development for the second half of 2014 and beyond.

With regard to settlements, we were once again reminded of the importance of cooperation with the SEC and DOJ and the effect it can have on penalties. DOJ and SEC settlements for FCPA violations with Alcoa and Hewlett-Packard, both credited for their voluntary disclosures and cooperation with DOJ and SEC investigations, resulted in fines well below the U.S. Sentencing Guidelines. Conversely, Marubeni Corporation agreed to pay a penalty of \$88 million, at the middle of the range of the applicable Sentencing Guideline, after the company “refused to cooperate with the government’s investigation,”

according to a DOJ press release. This disparity provides yet another reminder of the benefits that diligent monitoring, disclosures and cooperation can provide for companies under investigation for potential FCPA violations.

2014 has also seen an increase in enforcement from foreign regulators, China in particular. As discussed further herein, political pressure on China's controlling party has led to greater scrutiny of foreign multi-nationals doing business in China. China's anti-corruption laws include strict penalties, including up to life in prison for individuals convicted under its statutes. Most notably, the former head of GlaxoSmithKline China will face criminal trial later this year. It is more important than ever for companies doing business in China to understand and ensure compliance with Chinese anti-corruption laws in addition to the FCPA.

Discussed herein are summaries of the major enforcement actions, settlements, prosecutions and declinations from the first half of 2014, including a particular focus on Chinese anti-corruption laws. We are pleased to offer this update and look forward to answering any questions or concerns you have about these significant developments in FCPA enforcement, compliance and defense.



Legal Developments

**Landmark 11th Circuit Decision Defining Instrumentalities:
*U.S. v. Esquenazi***

The most significant FCPA development thus far in 2014 has been the 11th Circuit's attempt to define "instrumentality" in *U.S. v. Esquenazi*. Under the anti-bribery and books and records provisions of the FCPA, payments cannot be made to corruptly influence foreign officials. The FCPA defines "foreign official" as "any officer or employee of a foreign government, or any department, agency, or instrumentality thereof." For example, bribing a state-owned oil company or an employee of that company could have the same FCPA implications as a bribe paid directly to a government official.

The *Esquenazi* case involved two individuals, Joel Esquenazi and Carlos Rodriguez, who were co-owners of Terra Telecommunications (Terra), a Florida company that purchased phone time from foreign companies and resold it in the U.S. market. Terra became involved with Telecommunications D'Haiti, S.A.M. ("Teleco"), a company which had a monopoly in the Haitian telecommunications market and was owned by the central bank of Haiti. Esquenazi and Rodriguez paid Teleco's Director of International Relations, Robert Antoine, bribes to reduce unpaid bills owed to Teleco for minutes Terra had bought from Teleco. The corrupt payments were funneled through various shell companies before ultimately reaching the officials at Teleco. At issue in the case was whether Teleco was an instrumentality of the Haitian state for purposes of the FCPA. The district court found that Teleco was, in fact, an "instrumentality" of Haiti, and that therefore Robert Antoine was a "foreign official." Esquenazi and Rodriguez were both found guilty of FCPA violations, with Esquenazi receiving a 15-year prison sentence and Rodriguez receiving a 7-year prison sentence.

On appeal, Esquenazi and Rodriguez argued that Teleco was not an "instrumentality" because only an actual part of the government could be an "instrumentality." The 11th Circuit rejected this argument and upheld Esquenazi's and Rodriguez's convictions. Instead, the court agreed with the district court and held that courts must take a functional approach and look to "whether that foreign government considers the entity to be performing a governmental function." The court proceeded to define instrumentality as "an entity controlled by the government of a foreign country that performs a function the controlling government treats as its own."

The opinion emphasized that this inquiry is heavily fact based.

The court broke down its definition into two questions: first, whether the government controls the entity; and second, whether the entity performs a function the government treats as its own. The court indicated that relevant factors to consider when answering the first question include: (i) the entity's formal designation; (ii) whether the government has a majority interest in the entity; (iii) the government's ability to hire and fire principals of the entity; (iv) whether profits go to the government, or if the government provides funds to the entity; and (v) how long the relationship with the government has lasted. Factors the court pointed to when considering the second question were: (i) whether the entity enjoys a monopoly; (ii) whether the entity is subsidized by the government; (iii) whether the entity provides services to the public at large; and (iv) whether the public and government perceive the entity to be performing a government function. All of these factors, the court explained, were derived from the Organization for Economic Cooperation and Development's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Although this is the first federal appeals court to define "instrumentality," the 11th Circuit largely adopted the DOJ's and SEC's working definition of the term, which is laid out in the *A Resource Guide to the U.S. Foreign Corrupt Practices Act*. The court did not provide significant analysis regarding application of the various factors or the weight to be allocated to each individual factor because the 11th Circuit found, in a somewhat conclusory fashion, that it was almost undeniable that Teleco was an instrumentality.

Compliance officers and firm counsel must be careful when conducting due diligence on third parties because it may be very difficult to affirmatively establish whether an entity is an instrumentality. Information about a foreign government's involvement in a company may not be readily available and foreign governments may not want such information made available. Although the 11th Circuit did not adopt a definition that covered every state-controlled entity, companies should expect the DOJ and SEC to continue applying "instrumentality" broadly and to continue applying the FCPA to state-controlled entities.

In re: Grand Jury Subpoena, 745 F.3d 681 (3d Cir. 2014)

The Third Circuit upheld a district court's order enforcing an *in camera* interview to determine if an attorney should be forced to testify before

a grand jury regarding advice given to his client regarding FCPA provisions. The client approached the attorney to ask about paying a banker in England to ensure that the project he was working on progressed. The attorney advised his client that the proposed payment would be a violation of the FCPA. Instead of paying the banker directly, the client paid the banker's sister. The client's company is now under an FCPA investigation and the attorney was served a subpoena by the grand jury. The Third Circuit held that the district court did not abuse its discretion in determining that the attorney's advice fell under the crime-fraud exception to the attorney-client privilege.

DOJ FCPA Opinion Release

The DOJ released its first FCPA Opinion of 2014 on March 17, 2014. The opinion came from a request made by the majority shareholder (the "requestor") of a foreign financial services company ("Foreign Company A") which had contracted to buy the remaining minority interest in Foreign Company A from a foreign businessman. At the time the foreign businessman acquired shares from Foreign Company A, he was not a foreign official, but subsequently was appointed to serve in a foreign country's central monetary and banking agency. The party seeking the DOJ's opinion, Foreign Company A, was concerned that there would be a problem with the transaction because the minority shareholder was a "foreign official" and the original contract terms were changed to reflect the unique circumstances of the 2008 financial crisis and its effect on the current value of the shares. The DOJ stated it did not intend to take any enforcement action based on the information provided. The DOJ went on to explain that the FCPA does not prohibit all business relationships with foreign officials or governments, but will typically look to whether there is "corrupt intent, whether the arrangement is transparent to the foreign government and the general public, whether the arrangement is in conformity with local law, and whether there are safeguards to prevent the foreign official from improperly using his or her position to steer business to or otherwise assist the company." The DOJ concluded that the foreign official was being paid for the value of his shares and thus the transaction did not violate any FCPA provision. This recent opinion is notable given that previous DOJ opinion releases have been criticized in part because of the amount of time it takes for them to be issued. Although the original request in this particular release was submitted on July 8, 2013, the requester and the DOJ had been in communications and the DOJ did not receive all necessary information until February 13, 2014, indicating a somewhat more expedited process than in past situations.



