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New DOJ Guidance and Recent Corporate Monitor Appointments Show that Monitorships Are Here to Stay

In recent years, FCPA criminal investigations frequently have resulted in deferred, non-prosecution or plea agreements between the United States Department of Justice ("DOJ") and companies.

Many of these agreements— including four this year— have required the corporate defendant to retain an independent monitor, often a retired judge or other prominent attorney in private practice, to oversee the company's compliance with the terms of the agreement and to evaluate its compliance practices and internal controls. The Securities and Exchange Commission ("SEC") also has required companies to retain monitors to resolve civil FCPA enforcement actions.[1] In this article, we address a significant new development regarding the appointment of monitors and the resolution of disputes arising out of monitorships, as well as recent FCPA matters involving appointments of monitors. Taken together, these events make clear that the DOJ's approach to monitorships as a remedy in FCPA cases is "mend them, don't end them."

On May 25, 2010, the DOJ issued new guidance on drafting provisions of agreements relating to monitors. The guidance is meant to help define the role of the DOJ in resolving disputes between a company and its monitor about the monitor's recommendations, and to head off disputes about the scope and cost of monitorships.

The impact of the new DOJ guidance on monitorships may soon become apparent because the number of monitors appointed this year has already surpassed 2009 numbers.[2] Four companies facing FCPA allegations, including Daimler AG

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1 *See, e.g., In Re Westinghouse Air Brake Technologies Corp.*, SEC Release No. 57333, Order, ¶ 22 (Feb. 14, 2008), www.sec.gov/litigation/admin/2008/34-57333.pdf, (requiring retention of independent compliance consultant acceptable to SEC).

2 Only two companies were required to implement corporate compliance monitors as part of their FCPA-related settlement agreements in 2009, Control Components, Inc. and Kellogg Brown & Root LLC.

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and BAE Systems plc, have been required to retain corporate monitors.[3]

The Grindler Memorandum

The new guidance, issued in a memorandum from Acting Deputy Attorney General Gary G. Grindler to senior DOJ attorneys (the "Grindler Memorandum"), states that a "[deferred prosecution or non-prosecution] agreement should explain what role the Department could play in resolving disputes that may arise between the monitor and the corporation."[4] The Grindler Memo supplements guidance Grindler's predecessor, Craig Morford, issued on March 7, 2008.[5]

The Grindler Memorandum follows a review by the U.S. Government Accountability Office ("GAO") of the DOJ's use and oversight of deferred prosecution and non-prosecution agreements.[6] The GAO interviewed personnel at thirteen companies and learned that they were hesitant to raise concerns about how monitors discharged their responsibilities and the overall costs of the monitorships. The review reported that companies felt helpless to question or disagree with monitors' actions or recommendations for fear of being found in violation of their deferred or non-prosecution agreements, and perceived that they lacked the leverage to resolve issues with monitors, even in cases in which there were good reasons to believe a monitor was acting unreasonably.

To address these concerns, the Grindler Memorandum provides two model provisions for prosecutors to consider when drafting agreements. First, if a company believes that a monitor's recommendation is impractical, burdensome, or too costly,

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3 The four companies that have reached an agreement with the DOJ include Daimler AG (deferred prosecution agreement), BAE Systems plc (plea agreement), Innospec Inc. (plea agreement), and Alcatel-Lucent (deferred prosecution agreement, agreement in principle). *See United States v. Daimler AG*, No. 1:10-cr-00063, Deferred Prosecution Agreement (D.D.C. 2010), www.justice.gov/criminal/fraud/fcpa/cases/docs/daimlerag-def-agree.pdf.; *United States v. BAE Systems plc*, No. 1:10-cv-035, Plea Agreement (D.D.C. 2010), http://www.justice.gov/criminal/pr/documents/03-01-10bae-plea-%20agreement.pdf; *United States v. Innospec Inc.*, No. 1:10-cr-00061, Plea Agreement (D.D.C. 2010), http://www.scribd.com/doc/28747923/U-S-v-Innospec-Plea-Agreement; Form 20-F filed by Alcatel-Lucent (Mar. 23, 2010), http://www.alcatel-lucent.com/wps/portal/!ut/p/kcxml/04_Sj9SPykssy0xPLMnMz0vM0Y_QjzKLd4w3sTAASYGYRq6m-pEoYgbxjggRX4_83FT9IH1v_QD9gtzQiHJHR0UAOMxDgw!!/delta/base64xml/L3dJdyEvd0ZNQUFzQUMvNElVRS82X0FfNDgx.