Ongoing Investigations

Alstom SA (ALO)

Alstom SA (ALO) (“Alstom”) released a statement on March 27, 2014, that it was cooperating closely with the DOJ regarding an ongoing investigation. Alstom stated that these discussions were not at a point of negotiating a potential settlement and that the current investigation is limited to a few projects. The statement came in response to news reports that Alstom is facing penalties that could rival Siemens’ \$800 million settlement from 2008, and there is substantial speculation as to which projects are being targeted by the DOJ. Most of the speculation has centered on Alstom’s involvement with the Tarahan project in Indonesia and allegations that the company paid bribes to government officials. The individual enforcement actions against Alstom employees also indicate that projects in India and China are under investigation.

Connections have been made to the Japanese commodity-trading company Marubeni Corp., which settled with the DOJ this year regarding bribes paid to Indonesian officials in order to provide boiler services at a power plant in Sumatra. Speculation as to Alstom’s involvement has also surrounded Frederic Pierucci, who was indicted on charges of violating the FCPA, and David

Rothschild, who pleaded guilty in 2012 to bribery charges. In both cases, Alstom was not named but court documents referred to a “French power and transportation company” and it is known that both men worked for Alstom’s Connecticut-based U.S. subsidiary. Another former executive, William Pomponi, pleaded guilty on July 17, 2014.

Walmart Stores, Inc.

Walmart Stores, Inc. (“Walmart”) announced on February 20, 2014, that it expected to spend between \$200 and \$240 million on FCPA related costs in fiscal year 2015. Walmart began an internal investigation in 2011 after the *New York Times* reported that Walmart de Mexico had paid up to \$24 million in bribes to speed up licensing and permitting for its new stores, as reported in the January 2014 semi-annual update. Walmart also disclosed that it had spent \$439 million in legal fees and other costs on its ongoing FCPA investigation. Walmart spent \$53 million on compliance and enhancement costs in the quarter ending April 30, 2014, as compared to \$73 million to last year during the same quarter. Walmart also released a Global Compliance Program Report on FY 2014 in April. Relevant changes to Walmart’s compliance program include: hiring

anti-corruption directors and staff who report to a global anti-corruption team; hiring more personnel in the International Division of the compliance program; improving anti-corruption training; and the prohibiting of “facilitating payments” and a “technology solution” to collect information on third parties to expose problematic relationships.

Bio-Rad Laboratories, Inc.

Bio-Rad Laboratories, Inc. (“Bio-Rad”) stated on February 27, 2014, that it added \$15 million to its reserve for a potential FCPA settlement. The company completed its internal investigation and stated it found likely violations of the FCPA books and records and internal control provisions. Bio-Rad has not disclosed where the violations occurred.

Embraer S.A.

Embraer S.A. stated in its quarterly filing that the four-year FCPA investigation by the DOJ and SEC is still ongoing and at this point, the company cannot quantify reserves or a possible contingency. The investigation into sales of aircraft abroad began in three unnamed countries in 2010 and has since expanded.

Halliburton

In its first quarter disclosure released February 7, 2014, Halliburton stated that the internal investigations into Angola and Iraq were ongoing and they were working with both the DOJ and SEC to assess, address, and remediate any potential violations. The investigation started in December 2010 when an anonymous e-mail alleged FCPA violations.

JP Morgan Chase & Co.

The probe into JPMorgan Chase & Co.'s ("JPMC") hiring practices, highlighted in our January 2014 semi-annual update, remains ongoing. Fang Fang, an employee at the center of the DOJ investigation, has left the investment bank. The DOJ is investigating whether JPMC hired people in China in order to reward or induce an official to do business with JPMC under its "Sons and Daughters" hiring program. Fang is the son of Tang Shuangning, the China Everbright Group Chairman, a state-controlled conglomerate. In the wake of this investigation, JPMC withdrew from underwriting a \$3 billion Hong Kong listing by China Everbright Bank Co. Ltd.

The investigation into JPMC led to the SEC issuing letters to Morgan Stanley, Citigroup, Goldman Sachs, Credit Suisse and UBS requesting more

information regarding the banks' hiring practices in China. The SEC specifically asked about employees the banks hired based on referrals and if the banks had special programs to hire relatives of influential officials.

Orthofix International N.V.

Orthofix International N.V. ("Orthofix") announced in March that it reported allegations of improper payments by its subsidiary in Brazil, Orthofix do Brasil, to the DOJ and SEC. Orthofix is still under a deferred prosecution agreement from 2012 when the company agreed to pay \$7.4 million to the DOJ and SEC for violations of the FCPA by its subsidiary, Promeca S.A. de C.V., in Mexico.

PTC Inc.

PTC, Inc. ("PTC") which first disclosed an FCPA investigation in 2011, announced in February that it had begun settlement discussions with both the DOJ and SEC. The investigation involved improper payments and expenses by business partners in China as well as improper payments and expenses by employees of PTC's subsidiary in China. On May 6, 2014, the company announced it was expanding its investigation into earlier periods and that the SEC had issued a subpoena. There was no mention of settlement talks in the May announcement.

PTC also stated it had terminated certain employees and business partners as a result of the investigation.

SBM Offshore NV

SBM Offshore NV ("SBM"), which has been under FCPA scrutiny since 2012, announced the findings of its internal investigation in April. The company said there was evidence of illegal payments to government officials in Angola and Equatorial Guinea. The payments were directly and indirectly made by agents who were paid about \$200 million in commissions. No credible evidence was found indicating there were any illegal payments in Brazil, where SBM does most of its business. SBM suspended payments to agents and set up processes to improve vulnerabilities from using sales agents.

SciClone Pharmaceuticals

SciClone Pharmaceuticals ("SciClone") has been under FCPA scrutiny since 2010 and announced it spent \$5.3 million in 2013 on legal matters resulting from the investigation. The company announced on March 17, 2014 that it reserved \$2 million for a potential settlement with the DOJ and SEC, stating a settlement of that size was "probable." SciClone is under investigation

for sales and marketing expenses at its subsidiary in China, NovaMed Pharmaceuticals (Shanghai) Co. Ltd.