4 Memorandum from Gary G. Grindler to the Heads of DOJ Components and United States Attorneys, "Additional Guidance on the Use of Monitors in Deferred Prosecution Agreements and Non-Prosecution Agreements with Corporations" (May 25, 2010), *available at* www.justice.gov/dag/dag-memo-guidance-monitors.pdf.

5 Memorandum from Craig S. Morford to the Heads of DOJ Components and United States Attorneys, "Selection and Use of Monitors in Deferred Prosecution Agreements and Non-Prosecution Agreements with Corporations" (March 7, 2008), *available at* www.justice.gov/dag/morford-useofmonitorsmemo-03072008.pdf. The Morford Memo listed nine principles that prosecutors should follow when selecting monitors and drafting provisions of deferred and non-prosecution agreements relating to the use of monitors.

6 GAO, 10-260T, Prosecutors Adhered to Guidance in Selecting Monitors for Deferred Prosecution and Non-Prosecution agreements, but DOJ Could Better Communicate Its Role in Resolving Conflicts (Nov. 19, 2009), http://www.gao.gov/products/GAO-10-260T.

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the company can propose an alternative. If the monitor and the company ultimately disagree on which approach to take, the DOJ will consider the monitor's recommendation and the company's views when assessing the company's compliance with the non-prosecution or deferred prosecution agreement. Second, the DOJ and company representatives should meet at least annually to discuss how to improve the monitorship, including its scope and costs.

There are limits to the types of disputes the DOJ will discuss with the company. The Grindler Memorandum states that the DOJ's role in resolving disputes "generally should be limited to questions relating to whether the company has complied with the terms of the agreement."[7] Because the DOJ is generally not a party to the contract between the company and the monitor, the Grindler Memorandum states that the DOJ should not "arbitrate contractual disputes between the company and the monitor."[8] Companies should therefore try to head off disputes with monitors by carefully negotiating and drafting the terms of the monitor's retention agreement and by working within the scope of the monitorship relationship to vet issues in advance of any final recommendations from the monitor. The Grindler Memorandum will provide little assistance to companies that, without justification, fall behind in the reporting and cooperation tasks identified in a settlement that requires working with a monitor.

Corporate Monitors in Recent FCPA Matters

This year, there have been five FCPA enforcement cases settled with corporations, four of which were resolved with plea agreements or deferred prosecution agreements.[9] All four agreements require the corporate defendant to retain an independent compliance monitor.[10] The two most recent agreements are discussed here.

In April 2010, the German auto manufacturer Daimler AG ("Daimler") and three subsidiaries[11] resolved charges related to an FCPA investigation into the company's worldwide sales practices.[12] Daimler entered into a deferred prosecution agreement and agreed to the filing of a criminal information charging it with one account of conspiracy to violate the books and records provisions of the FCPA and one count of violating those provisions. Under the deferred prosecution agreement, Daimler agreed to retain a monitor for three years to oversee the company's continued implementation and maintenance of an FCPA compliance program, and to make reports to the Board of Directors and the DOJ.[13] Daimler and its subsidiaries will pay $93.6 million in criminal fines and penalties plus $91.4 million in civil penalties. Judge Richard J. Leon of the District of Columbia approved the settlement.[14]

In March 2010, BAE Systems plc ("BAE") pleaded guilty to conspiring to violate US laws prohibiting false statements and certifications to US agencies by misrepresenting its compliance with the FCPA.[15] As a condition of BAE's plea agreement, the company agreed to retain an independent monitor for three years to assess its FCPA and export control compliance programs and to make reports to the company and the DOJ.[16] The

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7 *See* Grindler Memorandum, note 4, *supra*.

8 *Id.*

9 The companies settling FCPA allegations with the DOJ to date in 2010 are Daimler AG, BAE Systems plc, Innospec Inc., Alcatel-Lucent and Nexus Technologies, Inc. *See* DOJ Press Rel. 10-360, Daimler AG and Three Subsidiaries Resolve Foreign Corrupt Practices Act Investigation and Agree to Pay $93.6 Million in Criminal Penalties (Apr. 1, 2010), http://www.justice.gov/opa/pr/2010/April/10-crm-360.html; DOJ Press Rel. 10-209, BAE Systems PLC Pleads Guilty and Ordered to Pay $400 Million Criminal Fine (Mar. 1, 2010), http://www.justice.gov/opa/pr/2010/March/10-crm-209.html; DOJ Press Rel. 10-278, Innospec Inc. Pleads Guilty to FCPA Charges and Defrauding the United Nations; Admits to Violating the U.S. Embargo Against Cuba (Mar. 18, 2010), http://www.justice.gov/opa/pr/2010/March/10-crm-278.html; Securities and Exchange Commission, Form 20-F filed by Alcatel-Lucent (agreement in principle), *see* Alcatel-Lucent, note 3, *supra*; DOJ Press Rel. 10-270, Nexus Technologies Inc. and Three Employees Plead Guilty to Paying Bribes to Vietnamese Officials (Mar. 16, 2010), http://www.justice.gov/opa/pr/2010/March/10-crm-270.html.

10 *See* note 2, *supra*.

11 The three subsidiaries are (1) DaimlerChrysler Automotive Russia SAO, now known as Mercedes-Benz Russia SAO (Russia); (2) Export and Trade Finance GmbH (Germany); and (3) DaimlerChrysler China Ltd., now known as Daimler North East Asia Ltd. (China).

12 *See* Daimler AG, note 9, *supra*.

13 *See* Daimler AG Deferred Prosecution Agreement, note 3, *supra*.

14 *Id.*

15 *See* BAE Systems, note 9, *supra*.

16 *See* Daimler AG Plea Agreement, note 3, *supra*.

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charges against BAE, Europe's largest defense contractor, related to questionable payments to win hundreds of millions of dollars in contracts in Saudi Arabia and other countries. BAE will have to pay a $400 million criminal fine. Judge John D. Bates of the District Court for the District of Columbia approved the plea agreement.[17]

The BAE plea agreement requires the monitor to be a citizen of the United Kingdom who is approved by the UK government and eligible for the appropriate UK national security clearances.[18] The DOJ retained sole discretion to accept or reject the candidates selected for the position by BAE.[19] According to court documents, the DOJ recently rejected four out of the six monitors proposed by BAE on the ground that they were unqualified because they did not have experience with relevant compliance programs, were not familiar with the defense industry, and did not have a legal, enforcement or investigative background in the FCPA or export control laws.[20] BAE argued that the specific legal background the DOJ demanded was beyond the scope of the plea agreement and would further shrink an already small pool of potential monitors.[21] On June 4, 2010, Bates extended the term for BAE's monitor by three months to give it more time to hire a monitor whom the DOJ would approve.[22]

BAE's difficulties proposing a suitable monitor may be an isolated occurrence in light of the special security clearance and approval from the UK government that is required. To avoid a similar situation, companies facing monitorships should consider whether to include detailed descriptions of the qualifications a monitor should have to meet the DOJ's approval. Such formal descriptions of credentials may not be necessary where a company and the DOJ already have agreed on a particular monitor or discussed monitor candidates before entering into a formal agreement.

Conclusion

The Grindler Memo and the terms of the plea agreements and deferred prosecution agreements entered this year show that the DOJ will continue to require companies to engage monitors in resolutions of FCPA cases. Although the recent DOJ guidance should give companies an outlet for raising concerns about monitors' performance and recommendations, it has yet to be seen how much impact the Grindler Memo will have on the way monitorships function. One possible way for a company to avoid the extraordinary cost that a monitorship may bring, if not the monitorship itself, would be to undertake a robust compliance review during the government investigation and implement remedial policies. ■

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17 *Id.*

18 *Id.*, Ex. C. at ¶ 2.

19 *Id.*, Ex. C. at ¶ 3.

20 *United States v. BAE Systems plc*, No. 1:10-cv-035, Motion of BAE Systems Plc for an Extension of the Deadline for the Approval by the Department and Engagement of a Corporate Monitor (D.D.C. 2010).

21 *Id.*

22 *United States v. BAE Systems plc*, No.1:10-cv-035, Order (D.D.C. 2010).