Teva Pharmaceutical Industries Ltd.

Teva Pharmaceutical Industries Ltd., which has been under FCPA scrutiny since 2012 by the SEC and later the DOJ, announced on May 1, 2014, that affiliates in certain countries under investigation gave inaccurate or altered information to the foreign countries' local investigating authorities. The information related to marketing and promotional practices. The probe originally focused on Latin American countries, but has been expanded to Russia and some Eastern European Companies.

Mead Johnson Nutrition Company

Mead Johnson Nutrition Company ("Mead Johnson") announced

in February it was investigating potential FCPA violations by its Chinese subsidiary as highlighted in our January 2014 semi-annual update. The company disclosed in 2013 that it was performing an internal investigation, but did not mention any FCPA violations. Most recent reports indicate that the investigation is focused on expenditures made in connection with the promotion of the company's products in China. Mead Johnson stated in its SEC filing that they have hired outside counsel and are unable to predict the outcome of the investigation.

Qualcomm Inc.

Qualcomm Inc. ("Qualcomm") announced in an SEC filing on April 23, 2014, that it had received a Wells Notice from the SEC, recommending an enforcement

action against the company for bribery in China. The Wells Notice was issued after an internal investigation by Qualcomm revealed that bribes were being made to several individuals associated with Chinese state-owned companies or agencies, as reported in our January 2014 semi-annual update. The SEC indicated potential remedies could include disgorgement of profits, retention of an independent compliance monitor, an injunction, and civil monetary penalties and prejudgment interest. The SEC issued a formal order of private investigation to Qualcomm in 2010 following a whistleblower complaint in 2009. Although the internal investigation showed no FCPA violations, the DOJ opened its own investigation.



New Investigations

Cisco Systems Inc.

Cisco Systems Inc. (“Cisco”) announced in a SEC filing on February 20, 2014, that it had commenced an investigation into its activities in Russia, Eastern Europe and Central Asia for possible violations of the FCPA. Cisco stated that it was asked by the SEC and DOJ to conduct an investigation concerning resellers of the company’s product after an apparent whistleblower complaint. Of note is that Cisco was named one of the “World’s Most Ethical Companies” by Ethisphere Institute in 2013.

Delphi Automotive PLC

The U.K.-based auto parts supplier, Delphi Automotive PLC (“Delphi”), announced that it notified U.S. authorities about potential FCPA violations in China. The possible violations stem from potentially improper payments made by manufacturing facility employees in China. It was not disclosed to whom the payments were made. The internal investigation is still ongoing and the SEC and DOJ have not formally charged Delphi with any wrongdoing.

GlaxoSmithKline

GlaxoSmithKline (“GSK”) confirmed it is investigating claims that its employees have been bribing government officials in the Middle East in violation of the FCPA. An apparent whistleblower claimed that 16

government-employed physicians and pharmacists were being paid by GSK as sales representatives. The allegations also included claims that a government-employed Iraqi emergency-room physician was being paid as a sales representative and to prescribe GSK products, even though the products were not stocked in the hospital’s pharmacy, and that GSK was hiring government-employed Iraqi doctors as medical representatives and paying for their travel expenses.

The investigation by GSK into violations of the FCPA is ongoing in Jordan and Lebanon. Allegedly, GSK representatives paid for doctors and their families to go on trips and gave free samples of GSK products to doctors who then went on to sell the samples. GSK employees were also alleged to have paid influential doctors for lectures and speaking engagements that may not have taken place in order to induce the doctors to prescribe more GSK drugs.

GSK is simultaneously being investigated by Chinese and Polish officials for allegations of bribery. GSK stated that it does not have a systemic issue with unethical behavior and has stopped payments to all doctors for attending events or for speaking about GSK drugs.

Citigroup

Citigroup is under investigation by the SEC for possible violation of the FCPA’s internal controls measures regarding its Mexican subsidiary Banamex S.A. (“Banamex”). On February 28, 2014, Citigroup disclosed that Banamex had given fraudulent loans to Oceanographia, a Mexican oil services company that was a contractor for Mexican state-owned oil company Petroleos Mexicanos. Citigroup stated that as a result of the bad loans they had to discount their 2013 earnings by \$235 million. Banamex made a \$535 million loan to Oceanographia based on fraudulent invoices used to show the company possessed sufficient collateral when in reality they only posted \$185 million in collateral. The Mexican government subsequently seized Oceanographia’s assets and arrested the Banamex employee who allegedly processed the falsified loan documents. Citigroup has fired eleven employees for failing to detect the fraud.

Sweett Group Ltd.

In April, Sweett Group Ltd. (“Sweett”) announced it found “material instances of deception” by a former employee or employees as a result of an internal investigation. The investigation related to allegations that the company bribed an insider

of the United Arab Emirates president's personal foundation to win a contract to build a hospital in Morocco. *The Wall Street Journal* first reported these allegations in June 2013. Sweett stated that it has hired outside counsel to perform an independent investigation and has been in contact with the DOJ, although no proceedings have been commenced as of the publication of this Guide.

Johnson Controls, Inc.

Johnson Controls, Inc. ("Johnson Controls") announced in its first quarter 10-K filing that it had self-reported alleged violations of the FCPA in July 2013 to the DOJ and SEC. The allegations were confined to Johnson Controls' Building Efficiency marine business in China. Sales ranged from \$20 to \$50 million in the marine business during the time of the alleged violations. External legal counsel and forensic accountants were hired to assist in an internal investigation. The company stated it could not predict the outcome of the matter with the DOJ and SEC.

FedEx Corp.

In June, FedEx Corp. ("FedEx") announced it reported allegations of a potential violation of the FCPA to the DOJ and SEC. An anonymous person alleged that FedEx's "nominated service contractor" in Kenya bribed

government officials. It was not disclosed if this anonymous tip was from a whistleblower. The bribes were given to customs officials and government vehicle inspectors to clear shipments without inspection. FedEx hired outside counsel and an external audit team to assist with its investigation, but has stated that it has not found anything to substantiate the allegations.

Och-Ziff Capital Management Group LLC

Och-Ziff Capital Management Group LLC ("Och-Ziff") disclosed on March 18, 2014, that it is under investigation by the SEC and DOJ in relation to investments made by a foreign sovereign wealth fund in Och-Ziff. Although Och-Ziff did not confirm or deny which fund is involved, Bloomberg reported that the Libyan Investment Authority, based in Tripoli, was the focus of the investigation. Various other entities including banks, private equity firms, and other hedge funds are also under investigation for their dealings with the Libyan Investment Authority. Och-Ziff stated its investigation was ongoing, but that a negative outcome could have a material effect on its business.