FCPA-Related Legislative Developments

The FCPA has had its share of attention in the busy 111th Congress. The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), H.R. 4173[1] – the financial reform legislation agreed upon by House and Senate conferees on June 25 – provides monetary bounties for whistleblowers who report violations of any securities laws, including the FCPA. The Dodd-Frank Act also includes new requirements for issuers involved in the commercial development of oil, natural gas, or minerals to disclose payments to foreign governments related to such activities. Bills have been introduced in the House to require debarment of companies convicted of violating the FCPA and to create a private right of action under the FCPA for US companies injured by foreign competitors that pay bribes. Although the expanded whistleblower bounty program and disclosure requirements for issuers involved in resource development set forth in the Dodd-Frank Act are the only provisions likely to be enacted any time soon, all of the proposals merit study and consideration by in-house legal and compliance staff given the attractiveness of anti-bribery enforcement as a political issue. Analysis and update on the status of these bills follow.

Whistleblower Bounties for FCPA Violations

The Dodd-Frank Act allows for the compensation of whistleblowers for providing information to the SEC regarding FCPA and securities fraud violations. A whistleblower who voluntarily provides "original information" to the SEC is entitled to between 10 and 30 percent of the amount the SEC recoups in prosecuting federal securities law violations that result in monetary sanctions greater than $1 million.[2] In determining the award amount, the Commission is required to consider the significance of the information provided, the degree of assistance the whistleblower provided, the SEC's interest in deterring securities laws violations by compensating whistleblowers, and any other factors rules or regulations establish.[3]

The whistleblower provisions of the Dodd-Frank Act also create a new private right of action for those who suffer retaliation "because of any lawful act done by the whistleblower [ ] (i) in providing information to the Commission in accordance with [the whistleblower provisions]; (ii) in initiating, testifying in, or assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information; or (iii) in making disclosures that are required or protected under [the Sarbanes-Oxley Act of 2002, the Securities Exchange Act of 1934 [("'34 Act")], § 1513(e) of Title 18 of the U.S. Code (relating to retaliation against witnesses)] and any other law, rule, or regulation subject to the jurisdiction of the Commission."[4] Successful plaintiffs under the anti-retaliation provision can be awarded reinstatement and double back pay with interest, as well as litigation costs, expert witness fees, and reasonable attorneys' fees.[5] Whistleblowers are also entitled to a monetary award for "related actions" brought by the DOJ or other agencies, including foreign regulators.

Until now, the SEC's whistleblower bounty program has applied only to reports of insider trading violations.[7] Since its inception in 1989, the current bounty program has paid only $159,537 to five whistleblowers.[8] The monetary

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1 The Wall Street Reform and Consumer Protection Act, H.R. 4173, (introduced Dec. 2, 2009), http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.4173:.

2 *Id.* at §§ 922(a)(1) , 922(a)(3), and 922(b).

3 *Id.* at § 922(c).

4 *Id.* at § 922(h)(1)(A).

5 *Id.* at § 922(h)(1)(C).

6 *Id.* at § 922(b)(1), 922(a)(5).

7 15 U.S.C. § 78u-1(e).

8 SEC, Office of Inspector General, Office of Audits, Assessment of SEC's Bounty Program, Rep. No 474, at 5, (Mar. 29, 2010), http://www.sec-oig.gov/Reports/AuditsInspections/2010/474.pdf.

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range contemplated by the proposed new whistleblower provision in the financial regulatory reform legislation could easily eclipse this amount in just one enforcement action. For example, KBR, Inc. and Halliburton Co. paid the SEC $177 million in disgorgement to settle an FCPA enforcement action in 2009.[9] A whistleblower could theoretically have earned between $17.7 million and $53.1 million under the provisions in the Dodd-Frank Act. Notably, this monetary range does not even include rewards associated with related actions; under the Dodd-Frank Act, the whistleblower also could have earned at least 10 percent of the $402 million criminal penalty the DOJ imposed against KBR.[10]

The inclusion of monetary incentives for the disclosure of broader securities laws violations in the financial reform legislation was motivated, at least in part, by the Bernard Madoff Ponzi scheme.[11] It is unclear how effective the whistleblower provisions will be in deterring and prosecuting securities violations. It is almost certain that the bounty programs articulated in the Dodd-Frank Act, if passed, will lead to an increase in SEC and other regulatory investigations of FCPA and other securities violations. The program may provide incentives for employees to report to the Commission before or instead of reporting a possible violation internally, potentially undermining compliance programs and removing the decision about how to handle a plausible violation from the hands of company management and counsel. The SEC is paying close attention to how it will process the expected exponential increase in the number of whistleblower tips it receives. It has been reported that the SEC is considering assigning several employees solely to field whistleblower complaints after the financial reform legislation is enacted.[12]

The House and Senate are expected to vote on the Dodd-Frank Act during the week of June 28. President Obama hopes to sign the legislation into law before the July 4th holiday.