Key Energy Services, Inc.

In May, Key Energy Services, Inc. ("Key Energy") disclosed that the

SEC was investigating its wholly owned subsidiary in Russia, Geostream, for violations of the FCPA. Geostream provides oil and gas drilling, workover, and engineering services. On June 6, 2014, Key Energy also announced it was investigating potential violations of the FCPA in Mexico. The company stated it voluntarily disclosed the information it found in its initial investigation and that the company's board of directors has formed a special committee to oversee the investigations in Russia and Mexico.

Quanta Services Inc.

The SEC has asked Quanta Services Inc. ("Quanta") to preserve documents related to its FCPA compliance program. Quanta stated in its Form 10-Q on May 8, 2014, that the SEC was looking into its operations in foreign countries including South Africa and the United Arab Emirates. The SEC has not alleged any specific violations to date.

TeliaSonera AB

On March 17, 2014, TeliaSonera AB ("TeliaSonera") revealed that the DOJ and SEC have requested documents from the company regarding the telecommunication company's business in Uzbekistan. In 2007, TeliaSonera bought an Uzbekistan wireless

data license and spectrum frequencies. TeliaSonera dealt with Takilant Ltd., a Gibraltar-based company that was alleged to have ties to Uzbekistan's authoritarian regime.

TeliaSonera claims that although it breached its own ethical guidelines, it did not violate any laws. TeliaSonera has also initiated its own investigation into the matter.

VimpelCom, Ltd.

VimpelCom, Ltd. ("VimpelCom") announced on March 12, 2014, that it was being investigated by the DOJ and SEC for FCPA violations and that documents had been requested. The company stated it believes the investigation concerns its operations in Uzbekistan. The company is known to have dealings with Takilant, Ltd., a Gibraltar-based company known to be an entity for the President of Uzbekistan's daughter, Gulnara Karimova.

United Technologies Corp.

United Technologies Corp. ("United Technologies") announced on April 25, 2014 that it made voluntary disclosures in December 2013 and January 2014 to the DOJ and SEC regarding a non-employee sales representative in China. The SEC has opened a formal investigation and issued subpoenas to United Technologies for document production. The company stated that it suspended all commission payments to the representative.



Settlements

Alcoa World Alumina Pleads Guilty to Foreign Bribery

On January 9, 2014, the DOJ announced that Alcoa World Alumina LLC, a majority-owned and controlled global division of Alcoa Inc., has agreed to plead guilty and to pay \$223 million in criminal fines and forfeiture to resolve charges that it violated the FCPA by paying millions of dollars in bribes through an international middleman in London to officials of Bahrain. The corrupt kickback payments allegedly began with Alcoa of Australia, which secured a long-term aluminum supply agreement with Aluminum Bahrain B.S.C., an aluminum smelter controlled by the government of Bahrain. Certain members of Bahrain's Royal Family in control of the tender process allegedly requested that Alcoa of Australia use a London-based middleman with close ties to the Royal Family as a sham sales agent, through whom Alcoa concealed bribe payments to the Bahraini government in order to obtain business.

As part of its plea agreement with the DOJ, Alcoa Inc. agreed to maintain and implement an enhanced anti-corruption compliance program. Alcoa, Inc. also settled a parallel action brought by the SEC, in which Alcoa, Inc. agreed to pay an additional \$161 million in

disgorgement, bringing the total amount of U.S. criminal and regulatory penalties to \$384 million, making it the fifth largest FCPA settlement of all-time. As part of its settlement with the DOJ, Alcoa, Inc. and Alcoa World Alumina agreed to cooperate with the DOJ in its continuing investigation of individuals and institutions involved in the matter.

Avon Products, Inc.

On May 1, 2014, Avon Products, Inc. ("Avon") disclosed that it had reached "an understanding" with the DOJ and the SEC to resolve an FCPA investigation into the company that began in 2008 over allegations that the company paid bribes in China and other countries in exchange for government permits it needed to open new markets. The allegations led to an internal investigation by the company that began in June 2008. Under the terms of the "understanding" with the DOJ and SEC, Avon agreed to, among other things: (i) pay aggregate fines, disgorgement and prejudgment interest of \$135 million with respect to alleged violations of the books and records and internal control provisions of the FCPA, with \$68 million payable to the DOJ and \$67 million payable to the SEC; (ii) enter into a deferred prosecution agreement ("DPA") with the DOJ,

under which the DOJ would defer criminal prosecution of Avon for a period of three years in connection with the FCPA investigation; and (iii) agree to have a compliance monitor which may be replaced after 18 months by Avon's agreement to undertake self-monitoring and reporting obligations for an additional 18 months. The government agreed to release its charges against Avon with prejudice if Avon complies with the terms of the DPA.

Hewlett Packard, Inc.

In April 2014, Hewlett Packard, Inc. ("HP") entered into a settlement agreement with the DOJ and the SEC, in which HP agreed to pay approximately \$108.2 million in fines to resolve allegations that certain individuals employed by HP's subsidiaries in Russia, Poland and Mexico made improper payments to foreign officials in order to secure business by, among other things, creating secret slush funds, making false representations and engaging in other covert means such as anonymous e-mail accounts and pre-paid cellphones. HP had been under FCPA scrutiny since 2010 for offenses that allegedly occurred from 2000 to 2007.

Marubeni Corporation

In March 2014, the DOJ announced that it had reached a settlement with Marubeni

Corporation, a Japanese trading company, to resolve allegations the company had violated the FCPA by participating in a seven-year scheme to pay bribes to high-ranking government officials in Indonesia in order to secure a lucrative power project. The DOJ alleged that Marubeni had worked in concert with a Connecticut company, among others, to bribe Indonesian officials. Under the terms of the settlement agreement, Marubeni pleaded guilty, agreed to pay an \$88 million criminal fine, and to maintain and implement an enhanced global anti-corruption compliance program.

Weatherford International

In January 2014, the U.S. District Court for the Southern District of Texas approved the settlement agreements reached between the DOJ and SEC with Weatherford International Ltd. (“Weatherford”) and certain of its subsidiaries. Weatherford, one of the largest international oil and natural gas service companies, reached the approved settlement agreements with the DOJ and the SEC in November 2013. Under the terms of the settlement agreements, Weatherford agreed to pay a total of \$152.6 million to the DOJ and SEC for alleged FCPA violations in the Middle East and Africa. The DOJ alleged that Weatherford created a joint venture in Africa

with two local entities through which Weatherford Services, a Weatherford subsidiary, funneled hundreds of thousands of dollars to foreign officials who controlled the local entities in order to gain approval for the renewal of an oil services contract. The DOJ also alleged that from 2005 through 2011, employees of another Weatherford subsidiary, Weatherford Oil Tools Middle East Limited (“WOTME”) gave improper “volume discounts” to a Weatherford distributor in the Middle East to create a \$15 million slush fund for bribe payments. Additionally, the DOJ alleged that WOTME paid nearly \$1.5 million in kickbacks to the Iraqi government on nine contracts with Iraq’s Ministry of Oil to provide oil drilling and refining equipment. In addition to the DOJ’s suit, the SEC alleged that Weatherford’s subsidiary in Italy “flouted the lack of internal controls and misappropriated more than \$200,000 in company funds, some of which was improperly paid to Albanian tax auditors.” The FCPA portion of the settlement ranks as the ninth largest FCPA enforcement action of all time.