Disclosure of Payments to Foreign Governments for Resource Development

The Dodd-Frank Act also amends § 13 of the '34 Act to require issuers that engage in the commercial development of oil, natural gas, or minerals to include in their annual reports information relating to payments by the issuer, a subsidiary, or an entity under the issuer's control to a foreign government or the US government for the purpose of such commercial development.[13] Any payment, other than those that are de minimis, made to further the commercial development of oil, natural gas, or minerals- including taxes, royalties, fees, licenses, production entitlements, bonuses, and other material benefits- must be reported under this bill. Reportable payments include those to foreign governments, departments, agencies, or instrumentalities of foreign governments, and companies owned by foreign governments.

Annual reports would have to include information about the type and total amount of such payments for each resource extraction project, and the type and total amount of such payments made to each government. Commission rules implementing this legislation are required to mandate that the information in the annual report be submitted in an "interactive data format" that includes electronic tags marking such information as the total amounts of payments by category, the currency used for each payment, the business segment of the issuer that made the payment, the financial period in which the payment was made, the government that received the payment, the project to which the payment relates, and any other information the Commission deems necessary.[14]

These provisions of the Dodd-Frank Act are intended to "support the

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9 SEC Press Rel. 2009-23, SEC Charges KBR and Halliburton for FCPA Violations, (Feb. 11, 2009), http://www.sec.gov/news/press/2009/2009-23.htm.

10 DOJ Press Rel. 09-112, Kellogg Brown & Root LLC Pleads Guilty to Foreign Bribery Charges and Agrees to Pay $402 Million Criminal Fine, (Feb. 11, 2009), http://www.justice.gov/opa/pr/2009/February/09-crm-112.html.

11 *See* SEC, Office of Inspector General, Office of Audits, note 8, *supra*.

12 "A Glimpse Into SEC Enforcement, by Way of Goldman," *Securities Docket*, (May 13, 2010), http://www.securitiesdocket.com/2010/05/13/a-glimpse-into-sec-enforcement-by-way-of-goldman/.

13 *See* The Wall Street Reform and Consumer Protection Act, note 1, *supra* at § 1504(2)(A).

14 *Id.* at § 1504(2)(D).

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commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals."[15] The legislation could cast a very wide net in terms of the payments required to be reported. If the legislation is enacted, issuers engaged in commercial development of oil, natural gas, or minerals will have to enhance their compliance policies to ensure adherence to the bill's disclosure requirements.

Interestingly, a similar disclosure requirement was rejected in deliberations surrounding the enactment of the FCPA in 1977 due to concerns that payment disclosure obligations were likely to be vague and encompass thousands of legitimate payments.[16] Instead, the Congress that enacted the FCPA relied on the general books and records provisions set forth in 15 U.S.C. § 78(m) to provide the regime for the disclosure of payments to foreign officials.

The disclosure requirements described herein are closely modeled upon legislation Sen. Richard Lugar (R-IN) introduced in September 2009.[17] Lugar's bill, however, includes within the scope of required disclosures payments to officers, employees, and agents of foreign governments, as well as persons who will provide a personal benefit to an officer of a government if that person receives a payment. The related provisions in the Dodd-Frank Act do not cover payments to individuals associated with foreign governments.

Debarment for FCPA Violations

In May 2010, Rep. Peter Welch (D-VT) introduced H.R. 5366, the "Overseas Contractor Reform Act."[18] The bill would require debarment of any individual or company from any contract or grant awarded by the federal government within 30 days after a final judgment that the individual or company has violated the FCPA.

Debarment would be immediate and would include the termination of any ongoing contracts with the federal government. The proposed legislation does allow the head of a federal agency to waive the debarment requirement so long as the federal agency head reports the waiver to Congress within 30 days of the waiver along with any accompanying justification. Importantly, the debarment requirement applies only to violations of the anti-bribery provisions of the FCPA, and not the books and records and internal controls provisions. The legislation was referred to the House Committee on Oversight and Government Reform and awaits further action.

In a press release, Welch explained that the legislation responds to reports that Xe Services, formerly Blackwater Worldwide, bribed Iraqi officials in order to allow the contractor to continue doing business in Iraq following a 2007 shooting in which 17 Iraqis were killed. Welch stated, "Simply put, those convicted of bribing foreign officials have no business doing business with the federal government. Companies that flagrantly violate the rule of law – as Blackwater is accused of doing – ought to be stripped of their ability to profit off of American contracts."[19]

If H.R. 5366 is enacted, it will be interesting to observe how, if at all, it affects SEC and DOJ settlements with federal contractors relating to foreign bribery. Defendants subject to automatic debarment will no doubt vigorously contest and heavily negotiate against the bringing of FCPA primary anti-bribery charges. Some speculate that this was the case in the DOJ's recent settlement with government contractor BAE Systems plc, which did not involve an itemization of FCPA charges despite allegations in the criminal information that seemed to make out the elements of an FCPA violation.

If passed, H.R. 5366 would supplement the requirements of the amendment to the Federal Acquisition Regulation, effective as of December 12,

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15 *Id.* at § 1504(2)(E).

16 Prohibited Bribes to Foreign Officials: Hearing on S. 3133, 3379 & 3418, Before the Committee on Banking, Housing and Urban Affairs, 94th Cong. 13 (1976).

17 Energy Security Through Transparency Act of 2009, S. 1700, (introduced Sept. 23, 2009), http://thomas.loc.gov/cgi-bin/bdquery/z?d111:s1700:.

18 Overseas Contractor Reform Act, H.R. 5366, (introduced May 20, 2010), http://thomas.loc.gov/home/gpoxmlc111/h5366_ih.xml.

19 "Welch Introduces Bill to Ban Federal Contractors Convicted of Bribing Foreign Officials," Official Website of Rep. Peter Welch, (May 24, 2010), http://welch.house.gov/index.php?option=com_content&task=view&id=987&Itemid=32.

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2008, that mandates that government contractors to disclose "credible evidence" of, among other requirements, FCPA violations or face suspension or debarment.[20]

Private FCPA Right of Action

In April of last year, Rep. Ed Perlmutter (D-CO) introduced H.R. 2152, the "Foreign Business Bribery Prohibition Act."[21] Rep. Shelley Berkley (D-NV) is co-sponsoring the legislation. The proposed bill would amend the FCPA to provide issuers, domestic concerns, and any other "U.S. Person" a private right of action against a "foreign concern" that causes injury to the plaintiff as a result of violating the anti-bribery provisions of the FCPA. Plaintiffs must allege and prove that (a) the foreign concern violated the anti-bribery provisions of the FCPA and (b) such violation (i) "prevented the plaintiff from obtaining or retaining business for or with any person" and (ii) "assisted the foreign concern in obtaining or retaining such business."[22] Plaintiffs would be entitled to recover three times the higher of either the total amount of the contract that the defendant gained as a result of violating the FCPA, or the total amount of the contract that the plaintiff failed to gain as a result of the defendant's violation of the FCPA, plus reasonable attorney's fees and costs.

Perlmutter introduced an identical bill in the previous Congress; that bill, H.R. 6188, never emerged from committee.[23] It is unclear whether H.R. 2152 will suffer the same fate. It has experienced no activity since it was referred to the House Judiciary Committee Subcommittee on Crime, Terrorism, and Homeland Security in June 2009. If enacted, the creation of a private right of action for FCPA violations would no doubt generate a body of judicial decisions that on the one hand would provide much-needed guidance on the parameters of the FCPA, but on the other hand also increase FCPA-related costs. The one-sided provisions focusing on violations by foreign entities could also trigger concerns by the United States' trading partners and upset the "level playing field" theory that underpins the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, as well as international trade treaties and agreements, such as those comprising the World Trade Organization. ■

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20 For more information on these requirements, see Paul R. Berger, Bruce E. Yannett, Steven S. Michaels, and Erin W. Sheehy, "Landmark Federal Regulation Mandates New Disclosure and Compliance Requirements for Federal Contractors," *Debevoise & Plimpton LLP Client Update*, (Mar. 26, 2009), http://www.debevoise.com/newseventspubs/publications/detail.aspx?id=40e0fe74-b030-428a-a826-c46801758230.

21 Foreign Business Bribery Prohibition Act, H.R. 2152, (introduced Apr. 28, 2009), http://thomas.loc.gov/cgi-bin/query/z?c111:h2152:.

22 *Id.* at § 2(f)(2).

23 Foreign Business Bribery Prohibition Act, H.R. 6188, (introduced Jun. 4, 2008), http://thomas.loc.gov/cgi-bin/query/z?c110:h6188:.