Indictments & Prosecutions

Benito Chinae and Joseph DeMeneses, Direct Access Partners

In April 2014, U.S. Attorney Preet Bharara of the Southern District of New York criminally charged Benito Chinae and Joseph DeMeneses (“DeMeneses”), the former CEO and a managing partner, respectively, of New York-based broker-dealer Direct Access Partners with conspiracy to pay and launder bribes to Venezuela’s state-owned economic development bank, Banco de Desarrollo Económico y Social de Venezuela (BANDES). The six-figure bribes were paid to Maria de los Angeles Gonzales de Hernandez, a senior official of the bank, in exchange for directing BANDES’s financial trading business to the Broker-Dealers. DeMeneses was also charged with conspiring to obstruct an examination of the Broker-Dealers by the SEC to conceal the true nature of the Broker-Dealers’ relationship with BANDES. In addition to the DOJ’s action, the SEC announced it would bring its own civil charges against Chinae, DeMeneses and others involved in the bribery conspiracy.

Dmitry Firtash and K.V.P. Ramachandra Rao

In April 2014, Ukrainian industrialist Dmitry Firtash, along with Indian parliament member

K.V.P. Ramachandra Rao and four others, were indicted by a Chicago grand jury for their alleged role in an international corruption scheme. The scheme involved bribing Indian government officials in order to gain access to minerals used to make titanium-based products and involved approximately \$18 million in bribes. The U.S. asserted its jurisdiction over defendants because they used U.S. financial institutions to transfer the bribe money and because defendants had plans to sell the titanium to a Chicago-based company. Five of the six defendants, excluding Rao, were also charged with conspiracy to violate the FCPA for bribing the Indian government in exchange for business.

Knut Hammar skjold, PetroTiger Ltd.

In February 2014, Knut Hammar skjold (“Hammar skjold”), the former co-CEO of PetroTiger, a British Virgin Islands oil and gas company with operations in Colombia and offices in New Jersey, pleaded guilty for his role in a scheme to pay bribes to foreign government officials and to defraud the company. Hammar skjold was charged by the U.S. Attorney for the District of New Jersey with one count of conspiracy to violate the FCPA and to commit wire

fraud. According to the charges, Hammar skjold, along with other former executives of PetroTiger, paid bribes to an official in Colombia in exchange for assistance in securing approval for an oil services contract worth approximately \$39 million.

Stephan Signer and Ulrich Bock, Siemens

In February 2014, a New York federal judge entered default judgments against Stephen Signer (“Signer”) and Ulrich Bock (“Bock”), both former executives of Siemens in Argentina, in a civil FCPA enforcement action brought by the SEC. According to the SEC’s civil complaint, Signer and Bock bribed a series of Argentine government officials from 1994 through 2004 in order to win a billion-dollar contract for Siemens to produce national identity cards for the government of Argentina. According to the SEC’s allegations, after the contract was terminated, both paid bribes to reinstate it and then paid additional bribes to suppress evidence when the contract termination went to arbitration. Both Signer and Bock were each required to pay a \$524,000 civil penalty, and Bock was ordered to pay an additional \$413,957 for disgorgement.

Frederic Cilins

A French national, Frederic Cilins (“Cilins”), pleaded guilty in the

Southern District of New York for obstructing a DOJ investigation into BSG Resources (“BSG”). Cilins was accused of attempting to destroy evidence that the FBI and a New York grand jury were seeking in connection to their investigation. The Guinean government also revoked BSG’s mining licenses in two areas after concluding its inquiry into whether BSG had paid bribes to win mining rights. The payments were alleged to have been made to the wife of the former president of Guinea. BSG made a statement that the Guinean government was relying on false claims and BSG would prove the claims were false.



Declinations

Baxter International

On February 21, 2014, pharmaceutical company Baxter International reported in its Form 10-K filed with the SEC that the DOJ and SEC would close their FCPA investigations and not take further action against the company. According to Baxter International, the SEC and DOJ opened an investigation into the company's business activities "in a number of countries" as part of an industry-wide FCPA sweep. In 2012, in response to whistleblower complaints, the company internally investigated a joint venture in China and found expense violations. According to the *Wall Street Journal*, Baxter International "disciplined the venture's leadership, conducted new training and enhanced its controls and monitoring of interactions with Chinese healthcare professionals, according to people familiar with the matter."

LyondellBasell

The Netherlands-based petrochemical manufacturer, LyondellBasell Industries NV, reported in February 2014 that the DOJ had closed its FCPA investigation into a payment made by the company in Kazakhstan. According to a 2010 report by Bloomberg, LyondellBasell paid \$7 million in 2008 to an individual affiliated with a Kazakh

company, SAT & Co., of which LyondellBasell was a partner until early 2010. Bloomberg reported that, "SAT & Co. is 50.46 percent owned by Kenes Rakishev according to the Kazakhstan **Stock Exchange Web site**. Rakishev is the son-in-law of Imangali Tasmagambetov, the mayor of the Kazakh capital Astana and the nation's former prime minister." According to unidentified sources with knowledge of the matter, the payment may not have followed LyondellBasell's required approval process. No fine or penalty was assessed on the company.

Magyar Telekom

In March 2014, the SEC dropped allegations that former executives of the Hungarian unit of Deutsche Telekom AG bribed officials in Montenegro. The SEC had begun an investigation into former Chief Executive Elek Straub and two former senior executives, Andras Balogh and Tamas Morvai, for allegedly bribing Montenegrin officials to gain control of state-owned Telekom Crne Gore A.D. in 2005. The SEC withdrew those allegations, but continued to investigate a different set of allegations that the executives bribed Macedonian officials for the passage of regulatory changes that would block Deutsche Telekom's competition. In 2011, Magyar Telekom ("Magyar") and

Deutsche Telekom paid \$95 million to resolve a U.S. criminal investigation into the charges. As part of the settlement, Magyar acknowledged the bribery charges, and Deutsche Telekom admitted one of its executives had known of the schemes.

Merck & Co.

Pharmaceutical company Merck & Co. reported in a March 2014 SEC filing that the DOJ discontinued its FCPA investigation into the company as part of an industry-wide FCPA sweep of drug makers and medical-device manufacturers. Merck & Co. previously disclosed in 2010 that it had received letters from the SEC and DOJ requesting information regarding its activities in a number of countries. Merck & Co.'s 2014 SEC filing did not provide any additional information into the status of the SEC probe.

SL Industries

The New Jersey power technology company SL Industries reported in March 2014 that the DOJ dropped its FCPA probe of the company without filing charges in September 2013. Initiated in May 2012, the DOJ's FCPA probe into SL Industries focused on whether employees of three Chinese subsidiaries had improperly provided gifts and entertainment to Chinese government officials. The company announced that it would implement a mandatory

FCPA compliance program for all employees moving forward, and would engage outside consultants to perform FCPA compliance tests at its operations in China and Mexico. SL Industries did not provide an update as to the status of the SEC's inquiry and stated that it "cannot predict at this time whether any action may be taken by the SEC."

Smith & Wesson

In June 2014, the DOJ ended its FCPA investigation into Smith & Wesson and declined to bring criminal charges against the company. The DOJ investigation followed the indictment of Smith & Wesson's vice president of sales, who was one of 22 individuals from the law enforcement and military equipment industries to be indicted in 2010 on charges of bribing Gabonese officials to win business. Smith & Wesson also indicated that a civil settlement with the SEC was forthcoming to resolve the SEC's investigation into potential violations of securities laws, which was triggered in part by the DOJ's FCPA probe.



Recent FCPA Enforcement Actions and Investigations in China

BRIC SPOTLIGHT: Increased Enforcement of China's Anti-Corruption Laws

After several years of increased domestic anti-corruption enforcement, China grabbed the global business community's attention for its international anti-corruption enforcement activities. Most multi-national companies with U.S. connections have established programs to comply with the FCPA; however, companies need to be aware of Chinese anti-corruption laws. Chinese regulators are increasing their focus on anti-corruption enforcement. Gone are the days where the Chinese government ignores corporate corruption. Corporations now need to be aware of these laws and should take appropriate remedial measures in response.

Although China has various sources of anti-corruption laws, there are two main statutes that control:

- The Criminal Law of the People's Republic of China ("CL")
- The Anti-Unfair Competition Law of the People's Republic of China ("AUCL")

The Provisional Measures on the Prohibition of Commercial Bribery issued by the State Administration for Industry and Commerce (AIC

Measures) supplement these statutes. Furthermore, China is a signatory to the UN Convention against Corruption, which has been effective for China since 2006.

Importance of China in the Current Economic Landscape

For several years, China has been experiencing a high growth of Foreign Direct Investment ("FDI") and trade. FDI inflows into China in 2013 rose to a record \$117.6 billion, and as of mid-2014, Chinese growth has increased at a higher rate than in 2013. Historically, China has attracted a steady flow of FDI every year since joining the World Trade Organization in 2001. This is due to foreign businesses increasingly entering its economy.

However, state owned entities ("SOEs") continue to maintain a central role in China's economy. Prior to economic reforms in the late 1970's, SOEs accounted for over eighty percent of China's industrial output. With these reforms, the role of SOEs has slowly declined while some have been privatized. Despite the diminishing role of SOEs, they continue to play a crucial role. All important sectors of the economy, such as banking, telecommunication, manufacturing, electricity and transportation are controlled

by SOEs. Therefore, it is highly likely that corporations doing business in China will have contact with SOEs.

Although some SOEs have been privatized, state entities often own a minority interest in these privatized companies. The DOJ does not require a company to be wholly owned by the state in order to qualify as an SOE. It is therefore possible that the DOJ will consider companies that are partially owned by the state to be SOEs. If so, the number of companies qualifying as SOEs in China could expand, requiring corporations doing business in China to exercise additional due diligence in determining if a Chinese business is private.

Included in this business development potential is the expectation that companies understand that China is perceived as corrupt. Transparency International in December 2013 released its annual corruption perception rankings in which China received a score of 40 out of 100. For perspective, India scored 36, the United States scored 73, and Iraq scored 16. Corporations need to be aware of the Chinese rules in addition to the FCPA to avoid penalties arising out of conduct prohibited by these rules.

Chinese Rules - Explained

The AUCL discusses commercial bribery while the CL addresses two forms of bribery: (1) Official Bribery and (2) Commercial Bribery. Official bribery involves bribery of a government official while commercial bribery is offering a bribe to a representative of a private organization. A person performing public services in a state-owned company, a person assigned by a state-owned organization to a particular company, or any person performing public services can be considered government officials. With such a broad definition, it is prudent for corporations to take precaution when dealing with executives from state-owned enterprises.

Penalties for violating the CL can be substantial. For official bribery, the punishment can range from the confiscation of property to imprisonment (up to life). For commercial bribery, an individual can face up to 10 years in prison and a fine. Entities that violate these laws will face criminal charges and individual executive liability. Under the AUCL, penalties of about \$30,000 and a forfeiture of illegal income are possible. Those harmed by the bribery have a cause of action under the AUCL.

Practically speaking, the fines imposed for violating the rules

have been modest in China; however, the more significant concern is the potential for life imprisonment, for corporate executives operating in China.

FCPA in China

Multi-national companies may not know that many private companies in China might actually be SOEs with owners and employees who have government ties. The DOJ and the SEC interpret “state-owned entities” and “foreign officials” broadly to incorporate a vast range of employees. Thus, it is imperative for companies to understand the rules and definitions before engaging in business with Chinese companies.

One of the problems that has decreased the transparency of foreign businesses in China is the lack of open access to corporate records. The Chinese government is restricting this information because of media attention focused on fraudulent Chinese companies and political figures. These restrictions hinder investors’ due diligence efforts and increase both the costs and dangers of doing business in China. Top-down, corporate-level compliance programs are unlikely to be effective in addressing these risks. While a robust anti-corruption program is important, dealing with China, a high-risk country, requires local level

compliance programs.

Examples of effective compliance programs in China include:

- Training for executives and local employees on FCPA and Chinese anti-corruption laws in both a specialized format and incorporated into various other training programs
- Open and wide-spread communication of anti-fraud programs
- Deep due diligence on all Chinese business relationships
- Periodic internal testing of high risk matters such as vendor lists, repetitive payments, one-time payments, and traditionally high-risk accounts.

Companies that invest in practical compliance programs will realize significant financial benefits. These benefits will protect the company from government investigations. China is certain to continue to be a huge opportunity for FDI. To succeed, companies must understand that an investment in FCPA and anti-fraud compliance is an essential part of their overall strategy. This is especially true because regulators are recognizing that companies operating in China are ripe for penalties.

Specific FCPA and Anti-Corruption Efforts in China

GlaxoSmithKline (2013-2014)

In July 2013, Chinese authorities detained 22 GlaxoSmithKline (“GSK”) executives and employees in a corruption investigation that involved as many as 60 domestic and multi-national pharmaceutical companies operating in China. The People’s Daily, China’s state newspaper, critiqued multi-nationals for exploiting the country’s regulatory gaps. Chinese investigators said that these employees admitted to using bribes, kickbacks and other fraudulent means to bolster drug sales in China. The Chinese police accused Mark Reilly, the former head of GSK’s China operations, of ordering his subordinates to form a bribery network resulting in higher drug prices and illegal revenue of more than \$150 million. Part of this plan included a scheme to bribe Chinese government officials. As recently as May 2014, Chinese officials stated that a 10-month investigation revealed that under Mr. Reilly, GSK had conducted false transactions through its financial department to transfer illegal gains made in China to overseas companies.

Morgan Stanley (2012)

The SEC charged a former executive at Morgan Stanley with

violating the FCPA by amassing great wealth for himself and a Chinese official. Garth Peterson (“Peterson”) of Morgan Stanley was accused of arranging to have at least \$1.8 million paid to himself and the Chinese official in order to obtain Chinese business. The SEC alleges that Peterson led Morgan Stanley’s effort to develop a Chinese real estate investment portfolio for its real estate funds by building a relationship with the Chinese official and taking advantage of his ability to steer opportunities to Morgan Stanley and his influence in helping with needed governmental approvals.

The complaint charges Peterson with violations of the anti-bribery, books and records and internal control provisions of the FCPA, and with aiding and abetting violations of the anti-fraud provisions of the Investment Advisers Act of 1940. He settled for a little over \$250,000, relinquishment of \$3.4 million of interest earned on his investments, and was barred from the securities industry. The DOJ also filed a criminal case against Peterson for FCPA violations.

Conclusion

The main takeaway from these developments related to corruption and China is that companies in the U.S. will need to understand not only the FCPA requirements but also the

anti-corruption rules in China. Increased enforcement efforts now require corporations that want to add FDI to China to understand that the country is starting to take a hard line against corruption.

To prevent disruptive enforcement actions from the SEC, DOJ and Chinese officials, compliance efforts must consider the gamut of laws within both countries.



FCPA Practice Team



John J. Carney, Partner

John J. Carney, a former Securities Fraud Chief, Assistant United States Attorney, U.S. Securities and Exchange Commission Senior Counsel and practicing CPA, serves as co-leader of the firm’s national White Collar Defense and Corporate Investigations group. He focuses his practice on advising and defending corporations and senior officers on FCPA compliance, investigation and defense. His significant experience in conducting investigations of possible FCPA violations and other potentially improper foreign, country-based financial transactions has included working on major matters in the key “BRIC” countries (Brazil, Russia, India and China). He has also worked proactively with companies to structure and implement FCPA compliance programs designed to avoid potential violations and lessen government sanctions should an FCPA violation occur. Mr. Carney is a seasoned advocate recognized in *Chambers USA: America’s Leading Lawyers for Business* as a leader in his field.



George A. Stamboulidis, Partner

George A. Stamboulidis, former Chief of the Long Island Division of the U.S. Attorney’s Office for the Eastern District of New York and lead prosecutor in several significant high-profile cases, has been selected as an independent monitor on five separate occasions, more than any other attorney. He applied and refined his deep knowledge of the FCPA while reviewing policies and procedures for the various institutions as part of these monitorships. Additionally, he regularly conducts internal investigations, evaluates financial transaction controls and makes recommendations for changes to ensure that adequate internal review procedures exist for clients’ organizations. Mr. Stamboulidis was quoted in the Best Practices section in *Managing Independent Monitors in Foreign Corrupt Practices Act Compliance Guidebook—Protecting Your Organization from Bribery and Corruption* by Martin and Daniel Biegelman. He received the Justice Department’s coveted Director’s Award for Superior Performance three times and was named a Fellow of the Litigation Counsel of America, a trial lawyer honorary society comprised of experienced and effective litigators throughout the U.S.



Jonathan R. Barr, Partner

Jonathan R. Barr, a former U.S. Department of Justice Fraud Section Trial Attorney, Assistant United States Attorney in the District of Columbia and a former Senior Counsel at the U.S. Securities and Exchange Commission's Division of Enforcement, focuses a significant portion of his practice on conducting internal investigations for public and non-public corporations, defending corporations and individuals in FCPA criminal and civil enforcement investigations and advising corporations on FCPA compliance. He has significant experience representing corporations making voluntary disclosures to the U.S. Government. He has represented clients in FCPA investigations relating to Eastern Europe, Southeast Asia, Brazil and China and has advised public and non-public corporations on creating and implementing FCPA compliance programs. Mr. Barr was recognized among *The Best Lawyers in America*®2013 and as a Washington, D.C., "Super Lawyer" in 2012.



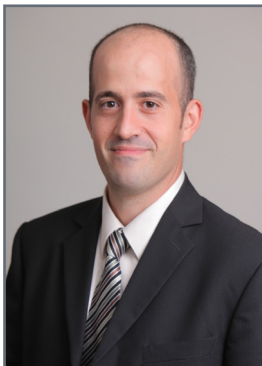
Lauren J. Resnick, Partner

Lauren J. Resnick, former Assistant United States Attorney, has conducted numerous internal investigations on behalf of international companies in the financial services, pharmaceutical, healthcare, and oil and natural gas industries regarding FCPA violations, accounting irregularities and conflicts of interest. She has considerable investigatory experience conducting due diligence for clients seeking overseas joint ventures and has led internal FCPA investigations for clients in countries such as Nigeria, China and Spain. She regularly advises corporate clients on optimizing internal controls and corporate governance, revising business codes of conduct and designing policies and procedures to enhance statutory and regulatory compliance. She has extensive experience advising clients on FCPA compliance issues and has remediated numerous books and records violations. Additionally, Ms. Resnick has supervised numerous monitorships in connection with the firm's appointment by the DOJ and other governmental agencies to assess compliance procedures including FCPA policies and procedures. She was recognized among *The Best Lawyers in America*®2013, as a New York "Super Lawyer" since 2011 and twice received the Justice Department's prestigious Director's Award for Superior Performance.



Timothy S. Pfeifer, Partner

Timothy S. Pfeifer has extensive FCPA compliance and procedures experience. He has conducted numerous internal investigations on behalf of international companies regarding FCPA violations, conflicts of interest, related and third-party transactions, and other employee and management misconduct. He has also conducted transactional due diligence in relation to these matters. He has advised corporate clients on enacting and enforcing internal controls, drafting and revising codes of conduct and designing “best practices” policies and procedures. His clients have included major pharmaceutical and telecommunications companies and their foreign subsidiaries, large foreign oil and chemical companies, U.S. and foreign banks, and foreign sovereigns, such as the Republic of Azerbaijan. Mr. Pfeifer has particular experience with the emerging economies of Eastern Europe and the Balkans, the former Soviet Union and the Russian Federation. He was named a New York “Super Lawyers, Rising Star” in 2011.



Jimmy Fokas, Partner

Jimmy Fokas, a former Senior Counsel in the Division of Enforcement in the New York Regional Office of the SEC, has extensive FCPA investigatory experience. He has reviewed compliance policies and recommended remedial measures regarding books, records and internal controls violations for numerous clients. He conducted an investigation of possible bribes to government officials involving a supplier and subcontractor in India, reviewed compliance policies and recommended remedial measures. He also managed a legal team in connection with the firm’s appointment as independent monitor of a non-prosecution agreement between the DOJ and Mellon Bank, N.A., which involved assessment of the bank’s global compliance and employee training programs. He subsequently made recommendations for enhancements to policies and procedures around data privacy, government contracting, FCPA and other compliance programs.



Jonathan B. New, Partner

Jonathan B. New, former Assistant United States Attorney, handled international money laundering cases, public corruption issues and financial fraud while serving in a variety of frontline positions in the DOJ. He has considerable FCPA compliance and investigatory experience and has spoken and written extensively on these issues. He has advised clients on legal and regulatory compliance issues and represented individuals, companies and professionals in connection with criminal investigations conducted by the DOJ, FBI and IRS. He successfully defended the U.S. in landmark NAFTA litigation, was lead counsel for the Overseas Private Investment Corporation in claims against the Islamic Republic of Iran and has defended numerous federal agencies in a wide range of lawsuits. Mr. New received a special commendation award for Outstanding Service in the Civil Division of the DOJ.



John W. Moscow

John W. Moscow has spearheaded investigations into some of the most complex frauds cases of the past 25 years. He has led investigations and conducted prosecutions involving money laundering and fraud at Bank of Credit and Commerce International; bank fraud in Caracas, Venezuela; the corrupt A.R. Baron & Co., Inc., stock brokerage; the Beacon Hill money laundering case in New York; and theft by top Tyco, Inc., executives. He spent 30 years with the New York County District Attorney's Office, where he served as the Chief of the Frauds Bureau and Deputy Chief of the Investigations Division. While there, he investigated and prosecuted cases involving international bank and tax fraud, securities fraud, theft, fraud on governmental entities and fraud in money transfer systems. Mr. Moscow works frequently with bank and securities regulators at the state and federal level and abroad. He has extensive experience in the international tracing of assets and is a leading authority on international corruption matters.



John J. Burke, Partner

John J. Burke has advised clients on FCPA compliance issues, particularly with respect to their dealings with India, China and the Middle East and has developed FCPA compliance programs for multi-national companies with operations around the world. He has developed clauses in distribution agreements for U.S. companies to reduce their exposure to FCPA liability through the actions of their foreign distributors. Additionally, he has conducted FCPA and anti-corruption due diligence on companies being acquired by clients and assisted companies in revising their FCPA compliance policies to incorporate requirements of the British Bribery Act 2010. Mr. Burke has held numerous in-house FCPA compliance seminars for clients, which include financial institutions, health care companies, data processing companies, defense contractors and consumer product companies.



Edmund W. Searby, Partner

Edmund W. Searby is a former federal prosecutor with the DOJ and the Office of the Independent Counsel. He has conducted criminal investigations and internal investigations involving the FCPA, export controls and international money laundering. In particular, he has conducted a number of FCPA investigations arising in the context of due diligence on potential mergers and acquisitions. He has also drafted and implemented FCPA, anti-trust and general compliance policies for a number of *FORTUNE* 500 companies and other corporations. Mr. Searby has spoken and published articles on the FCPA and other anti-bribery issues. In recognition for his work as a federal prosecutor, Mr. Searby received letters of commendation from the Attorney General of the United States and the Director of the FBI.



Gregory S. Saikin, Counsel

Gregory S. Saikin served as an Assistant United States Attorney in the Southern District of Texas, investigating and prosecuting individual and corporate targets for a variety of fraud, public corruption and money laundering violations. These investigations and prosecutions involved conduct occurring in Mexico, requiring close coordination with the FBI Border Liason Office and various Mexican law enforcement agencies. Mr. Saikin began his career in large law firms representing corporations, corporate officers and audit committees in connection with FCPA compliance and enforcement matters. He is an author and speaker on a wide range of white collar topics, including grand jury practice, corporate charging policies and the federal sentencing guidelines. As a federal prosecutor, he received a number of awards, including the Integrity Award from the Inspector General of the U.S. Department of Health and Human Services. He was also recognized by the FBI Director for outstanding prosecutorial skills and by the U.S. Secret Service Director for superior contributions to law enforcement.



Francesca M. Harker, Associate

Francesca M. Harker obtained significant FCPA experience while conducting investigatory work in Mexico, China, India and Brazil to assist U.S. clients in ascertaining the nature and extent of alleged bribe payments made to foreign official by distributors, contractors and subsidiaries. She also has experience structuring and implementing FCPA compliance programs in an effort to help clients avoid potential violations and lessen government sanctions, and has assisted clients in connection with criminal investigations conducted by the DOJ. During law school, Ms. Harker was an associate editor for the *University of Michigan Law Review*.



Kaitlyn Ferguson, Associate

Kaitlyn Ferguson works on a variety of litigation matters. She is also a member of the team overseeing the anti-corruption investigations and the enforcement of the consent decree of a local union. Ms. Ferguson's professional interests include national security law, government investigations and international relations.



Sonny A. Carpenter, Associate

A former Army prosecutor, Sonny A. Carpenter represents individuals and corporations in complex commercial litigation as well as white collar and corporate criminal matters. While in the government, he tried numerous bench and jury trials and led complex investigations with the Department of Justice, the Department of Homeland Security, and the Department of Defense. Mr. Carpenter uses that experience to support clients by conducting Foreign Corrupt Practices Act (FCPA) and other investigations and by handling various matters for corporations and individuals involving compliance measures and allegations of fraud. His disciplined nature heightens his professional organization and further regiments his thorough approach to client needs.



Jenna N. Felz, Associate

Jenna N. Felz is an associate at BakerHostetler, focusing her practice on litigation, including government investigations and white collar criminal defense. Ms. Felz is a member of the BakerHostetler team serving as court-appointed counsel to the Securities Investor Protection Act (SIPA) Trustee for the liquidation of Bernard L. Madoff Investment Securities LLC (BLMIS).

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